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As filed with the Securities and Exchange Commission on July 17, 2006

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT
Under
The Securities Act of 1933

CADENCE PHARMACEUTICALS, INC.

(Exact name of Registrant as specified in its charter)

Delaware	**2834**	**41-2142317**
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification Number)*

12730 High Bluff Drive, Suite 410
San Diego, CA 92130
(858) 436-1400
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Theodore R. Schroeder
President and Chief Executive Officer
Cadence Pharmaceuticals, Inc.
12730 High Bluff Drive, Suite 410
San Diego, CA 92130
(858) 436-1400
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

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, check the following box. o

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

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 for the same offering. o

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 statement number of the earlier effective registration statement for the same offering. o

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee
Common Stock, $0.0001 par value	$86,250,000	$9,229

(1) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

(2) Includes offering price of shares that the underwriters have the option to purchase to cover over-allotments, if any.

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 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 contained in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion
Preliminary Prospectus dated July 17, 2006

PROSPECTUS

Shares

Common Stock

This is our initial public offering. We are offering shares of common stock.

We expect the initial public offering price to be between $ and $ per share. Currently, no public market exists for our common stock. After pricing of the offering, we expect that our common stock will be quoted on the Nasdaq Global Market under the symbol "CADX."

Investing in our common stock involves risks that are described in the "Risk Factors" section beginning on page 8 of this prospectus.

	Per Share	Total
Public offering price	$	$
Underwriting discount	$	$
Proceeds, before expenses, to us	$	$

The underwriters may also purchase up to an additional shares of common stock from us at the public offering price, less the underwriting discount, within 30 days from the date of this prospectus to cover overallotments.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The shares of common stock will be ready for delivery on or about , 2006.

Merrill Lynch & Co.

Deutsche Bank Securities

Pacific Growth Equities, LLC

JMP Securities

The date of this prospectus is , 2006.

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You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized anyone to provide you with information different from or in addition to that contained in this prospectus. If anyone provides you with different or inconsistent information, you should not rely on it. We are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of our common stock. Our business, financial condition, results of operations and prospects may have changed since that date.

For investors outside the United States: Neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. You are required to inform yourselves about and to observe any restrictions relating to this offering and the distribution of this prospectus.

PROSPECTUS SUMMARY

This summary does not contain all of the information you should consider before buying shares of our common stock. You should read the entire prospectu carefully, especially the "Risk Factors" section and our financial statements and the related notes appearing at the end of this prospectus, before deciding to invest in shares of our common stock. Unless the context requires otherwise, references in this prospectus to "Cadence," "we," "us" and "our" refer to Cadenc Pharmaceuticals, Inc.

Cadence Pharmaceuticals, Inc.

Our Company

We are a biopharmaceutical company focused on in-licensing, developing and commercializing proprietary product candidates principally for use in the hospital setting. Since our inception in 2004, we have in-licensed rights to two Phase III product candidates, both of which have been studied in prior Phase III clinical trials conducted by our licensors. We have in-licensed the exclusive U.S. and Canadian rights to IV APAP, an intravenous formulation of acetaminophen that is currently marketed in Europe for the treatment of acute pain and fever by Bristol-Myers Squibb Company, or BMS. We believe that IV APAP is the only stable, pharmaceutically-acceptable intravenous formulation of acetaminophen. We have also in-licensed the exclusive North American and European rights to omiganan pentahydrochloride 1% aqueous gel, or omiganan, for the prevention and treatment of device-related, surgical wound-related and burn-related infections. We believe that the hospital setting is a concentrated, underserved market for pharmaceuticals and anticipate building our own, hospital-focused sales force as our product candidates approach potential U.S. Food and Drug Administration, or FDA, approval. We intend to build a leading franchise in the hospital setting, continuing to focus on products that are in late-stages of development, currently commercialized outside the United States, or approved in the United States but with significant commercial potential for proprietary new uses or formulations.

The Hospital Market

Large, multinational pharmaceutical companies have generally decreased marketing efforts focused on hospital-use drugs, instead focusing on drugs that can be marketed in the larger outpatient setting. We believe this reduced emphasis on the hospital marketplace presents us with an excellent opportunity to in-license, acquire, develop and commercialize products that address unmet medical needs in the hospital setting. We believe the concentrated nature of the hospital marketplace will allow for our expansion into other therapeutic areas without substantial investment in additional commercial infrastructure.

According to data from IMS Health Inc., or IMS, an independent marketing research firm, approximately $28 billion was spent on promotional activities by the pharmaceutical industry in 2004. Of this amount, IMS estimates that only $1 billion was directed towards hospital-based physicians and directors of pharmacies. In contrast, U.S. hospitals and clinics accounted for approximately $54 billion or 21% of U.S. pharmaceutical sales in 2005, according to IMS. Furthermore, we believe pharmaceutical sales to acute care hospitals are highly concentrated among a relatively small number of large institutions. For example, according to Wolters Kluwer Health, an independent marketing research firm, only 2,000 of the approximately 5,000 acute care hospitals in the United States represent more than 80% of injectable analgesic sales. We believe the relative lack of promotional efforts directed toward the highly concentrated hospital marketplace makes it an underserved and compelling opportunity, especially for a biopharmaceutical company commercializing its products directly through its own dedicated sales force.

Our Product Candidates

IV APAP for the Treatment of Acute Pain

We are developing IV APAP in the U.S. market for the treatment of acute pain. According to IMS, over 500 million units of injectable analgesics, typically used to treat acute pain, were sold in the United States in 2005. Opioids represent the majority of unit volume in the market but are associated with

a variety of unwanted side effects including sedation, nausea, vomiting, constipation, cognitive impairment and respiratory depression. Ketorolac, a non-steroidal anti-inflammatory drug, or NSAID, is the only non-opioid injectable analgesic available in the United States for the treatment of acute pain. However, ketorolac carries strong warnings from the FDA for various side effects, including an increased risk of bleeding — a particularly troubling side-effect in the surgical setting.

Acetaminophen was first available for sale in the United States in 1955 when it was introduced under the brand name Tylenol. Acetaminophen is the most widely used drug for pain relief and the reduction of fever in the United States and is currently available in over 600 pharmaceutical products. Historically, poor stability in aqueous solutions and inadequate solubility of acetaminophen prevented the development of an intravenous dosage form. The patent protection for IV APAP extends through various dates in 2017 to 2021.

IV APAP has previously been studied in six completed Phase III trials and is currently marketed in Europe by BMS. Since its introduction in Europe in mid-2002, over 100 million doses of IV APAP have been administered to patients, and it has become the market share leader among injectable analgesics, with 2005 sales of more than $140 million according to IMS. In the fourth quarter of 2006, we expect to initiate the remaining Phase III clinical trial requirements. We expect these Phase III clinical trial results to be available in the first half of 2008 and, if positive, to subsequently submit a new drug application, or NDA, for IV APAP in the second half of 2008.

Omiganan for the Prevention of Intravascular Catheter-Related Infections

We are currently developing omiganan for the prevention of intravascular catheter-related infections. According to the February 2004 *Catheter: Global Markets & Technologies* report from Theta Reports, eight million central venous catheters, or CVCs, were sold in the United States in 2003, and unit sales are projected to grow to 11 million by 2007. Although CVCs have become an important part of medical care, they can give rise to dangerous and costly complications, including: local catheter site infections, or LCSIs, which are infections at the catheter insertion site; catheter colonization, which is the growth of microorganisms on the portion of the catheter below the skin surface; and catheter-related bloodstream infections, or CRBSIs, which are infections in the bloodstream caused by microorganisms associated with the catheter. The Centers for Disease Control and Prevention estimates that there are 250,000 CRBSIs each year in the United States. The attributable mortality rate of CRBSIs is approximately 12% to 25% with an average marginal cost to the healthcare system of $25,000 per infection. Currently, topical antiseptics are the primary agent used to cleanse the skin surface around the catheter insertion site prior to insertion. However, the utility of these antiseptics is limited, principally due to their short duration of antimicrobial activity.

Omiganan is a topical antimicrobial that has been demonstrated to be rapidly bactericidal and fungicidal with prolonged duration of activity against microorganisms commonly found on the skin surface, including multi-drug resistant microorganisms such as methicillin-resistant *staphylococcus aureus*, or MRSA. Importantly, resistance to omiganan has not been induced in the laboratory after extensive study, nor has omiganan demonstrated potential to induce cross-resistance to other antimicrobial therapeutics. We have in-licensed the patents and the exclusive development and commercialization rights to omiganan in North America and Europe for the prevention of device-related, surgical wound-related and burn-related infections from Migenix Inc. The patent protection for omiganan extends through various dates in 2017 to 2022.

Omiganan has previously been studied in a large, completed Phase III trial that demonstrated statistically significant outcomes for the reduction of LCSI and catheter colonization. The presence of an LCSI may result in replacement of the catheter and/or administration of antibiotics, both of which create additional costs to hospitals and have the potential for adverse safety outcomes. In addition, catheter colonization is well correlated with CRBSIs, according to a published review of clinical trials. We reached agreement with the FDA through the special protocol assessment, or SPA, process on the trial design, endpoints and statistical analysis plan for a single confirmatory Phase III clinical trial with a primary

endpoint of prevention of LCSIs. We initiated this Phase III clinical trial in August 2005 and expect the results to be available in the second half of 2007 and, if positive, to subsequently submit an NDA for omiganan in the first half of 2008.

Our Strategy

Our goal is to be a leading biopharmaceutical company focused on the development and commercialization of proprietary pharmaceuticals principally for use in the hospital setting. Specifically, we intend to:

- *Obtain regulatory approval for our Phase III hospital product candidates.* We have designed our Phase III clinical programs in an effort to reduce clinical development risk, facilitate regulatory approval and optimize marketing claims. To that end, we plan to resume a U.S. Phase III program later this year for IV APAP previously initiated by BMS, and we expect to submit an NDA in the second half of 2008 based on the previously completed trials and any further trials that may be required by the FDA. In addition, we have reached a written agreement with the FDA through the SPA process for a single confirmatory Phase III study of omiganan for the prevention of LCSIs.
- *Build a highly leverageable sales organization targeting hospitals.* We intend to build a commercial organization focused on promoting our products principally to hospitals in the United States. We believe that both IV APAP and omiganan can be effectively promoted by our own sales force targeting key hospitals in the United States. Importantly, we believe the number of institutions in the hospital marketplace is relatively limited and a small number of these institutions account for a substantial portion of the prescribing activity. The concentrated nature of this market creates the opportunity for significant marketing synergies as we intend to leverage our sales force across multiple therapeutic categories in the hospital. Outside the United States, we intend to establish strategic partnerships for the commercialization of our products where we have commercialization rights.
- *Expand our product portfolio through acquiring or in-licensing additional late-stage, hospital-focused products with well-understood risk profiles.* We will seek additional opportunities to acquire or in-license products to more fully exploit our clinical, regulatory, manufacturing, sales and marketing capabilities. We believe that our focus on the hospital market enables us to evaluate a broader range of products across multiple therapeutic areas for possible acquisition. We focus on products that are in late-stages of development, currently commercialized outside the United States, or approved in the United States but with significant commercial potential for proprietary new uses, including new indications, dosage forms or delivery systems.
- *Pursue additional indications and commercial opportunities for our product candidates.* We will seek to maximize the value of IV APAP, omiganan and any other product candidates we may in-license, acquire or develop by pursuing other indications and commercial opportunities for such candidates. For example, we have rights to develop and commercialize omiganan for additional indications related to the prevention and treatment of device-related, surgical wound-related and burn-related infections.

Risk Factors

We are a development stage company with no revenues, and our operations to date have generated substantial and increasing needs for cash. Our business and our ability to execute on our business strategy are subject to a number of risks that you should be aware of before you decide to buy our common stock.

In particular, you should consider the following risks, which are discussed more fully in "Risk Factors" beginning on page 8:

- we are largely dependent on the success of our only two product candidates, IV APAP and omiganan, and we cannot be certain that either product candidate will receive regulatory approval or be successfully commercialized;
- delays in the commencement, enrollment or completion of clinical testing for either of our product candidates could result in increased costs to us and delay or limit our ability to obtain regulatory approval;
- even if our product candidates are approved by regulatory authorities, we expect intense competition in the hospital marketplace for our targeted indications;
- competitors may seek to develop and market products targeted for the same indications as our product candidates but having formulations that are outside the scope of our patent rights; and
- we will require substantial additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate our development programs and commercialization efforts.

Corporate Information

We were incorporated in Delaware on May 26, 2004. Our principal executive offices are located at 12730 High Bluff Drive, Suite 410, San Diego, California 92130, and our telephone number is (858) 436-1400. Prior to November 2004, we were named Strata Pharmaceuticals, Inc. Our website address is http://www.cadencepharm.com. The information on, or accessible through, our website is not part of this prospectus.

The U.S. Patent and Trademark Office has issued a Notice of Allowance in connection with our intent-to-use trademark application for the mark CADENCE™, covering pharmaceutical preparations for the treatment or prevention of diseases or infections of the body's major organs, including the heart, lungs, liver and kidneys; pharmaceutical preparations for the treatment or prevention of diseases of the body's systems, including the immune system and the cardiovascular system; and pharmaceutical preparations to treat or manage pain, anesthesia, surgical and medical procedures. This prospectus also contains trademarks of others, including Bactroban®, Betadine®, BioPatch®, DepoDur®, Dermagraft®, Habitrol®, Lotensin®, Neosporin®, Perfalgan®, Pro-Dafalgan®, Toradol® and Tylenol®.

THE OFFERING

Common stock offered	shares
Common stock to be outstanding after this offering	shares
Use of proceeds	We expect to use the net proceeds from this offering to fund clinical trials and other research and development activities, and to fund working capital, capital expenditures and other general corporate purposes. We may also use a portion of the net proceeds to in-license, acquire or invest in complementary businesses or products.
Risk factors	See "Risk Factors" and other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in shares of our common stock.
Proposed Nasdaq Global Market symbol	CADX

The number of shares of common stock to be outstanding after this offering is based on 87,400,455 shares outstanding as of March 31, 2006, and excludes

- 1,017,000 shares of common stock issuable upon the exercise of options outstanding as of March 31, 2006 at a weighted average exercise price of $0.10 per share;
- 385,000 shares of common stock issuable upon the exercise of warrants outstanding as of March 31, 2006 at a weighted average exercise price of $1.00 per share;
- shares of common stock reserved for future issuance under our 2006 equity incentive award plan, which will become effective on the day prior to the day on which we become subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act (including 5,713,000 shares of common stock reserved for future grant or issuance under our 2004 equity incentive award plan, which shares will be added to the shares to be reserved under our 2006 equity incentive award plan upon the effectiveness of th 2006 equity incentive award plan); and
- shares of common stock reserved for issuance under our 2006 employee stock purchase plan.

Except as otherwise indicated, all information in this prospectus assumes:

- no exercise by the underwriters of their option to purchase up to an additional shares of common stock to cover over-allotments;
- the filing of our amended and restated certificate of incorporation and amended and restated bylaws upon completion of this offering;
- the conversion of all outstanding shares of our preferred stock into 79,630,455 shares of common stock upon completion of this offering; and
- a one-for- reverse stock split of our common stock to be effected before the completion of this offering.

SUMMARY FINANCIAL DATA

The following table summarizes certain of our financial data. The summary financial data are derived from our audited financial statements for the period from May 26, 2004 (inception) through December 31, 2004, and the year ended December 31, 2005. Data are also derived from our unaudited financial statements for the three-month periods ended March 31, 2005 and 2006, and for the period from May 26, 2004 (inception) through March 31, 2006. The data should be read together with our financial statements and related notes, "Selected Financial Data," and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus. The pro forma as adjusted balance sheet data gives effect to the conversion of all outstanding shares of our preferred stock into 79,630,455 shares of our common stock and our sale of shares of our common stock in this offering at the initial offering price of $ per share, after deducting the estimated underwriting discounts and commissions and estimated offering costs payable by us.

	Period from May 26, 2004 (Inception) Through December 31, 2004	Year Ended December 31, 2005	Three Months Ended March 31, 2005	Three Months Ended March 31, 2006	Period from May 26, 2004 (Inception) Through March 31, 2006
	(In thousands, except per share amounts)				
Statement of Operations Data:					
Operating expenses:					
Research and development	$ 2,233	$ 6,126	$ 577	$ 27,835	$ 36,195
Marketing	41	240	130	96	377
General and administrative	877	1,412	263	537	2,826
Total operating expenses	3,151	7,778	970	28,468	39,398
Loss from operations	(3,151)	(7,778)	(970)	(28,468)	(39,398)
Other income (expense):					
Interest income	9	255	7	144	409
Interest expense	—	—	—	(17)	(17)
Total other income	9	255	7	127	392
Net loss	$ (3,142)	$ (7,523)	$ (963)	$ (28,341)	$ (39,006)
Basic and diluted net loss per share(1)	$ (0.86)	$ (1.63)	$ (0.21)	$ (5.79)	
Shares used to compute basic and diluted net loss per share(1)	3,658	4,624	4,519	4,895	
Pro forma basic and diluted net loss per share(1)		$ (0.36)		$ (0.87)	
Shares used to compute pro forma basic and diluted net loss per share(1)		20,649		32,451	

(1) See Note 1 of Notes to Financial Statements for an explanation of the method used to compute the historical and pro forma net loss per share and the number of shares used in the computation of the per share amounts.

	As of March 31, 2006	
	Actual	Pro Forma As Adjusted(1)
	(In thousands)	
Balance Sheet Data(2):		
Cash and cash equivalents	$ 40,617	$
Working capital	39,994	
Total assets	41,822	
Deficit accumulated during the development stage	(39,006)	
Total stockholders' equity	40,574	

(1) Each $1.00 increase or decrease in the assumed initial public offering price of $ would increase or decrease, respectively, the amount of cash and cash equivalents, working capital, total assets and total stockholders' equity by $, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering costs payable by us.

(2) Does not reflect $7.0 million of indebtedness incurred in June 2006 under our loan and security agreement with Silicon Valley Bank and Oxford Finance Corporation.

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the following risk factors, as well as the other information in this prospectus, before deciding whether to invest in shares of our common stock. The occurrence of any of the following risks could harm our business, financial condition, results of operations or growth prospects. In that case, the trading price of our common stock could decline, and you may lose all or part of your investment.

Risks Related to Our Business and Industry

We are largely dependent on the success of our two product candidates, IV APAP and omiganan, and we cannot be certain that either of these product candidates will receive regulatory approval or be successfully commercialized.

We currently have no drug products for sale and we cannot guarantee that we will ever have marketable drug products. The research, testing, manufacturing, labeling, approval, selling, marketing and distribution of drug products are subject to extensive regulation by the U.S. Food and Drug Administration, or FDA, and other regulatory authorities in the United States and other countries, which regulations differ from country to country. We are not permitted to market our product candidates in the United States until we receive approval of a new drug application, or NDA, from the FDA. We have not submitted an NDA or received marketing approval for either of our product candidates. Obtaining approval of an NDA is a lengthy, expensive and uncertain process. We currently have only two product candidates, and our business success currently depends entirely on their successful development and commercialization.

We have not developed either of our product candidates independently. We recently in-licensed exclusive rights to IV APAP, an intravenous formulation of acetaminophen that is currently marketed in Europe for the treatment of acute pain and fever by Bristol-Myers Squibb Company, or BMS. We intend to initiate a Phase III clinical program for this product candidate for the treatment of acute pain in the fourth quarter of 2006 following a planned meeting with the FDA in the third quarter of 2006. In July 2004, we in-licensed the rights to our only other product candidate, omiganan pentahydrochloride 1% aqueous gel, or omiganan, which is currently being evaluated in a single Phase III clinical trial for the prevention of local catheter site infections, or LCSIs, and will require the successful completion of this Phase III clinical trial before we are able to submit an NDA to the FDA for approval. Our clinical development programs for IV APAP and omiganan may not lead to commercial products if we fail to demonstrate that the product candidates are safe and effective in clinical trials and we may therefore fail to obtain necessary approvals from the FDA and similar foreign regulatory agencies, or because we may have inadequate financial or other resources to advance these product candidates through the clinical trial process. Any failure to obtain approval of IV APAP or omiganan would have a material and adverse impact on our business.

If clinical trials of our current or future product candidates do not produce results necessary to support regulatory approval in the United States or elsewhere, we will be unable to commercialize these products.

To receive regulatory approval for the commercial sale of IV APAP, omiganan or any other product candidates that we may in-license or acquire, we must conduct, at our own expense, adequate and well controlled clinical trials to demonstrate efficacy and safety in humans. Clinical testing is expensive, takes many years and has an uncertain outcome. Clinical failure can occur at any stage of the testing. Our clinical trials may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical and/or non-clinical testing. For example, Migenix Inc., or Migenix, the licensor for our omiganan product candidate, together with its former collaborator, Fujisawa Healthcare, Inc., or Fujisawa, completed enrollment in a Phase III trial in February 2003 that demonstrated statistically significant results for the prevention of secondary endpoints of the trial: LCSIs and catheter colonization, which is the growth of microorganisms on the portion of the catheter below the skin surface.

However, the trial did not show statistical significance for the prevention of the primary endpoint: catheter-related bloodstream infections, or CRBSIs.

After the termination of the collaboration between Migenix and Fujisawa in January 2004, we in-licensed the rights to omiganan from Migenix in July 2004 and subsequently reached an agreement under the special protocol assessment, or SPA, process with the FDA concerning the protocol for our own Phase III clinical trial for omiganan. In connection with the SPA for omiganan, the FDA agreed that a single confirmatory Phase III trial will be required for approval of omiganan and that the prevention of LCSIs will be the sole primary efficacy endpoint. However, we cannot be certain that our ongoing Phase III trial for omiganan will demonstrate statistical significance or otherwise demonstrate sufficient efficacy and safety to support the filing of an NDA or ultimately lead to regulatory approval. Furthermore, despite having completed the SPA process, the FDA's agreement with us on the trial protocol remains subject to future public health concerns unrecognized at the time of the FDA's protocol assessment.

Our failure to adequately demonstrate the efficacy and safety of IV APAP, omiganan or any other product candidates that we may in-license or acquire would prevent receipt of regulatory approval and, ultimately, the commercialization of that product candidate.

Because the results of earlier clinical trials are not necessarily predictive of future results, IV APAP, omiganan or any other product candidate we advance into clinical trials may not have favorable results in later clinical trials or receive regulatory approval.

Success in clinical testing and early clinical trials does not ensure that later clinical trials will generate adequate data to demonstrate the efficacy and safety of the investigational drug. A number of companies in the pharmaceutical industry, including those with greater resources and experience, have suffered significant setbacks in Phase III clinical trials, even after promising results in earlier clinical trials.

In March 2006, we in-licensed the rights to IV APAP from BMS, which is currently marketing IV APAP in Europe and other parts of the world under the brand name Perfalgan. BMS has completed nine clinical trials, mostly in Europe, primarily in support of European regulatory approvals for this product candidate. However, we do not know at this time what regulatory weight, if any, the U.S. and Canadian regulatory agencies will give to these clinical data in supplementing clinical data generated by us for potential regulatory approval of IV APAP in the United States and Canada. The FDA and foreign regulatory agencies may reject these clinical trial results if they determine that the clinical trials were not conducted in accordance with requisite regulatory standards and procedures. Furthermore, we have not audited or verified the accuracy of the primary clinical data provided by BMS and cannot determine their applicability to our regulatory filings. Even though BMS has obtained marketing approval in Europe and other territories for IV APAP, we must conduct additional adequate and well controlled clinical trials in the United States to demonstrate IV APAP's safety and efficacy in specific indications to gain regulatory approval in the United States. We may not be able to demonstrate the same safety and efficacy for IV APAP in our planned Phase III clinical trial as was demonstrated previously by BMS.

Our other product candidate, omiganan, is a novel antimicrobial peptide and is not yet approved in any jurisdiction. No antimicrobial peptide has been approved by the FDA, including two antimicrobial peptides with mechanisms of action similar to omiganan that were studied in Phase III clinical trials. Although omiganan has been studied in more than 750 patients, all of the patients studied were enrolled in trials conducted or sponsored by Migenix or Fujisawa. Since in-licensing rights to omiganan from Migenix in July 2004, we have initiated a Phase III clinical trial in which we are still seeking to enroll the target patient population. We do not expect to complete enrollment in this Phase III clinical trial until the second half of 2007. Similar to IV APAP, we have obtained electronic databases from the completed Phase III trials sponsored by Migenix and Fujisawa, and are currently analyzing these data. We have not audited or verified the accuracy of the primary clinical data provided by our licensor and its former collaborator and cannot determine their applicability to our regulatory filings. Although the Phase III clinical trial for omiganan conducted by Migenix and Fujisawa demonstrated favorable, statistically significant results for the prevention of LCSIs and catheter colonization, secondary endpoints in their trial,

we may not observe similar results in our ongoing Phase III clinical trial. Furthermore, the earlier Phase III clinical trial failed to show statistical significance for the prevention of the primary endpoint of that trial, the prevention of CRBSIs. While we will measure the prevention of CRBSIs as a secondary endpoint in our ongoing Phase III clinical trial for omiganan, our trial is not designed to demonstrate statistical significance for this secondary endpoint. Although we are targeting a different primary endpoint in our trial, the prevention of LCSIs, it is possible that we will experience similar, unexpected results. Failure to satisfy a primary endpoint in a Phase III clinical trial would generally mean that a product candidate would not receive regulatory approval without a further successful Phase III clinical trial.

The data collected from our clinical trials may not be adequate to support regulatory approval of IV APAP, omiganan or any other product candidates that we may in-license or acquire. Moreover, all clinical data reported is taken from databases that may not have been fully reconciled against medical records kept at the clinical sites. Despite the results reported by others in earlier clinical trials for our product candidates, we do not know whether any Phase III or other clinical trials we may conduct will demonstrate adequate efficacy and safety to result in regulatory approval to market our product candidates.

Delays in the commencement or completion of clinical testing could result in increased costs to us and delay or limit our ability to obtain regulatory approval for our product candidates.

Delays in the commencement or completion of clinical testing could significantly affect our product development costs. We do not know whether planned clinical trials for IV APAP will begin on time or be completed on schedule, if at all. Similarly, we may not complete enrollment for our ongoing Phase III clinical trial for omiganan on schedule, or at all. The commencement and completion of clinical trials requires us to identify and maintain a sufficient number of trial sites, many of which may already be engaged in other clinical trial programs for the same indication as our product candidates or may not be eligible to participate in or may be required to withdraw from a clinical trial as a result of changing standards of care. For example, the number of potential clinical trial sites for our Phase III clinical trial for omiganan is limited as a result of the increasing use of the topical antiseptic chlorhexidine to sterilize the catheter insertion site, rather than 10% povidone-iodine, the comparator product agreed to with the FDA under the SPA process for use in our trial. The commencement and completion of clinical trials can be delayed for a variety of other reasons, including delays related to:

- reaching agreements on acceptable terms with prospective clinical research organizations, or CROs, and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- obtaining regulatory approval to commence a clinical trial;
- obtaining institutional review board approval to conduct a clinical trial at a prospective site;
- recruiting and enrolling patients to participate in clinical trials for a variety of reasons, including competition from other clinical trial programs for the same indication as our product candidates; and
- retaining patients who have initiated a clinical trial but may be prone to withdraw due to the treatment protocol, lack of efficacy, personal issues, side effects from the therapy or who are lost to further follow-up.

In addition, a clinical trial may be suspended or terminated by us, the FDA or other regulatory authorities due to a number of factors, including:

- failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols;
- inspection of the clinical trial operations or trial sites by the FDA or other regulatory authorities resulting in the imposition of a clinical hold;

- unforeseen safety issues or any determination that a trial presents unacceptable health risks; or
- lack of adequate funding to continue the clinical trial, including the incurrence of unforeseen costs due to enrollment delays, requirements to conduct additional trials and studies and increased expenses associated with the services of our CROs and other third parties.

Additionally, changes in regulatory requirements and guidance may occur and we may need to amend clinical trial protocols to reflect these changes. Amendments may require us to resubmit our clinical trial protocols to institutional review boards for reexamination, which may impact the costs, timing or successful completion of a clinical trial. If we experience delays in the completion of, or if we terminate, our clinical trials, the commercial prospects for our product candidates will be harmed, and our ability to generate product revenues will be delayed. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of a product candidate. Even if we are able to ultimately commercialize our product candidates, other therapies for the same indications may have been introduced to the market and established a competitive advantage.

We expect intense competition in the territories in which we have rights to our product candidates, and new products may emerge that provide different or better therapeutic alternatives for our targeted indications.

The biotechnology and pharmaceutical industries are subject to rapid and intense technological change. We face, and will continue to face, competition in the development and marketing of our product candidates from academic institutions, government agencies, research institutions and biotechnology and pharmaceutical companies. There can be no assurance that developments by others will not render our product candidates obsolete or noncompetitive. Furthermore, new developments, including the development of other drug technologies and methods of preventing the incidence of disease, occur in the pharmaceutical industry at a rapid pace. These developments may render our product candidates obsolete or noncompetitive.

We intend to develop IV APAP for the treatment of acute pain in the hospital setting, which will compete with well established injectable drugs for this and similar indications, including opioids such as morphine, fentanyl, meperidine and hydromorphone, each of which is available generically from several manufacturers, as well as an extended release injectable formulation of morphine, DepoDur, currently marketed by an affiliate of Endo Pharmaceuticals Holdings Inc. Ketorolac, an injectable non-steroidal anti-inflammatory drug, or NSAID, is also available generically from several manufacturers and used to treat acute pain. During the time that it will take us to obtain regulatory approval for IV APAP, if at all, we anticipate that several additional products may be developed for the treatment of acute pain, including other injectable NSAIDs, novel opioids, new formulations of currently available opioids, long-acting local anesthetics and new chemical entities as well as alternative delivery forms of various opioids and NSAIDs.

We are also developing our omiganan product candidate for the prevention of intravascular catheter-related infections in the hospital setting. If approved, omiganan will compete with well established topical products that are currently used in practice to prevent these infections as well as BioPatch, a device marketed by Johnson & Johnson, which has been approved for wound dressing and prevention of catheter-related infections. Other competitive products may be under development.

In addition, competitors may seek to develop alternative formulations of our product candidates that address our targeted indications that do not directly infringe on our in-licensed patent rights. For example, we are aware of several U.S. and Canadian patents and patent applications covering various potential injectable formulations of acetaminophen, including intravenous formulations, as well as methods of making and using these potential formulations. Furthermore, analogs of omiganan have been developed by others that are not covered by patents licensed to or owned by us. The commercial opportunity for our product candidates could be significantly harmed if competitors are able to develop alternative

formulations outside the scope of our in-licensed patents. Compared to us, many of our potential competitors have substantially greater:

- capital resources;
- development resources, including personnel and technology;
- clinical trial experience;
- regulatory experience;
- expertise in prosecution of intellectual property rights; and
- manufacturing, distribution and sales and marketing experience.

As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we are able to or may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize our product candidates. Our competitors may also develop drugs that are more effective, useful and less costly than ours and may also be more successful than us in manufacturing and marketing their products. We also expect to face similar competition in our efforts to identify appropriate collaborators or partners to help develop or commercialize our product candidates in markets outside the United States.

If any of our product candidates for which we receive regulatory approval do not achieve broad market acceptance, the revenues that we generate from their sales will be limited.

The commercial success of our product candidates for which we obtain marketing approval from the FDA or other regulatory authorities will depend upon the acceptance of these products by the medical community and coverage and reimbursement of them by third-party payors, including government payors. The degree of market acceptance of any of our approved products will depend on a number of factors, including:

- limitations or warnings contained in a product's FDA-approved labeling, including potential limitations or warnings for IV APAP that may be more restrictive than oral formulations of acetaminophen;
- changes in the standard of care for the targeted indications for either of our product candidates, including, in the case of omiganan, the decreasing use of 10% povidone-iodine, the comparator product in our ongoing Phase III clinical trial, in favor of another topical antiseptic, chlorhexidine, which change could reduce the marketing impact of any superiority claims that we could make following FDA approval;
- limitations inherent in the approved indication for either of our product candidates compared to more commonly-understood or addressed conditions, including, in the case of omiganan, the ability to promote omiganan to hospitals and physicians who may be more focused on an indication specifically for the prevention of CRBSIs compared to the prevention of LCSIs, the primary endpoint in our ongoing Phase III clinical trial; and
- potential advantages over, and availability of, alternative treatments, including, in the case of IV APAP, a number of products already used to treat acute pain in the hospital setting, and in the case of omiganan, a number of competitive topical products as well as a device that has been approved for wound dressing and prevention of catheter-related infections.

Our ability to effectively promote and sell our product candidates in the hospital marketplace will also depend on pricing and cost effectiveness, including our ability to produce a product at a competitive price and our ability to obtain sufficient third-party coverage or reimbursement. Since many hospitals are members of group purchasing organizations, which leverage the purchasing power of a group of entities to obtain discounts based on the collective buying power of the group, our ability to attract customers in the hospital marketplace will also depend on our ability to effectively promote our product candidates to group

purchasing organizations. We will also need to demonstrate acceptable evidence of safety and efficacy as well as relative convenience and ease of administration. Market acceptance could be further limited depending on the prevalence and severity of any expected or unexpected adverse side effects associated with our product candidates. If our product candidates are approved but do not achieve an adequate level of acceptance by physicians, health care payors and patients, we may not generate sufficient revenue from these products, and we may not become or remain profitable. In addition, our efforts to educate the medical community and third-party payors on the benefits of our product candidates may require significant resources and may never be successful.

Even if our product candidates receive regulatory approval, they may still face future development and regulatory difficulties.

Even if U.S. regulatory approval is obtained, the FDA may still impose significant restrictions on a product's indicated uses or marketing or impose ongoing requirements for potentially costly post-approval studies. Any of these restrictions or requirements could adversely affect our potential product revenues. For example, the label ultimately approved for IV APAP, omiganan or any other product candidates that we may in-license or acquire, if any, may include a restriction on the term of its use, or it may not include one or more of our intended indications.

Our product candidates will also be subject to ongoing FDA requirements for the labeling, packaging, storage, advertising, promotion, record-keeping and submission of safety and other post-market information on the drug. In addition, approved products, manufacturers and manufacturers' facilities are subject to continual review and periodic inspections. If a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with the facility where the product is manufactured, a regulatory agency may impose restrictions on that product or us, including requiring withdrawal of the product from the market. If our product candidates fail to comply with applicable regulatory requirements, such as current Good Manufacturing Practices, or cGMPs, a regulatory agency may:

- issue warning letters or untitled letters;
- require us to enter into a consent decree, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance;
- impose other civil or criminal penalties;
- suspend regulatory approval;
- suspend any ongoing clinical trials;
- refuse to approve pending applications or supplements to approved applications filed by us;
- impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products or require a product recall.

Even if our product candidates receive regulatory approval in the United States, we may never receive approval or commercialize our products outside of the United States.

Our rights to IV APAP are limited to the United States and Canada, and our rights to omiganan are limited to North America and Europe. In order to market any products outside of the United States, we must establish and comply with numerous and varying regulatory requirements of other countries regarding safety and efficacy. Approval procedures vary among countries and can involve additional product testing and additional administrative review periods. The time required to obtain approval in other countries might differ from that required to obtain FDA approval. The regulatory approval process in other countries may include all of the risks detailed above regarding FDA approval in the United States as well as other risks. Regulatory approval in one country does not ensure regulatory approval in another, but a

failure or delay in obtaining regulatory approval in one country may have a negative effect on the regulatory process in others. Failure to obtain regulatory approval in other countries or any delay or setback in obtaining such approval could have the same adverse effects detailed above regarding FDA approval in the United States. As described above, such effects include the risks that our product candidates may not be approved for all indications requested, which could limit the uses of our product candidates and have an adverse effect on product sales and potential royalties, and that such approval may be subject to limitations on the indicated uses for which the product may be marketed or require costly, post-marketing follow-up studies.

We have never marketed a drug before, and if we are unable to establish an effective sales and marketing infrastructure, we will not be able to successfully commercialize our product candidates.

In the United States, we plan to build our own sales force to market our products directly to physicians, nurses, hospitals, group purchasing organizations and third-party payors. We currently do not have significant internal sales, distribution and marketing capabilities. In order to commercialize any of our product candidates, we must either acquire or internally develop sales and marketing capabilities, or enter into collaborations with partners to perform these services for us. The acquisition or development of a hospital-focused sales and marketing infrastructure for our domestic operations will require substantial resources, will be expensive and time consuming and could negatively impact our commercialization efforts, including delay any product launch. Moreover, we may not be able to hire a sales force that is sufficient in size or has adequate expertise. If we are unable to establish our sales and marketing capability or any other capabilities necessary to commercialize any products we may develop, we will need to contract with third parties to market and sell our products. If we are unable to establish adequate sales and marketing capabilities, whether independently or with third parties, we may not be able to generate any product revenue, may generate increased expenses and may never become profitable.

Our product candidates may have undesirable side effects that could delay or prevent their regulatory approval or commercialization.

Undesirable side effects caused by our product candidates could interrupt, delay or halt clinical trials and could result in the denial of regulatory approval by the FDA or other regulatory authorities for any or all targeted indications, and in turn prevent us from commercializing our product candidates and generating revenues from their sale. When used outside the current guidelines for administration, acetaminophen has the potential to cause liver toxicity. While administration of acetaminophen in intravenous form is not expected to result in an increased risk of toxicity to the liver compared with an equivalent dose of acetaminophen administered orally, we cannot be certain that increased liver toxicity or other drug-related side effects will not be observed in future clinical trials or that the FDA will not require additional trials or impose more severe labeling restrictions due to liver toxicity or other concerns. In addition, while the drug-related adverse events observed in clinical trials completed to date for omiganan have all been related to the skin, including the catheter insertion site, we cannot be certain that other drug-related side effects will not be reported in clinical trials or thereafter.

If either of our product candidates receives marketing approval and we or others later identify undesirable side effects caused by the product:

- regulatory authorities may require the addition of labeling statements, specific warnings or a contraindication;
- regulatory authorities may withdraw their approval of the product;
- we may be required to change the way the product is administered, conduct additional clinical trials or change the labeling of the product; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the affected product or could substantially increase our commercialization costs and expenses, which in turn could delay or prevent us from generating significant revenues from its sale.

If the government or third-party payors fail to provide coverage and adequate coverage and payment rates for our future products, if any, or if hospitals choose to use therapies that are less expensive, our revenue and prospects for profitability will be limited.

In both domestic and foreign markets, our sales of any future products will depend in part upon the availability of coverage and reimbursement from third-party payors. Such third-party payors include government health programs such as Medicare, managed care providers, private health insurers and other organizations. In particular, many U.S. hospitals receive a fixed reimbursement amount per procedure for certain surgeries and other treatment therapies they perform. Because this amount may not be based on the actual expenses the hospital incurs, hospitals may choose to use therapies which are less expensive when compared to our product candidates. Accordingly, IV APAP, omiganan or any other product candidates that we may in-license or acquire, if approved, will face competition from other therapies and drugs for these limited hospital financial resources. We may need to conduct post-marketing studies in order to demonstrate the cost-effectiveness of any future products to the satisfaction of hospitals, other target customers and their third-party payors. Such studies might require us to commit a significant amount of management time and financial and other resources. Our future products might not ultimately be considered cost-effective. Adequate third-party coverage and reimbursement might not be available to enable us to maintain price levels sufficient to realize an appropriate return on investment in product development.

Governments continue to propose and pass legislation designed to reduce the cost of healthcare. In the United States, we expect that there will continue to be federal and state proposals to implement similar governmental controls. For example, in December 2003, Congress enacted a limited prescription drug benefit for Medicare beneficiaries in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. Under this program, drug prices for certain prescription drugs are negotiated by drug plans, with the goal to lower costs for Medicare beneficiaries. In some foreign markets, the government controls the pricing of prescription pharmaceuticals. In these countries, pricing negotiated with governmental authorities can take six to 12 months or longer after the receipt of regulatory marketing approval for a product. Cost control initiatives could decrease the price that we would receive for any products in the future, which would limit our revenue and profitability. Accordingly, legislation and regulations affecting the pricing of pharmaceuticals might change before our product candidates are approved for marketing. Adoption of such legislation could further limit reimbursement for pharmaceuticals.

If we breach any of the agreements under which we license rights to our product candidates from others, we could lose the ability to continue the development and commercialization of our product candidates.

In March 2006, we entered into an exclusive license agreement with BMS relating to our IV APAP product candidate for the United States and Canada, and in July 2004, we entered into an exclusive license agreement with Migenix relating to our omiganan product candidate for North America and Europe. Because we have in-licensed the rights to our two product candidates from third parties, if there is any dispute between us and our licensors regarding our rights under these license agreements, our ability to develop and commercialize these product candidates may be adversely affected. In addition, our license for IV APAP is subject to the terms and conditions of a license from SCR Pharmatop to BMS, under which BMS originally licensed the intellectual property rights covering IV APAP. If BMS materially breaches the terms or conditions of this underlying license from SCR Pharmatop, and neither BMS nor we adequately cure that breach, or BMS and SCR Pharmatop otherwise become involved in a dispute, the breach by BMS or disputes with SCR Pharmatop could result in a loss of, or other material adverse impact on, our rights under our license agreement with BMS. While we would expect to exercise all rights and remedies available to us, including seeking to cure any such breach by BMS, and otherwise

seek to preserve our rights under the patents licensed by SCR Pharmatop, we may not be able to do so in a timely manner, at an acceptable cost or at all. Any uncured, material breach under these license agreements could result in our loss of exclusive rights to the related product candidate and may lead to a complete termination of our product development efforts for the related product candidate.

We rely on third parties to conduct our clinical trials, including our planned Phase III clinical program for IV APAP and our ongoing Phase III clinical trial for omiganan. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, we may not be able to obtain regulatory approval for or commercialize our product candidates on our anticipated timeline or at all.

We intend to rely primarily on third-party CROs to oversee our clinical trials for our IV APAP and omiganan product candidates, and we depend on independent clinical investigators, medical institutions and contract laboratories to conduct our clinical trials. Although we rely on CROs to conduct our clinical trials, we are responsible for ensuring that each of our clinical trials is conducted in accordance with its investigational plan and protocol. Moreover, the FDA requires us to comply with regulations and standards, commonly referred to as good clinical practices, or GCPs, for conducting, monitoring, recording and reporting the results of clinical trials to ensure that the data and results are scientifically credible and accurate and that the trial subjects are adequately informed of the potential risks of participating in clinical trials. Our reliance on CROs does not relieve us of these responsibilities and requirements. CROs and investigators are not our employees, and we cannot control the amount or timing of resources that they devote to our programs. If our CROs or independent investigators fail to devote sufficient time and resources to our drug development programs, or if their performance is substandard, it will delay the approval of our FDA applications and our introductions of new products. The CROs with which we contract for execution of our clinical trials play a significant role in the conduct of the trials and the subsequent collection and analysis of data. Failure of the CROs to meet their obligations could adversely affect clinical development of our product candidates. Moreover, these independent investigators and CROs may also have relationships with other commercial entities, some of which may have competitive products under development or currently marketed. If independent investigators and CROs assist our competitors, it could harm our competitive position. If any of these third parties do not successfully carry out their contractual duties or obligations or meet expected deadlines, or if the quality or accuracy of the clinical data is compromised for any reason, our clinical trials may be extended, delayed or terminated, and we may not be able to obtain regulatory approval for IV APAP, omiganan or future product candidates.

If the manufacturers upon whom we rely fail to produce our product candidates in the volumes that we require on a timely basis, or to comply with stringent regulations applicable to pharmaceutical drug manufacturers, we may face delays in the development and commercialization of, or be unable to meet demand for, our products and may lose potential revenues.

We do not manufacture any of our product candidates, and we do not currently plan to develop any capacity to do so. We do not yet have agreements established regarding commercial supply of either of our product candidates and may not be able to establish or maintain commercial manufacturing arrangements on commercially reasonable terms for IV APAP, omiganan or any other product candidates that we may in-license or acquire. Any problems or delays we experience in preparing for commercial-scale manufacturing of a product candidate may result in a delay in FDA approval of the product candidate or may impair our ability to manufacture commercial quantities, which would adversely affect our business. For example, our manufacturers will need to produce specific batches of our product candidates to demonstrate acceptable stability under various conditions and for commercially viable lengths of time. We and our contract manufacturers will need to demonstrate to the FDA and other regulatory authorities this acceptable stability data for our product candidates, as well as validate methods and manufacturing processes, in order to receive regulatory approval to commercialize IV APAP, omiganan or any other product candidate. Furthermore, if our commercial manufacturers fail to deliver the required commercial quantities of bulk drug substance or finished product on a timely basis and at commercially reasonable prices, we would likely be unable to meet demand for our products and we would lose potential revenues.

We currently have what we believe are adequate clinical supplies of our omiganan product candidate. We have contracted with BMS to manufacture clinical supplies of IV APAP and are currently negotiating with suppliers for the potential commercial supply of the finished drug product for IV APAP. We do not have any long-term commitments from our suppliers of clinical trial material or guaranteed prices for our product candidates or placebos. The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of pharmaceutical products often encounter difficulties in production, particularly in scaling up initial production. These problems include difficulties with production costs and yields, quality control, including stability of the product candidate and quality assurance testing, shortages of qualified personnel, as well as compliance with strictly enforced federal, state and foreign regulations. Our manufacturers may not perform as agreed. If our manufacturers were to encounter any of these difficulties, our ability to provide product candidates to patients in our clinical trials would be jeopardized.

In addition, all manufacturers of our product candidates must comply with cGMP requirements enforced by the FDA through its facilities inspection program. These requirements include quality control, quality assurance and the maintenance of records and documentation. Manufacturers of our product candidates may be unable to comply with these cGMP requirements and with other FDA, state and foreign regulatory requirements. We have little control over our manufacturers' compliance with these regulations and standards. A failure to comply with these requirements may result in fines and civil penalties, suspension of production, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval. If the safety of any quantities supplied is compromised due to our manufacturers' failure to adhere to applicable laws or for other reasons, we may not be able to obtain regulatory approval for or successfully commercialize our product candidates.

Our future growth depends on our ability to identify and acquire or in-license products and if we do not successfully identify and acquire or in-license related product candidates or integrate them into our operations, we may have limited growth opportunities.

We in-licensed the rights to each of our two current product candidates, IV APAP and omiganan, from third parties who conducted the initial development of each product candidate. An important part of our business strategy is to continue to develop a pipeline of product candidates by acquiring or in-licensing products, businesses or technologies that we believe are a strategic fit with our focus on the hospital marketplace. Future in-licenses or acquisitions, however, may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;
- incurrence of substantial debt or dilutive issuances of securities to pay for acquisitions;
- higher than expected acquisition and integration costs;
- increased amortization expenses;
- difficulty and cost in combining the operations and personnel of any acquired businesses with our operations and personnel;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to retain key employees of any acquired businesses.

We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. In particular, we may compete with larger pharmaceutical companies and other competitors in our efforts to establish new

collaborations and in-licensing opportunities. These competitors likely will have access to greater financial resources than us and may have greater expertise in identifying and evaluating new opportunities. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts.

We will need to increase the size of our organization, and we may experience difficulties in managing growth.

As of June 30, 2006, we had 24 full-time employees. We will need to continue to expand our managerial, operational, financial and other resources in order to manage and fund our operations and clinical trials, continue our development activities and commercialize our product candidates. Our management, personnel, systems and facilities currently in place may not be adequate to support this future growth. Our need to effectively manage our operations, growth and various projects requires that we:

- manage our clinical trials effectively, including our planned Phase III clinical program for IV APAP, which will be conducted at numerous clinical trial sites, and our ongoing Phase III clinical trial for omiganan, which is being conducted at numerous clinical sites;
- manage our internal development efforts effectively while carrying out our contractual obligations to licensors and other third parties; and
- continue to improve our operational, financial and management controls, reporting systems and procedures.

We may be unable to successfully implement these tasks on a larger scale and, accordingly, may not achieve our development and commercialization goals.

We may not be able to manage our business effectively if we are unable to attract and retain key personnel.

We may not be able to attract or retain qualified management and scientific and clinical personnel in the future due to the intense competition for qualified personnel among biotechnology, pharmaceutical and other businesses, particularly in the San Diego, California area. If we are not able to attract and retain necessary personnel to accomplish our business objectives, we may experience constraints that will significantly impede the achievement of our development objectives, our ability to raise additional capital and our ability to implement our business strategy. In particular, if we lose any members of our senior management team, we may not be able to find suitable replacements, and our business may be harmed as a result.

Our industry has experienced a high rate of turnover of management personnel in recent years. We are highly dependent on the product acquisition, development, regulatory and commercialization expertise of our senior management. If we lose one or more of the members of our senior management team or other key employees, our ability to implement our business strategy successfully could be seriously harmed. Replacing key employees may be difficult and may take an extended period of time because of the limited number of individuals in our industry with the breadth of skills and experience required to develop, gain regulatory approval of and commercialize products successfully. Competition to hire from this limited pool is intense, and we may be unable to hire, train, retain or motivate these additional key personnel.

In addition, we have scientific and clinical advisors who assist us in our product development and clinical strategies. These advisors are not our employees and may have commitments to, or consulting or advisory contracts with, other entities that may limit their availability to us, or may have arrangements with other companies to assist in the development of products that may compete with ours.

We face potential product liability exposure, and if successful claims are brought against us, we may incur substantial liability for a product candidate and may have to limit its commercialization.

The use of our product candidates in clinical trials and the sale of any products for which we obtain marketing approval expose us to the risk of product liability claims. Product liability claims might be brought against us by consumers, health care providers or others using, administering or selling our products. If we cannot successfully defend ourselves against these claims, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- withdrawal of clinical trial participants;
- termination of clinical trial sites or entire trial programs;
- decreased demand for our product candidates;
- impairment of our business reputation;
- costs of related litigation;
- substantial monetary awards to patients or other claimants;
- loss of revenues; and
- the inability to commercialize our product candidates.

We have obtained limited product liability insurance coverage for our clinical trials with a $10 million annual aggregate coverage limit and additional amounts in selected foreign countries where we are conducting clinical trials. However, our insurance coverage may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. We intend to expand our insurance coverage to include the sale of commercial products if we obtain marketing approval for our product candidates in development, but we may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing. On occasion, large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock price to fall and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

Recent proposed legislation may permit re-importation of drugs from foreign countries into the United States, including foreign countries where the drugs are sold at lower prices than in the United States, which could materially adversely affect our operating results and our overall financial condition.

Legislation has been introduced in Congress that, if enacted, would permit more widespread re-importation of drugs from foreign countries into the United States, which may include re-importation from foreign countries where the drugs are sold at lower prices than in the United States. Such legislation, or similar regulatory changes, could decrease the price we receive for any approved products which, in turn, could materially adversely affect our operating results and our overall financial condition.

Our business involves the use of hazardous materials and we and our third-party manufacturers must comply with environmental laws and regulations, which can be expensive and restrict how we do business.

Our third-party manufacturers' activities and, to a lesser extent, our own activities involve the controlled storage, use and disposal of hazardous materials, including the components of our product candidates and other hazardous compounds. We and our manufacturers are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of these hazardous materials. Although we believe that the safety procedures for handling and disposing of these materials comply with the standards prescribed by these laws and regulations, we cannot eliminate the risk of accidental contamination or injury from these materials. In the event of an accident, state or federal authorities may curtail our use of these materials and interrupt our business operations.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. Any system failure, accident or security breach that causes interruptions in our operations could result in a material disruption of our drug development programs. For example, the loss of clinical trial data from completed or ongoing clinical trials for IV APAP or omiganan could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach results in a loss or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we may incur liability and the further development of our product candidates may be delayed.

Risks Related to Intellectual Property

The patent rights that we have in-licensed covering IV APAP are limited to a specific intravenous formulation of acetaminophen, and our market opportunity for this product candidate may be limited by the lack of patent protection for the active ingredient itself and other formulations that may be developed by competitors.

The active ingredient in IV APAP is acetaminophen. There are no patents claiming acetaminophen as an active ingredient in the territories licensed to us: the United States and Canada. As a result, competitors who obtain the requisite regulatory approval can offer products with the same active ingredient as IV APAP so long as the competitors do not infringe any process or formulation patents that we have in-licensed from BMS and its licensor, SCR Pharmatop. We are aware of a number of third-party patents in the United States that claim methods of making acetaminophen. If a supplier of the active pharmaceutical ingredient, or API, for our IV APAP product candidate is found to infringe any of these method patents covering acetaminophen, our supply of the API could be delayed and we may be required to locate an alternative supplier. We are also aware of several U.S. and Canadian patents and patent applications covering various potential injectable formulations of acetaminophen as well as methods of making and using these potential formulations. In addition, Injectapap, a formulation of acetaminophen for intramuscular injection was approved by the FDA for the reduction of fever in adults in March 1986 but was withdrawn from the market by McNeil Pharmaceutical in July 1986. Although we are not aware of any announcement regarding the reasons for Injectapap's withdrawal, we believe it was likely withdrawn from the market due to product-related concerns either related to the intramuscular injection mode of administration or the sodium bisulfite in the formulation.

The number of patents and patent applications covering products in the same field as IV APAP indicates that competitors have sought to develop and may seek to market competing formulations that may not be covered by our licensed patents and patent applications. In addition, the Canadian patent applications that we have in-licensed have yet to be examined by the Canadian Patent Office. Thus, they may issue with claims that cover less than the corresponding in-licensed U.S. patents, or simply not issue at all. The commercial opportunity for our IV APAP product candidate could be significantly harmed if competitors are able to develop an alternative formulation of acetaminophen outside the scope of our in-licensed patents.

The patent rights that we have in-licensed covering omiganan are limited in scope and limited to specific territories.

We have an exclusive license from Migenix for omiganan in North America and Europe for the licensed field, although currently there are issued patents only in the United States and certain European countries. Canadian applications are pending; however, the claims that ultimately issue in Canada may be narrower than the protection obtained in the United States and Europe or may simply not issue at all. In addition, no patent protection has been sought in Mexico. Accordingly, the manufacture, sale and use of omiganan in Mexico by a competitor cannot be prevented. Furthermore, analogs of omiganan have been

developed by others that are not covered by patents licensed to us. At least some of these analogs are covered by third-party patents. It is possible that competitors having rights to these third-party patents may develop competing products having the same, similar or better efficacy compared to omiganan.

Furthermore, our license agreement with Migenix may be construed to cover only the use of omiganan for the licensed field, which is the treatment of burn-related, surgical wound-related, or device-related infections. Thus, Migenix or third-party licensees of Migenix may be able to market omiganan for other uses, including treatment of non-surgery related wound infections. We may be unable to prevent physicians from using any such competitive omiganan product off-label for the field licensed to us. Furthermore, the license covers only omiganan pentahydrochloride and its pharmaceutical formulations. Although the license agreement may prevent Migenix from developing a competing product for use in the licensed field, the agreement may not prevent Migenix from licensing a competing product, such as another salt of omiganan, to a third-party for use in the licensed field. Accordingly, we may face competition from a third-party licensee of Migenix using a different formulation of omiganan.

We depend on our licensors for the maintenance and enforcement of our intellectual property and have limited control, if any, over the amount or timing of resources that our licensors devote on our behalf.

We depend on our licensors, BMS and Migenix, to protect the proprietary rights covering IV APAP and omiganan. Regarding IV APAP, either BMS or its licensor, SCR Pharmatop, depending on the patent or application, is responsible for maintaining issued patents and prosecuting patent applications. Regarding omiganan, Migenix is responsible for maintaining issued patents and prosecuting patent applications. We have limited, if any, control over the amount or timing of resources that our licensors devote on our behalf or the priority they place on maintaining these patent rights and prosecuting these patent applications to our advantage. SCR Pharmatop is under a contractual obligation to BMS to diligently prosecute their patent applications and allow BMS the opportunity to consult, review and comment on patent office communications. However, we cannot be sure that SCR Pharmatop will perform as required. Should BMS decide it no longer wants to maintain any of the patents licensed to us, BMS is required to afford us the opportunity to do so at our expense. However, we cannot be sure that BMS will perform as required. If BMS does not perform, and if we do not assume the maintenance of the licensed patents in sufficient time to make required payments or filings with the appropriate governmental agencies, we risk losing the benefit of all or some of those patent rights. For patents and applications licensed from Migenix, Migenix is obligated to use commercially reasonable efforts to obtain and maintain patent rights covering omiganan in North America and Europe. If Migenix intends to abandon prosecution or maintenance of any patents or applications, they are obligated to notify us, and at that time, we will be granted an opportunity to maintain and prosecute the patents and applications. In such a case, Migenix is required to transfer all necessary rights and responsibilities to facilitate our maintenance and prosecution of the patents and applications. Similar to BMS, however, we cannot be certain that Migenix will perform its contractual obligations as required or that we will be able to adequately assume the prosecution or maintenance of the omiganan-related patents and applications.

As part of a debt financing transaction, Migenix has pledged as collateral to its lenders the patents and patent applications covering omiganan. While we believe our license agreement with Migenix would survive any foreclosure on these patents and patent applications, we cannot be sure that the lenders will have adequate expertise or resources to properly perform Migenix’s obligations to us under the license agreement, including maintaining and prosecuting the patents and patent applications.

While we intend to take actions reasonably necessary to enforce our patent rights, we depend, in part, on our licensors to protect a substantial portion of our proprietary rights. In the case of the IV APAP patents, BMS has the first right to prosecute a third-party infringement of the SCR Pharmatop patents, and has the sole right to prosecute third-party infringement of the BMS patents. We will have the ability to cooperate with BMS in third-party infringement suits involving the SCR Pharmatop patents. In certain instances, we may be allowed to pursue the infringement claim ourselves. With respect to omiganan, we have the first right to prosecute a third-party for infringement of the in-licensed Migenix patents provided

the infringing activities are in North America or Europe and relate primarily to the licensed field of use. Migenix is obligated to reasonably cooperate with any such suit.

Our licensors may also be notified of alleged infringement and be sued for infringement of third-party patents or other proprietary rights. We may have limited, if any, control or involvement over the defense of these claims, and our licensors could be subject to injunctions and temporary or permanent exclusionary orders in the United States or other countries. Our licensors are not obligated to defend or assist in our defense against third-party claims of infringement. We have limited, if any, control over the amount or timing of resources, if any, that our licensors devote on our behalf or the priority they place on defense of such third-party claims of infringement. Finally, Migenix is not obligated to defend or assist in our defense of a third-party infringement suit relating to our omiganan product candidate; however, Migenix has the right to control the defense and settlement that relates to the validity and enforceability of claims in the in-licensed Migenix patents.

For a third-party challenge to the SCR Pharmatop in-licensed patents relating to IV APAP, we will have some ability to participate in either SCR Pharmatop's or BMS's defense thereof. In the case that neither party elects to defend the third-party challenge, then we may have the opportunity to defend it. For a third-party challenge to the in-licensed BMS patents relating to IV APAP, BMS has the sole right to defend such challenge. If it chooses not to, we may have the right to renegotiate or terminate the license regarding the in-licensed BMS patents.

Because of the uncertainty inherent in any patent or other litigation involving proprietary rights, we or our licensors may not be successful in defending claims of intellectual property infringement by third parties, which could have a material adverse affect on our results of operations. Regardless of the outcome of any litigation, defending the litigation may be expensive, time-consuming and distracting to management.

Because it is difficult and costly to protect our proprietary rights, we may not be able to ensure their protection.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection for IV APAP, omiganan or any other product candidates that we may in-license or acquire and the methods we use to manufacture them, as well as successfully defending these patents against third-party challenges. We will only be able to protect our technologies from unauthorized use by third parties to the extent that valid and enforceable patents or trade secrets cover them.

The patent positions of pharmaceutical and biotechnology companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in pharmaceutical or biotechnology patents has emerged to date in the United States. The patent situation outside the United States is even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents or in third-party patents.

The degree of future protection for our proprietary rights is uncertain, because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- our licensors might not have been the first to make the inventions covered by each of our pending patent applications and issued patents;
- our licensors might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate any of our product candidates or technologies;
- it is possible that none of the pending patent applications licensed to us will result in issued patents;

- the issued patents covering our product candidates may not provide a basis for commercially viable active products, may not provide us with any competitive advantages, or may be challenged by third parties;
- we may not develop additional proprietary technologies that are patentable; or
- patents of others may have an adverse effect on our business.

Patent applications in the United States are maintained in confidence for at least 18 months after their earliest effective filing date. Consequently, we cannot be certain that our licensors were the first to invent or the first to file patent applications on some of our product candidates. In the event that a third party has also filed a U.S. patent application relating to our product candidates or a similar invention, we may have to participate in interference proceedings declared by the U.S. Patent and Trademark Office to determine priority of invention in the United States. The costs of these proceedings could be substantial and it is possible that our efforts would be unsuccessful, resulting in a material adverse effect on our U.S. patent position. Furthermore, we may not have identified all U.S. and foreign patents or published applications that affect our business either by blocking our ability to commercialize our drugs or by covering similar technologies that affect our drug market.

In addition, some countries, including many in Europe, do not grant patent claims directed to methods of treating humans, and in these countries patent protection may not be available at all to protect our drug candidates. Even if patents issue, we cannot guarantee that the claims of those patents will be valid and enforceable or provide us with any significant protection against competitive products, or otherwise be commercially valuable to us.

We also rely on trade secrets to protect our technology, particularly where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. While we use reasonable efforts to protect our trade secrets, our licensors, employees, consultants, contractors, outside scientific collaborators and other advisors may unintentionally or willfully disclose our information to competitors. Enforcing a claim that a third party illegally obtained and is using our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

If our licensors or we fail to obtain or maintain patent protection or trade secret protection for IV APAP, omiganan or any other product candidate we may in-license or acquire, third parties could use our proprietary information, which could impair our ability to compete in the market and adversely affect our ability to generate revenues and achieve profitability.

If we are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in any litigation would harm our business.

Our ability to develop, manufacture, market and sell IV APAP, omiganan or any other product candidates that we may in-license or acquire depends upon our ability to avoid infringing the proprietary rights of third parties. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the general fields of pain treatment and prevention of infections and cover the use of numerous compounds and formulations in our targeted markets. In addition, because patent applications can take many years to issue, there may be currently pending applications, unknown to us, which may later result in issued patents that IV APAP or omiganan may infringe. There could also be existing patents of which we are not aware that IV APAP or omiganan may inadvertently infringe.

There is a substantial amount of litigation involving patent and other intellectual property rights in the biotechnology and biopharmaceutical industries generally. If a third party claims that we infringe on their products or technology, we could face a number of issues, including:

- infringement and other intellectual property claims which, with or without merit, can be expensive and time consuming to litigate and can divert management's attention from our core business;
- substantial damages for past infringement which we may have to pay if a court decides that our product infringes on a competitor's patent;
- a court prohibiting us from selling or licensing our product unless the patent holder licenses the patent to us, which it is not required to do;
- if a license is available from a patent holder, we may have to pay substantial royalties or grant cross licenses to our patents; and
- redesigning our processes so they do not infringe, which may not be possible or could require substantial funds and time.

We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

As is common in the biotechnology and pharmaceutical industry, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

Risks Related to Our Finances and Capital Requirements

We have incurred significant operating losses since our inception and anticipate that we will incur continued losses for the foreseeable future.

We are a development stage company with a limited operating history. We have focused primarily on in-licensing and developing our two product candidates, IV APAP and omiganan, with the goal of supporting regulatory approval for these product candidates. We have financed our operations almost exclusively through private placements of preferred stock and have incurred losses in each year since our inception in May 2004. Net losses were $3.1 million in 2004, $7.5 million in 2005 and $28.3 million for the first three months of 2006. The net loss for the first three months of 2006 was principally attributed to our expense related to the $25.0 million licensing fee for IV APAP paid to BMS and clinical trial and regulatory expenses. As of March 31, 2006, we had an accumulated deficit of $39.0 million. These losses, among other things, have had and will continue to have an adverse effect on our stockholders' equity and working capital. We expect our development expenses as well as clinical product manufacturing expenses to increase in connection with our ongoing and planned Phase III clinical trials for our product candidates. In addition, if we obtain regulatory approval for IV APAP or omiganan, we expect to incur significant sales, marketing and outsourced manufacturing expenses as well as continued development expenses. As a result, we expect to continue to incur significant and increasing operating losses for the foreseeable future. Because of the numerous risks and uncertainties associated with developing pharmaceutical products, we are unable to predict the extent of any future losses or when we will become profitable, if at all.

We currently have no source of revenue and may never be profitable.

Our ability to become profitable depends upon our ability to generate revenue. To date, we have not generated any revenue from our development-stage product candidates, and we do not know when, or if, we will generate any revenue. Our ability to generate revenue depends on a number of factors, including, but not limited to, our ability to:

- successfully complete our ongoing and planned clinical trials for IV APAP and omiganan;
- obtain regulatory approval for either of our two product candidates;
- assuming these regulatory approvals are received, manufacture commercial quantities of our product candidates at acceptable cost levels; and
- successfully market and sell any approved products.

Even if one or more of our product candidates is approved for commercial sale, we anticipate incurring significant costs associated with commercializing any approved product. We also do not anticipate that we will achieve profitability for at least several years after generating material revenues, if ever. If we are unable to generate revenues, we will not become profitable and may be unable to continue operations without continued funding.

Our short operating history makes it difficult to evaluate our business and prospects.

We were incorporated in May 2004 and have only been conducting operations with respect to our IV APAP product candidate since March 2006 and our omiganan product candidate since July 2004. Our operations to date have been limited to organizing and staffing our company, in-licensing our two product candidates and initiating product development activities for our two product candidates. We have not yet demonstrated an ability to obtain regulatory approval for or successfully commercialize a product candidate. Consequently, any predictions about our future performance may not be as accurate as they could be if we had a history of successfully developing and commercializing pharmaceutical products.

We will need additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate our product development programs or commercialization efforts.

Developing products for use in the hospital setting, conducting clinical trials, establishing outsourced manufacturing relationships and successfully manufacturing and marketing drugs that we may develop is expensive. We will need to raise additional capital to:

- fund our operations and continue to conduct adequate and well-controlled clinical trials to provide clinical data to support regulatory approval of marketing applications;
- continue our development activities;
- qualify and outsource the commercial-scale manufacturing of our products under cGMP; and
- commercialize IV APAP, omiganan or any other product candidates that we may in-license or acquire, if any of these product candidates receive regulatory approval.

We believe that our existing cash, cash equivalents and short-term investments will be sufficient to meet our projected operating requirements through at least June 30, 2007. We have based this estimate on assumptions that may prove to be wrong, and we could spend our available financial resources much faster than we currently expect. Our future funding requirements will depend on many factors, including, but not limited to:

- the rate of progress and cost of our clinical trials and other product development programs for IV APAP, omiganan and any other product candidates that we may in-license or acquire;

- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights associated with our product candidates;
- the cost and timing of completion of an outsourced commercial manufacturing supply for each product candidate;
- the costs and timing of regulatory approval;
- the costs of establishing sales, marketing and distribution capabilities;
- the effect of competing technological and market developments; and
- the terms and timing of any collaborative, licensing, co-promotion or other arrangements that we may establish.

Future capital requirements will also depend on the extent to which we acquire or invest in additional complementary businesses, products and technologies, but we currently have no commitments or agreements relating to any of these types of transactions.

Until we can generate a sufficient amount of product revenue, if ever, we expect to finance future cash needs through public or private equity offerings, debt financings or corporate collaboration and licensing arrangements, as well as through interest income earned on cash balances. We cannot be certain that additional funding will be available on acceptable terms, or at all. If adequate funds are not available, we may be required to delay, reduce the scope of or eliminate one or more of our development programs or our commercialization efforts.

Our quarterly operating results may fluctuate significantly.

We expect our operating results to be subject to quarterly fluctuations. Our net loss and other operating results will be affected by numerous factors, including:

- the timing of milestone payments required under our license agreements for IV APAP and omiganan;
- our execution of other collaborative, licensing or similar arrangements, and the timing of payments we may make or receive under these arrangements;
- our addition or termination of clinical trials or funding support;
- variations in the level of expenses related to our two existing product candidates or future development programs;
- any intellectual property infringement lawsuit in which we may become involved;
- regulatory developments affecting our product candidates or those of our competitors; and
- if either of our product candidates receives regulatory approval, the level of underlying hospital demand for our product candidates and wholesalers' buying patterns.

If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our stock to fluctuate substantially. We believe that quarterly comparisons of our financial results are not necessarily meaningful and should not be relied upon as an indication of our future performance.

Raising additional funds by issuing securities may cause dilution to existing stockholders and raising funds through lending and licensing arrangements may restrict our operations or require us to relinquish proprietary rights.

To the extent that we raise additional capital by issuing equity securities, our existing stockholders' ownership will be diluted. If we raise additional funds through licensing arrangements, it may be necessary

to relinquish potentially valuable rights to our potential products or proprietary technologies, or grant licenses on terms that are not favorable to us. Any debt financing we enter into may involve covenants that restrict our operations. These restrictive covenants may include limitations on additional borrowing and specific restrictions on the use of our assets as well as prohibitions on our ability to create liens, pay dividends, redeem our stock or make investments. For example, in February 2006, we entered into a $7.0 million loan and security agreement with Silicon Valley Bank and Oxford Finance Corporation which contains a variety of affirmative and negative covenants, including required financial reporting, limitations on the disposition of assets other than in the ordinary course of business, limitations on the incurrence of additional debt and other requirements. To secure our performance of our obligations under the loan and security agreement, we pledged substantially all of our assets other than intellectual property assets, to the lenders. Our failure to comply with the covenants in the loan and security agreement could result in an event of default that, if not cured or waived, could result in the acceleration of all or a substantial portion of our debt.

We will incur increased costs as a result of changes in laws and regulations relating to corporate governance matters.

As a public reporting company, we will need to comply with the Sarbanes-Oxley Act of 2002 and the related rules and regulations adopted by the SEC and by the Nasdaq Stock Market, including expanded disclosures, accelerated reporting requirements and more complex accounting rules. Compliance with Section 404 of the Sarbanes-Oxley Act of 2002 and other requirements will increase our costs and require additional management resources. Additionally, these laws and regulations could make it more difficult or more costly for us to obtain certain types of insurance, including director and officer liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these events could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers. We are presently evaluating and monitoring developments with respect to these laws and regulations and cannot predict or estimate the amount or timing of additional costs we may incur to respond to their requirements.

Risks Relating to Securities Markets and Investment in Our Stock

There may not be a viable public market for our common stock.

Prior to this offering, there has been no public market for our common stock, and there can be no assurance that a regular trading market will develop and continue after this offering or that the market price of our common stock will not decline below the initial public offering price. The initial public offering price will be determined through negotiations between us and the representatives of the underwriters and may not be indicative of the market price of our common stock following this offering. Among the factors considered in such negotiations are prevailing market conditions, certain of our financial information, market valuations of other companies that we and the representatives of the underwriters believe to be comparable to us, estimates of our business potential, the present state of our development and other factors deemed relevant. See “Underwriting” for additional information.

As a new investor, you will experience immediate and substantial dilution in the net tangible book value of your shares.

The initial public offering price of our common stock in this offering is considerably more than the net tangible book value per share of our outstanding common stock. Investors purchasing shares of common stock in this offering will pay a price that substantially exceeds the value of our assets after subtracting liabilities. As a result, investors will:

- incur immediate dilution of $ per share, based on an assumed initial public offering price of $ per share, the midpoint of our expected public offering price range; and

- contribute % of the total amount invested to date to fund our company based on an assumed initial offering price to the public of $ per share, the mid point of our expected public offering price range, but will own only % of the shares of common stock outstanding after the offering.

To the extent outstanding stock options or warrants are exercised, there will be further dilution to new investors.

We believe that our existing cash, cash equivalents and short-term investments will be sufficient to meet our projected operating requirements through at least June 30, 2007. However, because we will need to raise additional capital to fund our clinical development programs, among other things, we may conduct substantial additional equity offerings. These future equity issuances, together with the exercise of outstanding options or warrants and any additional shares issued in connection with acquisitions, will result in further dilution to investors.

We expect that the price of our common stock will fluctuate substantially.

The initial public offering price for the shares of our common stock sold in this offering has been determined by negotiation between the representatives of the underwriters and us. This price may not reflect the market price of our common stock following this offering. The price of our common stock may decline. In addition, the market price of our common stock is likely to be highly volatile and may fluctuate substantially due to many factors, including:

- the results from our clinical trial programs, including our planned Phase III clinical program for IV APAP and our ongoing Phase III clinical trial for omiganan;
- the results of clinical trial programs for IV APAP and omiganan being performed by others;
- FDA or international regulatory actions, including failure to receive regulatory approval for any of our product candidates;
- failure of any of our product candidates, if approved, to achieve commercial success;
- announcements of the introduction of new products by us or our competitors;
- market conditions in the pharmaceutical and biotechnology sectors;
- developments concerning product development results or intellectual property rights of others;
- litigation or public concern about the safety of our potential products;
- actual and anticipated fluctuations in our quarterly operating results;
- deviations in our operating results from the estimates of securities analysts or other analyst comments;
- additions or departures of key personnel;
- third-party coverage and reimbursement policies;
- developments concerning current or future strategic collaborations; and
- discussion of us or our stock price by the financial and scientific press and in online investor communities.

The realization of any of the risks described in these “Risk Factors” could have a dramatic and material adverse impact on the market price of our common stock. In addition, class action litigation has often been instituted against companies whose securities have experienced periods of volatility in market price. Any such litigation brought against us could result in substantial costs and a diversion of management’s attention and resources, which could hurt our business, operating results and financial condition.

Our management team may invest or spend the proceeds of this offering in ways in which you may not agree or in ways which may not yield a return.

Our management will have broad discretion over the use of proceeds from this offering. The net proceeds from this offering will be used to fund clinical trials and other research and development activities, and to fund working capital, capital expenditures and other general corporate purposes. We may also use a portion of the net proceeds to in-license, acquire or invest in complementary businesses or products. We have no present understandings, commitments or agreements with respect to any such in-licenses, acquisitions or investments and no portion of the net proceeds has been allocated for any specific transaction. Our management will have considerable discretion in the application of the net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. The net proceeds may be used for corporate purposes that do not increase our operating results or market value. Until the net proceeds are used, they may be placed in investments that do not produce significant income or that lose value.

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

Sales of a substantial number of shares of our common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock. After this offering, we will have outstanding shares of common stock based on the number of shares outstanding as of March 31, 2006. This includes the shares that we are selling in this offering, which may be resold in the public market immediately. Of the remaining shares, shares are currently restricted as a result of securities laws or lock-up agreements but will be able to be sold after the offering as described in the "Shares Eligible for Future Sale" section of this prospectus. Moreover, after this offering, holders of an aggregate of shares of our common stock will have rights, subject to some conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or other stockholders. We also intend to register all shares of common stock that we may issue under our equity compensation plans. Once we register these shares, they can be freely sold in the public market upon issuance, subject to the lock-up agreements described in the "Underwriting" section of this prospectus.

Our executive officers and directors and their affiliates will exercise control over stockholder voting matters in a manner that may not be in the best interests of all of our stockholders.

Immediately following this offering, our executive officers and directors and their affiliates will together control approximately % of our outstanding common stock. As a result, these stockholders will collectively be able to significantly influence all matters requiring approval of our stockholders, including the election of directors and approval of significant corporate transactions. The concentration of ownership may delay, prevent or deter a change in control of our company even when such a change may be in the best interests of all stockholders, could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company or our assets and might affect the prevailing market price of our common stock.

Anti-takeover provisions under our charter documents and Delaware law could delay or prevent a change of control which could limit the market price of our common stock and may prevent or frustrate attempts by our stockholders to replace or remove our current management.

Our amended and restated certificate of incorporation and amended and restated bylaws, which are to become effective at the closing of this offering, contain provisions that could delay or prevent a change of control of our company or changes in our board of directors that our stockholders might consider favorable. Some of these provisions include:

- a board of directors divided into three classes serving staggered three-year terms, such that not all members of the board will be elected at one time;

- a prohibition on stockholder action through written consent;
- a requirement that special meetings of stockholders be called only by the chairman of the board of directors, the chief executive officer, the president or by a majority of the total number of authorized directors;
- advance notice requirements for stockholder proposals and nominations;
- a requirement of approval of not less than 66 2/3% of all outstanding shares of our capital stock entitled to vote to amend any bylaws by stockholder action, or to amend specific provisions of our certificate of incorporation; and
- the authority of the board of directors to issue preferred stock on terms determined by the board of directors without stockholder approval.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporate Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. These and other provisions in our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law could make it more difficult for stockholders or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by the then-current board of directors, including to delay or impede a merger, tender offer or proxy contest involving our company. Any delay or prevention of a change of control transaction or changes in our board of directors could cause the market price of our common stock to decline.

We have never paid dividends on our capital stock, and we do not anticipate paying any cash dividends in the foreseeable future.

We have paid no cash dividends on any of our classes of capital stock to date and we currently intend to retain our future earnings, if any, to fund the development and growth of our business. We do not anticipate paying any cash dividends on our common stock in the foreseeable future. Furthermore, our loan and security agreement with Silicon Valley Bank and Oxford Finance Corporation restricts our ability to pay dividends. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

We may become involved in securities class action litigation that could divert management's attention and harm our business.

The stock markets have from time to time experienced significant price and volume fluctuations that have affected the market prices for the common stock of pharmaceutical companies. These broad market fluctuations may cause the market price of our common stock to decline. In the past, following periods of volatility in the market price of a particular company's securities, securities class action litigation has often been brought against that company. We may become involved in this type of litigation in the future. Litigation often is expensive and diverts management's attention and resources, which could adversely affect our business.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements, including statements regarding the progress and timing of clinical trials, the safety and efficacy of our product candidates, the goals of our development activities, estimates of the potential markets for our product candidates, estimates of the capacity of manufacturing and other facilities to support our products, projected cash needs and our expected future revenues, operations and expenditures. The forward-looking statements are contained principally in the sections entitled “Prospectus Summary,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business.” These statements relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that could cause our actual results, levels of activity, performance or achievement to differ materially from those expressed or implied by these forward-looking statements. These risks and uncertainties include, among others:

- our ability to successfully complete clinical development of our only two product candidates, IV APAP and omiganan, on expected timetables, or at all, which includes enrolling sufficient patients in our clinical trials and demonstrating the safety and efficacy of these product candidates in such trials;
- the content and timing of submissions to and decisions made by the FDA and other regulatory agencies, including foreign regulatory agencies, demonstrating to the satisfaction of the FDA and such other agencies the safety and efficacy of our product candidates;
- intense competition in our markets and the ability of our competitors, many of whom have greater resources than we do, to offer different or better therapeutic alternatives than our product candidates;
- market acceptance of and future development and regulatory difficulties relating to any product candidates for which we do receive regulatory approval;
- our ability to develop sales, distribution and marketing capabilities or enter into agreements with third parties to sell, distribute and market any of our product candidates that may be approved for sale;
- our ability to obtain coverage and reimbursement for any of our product candidates that may be approved for sale from the government or third-party payors, and the extent of such coverage and reimbursement, and the willingness of hospitals to pay for our product candidates versus less expensive therapies;
- our compliance with the agreements under which we license the rights to our product candidates;
- our reliance on third parties to conduct our clinical trials and manufacture our product candidates;
- our ability to grow our business by identifying and acquiring or in-licensing new product candidates, increasing the size of our organization and attracting and retaining key personnel;
- our and our licensors’ ability to obtain, maintain and successfully enforce adequate patent and other intellectual property protection of our product candidates and the rights relating thereto; and
- our short operating history, our lack of revenue and profitabililty, our significant historical operating losses and our ability to obtain additional funding to continue to operate our business, which funding may not be available on commercially reasonable terms, or at all.

Forward-looking statements include all statements that are not historical facts. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “could,” “would,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “project,” “predict,” “potential,” or the negative of those terms, and similar expressions and comparable terminology intended to identify forward-looking statements. These statements reflect our current views with respect to future events and are based on assumptions and subject to risks and uncertainties. Given these uncertainties, you should not place undue reliance on these forward-looking statements. These forward-looking statements represent our estimates and assumptions only as of the date of this prospectus and, except as required by law, we undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise after the date of this prospectus. The forward-looking statements contained in this prospectus are excluded from the safe harbor protection provided by the Private Securities Litigation Reform Act of 1995 and Section 27A of the Securities Act of 1933, as amended.

USE OF PROCEEDS

We estimate that we will receive net proceeds of approximately $ million from the sale of the shares of common stock offered in this offering, based on an assumed initial public offering price of $ per share (the mid-point of the price range set forth on the cover page of this prospectus) and after deducting the estimated underwriting discounts and commissions and estimated offering costs payable by us. Each $1.00 increase or decrease in the assumed public offering price of $ per share would increase or decrease, the net proceeds to us from this offering by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering costs payable by us.

The principal purposes for this offering are to fund clinical trials and other research and development activities, including with respect to our two product candidates, to fund our working capital, to make capital expenditures, for other general corporate purposes, to create a public market for our common stock, to increase our ability to access the capital markets in the future and to provide liquidity for our existing stockholders.

We currently expect to use our net proceeds from this offering as follows:

- approximately $ million to fund clinical trials and other research and development activities; and
- the remainder to fund working capital, capital expenditures and other general corporate purposes.

We anticipate that the net proceeds from this offering, together with our existing cash and cash equivalents, will allow us to complete the clinical trials necessary to support an NDA filing for omiganan. However, due to the risks inherent in the clinical trial process and given the stage of development of IV APAP, we are unable to estimate with any certainty the total costs or when we will incur these costs in the continued development of IV APAP for potential commercialization.

We may also use a portion of the net proceeds to in-license, acquire or invest in complementary businesses or products. However, we have no current understandings, commitments or agreements to do so.

The amounts and timing of our actual expenditures will depend on numerous factors, including the progress in, and costs of, our clinical trials and other product development programs. We therefore cannot estimate the amount of net proceeds to be used for all of the purposes described above. We may find it necessary or advisable to use the net proceeds for other purposes, and we will have broad discretion in the application of the net proceeds. Pending the uses described above, we intend to invest the net proceeds in short-term, interest-bearing, investment-grade securities.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock and we do not currently intend to pay any cash dividends on our common stock. We expect to retain future earnings, if any, to fund the development and growth of our business. The payment of dividends by us on our common stock is limited by our loan and security agreement with Silicon Valley Bank and Oxford Finance Corporation. Any future determination to pay dividends on our common stock will be at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition, capital requirements and contractual restrictions.

CAPITALIZATION

The following table sets forth our capitalization as of March 31, 2006:

- on an actual basis; and
- on a pro forma as adjusted basis to reflect the conversion of all outstanding shares of our preferred stock into 79,630,455 shares of common stock and our receipt of the estimated net proceeds from this offering, based on an assumed initial public offering price of $ per share (the mid-point of the price range set forth on the cover page of this prospectus) and after deducting the estimated underwriting discounts and commissions and estimated offering costs payable by us.

The pro forma information below is illustrative only and our capitalization following the completion of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. You should read this table together with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the related notes appearing elsewhere in this prospectus.

	As of March 31, 2006	
	Actual	Pro Forma as Adjusted(1)
	(In thousands, except share and par value amounts)	
Cash and cash equivalents	$ 40,617	
Preferred stock, $0.0001 par value actual and pro forma as adjusted; actual — 80,015,455 shares authorized; 79,630,455 issued and outstanding; pro forma as adjusted — 10,000,000 shares authorized; no shares issued and outstanding	$ —	
Series A-1 convertible preferred stock, actual — 8,085,108 shares authorized, issued and outstanding; pro forma as adjusted — no shares authorized; no shares issued and outstanding	1	
Series A-2 convertible preferred stock, actual — 18,060,347 shares authorized; 17,675,347 issued and outstanding; pro forma as adjusted — no shares authorized; no shares issued and outstanding	2	
Series A-3 convertible preferred stock, actual — 53,870,000 shares authorized, issued and outstanding; pro forma as adjusted — no shares authorized; no shares issued and outstanding	5	
Common stock, $0.0001 par value; actual — 100,000,000 shares authorized; 7,770,000 shares issued and outstanding; pro forma as adjusted — 100,000,000 shares authorized; shares issued and outstanding	1	
Additional paid-in capital	79,571	
Deficit accumulated during the development stage	(39,006)	
Total capitalization	$ 40,574	

(1) Each $1.00 increase or decrease in the assumed public offering price of $ per share would increase or decrease, respectively, the amount of cash and cash equivalents, additional paid-in capital and total capitalization by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering costs payable by us.

The cash and cash equivalents and securities available-for-sale as of March 31, 2006 does not reflect $7.0 million of indebtedness incurred in June 2006 under our loan and security agreement with Silicon Valley Bank and Oxford Finance Corporation. The number of pro forma as adjusted common

shares shown as issued and outstanding in the table is based on the number of shares of our common stock outstanding as of March 31, 2006, and excludes:

- 1,017,000 shares of common stock issuable upon the exercise of options outstanding as of March 31, 2006 at a weighted average exercise price of $0.10 per share;
- 385,000 shares of common stock issuable upon the exercise of warrants outstanding as of March 31, 2006 at a weighted average exercise price of $1.00 per share;
- shares of our common stock reserved for future issuance under our 2006 equity incentive award plan, which will become effective on the day prior to the day on which we become subject to the reporting requirements of the Exchange Act (including 5,713,000 shares of common stock reserved for future grant or issuance under our 2004 equity incentive award plan, which shares will be added to the shares to be reserved under our 2006 equity incentive award plan upon the effectiveness of the 2006 equity incentive award plan); and
- shares of common stock reserved for issuance under our 2006 employee stock purchase plan.

DILUTION

If you invest in our common stock in this offering, your interest will be diluted to the extent of the difference between the public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock after this offering. As of March 31, 2006, our historical net tangible book value was $40.6 million, or $5.22 per share of common stock. Our historical net tangible book value per share represents the amount of our total tangible assets reduced by the amount of our total liabilities, divided by the total number of shares of our common stock outstanding as of March 31, 2006. After giving effect to the conversion of all outstanding shares of our preferred stock into 79,630,455 shares of our common stock, our pro forma net tangible book value as of March 31, 2006 would have been $40.6 million, or $0.46 per share. After giving effect to our sale in this offering of shares of our common stock at an assumed initial public offering price of $ per share (the mid-point of the price range set forth on the cover page of this prospectus) and after deducting estimated underwriting discounts and commissions and estimated offering costs payable by us, our pro forma as adjusted net tangible book value as of March 31, 2006 would have been $ million, or $ per share of our common stock. This represents an immediate increase of net tangible book value of $ per share to our existing stockholders and an immediate dilution of $ per share to investors purchasing shares in this offering. The following table illustrates this per share dilution:

Assumed initial public offering price per share		$
Historical net tangible book value per share as of March 31, 2006	$ 5.22	
Decrease per share attributable to conversion of preferred stock	(4.76)	
Pro forma net tangible book value per share before giving effect to this offering	0.46	
Increase per share attributable to investors purchasing shares in this offering		
Pro forma net tangible book value per share, as adjusted to give effect to this offering		
Dilution to investors purchasing shares in this offering		$

Each $1.00 increase or decrease in the assumed public offering price of $ per share would increase or decrease, our pro forma as adjusted net tangible book value by approximately $ million, the pro forma as adjusted net tangible book value per share after this offering by approximately $ per share and the dilution as adjusted to investors purchasing shares in this offering by approximately $ per share, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering costs payable by us.

If the underwriters exercise their over-allotment option in full, the pro forma net tangible book value per share after giving effect to this offering would be $ per share, and the dilution in pro forma net tangible book value per share to investors in this offering would be $ per share.

The following table summarizes, as of March 31, 2006, the differences between the number of shares of common stock purchased from us, after giving effect to the conversion of our preferred stock into common stock, the total effective cash consideration paid, and the average price per share paid by our existing stockholders and by our new investors purchasing stock in this offering at an assumed initial public offering price of $ per share (the mid-point of the price range set forth on the cover page of this prospectus) before deducting the estimated underwriting discounts and commissions and estimated offering costs payable by us:

	Shares Purchased		Total Consideration		
	Number	Percent	Amount	Percent	Average Price Per Share
Existing stockholders before this offering	87,400,455	%	$ 79,476,849	%	$ 0.91
Investors purchasing shares in this offering					
Total		100.0%	$	100.0%	$

Each $1.00 increase or decrease in the assumed public offering price of $ per share would increase or decrease total consideration paid by new investors, total consideration paid by all stockholders and the average price per share paid by all stockholders by $ million, $ million and $, respectively, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering costs payable by us.

If the underwriters exercise their over-allotment option in full, our existing stockholders would own % and our new investors would own % of the total number of shares of our common stock outstanding after this offering.

The above information assumes no exercise of stock options or warrants outstanding as of March 31, 2006, and does not reflect $7.0 million of indebtedness incurred in June 2006 under our loan and security agreement with Silicon Valley Bank and Oxford Finance Corporation. As of March 31, 2006, there were:

- 1,017,000 shares of common stock issuable upon the exercise of options outstanding as of March 31, 2006 at a weighted average exercise price of $0.10 per share;
- 385,000 shares of common stock issuable upon the exercise of warrants outstanding as of March 31, 2006 at a weighted average exercise price of $1.00 per share;
- shares of our common stock reserved for future issuance under our 2006 equity incentive award plan, which will become effective on the day prior to the day on which we become subject to the reporting requirements of the Exchange Act (including 5,713,000 shares of common stock reserved for future grant or issuance under our 2004 equity incentive award plan, which shares will be added to the shares to be reserved under our 2006 equity incentive award plan upon the effectiveness of the 2006 equity incentive award plan); and
- shares of common stock reserved for issuance under our 2006 employee stock purchase plan.

SELECTED FINANCIAL DATA

The following selected statement of operations data for the period from May 26, 2004 (inception) through December 31, 2004, the year ended December 31, 2005 and the balance sheet data as of December 31, 2004 and 2005 have been derived from our audited financial statements included elsewhere in this prospectus. The statement of operations data for the three-month periods ended March 31, 2005 and 2006, the period from May 26, 2004 (inception) through March 31, 2006 and the balance sheet data as of March 31, 2006 have been derived from our unaudited financial statements included elsewhere in this prospectus. The unaudited financial statements have been prepared on a basis consistent with our audited financial statements and, in the opinion of management, contain all adjustments, consisting only of normal recurring adjustments, we consider necessary for the fair presentation of the financial data. The selected financial data should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes included elsewhere in this prospectus.

	Period from May 26, 2004 (Inception) Through December 31, 2004	Year Ended December 31, 2005	Three Months Ended March 31,		Period from May 26, 2004 (Inception) Through March 31, 2006
			2005	2006	
	(In thousands, except per share amounts)				
Statement of Operations Data:					
Operating expenses:					
Research and development	$ 2,233	$ 6,126	$ 577	$ 27,835	$ 36,195
Marketing	41	240	130	96	377
General and administrative	877	1,412	263	537	2,826
Total operating expenses	3,151	7,778	970	28,468	39,398
Loss from operations	(3,151)	(7,778)	(970)	(28,468)	(39,398)
Other income (expense):					
Interest income	9	255	7	144	409
Interest expense	—	—	—	(17)	(17)
Total other income	9	255	7	127	392
Net loss	$ (3,142)	$ (7,523)	$ (963)	$ (28,341)	$ (39,006)
Basic and diluted net loss per share(1)	$ (0.86)	$ (1.63)	$ (0.21)	$ (5.79)	
Shares used to compute basic and diluted net loss per share(1)	3,658	4,624	4,519	4,895	
Pro forma basic and diluted net loss per share(1)		$ (0.36)		$ (0.87)	
Shares used to compute pro forma basic and diluted net loss per share(1)		20,649		32,451	

(1) See Note 1 of Notes to Financial Statements for an explanation of the method used to compute the historical and pro forma net loss per share and the number of shares used in the computation of the per share amounts.

	As of December 31,		As of March 31,
	2004	2005	2006
		(In thousands)	
Balance Sheet Data:			
Cash and cash equivalents and securities available-for-sale	$ 4,271	$ 15,025	$ 40,617
Working capital	4,161	14,405	39,994
Total assets	4,536	15,769	41,822
Deficit accumulated during the development stage	(3,142)	(10,665)	(39,006)
Total stockholders' equity	4,422	14,623	40,574

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with "Selected Financial Data" and our financial statements and related notes appearing elsewhere in this prospectus. In addition to historical information, this discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including but not limited to those set forth under "Risk Factors" and elsewhere in this prospectus.

Overview

Background

We are a biopharmaceutical company focused on in-licensing, developing and commercializing proprietary product candidates principally for use in the hospital setting. Since our inception in 2004, we have in-licensed rights to two Phase III product candidates, both of which have been studied in prior Phase III clinical trials conducted by our licensors. We have in-licensed the exclusive U.S. and Canadian rights to IV APAP, an intravenous formulation of acetaminophen that is currently marketed in Europe for the treatment of acute pain and fever by Bristol-Myers Squibb Company, or BMS. We believe that IV APAP is the only stable, pharmaceutically-acceptable intravenous formulation of acetaminophen. We have also in-licensed the exclusive North American and European rights to omiganan pentahydrochloride 1% aqueous gel, or omiganan, for the prevention and treatment of device-related, surgical wound-related and burn-related infections.

We believe that the hospital setting is a concentrated, underserved market for pharmaceuticals and anticipate building our own, hospital-focused sales force as our product candidates approach potential U.S. Food and Drug Administration, or FDA, approval. We intend to build a leading franchise in the hospital setting, continuing to focus on products that are in late-stages of development, currently commercialized outside the United States, or approved in the United States but with significant commercial potential for proprietary new uses or formulations.

We were incorporated in May 2004. During 2004, we focused on hiring our management team and initial operating employees and on in-licensing our first product candidate, omiganan. Substantial operations did not commence until September 2004. During 2005, we completed the special protocol assessment, or SPA, for omiganan, and initiated Phase III clinical trials for this product candidate. In March 2006, we in-licensed rights to IV APAP from BMS. Pending further discussions with the FDA concerning our Phase III development program for IV APAP, we plan to initiate the remaining Phase III clinical trial requirements for this product candidate in the fourth quarter of 2006.

We are a development stage company. We have incurred significant net losses since our inception. As of March 31, 2006, we had an accumulated deficit of $39.0 million. These losses have resulted principally from costs incurred in connection with research and development activities, including license fees, costs of clinical trial activities associated with our current product candidates and general and administrative expenses. We expect to continue to incur operating losses for the next several years as we pursue the clinical development and market launch of our product candidates and acquire or in-license additional products, technologies or businesses that are complementary to our own.

Revenues

We have not generated any revenues to date, and we do not expect to generate any revenues from licensing, achievement of milestones or product sales until we are able to commercialize our product candidates ourselves or execute a collaboration arrangement.

Research and Development Expenses

Our research and development expenses consist primarily of license fees, salaries and related employee benefits, costs associated with clinical trials managed by our contract research organizations, or CROs, and costs associated with non-clinical activities, such as regulatory expenses. Our most significant costs are for license fees and clinical trials. The clinical trial expenses include payments to vendors such as CROs, investigators, clinical suppliers and related consultants. Our historical research and development expenses relate predominantly to the in-licensing of IV APAP and omiganan and clinical trials for omiganan. We charge all research and development expenses to operations as incurred because the underlying technology associated with these expenditures relates to our research and development efforts and has no alternative future uses.

We use external service providers and vendors to conduct our clinical trials, to manufacture our product candidates to be used in clinical trials and to provide various other research and development related products and services. A substantial portion of these external costs are tracked on a project basis.

We use our internal research and development resources across several projects and many resources are not attributable to specific projects. A substantial portion of our internal costs, including personnel and facility related costs, are not tracked on a project basis and are included in the "unallocated" category in the table below.

The following summarizes our research and development expenses for the periods indicated:

Product Candidate	Period from May 26, 2004 (Inception) Through December 31, 2004	Year Ended December 31, 2005	Three Months Ended March 31, 2005	Three Months Ended March 31, 2006	Period from May 26, 2004 (Inception) Through March 31, 2006
			(In thousands)		
IV APAP	$ —	$ —	$ —	$ 25,464	$ 25,464
Omiganan	2,001	4,802	333	1,885	8,687
Unallocated	232	1,324	244	486	2,044
	$ 2,233	$ 6,126	$ 577	$ 27,835	$ 36,195

At this time, due to the risks inherent in the clinical trial process and given the early stage of our product development programs, we are unable to estimate with any certainty the costs we will incur in the continued development of our product candidates for potential commercialization. Clinical development timelines, the probability of success and development costs vary widely. While we are currently focused on advancing each of our product development programs, our future research and development expenses will depend on the determinations we make as to the scientific and clinical success of each product candidate, as well as ongoing assessments as to each product candidate's commercial potential. In addition, we cannot forecast with any degree of certainty which product candidates will be subject to future collaborations, when such arrangements will be secured, if at all, and to what degree such arrangements would affect our development plans and capital requirements.

We expect our development expenses to be substantial over the next few years as we continue the advancement of our product development programs. We initiated our Phase III clinical trial program for omiganan in August 2005, and we have not yet commenced our own Phase III clinical trials for IV APAP. We expect to receive results from the ongoing omiganan clinical trial in the second half of 2007. In the fourth quarter of 2006, we expect to initiate the remaining Phase III clinical trial requirements for IV APAP for submission to the FDA and expect these Phase III clinical trial results to be available in the first half of 2008. The lengthy process of completing clinical trials and seeking regulatory approval for our product candidates requires the expenditure of substantial resources. Any failure by us or delay in completing clinical trials, or in obtaining regulatory approvals, could cause our research and development expense to increase and, in turn, have a material adverse effect on our results of operations.

Marketing

Our marketing expenses consist primarily of market research studies, salaries, benefits and professional fees related to building our marketing capabilities. We anticipate increases in marketing expenses as we add personnel and continue to develop and prepare for the potential commercialization of our product candidates.

General and Administrative

Our general and administrative expenses consist primarily of salaries, benefits and professional fees related to our administrative, finance, human resources, legal, business development and internal systems support functions, as well as insurance and facility costs. We anticipate increases in general and administrative expenses as we add personnel, comply with the reporting obligations applicable to publicly-held companies, and continue to build our corporate infrastructure in support of our continued development and preparation for the potential commercialization of our product candidates.

Interest and Other Income

Interest and other income consist primarily of interest earned on our cash, cash equivalents and short-term investments.

Income Taxes

As of December 31, 2005, we had both federal and state net operating loss carryforwards of approximately $8.7 million. If not utilized, the net operating loss carryforwards will begin expiring in 2024 for federal purposes and 2014 for state purposes. As of December 31, 2005, we had both federal and state research and development tax credit carryforwards of approximately $0.3 million and $0.1 million, respectively. The federal tax credits will begin expiring in 2024 unless previously utilized and the state tax credits carryforward indefinitely. Under Section 382 of the Internal Revenue Code of 1986, as amended, or the Internal Revenue Code, substantial changes in our ownership may limit the amount of net operating loss carryforwards that could be utilized annually in the future to offset taxable income. Any such annual limitation may significantly reduce the utilization of the net operating losses before they expire. In each period since our inception, we have recorded a valuation allowance for the full amount of our deferred tax asset, as the realization of the deferred tax asset is uncertain. As a result, we have not recorded any federal or state income tax benefit in our statement of operations.

Critical Accounting Policies and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in conformity with generally accepted accounting principles in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, expenses and related disclosures. Actual results could differ from those estimates.

We believe the following accounting policies to be critical to the judgments and estimates used in the preparation of our financial statements.

Research and Development Expenses

A substantial portion of our on-going research and development activities are performed under agreements we enter into with external service providers, including CROs, who conduct many of our research and development activities. We accrue for costs incurred under these contracts based on factors such as estimates of work performed, milestones achieved, patient enrollment and experience with similar contracts. As actual costs become known, we adjust our accruals. To date, our accruals have been within management's estimates, and no material adjustments to research and development expenses have been recognized. We expect to expand the level of research and development activity performed by external

service providers in the future. As a result, we anticipate that our estimated accruals will be more material to our operations in future periods. Subsequent changes in estimates may result in a material change in our accruals, which could also materially affect our results of operations.

Stock-Based Compensation

Effective January 1, 2006, we adopted Statement of Financial Accounting Standards, or SFAS, No. 123(R), *Share-Based Payment*, which revises SFAS No. 123, *Accounting for Stock-Based Compensation* and supersedes Accounting Principles Board, or APB, Opinion No. 25, *Accounting for Stock Issued to Employees.* SFAS No. 123(R) requires that share-based payment transactions with employees be recognized in the financial statements based on their fair value and recognized as compensation expense over the vesting period. Prior to SFAS No. 123(R), we disclosed the pro forma effects of applying SFAS No. 123 under the minimum value method. We adopted SFAS No. 123(R) effective January 1, 2006, prospectively for new equity awards issued subsequent to December 31, 2005. The adoption of SFAS No. 123(R) in the first quarter of 2006 did not result in the recognition of additional stock-based compensation expense.

Under SFAS No. 123(R), we calculate the fair value of stock option grants using the Black-Scholes option-pricing model. The weighted average assumptions used in the Black-Scholes model were 6.08 years for the expected term, 70% for the expected volatility, 4.36% for the risk free rate and 0% for dividend yield for the three months ended March 31, 2006. Future expense amounts for any particular quarterly or annual period could be affected by changes in our assumptions.

The weighted average expected option term for 2006 reflects the application of the simplified method set out in Securities and Exchange Commission Staff Accounting Bulletin, or SAB, No. 107 which was issued in March 2005. The simplified method defines the life as the average of the contractual term of the options and the weighted average vesting period for all option tranches.

Estimated volatility for fiscal 2006 also reflects the application of SAB No. 107 interpretive guidance and, accordingly, incorporates historical volatility of similar public entities.

As of March 31, 2006, we had no material unrecognized share-based compensation costs related to nonvested equity awards. As of March 31, 2006, we had outstanding vested options to purchase 196,873 shares of our common stock and unvested options to purchase 820,127 shares of our common stock with an intrinsic value of and , respectively, based on an estimated initial public offering price of per share.

Prior to January 1, 2006, we applied the intrinsic-value-based method of accounting prescribed by APB Opinion No. 25 and related interpretations. Under this method, if the exercise price of the award equaled or exceeded the fair value of the underlying stock on the measurement date, no compensation expense was recognized. The measurement date was the date on which the final number of shares and exercise price were known and was generally the grant date for awards to employees and directors. If the exercise price of the award was below the fair value of the underlying stock on the measurement date, then compensation cost was recorded, using the intrinsic-value method, and was generally recognized in the statements of operations over the vesting period of the award.

The fair value of our common stock has been established by our board of directors and took into consideration contemporaneous independent valuations of the Company's common stock beginning in March 2006. We have considered the guidance in the American Institute of Certified Public Accountants, or AICPA, Audit and Accounting Practice Aid Series, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*, to determine the fair value of our common stock for purposes of setting the exercise prices of stock options granted to employees and others. This guidance emphasizes the importance of the operational development in determining the value of the enterprise. As a development stage enterprise, we are at an early stage of existence, primarily focused on development with an unproven business model. To date, we have been funded primarily by venture capitalists with a history of funding start-up, high-risk entities with the potential for high returns in the event the investments are successful.

Prior to the licensing of IV APAP in March 2006, we valued our common stock at a nominal amount when we were considered to be in a very early stage of development as defined in the AICPA guidance where the preferences of the preferred stockholders, in particular the liquidation preferences, are very meaningful. Subsequent to our licensing of IV APAP but prior to the initiation of our initial public offering process on June 14, 2006, taking into consideration a contemporaneous independent valuation, we allocated additional enterprise value to our common stock with an increase in the common stock valuation to $0.34 per share. Subsequent to the initiation of our initial public offering process, taking into consideration a contemporaneous independent valuation, we increased our common stock valuation to $0.80 per share.

Equity instruments issued to non-employees are recorded at their fair value as determined in accordance with SFAS No. 123 and Emerging Issues Task Force 96-18, *Accounting for Equity Instruments That are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling Goods and Services*, and are periodically revalued as the equity instruments vest and are recognized as expense over the related service period.

Results of Operations

Comparison of three months ended March 31, 2006 and 2005

Research and Development Expenses. Research and development expenses increased to $27.8 million for the three months ended March 31, 2006 from $0.6 million for the comparable period during 2005. This increase of $27.2 million primarily was due to:

- an increase of $25.5 million in our IV APAP program primarily as a result of a license fee which was immediately expensed as in-process research and development;
- an increase of $1.6 million in our omiganan program as a result of clinical trial and related costs for a Phase III clinical trial initiated in August 2005; and
- an increase of $0.1 million in unallocated expenses as a result of increased salaries and related personnel costs from increased research and development staff to support our clinical and regulatory efforts related to omiganan and our licensing efforts related to IV APAP.

Marketing Expenses. Marketing expenses decreased to $96,000 for the three months ended March 31, 2006 from $130,000 for the comparable period during 2005. This decrease of $34,000 primarily was due to non-recurring market research and branding costs in 2005 partially offset by increased personnel costs.

General and Administrative Expenses. General and administrative expenses increased to $0.5 million for the three months ended March 31, 2006 from $0.3 million for the comparable period during 2005. This increase of $0.2 million primarily was due to legal fees, other professional fees and consulting fees.

Interest Income. Interest income increased to $144,000 for the three months ended March 31, 2006 from $8,000 for the comparable period during 2005. This increase of $136,000 primarily was due to the increase in average cash and investment balances as a result of preferred stock sales and higher interest rates in 2006.

Interest Expense. Interest expense increased to $17,000 for the three months ended March 31, 2006 from zero for the comparable period during 2005. This increase of $17,000 was primarily due to non-cash interest expense related to the warrants issued to Silicon Valley Bank and Oxford Finance Corporation in connection with their February 2006 commitment to lend us $7.0 million.

Comparison of year ended December 31, 2005 to the period from May 26, 2004 (inception) through December 31, 2004

Research and Development Expenses. Research and development expenses increased to $6.1 million for the year ended December 31, 2005 from $2.2 million for the period from May 26, 2004 (inception) through December 31, 2004. This increase of $3.9 million primarily was due to:

- an increase of $2.8 million in our omiganan program as a result of clinical trial and related costs offset by a decrease in license fees; and
- an increase of $1.1 million in unallocated expenses as a result of increased salaries and related personnel costs from increased research and development staff to support our initial clinical and regulatory efforts.

Marketing Expenses. Marketing expenses increased to $240,000 for the year ended December 31, 2005 from $41,000 for the period from May 26, 2004 (inception) through December 31, 2004. This increase of $199,000 primarily was due to market research, branding and personnel costs in 2005.

General and Administrative Expenses. General and administrative expenses increased to $1.4 million for the year ended December 31, 2005 from $0.9 million for the period from May 26, 2004 (inception) through December 31, 2004. This increase of $0.5 million primarily was due to salaries and related costs as we expanded our general and administrative functions to support our operations, as well as legal fees, other professional fees and consulting fees.

Interest Income. Interest income increased to $256,000 for the year ended December 31, 2005 from $9,000 for the period from May 26, 2004 (inception) through December 31, 2004. This increase of $247,000 primarily was due to the increase in average cash and investment balances and interest rates in 2005.

Liquidity and Capital Resources

Since inception, our operations have been financed primarily through the private placement of equity securities. Through March 31, 2006, we received net proceeds of approximately $79.2 million from the sale of shares of our preferred and common stock as follows:

- from July 2004 to March 2006, we issued and sold a total of 7,770,000 shares of common stock for aggregate net proceeds of $0.3 million;
- from July 2004 to August 2004, we issued and sold a total of 8,085,108 shares of Series A-1 preferred stock for aggregate net proceeds of $7.5 million;
- from June 2005 to September 2005, we issued and sold 17,675,347 shares of Series A-2 preferred stock for aggregate net proceeds of $17.6 million; and
- in March 2006, we issued and sold a total of 53,870,000 shares of Series A-3 preferred stock for aggregate net proceeds of $53.8 million.

In February 2006, we entered into a $7.0 million loan and security agreement with Silicon Valley Bank and Oxford Finance Corporation to provide us with growth capital. We drew down $7.0 million in June 2006 and have no further credit available under this agreement. We are required to make interest only payments on the loan balance for the first six months of the loan, and beginning February 2007, we are required to make the first of 30 equal monthly principal and interest payments. Interest accrues on all outstanding amounts at the fixed rate of 11.47%. The loan is collateralized by substantially all of our assets other than intellectual property. We are subject to prepayment penalties. Under the terms of the agreement, we are precluded from entering into certain financing and other transactions, including disposing of certain assets and paying dividends, and are subject to various non-financial covenants.

In conjunction with the loan and security agreement, we issued warrants to the lenders to purchase 385,000 shares of Series A-2 preferred stock at an exercise price of $1.00 per share.

As of March 31, 2006, we had $40.6 million in cash and cash equivalents. We have invested a substantial portion of our available cash funds in commercial paper and money market funds placed with reputable financial institutions for which credit loss is not anticipated. We have established guidelines relating to diversification and maturities of our investments to preserve principal and maintain liquidity.

Our operating activities used net cash in the amount of $28.3 million in the three months ended March 31, 2006, $6.9 million for the year ended December 31, 2005 and $3.1 million for the period from May 26, 2004 (inception) through December 31, 2004. The increase in net cash used in operating activities from 2004 to 2005 primarily was due to an increase in our net loss as a result of increased expenses related to the clinical development of omiganan and increased salaries and overhead of company personnel. The increase in net cash used in operating activities from 2005 to 2006 primarily was due to an increase in our net loss as a result of increased expenses related to the license fee paid for IV APAP. We cannot be certain if, when or to what extent we will receive cash inflows from the commercialization of our product candidates. We expect our development expenses to be substantial and to increase over the next few years as we continue the advancement of our product development programs.

As a biopharmaceutical company focused on in-licensing, developing and commercializing proprietary pharmaceutical product candidates, we have entered into license agreements to acquire the rights to develop and commercialize our two product candidates, IV APAP and omiganan. Pursuant to these agreements, we obtained exclusive licenses to the patent rights and know-how for selected indications and territories. Under the IV APAP agreement, we paid to BMS a $25.0 million up-front fee and may be required to make future milestone payments totaling up to $50.0 million upon the achievement of various milestones related to regulatory or commercial events. Under the omiganan agreement, we paid to Migenix Inc. an aggregate of $2.0 million in the form of an up-front fee, including the purchase of 617,284 shares of Migenix common stock, and may be required to make future milestone payments totaling up to $27.0 million upon the achievement of various milestones related to regulatory or commercial events. Under both agreements, we are also obligated to pay royalties on any net sales of the licensed products.

Our future capital uses and requirements depend on numerous forward-looking factors. These factors include but are not limited to the following:

- the progress of our clinical trials, including expenses to support the trials and milestone payments that may become payable to BMS or Migenix;
- our ability to establish and maintain strategic collaborations, including licensing and other arrangements;
- the costs involved in enforcing or defending patent claims or other intellectual property rights;
- the costs and timing of regulatory approvals;
- the costs of establishing sales or distribution capabilities;
- the success of the commercialization of our products; and
- the extent to which we in-license, acquire or invest in other indications, products, technologies and businesses.

We believe that our existing cash, cash equivalents and short-term investments will be sufficient to meet our projected operating requirements through at least June 30, 2007.

Until we can generate significant cash from our operations, we expect to continue to fund our operations with existing cash resources generated from the proceeds of offerings of our equity securities and our existing borrowings under our loan and security agreement. In addition, we may finance future cash needs through the sale of additional equity securities, strategic collaboration agreements and debt financing. However, we have drawn down all available amounts under our existing loan and security agreement, and we may not be successful in obtaining strategic collaboration agreements or in receiving milestone or royalty payments under those strategic collaboration agreements. In addition, we cannot be

sure that our existing cash and investment resources will be adequate, that additional financing will be available when needed or that, if available, financing will be obtained on terms favorable to us or our stockholders. Having insufficient funds may require us to delay, scale-back or eliminate some or all of our development programs, relinquish some or even all rights to product candidates at an earlier stage of development or renegotiate less favorable terms than we would otherwise choose. Failure to obtain adequate financing also may adversely affect our ability to operate as a going concern. If we raise additional funds by issuing equity securities, substantial dilution to existing stockholders would likely result. If we raise additional funds by incurring additional debt financing, the terms of the debt may involve significant cash payment obligations as well as covenants and specific financial ratios that may restrict our ability to operate our business.

Contractual Obligations and Commitments

The following table describes our long-term contractual obligations and commitments as of December 31, 2005:

	Payments Due by Period				
	Total	Less Than 1 Year	1 - 3 Years	4-5 Years	After 5 Years
			(In thousands)		
Long-term debt obligations(1)	$ —	$ —	$ —	$ —	$ —
Operating lease obligations(2)	147	147	—	—	—
License obligations(3)	—	—	—	—	—
Total	$ 147	$ 147	$ —	$ —	$ —

(1) Long-term debt obligations do not include $7.0 million of indebtedness incurred in June 2006 under our loan and security agreement with Silicon Valley Bank and Oxford Finance Corporation.

(2) In May 2006, we entered into a six-year operating lease for 23,494 square feet of office space. Operating lease obligations do not include $6.7 million of non-cancelable operating lease payments related to this lease. Future minimum payments under the operating lease total $0.2 million, $1.0 million, $1.1 million, $1.1 million, $1.2 million, $1.2 million and $0.9 million for the years ending December 31, 2006, 2007, 2008, 2009, 2010, 2011 and 2012, respectively.

(3) License obligations do not include additional payments of up to $77.0 million due upon the occurrence of certain milestones related to regulatory or commercial events. We may also be required to pay royalties on any net sales of the licensed products. License payments may be increased based on the timing of various milestones and the extent to which the licensed technologies are pursued for other indications. These milestone payments and royalty payments under our license agreements are not included in the table above because we cannot, at this time, determine when or if the related milestones will be achieved or the events triggering the commencement of payment obligations will occur.

We also enter into agreements with third parties to manufacture our product candidates, conduct our clinical trials and perform data collection and analysis. Our payment obligations under these agreements depend upon the progress of our development programs. Therefore, we are unable at this time to estimate with certainty the future costs we will incur under these agreements.

Related Party Transactions

For a description of our related party transactions, see the “Certain Relationships and Related Party Transactions” section of this prospectus.

Off-Balance Sheet Arrangements

We have not engaged in any off-balance sheet activities.

Quantitative and Qualitative Disclosures About Market Risk

Our cash and investments as of March 31, 2006 consisted primarily of money market funds, commercial paper and U.S. government agency notes. Our primary exposure to market risk is interest income sensitivity, which is affected by changes in the general level of U.S. interest rates, particularly because the majority of our investments are in short-term marketable securities. The primary objective of our investment activities is to preserve principal while at the same time maximizing the income we receive from our investments without significantly increasing risk. Some of the securities that we invest in may be subject to market risk. This means that a change in prevailing interest rates may cause the value of the investment to fluctuate. For example, if we purchase a security that was issued with a fixed interest rate and the prevailing interest rate later rises, the value of our investment will probably decline. To minimize this risk, we intend to continue to maintain our portfolio of cash equivalents and short-term investments in a variety of securities including commercial paper, money market funds and government and non-government debt securities, all with various maturities. In general, money market funds are not subject to market risk because the interest paid on such funds fluctuates with the prevailing interest rate.

BUSINESS

Overview

We are a biopharmaceutical company focused on in-licensing, developing and commercializing proprietary product candidates principally for use in the hospital setting. Since our inception in 2004, we have in-licensed rights to two Phase III product candidates. We have in-licensed the exclusive U.S. and Canadian rights to IV APAP, an intravenous formulation of acetaminophen that has previously been studied in six completed Phase III trials and is currently marketed in Europe for the treatment of acute pain and fever by Bristol-Myers Squibb Company, or BMS. We believe that IV APAP is the only stable, pharmaceutically-acceptable intravenous formulation of acetaminophen. We intend to initiate Phase III development for the treatment of acute pain in the fourth quarter of 2006. We also in-licensed the exclusive North American and European rights to omiganan pentahydrochloride 1% aqueous gel, or omiganan, for the prevention and treatment of device-related, surgical wound-related and burn-related infections. We are currently conducting a Phase III trial of omiganan for the prevention of local catheter site infections, or LCSI, to confirm the results observed for the prevention of LCSI, a secondary endpoint, in a large, completed Phase III trial. We believe that the hospital setting is a concentrated, underserved market for pharmaceuticals and anticipate building our own, hospital-focused sales force as our products approach potential U.S. Food and Drug Administration, or FDA, approval. We intend to build a leading franchise in the hospital setting, continuing to focus on products that are in late-stages of development, currently commercialized outside the United States or approved in the United States but with significant commercial potential for proprietary new uses or formulations.

Our current portfolio consists of the following product candidates:

- *IV APAP for the treatment of acute pain.* We are developing IV APAP in the U.S. market for the treatment of acute pain. According to IMS Health, Inc., or IMS, an independent marketing research firm, over 500 million units of injectable analgesics, typically used to treat pain, were sold in the United States in 2005. Opioids such as morphine, meperdine, hydromorphone and fentanyl represent the majority of unit volume in the market but are associated with a variety of unwanted side effects including sedation, nausea, vomiting, constipation, cognitive impairment and respiratory depression. Ketorolac, a non-steroidal anti-inflammatory drug, or NSAID, is the only non-opioid injectable analgesic available for the treatment of acute pain in the United States. However, ketorolac carries strong warnings from the FDA for various side effects, including an increased risk of bleeding — a particularly troubling side-effect in the surgical setting.

  In March 2006, we in-licensed the patents and the exclusive development and commercialization rights to IV APAP in the United States and Canada from BMS. IV APAP has been marketed outside the United States for approximately four years. Since its introduction in Europe in mid-2002, over 100 million doses of IV APAP have been administered to patients, and it has become the market share leader among injectable analgesics with 2005 sales of more than $140 million according to IMS. With approval in over 40 countries, the addition of IV APAP to our product pipeline is consistent with our strategy to in-license and develop pharmaceutical candidates with well-understood risk profiles. In the fourth quarter of 2006, we expect to initiate the remaining Phase III clinical trial requirements. We expect these Phase III clinical trial results to be available in the first half of 2008 and, if positive, to subsequently submit a new drug application, or NDA, in the second half of 2008.

- *Omiganan for the prevention of intravascular catheter-related infections.* We are developing omiganan for the prevention of intravascular catheter-related infections in the United States and Europe. According to the February 2004 *Catheter: Global Markets & Technologies* report from Theta Reports, eight million central venous catheters, or CVCs, were sold in the United States in 2003, and unit sales are projected to grow to 11 million by 2007. Although CVCs have become an important part of medical care, they can give rise to dangerous and

costly complications, including: LCSIs, which are infections at the catheter insertion site; catheter colonization, which is the growth of microorganisms on the portion of the catheter below the skin surface; and catheter-related bloodstream infections, or CRBSIs, which are infections in the bloodstream caused by microorganisms associated with the catheter. The Centers for Disease Control and Prevention, or the CDC, estimates that there are 250,000 CRBSIs each year in the United States. The attributable mortality rate of CRBSIs is approximately 12% to 25% with an average marginal cost to the healthcare system of $25,000 per infection. Currently, topical antiseptics are the primary agent used to cleanse the skin surface around the catheter insertion site prior to insertion. However, the utility of these antiseptics is limited, principally due to the relatively short duration of antimicrobial activity.

Omiganan is a topical antimicrobial that has been demonstrated to be rapidly bactericidal and fungicidal with prolonged duration of activity against all microorganisms commonly found on the skin surface including multi-drug resistant microorganisms such as methicillin-resistant *staphylococcus aureus*, or MRSA. Importantly, resistance to omiganan has not been induced in the laboratory after extensive study nor has omiganan demonstrated potential to induce cross-resistance to other antimicrobial therapeutics. In July 2004, we in-licensed the patents and the exclusive development and commercialization rights to omiganan in North America and Europe for the prevention of device-related, surgical wound-related and burn-related infections.

Omiganan has previously been studied in a large, completed Phase III trial that demonstrated statistically significant outcomes for the reduction of LCSI and catheter colonization. The presence of an LCSI may result in replacement of the catheter and/or administration of antibiotics, both of which create additional costs to hospitals and have the potential for adverse safety outcomes. In addition, catheter colonization is well correlated with CRBSIs, according to a published review of clinical trials. In August 2005, we initiated a confirmatory Phase III clinical trial with a primary endpoint of LCSI. We reached agreement with the FDA on the trial design, endpoints and statistical analysis plan received through the special protocol assessment, or SPA, process. We expect these Phase III results to be available in the second half of 2007 and to subsequently submit an NDA for omiganan in the first half of 2008.

- *Other product candidates.* We are also exploring the opportunity to develop new formulations of omiganan for the prevention and treatment of other device-related, surgical wound-related and burn-related infections. We are currently preparing preclinical experiments in animal models prior to initiating human clinical trials.

Our Strategy

Our goal is to be a leading biopharmaceutical company focused on the development and commercialization of proprietary pharmaceuticals principally for use in the hospital setting. Our near-term strategy is to focus on completing the development of and commercializing our existing product candidates. Our long-term strategy is to in-license, acquire, develop and commercialize additional product candidates that are in late-stages of development, currently commercialized outside the United States or approved in the United States but with significant commercial potential for proprietary new uses or formulations. Specifically, we intend to:

- *Obtain regulatory approval for our Phase III hospital product candidates, IV APAP and omiganan.* We are applying the expertise of our development teams to conduct and successfully complete the Phase III clinical trials associated with each product candidate. We have designed our Phase III clinical programs in an effort to reduce clinical development risk, facilitate regulatory approval and optimize marketing claims. To that end, we plan to resume a U.S. Phase III program later this year for IV APAP previously

initiated by BMS, and we expect to submit an NDA in the second half of 2008 based on the previously completed trials and any further trials that may be required by the FDA. In addition, we have reached a written agreement with the FDA through the SPA process for a single confirmatory Phase III study of omiganan for the prevention of LCSIs.

- *Build a highly leverageable sales organization targeting hospitals.* We intend to build a commercial organization focused on promoting our products principally to hospitals in the United States. We believe that both IV APAP and omiganan can be effectively promoted by our own sales force targeting key hospitals in the United States. Importantly, the number of institutions comprising the hospital marketplace is relatively limited and we believe a small number of these institutions account for a substantial portion of the prescribing activity. The concentrated nature of this market creates the opportunity for significant marketing synergies as we intend to leverage our sales force across multiple therapeutic categories in the hospital. Outside the United States, we intend to establish strategic partnerships for the commercialization of our products where we have commercialization rights.
- *Expand our product portfolio through acquiring or in-licensing additional late-stage, hospital-focused products with well-understood risk profiles.* We will seek additional opportunities to acquire or in-license products to more fully exploit our clinical, regulatory, manufacturing, sales and marketing capabilities. We believe that our focus on the hospital market enables us to evaluate a broader range of products across multiple therapeutic areas for possible acquisition. In addition, competition from large pharmaceutical companies has generally diminished in the hospital marketplace as greater emphasis has shifted toward larger opportunities in the primary care setting. To reduce the time-to-market and the risks and costs of clinical development, we focus on products that are in late-stages of development, currently commercialized outside the United States or approved in the United States but with significant commercial potential for proprietary new uses or formulations.
- *Pursue additional indications and commercial opportunities for our product candidates.* We will seek to maximize the value of IV APAP, omiganan and any other product candidates we may in-license, acquire or develop by pursuing other indications and commercial opportunities for such candidates. For example, we have rights to develop and commercialize omiganan for additional indications related to the prevention and treatment of device-related, surgical wound-related and burn-related infections.

The Hospital Market

Large, multinational pharmaceutical companies have generally decreased marketing efforts focused on hospital-use drugs, instead focusing on drugs that can be marketed in the larger outpatient setting. We believe this reduced emphasis on the hospital marketplace presents us with an excellent opportunity to in-license, acquire, develop and commercialize products that address unmet medical needs in the hospital setting. We believe the concentrated nature of the hospital marketplace will allow for our expansion into other therapeutic areas without substantial investment in additional commercial infrastructure.

According to IMS, approximately $28 billion was spent on promotional activities by the pharmaceutical industry in 2004. Of this amount, IMS estimates that only $1 billion was directed towards hospital-based physicians and directors of pharmacies. This hospital-focused spending represents approximately 3% of total promotional expenditures and has declined from approximately 6% of total spending in 1996. The significant imbalance towards the outpatient market is highlighted by spending on direct-to-consumer campaigns and drug sampling which now make up close to 80% of promotional spending for pharmaceuticals.

Despite these declining promotional expenditures, U.S. hospitals and clinics accounted for approximately $54 billion or 21% of U.S. pharmaceutical sales in 2005, according to IMS. Furthermore, we believe pharmaceutical sales to acute care hospitals are highly concentrated among a relatively small

number of large institutions. For example, according to Wolters Kluwer Health, an independent marketing research firm, only 2,000 of the approximately 5,000 acute care hospitals in the United States represent more than 80% of injectable analgesic sales. The concentration of high-prescribing institutions enables effective promotion of pharmaceuticals utilizing a relatively small, dedicated sales and marketing organization. We believe the relative lack of promotional efforts directed toward the highly concentrated hospital marketplace makes it an underserved and compelling opportunity, especially for a biopharmaceutical company commercializing its products directly through its own dedicated sales force.

We believe a typical sales representative focused on office-based physicians can generally promote only two to three products effectively; whereas, a typical hospital-focused sales representative can effectively promote five to six products. Furthermore, we believe a typical sales representative focused on office-based physicians can effectively reach five to seven physicians per day; whereas, a typical hospital-focused sales representative can reach many more physicians, nurses and pharmacy directors within a given institution. Notably, a hospital-focused sales representative also faces significantly less travel time between sales calls and less wait time in physician offices as a large number of prescribers can be found in a single location. Furthermore, drug sampling generally does not occur in hospitals, which represents a significant cost advantage versus marketing to office-based physicians. A single sales representative can promote products from multiple therapeutic categories to multiple prescribers within the institution.

In addition to hospitals, we intend to promote our products to certain ambulatory care centers, including ambulatory surgery centers and dialysis clinics, which tend to be located in close proximity to a hospital and can be targeted with our hospital sales force. According to Verispan, there are approximately 5,000 outpatient surgery centers in the United States. We estimate that fewer than 500 of these surgery centers represent the high opportunity segment for our products. According to the U.S. General Accounting Office, there are approximately 4,000 dialysis clinics in the United States, of which we believe most are either co-located with a hospital or located in close proximity to a hospital.

In recent years there has also been significant activity by both government agencies and accrediting organizations to hold hospitals accountable for improving patient outcomes across a wide variety of areas, including infection control, pain management, cardiovascular care and others. For example, according to the Association for Professionals in Infection Control and Epidemiology, there are now 13 U.S. states that require hospitals to publicly report their infections rates and there are more than 20 other states that have had legislative activity related to public reporting of infection rates in 2006. These types of initiatives support our view that significant unmet medical needs remain in hospitals today.

Our Product Development Programs

Our current product development programs are focused on late-stage development products principally for use in the hospital setting. Our portfolio consists of the following product candidates:

Product Candidate	Indication	Development Stage in the United States	Development Stage in Europe	Cadence Commercial Rights
IV APAP(1)	Treatment of acute pain — adults	Phase III	Marketed (by BMS)	United States, Canada
	Treatment of acute pain — pediatrics	Phase III	Marketed (by BMS)	United States, Canada
	Treatment of fever — pediatrics	Phase III	Marketed (by BMS)	United States, Canada
Omiganan	Prevention of local catheter site infections	Phase III	Phase III	North America, Europe

(1) In March 2006, we in-licensed the patents and the exclusive development and commercialization rights to IV APAP in the United States and Canada from BMS. BMS has completed Phase III trials with respect to the above indications for IV APAP in Europe and the United States, which we intend to use in our NDA filing following agreement with the FDA on additional clinical trials needed in the United States for approval. In the fourth quarter of 2006, we expect to initiate the remaining Phase III clinical trial requirements for submission in the United States. We expect these Phase III clinical trial results to be available in the first half of 2008 and, if positive, to submit an NDA in the second half of 2008.

IV APAP for the Treatment of Acute Pain

Acute Pain Background

Acute pain is generally defined as pain with relatively short duration and recent onset with an easily identifiable cause. It serves to warn the patient of tissue damage and is often sharp initially and followed by aching pain. In the hospital setting, acute pain is generally classified as post-operative or non-operative.

Post-operative pain is a response to tissue damage during surgery that stimulates peripheral nerves, which signal the brain to produce a sensory and emotional response. Post-operative pain may occur not only at the surgical site but also in areas not directly affected by the surgical procedure. The pain may be experienced by an inpatient or outpatient and can be felt after surgical procedures.

Numerous studies reveal that the incidence and severity of post-operative pain is primarily determined by the type of surgery, duration of surgery and the treatment choice following surgery. Post-operative pain is usually greatest with abdominal, head-neck, orthopedic and thoracic surgery and may last up to eight days after the surgical procedure. In comparison, surgical procedures such as arthroscopy, breast biopsy, hernia repair and plastic surgery tend to be less invasive and generally produce minor surgical trauma.

Despite major improvements in surgical techniques and the introduction of novel drugs, the overall treatment of post-operative pain has not substantially improved over the last 20 years. According to the industry research group Datamonitor, up to 75% of patients report inadequate pain relief. Such inadequate pain relief often leads to nausea, vomiting, decreased mobilization and reduced nutritional intake — all of which impede patient recovery — and can lead to infections and blood clots in the legs and lungs — all of which jeopardize patient safety. All of these factors have a major impact on patient care and hospital economic outcomes, including prolonged hospital stays.

Non-operative pain in the hospital is typically associated with diseases, disorders, trauma and other conditions. The most common non-operative pain types among hospitalized patients include pain associated with cancer, trauma, burns, gallstones and cardiovascular events. Other incidences of non-operative pain among hospitalized patients are often related to HIV, pancreatitis, sickle cell disease and other diseases. Inadequate pain management in these patients also leads to poor health and economic outcomes.

Market for Injectable Analgesics

Drugs used to treat pain are collectively known as analgesics. Injectable formulations of analgesics are typically used when patients are unable to take medications by mouth, faster onset of analgesia is required, or it is otherwise more convenient to administer drugs in injectable form. Hospitalized patients may be unable to take medications by mouth for a variety of reasons including post-anesthesia sedation, other forms of sedation, nausea, vomiting, gastrointestinal limitations or other conditions.

According to IMS, the U.S. market for injectable analgesics exceeded 500 million units in 2005. Morphine is the current market leader and accounted for more than 300 million units in 2005. Other

injectable opioids such as meperidine, hydromorphone and fentanyl, which are all available in generic forms, accounted for more than 135 million units in 2005. Ketorolac (Toradol), a genericized NSAID, is the only non-opioid injectable analgesic for acute pain available in the United States. According to IMS, injectable ketorolac sold more than 40 million units in 2005.

According to Datamonitor, up to 53 million patients undergo surgical procedures each year in the United States. Datamonitor projects the number of surgical procedures to increase as the elderly population increases and as technological advances allow new surgical procedures to be performed. As such, we expect that the need for safe and effective drugs to treat pain in the post-operative setting will continue to increase.

Limitations of Current Therapies

Only two classes of injectable analgesics, opioids and NSAIDs, are currently available in the United States for the treatment of acute pain.

Opioids have been used as analgesics for over 2,000 years and continue to be the mainstay of post-operative pain management. Opioids activate certain receptors in the central nervous system, which produce analgesia, euphoria and other positive effects. A range of opioids are available in injectable form including morphine, fentanyl, meperidine and hydromorphone.

Opioids, however, are associated with a variety of unwanted side effects including sedation, nausea, vomiting, constipation, headache, cognitive impairment and respiratory depression. Respiratory depression can lead to death if not monitored closely. Side effects from opioids have been demonstrated to reduce quality of life and side-effect-related dosing limitations can result in suboptimal pain relief due to under-dosing. All of these side effects may require additional medications or treatments and can prolong patient stay in the post-anesthesia care unit as well as a patient's overall stay in the hospital or in an ambulatory surgical center.

Opioid-related side effects also impose significant economic burdens on hospitals and ambulatory surgical centers. For example, nausea and vomiting, common opioid-related side effects, can cause the need for administration of anti-nausea medication, increased monitoring by nurses, increased length of stay in the post-anesthesia care unit and overall length of stay in the hospital, diverting resources that could otherwise be utilized in revenue-generating activities. Studies have demonstrated increased costs related to post-operative opioid administration from not only increased personnel time and length of stay but also increased supply and drug costs, including drugs to manage the nausea and vomiting.

The only non-opioid injectable analgesic for acute pain available in the United States is the NSAID ketorolac. NSAIDs act as non-selective inhibitors of the enzyme cyclooxygenase, inhibiting both the cyclooxygenase-1, or COX-1, and cyclooxygenase-2, or COX-2, enzymes. The inhibition of COX-2 produces an anti-inflammatory effect resulting in analgesia. Since NSAIDs do not produce respiratory depression or impair gastrointestinal motility, they are considered to be useful alternatives to opioids for the relief of acute pain. Studies have also demonstrated the opioid-sparing potential of ketorolac when used in combination with opioids, as well as resulting decreases in hospital costs. Published studies have shown lower overall per-patient costs ranging from $326 to $2,031 for the patients treated with ketorolac and opioids compared to those treated with opioids alone.

Despite these economic advantages, the use of ketorolac is severely limited in the post-operative period. Non-specific NSAIDs such as ketorolac block COX-1, which plays a major role in the release of prostaglandins to regulate platelet aggregation and protect the lining of the stomach. As a result, bleeding, gastrointestinal and renal complications are significant impediments to the post-operative use of ketorolac. The product carries a black box warning for these side effects. A black box warning is the strongest type of warning that the FDA can require for a drug and is generally reserved for warning prescribers about adverse drug reactions that can cause serious injury or death. The FDA specifically warns that ketorolac should not be used in various patient populations that are at-risk for bleeding, as a prophylactic analgesic prior to major surgery or for intraoperative administration when stoppage of bleeding is critical.

The World Health Organization, or WHO, has established a three-step analgesic ladder for the treatment of pain, which recommends initial treatment with a non-opioid such as acetaminophen, aspirin, or NSAIDs followed by the addition of opioids as pain increases. The WHO analgesic ladder is consistent with the practice of multimodal analgesia, which involves the use of more than one class of drug for pain control to obtain additional analgesia, reduce side effects or both. In the United States, this recommended practice of multimodal analgesia is not fully available to physicians given the current lack of an intravenous formulation of acetaminophen. With the availability of IV APAP in Europe, physicians are able to treat post-operative pain with IV APAP as baseline therapy and use opioids in combination as needed for increasing levels of pain.

IV APAP

IV APAP has been marketed by BMS in Europe since its launch in France in mid-2002 and subsequent approvals in other countries throughout Europe and other parts of the world. After obtaining these approvals, BMS elected to seek a partner to develop and commercialize IV APAP in the United States and Canada based on a new corporate strategy to focus the company's research and development on 10 specific disease areas, which do not include the treatment of pain. In March 2006, we completed our agreement with BMS to in-license these rights.

Acetaminophen is the most widely used drug for pain relief and the reduction of fever in the United States. The mechanism of action of acetaminophen remains not well understood; however, it is believed that acetaminophen acts in part on central COX enzymes without the peripheral anti-inflammatory effects, platelet inhibition or other side effects associated with NSAIDs. Acetaminophen was discovered in the late 19th century but was not available for sale until 1955 when it was introduced under the brand name Tylenol in the United States. Acetaminophen is currently available in over 600 combination and single ingredient prescription and over-the-counter medicines, including tablet, caplet, orally-dosed liquid suspension, powder and suppository forms for both adults and children.

Historically, poor stability in aqueous solutions and inadequate solubility of acetaminophen prevented the development of an intravenous dosage form. Acetaminophen will decompose in the presence of moisture or water. The rate of decomposition is accelerated as the temperature is increased and upon exposure to light. The stability is also a function of the solution's pH, which creates a further challenge to formulate acetaminophen in an aqueous solution suitable for intravenous administration. We believe that IV APAP is the only stable, pharmaceutically-acceptable intravenous formulation of acetaminophen.

Prior to the introduction of IV APAP in Europe, BMS had developed an intravenous formulation of propacetamol, a prodrug that is rapidly converted in the bloodstream to acetaminophen. This formulation was developed as an alternative approach given the challenges associated with formulating acetaminophen itself in solution. Available in Europe for more than 20 years, intravenous propacetamol was marketed under the brand name Pro-Dafalgan and was generally indicated for the treatment of acute moderate pain and the reduction of fever. Pro-Dafalgan was provided for use as a dried powder to be reconstituted in solution prior to intravenous administration. In healthcare workers reconstituting the drug, there were reported incidences of allergic reactions, including mild allergic reactions on the skin and severe allergic shock from inhalation. Intravenous propacetamol was also associated with pain at the injection site and other local reactions in approximately 50% of patients receiving the drug.

IV APAP was approved in Europe based on clinical data demonstrating that the formulation provides superior analgesic efficacy over placebo and similar analgesic efficacy and bioequivalence to intravenous propacetamol. Well-controlled clinical trials have demonstrated that IV APAP has a safety profile similar to placebo with significantly better tolerability than intravenous propacetamol upon infusion. Pain at the injection site has been demonstrated to be no different than placebo.

IV APAP is the only intravenous formulation of acetaminophen available anywhere in the world and has now been approved in over 40 countries. BMS markets IV APAP in Europe and other countries under the brand name Perfalgan. When BMS launched IV APAP, it withdrew intravenous propacetamol from the market. Two strengths of IV APAP are commercially available in these countries in a ready-to-

use solution: a 50mL bottle containing 0.5g acetaminophen and a 100mL bottle containing 1g acetaminophen. Both are labeled for administration via a 15-minute intravenous infusion.

In Europe, IV APAP was initially launched in France in mid-2002, followed by Germany and Spain in 2003, the United Kingdom in 2004 and Italy in 2005. Despite this country-by-country launch, according to IMS, IV APAP achieved a 43% dollar share (20% of unit volume) among all injectable analgesics sold in Europe in less than four years. In 2005, IV APAP sold more than 55 million units for total sales exceeding $140 million (U.S. dollars) according to IMS.

We believe the United States represents a substantially larger market opportunity for IV APAP than Europe. According to IMS, over 500 million units of injectable analgesics were sold in the United States in 2005 compared to approximately 320 million in Europe. More significantly, pharmaceutical pricing continues to be higher in the United States on average. Each country in the European Union currently employs direct and other forms of price controls, including reference systems where prices for new drugs are based upon the prices of existing drugs that provide similar therapeutic benefit or prices of drugs in other European countries. According to IMS, the average selling price in Europe was approximately $2.50 (U.S. dollars) per unit.

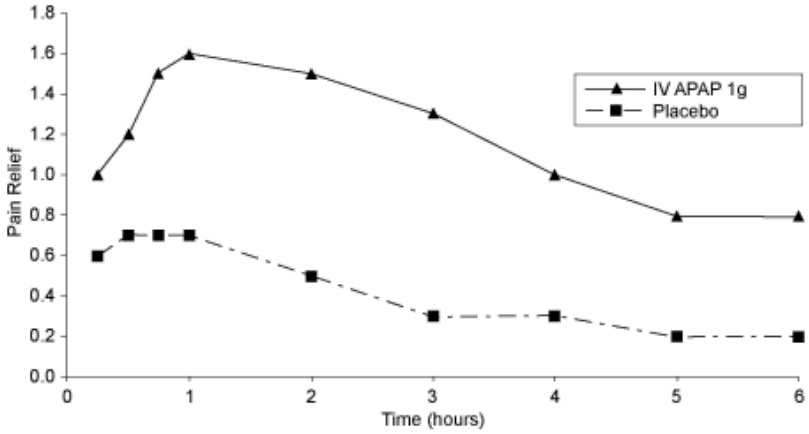
We believe that the key product attributes that will drive adoption include the proven efficacy and established safety profile of acetaminophen, the potential ability to reduce concomitant use of morphine and other opioids and a more rapid onset of action.

Clinical Development History

Clinical Overview. There have been 2,241 subjects, including 1,780 subjects that received IV APAP, studied in nine clinical trials completed by BMS, largely submitted to support the Marketing Authorization Application, or MAA, that resulted in European approval. These trials included two Phase I trials, six Phase III trials and one large Phase IV trial. Overall, we believe that the results of these nine studies demonstrate that IV APAP is safe and effective in the treatment of post-operative pain in adults and children. These trials have also demonstrated that IV APAP reduces the consumption of opioids when used in combination.

Clinical Studies for Post-Operative Pain in Adults. One Phase III study evaluated 150 adult subjects with moderate-to-severe pain following total hip and total knee replacements. Subjects were randomized to receive IV APAP, intravenous propacetamol or placebo. We believe this study best demonstrates the efficacy of IV APAP since the patients in the trial were undergoing surgical procedures with more severe levels of pain. On the primary efficacy endpoint, pain relief scores in the patients treated with IV APAP were statistically higher ($p\text{-value} < 0.05$) than those treated with placebo and not statistically different than those treated with intravenous propacetamol from 15 minutes to six hours, at which point patients received a second dose. P-values indicate the likelihood that clinical trial results were due to random statistical fluctuations rather than a true cause and effect. The lower the p-value, the more likely there is a true cause-and-effect relationship. Therefore, p-values provide a sense of the reliability of the results of the study in question. Typically, the FDA requires a p-value of less than 0.05 to establish the statistical significance of a clinical trial.

The following graph presents the results for pain relief reported by patients in this Phase III study for post-operative pain in adults following major orthopedic surgery, based on a five point verbal scale, with four representing complete pain relief and zero representing no pain relief:



In addition, this Phase III study demonstrated the following results:

Outcome Measure	Result	p-value
Median time to morphine rescue	3.0 hours for IV APAP vs. 0.8 hours for placebo	<0.001
Reduction in morphine consumption over the 24-hour period	33% reduction (19.1mg) for IV APAP compared to placebo	<0.01

This Phase III study also demonstrated a statistically significant reduction in pain intensity and a statistically significant improvement in patient satisfaction with pain treatment for IV APAP compared to placebo. Drug-related adverse events in this trial were similar to placebo.

Two Phase III studies evaluated a total of 349 adult subjects with moderate-to-severe pain following third molar surgery. Subjects were randomized to receive IV APAP, intravenous propacetamol or placebo. Statistically significant effects versus placebo (*p-value*<0.01) were obtained with IV APAP for all efficacy criteria, including pain relief, pain intensity difference, duration of analgesia and patients' global evaluation. There were no statistically significant differences in treatment-related adverse events between IV APAP and placebo. IV APAP demonstrated similar results on all efficacy parameters compared to intravenous propacetamol with significantly lower incidence of pain at the injection site.

One Phase III study evaluated 163 adult subjects with moderate-to-severe pain following minor gynecologic surgery. Subjects were randomized to receive IV APAP or intravenous propacetamol. IV APAP demonstrated similar results on all efficacy parameters compared to intravenous propacetamol with statistically significantly lower incidence of pain at the injection site.

One Phase IV study evaluated 1,061 subjects with mild-to-moderate pain following surgery. All subjects received up to four doses of IV APAP over a 24-hour period. This trial provided additional data regarding the administration of multiple-doses of IV APAP.

Clinical Studies for Post-Operative Pain in Children. One Phase III study evaluated 183 pediatric subjects with moderate-to-severe pain following surgery for hernia repair. Subjects were randomized to receive IV APAP or intravenous propacetamol. IV APAP demonstrated similar results on all efficacy parameters compared to intravenous propacetamol with significantly lower incidence of pain at the injection site.

Clinical Studies for Fever in Children. One Phase III study evaluated 67 pediatric subjects (age one month to 12 years) with fever of infectious origin. Subjects were randomized to receive IV APAP or intravenous propacetamol. IV APAP demonstrated similar results on all efficacy parameters compared to intravenous propacetamol with statistically significantly lower incidence of pain at the injection site.

Safety Summary. The safety of acetaminophen has been well-established through decades of use in oral, suppository and intravenous formulations. The primary safety concern with acetaminophen is hepatotoxicity, which is well-understood and occurs rarely when acetaminophen is dosed in accordance with the recommended guidelines. In addition, an effective antidote, N-acetylcysteine, is available to treat acetaminophen overdose. We believe there is no evidence that IV APAP poses an increased risk for hepatoxicity or any other adverse event. In fact, in the 1,780 subjects receiving IV APAP in nine clinical trials previously completed by BMS, the product has exhibited a safety profile consistent with published data for oral acetaminophen. This is also consistent with observations from the European post-marketing safety database of IV APAP which covers a time period in which over 100 million doses were administered to patients.

In pharmacokinetic trials, the peak plasma concentration of acetaminophen ranged from 50% to 74% higher for IV APAP compared to oral acetaminophen; however, total plasma concentrations over time were not meaningfully different. Further, these results demonstrated that urinary elimination of acetaminophen metabolites, including metabolites with potential to interact with the liver, was not meaningfully different for IV APAP compared to oral acetaminophen at 12 and 24 hour measurements. Therefore, the study concluded that IV APAP would not be expected to be associated with an increased risk of toxicity to the liver compared with an equivalent dose of acetaminophen administered orally.

Opioid Sparing Summary. The use of IV APAP in clinical trials has consistently been associated with at least a 33% reduction in opioid consumption compared to placebo. In these cases, opioids were available at the discretion of patients utilizing patient controlled analgesia, or PCA, devices.

Clinical Development Plan

We are developing IV APAP based on a targeted indication for the treatment of acute pain, usually in the post-operative setting. Our proposed development plan to support this indication integrates the existing body of IV APAP data, intravenous propacetamol data and the data generated by clinical studies to be conducted by us. Under our agreement with BMS, we have rights to reference these BMS data. We intend to submit a 505(b)(2) NDA for IV APAP based on these data sets as well as references to the extensive literature which supports the safety and efficacy of acetaminophen in oral formulations. Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act permits the submission of an NDA where at least some of the information required for approval comes from studies not conducted by or for the applicant and for which the applicant has not obtained a right of reference.

We intend to initiate a multiple-dose study in healthy volunteers to compare the pharmacokinetics of IV APAP with oral acetaminophen in the fourth quarter of 2006. Four doses of IV APAP 1g will be administered over a 24 hour period dosed either four or six hours apart.

Additional clinical trial requirements will be determined based on additional input from the FDA. We are currently scheduled to meet with the FDA in the third quarter of 2006 to discuss these requirements.

Additional Indications

We also intend to pursue indications for IV APAP for the management of acute pain and fever in pediatric populations. According to the National Center for Health Statistics, an estimated 1.5 million children undergo surgery each year in the United States. Appropriate pain management in children remains a significant unmet need as children often underreport their pain and inadequate doses of analgesics are often administered due to fears of side effects. Fever is the most common reason parents

bring their children to the emergency department. In addition, children frequently become feverish in the hospital setting due the acquisition of infections.

Omiganan for the Prevention of Intravascular Catheter-Related Infections

Intravascular Catheter-Related Infections Background

The use of catheters for vascular access has become essential to medical practice. Intravascular catheters are inserted through the skin and advanced so that the tip rests in a vein or artery. Intravascular catheters are typically classified as either peripheral lines which access smaller veins or central lines (such as CVCs, peripherally inserted central catheters and arterial lines) to access larger veins (such as the jugular, femoral and subclavian veins) and arteries. Although such catheters provide necessary access to veins and arteries, their use puts patients at risk for dangerous and costly complications, including LCSIs, catheter colonization and CRBSIs, and, to a lesser degree, infections in other organs including the heart, lungs, brain and bones.

Based on published clinical studies, we estimate that, of patients with a CVC, approximately 10% will develop an LCSI and 20% will develop catheter colonization. This translates into approximately one million LCSIs and two million incidences of catheter colonization in the United States each year. The presence of an LSCI may result in replacement of the catheter and/or administration of antibiotics, both of which create additional costs to hospitals and have the potential for adverse safety outcomes. In addition, catheter colonization is well correlated with CRBSIs, according to a published review of clinical trials.

The CDC estimates that there are more than 250,000 CRBSIs among hospitalized patients and more than 75,000 CRBSIs among hemodialysis patients in the United States each year. Attributable mortality is estimated by the CDC to be 12% to 25% for each CRBSI, which translates into 39,000 to 81,250 deaths annually due to CRBSIs. Further, the CDC estimates that the average cost per infection is estimated to be $25,000 and, for patients in the intensive care unit, is estimated to be up to $56,000.

The additional costs related to infectious complications from CVCs result in an estimated annual burden to the healthcare system exceeding $6 billion. The majority of these costs are shouldered by hospitals due to the reimbursement system. Adopted by Medicare in 1983, the Prospective Payment System for acute hospital inpatient services generally establishes pre-determined reimbursement amounts, or diagnosis-related groups, which are classifications based on the patient’s discharge diagnoses, procedures performed and other patient factors. Similar prospective payment systems were later adopted for certain other Medicare inpatient hospital services, such as rehabilitation and psychiatric hospitals. When the costs of treating a patient fall below or are above these prospective payment amounts, the hospital reaps the respective benefit or bears the respective cost. Therefore, there is a compelling economic incentive for these hospitals to use all available means to reduce infections.

The CDC estimates that hospital-acquired bloodstream infections are the eighth leading cause of death in the United States and that intravascular catheters are the leading cause of hospital-acquired bloodstream infections. Furthermore, a recent study in the New England Journal of Medicine reported that 70% of these infections are antibiotic-resistant, making them more difficult and costly to treat. Consumer groups, the CDC and the Joint Commission on Accreditation of Healthcare Organizations, or JCAHO, are calling for greater scrutiny and wider reporting of data on hospital-acquired infections. JCAHO or other recognized accreditation is necessary for reimbursement eligibility with Medicare and most insurers. Laws have been passed mandating public reporting of hospital-acquired infection data in Colorado, Connecticut, Florida, Illinois, Maryland, Missouri, New Hampshire, New York, Pennsylvania, South Carolina, Tennessee, Vermont and Virginia. In 2006, more than 20 other states have had some legislative activity related to public reporting of hospital-acquired infections. We believe that the increased scrutiny on catheter-related infections in addition to compelling economic incentives will drive adoption of new products which show an ability to reduce infection rates.

Market for Antimicrobials to Prevent Intravascular Catheter Infections

Theta Reports estimates that nearly 500 million intravascular catheters will be used in the United States in 2006, including approximately 10 million CVCs. Unit sales of CVCs are projected to grow at 9% per year. Outside the United States, Theta Reports estimates that approximately 11 million CVCs will be used in 2006. The number of CVC placements is increasing as the population continues to age and hospitalized patients become increasingly compromised. We estimate that patients with a CVC receive, on average, three to four topical antimicrobial applications during a hospital stay. This translates into more than an estimated 30 million applications in the United States in 2006 for CVCs alone.

The Centers for Medicare and Medicaid Services indicate that there were more than 321,500 patients with end-stage renal disease receiving dialysis at the end of 2004, of which approximately 25% had a CVC. This patient population has been growing at an annual rate of approximately 8% due to the aging population, rise in diabetes, shortage of organ donors and improved technologies enabling longer survival of patients with end-stage renal disease. Patients on hemodialysis receive, on average, three topical antimicrobial applications per week. This translates into more than an estimated 12 million applications in the United States in 2006.

The use of topical antimicrobials to prevent infections associated with other central lines, including arterial lines and peripherally inserted central catheters, also represents a significant market opportunity. According to Theta Reports, there are more than 2 million peripherally inserted central catheters inserted in the United States each year. We estimate there are also approximately 7 million arterials lines inserted in the United States each year.

Limitations of Current Therapies

Microorganisms on the skin surface have been demonstrated to be the leading cause of intravascular device-related infections, including LCSIs and CRBSIs. The same microorganisms on the skin that cause LCSIs can lead to CRBSIs. Given the evidence for the importance of killing microorganisms on the skin surface to prevent the development of intravascular device-related infections, the use of topical antimicrobials is critical. However, currently available products have significant limitations.

The standard of care for skin antisepsis prior to catheter insertion and at dressing changes has been dominated by either povidone-iodine, also known as Betadine, or chlorhexidine, although usage patterns are increasingly favoring chlorhexidine. In 2002, the CDC published guidelines that stated that although chlorhexidine is preferred, povidone-iodine can be used. In 2002, a meta-analysis of eight heterogeneous studies comparing various formulations of chlorhexidine to povidone-iodine for the prevention of catheter-related infections was published. While the meta-analysis indicated a benefit to chlorhexidine, only one of the eight studies on its own demonstrated a statistically significant reduction of CRBSIs. We believe that this change in medical practice despite the lack of robust clinical evidence underscores the desire and willingness of healthcare providers to address this significant unmet need.

Although topical antiseptics tend to have a broad spectrum of antimicrobial activity, duration of activity ranges from minutes to hours after application. These products do not provide sustained antimicrobial coverage throughout the periods between dressing changes (typically every 72-96 hours), and this lack of sustained antimicrobial activity can put patients at increased risk for acquiring an infection at the catheter insertion site.

In order to address the limited duration of activity associated with topical antiseptics, topical antibiotics have been used, either alone or in combination with topical antiseptics, to confer protection against microbial invasion. Clinical trials have shown benefits attributable to topical antibiotics, but these products have either been associated with increased frequency of fungal infections or emergence of bacterial resistance, including MRSA. These drawbacks have significantly diminished the use of topical antibiotics for the prevention of catheter-related infections. As a result, the market has almost exclusively switched back to the use of topical antiseptics.

There is some limited use of BioPatch, a chlorhexidine-impregnated foam dressing that is placed around the catheter at the insertion site. While this product delivers chlorhexidine to the catheter insertion site over a period of days, it has not been widely adopted reportedly due to difficulty in applying the dressing and the inability to visibly inspect the insertion site through the dressing. Physicians and nurses must lift up the BioPatch to monitor the insertion site for redness, swelling and other leading signs of infection. Such disruption of the dressing has the potential to interfere with the sterility of the site and promote the spread of pathogens.

Other products either in use or in development to reduce catheter-related infections are focused on downstream aspects of the infectious process. Some catheters coated with antiseptics and antibiotics have demonstrated reductions in catheter-related infections. Other new technologies being developed include contamination-resistant hubs, attachable cuffs, new catheter-coatings and antiseptic catheter lock solutions. We believe any use of these products would be in addition to the use of antimicrobial agents on the skin surface to prevent catheter-related infections.

Omiganan

Omiganan was discovered by researchers at Migenix. Migenix subsequently entered into a collaboration and license agreement with Fujisawa Healthcare, Inc., or Fujisawa. In that agreement, Fujisawa was granted the rights to commercialize omiganan in North America in return for licensing payments, funding of all remaining development costs and establishment of a joint development committee. In January 2004, Migenix reacquired all rights to omiganan from Fujisawa after completion of the first Phase III trial and then, in July 2004, licensed both the North American and European rights to us with the objective of completing the development program and commercializing the product.

Unlike other topical antimicrobials, omiganan exhibits a combination of features that we believe make it an ideal product for the prevention of catheter-related infections. Such features include:

- broad spectrum bactericidal and fungicidal activity;
- activity against resistant strains, including MRSA;
- rapid and prolonged duration of effect;
- resistance to omiganan has not been induced in the laboratory;
- no demonstrated ability to generate cross-resistance to other antimicrobials;
- excellent safety profile; and
- convenient application.

Omiganan is effective against a wide variety of bacteria and fungi. The compound has been tested against more than 285 strains of Gram-positive and Gram-negative bacteria as well as more than 75 fungal strains. These studies demonstrate that omiganan has broad bactericidal and fungicidal activity against bacteria and fungi commonly found on the surface of human skin. Further, omiganan has also demonstrated the ability to kill multi-drug resistant microorganisms, including MRSA, and vancomycin-resistant *enterococcus*, or VRE. The incidence of resistant infections is increasing, and these microorganisms represent a potentially significant threat to the public health.

Omiganan has demonstrated not only the ability to kill rapidly but also, unlike the topical antiseptics, a prolonged duration of effect. In preclinical studies with omiganan, most microorganisms were killed after only six minutes of exposure. In skin surface studies, omiganan demonstrated the ability to kill more than 99.9% of microorganisms for at least three days.

In laboratory testing conducted by Migenix, resistance to omiganan, unlike the topical antiseptics, has not been demonstrated, nor has cross-resistance to other antimicrobials been demonstrated. A primary mechanism of action of omiganan is believed to be depolarization of the outer cell membrane of infectious microorganisms, resulting in cell death. Specific receptors within the cell have not been shown to be

involved in the disruption of the cell membrane and, therefore, this non-specific mechanism of action decreases the likelihood of the development of resistance.

Omiganan presents a benign toxicological profile when administered topically at doses as much as 30 times the planned human dose. The product has been demonstrated to be non-irritating to the skin, non-sensitizing to the skin, and not absorbed through the skin into the bloodstream (based on the inability to detect omiganan in the bloodstream at very low levels) and, therefore, has no meaningful systemic exposure.

Omiganan is packaged in a convenient, single unit-of-use plastic squeeze vial. Omiganan, which is formulated as a 1% clear viscous, aqueous gel, is applied around the catheter insertion site by squeezing the plastic vial. Unlike the topical antiseptics, omiganan does not have to be scrubbed onto the skin surface. Unlike povidone-iodine, omiganan does not have the potential to stain the skin and clothes of patients and healthcare providers.

Clinical Development History

Migenix completed one Phase I and two Phase II studies of omiganan in a total of 273 subjects. These trials demonstrated no evidence of sensitization, clinically significant irritation or systemic absorption. In addition, the Phase I trial exhibited killing of greater than 99.9% of bacteria and fungi on skin and maintained this level of antimicrobial activity for at least three days.

Migenix and Fujisawa subsequently completed a multi-center, randomized, evaluation committee-blinded Phase III trial that compared omiganan to 10% povidone-iodine in patients receiving CVCs, peripherally inserted central catheters, and/or arterial lines. The study was conducted in 1,407 patients in 27 centers in the United States. The primary efficacy endpoint was to demonstrate the superiority of omiganan over 10% povidone-iodine for the prevention of CRBSIs, as determined by a treatment-blinded evaluation committee. Secondary efficacy endpoints included demonstrating the superiority of omiganan for the prevention of LCSI and catheter colonization.

Treatment with omiganan resulted in a statistically significant reduction in catheter colonization compared to 10% povidone-iodine (*p-value*=0.002). The omiganan group had 21.9% fewer incidences of catheter colonization than the 10% povidone-iodine group.

	Treatment Arm		
Variable	**10% povidone-iodine**	**omiganan**	**p-value**
Catheter colonization present	232/583 (39.8)%	180/578 (31.1)%	0.002

Treatment with omiganan also resulted in a statistically significant reduction in LCSI (*p-value*=0.004). The table below summarizes data for LCSI in the modified intent-to-treat analysis set, which includes only those patients who did not have a bloodstream infection present at baseline. As shown in the table, the omiganan group had 49.2% fewer LCSIs than the 10% povidone-iodine group. Moreover, there was a greater than 50% reduction in the number of patients that had an LCSI and a catheter removed (*p-value*=0.002).

	Treatment Arm		
Variable	**10% povidone-iodine**	**omiganan**	**p-value**
LCSI present	48/699 (6.9)%	24/693 (3.5)%	0.004

Despite these favorable, statistically significant results for LCSI and catheter colonization, the study did not show statistical significance for the primary endpoint of CRBSI. The table below compares the incidence of CRBSI in the modified intent-to-treat analysis set after treatment with omiganan or 10% povidone-iodine. The rates of failure (development of CRBSI) and indeterminate response were similar for the two treatments arms. There was a 15.4% reduction in the incidence of microbiologically-proven CRBSI in the omiganan group compared to 10% povidone iodine; however, this outcome was not statistically significant.

Outcome	Treatment Arm		p-value
	10% povidone-iodine	omiganan	
Failure	18/699 (2.6)%	15/693 (2.2)%	0.622
Success	635/699 (90.8)%	630/693 (90.9)%	
Indeterminate	46/699 (6.6)%	48/693 (6.9)%	

The definition of CRBSI required an organism isolated from a peripheral blood draw to be genotypically matched to an organism isolated from the catheter tip. In this study, many catheters were lost and the organisms could be not isolated from the catheter tip. Similarly, many patients were administered systemic antibiotics for suspected bloodstream infections but were given such antibiotics prior to taking a blood draw. As a result, the high rate of indeterminate events was observed, which we believe was a significant factor contributing to the lower than expected rate of CRBSI. In addition, the study enrolled a large number of patients that were at relatively low risk for developing a CRBSI, which we believe further decreased the event rate to a point where, as observed, a statistically significant difference for CRBSI between the two treatment arms could not be detected. We believe that the CRBSI endpoint, as defined in the previous study, is not achievable without a very significant increase the number of patients enrolled.

Only 14 patients (2.0%) in each treatment group had adverse events that were considered drug-related. All of these omiganan adverse events were related to the catheter insertion site, and none were serious. Overall, there were no statistically significant differences between the treatment groups for any safety variable.

Clinical Development Plan

In June 2005, we reached agreement on the clinical development plan for omiganan with the FDA under the FDA's SPA process. The SPA process provides for a formal review and written agreement of clinical protocols that are binding on both the FDA and the company sponsor. Through the SPA process, the FDA agreed that a single confirmatory Phase III trial would be required for approval and that LCSI would be the sole primary efficacy endpoint. Secondary endpoints include catheter colonization and other measures of infection.

The presence of an LCSI will typically result in one of several actions being taken by a physician, including administration of systemic or topical antimicrobials and/or removal and replacement of the catheter. The most serious risks from catheter replacement include bleeding from a damaged artery or puncturing of a lung. Further, the same microorganisms on the skin surface that cause LCSIs can cause CRBSIs. A published review of clinical trials found that catheter colonization is well correlated to CRBSIs.

We have completed a market research study that indicates physicians only modestly favor (73% vs. 65%) a profile of omiganan that demonstrates a statistically significant reduction in LCSIs, catheter colonization and CRBSIs compared to a profile of omiganan that demonstrates a statistically significant reduction in LCSIs and catheter colonization alone. The FDA has communicated to us that LCSI is a clinically relevant indication and, based on these market research findings, we believe that a product indicated for the prevention of LCSIs is also a highly relevant indication to physicians.

The confirmatory Phase III trial that we are conducting according to the SPA, known as the Central Line Infection Reduction Study, or CLIRS trial, is a multi-center, randomized, evaluation committee-blinded study in patients receiving a CVC. The primary efficacy endpoint of the study is to evaluate whether omiganan is superior to 10% povidone-iodine in the reduction of LCSI in patients requiring central venous catheterization. Secondary objectives of the study are to evaluate whether omiganan is superior to 10% povidone-iodine treatment in preventing significant catheter colonization, CRBSI and all-cause bloodstream infections in patients requiring central venous catheterization.

The CLIRS trial is designed to recruit 1,250 patients randomized to receive either omiganan or 10% povidone-iodine. The study began enrollment in August 2005 and is currently being conducted at

centers in the United States and Europe. We expect to complete enrollment and have results available in the second half of 2007. Omiganan for the prevention of LCSIs was awarded fast track status by the FDA, and we intend to submit an NDA to the FDA in the first half of 2008.

We also intend to submit an MAA to European regulatory authorities in the first half of 2008. We have met with regulatory authorities in several European countries and believe that no additional clinical trials will be required for submission if the ongoing CLIRS trial is successful.

Additional Indications

We intend to pursue a pediatric indication for omiganan for the prevention of catheter-related infections. As in the adult population, CVCs are frequently used in neonates, infants and children with wide variety of conditions. Pediatric CVCs are a significant source of infectious complications in hospitalized children.

We have rights to develop and commercialize omiganan pentahydrochloride for additional indications related to the prevention and treatment of device-related, surgical wound-related and burn-related infections. We believe that omiganan pentahydrochloride may have significant opportunity in these areas. For example, the CDC estimates there are approximately 500,000 post-operative surgical site infections in the United States annually. The CDC also estimates that there are 50,000 hospitalizations from burn injuries and that 10,000 people will die from burn-related infections in the United States every year.

Commercialization Strategy

We intend to build a commercial organization in the United States focused on promoting our products to physicians, nurses and pharmacy directors principally in the hospital setting. We believe that we can achieve our strategic goals by deploying an experienced sales organization supported by an internal marketing infrastructure that targets institutions with the greatest use of pharmaceutical products. We will consider opportunities to partner our products to reach markets outside the United States or to expand our reach to other physician groups outside the hospital where applicable. In particular, we believe that omiganan is an excellent candidate for partnering in countries outside the United States, and we anticipate launching the product in those countries with a partner who has the resources to be competitive in the hospital market.

For the launch of omiganan in the United States, we intend to build our own commercial organization and estimate that a sales force of approximately 75-100 people will reach the top 1,200 institutions, which we believe represents more than 60% of the market opportunity for the product. Sales calls will primarily target intensive care physicians, infectious disease physicians and infection control physicians and nurses. Other targets will include anesthesiologists, surgeons, intensive care and other nurses in the hospital, and physicians and nurses in outpatient dialysis centers. Key elements in the adoption of omiganan will include formulary acceptance followed by trial and usage and, ultimately, adoption to standing orders and protocols within the hospitals and specific units therein. We expect that omiganan will initially be used in combination with topical antiseptics but ultimately may be used as a stand-alone treatment after more widespread use.

For the launch of IV APAP, we intend to expand the sales force to 150-200 people to reach the top 1,800 to 2,000 institutions, which we believe represents more than 80% of the opportunity for both products. The primary target audience will include anesthesiologists and surgeons. Other targets will include certified registered nurse anesthetists, emergency medicine physicians, obstetricians and other physicians throughout the hospital.

Licensing Agreements

IV APAP Agreement

In March 2006, we in-licensed the patents and the exclusive development and commercialization rights to IV APAP in the United States and Canada from BMS. BMS has sublicensed these rights to us under a license agreement with SCR Pharmatop S.A., or Pharmatop.

As consideration for the license, we paid a $25.0 million up-front fee and may be required to make future milestone payments totaling up to $50.0 million upon the achievement of various milestones related to regulatory or commercial events. We are also obligated to pay a royalty on net sales of the licensed products. We have the right to grant sublicenses to our affiliates.

The term of the IV APAP agreement generally extends on a country-by-country basis until the last licensed patent expires, which is expected to occur in 2022. Either party may terminate the IV APAP agreement upon delivery of written notice if the other party commits a material breach of its obligations and fails to remedy the breach within a specified period or upon the occurrence of specified bankruptcy, reorganization, liquidation or receivership proceedings. In addition, BMS may terminate the IV APAP agreement if we breach, in our capacity as a sublicensee, any provision of the agreement between BMS and Pharmatop. The IV APAP agreement will automatically terminate in the event of a termination of the license agreement between BMS and Pharmatop. We may terminate the IV APAP agreement at any time upon specified written notice to BMS after the occurrence of an event that relates to our territory and would entitle BMS to terminate the Pharmatop license agreement pursuant to specified sections thereof. We may also terminate the IV APAP agreement upon specified written notice after an uncured failure by Pharmatop to perform any of its material obligations under the Pharmatop license agreement with respect to our territory that would permit BMS to terminate the Pharmatop license agreement.

Omiganan Agreement

In July 2004, we in-licensed from Migenix the patents and the exclusive development and commercialization rights to omiganan pentahydrochloride for the prevention and treatment of device-related, surgical wound-related and burn-related infections in North America and Europe.

As consideration for the license, we paid a $2.0 million up-front fee, of which $1.9 million was allocated to the value of the acquired technology and $100,000 was attributed to the acquisition of 617,284 shares of Migenix common stock. We may be required to make future milestone payments totaling up to $27.0 million upon the achievement of various milestones related to regulatory or commercial events. We are also obligated to pay a royalty on net sales of the licensed products. We have the right to grant sublicenses to third parties.

The term of the omiganan agreement generally extends until the last licensed patent expires, which is expected to occur in November 2022. Either party may terminate the omiganan agreement upon specified written notice after the other party commits a material breach of its obligations and fails to remedy the breach or upon the cessation of operations of the other party or occurrence of specified bankruptcy, reorganization, liquidation or receivership proceedings involving the other party. We may terminate the omiganan agreement upon written notice if we determine, prior to regulatory approval in the United States, that the product is not reasonably expected to demonstrate safety or efficacy. We may also terminate the omiganan agreement upon specified written notice after receipt of any interim results or the executive summary following database lock of the on-going Phase III trial for omiganan.

Intellectual Property

IV APAP

We are the exclusive licensee of two U.S. patents and two pending Canadian patent applications from Pharmatop, under BMS’s license to these patents from Pharmatop. U.S. Patent No. 6,028,222 (Canadian patent application 2,233,924) covers the formulation of IV APAP and expires in August 2017.

U.S. Patent No. 6,992,218 (Canadian patent application 2,415,403) covers the process used to manufacture IV APAP and expires in June 2021.

We have also in-licensed the non-exclusive rights to two U.S. patents from BMS. U.S. Patent No. 6,593,331 covers a method of treating pain with acetaminophen and concurrent administration of a hydroxyazapirone and expires in April 2022. US Patent No. 6,511,982 covers a method of treating pain with acetaminophen and concurrent administration of buspirone and expires in June 2020.

Omiganan

We are the exclusive licensee of four U.S. patents, two pending U.S. applications, and their international equivalents in North America and Europe for the prevention and treatment of device-related, surgical wound-related, and burn-related infections. U.S. Patent No. 6,180,604 and U.S. Patent No. 6,538,106 cover composition of matter for certain analogues of indolicidin, including omiganan, and expire in August 2017. U.S. Patent No. 6,503,881 covers composition of matter for additional analogues of indolicidin (not including omiganan), pharmaceutical preparations of certain analogues of indolicidin, including omiganan, and methods of using the pharmaceutical preparations for treating microbial infections (including covering routes of administration). U.S. Patent No. 6,503,881 also expires in August 2017. U.S. Patent No. 6,835,536 covers specific pharmaceutical preparations of certain analogues of indolicidin, including omiganan, and methods of treatment by applying pharmaceutical preparations to a target site, including a target site were a medical device is inserted. U.S. Patent No. 6,835,536 expires in November 2022.

Manufacturing

We have contracted with BMS to manufacture clinical supplies of IV APAP. For commercial supply, the active pharmaceutical ingredient, or API, acetaminophen is readily available from multiple suppliers. We are currently negotiating with suppliers for commercial supply of the finished drug product for IV APAP.

We have purchased clinical supplies of the API omiganan pentahydrochloride from UCB Bioproducts, which was recently acquired by Lonza Group, Ltd. We have purchased clinical supplies of the omiganan finished drug product from Cardinal Health, Inc. Lonza and Cardinal have produced the clinical supplies which we are using in our Phase III omiganan program. We are currently negotiating with suppliers for commercial supply of the API and finished drug product for omiganan.

Competition

The pharmaceutical industry is subject to intense competition and characterized by extensive research efforts and rapid technological progress. Competition in our industry occurs on a variety of fronts, including developing and bringing new products to market before others, developing new technologies to improve existing products, developing new products to provide the same benefits as existing products at lower cost and developing new products to provide benefits superior to those of existing products. There are many companies, including generic manufacturers as well as large pharmaceutical companies, that have significantly greater financial and other resources than we do, as well as academic and other research institutions that are engaged in research and development efforts for the indications targeted by our product candidates.

IV APAP

Our IV APAP product candidate is being developed for the treatment of acute pain, usually in the hospital setting. A wide variety of competitive products already address this target market, including:

Injectable opioids

- Morphine is the leading product for the treatment of acute post-operative pain, and is available generically from several manufacturers;
- DepoDur, currently marketed by Endo Pharmaceuticals, is an extended release injectable formulation of morphine; and
- other injectable opioids, including fentanyl, meperidine and hydromorphone, each of which is available generically from several manufacturers.

Injectable NSAIDs

- Ketorolac, an injectable NSAID, is available generically from several manufacturers.

Product Candidates

We are also aware of a number of product candidates in development to treat acute pain, including injectable NSAIDs, novel opioids, new formulations of currently available opioids, long-acting local anesthetics and new chemical entities as well as alternative delivery forms of various opioids and NSAIDs. A variety of pharmaceutical and biotechnology companies are developing these new product candidates, including but not limited to Anesiva, Inc (formerly Corgentech Inc.), CeNeS Pharmaceuticals plc, Cumberland Pharmaceuticals Inc., Durect Corporation, Javelin Pharmaceuticals, Inc., Pfizer Inc., SkyePharma Inc., St. Charles Pharmaceuticals, TheraQuest Biosciences, LLC and Xsira Pharmaceuticals, Inc.

Omiganan

We are developing our omiganan product candidate for the prevention of intravascular catheter-related infections. Although there are no approved drugs for this specific indication, a number of topical products are currently used in practice and one device has been approved for wound dressing and prevention of catheter-related infections. These competitive products include:

- topical antiseptics such as povidone-iodine and chlorhexidine, each of which is available generically from several manufacturers;
- Neosporin, a topical antibacterial ointment containing polymyxin, neomycin and bacitracin, available generically from several manufacturers;
- Bactroban, a topical antibacterial containing mupirocin, available generically from several manufacturers; and
- BioPatch, a chlorhexidine-impregnated foam dressing, from Johnson & Johnson that is approved both for wound dressing and the prevention of catheter-related infections.

Other products may be in development; however, we are not aware of any other topical drugs being developed for the prevention of intravascular catheter-related infections.

Government Regulation

Governmental authorities in the United States and other countries extensively regulate the testing, manufacturing, labeling, storage, record-keeping, advertising, promotion, export, marketing and distribution, among other things, of pharmaceutical products. In the United States, the FDA, under the Federal Food, Drug and Cosmetic Act and other federal statutes and regulations, subjects pharmaceutical products to

rigorous review. If we do not comply with applicable requirements, we may be fined, the government may refuse to approve our marketing applications or allow us to manufacture or market our products, and we may be criminally prosecuted.

We and our manufacturers and clinical research organizations may also be subject to regulations under other federal, state and local laws, including the Occupational Safety and Health Act, the Environmental Protection Act, the Clean Air Act and import, export and customs regulations as well as the laws and regulations of other countries.

FDA Approval Process

To obtain approval of a new product from the FDA, we must, among other requirements, submit data supporting safety and efficacy as well as detailed information on the manufacture and composition of the product and proposed labeling. The testing and collection of data and the preparation of necessary applications are expensive and time-consuming. The FDA may not act quickly or favorably in reviewing these applications, and we may encounter significant difficulties or costs in our efforts to obtain FDA approvals that could delay or preclude us from marketing our products.

The process required by the FDA before a new drug may be marketed in the United States generally involves the following: completion of preclinical laboratory and animal testing in compliance with FDA regulations, submission of an investigational new drug application, or IND, which must become effective before human clinical trials may begin, performance of adequate and well-controlled human clinical trials to establish the safety and efficacy of the proposed drug for its intended use, and submission and approval of an NDA by the FDA. The sponsor typically conducts human clinical trials in three sequential phases, but the phases may overlap. In Phase I clinical trials, the product is tested in a small number of patients or healthy volunteers, primarily for safety at one or more dosages. In Phase II clinical trials, in addition to safety, the sponsor evaluates the efficacy of the product on targeted indications, and identifies possible adverse effects and safety risks in a patient population. Phase III clinical trials typically involve testing for safety and clinical efficacy in an expanded population at geographically-dispersed test sites.

Clinical trials must be conducted in accordance with the FDA's good clinical practices requirements. The FDA may order the partial, temporary or permanent discontinuation of a clinical trial at any time or impose other sanctions if it believes that the clinical trial is not being conducted in accordance with FDA requirements or presents an unacceptable risk to the clinical trial patients. The institutional review board, or IRB, generally must approve the clinical trial design and patient informed consent at each clinical site and may also require the clinical trial at that site to be halted, either temporarily or permanently, for failure to comply with the IRB's requirements, or may impose other conditions.

The applicant must submit to the FDA the results of the preclinical and clinical trials, together with, among other things, detailed information on the manufacture and composition of the product and proposed labeling, in the form of an NDA, including payment of a user fee. The FDA reviews all NDAs submitted before it accepts them for filing and may request additional information rather than accepting an NDA for filing. Once the submission is accepted for filing, the FDA begins an in-depth review of the NDA. Under the policies agreed to by the FDA under the Prescription Drug User Fee Act, or PDUFA, the FDA has 10 months in which to complete its initial review of a standard NDA and respond to the applicant. The review process and the PDUFA goal date may be extended by three months if the FDA requests or the NDA sponsor otherwise provides additional information or clarification regarding information already provided in the submission within the last three months of the PDUFA goal date. If the FDA's evaluations of the NDA and the clinical and manufacturing procedures and facilities are favorable, the FDA may issue either an approval letter or an approvable letter, which contains the conditions that must be met in order to secure final approval of the NDA. If and when those conditions have been met to the FDA's satisfaction, the FDA will issue an approval letter, authorizing commercial marketing of the drug for certain indications. According to the FDA, the median total approval time for NDAs approved during calendar year 2004 was approximately 13 months for standard applications. If the

FDA's evaluation of the NDA submission and the clinical and manufacturing procedures and facilities is not favorable, the FDA may refuse to approve the NDA and issue a not approvable letter.

Special Protocol Assessment Process

The special protocol assessment, or SPA, process provides for official FDA evaluation of a proposed Phase III clinical trial protocol and generally provides a product sponsor with a binding agreement from the FDA that the design and analysis of the trial are adequate to support a license application submission if the trial is performed according to the SPA. The FDA's guidance on the SPA process indicates that SPAs are designed to evaluate individual clinical trial protocols primarily in response to specific questions posed by the sponsors. In practice, the sponsor of a product candidate may request an SPA for proposed Phase III trial objectives, designs, clinical endpoints and analyses. A request for an SPA is submitted in the form of a separate amendment to an IND, and the FDA's evaluation generally will be completed within a 45-day review period under applicable PDUFA goals, provided that the trials have been the subject of discussion at an end-of-Phase II and pre-Phase III meeting with the FDA, or in other limited cases. All agreements and disagreements between the FDA and the sponsor regarding an SPA, including the FDA's responses to questions about protocol design, primary efficacy endpoints, study conduct, data analysis and prospective labeling statements must be documented in writing. In limited circumstances, the FDA may agree that a specific finding, such as a particular p-value on the primary efficacy endpoint of a study, will satisfy a specific objective, such as demonstration of efficacy, or support an approval decision. However, final determinations by the FDA are made after a complete review of the applicable NDA and are based on the entire data in the application, and any SPA is subject to future public health concerns unrecognized at the time of protocol assessment.

Section 505(b)(2) New Drug Applications

As an alternate path to FDA approval for new indications or improved formulations of previously-approved products, a company may file a Section 505(b)(2) NDA, instead of a "stand-alone" or "full" NDA. Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, otherwise known as the Hatch-Waxman Amendments. Section 505(b)(2) permits the submission of an NDA where at least some of the information required for approval comes from studies not conducted by or for the applicant and for which the applicant has not obtained a right of reference. For example, the Hatch-Waxman Amendments permit the applicant to rely upon the FDA's findings of safety and effectiveness for an approved product. The FDA may also require companies to perform additional studies or measurements to support the change from the approved product. The FDA may then approve the new formulation for all or some of the label indications for which the referenced product has been approved, or the new indication sought by the Section 505(b)(2) applicant.

To the extent that the Section 505(b)(2) applicant is relying on the FDA's findings for an already-approved product, the applicant is required to certify to the FDA concerning any patents listed for the approved product in the FDA's Orange Book publication. Specifically, the applicant must certify that: (1) the required patent information has not been filed; (2) the listed patent has expired; (3) the listed patent has not expired, but will expire on a particular date and approval is sought after patent expiration; or (4) the listed patent is invalid or will not be infringed by the manufacture, use or sale of the new product. A certification that the new product will not infringe the already approved product's Orange Book-listed patents or that such patents are invalid is called a paragraph IV certification. If the applicant does not challenge the listed patents, the Section 505(b)(2) application will not be approved until all the listed patents claiming the referenced product have expired. The Section 505(b)(2) application may also not be approved until any non-patent exclusivity, such as exclusivity for obtaining approval of a new chemical entity, listed in the Orange Book for the referenced product has expired.

If the applicant has provided a paragraph IV certification to the FDA, the applicant must also send notice of the paragraph IV certification to the NDA and patent holders once the NDA has been accepted for filing by the FDA. The NDA and patent holders may then initiate a legal challenge to the

paragraph IV certification. The filing of a patent infringement lawsuit within 45 days of their receipt of a paragraph IV certification automatically prevents the FDA from approving the Section 505(b)(2) NDA until the earliest of 30 months, expiration of the patent, settlement of the lawsuit or a decision in the infringement case that is favorable to the Section 505(b)(2) applicant. For drugs with five-year exclusivity, if an action for patent infringement is initiated after year four of that exclusivity period, then the 30-month stay period is extended by such amount of time so that 7.5 years has elapsed since the approval of the NDA with five-year exclusivity. This period could be extended by six months if the NDA sponsor obtains pediatric exclusivity. Thus, the Section 505(b)(2) applicant may invest a significant amount of time and expense in the development of its products only to be subject to significant delay and patent litigation before its products may be commercialized. Alternatively, if the listed patent holder does not file a patent infringement lawsuit within the required 45-day period, the applicant's NDA will not be subject to the 30-month stay.

Notwithstanding the approval of many products by the FDA pursuant to Section 505(b)(2), over the last few years, certain brand-name pharmaceutical companies and others have objected to the FDA's interpretation of Section 505(b)(2) and one pharmaceutical company has sued the FDA on the matter. Although the issues in that litigation are specific to the products involved, if the FDA does not prevail, it may be required to change its interpretation of Section 505(b)(2), which could delay or even prevent the FDA from approving any Section 505(b)(2) NDA that we submit.

Fast Track Designation

A drug designated as a fast track product by the FDA must be intended for the treatment of a serious or life-threatening condition and demonstrate the potential to address unmet medical needs for the condition. Fast track designation does not apply to a product alone, but applies to a combination of the product and specific indication for which it is being studied. A sponsor may submit a request for fast track designation at the time of original submission of its IND, or at any time thereafter prior to receiving marketing approval of its NDA. Fast track status enables the sponsor to have more frequent and timely communication and meetings with the FDA regarding the product development plans. Fast track status may also result in eligibility for NDA priority review, under which the PDUFA review goal for the NDA is six months rather than ten months.

The Hatch-Waxman Act

Under the Hatch-Waxman Act, newly-approved drugs and indications benefit from a statutory period of non-patent marketing exclusivity. The Hatch-Waxman Act provides five-year marketing exclusivity to the first applicant to gain approval of an NDA for a new chemical entity, meaning that the FDA has not previously approved any other new drug containing the same active moiety. Hatch-Waxman prohibits the submission of an abbreviated new drug application, or ANDA, or a Section 505(b)(2) NDA for another version of such drug during the five-year exclusive period; however, as explained above, submission of an ANDA or Section 505(b)(2) NDA containing a paragraph IV certification is permitted after four years, which may trigger a 30-month stay of approval of the ANDA or Section 505(b)(2) NDA. Protection under Hatch-Waxman will not prevent the submission or approval of another full NDA; however, the applicant would be required to conduct its own preclinical and adequate and well-controlled clinical trials to demonstrate safety and effectiveness. The Hatch-Waxman Act also provides three years of marketing exclusivity for the approval of new and supplemental NDAs, including Section 505(b)(2) NDAs, for, among other things, new indications, dosages or strengths of an existing drug, if new clinical investigations that were conducted or sponsored by the applicant are essential to the approval of the application.

Other Regulatory Requirements

We may also be subject to a number of post-approval regulatory requirements. If we seek to make certain changes to an approved product, such as promoting or labeling a product for a new indication, making certain manufacturing changes or product enhancements or adding labeling claims, we will need

FDA review and approval before the change can be implemented. While physicians may use products for indications that have not been approved by the FDA, we may not label or promote the product for an indication that has not been approved. Securing FDA approval for new indications or product enhancements and, in some cases, for manufacturing and labeling claims, is generally a time-consuming and expensive process that may require us to conduct clinical trials under the FDA's IND regulations. Even if such studies are conducted, the FDA may not approve any change in a timely fashion, or at all. In addition, adverse experiences associated with use of the products must be reported to the FDA, and FDA rules govern how we can label, advertise or otherwise commercialize our products.

There are current post-marketing safety surveillance requirements that we will need to meet to continue to market an approved product. The FDA also may, in its discretion, require post-marketing testing and surveillance to monitor the effects of approved products or place conditions on any approvals that could restrict the commercial applications of these products.

In addition to FDA restrictions on marketing of pharmaceutical products, several other types of state and federal laws have been applied to restrict certain marketing practices in the pharmaceutical industry in recent years. These laws include anti-kickback statutes and false claims statutes. The federal health care program anti-kickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce or in return for purchasing, leasing, ordering or arranging for the purchase, lease or order of any health care item or service reimbursable under Medicare, Medicaid or other federally financed health care programs. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on the one hand and prescribers, purchasers and formulary managers on the other. Violations of the anti-kickback statute are punishable by imprisonment, criminal fines, civil monetary penalties and exclusion from participation in federal health care programs. Although there are a number of statutory exemptions and regulatory safe harbors protecting certain common activities from prosecution or other regulatory sanctions, the exemptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchases or recommendations may be subject to scrutiny if they do not qualify for an exemption or safe harbor.

Federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to have a false claim paid. Recently, several pharmaceutical and other health care companies have been prosecuted under these laws for allegedly inflating drug prices they report to pricing services, which in turn were used by the government to set Medicare and Medicaid reimbursement rates, and for allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product. In addition, certain marketing practices, including off-label promotion, may also violate false claims laws. The majority of states also have statutes or regulations similar to the federal anti-kickback law and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor.

In addition, we and the manufacturers on which we rely for the manufacture of our products are subject to requirements that drugs be manufactured, packaged and labeled in conformity with current good manufacturing practice, or cGMP. To comply with cGMP requirements, manufacturers must continue to spend time, money and effort to meet requirements relating to personnel, facilities, equipment, production and process, labeling and packaging, quality control, record-keeping and other requirements. The FDA periodically inspects drug manufacturing facilities to evaluate compliance with cGMP requirements.

Also, as part of the sales and marketing process, pharmaceutical companies frequently provide samples of approved drugs to physicians. This practice is regulated by the FDA and other governmental authorities, including, in particular, requirements concerning record-keeping and control procedures.

Outside of the United States, our ability to market our products will also depend on receiving marketing authorizations from the appropriate regulatory authorities. The foreign regulatory approval process includes all of the risks associated with the FDA approval process described above. The requirements governing the conduct of clinical trials and marketing authorization vary widely from country to country.

Third-Party Reimbursement and Pricing Controls

In the United States and elsewhere, sales of pharmaceutical products depend in significant part on the availability of coverage and reimbursement to providers and the consumer from third-party payors, such as government and private insurance plans. Third-party payors are increasingly challenging the prices charged for medical products and services. Our products may not be considered cost effective, and coverage and reimbursement may not be available or sufficient to allow us to sell our products on a competitive and profitable basis.

In many foreign markets, including the countries in the European Union, pricing of pharmaceutical products is subject to governmental control. In the United States, there have been, and we expect that there will continue to be, a number of federal and state proposals to implement similar governmental pricing control. While we cannot predict whether such legislative or regulatory proposals will be adopted, the adoption of such proposals could have a material adverse effect on our business, financial condition and profitability.

Employees

As of June 30, 2006, we had 24 employees, consisting of clinical development, regulatory affairs, manufacturing and program management, administration, business development and marketing. We consider our relations with our employees to be good.

Facilities

We lease approximately 5,928 square feet of space in our headquarters in San Diego, California under a sublease that expires in September 2006. We have entered into a lease that expires in 2012 for approximately 23,494 square feet of space for our new headquarters in San Diego, California which we intend to occupy in September 2006. We intend to sublease approximately 5,800 square feet of our new headquarters for a period of two years. We have no laboratory, research or manufacturing facilities. We believe that our current facilities are adequate for our needs for the immediate future and that, should it be needed, suitable additional space will be available to accommodate expansion of our operations on commercially reasonable terms.

Legal Proceedings

We are not engaged in any legal proceedings.

MANAGEMENT

Executive Officers and Directors

The following table sets forth certain information about our executive officers and directors as of July 15, 2006:

Name	Age	Position
Theodore R. Schroeder	51	President, Chief Executive Officer and Director
William S. Craig, Ph.D.	56	Senior Vice President, Pharmaceutical Development and Manufacturing
Kenneth R. Heilbrunn, M.D.	48	Senior Vice President, Clinical Development
William R. LaRue	55	Senior Vice President, Chief Financial Officer, Treasurer and Secretary
Richard E. Lowenthal	40	Vice President, Regulatory Affairs and Quality Assurance
Mike A. Royal, M.D., J.D.	52	Vice President, Clinical Development, Analgesics
David A. Socks	31	Vice President, Business Development
Cam L. Garner(1)	58	Chairman of the Board of Directors
Brian G. Atwood(2)	53	Director
Michael A. Berman, M.D.(2)(3)	63	Director
James C. Blair, Ph.D.(1)	67	Director
Alan D. Frazier(1)(3)	54	Director
Alain B. Schreiber, M.D.(2)	51	Director
Christopher J. Twomey(3)	46	Director

(1) Member of the Compensation Committee.
(2) Member of the Nominating/ Corporate Governance Committee.
(3) Member of the Audit Committee.

Executive Officers

Theodore R. Schroeder is one of our co-founders and has served as our President and Chief Executive Officer and as a member of our board of directors since our inception in May 2004. From August 2002 to February 2004, he served as Senior Vice President of North America Sales and Marketing of Elan Pharmaceuticals, Inc., a neuroscience-based pharmaceutical company. From February 2001 to August 2002, Mr. Schroeder served as General Manager of the Hospital Products Business Unit at Elan, a position he also held at Dura Pharmaceuticals, Inc., a specialty respiratory pharmaceutical and pulmonary drug delivery company, from May 1999 to November 2000 until its acquisition by Elan. Prior to joining Dura, Mr. Schroeder held a number of hospital-related sales and marketing positions with Bristol-Myers Squibb Company, a global pharmaceutical company. Mr. Schroeder holds a B.S. in management from Rutgers University.

William S. Craig, Ph.D. has served as our Senior Vice President, Pharmaceutical Development and Manufacturing since November 2004. From January 2000 to November 2004, Dr. Craig served as Vice President, Research and Product Development of ISTA Pharmaceuticals, Inc., an ophthalmology-focused specialty pharmaceutical company. From 1996 to December 1999, Dr. Craig served as Vice President, Research and Development for Alpha Therapeutics Corporation, a biotechnology company. From 1988 to 1996, he served as Senior Director, Research and Development for Telios Pharmaceuticals, Inc., a biotechnology company. Dr. Craig holds a B.S. in biochemistry from the University of Michigan and a Ph.D. in chemistry from the University of California, San Diego.

Kenneth R. Heilbrunn, M.D. has served as our Senior Vice President, Clinical Development since April 2005. From May 2002 to April 2005, Dr. Heilbrunn served as Vice President of Clinical Development of La Jolla Pharmaceutical Company, an autoimmune disease-focused biopharmaceutical company. From 1998 to April 2002, he held several positions, the most recent of which was Vice President of Clinical Research, at Advanced Tissue Sciences, Inc., a tissue engineering company, where he was responsible for a multicenter Phase III clinical trial which ultimately led to the FDA approval of Dermagraft, a bioengineered human tissue. From 1997 to 1998, Dr. Heilbrunn served as Vice President of Medical Affairs at Hepatix, Inc., a company engaged in the development of a bioengineered liver. From 1994 to 1996, he served as Staff Vice President of Medical Affairs at C.R. Bard, Inc., a manufacturer of healthcare products. From 1989 to 1994, he held several positions in the Medical Affairs department of Ciba-Geigy Pharmaceuticals Division, a pharmaceutical company, the most recent of which was Director for Cardiovascular and Pulmonary Drugs, where he participated in the launch of the nicotine patch, Habitrol, and the antihypertensive drug, Lotensin. From 1986 to 1989, Dr. Heilbrunn served as Staff Internist and, ultimately, Director of the Critical Care unit at the 31st Tactical Air Force Hospital in Homestead, Florida. Dr. Heilbrunn received a B.A. from Brown University and an M.D. from New York Medical College.

William R. LaRue has served as our Senior Vice President, Chief Financial Officer, Treasurer and Secretary since June 2006. From April 2001 to May 2006, Mr. LaRue served as Senior Vice President and Chief Financial Officer of Micromet, Inc., formerly CancerVax Corporation, a biotechnology company focused on the treatment and control of cancer. From March 2000 to February 2001, Mr. LaRue served as Executive Vice President and Chief Financial Officer of eHelp Corporation, a provider of user assistance software. From January 1997 to February 2000, Mr. LaRue served as Vice President and Treasurer of Safeskin Corporation, a medical device company, and from January 1993 to January 1997 he served as Treasurer of GDE Systems, Inc., a high technology electronic systems company. Mr. LaRue received a B.S. in business administration and an M.B.A. from the University of Southern California.

Richard E. Lowenthal has served as our Vice President, Regulatory Affairs and Quality Assurance since November 2004. From November 2002 to November 2004, Mr. Lowenthal served as Senior Director, Worldwide Regulatory Affairs and Drug Safety of Maxim Pharmaceuticals, Inc., a biopharmaceutical company. From December 2001 to November 2002, he served as Vice President of Regulatory Affairs and Quality Assurance of AnGes, MG, Inc., a biopharmaceutical company. From June 1996 to December 2001, Mr. Lowenthal served in various roles in regulatory affairs at Janssen Research Foundation, a division of Johnson & Johnson, most recently as the Global Director of Chemistry, Manufacturing and Control Regulatory Affairs. Prior to joining Janssen, he served as the Director of Regulatory Affairs and Quality Assurance of Somerset Pharmaceuticals, Inc., a proprietary research and development pharmaceutical company. Mr. Lowenthal holds a B.S. in biochemistry and a M.S. in organic chemistry from Florida State University.

Mike A. Royal, M.D., J.D. has served as our Vice President, Clinical Development, Analgesics since April 2006. From December 2004 to March 2006, Dr. Royal served as Chief Medical Officer of Solstice Neurosciences, Inc., a specialty biopharmaceutical company. From May 2003 to December 2004, Dr. Royal served as Vice President, Strategic Brand Development and Global Medical Affairs of Alpharma Inc., a global specialty pharmaceutical company. From January 2002 to May 2003, he served as Senior Medical Director of Elan Pharmaceuticals, Inc., a neuroscience-based biotechnology company. From 1994 to January 2002, he owned and managed the largest private practice pain management clinic and research center in Oklahoma. Dr. Royal has also served as Director of the Acute Pain Service, Staff Anesthesiologist, and Assistant Professor of Anesthesiology and Critical Care Medicine at the University of Pittsburgh Medical Center. Dr. Royal is board certified in internal medicine, anesthesiology, pain management, and addiction medicine and has published extensively in the area of pain management. He holds a B.S. in chemistry from the Massachusetts Institute of Technology, an M.D. from the University of Massachusetts, a J.D. from the University of Maryland and an M.B.A. from New York University (TRIUM).

David A. Socks is one of our co-founders and has served as our Vice President, Business Development since our inception in May 2004. From May 2004 to June 2006, Mr. Socks also served as our Chief Financial Officer, Treasurer, and Secretary. From July 2000 to May 2004, Mr. Socks was a Venture Partner at Windamere Venture Partners, a venture capital firm investing in early stage life science companies. In this capacity, Mr. Socks held management positions at two portfolio companies of Windamere Venture Partners. These positions included Vice President of Business Development of Kanisa Pharmaceuticals, Inc., an oncology-focused specialty pharmaceutical company and Vice President of Finance of CelTor Biosystems, Inc., a drug discovery company. Mr. Socks co-founded several pharmaceutical companies including Avera Pharmaceuticals, Inc., Kanisa Pharmaceuticals, Inc., Somaxon Pharmaceuticals, Inc. and Verus Pharmaceuticals, Inc. and two medical technology companies including MiraMedica, Inc. and SpineWave, Inc. In 1999, Mr. Socks worked in business development at Neurocrine Biosciences, a biopharmaceutical company. In 1998, he worked in the venture capital arm of EFO Holdings, L.P., an investment firm. From 1995 to 1998, he worked at Kaiser Associates, Inc., a strategic management consulting firm, where he was most recently a Senior Manager. Mr. Socks holds a B.S. in business administration from Georgetown University and an M.B.A. from Stanford University.

Board of Directors

Cam L. Garner is one of our co-founders and has served as a member of our board of directors since our inception in May 2004, and as the chairman of our board of directors since July 2004. Mr. Garner co-founded Verus Pharmaceuticals, Inc., Somaxon Pharmaceuticals, Inc. and Xcel Pharmaceuticals, Inc., which are specialty pharmaceutical companies. Since July 2004, he has served as Chairman and Chief Executive Officer of Verus. He served as Chairman of Xcel Pharmaceuticals, Inc. from January 2001 until it was acquired in March 2005 by Valeant Pharmaceuticals International. From August 2001 to February 2002, he served as acting Chief Executive Officer of Favrille, Inc., a biotechnology company, and is currently the Chairman of its board of directors. From 1989 to 1995, he served as Chief Executive Officer of Dura Pharmaceuticals, Inc., a specialty respiratory pharmaceutical and pulmonary drug delivery company, and Chairman and Chief Executive Officer from 1995 to 2000 until it was sold to Elan in November 2000. Previously, he served as Chairman of DJ Pharma, a specialty pharmaceutical sales and marketing company, which was sold to Biovail Corporation in 2000. Mr. Garner also serves on the board of directors of two publicly-held companies — Somaxon Pharmaceuticals, Inc. and Pharmion Corporation — and other privately-held pharmaceutical companies. In addition, Mr. Garner participates on the boards of several charitable organizations. Mr. Garner holds a B.A. in biology and an M.B.A. from Baldwin-Wallace College and an honorary Doctor of Science from Virginia Wesleyan College.

Brian G. Atwood has served as a member of our board of directors since March 2006. Since 1999, Mr. Atwood has served as a Managing Director of Versant Ventures, a venture capital firm focusing on healthcare that he co-founded. Prior to co-founding Versant Ventures, Mr. Atwood served as a general partner of Brentwood Associates, a venture capital firm. Mr. Atwood also serves on the board of directors of Pharmion Corporation. Mr. Atwood holds a B.S. in biological sciences from the University of California, Irvine, an M.S. in ecology from the University of California, Davis and an M.B.A. from Harvard University.

Michael A. Berman, M.D. has served as a member of our board of directors since April 2006. Since January 2005, Dr. Berman has served as President and Chief Executive Officer of the Michael A. Berman Group, Inc., a consulting firm specializing in the healthcare industry. Since January 2005, Dr. Berman has also served as a consultant for Stockamp and Associates, Inc., a business process consulting firm specializing in the healthcare industry. From October 1999 to January 2005, Dr. Berman served as Executive Vice President and Director of New York Presbyterian Hospital, and from September 1997 to October 1999 as its Senior Vice President and Chief Medical Officer. From April 1984 to September 1997, he served as Professor and Chairman of the Department of Pediatrics at the University of Maryland School of Medicine. Dr. Berman holds a M.D. from the State University of New York, Syracuse.

James C. Blair, Ph.D. has served as a member of our board of directors since September 2005. Since 1985, Mr. Blair has been a partner of Domain Associates, L.L.C., a venture capital management company focused on life sciences. Mr. Blair also serves on the board of directors of Cell Biosciences, Inc., Five Prime Therapeutics, Inc., GenVault Corporation, NeuroPace, Inc., Novacea, Inc., NuVasive, Inc., Pharmion Corporation, Verus Pharmaceuticals, Inc. and Volcano Corporation. Mr. Blair has over 35 years experience with venture and emerging growth companies. In the course of this experience, he has been involved in the creation and successful development at the board level of over forty life science ventures, including Amgen Inc., Aurora Biosciences Corporation, Amylin Pharmaceuticals, Inc., Applied Biosystems Inc., Dura Pharmaceuticals, GeneOhm Sciences, Inc. and Molecular Dynamics Inc. A former managing director of Rothschild Inc., Mr. Blair was directly involved at a senior level with Rothschild/ New Court venture capital activities from 1978 to 1985. From 1969 to 1978, he was associated with F.S. Smithers and Co. and White, Weld and Co., two investment banking firms actively involved with new ventures and emerging growth companies. From 1961 to 1969, Mr. Blair was an engineering manager with RCA Corporation, during which time he received a David Sarnoff Fellowship. He currently serves on the board of directors of the Prostate Cancer Foundation, a philanthropic organization, and he is on the advisory boards of the Department of Molecular Biology at Princeton University and the Department of Biomedical Engineering at the University of Pennsylvania. Mr. Blair holds a B.S.E. from Princeton University and an M.S.E. and Ph.D. from the University of Pennsylvania.

Alan D. Frazier has served as a member of our board of directors since March 2006. In 1991, Mr. Frazier founded Frazier Healthcare Ventures, a venture capital firm, and has served as the managing partner since its inception. From 1983 to 1991, Mr. Frazier served as Executive Vice President, Chief Financial Officer and Treasurer of Immunex Corporation, a biopharmaceutical company. From 1980 to 1983, Mr. Frazier was a principal in the Audit Department of Arthur Young & Company, which is now Ernst & Young LLP. Mr. Frazier is a member of the board of directors of Alexza Pharmaceuticals, Inc. and Rigel Pharmaceuticals, Inc., both of which are pharmaceutical companies. Mr. Frazier received a B.A. in economics from the University of Washington.

Alain B. Schreiber, M.D. has served as a member of our board of directors since July 2004. Since 2000, Dr. Schreiber has been a General Partner of ProQuest Investments, a venture capital firm. From May 1992 to June 2000, Dr. Schreiber served as President, Chief Executive Officer and a director of Vical Incorporated, a biopharmaceutical company. From July 1985 to April 1992, he held various positions with Rhone-Poulenc Rorer Inc., which is now Sanofi-Aventis, most recently as Senior Vice President of Discovery Research. From October 1982 to June 1985, Dr. Schreiber served as Biochemistry Department Head at Syntex Research, which is now Roche Bioscience. Dr. Schreiber currently serves on the board of several privately held companies including BioRexis Pharmaceutical Corporation, Concentric Medical, Inc. and Optimer Pharmaceuticals, Inc. Dr. Schreiber holds a B.S. in chemistry and an M.D. from the Free University in Brussels, Belgium.

Christopher J. Twomey has served as a member of our board of directors since July 2006. Mr. Twomey joined Biosite Incorporated, a medical diagnostic company, in March 1990 and is currently its Senior Vice President, Finance and Chief Financial Officer. From 1981 to 1990, Mr. Twomey worked for Ernst & Young LLP, where he served as an Audit Manager. Mr. Twomey also serves on the board of directors of Senomyx, Inc., a biotechnology company, where he serves as Chair of the Audit Committee. Mr. Twomey holds a B.A. in business economics from the University of California at Santa Barbara.

Board Composition

Our board of directors is currently authorized to have eight members, and is currently composed of seven non-employee members and our current President and Chief Executive Officer, Theodore R. Schroeder. Upon completion of this offering, our amended and restated certificate of incorporation will provide for a classified board of directors consisting of three classes of directors, each serving staggered three-year terms. As a result, a portion of our board of directors will be elected each year. To implement the classified structure, prior to the consummation of this offering, two of the nominees to the board will be appointed to one-year terms, three will be appointed to two-year terms and three will be appointed to

three-year terms. Thereafter, directors will be elected for three-year terms. Our Class I directors, whose terms will expire at the 2007 annual meeting of stockholders, will be , and . Our Class II directors, whose terms will expire at the 2008 annual meeting of stockholders, will be , and . Our Class III directors, whose terms will expire at the 2009 annual meeting of stockholders, will be , and .

Pursuant to a voting agreement originally entered into in July 2004 and most recently amended in March 2006 by and among us and certain of our stockholders, Drs. Berman and Schreiber and Messrs. Atwood, Blair, Frazier, Garner and Schroeder were each elected to serve as members on our board of directors and, as of the date of this prospectus, continue to so serve. The voting agreement will terminate upon completion of this offering, and members previously elected to our board of directors pursuant to this agreement will continue to serve as directors until their successors are duly elected by holders of our common stock. For a more complete description of the voting agreement, see "Certain Relationships and Related Party Transactions — Voting Agreement."

Board Committees

Our board of directors has established three committees: the audit committee, the compensation committee and the nominating/corporate governance committee. Our board of directors may establish other committees to facilitate the management of our business.

Audit Committee. Our audit committee consists of Messrs. Twomey (chair and audit committee financial expert) and Frazier and Dr. Berman, each of whom our board of directors has determined is independent within the meaning of the independent director standards of the Securities and Exchange Commission and the Nasdaq Stock Market, Inc.

This committee's main function is to oversee our accounting and financial reporting processes, internal systems of control, independent registered public accounting firm relationships and the audits of our financial statements. This committee's responsibilities include:

- selecting and hiring our independent registered public accounting firm;
- evaluating the qualifications, independence and performance of our independent registered public accounting firm;
- approving the audit and non-audit services to be performed by our independent registered public accounting firm;
- reviewing the design, implementation, adequacy and effectiveness of our internal controls and our critical accounting policies;
- overseeing and monitoring the integrity of our financial statements and our compliance with legal and regulatory requirements as they relate to financial statements or accounting matters;
- reviewing with management and our auditors any earnings announcements and other public announcements regarding our results of operations;
- preparing the report that the SEC requires in our annual proxy statement; and
- reviewing and approving any related party transactions and reviewing and monitoring compliance with our code of conduct and ethics.

Compensation Committee. Our compensation committee consists of Messrs. Garner (chair) and Frazier and Dr. Blair, each of whom our board of directors has determined is independent within the meaning of the independent director standards of the Nasdaq Stock Market, Inc. This committee's purpose is to assist our board of directors in determining the development plans and compensation for our

senior management and directors and recommend these plans to our board. This committee's responsibilities include:

- reviewing and recommending compensation and benefit plans for our executive officers and compensation policies for members of our board of directors and board committees;
- reviewing the terms of offer letters and employment agreements and arrangements with our officers;
- setting performance goals for our officers and reviewing their performance against these goals;
- evaluating the competitiveness of our executive compensation plans and periodically reviewing executive succession plans; and
- preparing the report that the SEC requires in our annual proxy statement.

Nominating/ Corporate Governance Committee. Our nominating/corporate governance committee consists of Mr. Atwood (chair) and Drs. Berman and Schreiber, each of whom our board of directors has determined is independent within the meaning of the independent director standards of the Nasdaq Stock Market, Inc. This committee's purpose is to assist our board by identifying individuals qualified to become members of our board of directors, consistent with criteria set by our board, and to develop our corporate governance principles. This committee's responsibilities include:

- evaluating the composition, size and governance of our board of directors and its committees and making recommendations regarding future planning and the appointment of directors to our committees;
- administering a policy for considering stockholder nominees for election to our board of directors;
- evaluating and recommending candidates for election to our board of directors;
- overseeing our board of directors' performance and self-evaluation process; and
- reviewing our corporate governance principles and providing recommendations to the board regarding possible changes.

Compensation Committee Interlocks and Insider Participation

Prior to establishing the compensation committee, our board of directors as a whole performed the functions delegated to the compensation committee. None of the members of our compensation committee has ever been one of our officers or employees. None of our executive officers currently serves, or has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

Director Compensation

From September 2004 through August 2005, we paid Mr. Garner $5,000 per month plus qualified business expenses for his services as chairman of our board of directors under the terms of a consulting agreement between us and a limited liability company affiliated with Mr. Garner. The agreement expired on August 31, 2005. From September 2005 to February 2006, we continued to pay Mr. Garner $5,000 per month for his services as chairman of our board of directors. In February 2006, Mr. Garner's monthly compensation for his services as chairman of our board of directors was increased to $8,333 per month.

Other than to Mr. Garner, we have historically not provided cash compensation to directors for their services as directors or members of committees of the board of directors. Following the completion of this offering, we intend to provide cash compensation in the form of a quarterly retainer of $ for each non-employee director. We will also pay an additional quarterly retainer of $ to the chairman of our Audit Committee, $ to the Chairmen of our Compensation Committee and our Nominating/

Corporate Governance Committee and $ to other non-employee directors for their service on each such committee. We will pay additional cash compensation to the chairman of our board of directors of $ per year. We have reimbursed and will continue to reimburse our non-employee directors for their reasonable expenses incurred in attending meetings of our board of directors and committees of the board of directors.

Following the completion of this offering, any non-employee director who is first elected to the board of directors will be granted an option to purchase shares of our common stock on the date of his or her initial election to the board of directors. Such options will have an exercise price per share equal to the fair market value of our common stock on the date of grant. In addition, on the date of each annual meeting of our stockholders following this offering, each non-employee director will be eligible to receive an option to purchase shares of common stock.

The initial options granted to non-employee directors described above will vest over three years in twelve equal quarterly installments on the first day of each calendar quarter subsequent to the date of grant, subject to the director's continuing service on our board of directors on those dates. The annual options granted to non-employee directors described above will vest in four equal quarterly installments on each quarterly anniversary of the date of grant, subject to the director's continuing service on our board of directors (and, with respect to grants to a chairman of the board or board committee, service as chairman of the board or a committee) on those dates. The term of each option granted to a non-employee director shall be ten years. The terms of these options are described in more detail under "— Employee Benefit and Stock Plans."

Executive Compensation

The following table summarizes the compensation that we paid to our Chief Executive Officer and each of our four other most highly compensated executive officers during the year ended December 31, 2005. We refer to these officers in this prospectus as our named executive officers.

Summary Compensation Table

	Annual Compensation			Long-Term Compensation	
Name and Principal Position	Salary	Bonus	Other Annual Compensation	Securities Underlying Options	All Other Compensation
Named Executive Officers					
Theodore R. Schroeder *President and Chief Executive Officer*	$ 250,000	$ 30,000	—	250,000	—
Richard E. Lowenthal *Vice President, Regulatory Affairs and Quality Assurance*	220,000	25,430	—	564,000	—
William S. Craig, Ph.D. *Senior Vice President, Pharmaceutical Development and Manufacturing*	220,000	23,161	—	350,000	—
Kenneth R. Heilbrunn, M.D.(1) *Senior Vice President, Clinical Development*	206,250	6,000	—	350,000	—
David A. Socks *Vice President, Business Development*	175,000	10,000	—	—	—

(1) Dr. Heilbrunn joined us as our Senior Vice President, Clinical Development in April 2005 and, therefore, the amounts set forth above reflect less than a full year.

In May 2006, Dr. Mike A. Royal, M.D., J.D. joined us as our Vice President, Clinical Development, Analgesics at an annual salary of $275,000. In June 2006, Mr. William R. LaRue joined us as our Senior Vice President, Chief Financial Officer, Treasurer and Secretary at an annual salary of $265,000.

Option Grants in Last Fiscal Year

The following table sets forth certain information with respect to stock options granted to the individuals named in the Summary Compensation Table during the fiscal year ended December 31, 2005, including the potential realizable value over the ten-year term of the options, based on assumed rates of stock appreciation of 5% and 10%, compounded annually, minus the applicable per share exercise price.

These assumed rates of appreciation are mandated by the rules of the Securities and Exchange Commission and do not represent our estimate or projection of our future common stock price. We cannot assure you that any of the values in the table will be achieved. Actual gains, if any, on stock option exercises will be dependent on the future performance of our common stock and overall stock market conditions. The assumed 5% and 10% rates of stock appreciation are based on the assumed initial public offering price of $ per share (the mid-point of the price range set forth on the cover page of this prospectus). The percentage of total options granted is based upon our granting of options to employees, directors and consultants in 2005 to purchase an aggregate of 3,077,000 shares of our common stock.

	Individual Grants				Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
Name	Number of Shares Underlying Options Granted	% of Total Options Granted to Employees In Last Fiscal Year	Exercise Price Per Share	Expiration Date	5%	10%
Theodore R. Schroeder	250,000	8.12%	$ 0.10	12-29-2015	$	$
Richard E. Lowenthal	300,000	9.75%	0.10	2-15-2015		
	264,000	8.58%	0.10	12-29-2015		
William S. Craig, Ph.D.	350,000	11.37%	0.10	2-15-2015		
Kenneth R. Heilbrunn, M.D.	350,000	11.37%	0.10	5-19-2015		
David A. Socks	—	—	—	—	—	—

Aggregate Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values

The following table describes for the named executive officers the number and value of securities underlying exercisable and unexercisable options held by them as of December 31, 2005. The value realized and the value of unexercised in-the-money options at December 31, 2005 are based on the assumed initial public offering price of $ per share (the mid-point of the price range set forth on the cover page of this prospectus) less the per share exercise price, multiplied by the number of shares issued

or issuable, as the case may be, upon exercise of the option. All options were granted under our 2004 equity incentive award plan.

Name	Number of Shares Acquired on Exercise	Value Realized	Number of Securities Underlying Unexercised Options at December 31, 2005		Value of Unexercised In-the-Money Options at December 31, 2005	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Theodore R. Schroeder	1,000,000(1)	$	—	—	$	$
Richard E. Lowenthal	564,000(2)		—	—		
William S. Craig, Ph.D.	—		350,000(3)	—		
Kenneth R. Heilbrunn, M.D.	—		350,000(4)	—		
David A. Socks	—		100,000(5)	—		

(1) Of these 1,000,000 shares, 765,625 were unvested as of December 31, 2005.

(2) Of these 564,000 shares, 489,000 were unvested as of December 31, 2005.

(3) Of these 350,000 shares, 255,208 were unvested as of December 31, 2005.

(4) Of these 350,000 shares, 350,000 were unvested as of December 31, 2005.

(5) Of these 100,000 shares, 68,750 were unvested as of December 31, 2005.

Employment Agreements

We have entered into employment agreements with Theodore R. Schroeder, our President and Chief Executive Officer, William S. Craig, Ph.D., our Senior Vice President, Pharmaceutical Development and Manufacturing, Kenneth R. Heilbrunn, M.D., our Senior Vice President, Clinical Development, William R. LaRue, our Senior Vice President, Chief Financial Officer, Treasurer and Secretary, Richard E. Lowenthal, our Vice President, Regulatory Affairs and Quality Assurance, Mike A. Royal, M.D., J.D., our Vice President, Clinical Development, Analgesics, and David A. Socks, our Vice President, Business Development.

Pursuant to the employment agreements, each executive is required to faithfully, industriously and to the best of his or her ability, experience and talent perform all of the duties that may be assigned to such executive pursuant to his or her employment agreement, and shall devote substantially all of his or her productive time and efforts to the performance of such duties.

The base salaries of the executives are set forth in the employment agreements. The employment agreements do not provide for automatic annual increases in salary, but each employment agreement provides for annual salary reviews. The employment agreements provide that each executive shall participate in any bonus plan that our board of directors or its designee may approve for our senior executives (see "— Employee Benefit and Stock Plans — Annual Bonus Plan" below). Each executive's employment is at-will and may be terminated by us at any time, with or without notice. Similarly, each executive may terminate his or her employment with us at any time, with or without notice.

The employment agreements provide each executive with certain severance benefits in the event his or her employment is terminated as a result of his or her death or permanent disability. Specifically, in the event of such a termination, each executive will receive any accrued but unpaid base salary as of the date of termination, a lump sum cash payment equal to the executive's annual base salary, and a lump sum cash payment equal to the executive's prorated annual bonus. Additionally, in the event of an executive's death, his or her eligible dependents would receive 12 months healthcare benefits continuation coverage at our expense. In the event of an executive's permanent disability, he or she will receive 12 months healthcare and life insurance benefits continuation at our expense.

The employment agreements also provide each executive with certain severance benefits in the event his or her employment is terminated by us other than for "cause", as defined in the agreements and described below, or if the executive resigns with "good reason", as defined in the agreements and

described below. Specifically, if such termination occurs within three months prior to or within 12 months following a change of control, each executive will receive any accrued but unpaid base salary as of the date of termination, a lump sum cash payment equal to the executive's annual base salary, a lump sum cash payment equal to the executive's prorated annual bonus, and 12 months healthcare and life insurance benefits continuation coverage at our expense, plus a maximum of $15,000 towards outplacement services. If such termination occurs more than three months prior to a change of control or more than 12 months following a change of control, each executive will receive the benefits described in the previous sentence, less the prorated annual bonus.

The employment agreements provide that, in the event an executive's employment is terminated by us other than for cause or as a result of the executive's death or permanent disability, or if the executive resigns for good reason, that portion of the executive's stock awards, and any unvested shares issued upon the exercise of such stock awards, which would have vested if the executive had remained employed for an additional 12 months following the date of termination will immediately vest on the date of termination. In addition, if an executive's employment is terminated by us other than for cause or if an executive resigns for good reason within three months prior to or twelve months following a change of control, all of the executive's remaining unvested stock awards, and any unvested shares issued upon the exercise of such stock awards, will immediately vest on the later of (1) the date of termination or (2) the date of the change of control. This accelerated vesting is in addition to any accelerated vesting provided under our stock option plans.

Provided that the relevant stock award agreements do not specify a longer exercise period, an executive may generally exercise his or her stock awards until three months after the date of the executive's termination of employment, except that the executive may also exercise his or her stock awards three months after the date of a change of control, if the executive's employment is terminated by us other than for cause or if the executive resigns for good reason within three months prior to a change of control, and if such stock awards were granted on or after the effective date of the executive's employment agreement. In no event, however, may an executive exercise any stock award later than its original outside expiration date.

In addition, the employment agreements provide that, in connection with a change of control, 50% of the executive's unvested stock awards, and any unvested shares issued upon the exercise of stock awards, will immediately become vested. This accelerated vesting is in addition to any accelerated vesting provided under our stock option plans.

The employment agreements also include standard noncompetition, nonsolicitation and nondisclosure covenants on the part of the executives. During the term of each executive's employment with us, the employment agreements provide that he or she may not compete with our business in any manner, except that an executive may own insignificant equity positions in publicly traded companies so long as the executive does not control such company. During the term of each executive's employment with us and for any period during which he or she is receiving severance, the employment agreements provide that he or she may not solicit our employees or consultants. The employment agreements also reaffirm the executives' obligations under our standard employee proprietary information and inventions agreement to which each executive is a party.

For purposes of the employment agreements, "cause" means, generally, the executive's commission of an act of fraud, embezzlement or dishonesty that has a material adverse impact on us, the executive's conviction of, or plea of guilty or no contest to a felony, the executive's unauthorized use or disclosure of our confidential information or trade secrets that has a material adverse impact on us, the executive's gross negligence, insubordination, material violation of any duty of loyalty to us or any other material misconduct on the part of the executive, the executive's ongoing and repeated failure or refusal to perform or neglect of his or her duties (where such failure, refusal or neglect continues for 15 days following the executive's receipt of written notice from our board), or a breach by the executive of any material provision of his or her employment agreement. Prior to any determination by us that "cause" has occurred, we will provide the executive with written notice of the reasons for such determination, afford

the executive a reasonable opportunity to remedy any such breach, and provide the executive an opportunity to be heard prior to the final decision to terminate the executive's employment.

For purposes of the employment agreements, "good reason" means, generally, a change by us in the executive's position or responsibilities, other than a change in the executive's reporting relationship, that, in the executive's reasonable judgment, represents a substantial and material reduction in the position or responsibilities as in effect immediately prior thereto, our assignment to the executive of any duties or responsibilities that, in the executive's reasonable judgment, are materially inconsistent with such position or responsibilities, any removal of the executive from or failure to reappoint or reelect the executive to any of such positions, except in connection with the termination of the executive's employment for cause, as a result of his or her permanent disability or death, or by the executive other than for good reason, a material reduction in the executive's annual base salary (other than in connection with a general reduction in wages for personnel with similar status and responsibilities), our requiring the executive (without the executive's consent) to be based at any place outside a 50-mile radius of his or her initial place of employment with us, except for reasonably required travel on behalf of our business, our failure to provide the executive with compensation and benefits substantially equivalent (in terms of benefit levels and/or reward opportunities) to those provided for under each of our material employee benefit plans, programs and practices as in effect immediately prior to the date of the employment agreement, or any material breach by us of our obligations to the executive under the employment agreement.

Proprietary Information and Inventions Agreement

Each of our named executive officers has also entered into a standard form agreement with respect to proprietary information and inventions. Among other things, this agreement obligates each named executive officer to refrain from disclosing any of our proprietary information received during the course of employment and, with some exceptions, to assign to us any inventions conceived or developed during the course of employment.

Employee Benefit and Stock Plans

Annual Bonus Plan

In 2006, our board of directors approved our 2006 incentive plan. Pursuant to the 2006 incentive plan, our board of directors designated for each executive officer a target bonus amount, expressed as a percentage of his or her base salary (% for our president and chief executive officer and % for our other executive officers). Our executive officers are eligible to receive bonuses if certain individual and corporate performance criteria are achieved during the 2006 fiscal year, and such bonuses are payable as cash, stock or options. Bonus payments will be based on the compensation committee's evaluation of our achievement of corporate performance goals for 2006, which were determined by the compensation committee prior to the inception of the 2006 incentive plan. Such corporate performance goals include the achievement of performance targets with respect to business development activities, product and clinical development activities, financing activities and financial results. The use of corporate goals is intended to establish a link between the executive's pay and our business performance. The individual performance of each of the executive officers during 2006 will also be evaluated by the compensation committee based on the achievement of individual performance goals, which were approved by the president and chief executive officer and the relevant vice presidents prior to the inception of the 2006 incentive plan. Our president and chief executive officer will receive a bonus determined solely by reference to the achievement of corporate goals. The compensation committee is responsible for approving any bonuses to our executive officers pursuant to the 2006 incentive plan, and the compensation committee's determination of bonus amounts will be subject to approval by our board of directors.

2006 Equity Incentive Award Plan

In 2006, our board of directors approved our 2006 Equity Incentive Award Plan, or the 2006 plan, which was approved by our stockholders in 2006. The 2006 plan will become effective on the day prior to the day of this offering.

We have initially reserved shares of our common stock for issuance under the 2006 plan. The 2006 plan contains an "evergreen provision" that allows for an annual increase in the number of shares available for issuance under the 2006 plan on January 1 of each year during the ten-year term of the 2006 plan, beginning on January 1, 2008. The annual increase in the number of shares shall be equal to the least of:

- % of our outstanding common stock on the applicable January 1;
- shares; and
- a lesser amount determined by our board of directors.

The material terms of the 2006 plan are summarized below. The 2006 plan is filed as an exhibit to the registration statement of which this prospectus is a part.

Administration. The compensation committee of our board of directors will administer the 2006 plan (except with respect to any award granted to "independent directors" (as defined in the 2006 plan), which must be administered by our full board of directors). To administer the 2006 plan, our compensation committee must consist of at least two members of our board of directors, each of whom is a "non-employee director" for purposes of Rule 16b-3 under the Securities Exchange Act of 1934, as amended, and, with respect to awards that are intended to constitute performance-based compensation under Section 162(m) of the Internal Revenue Code of 1986, as amended, an "outside director" for purposes of Section 162(m). Subject to the terms and conditions of the 2006 plan, our compensation committee has the authority to select the persons to whom awards are to be made, to determine the type or types of awards to be granted to each person, the number of awards to grant, the number of shares to be subject to such awards, and the terms and conditions of such awards, and to make all other determinations and decisions and to take all other actions necessary or advisable for the administration of the 2006 plan. Our compensation committee is also authorized to adopt, amend or rescind rules relating to administration of the 2006 plan. Our board of directors may at any time abolish the compensation committee and revest in itself the authority to administer the 2006 plan. The full board of directors will administer the 2006 plan with respect to awards to non-employee directors.

Eligibility. Options, stock appreciation rights, or SARs, restricted stock and other awards under the 2006 plan may be granted to individuals who are then our officers or employees or are the officers or employees of any of our subsidiaries. Such awards may also be granted to our non-employee directors and consultants but only employees may be granted incentive stock options, or ISOs. The maximum number of shares that may be subject to awards granted under the 2006 plan to any individual in any calendar year cannot exceed .

Awards. The 2006 plan provides that our compensation committee (or the board of directors, in the case of awards to non-employee directors) may grant or issue stock options, SARs, restricted stock, restricted stock units, dividend equivalents, performance share awards, performance stock units, stock payments, deferred stock, performance bonus awards, performance-based awards, and other stock-based awards, or any combination thereof. The compensation committee (or the board of directors, in the case of awards to non-employee directors) will consider each award grant subjectively, considering factors such as the individual performance of the recipient and the anticipated contribution of the recipient to the attainment of the company's long-term goals. Each award will be set forth in a separate agreement with the person receiving the award and will indicate the type, terms and conditions of the award.

- Nonqualified stock options, or NQSOs, will provide for the right to purchase shares of our common stock at a specified price which may not be less than par value of a share of common stock on the date of grant, and usually will become exercisable (at the discretion

of our compensation committee or the board of directors, in the case of awards to non-employee directors) in one or more installments after the grant date, subject to the participant's continued employment or service with us and/or subject to the satisfaction of performance targets established by our compensation committee (or the board of directors, in the case of awards to non-employee directors). NQSOs may be granted for any term specified by our compensation committee (or the board of directors, in the case of awards to non-employee directors), but the term may not exceed ten years.

- ISOs will be designed to comply with the provisions of the Internal Revenue Code and will be subject to specified restrictions contained in the Internal Revenue Code. Among such restrictions, ISOs must have an exercise price of not less than the fair market value of a share of common stock on the date of grant, may only be granted to employees, must expire within a specified period of time following the optionee's termination of employment, and must be exercised within the ten years after the date of grant. In the case of an ISO granted to an individual who owns (or is deemed to own) more than 10% of the total combined voting power of all classes of our capital stock, the 2006 plan provides that the exercise price must be more than 110% of the fair market value of a share of common stock on the date of grant and the ISO must expire upon the fifth anniversary of the date of its grant.
- Restricted stock may be granted to participants and made subject to such restrictions as may be determined by our compensation committee (or the board of directors, in the case of awards to non-employee directors). Typically, restricted stock may be forfeited for no consideration if the conditions or restrictions are not met, and they may not be sold or otherwise transferred to third parties until restrictions are removed or expire. Recipients of restricted stock, unlike recipients of options, may have voting rights and may receive dividends, if any, prior to the time when the restrictions lapse.
- Restricted stock units may be awarded to participants, typically without payment of consideration or for a nominal purchase price, but subject to vesting conditions including continued employment or on performance criteria established by our compensation committee (or the board of directors, in the case of awards to non-employee directors). Like restricted stock, restricted stock units may not be sold or otherwise transferred or hypothecated until vesting conditions are removed or expire. Unlike restricted stock, stock underlying restricted stock units will not be issued until the restricted stock units have vested, and recipients of restricted stock units generally will have no voting or dividend rights prior to the time when vesting conditions are satisfied.
- SARs may be granted in connection with stock options or other awards, or separately. SARs granted under the 2006 plan in connection with stock options or other awards typically will provide for payments to the holder based upon increases in the price of our common stock over the exercise price of the related option or other awards. Except as required by Section 162(m) of the Internal Revenue Code with respect to an SAR intended to qualify as performance-based compensation as described in Section 162(m) of the Internal Revenue Code, there are no restrictions specified in the 2006 plan on the exercise of SARs or the amount of gain realizable therefrom. Our compensation committee (or the board of directors, in the case of awards to non-employee directors) may elect to pay SARs in cash or in common stock or in a combination of both.
- Dividend equivalents represent the value of the dividends, if any, per share paid by us, calculated with reference to the number of shares covered by the stock options, SARs or other awards held by the participant.
- Performance awards (*i.e.*, performance share awards, performance stock units, performance bonus awards, performance-based awards and deferred stock) may be granted by our compensation committee (or the board of directors, in the case of awards to non-employee directors) on an individual or group basis. Generally, these awards will be based upon

specific performance targets and may be paid in cash or in common stock or in a combination of both. Performance awards may include "phantom" stock awards that provide for payments based upon increases in the price of our common stock over a predetermined period. Performance awards may also include bonuses that may be granted by our compensation committee (or the board of directors, in the case of awards to non-employee directors) on an individual or group basis, which may be paid on a current or deferred basis and may be payable in cash or in common stock or in a combination of both.

- Stock payments may be authorized by our compensation committee (or the board of directors, in the case of awards to non-employee directors) in the form of common stock or an option or other right to purchase common stock as part of a deferred compensation arrangement, made in lieu of all or any part of compensation, including bonuses, that would otherwise be payable to employees or consultants or members of our board of directors.

Corporate Transactions. In the event of a change of control where the acquiror does not assume awards granted under the plan, awards issued under the 2006 plan will be subject to accelerated vesting such that 100% of the awards will become vested and exercisable or payable, as applicable. Under the 2006 plan, a change of control is generally defined as:

- the direct or indirect sale or exchange in a single or series of related transactions (other than an offering of our stock to the general public through a registration statement filed with the SEC) whereby any person or entity or related group of persons or entities (other than us, our subsidiaries, an employee benefit plan maintained by us or any of our subsidiaries or a person or entity that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, us) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of more than 50% of the total combined voting power of our securities outstanding immediately after such acquisition;
- during any two-year period, individuals who, at the beginning of such period, constitute our board of directors together with any new director(s) whose election by our board of directors or nomination for election by our stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority of our board of directors;
- the merger, consolidation, reorganization, or business combination in which the company is a party (whether directly involving the company or indirectly involving the company through one or more intermediaries, other than a merger, consolidation, reorganization, or business combination that results in our outstanding voting securities immediately before the transaction continuing to represent a majority of the voting power of the acquiring company's outstanding voting securities or a merger, consolidation, reorganization, or business combination after which no person or entity owns 50% of the successor company's voting power); and
- the sale, exchange or transfer of all or substantially all of our assets.

Amendment and Termination of the 2006 Plan. Our board of directors may terminate, amend or modify the 2006 plan. However, stockholder approval of any amendment to the 2006 plan will be obtained to the extent necessary and desirable to comply with any applicable law, regulation or stock exchange rule, or for any amendment to the 2006 plan that increases the number of shares available under the 2006 plan. If not terminated earlier by the compensation committee or the board of directors, the 2006 plan will terminate on the tenth anniversary of the date of its initial approval by our board of directors.

Securities Laws and Federal Income Taxes. The 2006 plan is designed to comply with various securities and federal tax laws as follows:

- *Securities Laws.* The 2006 plan is intended to conform to all provisions of the Securities Act and the Exchange Act and any and all regulations and rules promulgated by the SEC thereunder, including without limitation, Rule 16b-3. The 2006 plan will be administered, and awards will be granted and may be exercised, only in such a manner as to conform to such laws, rules and regulations.

- *General Federal Tax Consequences.* Under current federal laws, in general, recipients of awards and grants of NQSOs, SARs, restricted stock, restricted stock units, dividend equivalents, performance awards and stock payments under the plan are taxable under Section 83 of the Internal Revenue Code upon their receipt of common stock or cash with respect to such awards or grants and, subject to Section 162(m) of the Internal Revenue Code, we will be entitled to an income tax deduction with respect to the amounts taxable to such recipients. However, Section 409A of the Internal Revenue Code provides certain new requirements on non-qualified deferred compensation arrangements. Certain awards under the 2006 plan are subject to the requirements of Section 409A, in form and in operation, such as restricted stock unit awards. We intend that all plan awards that are subject to Section 409A will satisfy the requirements of Section 409A. However, if a plan award is subject to and fails to satisfy the requirements of Section 409A, the recipient of that award may recognize ordinary income on the amounts deferred under the award, to the extent vested, which may be prior to when the compensation is actually or constructively received. Also, if an award that is subject to Section 409A fails to comply, Section 409A imposes an additional 20% federal income tax on compensation recognized as ordinary income, as well as interest on such deferred compensation.

Under Sections 421 and 422 of the Internal Revenue Code, recipients of ISOs are generally not taxed on their receipt of common stock upon their exercises of ISOs if the ISOs and option stock are held for specified minimum holding periods and, in such event, we are not entitled to income tax deductions with respect to such exercises. Participants in the 2006 plan will be provided with detailed information regarding the tax consequences relating to the various types of awards and grants under the 2006 plan.

- *Section 162(m) Limitation.* In general, under Section 162(m) of the Internal Revenue Code, income tax deductions of publicly-held corporations may be limited to the extent total compensation (including base salary, annual bonus, stock option exercises and non-qualified benefits paid) for certain executive officers exceeds $1 million (less the amount of any “excess parachute payments” as defined in Section 280G of the Internal Revenue Code) in any one year. However, under Section 162(m), the deduction limit does not apply to certain “performance-based compensation” if an independent compensation committee determines performance goals, and if the material terms of the performance-based compensation are disclosed to and approved by our stockholders. In particular, stock options and SARs will satisfy the “performance-based compensation” exception if the awards are made by a qualifying compensation committee, the 2006 plan sets the maximum number of shares that can be granted to any person within a specified period and the compensation is based solely on an increase in the stock price after the grant date. Specifically, the option exercise price must be equal to or greater than the fair market value of the stock subject to the award on the grant date. Under a Section 162(m) transition rule for compensation plans of corporations which are privately held and which become publicly held in an initial public offering, the 2006 plan will not be subject to Section 162(m) until a specified transition date, which is the earlier of (i) the material modification of the 2006 plan, (ii) the issuance of all employer stock and other compensation that has been allocated under the 2006 plan, or (iii) the first annual meeting of stockholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which the

initial public offering occurs. After the transition date, rights or awards granted under the 2006 plan, other than options and SARs, will not qualify as "performance-based compensation" for purposes of Section 162(m) unless such rights or awards are granted or vest upon pre-established objective performance goals, the material terms of which are disclosed to and approved by our stockholders.

We have attempted to structure the 2006 plan in such a manner that, after the transition date, the compensation attributable to stock options and SARs which meet the other requirements of Section 162(m) will not be subject to the $1 million limitation. We have not, however, requested a ruling from the Internal Revenue Service, or IRS, or an opinion of counsel regarding this issue.

2004 Equity Incentive Award Plan

Our 2004 equity incentive award plan, or 2004 plan, was initially adopted by our board of directors and approved by our stockholders in November 2004. As amended to date, we have reserved a total of 11,500,000 shares of common stock for issuance under the 2004 plan. As of March 31, 2006, options to purchase 3,300,000 shares of common stock had been exercised (30,000 shares of which were repurchased by us), options to purchase 1,017,000 shares of common stock were outstanding and 5,713,000 shares of common stock remained available for grant. As of March 31, 2006, the outstanding options were exercisable at a weighted average exercise price of approximately $0.10 per share. The material terms of the 2004 plan are summarized below. The 2004 plan is filed as an exhibit to the registration statement of which this prospectus is a part.

No Further Grants. After the effective date of the 2006 Plan, no additional awards will be granted under the 2004 plan.

Administration. The compensation committee of our board of directors administers the 2004 plan. Following the completion of this offering, to administer the 2004 plan, our compensation committee must be constituted as described above in our description of the 2006 Plan. Subject to the terms and conditions of the 2004 plan, our compensation committee has the authority to select the persons to whom awards are to be made, to determine the number of shares to be subject thereto and the terms and conditions thereof, and to make all other determinations and to take all other actions necessary or advisable for the administration of the 2004 plan. Our compensation committee is also authorized to establish, adopt, amend or rescind rules relating to administration of the 2004 plan. Our board of directors may at any time abolish the compensation committee and revest in itself the authority to administer the 2004 plan. The full board of directors administers the 2004 plan with respect to awards to non-employee directors.

Eligibility. Options and restricted stock under the 2004 plan may be granted to individuals who are then our officers or employees or are the officers or employees of any of our subsidiaries. Such awards may also be granted to our non-employee directors or consultants, but only employees may be granted ISOs.

Awards. The 2004 plan provides that our compensation committee may grant or issue stock options and restricted stock, stock appreciation rights, performance share awards, restricted stock units, dividend equivalents, stock payments or performance-based awards or any combination thereof. Each award will be set forth in a separate agreement with the person receiving the award and will indicate the type, terms and conditions of the award.

- NQSOs provide for the right to purchase shares of our common stock at a specified price, which for purposes of the 2004 plan prior to the date of this offering, may be no less than 85% of the fair market value on the date of grant, and usually will become exercisable (at the discretion of our compensation committee (or the board of directors, in the case of awards to non-employee directors), in one or more installments after the grant date, subject to the participant's continued employment or service with us and/or subject to the satisfaction of performance targets established by our compensation committee (or the board

of directors, in the case of awards to non-employee directors). NQSOs may be granted for a maximum 10-year term.

- ISOs are designed to comply with the provisions of the Internal Revenue Code and will be subject to specified restrictions contained in the Internal Revenue Code and as further described above in connection with the 2006 Equity Incentive Award Plan.

To date, we have only granted stock options under the 2004 plan.

Corporate Transactions. In the event of a change of control where the acquiror does not assume awards granted under the plan and does not substitute substantially similar awards for those outstanding under the plan, awards issued under the plan will be subject to accelerated vesting such that 100% of the awards will become vested and exercisable or payable, as applicable. Under the 2004 plan, a change of control is generally defined as:

- a merger or consolidation of us with or into any other corporation or other entity or person; or
- a sale, lease, exchange or other transfer in one transaction or a series of related transactions of all or substantially all of our outstanding securities or all or substantially all of our assets.

Amendment and Termination of the 2004 plan. The compensation committee, with the approval of the board of directors, may terminate, amend or modify the 2004 plan. However, stockholder approval of any amendment to the 2004 plan will be obtained to the extent necessary and desirable to comply with any applicable law, regulation, or stock exchange rule. If not terminated earlier by the compensation committee, with the approval of the board of directors, the 2004 plan will terminate on the tenth anniversary of the date of its initial adoption by our board of directors.

2006 Employee Stock Purchase Plan

In 2006, our board of directors approved our 2006 Employee Stock Purchase Plan, or the ESPP, which was approved by our stockholders in 2006. The ESPP is designed to allow our eligible employees to purchase shares of common stock during designated offering periods with their accumulated payroll deductions.

We have reserved a total of shares of our common stock for issuance under the ESPP. The ESPP provides for an annual increase to the shares of common stock reserved under the ESPP on each January 1 during the ten-year term of the ESPP, beginning on January 1, 2008, equal to the least of:

- % of our outstanding shares on the applicable January 1;
- shares; and
- a lesser amount determined by our board of directors.

Offering periods under the ESPP will be months long. The first offering period under the ESPP will commence on the effective date of our registration statement on Form S-8 to be filed with the SEC to register shares of common stock issuable under the ESPP. A new offering period will commence on each 1st and 1st thereafter during the term of the ESPP. Our compensation committee may change the frequency and duration of offering periods under the ESPP.

Individuals scheduled to work more than 20 hours per week for more than five calendar months per year may join an offering period on the first day of the offering period.

Participants may contribute up to % of their cash earnings through payroll deductions, and the accumulated deductions will be applied to the purchase of shares on each purchase date. Currently, the purchase price per share will be equal to 95% of the fair market value per share on the purchase date.

In the event of a proposed sale of all or substantially all of our assets, or our merger with or into another company, the outstanding rights under the ESPP will be assumed or an equivalent right substituted by the successor company or its parent. If the successor company or its parent refuses to

assume the outstanding rights or substitute an equivalent right, then the compensation committee may provide for the automatic exercise of all outstanding purchase rights prior to the effective date of the transaction. Currently, the purchase price will be equal to 95% of the fair market value on the date the purchase rights are exercised.

The ESPP will terminate no later than the tenth anniversary of the ESPP's initial adoption by our board of directors.

401(k) Plan

We provide a basic savings plan, or 401(k) plan, which is intended to qualify under Section 401(k) of the Internal Revenue Code so that contributions to our 401(k) plan by employees or by us, and the investment earnings thereon, are not taxable to employees until withdrawn from our 401(k) plan. If our 401(k) plan qualifies under Section 401(k) of the Internal Revenue Code, contributions by us, if any, will be deductible by us when made.

All of our employees are eligible to participate in our 401(k) plan. Pursuant to our 401(k) plan, employees may elect to reduce their current compensation by up to the statutorily-prescribed annual limit of $15,000 in 2006 and to have the amount of this reduction contributed to our 401(k) plan. Our 401(k) plan permits, but does not require, additional matching or non-elective contributions to our 401(k) plan by us on behalf of all participants in our 401(k) plan. To date, we have not made any matching or non-elective contributions to our 401(k) plan.

Limitations of Liability and Indemnification Matters

We will adopt provisions in our amended and restated certificate of incorporation that limit the liability of our directors for monetary damages for breach of their fiduciary duties, except for liability that cannot be eliminated under the Delaware General Corporation Law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except liability for any of the following:

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

This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated certificate of incorporation and our amended and restated bylaws also will 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 this capacity, regardless of whether our amended and restated bylaws would permit indemnification.

We have entered into separate indemnification agreements with our directors and executive officers, in addition to indemnification provided for in our charter documents. These agreements, among other things, provide for indemnification of our directors and executive officers for expenses, judgments, fines and settlement amounts incurred by this person in any action or proceeding arising out of this person's services as a director or executive officer or at our request. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers.

PRINCIPAL STOCKHOLDERS

The following table sets forth information about the beneficial ownership of our common stock at July 15, 2006, and as adjusted to reflect the sale of the shares of common stock in this offering, for:

- each person known to us to be the beneficial owner of more than 5% of our common stock;
- each named executive officer and two additional executive officers;
- each of our directors; and
- all of our executive officers and directors as a group.

Unless otherwise noted below, the address of each beneficial owner listed on the table is c/o Cadence Pharmaceuticals, Inc., 12730 High Bluff Drive, Suite 410, San Diego, CA 92130. We have determined beneficial ownership in accordance with the rules of the Securities and Exchange Commission. Except as indicated by the footnotes below, we believe, based on the information furnished to us by the stockholders, that the persons and entities named in the tables below have sole voting and investment power with respect to all shares of common stock that they beneficially own, subject to applicable community property laws. We have based our calculation of the percentage of beneficial ownership on 88,182,195 shares of common stock outstanding on July 15, 2006, which assumes the conversion of all outstanding shares of preferred stock into common stock and shares of common stock outstanding upon completion of this offering.

In computing the number of shares of common stock beneficially owned by a person and the percentage ownership of that person, we deemed outstanding shares of common stock subject to options or warrants held by that person that are currently exercisable or exercisable within 60 days of July 15, 2006. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person.

Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Common Stock Beneficially Owned	
		Prior to Offering	After Offering
5% or Greater Stockholders:			
Funds affiliated with Domain Associates, L.L.C.(1) One Palmer Square, Suite 515 Princeton, NJ 08542	22,964,492	26.0%	
ProQuest Investments III, L.P.(2) 90 Nassau Street, 5th Floor Princeton, NJ 08542	12,322,698	14.0	
Frazier Healthcare V, LP(3) 601 Union Street, Suite 3200 Seattle, WA 98101	10,100,000	11.4	
Funds affiliated with Versant Ventures II, L.L.C.(4) 3000 Sand Hill Road Building 4, Suite 210 Menlo Park, CA 94025	8,100,000	9.2	
Funds affiliated with Technology Partners(5) 100 Shoreline Highway Suite 282, Building B Mill Valley, CA 94941	8,000,000	9.1	
BB Biotech Ventures II, L.P. Trafalgar Court, Les Banques St Peter Port, Guernsey, Channel Islands GY1 3QL	7,000,000	7.9	

Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Common Stock Beneficially Owned	
		Prior to Offering	After Offering
Directors and Executive Officers:			
Theodore R. Schroeder(6)	4,043,740	4.5	
William S. Craig, Ph.D.(7)	705,303	*	
Kenneth R. Heilbrunn, M.D.(8)	650,000	*	
William R. LaRue(9)	749,000	*	
Richard E. Lowenthal(10)	564,000	*	
Mike A. Royal, M.D., J.D.(11)	300,000	*	
David A. Socks(12)	1,692,728	1.9	
Cam L. Garner(13)	4,250,123	4.8	
Brian G. Atwood(4)	8,100,000	9.2	
Michael A. Berman, M.D.(14)	100,000	*	
James C. Blair, Ph.D.(1)	22,964,492	26.0	
Alan D. Frazier(3)	10,100,000	11.4	
Alain B. Schreiber, M.D.(2)	12,322,698	14.0	
Christopher J. Twomey(15)	100,000	*	
Executive officers and directors as a group (14 persons)(16)	66,742,084	70.9	

* Represents beneficial ownership of less than one percent of our outstanding common stock.

(1) Includes 22,612,155 shares of common stock owned by Domain Partners VI, L.P., 242,337 shares of common stock owned by DP VI Associates, L.P. and 50,000 shares of common stock owned by Domain Associates, L.L.C. Of the 50,000 shares owned by Domain Associates, 30,000 will be subject to our right of repurchase within 60 days of July 15, 2006. Also includes 60,000 shares Dr. Blair has the right to acquire pursuant to outstanding options which are immediately exercisable, all of which would be subject to our right of repurchase within 60 days of July 15, 2006. Dr. Blair is a member of our board of directors and a managing member of Domain Associates, L.L.C. and a managing member of One Palmer Square Associates VI, L.L.C., which is the general partner of Domain Partners VI, L.P. and DP VI Associates, L.P. Dr. Blair disclaims beneficial ownership of these shares except to the extent of his pecuniary interest therein.

(2) Includes 12,212,698 shares of common stock owned by ProQuest Investments III, L.P. and 50,000 shares of common stock owned by ProQuest Management LLC. Of the 50,000 shares owned by ProQuest Management, 20,000 will be subject to our right of repurchase within 60 days of July 15, 2006. Also includes 60,000 shares Dr. Schreiber has the right to acquire pursuant to outstanding options which are immediately exercisable, all of which would be subject to our right of repurchase within 60 days of July 15, 2006. Dr. Schreiber is a member of our board of directors and a managing member of ProQuest Management LLC and a managing member of ProQuest Associates III LLC, the ultimate general partner of ProQuest Investments III, L.P.

(3) Includes 100,000 shares Mr. Frazier has the right to acquire pursuant to outstanding options which are immediately exercisable, 95,000 of which would be subject to our right of repurchase within 60 days of July 15, 2006. The voting and disposition of the shares held by Frazier Healthcare V, LP is determined by FHM V, LLC, which is the general partner of FHM V, LP, which is the general partner of Frazier Healthcare V, LP. Mr. Frazier is a member of our board of directors and a managing member of FHM V, LLC. Mr. Frazier disclaims beneficial ownership of these shares except to the extent of his pecuniary interest therein.

footnotes continued on the following page

(4) Includes 7,782,747 shares of common stock owned by Versant Venture Capital II, L.P., 147,695 shares of common stock owned by Versant Affiliates Fund II-A, L.P. and 69,558 shares of common stock owned by Versant Side Fund II, L.P. Also includes 100,000 shares Mr. Atwood has the right to acquire pursuant to outstanding options which are immediately exercisable, 95,000 of which would be subject to our right of repurchase within 60 days of July 15, 2006. Mr. Atwood is a member of our board of directors and a managing member of Versant Ventures II, L.L.C., which is the general partner of each of these Versant funds. Mr. Atwood disclaims beneficial ownership of shares owned by these Versant funds except to the extent of his pecuniary interest therein.

(5) Includes 7,520,000 shares of common stock owned by Technology Partners Fund VII, L.P. and 480,000 shares of common stock owned by Technology Partners Affiliates VII, L.P.

(6) Includes 2,043,740 shares Mr. Schroeder has the right to acquire pursuant to outstanding options which are immediately exercisable, all of which would be subject to our right of repurchase within 60 days of July 15, 2006. Also includes 1,000,000 unvested shares acquired by Mr. Schroeder upon the early exercise of stock options, 625,000 of which will be subject to our right of repurchase within 60 days of July 15, 2006.

(7) Includes 705,303 shares Dr. Craig has the right to acquire pursuant to outstanding options which are immediately exercisable, 544,887 of which would be subject to our right of repurchase within 60 days of July 15, 2006.

(8) Includes 650,000 shares Dr. Heilbrunn has the right to acquire pursuant to outstanding options that are immediately exercisable, 533,334 of which would be subject to our right of repurchase within 60 days of July 15, 2006.

(9) Includes 44,000 shares acquired by Mr. LaRue upon exercise of stock options, 33,000 of which will be subject to our right of repurchase within 60 days of July 15, 2006. These 44,000 shares are held by a trust for the benefit of Mr. LaRue's family. Also includes 705,000 shares of common stock Mr. LaRue has the right to acquire pursuant to outstanding options that are immediately exercisable, all of which would be subject to our right of repurchase within 60 days of July 15, 2006.

(10) Includes 564,000 shares acquired by Mr. Lowenthal upon the exercise of stock options, 432,750 of which will be subject to our right of repurchase within 60 days of July 15, 2006. These 564,000 shares are held of record by a trust for the benefit of Mr. Lowenthal's family.

(11) Includes 300,000 shares Dr. Royal has the right to acquire pursuant to outstanding options which are immediately exercisable, all of which would be subject to our right of repurchase within 60 days of July 15, 2006.

(12) Includes 842,728 shares Mr. Socks has the right to acquire pursuant to outstanding options which are immediately exercisable, 792,728 of which would be subject to our right of repurchase within 60 days of July 15, 2006.

(13) Includes 2,293,740 shares acquired by Mr. Garner upon the exercise of stock options, 2,116,023 of which will be subject to our right of repurchase within 60 days of July 15, 2006. Of these 2,293,740 shares, 2,153,740 shares are held of record by a trust for which Mr. Garner serves as trustee and 140,000 shares are held by a limited liability company for which Mr. Garner is the sole member. Also includes 1,750,000 shares acquired by Mr. Garner as one of our co-founders. Of these 1,750,000 shares, 1,600,000 shares are held by a limited liability company for which Mr. Garner is the sole member and 150,000 shares are held by siblings of Mr. Garner. Also includes 206,383 shares acquired by a limited liability company for which Mr. Garner is the sole member.

footnotes continued on the following page

(14) Includes 100,000 shares Dr. Berman has the right to acquire pursuant to outstanding options which are immediately exercisable, 97,500 of which would be subject to our right of repurchase within 60 days of July 15, 2006.

(15) Includes 100,000 shares Mr. Twomey has the right to acquire pursuant to outstanding options which are immediately exercisable, all of which would be subject to our right of repurchase within 60 days of July 15, 2006.

(16) Includes 5,766,771 shares of common stock subject to outstanding options which are immediately exercisable, 5,427,189 of which would be subject to our right of repurchase within 60 days of July 15, 2006. Includes 4,001,740 shares of common stock acquired upon the exercise of options, 3,256,773 of which will be subject to our right of repurchase within 60 days of July 15, 2006.

footnotes continued on the following page

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

We describe below transactions and series of similar transactions, since our inception, to which we were a party or will be a party, in which:

- the amounts involved exceeded or will exceed $60,000; and
- a director, executive officer, holder of more than 5% of our common stock or any member of their immediate family had or will have a direct or indirect material interest.

We also describe below certain other transactions with our directors, executive officers and stockholders.

Preferred Stock Issuances

In July and August 2004, we issued in a private placement an aggregate of 8,085,108 shares of Series A-1 preferred stock at a per share price of $0.94, for aggregate consideration of $7,600,002. In June and September 2005, we issued in a private placement an aggregate of 17,675,347 shares of Series A-2 preferred stock at a per share price of $1.00, for aggregate consideration of $17,675,347. In March 2006, we issued in a private placement 53,870,000 shares of Series A-3 preferred stock at a per share price of $1.00, for aggregate consideration of $53,870,000.

The following table sets forth the aggregate number of these securities acquired by the listed directors, executive officers or holders of more than 5% of our common stock, or their affiliates:

	Shares of Preferred Stock		
Investor	**Series A-1**	**Series A-2**	**Series A-3**
Funds affiliated with Domain Associates, L.L.C.(1)	3,989,362	6,365,130	12,500,000
ProQuest Investments III, L.P.(2)	2,393,618	3,819,080	6,000,000
Frazier Healthcare V, LP(3)	—	—	10,000,000
Funds affiliated with Versant Ventures II, L.L.C.(4)	—	—	8,000,000
Funds affiliated with Technology Partners(5)	—	—	8,000,000
BB Biotech Ventures II, L.P.	—	3,000,000	4,000,000
Cam L. Garner(6)	106,383	—	100,000

(1) Includes 3,947,061 shares of Series A-1 preferred stock, 6,297,638 shares of Series A-2 preferred stock and 12,367,456 shares of Series A-3 preferred stock owned by Domain Partners VI, L.P., and 42,301 shares of Series A-1 preferred stock, 67,492 shares of Series A-2 preferred stock, and 132,544 shares of Series A-3 preferred stock owned by DP VI Associates, L.P. Dr. Blair, a member of our board of directors, is a managing member of Domain Associates, L.L.C. and a managing member of One Palmer Square Associates VI, L.L.C., which is the general partner of Domain Partners VI, L.P. and DP VI Associates, L.P.

(2) The voting and disposition of the shares held by ProQuest Investments III, L.P. is determined by ProQuest Associates III LLC, the ultimate general partner of ProQuest Investments III, L.P. Dr. Schreiber, a member of our board of directors, is a managing member of ProQuest Associates III LLC.

(3) The voting and disposition of the shares held by Frazier Healthcare V, LP is determined by FHM V, LLC, which is the general partner of FHM V, LP, which is the general partner of Frazier Healthcare V, LP. Mr. Frazier, a member of our board of directors, is a managing member of FHM V, LLC.

footnotes continued on the following page

(4) Includes 7,782,747 shares of Series A-3 preferred stock owned by Versant Venture Capital II, L.P., 147,695 shares of Series A-3 preferred stock owned by Versant Affiliates Fund II-A, L.P., and 69,558 shares of Series A-3 preferred stock owned by Versant Side Fund II, L.P. Mr. Atwood, a member of our board of directors, is a managing member of Versant Ventures II, L.L.C., which is the general partner of each of these Versant funds.

(5) Includes 7,520,000 shares of Series A-3 preferred stock owned by Technology Partners Fund VII, L.P. and 480,000 shares of Series A-3 preferred stock owned by Technology Partners Affiliates VII, L.P.

(6) Shares held by a limited liability company for which Mr. Garner is the sole member.

Common Stock Issuances

In July 2004, in connection with the inception of our company, we issued and sold a total of 4,500,000 shares of common stock for an aggregate consideration of $4,500. The price for the common stock was determined through negotiations between our board of directors and the purchasers based primarily on the early stage of our development at the time of the transaction. The following table sets forth the aggregate number of these securities acquired by the listed directors and executive officers or their affiliates:

Investor	Common Stock
Cam L. Garner(1)	1,750,000
Theodore R. Schroeder(2)	1,000,000
David A. Socks	850,000

(1) Of these 1,750,000 shares, 1,600,000 shares are held by a limited liability company for which Mr. Garner is the sole member and 150,000 shares are held by siblings of Mr. Garner.

(2) Shares held by a trust for the benefit of Mr. Schroeder's family.

Investor Rights Agreement

We have entered into an agreement with purchasers of our preferred stock that provides for certain rights relating to the registration of their shares of common stock issuable upon conversion of their preferred stock. The agreement also provides these rights to shares of common stock held by Messrs. Schroeder and Socks. These rights will continue following this offering and will terminate seven years following the completion of this offering, or for any particular holder with registration rights, at such time following this offering when all securities held by that stockholder subject to registration rights may be sold pursuant to Rule 144 under the Securities Act. All holders of our preferred stock are parties to this agreement. See "Description of Capital Stock — Registration Rights" for additional information.

Voting Agreement

Pursuant to a voting agreement originally entered into in July 2004 and most recently amended in March 2006 by and among us and certain of our stockholders, the following directors were each elected to serve as members on our board of directors and, as of the date of this prospectus, continue to so serve: Drs. Berman, Blair and Schreiber and Messrs. Atwood, Frazier, Garner and Schroeder. Pursuant to the voting agreement, Mr. Schroeder, as our president and chief executive officer, and Mr. Garner were initially selected to serve on our board of directors as representatives of our common stock, as designated by a majority of our common stockholders. Dr. Schreiber and Messrs. Atwood, Blair and Frazier were initially selected to serve on our board of directors as representatives of our preferred stock, as designated by ProQuest Investments III, L.P., Versant Venture Capital II, L.P., Domain Partners VI, L.P. and Frazier Healthcare V, LP, respectively. Dr. Berman was selected to serve on our board of directors as a representative of our common stock and preferred stock, as designated by a majority of our common and preferred stockholders.

The voting agreement will terminate upon completion of this offering, and members previously elected to our board of directors pursuant to this agreement will continue to serve as directors until their successors are duly elected by holders of our common stock.

Stock Option Grants

Certain stock option grants to our directors and executive officers and related option grant policies are described in this prospectus under the captions "Management — Director Compensation" and "Management — Option Grants in Last Fiscal Year." Prior to this offering, we granted the following options to certain non-employee directors:

- In November 2004, we granted to Dr. Schreiber an option to purchase 40,000 shares of our common stock at an exercise price of $0.10 per share, vesting over 16 calendar quarters from September 2004.
- In November 2005, we granted to Dr. Blair an option to purchase 40,000 shares of our common stock at an exercise price of $0.10 per share, vesting over 16 calendar quarters from September 2005.
- In November 2005, we granted to each of Dr. Schreiber and Mr. Garner an option to purchase 10,000 shares of our common stock at an exercise price of $0.10 per share, vesting over four calendar quarters from September 2005.
- In December 2005, we granted to Mr. Garner an option to purchase 1,362,000 shares of our common stock at an exercise price of $0.10 per share, vesting over four years from December 2005.
- In May 2006, we granted to Mr. Garner an option to purchase 781,740 shares of our common stock at an exercise price of $0.34 per share, vesting over four years from February 2006.
- In May 2006, we granted to Dr. Berman an option to purchase 40,000 shares of our common stock at an exercise price of $0.34 per share, vesting over 16 calendar quarters from April 2006.
- In May 2006, we granted to each of Messrs. Atwood and Frazier an option to purchase 40,000 shares of our common stock at an exercise price of $0.34 per share, vesting over 16 calendar quarters from March 2006.
- In July 2006, we granted to Mr. Twomey an option to purchase 100,000 shares of our common stock at an exercise price of $0.80 per share, vesting over 9 calendar quarters from July 2006.
- In July 2006, we granted to each of Mr. Atwood, Drs. Berman and Blair, Mr. Frazier and Dr. Schreiber an option to purchase 60,000 shares of our common stock at an exercise price of $0.80 per share, vesting over 12 calendar quarters from July 2006.

In addition, we granted to each of Messrs. Craig, Heilbrunn and Socks an option in May 2006 to purchase 355,303, 300,000 and 742,728, respectively, shares of our common stock at an exercise price of $0.34 per share. In June 2006, we granted to each of Dr. Royal and Mr. LaRue an option to purchase 300,000 and 705,000, respectively, shares of our common stock at an exercise price of $0.80 per share. Each of these options vests with respect to 25% of the shares subject to the option one year after the applicable vesting commencement date and monthly thereafter over the following three years.

Employment Agreements

We have entered into employment agreements with Theodore R. Schroeder, our President and Chief Executive Officer, William S. Craig, Ph.D., our Senior Vice President, Pharmaceutical Development and Manufacturing, Kenneth R. Heilbrunn, M.D., our Senior Vice President, Clinical Development,

William R. LaRue, our Senior Vice President, Chief Financial Officer, Treasurer and Secretary, Richard E. Lowenthal, our Vice President, Regulatory Affairs and Quality Assurance, Mike A. Royal, M.D., J.D. our Vice President, Clinical Development, Analgesics, and David A. Socks, our Vice President, Business Development. For further information, see "Management — Employment Agreements."

Indemnification of Officers and Directors

Our restated certificate of incorporation and our amended and restated bylaws provide that we will indemnify each of our directors and officers to the fullest extent permitted by the Delaware General Corporation Law. Further, we have entered into indemnification agreements with each of our directors and officers, and we have purchased a policy of directors' and officers' liability insurance that insures our directors and officers against the cost of defense, settlement or payment of a judgment under certain circumstances. For further information, see "Management — Limitations of Liability and Indemnification Matters."

Consulting Agreement with Mr. Cam L. Garner

From September 2004 through August 2005, we paid Mr. Garner $5,000 per month plus qualified business expenses for his services as chairman of our board of directors under the terms of a consulting agreement between us and a limited liability company affiliated with Mr. Garner. The agreement expired on August 31, 2005.

Other Transactions

During 2004, certain investors advanced $500,000 for pre-operating expenses and an exclusivity fee due in connection with the Collaboration and License Agreement between us and Migenix. The advance was repaid with shares of our Series A-1 preferred stock.

DESCRIPTION OF CAPITAL STOCK

Upon completion of this offering and filing of our amended and restated certificate of incorporation, our authorized capital stock will consist of 100,000,000 shares of common stock, $0.0001 par value per share, and 10,000,000 shares of preferred stock, $0.0001 par value per share. The following description summarizes some of the terms of our capital stock. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description you should refer to our amended and restated certificate of incorporation and amended and restated bylaws, copies of which have been filed as exhibits to the registration statement of which the prospectus is a part.

Common Stock

On March 31, 2006, there were 7,770,000 shares of common stock outstanding, held of record by 15 stockholders. This amount excludes our outstanding shares of preferred stock as of March 31, 2006 which will convert into 79,630,455 shares of common stock upon completion of the offering. After this offering, there will be shares of our common stock outstanding, or shares if the underwriters exercise their over-allotment option in full.

The holders of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders, including the election of directors, and do not have cumulative voting rights. Accordingly, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they so choose. Subject to preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive ratably those dividends, if any, as may be declared by the board of directors out of legally available funds. Upon our liquidation, dissolution or winding up, the holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities of our company, subject to the prior rights of any preferred stock then outstanding. Holders of common stock have no preemptive or conversion rights or other subscription rights and there are no redemption or sinking funds provisions applicable to the common stock. All outstanding shares of common stock are, and the common stock to be outstanding upon completion of this offering will be, fully paid and nonassessable.

Preferred Stock

On March 31, 2006, there were 79,630,455 shares of preferred stock outstanding, held of record by 32 stockholders. Our stockholders have agreed to convert their shares of preferred stock to common stock in connection with the completion of this offering. Accordingly, upon the completion of this offering, all outstanding shares of preferred stock as of March 31, 2006 will automatically convert into 79,630,455 shares of our common stock.

Following the offering, our board of directors will have the authority, without any action by the stockholders, to issue from time to time preferred stock in one or more series and to fix the number of shares, designations, preferences, powers, and relative, participating, optional or other special rights and the qualifications or restrictions thereof. The preferences, powers, rights and restrictions of different series of preferred stock may differ with respect to dividend rates, amounts payable on liquidation, voting rights, conversion rights, redemption provisions, sinking fund provisions, and purchase funds and other matters. The issuance of preferred stock could decrease the amount of earnings and assets available for distribution to holders of common stock or adversely affect the rights and powers, including voting rights, of the holders of common stock, and may have the effect of delaying, deferring or preventing a change in control of our company. The existence of authorized but unissued preferred stock may enable the board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise. For example, if in the due exercise of its fiduciary obligations, the board of directors were to determine that a takeover proposal is not in our best interests, the board of directors could cause shares of preferred stock to be issued without stockholder approval in one or more

private offerings or other transactions that might dilute the voting or other rights of the proposed acquirer or insurgent stockholder or stockholder group.

Warrants

In February 2006, in connection with our loan and security agreement, we issued a warrant to purchase up to an aggregate of 192,500 shares of our Series A-2 preferred stock to each of Silicon Valley Bank and Oxford Finance Corporation. These warrants are immediately exercisable at an exercise price of $1.00 per share and, excluding certain mergers or acquisitions, expire upon the later of ten years from the date of grant, which is February 17, 2016, or five years after the closing of this offering. These warrants will become exercisable for an aggregate of 385,000 shares of our common stock, at an exercise price of $1.00 per share, upon completion of this offering.

Each of these warrants has a net exercise provision under which its holder may, in lieu of payment of the exercise price in cash, surrender the warrant and receive, after this offering, a net amount of shares of our common stock based on the fair market value of our common stock at the time of exercise of the warrant after deduction of the aggregate exercise price. Each of these warrants for common stock also contains provisions for the adjustment of the exercise price and the aggregate number of shares issuable upon the exercise of the warrant in the event of stock dividends, stock splits, reorganizations and reclassifications and consolidations.

Registration Rights

After this offering, the holders of approximately 83,555,455 shares of common stock and the holders of warrants to purchase 385,000 shares of common stock will be entitled to rights with respect to the registration of these shares under the Securities Act. These shares are referred to as registrable securities. Under the terms of the agreement between us and the holders of the registrable securities, if we propose to register any of our securities under the Securities Act, these holders are entitled to notice of such registration and are entitled to include their shares of registrable securities in our registration. Certain of these holders are also entitled to demand registration, pursuant to which they may require us to use our best efforts to register their registrable securities under the Securities Act at our expense, up to a maximum of two such registrations. Holders of registrable securities may also require us to file an unlimited number of additional registration statements on Form S-3 at our expense so long as the holders propose to sell registrable securities of at least $1.0 million and we have not already filed two such registration statements on Form S-3 in the previous twelve months.

All of these registration rights are subject to certain conditions and limitations, among them the right of the underwriters of an offering to limit the number of shares included in such registration and our right not to effect a requested registration 60 days prior to or 180 days after an offering of our securities, including this offering. These registration rights have been waived by all of the holders thereof with respect to this offering.

Anti-Takeover Effects of Provisions of Our Amended and Restated Certificate of Incorporation, Our Amended and Restated Bylaws and Delaware Law

Some provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws contain provisions that could make the following transactions more difficult: acquisition of us by means of a tender offer; acquisition of us by means of a proxy contest or otherwise; or removal of our incumbent officers and directors. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in our best interests, including transactions that might result in a premium over the market price for our shares.

These provisions, summarized below, are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of increased

protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

Undesignated Preferred Stock

The ability to authorize undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.

Stockholder Meetings

Our charter documents provide that a special meeting of stockholders may be called only by our chairman of the board, chief executive officer or president, or by a resolution adopted by a majority of our board of directors.

Requirements for Advance Notification of Stockholder Nominations and Proposals

Our amended and restated bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors.

Elimination of Stockholder Action by Written Consent

Our amended and restated certificate of incorporation eliminates the right of stockholders to act by written consent without a meeting.

Election and Removal of Directors

Our board of directors is divided into three classes. The directors in each class will serve for a three-year term, one class being elected each year by our stockholders. For more information on the classified board, see “Management — Board of Directors.” This system of electing and removing directors may tend to discourage a third party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of the directors.

Delaware Anti-Takeover Statute

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits persons deemed “interested stockholders” from engaging in a “business combination” with a publicly held Delaware corporation for three years following the date these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies. Generally, an “interested stockholder” is a person who, together with affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation’s voting stock. Generally, a “business combination” includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the board of directors.

Amendment of Charter Provisions

The amendment of any of the above provisions, except for the provision making it possible for our board of directors to issue preferred stock, would require approval by holders of at least 66²/₃% of our then outstanding common stock.

The provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws could have the effect of discouraging others from attempting hostile

takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in our management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is , located at .

Nasdaq Global Market Listing

We have applied to have our common stock approved for quotation on the Nasdaq Global Market under the symbol “CADX.”

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock. Future sales of our common stock in the public market, or the availability of such shares for sale in the public market, could adversely affect market prices prevailing from time to time. As described below, only a limited number of shares will be available for sale shortly after this offering due to contractual and legal restrictions on resale. Nevertheless, sales of our common stock in the public market after such restrictions lapse, or the perception that those sales may occur, could adversely affect the prevailing market price at such time and our ability to raise equity capital in the future.

Sales of Restricted Shares

Upon the closing of this offering, we will have outstanding an aggregate of approximately shares of common stock. Of these shares, the shares of common stock to be sold in this offering will be freely tradable without restriction or further registration under the Securities Act, unless the shares are held by any of our "affiliates" as such term is defined in Rule 144 of the Securities Act. All remaining shares of common stock held by existing stockholders were issued and sold by us in private transactions and are eligible for public sale only if registered under the Securities Act or if they qualify for an exemption from registration under Rule 144, Rule 144(k) or Rule 701 under the Securities Act, which rules are summarized below.

As a result of the lock-up agreements described below and the provisions of Rule 144, Rule 144(k) and Rule 701 under the Securities Act, the shares of our common stock (excluding the shares sold in this offering) that will be available for sale in the public market are as follows:

- shares will be eligible for sale on the date of this prospectus;
- shares will be eligible for sale upon the expiration of the lock-up agreements, as more particularly and except as described below, beginning 180 days after the date of this prospectus;
- shares will be eligible for sale, upon exercise of vested options, upon the expiration of the lock-up agreements, as more particularly and except as described below, beginning 180 days after the date of this prospectus; and
- the remaining restricted shares will be eligible for sale from time to time thereafter upon expiration of their respective one-year holding periods.

Lock-up Agreements

We, each of our directors and executive officers, and all of the holders of our common stock and holders of securities exercisable for or convertible into shares of our common stock have each agreed not to sell or otherwise dispose of, directly or indirectly any shares of our common stock or any securities convertible into or exercisable or exchangeable for shares of our common stock for a period of not less than 180 days from the date of this prospectus without the prior written consent of Merrill Lynch & Co.

Merrill Lynch, in its sole discretion, at any time or from time to time and without notice, may release for sale in the public market all or any portion of the shares restricted by the terms of the lock-up agreements. The lock-up restrictions will not apply to transactions relating to common shares acquired in open market transactions after the closing of this offering provided that no filing by the transferor under Rule 144 of the Securities Act or Section 16 of the Exchange Act is required or will be voluntarily made in connection with such transactions. The lock-up restrictions also will not apply to certain transfers not involving a disposition for value, provided that the recipient agrees to be bound by these lock-up restrictions and provided that no filing by the transferor under Rule 144 of the Securities Act or Section 16 of the Exchange Act is required or will be voluntarily made in connection with such transfers.

Rule 144

In general, under Rule 144 as currently in effect, beginning 90 days after the effective date of this offering, a person (or persons whose shares are required to be aggregated) who has beneficially owned restricted securities for at least one year, including the holding period of any prior owner other than one of our affiliates, is entitled to sell a number of restricted shares within any three-month period that does not exceed the greater of:

- one percent of the number of common shares then outstanding, which will equal shares immediately after this offering (assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options or warrants); or
- the average weekly trading volume of our common shares on the Nasdaq Global Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Sales of restricted shares under Rule 144 are also subject to requirements regarding the manner of sale, notice and the availability of current public information about us. Rule 144 also provides that affiliates that sell our common shares that are not restricted shares must nonetheless comply with the same restrictions applicable to restricted shares, other than the holding period requirement.

Rule 144(k)

Under Rule 144(k), a person who is not deemed to have been our affiliate at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least two years, including the holding period of any prior owner other than an affiliate, may sell those shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144.

Rule 701

In general, under Rule 701 as currently in effect, any of our employees, directors, officers, consultants or advisors who acquires common stock from us in connection with a compensatory stock or option plan or other written agreement before the effective date of this offering (to the extent such common stock is not subject to a lock-up agreement) is entitled to resell such shares 90 days after the effective date of this offering in reliance on Rule 144. The SEC has indicated that Rule 701 will apply to typical stock options granted by an issuer before it becomes subject to the reporting requirements of the Exchange Act, along with the shares acquired upon exercise of such options, including exercises after the date of this prospectus. Securities issued in reliance on Rule 701 are restricted securities and, subject to the lock-up agreements described above, beginning 90 days after the date of this prospectus, may be sold by persons other than affiliates, as defined in Rule 144, subject only to the manner of sale provisions of Rule 144 and by affiliates under Rule 144 without compliance with its one-year minimum holding period requirement.

Stock Plans

We intend to file one or more registration statements on Form S-8 under the Securities Act to register shares of our common stock issued or reserved for issuance under our option and employee stock purchase plans. The first such registration statement is expected to be filed soon after the date of this prospectus and will automatically become effective upon filing with the Securities and Exchange Commission. Accordingly, shares registered under such registration statement will be available for sale in the open market, unless such shares are subject to vesting restrictions with us or the lock-up restrictions described above.

Warrants

As of March 31, 2006, warrants to purchase a total of 385,000 shares of our Series A-2 preferred stock at a price of $1.00 per share were outstanding. Upon completion of this offering, these warrants will

become exercisable for a total of 385,000 shares of our common stock at a price of $1.00 per share. See “Description of Capital Stock — Warrants.” All of these common shares are subject to the terms of the lock-up agreements with the underwriters.

Stock Options

As of March 31, 2006, options to purchase a total of 1,017,000 shares of our common stock were outstanding, of which 842,707 were exercisable. All of the shares subject to options are subject to the terms of the lock-up agreements with the underwriters. An additional 5,713,000 shares of common stock were available for future option grants under our stock plan.

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS TO NON-U.S. HOLDERS

This section summarizes certain material U.S. federal income tax considerations relating to the ownership and disposition of common stock to non-U.S. holders. This summary does not provide a complete analysis of all potential tax considerations. The information provided below is based on existing authorities. These authorities may change, or the IRS might interpret the existing authorities differently. In either case, the tax considerations of owning or disposing of common stock could differ from those described below. For purposes of this summary, a "non-U.S. holder" is any beneficial owner of our common stock other than a citizen or resident of the United States, a corporation or a partnership organized under the laws of the United States or any state, a trust that is (i) subject to the primary supervision of a U.S. court and the control of one of more U.S. persons or (ii) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person, or an estate whose income is subject to U.S. income tax regardless of source. If a partnership or other flow-through entity is a beneficial owner of common stock, the tax treatment of a partner in the partnership or an owner of the entity will depend upon the status of the partner or other owner and the activities of the partnership or other entity. Accordingly, partnerships and flow-through entities that hold our common stock and partners or owners of such partnerships or entities, as applicable, should consult their own tax advisors. The summary generally does not address tax considerations that may be relevant to particular investors because of their specific circumstances, or because they are subject to special rules, including, without limitation, banks, insurance companies, or other financial institutions; persons subject to the alternative minimum tax; tax exempt organizations; dealers in securities or currencies; traders in securities that elect to use a mark to market method of accounting for their securities holdings; persons that own, or are deemed to own, more than five percent of our company (except to the extent specifically set forth below); certain former citizens or long term residents of the United States; persons who hold our common stock as a position in a hedging transaction, "straddle," "conversion transaction" or other risk reduction transaction; or persons deemed to sell our common stock under the constructive sale provisions of the Internal Revenue Code. Finally, the summary does not describe the effects of any applicable foreign, state or local laws.

INVESTORS CONSIDERING THE PURCHASE OF COMMON STOCK SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE APPLICATION OF THE U.S. FEDERAL INCOME AND ESTATE TAX LAWS TO THEIR PARTICULAR SITUATIONS AND THE CONSEQUENCES OF FOREIGN, STATE, OR LOCAL LAWS, AND TAX TREATIES.

Dividends

We have not made any distributions on our common stock, and we do not plan to make any distributions for the foreseeable future. However, if we do make distributions on our common stock, those payments will constitute dividends for U.S. tax purposes to the extent paid from our current and accumulated earnings and profits, as determined under U.S. federal income tax principles. To the extent those distributions exceed our current and accumulated earnings and profits, they will constitute a return of capital and will first reduce a non-U.S. holder's basis in our common stock, but not below zero, and then will be treated as gain from the sale of stock. Any dividend paid to a non-U.S. holder on our common stock will generally be subject to U.S. withholding tax at a 30 percent rate. The withholding tax might not apply, however, or might apply at a reduced rate, under the terms of an applicable income tax treaty between the United States and the non-U.S. holder's country of residence. A non-U.S. holder must demonstrate its entitlement to treaty benefits by certifying its nonresident status. A non-U.S. holder can meet this certification requirement by providing a Form W-8BEN or appropriate substitute form to us or our paying agent. If the holder holds the stock through a financial institution or other agent acting on the holder's behalf, the holder will be required to provide appropriate documentation to such financial institution or the agent. The financial institution or the agent will then be required to provide certification to us or our paying agent, either directly or through other intermediaries. For payments made to a foreign partnership or other flow-through entity, the certification requirements generally apply to the partners or other owners rather than to the partnership or other entity, and the partnership or other entity must provide the partners' or other owners' documentation to us or our paying agent. Special rules, described

below, apply if a dividend is effectively connected with a U.S. trade or business conducted by the non-U.S. holder.

Sale of Common Stock

Non-U.S. holders will generally not be subject to U.S. federal income tax on any gains realized on the sale, exchange, or other disposition of common stock. This general rule, however, is subject to several exceptions. For example, the gain would be subject to U.S. federal income tax if:

- the gain is effectively connected with the conduct by the non-U.S. holder of a U.S. trade or business (in which case the special rules described below apply);
- the non-U.S. holder is an individual who holds our common stock as a capital asset (generally, an asset held for investment purposes) and who is present in the U.S. for a period or periods aggregating 183 days or more during the calendar year in which the sale or disposition occurs and certain other conditions are met;
- the non-U.S. holder was a citizen or resident of the United States and thus is subject to special rules that apply to expatriates; or
- the rules of the Foreign Investment in Real Property Tax Act, or FIRPTA (described below) treat the gain as effectively connected with a U.S. trade or business.

An individual non-U.S. holder described in the second bullet point immediately above will be subject to a flat 30% tax on the gain derived from the sale, which may be offset by U.S. source capital losses, even though the individual is not considered a resident of the U.S. If a non-U.S. holder is described in the third bullet point above, the non-U.S. holder should consult its own tax advisor to determine the U.S. federal, state, local and other tax consequences that may be relevant to such holder.

The FIRPTA rules may apply to a sale, exchange or other disposition of common stock if we are, or were within five years before the transaction, a "U.S. real property holding corporation," or a USRPHC. In general, we would be a USRPHC if interests in U.S. real estate comprised most of our assets. We do not believe that we are a USRPHC or that we will become one in the future. If we are or become a USRPHC, so long as our common stock is regularly traded on an established securities market, only a non-U.S. holder who, actually or constructively, holds or held (at any time during the shorter of the five year period preceding the date of disposition or the holder's holding period) more than 5% of our common stock will be subject to U.S. federal income tax on the disposition of our common stock.

Dividends or Gain Effectively Connected With a U.S. Trade or Business

If any dividend on common stock, or gain from the sale, exchange or other disposition of common stock, is effectively connected with a U.S. trade or business conducted by the non-U.S. holder, then the dividend or gain will be subject to U.S. federal income tax at the regular graduated rates. If the non-U.S. holder is eligible for the benefits of a tax treaty between the United States and the holder's country of residence, any "effectively connected" dividend or gain would generally be subject to U.S. federal income tax only if it is also attributable to a permanent establishment or fixed base maintained by the holder in the United States. Payments of dividends that are effectively connected with a U.S. trade or business, and therefore included in the gross income of a non-U.S. holder, will not be subject to the 30 percent withholding tax. To claim exemption from withholding, the holder must certify its qualification, which can be done by filing a Form W-8ECI. If the non-U.S. holder is a corporation, that portion of its earnings and profits that is effectively connected with its U.S. trade or business would generally be subject to a "branch profits tax." The branch profits tax rate is generally 30 percent, although an applicable income tax treaty might provide for a lower rate.

Backup Withholding and Information Reporting

The Internal Revenue Code and the Treasury regulations require those who make specified payments to report the payments to the IRS. Among the specified payments are dividends and proceeds paid by brokers to their customers. The required information returns enable the IRS to determine whether the recipient properly included the payments in income. This reporting regime is reinforced by "backup withholding" rules. These rules require the payors to withhold tax from payments subject to information reporting if the recipient fails to cooperate with the reporting regime by failing to provide his taxpayer identification number to the payor, furnishing an incorrect identification number, or repeatedly failing to report interest or dividends on his returns. The withholding tax rate is currently 28 percent. The backup withholding rules do not apply to payments to certain exempt holders, including corporations, whether domestic or foreign, who establish their exempt status.

Payments to non-U.S. holders of dividends on common stock will generally not be subject to backup withholding, and payments of proceeds made to non-U.S. holders by a broker upon a sale of common stock will not be subject to information reporting or backup withholding, in each case so long as the non-U.S. holder certifies its nonresident status. Some of the common means of certifying nonresident status are described under "— Dividends." We must report annually to the IRS any dividends paid to each non-U.S. holder and the tax withheld, if any, with respect to such dividends. Copies of these reports may be made available to tax authorities in the country where the non-U.S. holder resides.

Any amounts withheld from a payment to a holder of common stock under the backup withholding rules can be credited against any U.S. federal income tax liability of the holder.

THE PRECEDING DISCUSSION OF U.S. FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION ONLY. IT IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE PARTICULAR U.S. FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF PURCHASING, HOLDING, AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAWS.

UNDERWRITING

Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Bank Securities Inc., Pacific Growth Equities, LLC and JMP Securities LLC are acting as representatives of each of the underwriters named below. Subject to the terms and conditions set forth in a purchase agreement among us and the underwriters, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the number of shares of common stock set forth opposite its name below.

Underwriter	Number of Shares
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Deutsche Bank Securities Inc.	
Pacific Growth Equities, LLC	
JMP Securities LLC	
Total	

Subject to the terms and conditions set forth in the purchase agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the purchase agreement if any of these shares are purchased. If an underwriter defaults, the purchase agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the purchase agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the purchase agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Commissions and Discounts

The representatives have advised us that the underwriters propose initially to offer the shares to the public at the initial public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of $ per share. The underwriters may allow, and the dealers may reallow, a discount not in excess of $ per share to other dealers. After the initial public offering, the public offering price, concession and discount may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their overallotment option.

	Per Share	Without Option	With Option
Public offering price	$	$	$
Underwriting discount	$	$	$
Proceeds, before expenses, to us	$	$	$

The expenses of the offering, not including the underwriting discount, are estimated at $ and are payable by us.

Overallotment Option

We have granted an option to the underwriters to purchase up to additional shares at the public offering price, less the underwriting discount. The underwriters may exercise this option for 30 days from the date of this prospectus solely to cover any overallotments. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the purchase agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

No Sales of Similar Securities

We and our officers, directors, stockholders, warrant holders and option holders, who hold all of our shares of common stock, on a fully diluted basis, have agreed, subject to certain exceptions, not to sell or transfer any common stock or securities convertible into, exchangeable for, exercisable for, or repayable with common stock, for 180 days after the date of this prospectus without first obtaining the written consent of Merrill Lynch. Specifically, we and these other individuals have agreed not to directly or indirectly

- offer, pledge, sell or contract to sell any common stock,
- sell any option or contract to purchase any common stock,
- purchase any option or contract to sell any common stock,
- grant any option, right or warrant for the sale of any common stock,
- lend or otherwise dispose of or transfer any common stock,
- request or demand that we file a registration statement related to the common stock, or
- enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any common stock, whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

This lockup provision applies to common stock and to securities convertible into or exchangeable or exercisable for or repayable with common stock. It also applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition.

Quotation on the Nasdaq Global Market

We expect the shares to be approved for quotation on the Nasdaq Global Market, subject to notice of issuance, under the symbol "CADX."

Before this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations among us and the representatives. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are

- the valuation multiples of publicly traded companies that the representatives believe to be comparable to us,
- our financial information,
- the history of, and the prospects for, our company and the industry in which we compete,
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenues,
- the present state of our development, and

- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

The underwriters do not expect to sell more than 5% of the shares in the aggregate to accounts over which they exercise discretionary authority.

Price Stabilization, Short Positions and Penalty Bids

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representatives may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

In connection with the offering, the underwriters may purchase and sell our common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. “Covered” short sales are sales made in an amount not greater than the underwriters’ option to purchase additional shares in the offering. The underwriters may close out any covered short position by either exercising their overallotment option or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the overallotment option. “Naked” short sales are sales in excess of the overallotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of common stock made by the underwriters in the open market prior to the completion of the offering.

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.

Similar to other purchase transactions, the underwriters’ purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the representatives will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Electronic Offer, Sale and Distribution of Shares

A prospectus in electronic format will be made available on the websites maintained by one or more of the underwriters of this offering. Other than the electronic prospectus, the information on the websites of the underwriters is not part of this prospectus. 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 to underwriters that may make Internet distributions on the same basis as other allocations.

Other Relationships

Some of the underwriters and their affiliates have provided from time to time, and may provide in the future, investment and commercial banking and financial advisory services to us in the ordinary course of business, for which they have received and may continue to receive customary fees and commissions.

LEGAL MATTERS

The validity of our common stock offered by this prospectus will be passed upon for us by Latham & Watkins LLP, San Diego, California. Latham & Watkins LLP and certain attorneys and investment funds affiliated with the firm collectively own an aggregate of 90,000 shares of our preferred stock, which will convert into an aggregate of 90,000 shares of our common stock upon the completion of this offering. Certain legal matters in connection with this offering will be passed upon for the underwriters by Heller Ehrman LLP, San Diego, California.

EXPERTS

Ernst & Young LLP, independent registered public accounting firm, has audited our financial statements as of December 31, 2004 and 2005 and for the period from May 26, 2004 (inception) through December 31, 2004 and for the year ended December 31, 2005 as set forth in their report. We have included our financial statements in this prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the Securities and Exchange Commission a registration statement on Form S-1 under the Securities Act of 1933, as amended, with respect to the shares of our common stock offered hereby. This prospectus does not contain all of the information set forth in the registration statement and the exhibits and schedules thereto. Some items are omitted in accordance with the rules and regulations of the SEC. For further information with respect to us and the common stock offered hereby, we refer you to the registration statement and the exhibits and schedules filed therewith. Statements contained in this prospectus as to the contents of any contract, agreement or any other document are summaries of the material terms of this contract, agreement or other document. With respect to each of these contracts, agreements or other documents filed as an exhibit to the registration statement, reference is made to the exhibits for a more complete description of the matter involved. A copy of the registration statement, and the exhibits and schedules thereto, may be inspected without charge at the public reference facilities maintained by the SEC at 100 F Street NE, Washington, D.C. 20549. Copies of these materials may be obtained from the Public Reference Section of the SEC at 100 F Street NE, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facility. The SEC maintains a web site that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address of the SEC's website is http://www.sec.gov.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of
Cadence Pharmaceuticals, Inc.

We have audited the accompanying balance sheets of Cadence Pharmaceuticals, Inc. (a development stage company) as of December 31, 2004 and 2005 and the related statements of operations, stockholders' equity and cash flows for the period from May 26, 2004 (inception) through December 31, 2004 and for the year ended December 31, 2005. 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 in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also 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 our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Cadence Pharmaceuticals, Inc. (a development stage company) at December 31, 2004 and 2005 and the results of its operations and its cash flows for the period from May 26, 2004 (inception) through December 31, 2004 and for the year ended December 31, 2005 in conformity with generally accepted accounting principles in the United States.

/s/ Ernst & Young LLP

San Diego, California
April 21, 2006

Cadence Pharmaceuticals, Inc.
(a development stage company)

BALANCE SHEETS

	December 31, 2004	December 31, 2005	March 31, 2006 (Unaudited)	Pro Forma Stockholders' Equity at March 31, 2006 (Unaudited)
ASSETS				
Current assets:				
Cash and cash equivalents	$ 4,271,229	$ 8,025,285	$ 40,617,049	
Securities available-for-sale	—	7,000,000	—	
Prepaid expenses and other current assets	3,854	526,173	625,348	
Total current assets	4,275,083	15,551,458	41,242,397	
Property and equipment, net	108,735	117,740	154,811	
Other assets	152,159	100,000	425,006	
Total assets	$ 4,535,977	$ 15,769,198	$ 41,822,214	
LIABILITIES AND STOCKHOLDERS' EQUITY				
Current liabilities:				
Accounts payable	$ 68,509	$ 715,781	$ 828,607	
Accrued liabilities	45,965	430,220	419,905	
Total current liabilities	114,474	1,146,001	1,248,512	
Commitments				
Stockholders' equity:				
Preferred stock, $0.0001 par value:				
Series A-1 convertible preferred stock, 8,085,108 shares authorized, issued and outstanding at December 31, 2004 and 2005 and March 31, 2006 (unaudited); aggregate liquidation preference of $7,600,002; no shares issued and outstanding pro forma (unaudited)	809	809	809	$ —
Series A-2 convertible preferred stock, 12,900,001 shares, 17,675,347 shares and 18,060,347 shares authorized at December 31, 2004 and 2005 and March 31, 2006 (unaudited), respectively; no shares, 17,675,347 shares and 17,675,347 shares issued and outstanding at December 31, 2004 and 2005 and March 31, 2006 (unaudited), respectively; aggregate liquidation preference of $17,675,347; no shares issued and outstanding pro forma (unaudited)	—	1,767	1,767	—
Series A-3 convertible preferred stock, 53,870,000 shares authorized at March 31, 2006 (unaudited); 53,870,000 shares issued and outstanding at March 31, 2006 (unaudited); aggregate liquidation preference of $53,870,000; no shares issued and outstanding pro forma (unaudited)	—	—	5,387	—
Common stock, $0.0001 par value; 33,000,000 shares, 40,000,000 shares and 100,000,000 shares authorized at December 31, 2004 and 2005 and March 31, 2006 (unaudited), respectively; 4,680,000 shares, 7,616,000 shares and 7,770,000 shares issued and outstanding at December 31, 2004 and 2005 and March 31, 2006 (unaudited), respectively; 87,400,455 shares issued and outstanding pro forma (unaudited)	468	762	777	8,740
Additional paid-in capital	7,562,463	25,472,308	79,570,891	79,570,891
Stock subscription receivable	—	(187,600)	—	—
Deficit accumulated during the development stage	(3,142,237)	(10,664,849)	(39,005,929)	(39,005,929)
Total stockholders' equity	4,421,503	14,623,197	40,573,702	$ 40,573,702
Total liabilities and stockholders' equity	$ 4,535,977	$ 15,769,198	$ 41,822,214	

See accompanying notes.

Cadence Pharmaceuticals, Inc.
(a development stage company)

STATEMENTS OF OPERATIONS

	Period from May 26, 2004 (Inception) Through December 31, 2004	Year Ended December 31, 2005	Three Months Ended March 31,		Period from May 26, 2004 (Inception) Through March 31, 2006
			2005 (Unaudited)	2006 (Unaudited)	(Unaudited)
Operating expenses:					
Research and development	$ 2,233,357	$ 6,126,226	$ 577,013	$ 27,835,246	$ 36,194,829
Marketing	41,114	240,361	130,450	95,758	377,233
General and administrative	877,146	1,411,810	262,829	537,349	2,826,305
Total operating expenses	3,151,617	7,778,397	970,292	28,468,353	39,398,367
Loss from operations	(3,151,617)	(7,778,397)	(970,292)	(28,468,353)	(39,398,367)
Other income (expense):					
Interest income	9,380	255,785	7,634	143,939	409,104
Interest expense	—	—	—	(16,666)	(16,666)
Total other income	9,380	255,785	7,634	127,273	392,438
Net loss	$ (3,142,237)	$ (7,522,612)	$ (962,658)	$ (28,341,080)	$ (39,005,929)
Basic and diluted net loss per share	$ (0.86)	$ (1.63)	$ (0.21)	$ (5.79)	
Shares used to compute basic and diluted net loss per share	3,658,356	4,623,517	4,519,194	4,895,011	
Pro forma basic and diluted net loss per share		$ (0.36)		$ (0.87)	
Shares used to compute pro forma basic and diluted net loss per share		20,648,526		32,451,133	

See accompanying notes.

Cadence Pharmaceuticals, Inc.
(a development stage company)

STATEMENTS OF STOCKHOLDERS' EQUITY
For the Period from May 26, 2004 (inception) through March 31, 2006

	Series A-1 Convertible Preferred Stock		Series A-2 Convertible Preferred Stock		Series A-3 Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Stock Subscription Receivable	Deficit Accumulated During the Development Stage	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount				
Issuance of common stock to founders for cash at $0.001 per share in July	—	$ —	—	$ —	—	$ —	4,500,000	$ 450	$ 4,050	$ —	$ —	$ 4,500
Exercise of common stock options for cash at $0.10 per share in December	—	—	—	—	—	—	180,000	18	17,982	—	—	18,000
Issuance of Series A-1 preferred stock for cash at $0.94 per share, net of $59,573 of offering costs, in July and August	8,085,108	809	—	—	—	—	—	—	7,539,620	—	—	7,540,429
Issuance of common stock options for consulting services in November	—	—	—	—	—	—	—	—	811	—	—	811
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	—	(3,142,237)	(3,142,237)
Balance at December 31, 2004	8,085,108	809	—	—	—	—	4,680,000	468	7,562,463	—	(3,142,237)	4,421,503
Exercise of common stock options at $0.10 per share in February, June and December, net of the repurchase of 30,000 shares at $0.10 per share	—	—	—	—	—	—	2,936,000	294	293,306	(187,600)	—	106,000
Issuance of Series A-2 preferred stock for cash at $1.00 per share, net of $57,041 of offering costs, in June and September	—	—	17,675,347	1,767	—	—	—	—	17,616,539	—	—	17,618,306
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	—	(7,522,612)	(7,522,612)
Balance at December 31, 2005	8,085,108	809	17,675,347	1,767	—	—	7,616,000	762	25,472,308	(187,600)	(10,664,849)	14,623,197
Exercise of common stock options at $0.10 per share in January (unaudited)	—	—	—	—	—	—	154,000	15	15,385	—	—	15,400
Collection of stock subscription receivable (unaudited)	—	—	—	—	—	—	—	—	—	187,600	—	187,600
Issuance of Series A-3 preferred stock for cash at	—	—	—	—	53,870,000	5,387	—	—	53,769,626	—	—	53,775,013

$1.00 per share, net of $94,987 of offering costs, in March (unaudited)												
Issuance of warrants in connection with loan and security agreement in February (unaudited)	—	—	—	—	—	—	—	—	313,572	—	—	313,572
Net loss and comprehensive loss (unaudited)	—	—	—	—	—	—	—	—	—	—	(28,341,080)	(28,341,080)
Balance at March 31, 2006 (unaudited)	8,085,108	$ 809	17,675,347	$1,767	53,870,000	$5,387	7,770,000	$ 777	$79,570,891	$ —	$(39,005,929)	$ 40,573,702

See accompanying notes.

Cadence Pharmaceuticals, Inc.
(a development stage company)

STATEMENTS OF CASH FLOWS

	Period from May 26, 2004 (Inception) Through December 31, 2004	Year Ended December 31, 2005	Three Months Ended March 31,		Period from May 26, 2004 (Inception) Through March 31, 2006
			2005	2006	
			(Unaudited)	(Unaudited)	(Unaudited)
Operating activities					
Net loss	$ (3,142,237)	$ (7,522,612)	$ (962,658)	$ (28,341,080)	$ (39,005,929)
Adjustments to reconcile net loss to net cash used in operating activities:					
Depreciation	8,389	36,876	7,784	10,732	55,997
Stock-based compensation	811	—	—	—	811
Non-cash interest expense	—	—	—	16,666	16,666
Changes in operating assets and liabilities:					
Prepaid expenses and other assets	(56,013)	(470,160)	(114,811)	(127,275)	(653,448)
Accounts payable and accrued liabilities	114,474	1,031,527	282,520	102,511	1,248,512
Net cash used in operating activities	(3,074,576)	(6,924,369)	(787,165)	(28,338,446)	(38,337,391)
Investing activities					
Purchases of marketable securities	(100,000)	(7,000,000)	—	—	(7,100,000)
Maturities of marketable securities	—	—	—	7,000,000	7,000,000
Purchases of property and equipment	(117,124)	(45,881)	—	(47,803)	(210,808)
Net cash provided by (used in) investing activities	(217,124)	(7,045,881)	—	6,952,197	(310,808)
Financing activities					
Proceeds from issuance of common stock	22,500	106,000	4,000	203,000	331,500
Proceeds from sale of preferred stock, net of issuance costs	7,540,429	17,618,306	—	53,775,013	78,933,748
Net cash provided by financing activities	7,562,929	17,724,306	4,000	53,978,013	79,265,248
Increase (decrease) in cash and cash equivalents	4,271,229	3,754,056	(783,165)	32,591,764	40,617,049
Cash and cash equivalents at beginning of period	—	4,271,229	4,271,229	8,025,285	—
Cash and cash equivalents at end of period	$ 4,271,229	$ 8,025,285	$ 3,488,064	$ 40,617,049	$ 40,617,049

See accompanying notes.

Cadence Pharmaceuticals, Inc.
(a development stage company)

NOTES TO FINANCIAL STATEMENTS
(Information as of March 31, 2006 and thereafter and for the three months ended March 31, 2005 and 2006 and the period from May 26, 2004 (inception) through March 31, 2006 is unaudited)

1. The Company and Summary of Significant Accounting Policies

The Company and Basis of Presentation

Cadence Pharmaceuticals, Inc. (the "Company") was incorporated in the state of Delaware in May 2004. The Company is a biopharmaceutical company focused on in-licensing, developing and commercializing proprietary product candidates principally for use in the hospital setting.

The Company's primary activities since incorporation have been organizational activities, including recruiting personnel, establishing office facilities, conducting research and development, including clinical trials, and raising capital. To date, the Company has in-licensed rights to two Phase III product candidates. Since the Company has not begun principal operations of commercializing a product candidate, the Company is considered to be in the development stage.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Unaudited Interim Financial Statements

The accompanying unaudited interim balance sheet as of March 31, 2006, the statements of operations and cash flows for the three months ended March 31, 2005 and 2006 and the period from May 26, 2004 (inception) through March 31, 2006 and the statement of stockholders' equity for the three months ended March 31, 2006 are unaudited. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments necessary to present fairly the Company's financial position as of March 31, 2006 and results of operations and cash flows for the three months ended March 31, 2005 and 2006. The results of operations for the three months ended March 31, 2006 are not necessarily indicative of the results to be expected for the year ending December 31, 2006 or for any other interim period or for any other future year.

Unaudited Pro Forma Stockholders' Equity

The unaudited pro forma stockholders' equity information in the accompanying balance sheet assumes the conversion of the outstanding shares of convertible preferred stock at March 31, 2006 into 79,630,455 shares of common stock as though the completion of the initial public offering contemplated by the filing of this prospectus had occurred on March 31, 2006. Common shares issued in such initial public offering and any related estimated net proceeds are excluded from such pro forma information.

Cash and Cash Equivalents

Cash and cash equivalents consists of cash and other highly liquid investments with original maturities of three months or less from the date of purchase.

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Investment Securities Available-for-Sale

The Company classifies all securities as available-for-sale, as the sale of such securities may be required prior to maturity to implement management strategies. These securities are carried at fair value, with the unrealized gains and losses reported as a component of accumulated other comprehensive loss until realized. Realized gains and losses from the sale of available-for-sale securities, if any, are determined on a specific identification basis. As of December 31, 2004 and 2005 and March 31, 2006, the carrying value of the investments approximated their fair market value.

Fair Value of Financial Instruments

The carrying amount of cash and cash equivalents, accounts payable and accrued liabilities are considered to be representative of their respective fair values because of the short-term nature of those instruments.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to a significant concentration of credit risk consist primarily of cash and cash equivalents and securities available-for-sale. The Company maintains deposits in federally insured financial institutions in excess of federally insured limits. However, management believes the Company is not exposed to significant credit risk due to the financial position of the depository institutions in which those deposits are held. Additionally, the Company has established guidelines regarding diversification of its investments and their maturities, which are designed to maintain safety and liquidity.

Property and Equipment

Property and equipment, including leasehold improvements, are stated at cost. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets, generally two to five years.

Impairment of Long-Lived Assets

In accordance with Statement of Financial Accounting Standards (“SFAS”) No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, long-lived assets, such as property and equipment are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. Assets to be disposed of would be separately presented in the balance sheet and reported at the lower of the carrying amount or the fair value less costs to sell, and are no longer depreciated. The assets and liabilities of a disposed group classified as held for sale would be presented separately in the appropriate asset and liability sections of the balance sheet. Although the Company has accumulated losses since inception, the Company believes the future cash flows to be received from the long-lived assets will exceed the assets’ carrying value and, accordingly, the Company has not recognized any impairment losses through March 31, 2006.

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Research and Development

The Company accounts for research and development costs in accordance with SFAS No. 2, *Accounting for Research and Development Costs.* SFAS No. 2 specifies that research and development costs should be charged to expense until technological feasibility has been established for the product. Once technological feasibility is established, all product costs should be capitalized until the product is available for general release to customers. The Company has determined that technological feasibility for its product candidates is reached when the requisite regulatory approvals are obtained to make the product available for sale. The Company's research and development expenses consist primarily of license fees, salaries and related employee benefits, costs associated with clinical trials managed by our contract research organizations, or CROs, and costs associated with non-clinical activities, such as regulatory expenses. The Company uses external service providers and vendors to conduct clinical trials, to manufacture product candidates to be used in clinical trials and to provide various other research and development related products and services. Through March 31, 2006, research and development expenses relate predominantly to the in-licensing of IV APAP and omiganan and clinical trials for omiganan.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. The Company provides a valuation allowance against net deferred tax assets unless, based upon the available evidence, it is more likely than not that the deferred tax assets will be realized.

Stock-Based Compensation

Effective January 1, 2006, the Company adopted the provisions of SFAS No. 123(R), *Share-Based Payment*, using the prospective transition method and therefore, prior period results will not be restated. SFAS No. 123(R) supersedes Accounting Principles Board ("APB") Opinion No. 25, *Accounting for Stock issued to Employees*, and related interpretations, and revises guidance in SFAS No. 123, *Accounting for Stock-Based Compensation.* Under this transition method, the compensation cost related to all equity instruments granted prior to, but not yet vested as of, the adoption date is recognized based on the grant-date fair value which is estimated in accordance with the original provisions of SFAS No. 123; however, those options issued prior to but unvested on January 1, 2006 and valued using the minimum value method are excluded from the options subject to SFAS No. 123(R). Compensation costs related to all equity instruments granted after January 1, 2006 is recognized at grant-date fair value of the awards in accordance with the provisions of SFAS No. 123(R). Additionally, under the provisions of SFAS No. 123(R), the Company is required to include an estimate of the number of the awards that will be forfeited in calculating compensation costs, which is recognized over the requisite service period of the awards on a straight-line basis.

During the three months ended March 31, 2006, the Company granted an option to purchase 15,000 shares of common stock but recorded no stock-based compensation costs due to the

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insignificance of the amount. Had this amount been significant, the Company would have allocated the expense between research and development, sales and marketing and general and administrative expenses based on the department to which the associated employee reports. No related tax benefits of the stock-based compensation costs have been recognized since the inception of the Company.

The following table shows the assumptions used to compute the stock-based compensation costs for the stock options granted during the three months ended March 31, 2006 using the Black-Scholes option pricing model:

Employee Stock Options	
Risk-free interest rate	4.36%
Dividend yield	0.00%
Weighted average expected life of options (years)	6.08
Volatility	70.00%

The risk-free interest rate assumption was based on the United States Treasury's rates for U.S. Treasury zero-coupon bonds with maturities similar to those of the expected term of the award being valued. The assumed dividend yield was based on the Company's expectation of not paying dividends in the foreseeable future. The weighted average expected life of options was calculated using the simplified method as prescribed by the Securities and Exchange Commission's Staff Accounting Bulletin ("SAB") No. 107. This decision was based on the lack of relevant historical data due to the Company's limited historical experience. In addition, due to the Company's limited historical data, the estimated volatility also reflects the application of SAB No. 107, incorporating the historical volatility of comparable companies whose share prices are publicly available.

The weighted average grant-date fair values of stock options granted during the three months ended March 31, 2006 was $0.07 per share.

As of March 31, 2006, the Company has no significant unrecognized stock-based compensation costs related to the non-vested balance of the 15,000 stock options granted during the three months ended March 31, 2006 or any prior periods.

Prior to January 1, 2006, the Company applied the intrinsic-value-based method of accounting prescribed by APB Opinion No. 25, and related interpretations including Financial Accounting Standards Board ("FASB") Interpretation No. 44, *Accounting for Certain Transactions involving Stock Compensation — an interpretation of APB Opinion No. 25*, to account for its equity-based awards to employees and directors. Under this method, if the exercise price of the award equaled or exceeded the fair value of the underlying stock on the measurement date, no compensation expense was recognized. The measurement date was the date on which the final number of shares and exercise price were known and was generally the grant date for awards to employees and directors. If the exercise price of the award was below the fair value of the underlying stock on the measurement date, then compensation cost was recorded, using the intrinsic-value method, and was generally recognized in the statements of operations over the vesting period of the award.

The effect on net loss as if the fair-value-based method had been applied to all outstanding and unvested awards in each period would have been less than a $10,000 increase in the net loss for each period in the period from May 26, 2004 (inception) through December 31, 2005. For purposes of disclosures required by SFAS No. 123, the estimated fair value of the options is amortized on a straight-

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line basis over the vesting period. The fair value of these awards was estimated using the Minimum Value pricing model, with the following weighted-average assumptions for 2004 and 2005: risk-free interest rate of 3.53% and 4.17%, respectively; dividend yield of 0%; expected volatility of 0%; and a life of four years.

Equity instruments issued to non-employees are recorded at their fair value as determined in accordance with SFAS No. 123 and Emerging Issues Task Force ("EITF") 96-18, *Accounting for Equity Instruments That are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling Goods and Services*, and are periodically revalued as the equity instruments vest and are recognized as expense over the related service period. Compensation expense related to the 10,000 stock options issued to a non-employee was $811 for both the period from May 26, 2004 (inception) through December 31, 2004 and the period from May 26, 2004 (inception) through March 31, 2006. The fair value of these stock options was estimated using the Black-Scholes pricing model, with the following weighted-average assumptions: risk-free interest rate of 4.19%; dividend yield of 0%; expected volatility of 70%; and a life of 10 years.

Comprehensive Income

The Company has applied SFAS No. 130, *Reporting Comprehensive Income*, which requires that all components of comprehensive income, including net income, be reported in the financial statements in the period in which they are recognized. Comprehensive income is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. Net income and other comprehensive income, including foreign currency translation adjustments and unrealized gains and losses on investments, shall be reported, net of their related tax effect, to arrive at comprehensive income. The net loss and comprehensive loss were the same for all periods presented.

Net Loss Per Share

Basic net loss per share is calculated by dividing the net loss by the weighted average number of common shares outstanding for the period, without consideration for common stock equivalents. Diluted net loss per share is computed by dividing the net loss by the weighted average number of common share equivalents outstanding for the period determined using the treasury-stock method. For purposes of this calculation, convertible preferred stock, stock options and warrants are considered to be common stock equivalents and are only included in the calculation of diluted net loss per share when their effect is dilutive.

The unaudited pro forma basic and diluted net loss per share is calculated by dividing the net loss by the weighted average number of common shares outstanding for the period plus the weighted average number of common shares resulting from the assumed conversion of the outstanding shares of convertible preferred stock. The assumed conversion is calculated using the as-if-converted method, as if such conversion had occurred as of the beginning of each period presented or as of the original issuance date, if later.

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	Period from May 26, 2004 (Inception) Through December 31, 2004	Year Ended December 31, 2005	Three Months Ended March 31, 2005	Three Months Ended March 31, 2006
Historical				
Numerator:				
Net loss	$ (3,142,237)	$ (7,522,612)	$ (962,658)	$ (28,341,080)
Denominator:				
Weighted average common shares outstanding	3,680,548	5,277,468	4,697,333	7,727,933
Weighted average unvested common shares subject to repurchase	(22,192)	(653,951)	(178,139)	(2,832,922)
Weighted average common shares outstanding	3,658,356	4,623,517	4,519,194	4,895,011
Basic and diluted net loss per share	$ (0.86)	$ (1.63)	$ (0.21)	$ (5.79)
Pro Forma				
Net loss used above		$ (7,522,612)		$ (28,341,080)
Pro forma basic and diluted net loss per share		$ (0.36)		$ (0.87)
Shares used above		4,623,517		4,895,011
Pro forma adjustments to reflect assumed weighted average effect of conversion of preferred stock		16,025,009		27,556,122
Pro forma shares used to compute basic and diluted net loss per share		20,648,526		32,451,133
Historical weighted average anti-dilutive securities not included in diluted net loss per share calculation				
Preferred stock	5,661,130	16,025,009	8,085,108	27,556,122
Preferred stock warrants	—	—	—	161,700
Common stock options	—	—	—	751,969
Common stock subject to repurchase	22,192	653,951	178,139	2,832,922
	5,683,322	16,678,960	8,263,247	31,302,713

2. Securities Available-for-Sale

As of December 31, 2005, the Company held $7,000,000 of commercial paper issued by U.S. corporations and rated by debt rating agencies.

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3. Property and Equipment

Property and equipment are as follows:

	Useful Lives	December 31, 2004	December 31, 2005	March 31, 2006
Leasehold improvements	2 years	$ 1,146	$ 1,146	$ 1,146
Computer equipment and software	3 years	55,245	63,972	77,274
Furniture and equipment	5 years	60,733	94,982	129,483
		117,124	160,100	207,903
Less accumulated depreciation		(8,389)	(42,360)	(53,092)
		$ 108,735	$ 117,740	$ 154,811

4. Related Party Transactions

From September 2004 through August 2005, we paid Mr. Cam L. Garner $5,000 per month plus qualified business expenses for his services as chairman of our board of directors under the terms of a consulting agreement between us and a limited liability company affiliated with Mr. Garner. The agreement expired on August 31, 2005. From September 2005 to February 2006, we continued to pay Mr. Garner $5,000 per month for his services as chairman of our board of directors. In February 2006, Mr. Garner's monthly compensation for his services as chairman of our board of directors was increased to $8,333 per month. For the period from May 26, 2004 (inception) through December 31, 2004, the year ended December 31, 2005, the three months ended March 31, 2005 and 2006 and the period from May 26, 2004 (inception) through March 31, 2006, the Company expensed $20,000, $60,000, $15,000, $18,333, and $98,333, respectively for payments to Mr. Garner for services as chairman of our board of directors. The unpaid balance as of December 31, 2004 and 2005 and March 31, 2006 was $20,000, $10,000 and $8,333, respectively.

During 2004, certain investors advanced $500,000 for pre-operating expenses and an exclusivity fee due for the collaboration and license agreement with Migenix (see Note 6). The advance was repaid with shares of Series A-1 preferred stock.

5. Commitments

Loan and Security Agreement

In February 2006, the Company entered into a $7,000,000 loan and security agreement with Silicon Valley Bank and Oxford Finance Corporation to provide growth capital to the Company (see Note 10). The commitment to lend expires on June 30, 2006. The Company will make interest only payments on growth capital advances until the first day of the month following the six month anniversary of each growth capital advance, at which date the Company will make the first of 30 equal principal and interest payments. Interest accrues on all outstanding amounts at the fixed rate equal to the greater of (a) 10.83% or (b) the Treasury Rate plus 6.25% as of the date the first principal and interest payment is due. The loans will be collateralized by substantially all the assets of the Company (excluding intellectual property) and are subject to prepayment penalties. Under the terms of the agreement, the Company may be precluded from entering into certain financing and other transactions, including disposing of certain

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assets and paying dividends, and is subject to certain non-financial covenants. Upon the occurrence of an event of default, including a Material Adverse Change (as defined in the agreement), the lenders may declare all outstanding amounts due and payable.

In conjunction with the loan and security agreement, the Company issued fully exercisable warrants to the lenders to purchase an aggregate of 385,000 shares of the Company's Series A-2 preferred stock at an exercise price of $1.00 per share. Excluding certain mergers or acquisitions, the warrants expire upon the later of: (a) 10 years from issuance or (b) five years after the closing of an initial public offering of the Company's common stock. The $313,572 fair value of the warrants was determined using the Black-Scholes valuation model, recorded as debt issuance costs which are included as other long-term assets in the accompanying balance sheets, and amortized to interest expense over the expected term of the loan agreement. The warrants were valued using the following assumptions: risk-free interest rate of 4.57%; dividend yield of 0%; expected volatility of 70%; and contractual term of 10 years.

Facility Lease

In 2004, the Company subleased its corporate headquarters under a non-cancelable operating lease that expires in September 2006. Rent expense was $67,579, $190,911, $50,684, $50,684 and $309,174 for the period from May 26, 2004 (inception) through December 31, 2004, the year ended December 31, 2005, the three months ended March 31, 2005 and 2006 and the period from May 26, 2004 (inception) through March 31, 2006, respectively. As of December 31, 2005 and March 31, 2006, the sublessor held a security deposit of $50,685. Future minimum payments under the operating lease will be $146,985 for the year ending December 31, 2006.

6. License Agreements and Acquired Development and Commercialization Rights

In July 2004, the Company in-licensed from Migenix the technology and the exclusive development and commercialization rights to its omiganan product candidate for the prevention and treatment of device-related, wound-related, and burn-related infections in North America and Europe. As consideration for the license, the Company paid a $2,000,000 up-front fee, of which $1,900,000 was allocated to the value of the acquired technology and $100,000 was recorded as other long-term assets in the accompanying balance sheet for the 617,284 shares of Migenix common stock acquired. The Company may also be required to make future milestone payments totaling up to $27,000,000 upon the achievement of various milestones related to regulatory or commercial events. The Company is also obligated to pay a royalty on future net sales (as defined) of the licensed products and has the right to grant sublicenses to affiliates. The Company expects results from Phase III clinical trials for the licensed product in the second half of 2007 but does not expect FDA approval prior to 2008. Accordingly, all payments related to the Migenix agreement (other than for the acquisition of common stock) have been recorded as research and development expense.

In March 2006, the Company in-licensed the technology and the exclusive development and commercialization rights to its IV APAP product candidate in the United States and Canada from Bristol-Myers Squibb Company ("BMS"). BMS sublicensed these rights to the Company under a license agreement with SCR Pharmatop S.A. As consideration for the license, the Company paid a $25,000,000 up-front fee, and may be required to make future milestone payments totaling up to $50,000,000 upon the achievement of various milestones related to regulatory or commercial events. The Company is also obligated to pay a royalty on net sales of the licensed products and has the right to grant sublicenses to

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third parties. The Company expects to initiate Phase III clinical trials for the licensed product in 2006 but does not expect FDA approval prior to 2008. Accordingly, all payments related to the BMS agreement have been recorded as research and development expense.

7. Stockholders' Equity

Convertible Preferred Stock

In July and August 2004, the Company issued 8,085,108 shares of Series A-1 preferred stock at $0.94 per share for cash of $7,600,002. The Company incurred offering costs of $59,573 resulting in net cash proceeds of $7,540,429.

In June and September 2005, the Company issued an aggregate of 17,675,347 shares of Series A-2 preferred stock at $1.00 per share for cash of $17,675,347. The Company incurred offering costs of $57,041 resulting in net cash proceeds of $17,618,306.

In March 2006, the Company issued 53,870,000 shares of Series A-3 preferred stock at $1.00 per share for cash of $53,870,000. The Company incurred offering costs of $94,987 resulting in net cash proceeds of $53,775,013.

Each holder of Series A-1, A-2 and A-3 preferred stock has the right, at the option of the holder at any time, to convert shares of preferred stock into shares of common stock at an initial conversion ratio of one-to-one, subject to adjustment. Each share of preferred stock will automatically convert into shares of common stock, at the then effective applicable conversion rate upon the earlier of: (i) the day preceding the closing of the sale of the Company's common stock in connection with a firmly underwritten public offering in which the Company receives gross proceeds of at least $30,000,000 at a price of at least $3.00 per share (as adjusted from time to time) or (ii) the consent of at least 60% of the then outstanding shares of preferred stock, as a single class.

Unless 60% of the Series A-3 preferred stockholders vote otherwise, certain Series A-3 preferred stockholders that fail to participate in future equity financings up to specified amounts will lose their right of first offer related to any subsequent equity financings and any Series A-1 preferred stock held by them will automatically convert into newly created Series A-4 preferred stock and any Series A-2 and A-3 preferred stock held by them will automatically convert into newly created Series A-5 preferred stock. Series A-4 and A-5 preferred stock shall have identical rights and preferences as Series A-1, A-2 and A-3 preferred stock with the exception of certain anti-dilution protections.

The holders of Series A-1, A-2 and A-3 preferred stock are entitled to receive, when, as and if declared by the Company's Board of Directors out of legally available funds, non-cumulative dividends payable to holders of the preferred stock in an amount equal to $0.0752, $0.08 and $0.08 per share, respectively, in preference and priority to the payment of any dividends on common stock. As of December 31, 2005 and March 31, 2006, no dividends have been declared by the Board of Directors.

In the event of any liquidation, dissolution or winding up of the Company, the holders of Series A-1, A-2 and A-3 preferred stock will be entitled to receive in preference to the holders of common stock, the amount of their original purchase price per share, plus declared and unpaid dividends, if any. If the assets and funds available to be distributed among the holders of the preferred stock shall be insufficient to permit the payment to such holders of the full preferences, then the entire assets and funds legally available for distribution to such holders shall be distributed ratably based on the total due each

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such holder. Any remaining assets of the Company will be distributed ratably among the holders of the common stock and preferred stock, with the preferred stock limited to the aggregate of three times the original purchase price per share, based upon the number of shares of common stock held by each stockholder, treating each share of preferred stock as if it were converted into shares of common stock at the then-applicable conversion rate.

Preferred stockholders are entitled to the number of votes they would have upon conversion of their preferred shares into common stock at the then-applicable conversion rate. The preferred stockholders have been granted certain rights with regard to the election of board members and various other corporate actions.

Stock Options

In 2004, the Company adopted the Cadence Pharmaceuticals, Inc. 2004 Equity Incentive Plan (the "2004 Plan"). The 2004 Plan allows for the grant of options, restricted stock awards, performance share awards, dividend equivalents, restricted stock units, stock payments and stock appreciation rights to employees, directors and consultants of the Company. As of December 31, 2005 and March 31, 2006, respectively, the 2004 Plan had 4,500,000 and 10,000,000 shares of common stock reserved for issuance. Options granted under the 2004 Plan expire no later than 10 years from the date of grant. Options generally vest over a four-year period and may be immediately exercisable. After one year, the options generally vest 25%. Thereafter, options generally vest monthly in 36 equal installments. The exercise price of incentive stock options shall not be less than 100% of the fair value of the Company's common stock on the date of grant. The exercise price of any option granted to a 10% stockholder may be no less than 110% of the fair value of the Company's common stock on the date of grant. The fair value of the Company's common stock is established by the Company's board of directors and in 2006 took into consideration contemporaneous independent valuations of the Company's common stock.

The Company has considered the guidance in the American Institute of Certified Public Accountants ("AICPA") Audit and Accounting Practice Aid Series, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*, to determine the fair value of its common stock for purposes of setting the exercise prices of stock options granted to employees and others. This guidance emphasizes the importance of the operational development in determining the value of the enterprise. As a development stage enterprise, the Company is at an early stage of existence, primarily focused on product development with an unproven business model. To date, the Company has been funded primarily by venture capitalists with a history of funding start-up, high-risk entities with the potential for high returns in the event the investments are successful. Prior to the licensing of IV APAP in March 2006, the Company was considered to be in a very early stage of development as defined in the AICPA guidance where the preferences of the preferred stockholders, in particular the liquidation preferences, are very meaningful. Subsequent to our licensing of IV APAP but prior to the initiation of our initial public offering process on June 14, 2006, taking into consideration a contemporaneous independent valuation, we allocated additional enterprise value to our common stock with an increase in the common stock valuation to $0.34 per share. Subsequent to the initiation of our initial public offering process, taking into consideration a contemporaneous independent valuation, we increased our common stock valuation to $0.80 per share.

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At December 31, 2005 and March 31, 2006, respectively, a total of 228,000 and 5,713,000 shares of common stock remained available for issuance under the 2004 Plan. A summary of the Company's stock option activity under the 2004 Plan and related information are as follows:

	Options Outstanding	Weighted Average Exercise Price
Granted	1,225,000	$ 0.10
Exercised	(180,000)	$ 0.10
Balance at December 31, 2004	1,045,000	$ 0.10
Granted	3,077,000	$ 0.10
Exercised	(2,966,000)	$ 0.10
Balance at December 31, 2005	1,156,000	$ 0.10
Granted	15,000	$ 0.10
Exercised	(154,000)	$ 0.10
Balance at March 31, 2006	1,017,000	$ 0.10

During the period from May 26, 2004 (inception) through December 31, 2004 and the quarterly periods ended March 31, 2005, June 30, 2005, September 30, 2005, December 31, 2005 and March 31, 2006, the Company granted options to purchase shares of the Company's common stock in the amount of 1,225,000, 650,000, 360,000, 191,000, 1,876,000 and 15,000, respectively. All such grants had both a fair value and exercise price of $0.10.

As of December 31, 2005 and March 31, 2006, respectively, 989,521 and 842,707 of the outstanding options under the 2004 Plan were exercisable, 186,813 and 196,873 were vested and 2,767,875 and 2,802,000 of the options exercised were subject to repurchase by the Company since they were unvested. The weighted average remaining contractual life of the options outstanding at December 31, 2005 and March 31, 2006, respectively, was 9.2 and 9.0 years. The weighted average remaining contractual life of the options exercisable at December 31, 2005 and March 31, 2006, respectively, was 9.2 and 8.9 years.

Shares Reserved For Future Issuance

The following shares of common stock are reserved for future issuance:

	December 31, 2005	March 31, 2006
Conversion of preferred stock	25,760,455	79,630,455
Common stock options granted and outstanding	1,156,000	1,017,000
Preferred stock warrants outstanding	—	385,000
Common stock options reserved for future issuance	228,000	5,713,000
	27,144,455	86,745,455

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8. Income Taxes

Significant components of the Company's deferred tax assets for federal and state income taxes at December 31, 2004 and 2005 are shown below. A valuation allowance has been established as realization of such deferred tax assets has not met the more likely than not threshold requirement under SFAS No. 109.

	December 31, 2004	December 31, 2005
Deferred tax assets:		
Net operating loss carryforwards	$ 361,000	$ 3,528,000
Tax credit carryforwards	29,000	359,000
Capitalized research and development	591,000	520,000
Other, net	157,000	111,000
Total deferred tax assets	1,138,000	4,518,000
Valuation allowance for deferred tax assets	(1,138,000)	(4,518,000)
Net deferred taxes	$ —	$ —

At December 31, 2005, the Company had federal and state net operating loss carryforwards of approximately $8,659,000 and $8,663,000, respectively. The federal and state tax loss carryforwards will begin to expire in 2024 and 2014, respectively, unless previously utilized. The Company also had federal research and development tax credit carryforwards of approximately $283,000 which will begin expiring in 2024 unless previously utilized. The Company had state research and development tax credit carryforwards of approximately $116,000, which carryforward indefinitely.

Utilization of the net operating loss carry forwards and credits may be subject to a substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986, as amended, and similar state provisions. The annual limitation may result in the expiration of net operating losses and credits before utilization.

9. Employee Benefit Plan

Effective January 1, 2005, the Company established a 401(k) plan covering substantially all employees. Employees may contribute up to 100% of their compensation per year (subject to a maximum limit prescribed by federal tax law). The Company may elect to make a discretionary contribution or match a discretionary percentage of employee contributions. As of December 31, 2005 and March 31, 2006, the Company had not elected to make any contributions to the plan.

10. Subsequent Events (unaudited)

In June 2006, the Company's stockholders approved the increase of the number of shares of common stock reserved for issuance under the 2004 Plan by 1,500,000 shares.

In May 2006, the Company entered into a six-year operating lease for 23,494 square feet of office space. The Company will receive certain tenant improvement allowances and rent abatement and has an option to extend the lease for five years. Monthly rental payments are adjusted on an annual basis and the lease expires in September 2012. As security for the lease, the landlord required a letter of credit in the

Cadence Pharmaceuticals, Inc.
(a development stage company)

NOTES TO FINANCIAL STATEMENTS — (Continued)
(Information as of March 31, 2006 and thereafter and for the three months ended March 31, 2005 and 2006 and the period from May 26, 2004 (inception) through March 31, 2006 is unaudited)

amount of $1,581,130. The letter of credit is collateralized by a certificate of deposit in the same amount which will be classified as restricted cash in the balance sheet. The required amount subject to the letter of credit and corresponding certificate of deposit will be reduced by 22% on each of the first four anniversaries of the commencement of the lease. Future minimum payments under the operating lease total $197,936, $1,009,000, $1,074,851, $1,112,206, $1,151,676, $1,191,851 and $917,676 for the years ending December 31, 2006, 2007, 2008, 2009, 2010, 2011 and 2012, respectively.

In June 2006, the Company drew down $7,000,000 under its loan and security agreement with Silicon Valley Bank and Oxford Finance Corporation and has no further credit available under this agreement. The Company is required to make interest only payments on the loan balance for the first six months of the loan, and beginning February 2007 is required to make the first of 30 equal monthly principal and interest payments. Interest accrues on all outstanding amounts at the fixed rate of 11.47%.

From April 1, 2006 through July 15, 2006, the Company granted options to employees, directors and consultants of the Company to purchase an aggregate of 5,953,261 shares of common stock at an exercise price ranging from $0.34 to $0.80 per share. The exercise price was established by the Company's board of directors and took into consideration contemporaneous independent valuations of the Company's common stock.

Through and including , 2006 (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 the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Shares

Common Stock

PROSPECTUS

Merrill Lynch & Co.
Deutsche Bank Securities
Pacific Growth Equities, LLC
JMP Securities

, 2006

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. *Other Expenses of Issuance and Distribution*

The following table sets forth the fees and expenses, other than underwriting discounts and commissions, payable by us in connection with the registration of the common stock hereunder. All amounts shown are estimates except for the SEC registration fee, the NASD filing fee and the Nasdaq Global Market listing fee.

Item	Amount to be Paid
SEC Registration Fee	$ 9,229
NASD Filing Fee	9,125
Nasdaq Global Market Listing Fee	100,000
Legal Fees and Expenses	*
Accounting Fees and Expenses	*
Printing and Engraving Expenses	*
Blue Sky, Qualification Fees and Expenses	*
Transfer Agent and Registrar Fees	*
Miscellaneous Expenses	*
Total	$ *

* To be completed by amendment.

Item 14. *Indemnification of Directors and Officers*

Section 145 of the Delaware General Corporation Law permits a corporation to include in its charter documents, and in agreements between the corporation and its directors and officers, provisions expanding the scope of indemnification beyond that specifically provided by the current law.

Our amended and restated certificate of incorporation provides for the indemnification of directors to the fullest extent permissible under Delaware law.

Our amended and restated bylaws provide for the indemnification of officers, directors and third parties acting on our behalf if such persons act in good faith and in a manner reasonably believed to be in and not opposed to our best interest, and, with respect to any criminal action or proceeding, such indemnified party had no reason to believe his or her conduct was unlawful.

We are entering into indemnification agreements with each of our directors and executive officers, in addition to the indemnification provisions provided for in our charter documents, and we intend to enter into indemnification agreements with any new directors and executive officers in the future.

The underwriting agreement (to be filed as Exhibit 1.1 hereto) will provide for indemnification by the underwriters of us, our executive officers and directors, and indemnification of the underwriters by us for certain liabilities, including liabilities arising under the Securities Act of 1933, as amended, in connection with matters specifically provided in writing by the underwriters for inclusion in the registration statement.

We intend to purchase and maintain insurance on behalf of any person who is or was a director or officer against any loss arising from any claim asserted against him or her and incurred by him or her in that capacity, subject to certain exclusions and limits of the amount of coverage.

Item 15. ***Recent Sales of Unregistered Securities***

Since inception, we have issued and sold the following unregistered securities:

1. In July 2004, we issued 4,500,000 shares of common stock to a limited liability company and individual investors for aggregate consideration of $4,500.

2. In July and August 2004, we issued and sold an aggregate of 8,085,108 shares of Series A-1 preferred stock to certain venture capital funds and individual investors at a per share price of $0.94, for aggregate consideration of $7,600,001.52. Upon completion of this offering, these shares of Series A-1 preferred stock will convert into 8,085,108 shares of our common stock.

3. In June and September 2005, we issued and sold an aggregate of 17,675,347 shares of Series A-2 preferred stock to certain existing and new investors at a per share price of $1.00, for aggregate consideration of $17,675,347. Upon completion of this offering, these shares of Series A-2 preferred stock will convert into 17,675,347 shares of our common stock.

4. In February 2006, in connection with a loan and security agreement, we issued two warrants to two lenders to purchase an aggregate of 385,000 shares of Series A-2 preferred stock, at an initial exercise price of $1.00 per share, subject to adjustment. The warrants are exercisable through the later of February 2016 or five years from the closing of this offering. These warrants will be exercisable for an aggregate of 385,000 shares of common stock at an exercise price of $1.00 per share upon the completion of this offering.

5. In March 2006, we issued and sold an aggregate of 53,870,000 shares of Series A-3 preferred stock to certain existing and new investors at a per share price of $1.00, for aggregate consideration of $53,870,000. Upon completion of this offering, these shares of Series A-3 preferred stock will convert into 53,870,000 shares of our common stock.

6. Since our inception through March 31, 2006, we granted stock options to purchase 4,317,000 shares of our common stock at an exercise price of $0.10 per share to our employees, consultants and directors under our 2004 equity incentive award plan. Since our inception through March 31, 2006, we issued and sold an aggregate of 3,300,000 shares of our common stock to our employees, consultants and directors at a price of $0.10 per share pursuant to exercises of options granted under our 2004 equity incentive award plan. During this period, 30,000 unvested shares were repurchased by us resulting in a net of 3,270,000 shares issued and sold under our 2004 equity incentive award plan.

The issuance of securities described above in paragraphs (1) through (5) were exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(2) of the Securities Act of 1933, as amended, and Regulation D promulgated thereunder, as transactions by an issuer not involving any public offering. The purchasers of the securities in these transactions represented that they were accredited investors or qualified institutional buyers and they were acquiring the securities for investment only and not with a view toward the public sale or distribution thereof. Such purchasers received written disclosures that the securities had not been registered under the Securities Act of 1933, as amended, and that any resale must be made pursuant to a registration statement or an available exemption from registration. All purchasers either received adequate financial statement or non-financial statement information about the registrant or had adequate access, through their relationship with the registrant, to financial statement or non-financial statement information about the registrant. The sale of these securities was made without general solicitation or advertising.

The issuance of securities described above in paragraph (6) was exempt from registration under the Securities Act of 1933, as amended, in reliance on Rule 701 of the Securities Act of 1933, as amended, pursuant to compensatory benefit plans approved by the registrant’s board of directors.

All certificates representing the securities issued in these transactions described in this Item 15 included appropriate legends setting forth that the securities had not been offered or sold pursuant to a

registration statement and describing the applicable restrictions on transfer of the securities. There were no underwriters employed in connection with any of the transactions set forth in this Item 15.

Item 16. ***Exhibits and Financial Statement Schedules***

(a) *Exhibits*

Exhibit Number	Description
1.1*	Form of Underwriting Agreement
3.1	Restated Certificate of Incorporation of the Registrant, as currently in effect
3.2*	Form of Amended and Restated Certificate of Incorporation of the Registrant, to be in effect upon completion of the offering
3.3	Amended and Restated Bylaws of the Registrant, as currently in effect
3.4*	Form of Amended and Restated Bylaws of the Registrant, to be in effect upon completion of the offering
4.1*	Form of the Registrant's Common Stock Certificate
4.2	Amended and Restated Investor Rights Agreement dated February 21, 2006
4.3	Warrant issued by Registrant in February 2006 to Silicon Valley Bank
4.4	Warrant issued by Registrant in February 2006 to Oxford Finance Corporation
5.1*	Opinion of Latham & Watkins LLP
10.1*	Form of Director and Executive Officer Indemnification Agreement
10.2*	Form of Executive Officer Employment Agreement
10.3#	2004 Equity Incentive Award Plan and forms of option agreements thereunder
10.4#*	Director Equity Compensation Policy
10.5#*	2006 Equity Incentive Award Plan and forms of option and restricted stock agreements thereunder
10.6#*	2006 Employee Stock Purchase Plan and form of offering document thereunder
10.7#*	2006 Incentive Plan
10.8	Sublease dated August 31, 2004 by and between the Registrant and Townsend and Townsend and Crew, LLP
10.9	Lease dated May 12, 2006 by and between the Registrant and Prentiss/ Collins Del Mar Heights LLC
10.10†	Collaboration and License Agreement dated July 30, 2004 by and between the Registrant and Migenix Inc. (formerly Micrologix Biotech Inc.)
10.11†	IV APAP Agreement (US and Canada) dated February 21, 2006 by and between the Registrant and Bristol-Myers Squibb Company
10.12†	License Agreement dated December 23, 2002 by and among SCR Pharmatop and Bristol-Myers Squibb Company
10.13	Loan and Security Agreement dated February 17, 2006 by and among the Registrant, Silicon Valley Bank and Oxford Finance Corporation
23.1	Consent of Ernst & Young LLP, independent registered public accounting firm
23.2*	Consent of Latham & Watkins LLP (included in Exhibit 5.1)
24.1	Power of Attorney (See page II-5)

* To be filed by amendment.

† Confidential treatment has been requested for portions of this exhibit. These portions have been omitted from the Registration Statement and submitted separately to the Securities and Exchange Commission.

# Indicates management contract or compensatory plan.

(b) *Financial Statement Schedules*

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

Item 17. ***Undertakings***

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, 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 Securities Act of 1933, as amended, 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 Securities Act of 1933, as amended, and will be governed by the final adjudication of such issue.

We hereby undertake that:

(a) We will provide to the underwriters at the closing as 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.

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

(c) For the purpose of determining any liability under the Securities Act of 1933, as amended, 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, Cadence Pharmaceuticals, Inc. has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in San Diego, California on the 17th day of July, 2006.

CADENCE PHARMACEUTICALS, INC.

By: /s/ THEODORE R. SCHROEDER

Theodore R. Schroeder
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Theodore R. Schroeder and William R. LaRue, and each of them, his true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to sign any registration statement for the same offering covered by this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act of 1933, as amended, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that such attorneys-in-fact and agents or any of them, or his or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement on Form S-1 has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ THEODORE R. SCHROEDER Theodore R. Schroeder	President, Chief Executive Officer and Director (Principal Executive Officer)	July 17, 2006
/s/ WILLIAM R. LARUE William R. LaRue	Senior Vice President, Chief Financial Officer, Treasurer and Secretary (Principal Financial and Accounting Officer)	July 17, 2006
/s/ CAM L. GARNER Cam L. Garner	Chairman of the Board of Directors	July 17, 2006
/s/ BRIAN G. ATWOOD Brian G. Atwood	Director	July 17, 2006
/s/ MICHAEL A. BERMAN Michael A. Berman, M.D.	Director	July 17, 2006

Signature	Title	Date
/s/ JAMES C. BLAIR, PH.D. James C. Blair, Ph.D.	Director	July 17, 2006
/s/ ALAN D. FRAZIER Alan D. Frazier	Director	July 17, 2006
/s/ ALAIN B. SCHREIBER, M.D. Alain B. Schreiber, M.D.	Director	July 17, 2006
/s/ CHRISTOPHER J. TWOMEY Christopher J. Twomey	Director	July 17, 2006

EXHIBIT INDEX

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23.2*	Consent of Latham & Watkins LLP (included in Exhibit 5.1)
24.1	Power of Attorney (See page II-5)

* To be filed by amendment.

† Confidential treatment has been requested for portions of this exhibit. These portions have been omitted from the Registration Statement and submitted separately to the Securities and Exchange Commission.

# Indicates management contract or compensatory plan.

EXHIBIT 3.1

RESTATED CERTIFICATE OF INCORPORATION
OF
CADENCE PHARMACEUTICALS, INC.

CADENCE PHARMACEUTICALS, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "**Corporation**"),

DOES HEREBY CERTIFY:

FIRST: That the name of the Corporation is Cadence Pharmaceuticals, Inc. The Corporation, which was originally known as Strata Pharmaceuticals, Inc., originally filed its Certificate of Incorporation with the Secretary of the State of Delaware on May 26, 2004.

SECOND: Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Restated Certificate of Incorporation was adopted by the Corporation's Board of Directors (the "**Board of Directors**") and stockholders.

THIRD: The text of the Corporation's Certificate of Incorporation as heretofore amended, restated and or supplemented is hereby restated and further amended to read in its entirety as follows:

I

The name of the Corporation is Cadence Pharmaceuticals, Inc.

II

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle 19801. The name of its registered agent at such address is The Corporation Trust Company.

III

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware.

IV

The Corporation is authorized to issue two classes of stock designated "**Common Stock**" and "**Preferred Stock**." The Preferred Stock shall consist of three series designated "**Series A-1 Preferred Stock,**" "**Series A-2 Preferred Stock**" and **"Series A-3 Preferred Stock."**

The number of shares of Common Stock that the Corporation is authorized to issue is One Hundred Million (100,000,000). The number of shares of Preferred Stock that the Corporation is authorized to issue is Eighty Million Fifteen Thousand Four Hundred Fifty-Five (80,015,455), of which Eight Million Eighty-Five Thousand One Hundred Eight (8,085,108) shares shall be designated Series A-1 Preferred Stock, Eighteen Million Sixty Thousand Three Hundred Forty Seven, (18,060,347) shares shall be designated Series A-2 Preferred Stock, and Fifty-Three Million Eight Hundred Seventy Thousand (53,870,000) shares shall be designated Series A-3 Preferred Stock.

All shares of Common Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock shall have a par value of $0.0001 per share. Except as specifically set forth herein, references hereinafter to "**Preferred Stock**" shall mean the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and Series A-3 Preferred Stock.

The rights, preferences, privileges and restrictions granted to or imposed upon the respective classes and series of shares of capital or the holders thereof are set forth below in this Article IV.

1. Dividends.

(a) Rights to Receive Dividends. The holder of each then outstanding share of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock shall be entitled to receive dividends at the per annum rate of eight percent (8%) of the Series A-1 Original Purchase Price (as defined herein), Series A-2 Original Purchase Price (as defined herein) or Series A-3 Original Purchase Price (as defined herein), as applicable (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations with respect to such shares), payable out of funds legally available therefor. Such dividends shall be payable in preference and priority to any payment of any dividend on any shares of Common Stock of the Corporation, when, as and if declared by the board of directors of the Board of Directors. The "**Series A-1 Original Purchase Price**" shall be $0.94 per share (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations with respect to such shares); the "**Series A-2 Original Purchase Price**" shall be $1.00 per share (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations with respect to such shares); and the "**Series A-3 Original Purchase Price**" shall be $1.00 per share (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations with respect to such shares). The right to such dividends on the Preferred Stock shall not be cumulative, and no right shall accrue to holders of Preferred Stock by reason of the fact that dividends on such shares are not declared or paid in any prior year, whether or not the earnings of the Corporation were sufficient to pay such dividends in whole or in part. The Board of Directors may fix a record date for the determination of holders of Preferred Stock entitled to receive payment of a dividend declared thereon, which record date shall be not more than thirty (30) days prior to the date fixed for the payment thereof (the "**Preferred Stock Date of Accrual**"). Notwithstanding the foregoing, dividends, if paid, or if declared and set apart for payment, must be paid, or declared and set apart for payment, on all outstanding shares of the Preferred Stock contemporaneously.

(b) Payment of Dividends. The Corporation shall pay to each holder of Preferred Stock on the Preferred Stock Date of Accrual with respect to shares held by each of such holders any and all dividends which have been declared through such date.

(c) Other Dividends. Subject to the provisions of Sections 1(a) and (b) hereof, no dividend or other distribution shall be paid, or declared and set apart for payment, other than dividends of Common Stock on the Common Stock of the Corporation, on the shares of any class or series of capital stock of the Corporation, unless and until there shall first be declared and paid on each share of the Preferred Stock a cash dividend in an amount equal to such dividend or other distribution with each share of Preferred Stock entitled to receive the amount specified in Section 1(a) plus the product of (i) the amount of the dividend, if any, declared on each share of Common Stock and (ii) the number of shares of Common Stock into which the share of Preferred Stock is then convertible under Section 5 of this Article IV determined by reference to the Conversion Price in effect at the record date for such dividend.

Neither the Corporation nor any of its Subsidiaries shall purchase, redeem or otherwise acquire for value any shares of any class or series of the Corporation's capital stock (other than the shares of Common Stock issued by the Corporation to its employees, directors, advisors, outside consultants, contractors, or stockholders pursuant to plans, agreements or arrangements duly approved by the Board of Directors) and no money shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

2. Liquidation.

(a) Preference. In the event of any voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation (a "**Liquidation Event**"), after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of each share of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock shall be entitled to receive on a pari passu basis out of the assets of the Corporation, whether such assets are capital, surplus or earnings, an amount equal to the Series A-1 Original Purchase Price, the Series A-2 Original Purchase Price and the Series A-3 Original Purchase Price for each share of Series A-1 Preferred Stock, Series A-2 Preferred Stock and/or Series A-3 Preferred Stock, as applicable, then held by each such holder, plus any declared but unpaid dividend on each such share, before any payment shall be made or assets distributed on the Common Stock or any other class or series of capital stock of the Corporation.

(b) Partial Payment. If upon any Liquidation Event the assets of the Corporation distributable as aforesaid among the holders of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and the Series A-3 Preferred Stock shall be insufficient to permit the payment to them of the full preferential amounts to which they are entitled, then the entire assets of the Corporation so to be distributed shall be distributed ratably among the holders of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and the Series A-3 Preferred Stock, in proportion to the sum of their respective per share liquidation values, until payment in full of such amount per share.

(c) Remaining Assets. After payment to the holders of the Preferred Stock of the amounts set forth in Section 2(a) above, the entire remaining assets and funds of the corporation legally available for distribution, if any, shall be distributed ratably among the holders of the Common Stock and the holders of the Preferred Stock, with the Preferred Stock holders participating on the basis of the number of shares they would be entitled to receive if they were to convert their shares of Preferred Stock into shares of Common Stock only until such holders of Preferred Stock have received, including amounts paid pursuant to Section 2(a) of this Article IV, an amount equal to three (3) times the Series A-1 Original Purchase Price, three (3) times the Series A-2 Original Purchase Price and three (3) times the Series A-3 Original Purchase Price for each share of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock, as applicable, then held by them.

(d) Reorganization. For purposes of this Section 2, a Liquidation Event shall be deemed to be occasioned by, and to include, the Corporation's (i) sale of all or substantially all of its assets or (ii) consolidation or merger with or into another Person (as defined in Section 8 below) if, as a result of such consolidation or merger, the holders of the Common Stock and the Preferred Stock prior to such consolidation or merger do not hold at least fifty-one percent (51%) of the combined voting power of the surviving Person.

3. Redemption. The Corporation shall not be obligated to, and shall not have the right to call or redeem any shares of the Preferred Stock.

4. Voting Rights; Directors.

(a) Generally. On all matters to come before the stockholders, the Preferred Stock shall have that number of votes per share (rounded up to the nearest whole share) equivalent to the number of shares of Common Stock into which such share of Preferred Stock is then convertible determined by reference to the applicable Conversion Price in effect at the record date of the

determination of the holders of the shares entitled to vote or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is first solicited. Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held. Except as otherwise provided by law or this Restated Certificate of Incorporation, the holders of Preferred Stock shall vote together with the holders of the outstanding shares of Common Stock, and not as a separate class or series.

(b) Directors.

(i) The holders of the outstanding shares of Preferred Stock, voting together as a class and to the exclusion of all other classes of capital stock of the Corporation, shall be entitled to elect four (4) members of the Board of Directors (the "**Preferred Directors**"). The holders of the outstanding shares of Common Stock, voting together or as a class and to the exclusion of all other classes of capital stock of the Corporation shall be entitled to select two (2) members of the Board of Directors (the "**Common Directors**"). The holders of the outstanding shares of Common Stock and Preferred Stock, voting together as a single class and to the exclusion of all other classes of capital stock of the Corporation, shall be entitled to elect two (2) members of the Board of Directors in accordance with Section 4(a) above (the "**General Directors**"); provided, however, that any such General Director must be approved by (x) the holders of a majority of the Common Stock, voting together as a single class and to the exclusion of all other classes of capital stock of the Corporation, and (y) the holders of a majority of the Preferred Stock, voting together as a single class and to the exclusion of all other classes of capital stock of the Corporation.

(ii) In the case of any vacancy in the office of a director occurring among the Preferred Directors, the Common Directors or the General Directors, the remaining Preferred Director(s), the Common Director(s) or the General Director(s), as the case may be, may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one, or if there is no such director remaining, by the affirmative vote of the holders of a majority of the shares of the class or classes entitled to vote on the election of the Preferred Director, the Common Director or the General Director, as the case may be), elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of the shares eligible to vote in an election for the seat occupied by that director (e.g., in order to remove a Preferred Director, the holders of a majority of the Preferred Stock, voting together as a single class and to the exclusion of all other classes of capital stock of the Corporation, must so vote).

(c) Protective Provisions. The Corporation shall not (by amendment, merger, consolidation or otherwise), without the consent of the holders of at least sixty percent (60%) of the outstanding shares of Series A-3 Preferred Stock voting or consenting as a separate class and to the exclusion of all other classes of capital stock of the Corporation, given in person or by proxy, either in writing or by vote at a meeting called for that purpose at which the holders of the Preferred Stock shall vote together as a single class:

(i) amend or repeal any provision of, or add any provision to, this Restated Certificate of Incorporation or the Corporation's By-laws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Preferred Stock;

(ii) increase or decrease the authorized number of shares of the Corporation's Preferred Stock;

(iii) authorize, issue or otherwise create shares of any class or series of stock having any preference over, or on parity with, the Preferred Stock with respect to any rights, preferences or privileges associated with the Preferred Stock;

(iv) (A) sell or otherwise dispose of all or substantially all of its assets or (B) consolidate or merge with or into another Person if, as a result of such consolidation or merger, the holders of the Common Stock and the Preferred Stock prior to such consolidation or merger do not hold at least fifty-one percent (51%) of the combined voting power of the surviving corporation;

(v) declare or pay any dividends on any capital stock of the Corporation; provided, however, that the restriction shall not apply to dividends payable solely in Common Stock;

(vi) take any action which would result in taxation of the holders of shares of the Preferred Stock under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereafter from time to time amended); or

(vii) increase or decrease the size of the Board of Directors.

5. Conversion. Except with respect to the Special Mandatory Conversion described in Section 7, the rights of the holders of shares of Preferred Stock to convert such shares into shares of Common Stock (as defined in Section 5(i) below) of the Corporation (the "**Conversion Rights**"), and the terms and conditions of such conversion, shall be as follows:

(a) Right to Convert; Automatic Conversion.

(i) Each share of the Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of the issuance of such share, at the office of the Corporation or any transfer agent for the Preferred Stock or the Common Stock, into that number of the fully paid and nonassessable shares of Common Stock determined in accordance with the provisions of Section 5(b) below. In order to convert shares of the Preferred Stock into shares of Common Stock, the holder thereof shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or to the transfer agent for the Preferred Stock or the Common Stock, together with written notice to the Corporation stating that it elects to convert the same and setting forth the name or names in which it wishes the certificate or certificates for Common Stock to be issued, and the number of shares of Preferred Stock being converted.

(ii) The Corporation shall, as soon as practicable after the surrender of the certificate or certificates evidencing shares of Preferred Stock for conversion at the office of the Corporation or the transfer agent for the Preferred Stock or the Common Stock, issue to each holder of such shares, or its nominee or nominees, a certificate or certificates evidencing the number of shares of Common Stock (and any other securities and property) to which it shall be entitled and, in the event that only a part of the shares evidenced by such certificate or certificates are converted, a certificate evidencing the number of shares of Preferred Stock which are not converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock at such date and shall, with respect to such shares, have only those rights of a holder of Common Stock of the Corporation.

(iii) Each share of Preferred Stock then outstanding shall be automatically converted into that number of fully paid and nonassessable shares of Common Stock determined in

accordance with the provisions of Section 5(b) below upon the earlier of (A) the close of business of the day immediately preceding the closing of the sale of its Common Stock in connection with a Qualified Public Offering (as defined in Section 8 below) or (B) the consent of the holders of at least sixty percent (60%) of the outstanding shares of Preferred Stock voting or consenting together as a single class and to the exclusion of all other classes of capital stock of the Corporation, given in person or by proxy, either in writing or by vote at a meeting called for that purpose at which the holders of Preferred Stock shall vote together as a single class.

(b) Conversion of Preferred Stock.

(i) Each share of Series A-1 Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing the Series A-1 Conversion Price (as defined herein) per share in effect at the time into the Series A-1 Original Purchase Price;

(ii) Each share of Series A-2 Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing the Series A-2 Conversion Price (as defined herein) per share in effect at the time into the Series A-2 Original Purchase Price; and

(iii) Each share of Series A-3 Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing the Series A-3 Conversion Price (as defined herein) per share in effect at the time into the Series A-3 Original Purchase Price.

(c) Conversion Price.

(i) The conversion price per share for the Series A-1 Preferred Stock shall initially be $0.94 (the "**Series A-1 Conversion Price**") and shall be subject to adjustment from time to time as provided herein;

(ii) The conversion price per share for the Series A-2 Preferred Stock shall initially be $1.00 (the "**Series A-2 Conversion Price**") and shall be subject to adjustment from time to time as provided herein.

(iii) The conversion price per share for the Series A-3 Preferred Stock shall initially be $1.00 (the **"Series A-3 Conversion Price"**) and shall be subject to adjustment from time to time as provided herein.

The conversion price as it applies to each series of Preferred Stock is sometimes referred to herein as the "**Conversion Price**."

(d) Adjustment for Stock Splits and Combinations. If outstanding shares of the Common Stock of the Corporation shall be subdivided into a greater number of shares, or a dividend in Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock (in which latter event the number of shares of Common Stock issuable upon the conversion or exchange of such securities shall be deemed to have been distributed), shall be paid in respect to the Common Stock of the Corporation, the Series A-1 Conversion Price, the Series A-2 Preferred Conversion Price and the Series A-3 Conversion Price in effect immediately prior to such subdivision or at the record date of such dividend shall be proportionately reduced, and conversely, if outstanding shares of the Common Stock of the Corporation shall be combined into a smaller number of shares, the Series A-1 Conversion Price, the Series A-2 Conversion Price and the Series A-3 Conversion Price in effect immediately prior to such combination shall be proportionately increased.

Any adjustment to the Series A-1 Conversion Price, the Series A-2 Conversion Price or the Series A-3 Conversion Price under this Section 5(d) shall become effective at the close of business on the date the subdivision or combination referred to herein becomes effective.

(e) Reorganizations, Mergers, Consolidations or Reclassifications. In the event of any capital reorganization, any reclassification of the Common Stock (other than a change in par value or as a result of a stock dividend, subdivision, split-up or combination of shares), the consolidation or merger of the Corporation with or into another Person (excluding a consolidation or merger described in Section 2(d) of this Article IV) (collectively referred to hereinafter as "**Reorganizations**"), the holders of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and the Series A-3 Preferred Stock shall thereafter be entitled to receive, and provision shall be made therefor in any agreement relating to a Reorganization, upon conversion of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and the Series A-3 Preferred Stock the kind and number of shares of Common Stock or other securities or property (including cash) of the Corporation, or other corporation resulting from such consolidation or surviving such merger to which a holder of the number of shares of the Common Stock of the Corporation which the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and the Series A-3 Preferred Stock entitled the holder thereof to convert to immediately prior to such Reorganization would have been entitled to receive with respect to such Reorganization; and in any such case appropriate adjustment shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and the Series A-3 Preferred Stock, to the end that the provisions set forth herein (including the specified changes and other adjustments to the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares, other securities or property thereafter receivable upon conversion of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and the Series A-3 Preferred Stock. The provisions of this Section 5(e) shall similarly apply to successive Reorganizations.

(f) Sale of Additional Shares.

(i) If at any time or from time to time following the date of the initial issuance of shares of Series A-3 Preferred Stock, the Corporation shall issue or sell Additional Shares of Common Stock (as hereinafter defined) other than as a dividend or other distribution on any class of stock and other than as a subdivision or combination of shares of Common Stock as provided in Section 5(d) above, for a consideration per share less than the then existing Series A-1 Conversion Price, the then existing Series A-2 Conversion Price and/or the then existing Series A-3 Conversion Price, then, and in each such case, the then existing Series A-1 Conversion Price, the then existing Series A-2 Conversion Price and/or the then existing Series A-3 Conversion Price, as the case may be, shall be reduced, as of the opening of business on the date of such issuance or sale, to a price determined by multiplying the applicable Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock issuable upon conversion of the Preferred Stock and the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the date immediately prior to such issuance) plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at the applicable Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock issuable upon conversion of the Preferred Stock and the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the date immediately prior to such issuance) plus the number of shares of Additional Shares of Common Stock actually issued in such issuance.

(ii) For the purpose of making any adjustment in either (a) the Series A-1 Conversion Price, the Series A-2 Conversion Price or the Series A-3 Conversion Price, or (b) number of shares of Common Stock issuable upon conversion of either the Series A-1 Preferred Stock, the Series A-2 Preferred Stock or the Series A-3 Preferred Stock, as provided above, the consideration received by the Corporation for any issue or sale of securities shall:

(a) To the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any expenses payable directly or indirectly by the Corporation and any underwriting or similar commissions, compensations, discounts or concessions paid or allowed by the Corporation in connection with such issue or sale;

(b) To the extent it consists of property other than cash, the consideration other than cash shall be computed at the fair market value thereof as determined in good faith by the Board of Directors, at or about, but as of, the date of the adoption of the resolution specifically authorizing such issuance or sale, irrespective of any accounting treatment thereof; provided, however, that such fair market value as determined by the Board of Directors, when added to any cash consideration received in connection with such issuance or sale, shall not exceed the aggregate market price of the Additional Shares of Common Stock being issued, as of the date of the adoption of such resolution; and

(c) If Additional Shares of Common Stock, Convertible Securities (as defined below) or Rights (as defined below) are issued or sold together with other stock or securities or other assets of the Corporation for consideration which covers both, the consideration received for the Additional Shares of Common Stock, Convertible Securities or Rights shall be computed as that portion of the consideration so received which is reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights.

(iii) For the purpose of making any adjustment in the Series A-1 Conversion Price , the Series A-2 Conversion Price or the Series A-3 Conversion Price provided in Section 5(f) hereof, if at any time, or from time to time, the Corporation issues any stock or other securities convertible into Additional Shares of Common Stock (such stock or other securities being hereinafter referred to as "**Convertible Securities**") or issues any rights or options to purchase Additional Shares of Common Stock or Convertible Securities (such rights or options being hereinafter referred to as "**Rights**"), then, and in each such case, if the Effective Conversion Price (as hereinafter defined) of such Rights or Convertible Securities shall be less than the Series A-1 Conversion Price, the Series A-2 Conversion Price and/or the Series A-3 Conversion Price in effect immediately prior to the issuance of such Rights or Convertible Securities, the Corporation shall be deemed to have issued at the time of the issuance of such Rights or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received in consideration for the issuance of such shares an amount equal to the aggregate Effective Conversion Price of such Rights or Convertible Securities. For the purposes of this Section 5(f)(iii), **"Effective Conversion Price"** shall mean an amount equal to the sum of the lowest amount of consideration, if any, received or receivable by the Corporation with respect to any one (1) Additional Share of Common Stock upon issuance of the Rights or Convertible Securities and upon their exercise or conversion, respectively. No further adjustment of the Series A-1 Conversion Price, the Series A-2 Conversion Price or the Series A-3 Conversion Price adjusted upon the issuance of such Rights or Convertible Securities shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such Rights or the conversion of any such Convertible Securities. If any such Rights or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, such Series A-1 Conversion Price, the Series A-2 Conversion Price or the Series A-3 Conversion Price, as applicable, as adjusted upon the issuance of such Rights or Convertible Securities shall be readjusted to the Series A-1 Conversion Price,

the Series A-2 Conversion Price or the Series A-3 Conversion Price, as applicable, which would have been in effect had such adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such Rights or on the conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such Rights, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities.

(g) Additional Shares of Common Stock. "Additional Shares of Common Stock" as used in this Section 5 shall mean all shares of Common Stock issued or deemed to be issued by the Corporation, whether or not subsequently reacquired or retired by the Corporation, other than:

(i) shares of Common Stock issued upon the conversion of any shares of the Company's Preferred Stock;

(ii) shares of Common Stock issued or issuable to employees, officers, directors, advisors, outside consultants or contractors of the Corporation or any Subsidiary pursuant to a plan, agreement or arrangement duly approved by the Board of Directors;

(iii) shares of Common Stock issued or issuable pursuant to the exercise of options, warrants or convertible securities outstanding as of the date hereof;

(iv) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with the Corporation obtaining equipment lease financing, whether issued to a lessor, guarantor or other Person, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors, and provided, further, that such issuance shall not be primarily for general capital raising purposes;

(v) shares of Common Stock issued to effect any stock split, stock dividend, recapitalization or like transaction of the Corporation;

(vi) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with any borrowings, direct or indirect from financial institutions or other Persons by the Corporation, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors;

(vii) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with the acquisition of all or a substantial portion of the assets or the business of another entity by the Corporation, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors; and

(viii) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with any corporate partnering transaction, strategic alliance, technology transfer or similar transaction between the Corporation and any other Person, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors.

(h) Common Stock. "Common Stock" as used in this Section 5 shall mean any shares of any class of the Corporation's capital stock other than the Preferred Stock. The Common Stock issuable upon conversion of the Preferred Stock, however, shall be the Common Stock of the Corporation as constituted on the date hereof, except as otherwise provided in this Section 5.

(i) Certificate of Adjustment. In each case of an adjustment or readjustment of the Series A-1 Conversion Price, the Series A-2 Conversion Price or the Series A-3 Conversion Price or the number of shares of Common Stock or other securities issuable upon conversion of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock or the Series A-3 Preferred Stock, the Corporation, at its expense, shall cause the Chief Financial Officer of the Corporation to compute such adjustment or readjustment in accordance with this Restated Certificate of Incorporation and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first-class mail, postage prepaid, to each registered holder of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock or the Series A-3 Preferred Stock at the holder's address as shown on the Corporation's stock transfer books. The certificate shall set forth such adjustment or readjustment, showing in reasonable detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold; (ii) Conversion Price at the time in effect for the Series A-1 Preferred Stock, the Series A-2 Preferred Stock or the Series A-3 Preferred Stock, respectively; and (iii) the number of Additional Shares of Common Stock and the type and amount, if any, of other property which at the time would be received upon conversion of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock or the Series A-3 Preferred Stock. Such notice may be given in advance of such adjustment or readjustment and may be included as part of a notice required to be given pursuant to Section 5(j) below.

(j) Notices of Record Date. In the event the Corporation shall propose to take any action of the type or types requiring an adjustment to the Conversion Price of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock or the Series A-3 Preferred Stock, or the number or character of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock or the Series A-3 Preferred Stock as set forth herein, the Corporation shall give notice to the holders of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock or the Series A-3 Preferred Stock as applicable in the manner set forth in Section 5(i) above, which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Series A-1 Conversion Price, the Series A-2 Conversion Price or the Series A-3 Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable upon the occurrence of such action or deliverable upon the conversion of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock or the Series A-3 Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least ten (10) days prior to the date so fixed, and in case of all other action, such notice shall be given at least fifteen (15) days prior to the taking of such proposed action. Notwithstanding the requirements of this Section 5(j), this Section 5(j) shall not be applicable and no such notice shall be required with respect to any action that is, or has been, approved by the holders of at least sixty percent (60%) of the outstanding shares of Preferred Stock voting or consenting together as a single class and to the exclusion of all other classes of capital stock of the Corporation.

(k) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect a conversion of all outstanding shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock, the

Corporation shall promptly seek such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose. In the event of the consolidation or merger of the Corporation with another corporation where the Corporation is not the surviving corporation, effective provisions shall be made in the certificate or articles of incorporation, merger or consolidation, or otherwise of the surviving corporation so that such corporation will at all times reserve and keep available a sufficient number of shares of Common Stock or other securities or property to provide for the conversion of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock in accordance with the provisions of this Section 5.

(l) Payment of Taxes. The Corporation shall pay all taxes and other governmental charges (other than any income or other taxes imposed upon the profits realized by the recipient) that may be imposed in respect of the issue or delivery of shares of Common Stock or other securities or property upon conversion of shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock or other securities in a name other than that in which the shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock so converted were registered.

(m) Status of Converted Stock. In the event any shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock shall be converted pursuant to Section 5 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation, and this Restated Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(n) No Impairment. Subject to the right of the Corporation to amend its Certificate of Incorporation or take any other corporate action upon obtaining the necessary approvals required by its Certificate of Incorporation and applicable law, the Corporation shall not amend this Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith use its best efforts, and assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and the Series A-3 Preferred Stock against dilution or other impairment.

6. Common Stock.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of this Article IV.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one (1) vote, and shall be entitled to notice of any stockholders' meeting in accordance with the By-laws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be

provided by this Restated Certificate of Incorporation and law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

7. Special Mandatory Conversion for Failure to Exercise Right of First Offer. Unless (i) the holders of sixty percent (60%) of the Series A-3 Preferred Stock then outstanding deem otherwise (by vote or by action by written consent) or (ii) the Corporation requests in writing a lesser investment commitment of the holders of Series A-3 Preferred Stock, at any time or from time to time following the date of the initial issuance of shares of Series A-3 Preferred Stock, if (A) any holder of at least 1,700,000 shares of Series A-3 Preferred Stock (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations with respect to such shares) is entitled to exercise the right of first offer (the "**Right of First Offer**") as set forth in Section 4 of that certain Amended and Restated Investors' Rights Agreement among the Corporation and the holders of the Preferred Stock, as such agreement may from time to time be amended (the "**Rights Agreement**") with respect to an issuance of securities of the Corporation (a "**Securities Issuance**"), (B) the Corporation has complied with its obligations under the Rights Agreement with respect to the Right of First Offer, and (C) such holder does not acquire at least the holder's Minimum Share (as such term is defined in the Rights Agreement) in such Securities Issuance that such holder is entitled to purchase pursuant to Section 4.4 of the Rights Agreement (a "**Non-Participating Holder**"), then, effective immediately prior to the consummation of such Securities Issuance:

(a) each Non-Participating Holder shall lose his, her or its Right of First Offer pursuant to Section 4 of the Rights Agreement for all subsequent securities issuances by the Corporation which would otherwise trigger anew the Right of First Offer;

(b) all shares of Series A-1 Preferred Stock held by each and every Non-Participating Holder shall be converted, subject to and concurrently with, the effectuation of the Securities Issuance, into an equivalent number of shares of Series A-4 Preferred Stock. All shares of Series A-2 Preferred Stock and Series A-3 Preferred Stock held by each and every Non-Participating Holder shall be converted, subject to and concurrently with, the effectuation of the Securities Issuance, into an equivalent number of shares of Series A-5 Preferred Stock. The Series A-4 Preferred Stock and Series A-5 Preferred Stock shall be created concurrently with the Securities Issuance. The designations, powers, preferences and rights and the qualifications, limitations and restrictions of the Series A-4 Preferred Stock and Series A-5 Preferred Stock shall be identical to those of the Series A-1 Preferred Stock and the Series A-3 Preferred Stock, respectively, except that the conversion price for the Series A-4 Preferred Stock and Series A-5 Preferred Stock shall not be subject to any adjustment pursuant to Section 5(f) of this Article IV, but shall be subject to further adjustment pursuant to Sections 5(d) and 5(e) of this Article IV. Upon such exchange, the conversion price for the Series A-4 Preferred Stock and Series A-5 Preferred Stock shall be equal to the conversion price immediately prior to the Securities Issuance for the converted shares of Series A-1 Preferred Stock and Series A-3 Preferred Stock, as applicable; and

(c) Promptly following the closing of the Securities Issuance, each such Non-Participating Holder shall surrender to the Corporation during regular business hours at the office of any transfer agent for the Corporation, or at such other place as may be designated by the Corporation, the certificate or certificates representing the Preferred Stock so exchanged, duly endorsed or assigned in blank or to the Corporation. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of the Series A-4 Preferred Stock or Series A-5 Preferred Stock, as applicable, to be issued and such holder shall be deemed to have become the holder of record of such shares of Series A-4 Preferred

Stock or Series A-5 Preferred Stock, as applicable, on the date of the Securities Issuance. The right to receive any dividend declared but unpaid at the time of conversion on any shares of Preferred Stock exchanged pursuant to the provisions of this Section 7 shall accrue to the benefit of the new shares of Series A-4 Preferred Stock or Series A-5 Preferred Stock, as applicable, issued upon exchange thereof.

8. Miscellaneous.

(a) Definitions.

(i) "**Additional Shares of Common Stock**" shall have that meaning set forth in Section 5(g) hereof.

(ii) "**Common Stock**" shall have that meaning set forth in Section 5(h) hereof.

(iii) "**Conversion Price**" shall have that meaning set forth in Section 5(c) hereof.

(iv) "**Conversion Rights**" shall have that meaning set forth in Section 5 hereof.

(v) "**Convertible Securities**" shall have that meaning set forth in Section 5(f)(iii) hereof.

(vi) "**Effective Conversion Price**" shall have that meaning set forth in Section 5(f)(iii) hereof.

(vii) "**Liquidation Event**" shall have that meaning set forth in Section 2(a) hereof.

(viii) "**Person**" shall mean an individual, a corporation, a partnership, a trust or unincorporated organization or any other entity or organization.

(ix) "**Preferred Stock Date of Accrual**" shall have that meaning set forth in Section 1(a) hereof.

(x) "**Qualified Public Offering**" means a firmly underwritten public offering of the Corporation's Common Stock on a Form S-1 Registration Statement, or any similar form of registration statement, adopted by the Securities and Exchange Commission (the "**Commission**") from and after the date hereof, filed with the Commission under the Securities Act of 1933, as amended, with respect to which the Corporation receives gross proceeds of at least $30,000,000 (prior to deduction for underwriters' discounts and expenses relating to such public offering, including without limitation, fees of the Corporation's counsel) and the price to the public is at least $3.00 per share (equitably adjusted for all stock splits, sub-divisions, stock dividends, combinations and the like with respect to such shares).

(xi) "**Series A-1 Original Purchase Price**" shall have that meaning set forth in Section 1(a) hereof.

(xii) "**Series A-1 Preferred Stock**" shall have that meaning set forth in the first paragraph of this Article IV.

(xiii) "**Series A-2 Original Purchase Price**" shall have that meaning set forth in Section 1(a) hereof.

(xiv) "**Series A-2 Preferred Stock**" shall have that meaning set forth in the first paragraph of this Article IV.

(xv) "**Series A-3 Original Purchase Price**" shall have that meaning set forth in Section 1(a) hereof.

(xvi) "**Series A-3 Preferred Stock**" shall have that meaning set forth in the first paragraph of this Article IV.

(xvii) "**Subsidiary**" means any corporation of which equity securities possessing a majority of the ordinary voting power in electing the board of directors are, at the time as of which such determination is being made, owned by the Corporation either directly or indirectly through one or more Subsidiaries.

(b) Notices. All notices referred to herein, except as otherwise expressly provided, shall be made by registered or certified mail, return receipt requested, postage prepaid and shall be deemed to have been given when so mailed.

(c) Conflicts. So long as any of the Preferred Stock is outstanding, in the event of any conflict between the provisions of this Article IV and the remainder of this Restated Certificate of Incorporation or the By-laws of the Corporation (both as presently existing or hereafter amended and supplemented), the provisions of this Article IV shall be and remain controlling.

V

EXCULPATION AND INDEMNIFICATION

1. Exculpation. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the Delaware General Corporation Law; or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is hereafter amended to further reduce or to authorize, with the approval of the Corporation's stockholders, further reductions in the liability of the Corporation's directors for breach of fiduciary duty, then a director of the Corporation shall not be liable for any such breach to the fullest extent permitted by the Delaware General Corporation Law as so amended.

2. Indemnification. To the extent permitted by applicable law, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) such agents (and any other Persons to which Delaware law permits the Corporation to provide indemnification) through bylaw provisions, agreements with such agents or other Persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders and others.

3. Effect of Repeal or Modification. Any repeal or modification of any of the foregoing provisions of this Article V shall not adversely affect any right or protection of a director, officer, agent or other Person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

VI

BOARD POWER REGARDING BY-LAWS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind the By-laws of the Corporation without the vote or assent of the stockholders.

VII

ELECTION OF DIRECTORS

Elections of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

VIII

CORPORATE POWER

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation which restates and amends the provisions of the Restated Certificate of Incorporation of the Corporation, and which has been duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware and has been executed by its President this 27th day of March, 2006.

CADENCE PHARMACEUTICALS, INC.

By: /s/ Theodore R. Schroeder
Theodore R. Schroeder,
President and Chief Executive Officer

EXHIBIT 3.3

AMENDED AND RESTATED BYLAWS
OF
CADENCE PHARMACEUTICALS, INC.

AMENDED AND RESTATED BYLAWS

OF

CADENCE PHARMACEUTICALS, INC.

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AMENDED AND RESTATED BYLAWS

OF

CADENCE PHARMACEUTICALS, INC.

ARTICLE I

OFFICES

Section 1. REGISTERED OFFICE. The registered office shall be in the City of Dover, County of Kent, State of Delaware.

Section 2. OTHER OFFICES. The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. PLACE OF MEETINGS. Meetings of stockholders shall be held at any place within or outside the State of Delaware designated by the Board of Directors. In the absence of any such designation, stockholders' meetings shall be held at the principal executive office of the corporation.

Section 2. ANNUAL MEETING OF STOCKHOLDERS. The annual meeting of stockholders shall be held each year on a date and a time designated by the Board of Directors. At each annual meeting directors shall be elected in the manner provided in the certificate of incorporation of the corporation (the "***Certificate of Incorporation***") and in the Bylaws, and any other proper business may be transacted.

Section 3. QUORUM; ADJOURNED MEETINGS AND NOTICE THEREOF. A majority of the stock issued and outstanding and entitled to vote at any meeting of stockholders, the holders of which are present in person or represented by proxy, shall constitute a quorum for the transaction of business except as otherwise provided by law, by the Certificate of Incorporation, or by these Bylaws. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum and the votes present may continue to transact business until adjournment. If, however, such quorum shall not be present or represented at any meeting of the stockholders, a majority of the voting stock represented in person or by proxy may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote thereat.

Section 4. VOTING. When a quorum is present at any meeting, in all matters other than the election of directors, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes, or the Certificate of Incorporation, or these Bylaws, a different vote is required in which case such express provision shall govern and control the decision of such question. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

Section 5. PROXIES. At each meeting of the stockholders, each stockholder having the right to vote may vote in person or may authorize another person or persons to act for him or her by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument provides for a longer period. All proxies must be filed with the Secretary of the corporation at the beginning of each meeting in order to be counted in any vote at the meeting. Except as may be otherwise provided in the Certificate of Incorporation, each stockholder shall have one vote for each share of stock having voting power, registered in his or her name on the books of the corporation on the record date set by the Board of Directors as provided in Article VII, Section 6 hereof.

Section 6. SPECIAL MEETINGS. Special meetings of the stockholders, for any purpose, or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the President and shall be called by the Chairman of the Board, President or the Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the corporation issued and outstanding, and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 7. NOTICE OF STOCKHOLDERS' MEETINGS. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which notice shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The written notice of any meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the records of the corporation.

Section 8. MAINTENANCE AND INSPECTION OF STOCKHOLDER LIST. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 9. STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice

and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in Delaware, its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by this Section 9 to the corporation, written consents signed by a sufficient number of holders to take action are delivered to the corporation by delivery to its registered office in Delaware, its principal place of business or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE III

DIRECTORS

Section 1. THE NUMBER OF DIRECTORS. Unless otherwise provided by law, the number of directors which shall constitute the whole Board of Directors shall be determined from time to time solely by resolution adopted by the affirmative vote of a majority of the directors. The directors need not be stockholders. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until his or her successor is elected and qualified; provided, however, that unless otherwise restricted by the Certificate of Incorporation or by law, any director or the entire Board of Directors may be removed, either with or without cause, from the Board of Directors at any meeting of stockholders by a majority of the stock represented and entitled to vote thereat.

Section 2. VACANCIES. Vacancies on the Board of Directors by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. The directors so chosen shall hold office until the next annual election of directors and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole Board of Directors (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office.

Section 3. POWERS. The property and business of the corporation shall be managed by or under the direction of its Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of Directors may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

Section 4. PLACE OF DIRECTORS' MEETINGS. The directors may hold their meetings and have one or more offices, and keep the books of the corporation outside of the State of Delaware.

Section 5. REGULAR MEETINGS. Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board of Directors.

Section 6. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by the President on forty-eight (48) hours notice to each director, either personally or by mail, e-mail or by telegram; special meetings shall be called by the Chairman of the Board, President or the Secretary in like manner and on like notice on the written request of two directors unless the Board of Directors consists of only one director; in which case special meetings shall be called by the Chairman of the Board, President or Secretary in like manner or on like notice on the written request of the sole director.

Section 7. QUORUM. At all meetings of the Board of Directors a majority of the authorized number of directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the vote of a majority of the directors present at any meeting at which there is a quorum, shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, by the Certificate of Incorporation or by these Bylaws. If a quorum shall not be present at any meeting of the Board of Directors, the directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. If only one director is authorized, such sole director shall constitute a quorum.

Section 8. ACTION WITHOUT MEETING. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 9. TELEPHONIC MEETINGS. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any 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 shall constitute presence in person at such meeting.

Section 10. COMMITTEES OF DIRECTORS. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, each such committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of

the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the Bylaws of the corporation; and, unless the resolution or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

Section 11. MINUTES OF COMMITTEE MEETINGS. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 12. CHAIRMAN OF THE BOARD. The Board of Directors may designate one of its members to serve as Chairman of the Board, and if so, the Chairman of the Board shall, if present, preside at all meetings of the Board of Directors and stockholders, and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the Board of Directors or prescribed by these Bylaws.

Section 13. COMPENSATION OF DIRECTORS. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

ARTICLE IV

OFFICERS

Section 1. OFFICERS. The officers of this corporation shall be chosen by the Board of Directors and shall include a President and a Secretary. The corporation may also have at the discretion of the Board of Directors such other officers as are desired, including a Vice-Chairman of the Board of Directors, a Chief Executive Officer, a Chief Financial Officer or Treasurer, one or more Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 hereof. In the event there are two or more Vice Presidents, then one or more may be designated as Executive Vice President, Senior Vice President, or other similar or dissimilar title. At the time of the election of officers, the directors may by resolution determine the order of their rank. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

Section 2. ELECTION OF OFFICERS. The Board of Directors, at its first meeting after each annual meeting of stockholders, shall choose the officers of the corporation.

Section 3. SUBORDINATE OFFICERS. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Section 4. COMPENSATION OF OFFICERS. The salaries of all officers and agents of the corporation shall be fixed by the Board of Directors.

Section 5. TERM OF OFFICE; REMOVAL AND VACANCIES. The officers of the corporation shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. If the office of any officer or officers becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 6. PRESIDENT. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, the President shall be the Chief Executive Officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. In the absence of the Chairman of the Board, the President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors. He or she shall be an ex-officio member of all committees and shall have the general powers and duties of management usually vested in the office of President and Chief Executive Officer of corporations, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 7. VICE PRESIDENTS. In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall have such other duties as from time to time may be prescribed for them, respectively, by the Board of Directors.

Section 8. SECRETARY. The Secretary shall attend all sessions of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for the standing committees when required by the Board of Directors. He or she shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or these Bylaws. He or she shall keep in safe custody the seal of the corporation, and when authorized by the Board of Directors, affix the same to any instrument requiring it, and when so affixed it shall be attested by his or her signature or by the signature of an Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his or her signature.

Section 9. ASSISTANT SECRETARY. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, or if there be no such determination, the Assistant Secretary designated by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

Section 10. CHIEF FINANCIAL OFFICER OR TREASURER. The Chief Financial Officer or Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the corporation, in such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements,

and shall render to the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his or her transactions as Chief Financial Officer or Treasurer and of the financial condition of the corporation. If required by the Board of Directors, he or she shall give the corporation a bond, in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors, for the faithful performance of the duties of his or her office and for the restoration to the corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the corporation.

Section 11. ASSISTANT TREASURER. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, or if there be no such determination, the Assistant Treasurer designated by the Board of Directors, shall, in the absence or disability of the Chief Financial Officer or Treasurer, perform the duties and exercise the powers of the Chief Financial Officer or Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

ARTICLE V

INDEMNIFICATION OF DIRECTORS AND OFFICERS

(a) The corporation shall indemnify to the maximum extent permitted by law any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) The corporation shall indemnify to the maximum extent permitted by law any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such

person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

(c) To the extent that a director or officer of the corporation shall be successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraphs (a) and (b), or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

(d) Any indemnification under paragraphs (a) and (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in paragraphs (a) and (b). Such determination shall be made (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (3) by the stockholders. The corporation, acting through its Board of Directors or otherwise, shall cause such determination to be made if so requested by any person who is indemnifiable under this Article V.

(e) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the corporation as authorized in this Article V.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Article V shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

(g) The Board of Directors may authorize, by a vote of a majority of a quorum of the Board of Directors, the corporation to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of this Article V.

(h) For the purposes of this Article V, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers so that any person who is or was a director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article V with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this section, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include service as a director or officer of the corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this section.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

(k) The corporation shall be required to indemnify a person in connection with an action, suit or proceeding (or part thereof) initiated by such person only if the action, suit or proceeding (or part thereof) was authorized by the Board of Directors of the corporation.

ARTICLE VI

INDEMNIFICATION OF EMPLOYEES AND AGENTS

The corporation may indemnify every person who was or is a party or is or was threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was an employee or agent of the corporation or, while an employee or agent of the corporation, is or was serving at the request of the corporation as an employee or agent or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, to the extent permitted by applicable law.

ARTICLE VII

CERTIFICATES OF STOCK

Section 1. CERTIFICATES. Every holder of stock of the corporation shall be entitled to have a certificate signed by, or in the name of the corporation by, the Chairman or Vice-Chairman of the Board of Directors, or the President or a Vice President, and by the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer of the corporation, certifying the number of shares represented by the certificate owned by such stockholder in the corporation.

Section 2. SIGNATURES ON CERTIFICATES. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent, or registrar at the date of issue.

Section 3. STATEMENT OF STOCK RIGHTS, PREFERENCES, PRIVILEGES. If the corporation shall be authorized to issue more than one class of stock or more than one series of any

class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 4. LOST CERTIFICATES. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 5. TRANSFERS OF STOCK. Upon surrender to the corporation, or the transfer agent of the corporation, of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 6. FIXED RECORD DATE. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders, or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date which shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date which shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors.

Section 7. REGISTERED STOCKHOLDERS. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Delaware.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. DIVIDENDS. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to and subject to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 2. PAYMENT OF DIVIDENDS; DIRECTORS' DUTIES. Before payment of any dividend there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interests of the corporation, and the directors may abolish any such reserve.

Section 3. CHECKS. All checks or demands for money and notes of the corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

Section 4. FISCAL YEAR. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

Section 5. CORPORATE SEAL. The corporate seal shall contain two concentric circles with the name of the corporation between the two circles and the date and state of incorporation appearing in the inner circle.

Section 6. MANNER OF GIVING NOTICE. Whenever, under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his or her address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram.

Section 7. WAIVER OF NOTICE. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 8. ANNUAL STATEMENT. The Board of Directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the corporation.

ARTICLE IX

AMENDMENTS

Section 1. AMENDMENT BY DIRECTORS OR STOCKHOLDERS. These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the stockholders or by the Board

of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such special meeting. If the power to adopt, amend or repeal Bylaws is conferred upon the Board of Directors by the Certificate of Incorporation it shall not divest or limit the power of the stockholders to adopt, amend or repeal Bylaws.

ARTICLE X

RIGHT OF FIRST REFUSAL

Section 1. RESTRICTION ON TRANSFER. No stockholder of the corporation shall transfer, assign, hypothecate, encumber, pledge or otherwise alienate (hereinafter "***Transfer***") any shares of Common Stock of the corporation (the "***Common Stock***") owned by such stockholder unless such stockholder previously complied with all provisions of this Article X. Any Transfer not made in accordance with this Article X shall be void, and the corporation shall not treat the transferee in such transaction as a stockholder for any purpose.

Section 2. NOTICE REQUIREMENT. If a stockholder seeks to Transfer any Common Stock, whether voluntarily or involuntarily, such stockholder (the "***Offering Stockholder***") shall first give simultaneous written notice of such intention ("***Notice of Transfer***") to the Secretary of the corporation. The Notice of Transfer shall specify the number of shares of Common Stock to be transferred (the "***Offered Shares***"), and state the price and all other terms of the proposed transaction. The Notice of Transfer shall constitute an irrevocable offer to sell the Offered Shares during the periods described below.

Section 3. OPTION OF THE CORPORATION. For twenty-five (25) days following the delivery of a Notice of Transfer (the "***Option Period***"), the corporation shall have an irrevocable right to purchase all or a portion of the Offered Shares in accordance with the terms stated in the Notice of Transfer. The right may be exercised by a written notice, signed by the President of the corporation (the "***Corporation Notice***"), stating that the corporation desires to purchase the Offered Shares and tendering the purchase price therefor. Such notice and the purchase price for the Offered Shares shall be delivered to the Offering Stockholder before expiration of the Option Period. Failure to so respond within the Option Period to the Notice of Transfer shall be deemed an irrevocable waiver by the corporation of its right to acquire the Offered Shares. The corporation shall effect the purchase of the Offered Shares, including payment of the purchase price, not more than five (5) business days after delivery of the Corporation Notice, and at such time the Offering Stockholder shall deliver to the corporation the certificate(s) representing the Offered Shares to be purchased by the corporation, each certificate to be properly endorsed for transfer. Any Common Stock so purchased by the corporation shall thereupon be cancelled and cease to be issued and outstanding shares of the corporation's Common Stock.

Section 4. SPECIAL PROVISIONS REGARDING EXCHANGES. If the Notice of Transfer specifies consideration other than cash, then the Offered Shares may be purchased in cash for the fair market value of such property, as determined in good faith by the Board of Directors. In the event that the Board of Directors decides to hire an independent appraiser in connection with such determination, all expenses for such independent appraiser shall be borne by the Offering Stockholder.

Section 5. EFFECT OF PURCHASE. For purposes of Section 3 of this Article X, the purchase price for Offered Shares shall be deemed tendered, and said Offered Shares shall be deemed

purchased, at such time as the Offering Stockholder receives written notice enclosing a cashier's check for the purchase price or stating that the purchase price has been delivered to a third party (such as counsel to the corporation) with instructions to deliver such amount to the Offering Stockholder upon surrender of certificates representing the Offered Shares, duly endorsed with signatures guaranteed. All rights accorded the Offering Stockholder with respect to the Offered Shares, other than the right to payment therefor, shall cease at that time. If payment is tendered directly to the Offering Stockholder, the Offering Stockholder shall promptly, but in no event later than five (5) business days, cause to be delivered certificate(s) representing the Offered Shares, duly endorsed with signatures guaranteed, to the corporation's transfer agent for cancellation or transfer.

Section 6. CERTAIN TRANSFERS EXEMPT. Notwithstanding anything else contained in this Article X to the contrary, an Offering Stockholder shall be permitted to make Transfers of certain shares of Common Stock held by such Offering Stockholder without complying with the provisions of Sections 1 through 5 of this Article X above if such Transfer is:

(a) to the Offering Stockholder's spouse, parents, children, or siblings or other members of the Offering Stockholder's family (including relatives by marriage), or to a trust for the benefit of the Offering Stockholder or any of the foregoing members of his or her family, or to a custodian, trustee or other fiduciary for the account of the Offering Stockholder or any of the foregoing members of his or her family in connection with a bona fide estate planning transaction; provided, however, that this Section shall not permit any Transfer to be made by the Offering Stockholder in connection with the dissolution of the Offering Stockholder's marriage or the legal separation of the Offering Stockholder and Offering Stockholder's spouse to such spouse on the account of any settlement of any community property or other marital property rights such spouse may have in such shares;

(b) by way of bequest or inheritance upon death;

(c) to any person, association or entity that, directly or indirectly, through one or more intermediaries, has voting control or has its voting controlled by, or is under common voting control with, such Offering Stockholder;

(d) by way of a bona fide gift;

(e) in connection with a Change of Control (as defined in Section 7 of this Article X below); or

(f) subject to an alternative right of first refusal or similar right granted by the corporation to a third party or parties which is more restrictive than the corporation's rights under this Article X.

Any Transfer set forth in clauses (a) through (f) of this Section 6 may be referred to herein as a "***Permitted Transfer***."

Section 7. LIMITATIONS ON RIGHT OF FIRST REFUSAL. The restrictions imposed by this Article X shall not apply to and shall terminate upon (i) the closing of a firmly underwritten public offering of Common Stock or (ii) the closing of any transaction or series of related transactions constituting (a) a reorganization, merger, consolidation or sale of all or substantially all of the corporation's stock, as a result of which transaction or series of related transactions the corporation's stockholders of record as constituted immediately prior to such transaction or series of related transactions

hold less than a majority of the outstanding voting power of the surviving or acquiring entity after the consummation of such transaction or series of related transactions; or (b) a sale of all or substantially all of the assets of the corporation (each of clauses (a) and (b) a "***Change of Control***").

Section 8. WAIVER. The provisions of this Article X may be waived with respect to any Transfer only in writing signed by the corporation.

Section 9. ASSIGNMENT; ALTERNATIVE RIGHTS. The corporation may assign its rights under this Article X or grant alternative rights of first refusal or similar rights to a third party or parties.

Section 10. LEGEND. Any and all certificates representing any shares of Common Stock shall bear a legend referring to the restrictions imposed by this Article X in substantially the form below:

"THE SHARES EVIDENCED HEREBY ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION AND/OR ITS ASSIGNEE(S), AS PROVIDED IN THE AMENDED AND RESTATED BYLAWS OF THE CORPORATION, A COPY OF WHICH ARE ON FILE WITH THE SECRETARY OF THE CORPORATION."

[Remainder of page intentionally left blank]

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

(1) That I am the duly elected and acting Secretary of Cadence Pharmaceuticals, Inc., a Delaware corporation (the "***Corporation***"); and

(2) That the foregoing amended and restated bylaws constitute the bylaws of the Corporation as duly adopted by the written consent of the stockholders of the Corporation dated as of November 2, 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 2nd day of November, 2004.

/s/ David A. Socks

David A. Socks, Secretary

EXHIBIT 4.2

CADENCE PHARMACEUTICALS, INC.

AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

February 21, 2006

CADENCE PHARMACEUTICALS, INC.

AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

THIS AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT (this "**Agreement**") is made as of February 21, 2006, by and among **CADENCE PHARMACEUTICALS, INC.**, a Delaware corporation (the "**Company**"), and each of the entities and persons listed on Schedule A hereto (collectively, the "**Investors**").

This Agreement supersedes and replaces that certain Amended and Restated Investor Rights Agreement, dated September 30, 2005 (the "**Prior Agreement**"), entered into by and among the Company and the other parties thereto, contingent upon and effective as of the Closing (as defined in the Purchase Agreement).

RECITALS

A. Certain of the Investors purchased shares of the Company's Series A-1 Preferred Stock, par value $0.0001 per share (the "**Series A-1 Preferred Stock**"), and Series A-2 Preferred Stock, par value $0.0001 per share (the "**Series A-2 Preferred Stock**"), and are purchasing shares of the Company's Series A-3 Preferred Stock, par value $0.0001 per share (the "Series A-3 Preferred Stock") pursuant to that certain Series A-3 Preferred Stock Purchase Agreement of even date herewith (the "**Purchase Agreement**").

B. Certain of the obligations in the Purchase Agreement are conditioned upon the execution and delivery of this Agreement.

C. The Prior Agreement provides that any amendment or waiver thereof shall be effective with the written consent of the Company and by Persons holding at a majority of the Convertible Securities (as such terms are defined in the Prior Agreement).

D. The undersigned parties constitute Persons holding at least a majority of the Convertible Securities, and, therefore, are entitled to bind all holders of Convertible Securities (as such terms are defined in the Prior Agreement).

THE PARTIES AGREE AS FOLLOWS:

SECTION 1. CERTAIN DEFINITIONS.

As used in this Agreement, the following terms shall have the following respective meanings:

(a) "**Affiliate**" shall mean with respect to any Person, any Person which directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person.

(b) "**Board**" shall mean the Board of Directors of the Company.

(c) "**Commission**" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(d) "**Common Stock**" shall mean the Company's common stock, par value $0.0001

per share.

(e) "**Convertible Securities**" shall mean the Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock and, only to the extent circumstances arise which require their creation, Series A-4 Preferred Stock and Series A-5 Preferred Stock.

(f) "**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

(g) "**Form S-3**" shall mean Form S-3 issued by the Commission or any substantially similar form then in effect.

(h) "**Holder**" shall mean any Person entering into this Agreement and any holder of outstanding Registrable Securities or an assignee or transferee of Registration rights as permitted by Section 3.8.

(i) "**Initiating Holders**" shall mean Holders who in the aggregate hold at least twenty percent (20%) of the Registrable Securities.

(j) "**Material Adverse Event**" shall mean an occurrence having a consequence that either (i) is materially adverse as to the business, properties, prospects or financial condition of the Company and its subsidiary, taken as a whole, or (ii) is reasonably foreseeable, has a reasonable likelihood of occurring, and if it were to occur would reasonably be expected to materially adversely affect the business, properties, prospects or financial condition of the Company and its subsidiary, taken as a whole.

(k) "**Person**" shall mean an individual, a corporation, a partnership, a trust or unincorporated organization or any other entity or organization.

(l) "**Preferred Directors"** shall mean the members of the Board elected by the holders of the Convertible Securities voting together as a class and to the exclusion of all other classes of capital stock of the Company.

(m) "**Qualified Public Offering**" shall mean a firmly underwritten public offering of the Company's Common Stock Registered under the Securities Act and involving gross proceeds to the Company of at least Thirty Million Dollars ($30,000,000) (prior to deduction for underwriters' discounts and other expenses relating to such public offering, including, without limitation, fees of the Company's counsel) and the price to the public is at least Three Dollars ($3.00) per share (equitably adjusted for all stock splits, sub-divisions, stock dividends, combinations and the like with respect to such shares).

(n) The terms "**Register**," "**Registered**" and "**Registration**" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act ("**Registration Statement**"), and the declaration or ordering of the effectiveness of such Registration Statement.

(o) "**Registrable Securities**" shall mean (i) all Common Stock not previously sold to the public issued or issuable upon conversion of any of the Convertible Securities purchased by or issued to the Investors, (ii) all shares of Common Stock owned by the Investors, (iii) for the purposes of Section 3.2, the shares of Common Stock owned by Theodore R. Schroeder and David A. Socks, (iv) the 192,500 shares of Common Stock issuable upon conversion of the Convertible Securities issuable upon exercise of

that certain Warrant to Purchase Stock dated February 17, 2006 by and between the Corporation and Silicon Valley Bank, (v) the 192,500 shares of Common Stock issuable upon conversion of the Convertible Securities issuable upon exercise of that certain Warrant to Purchase Stock dated February 17, 2006 by and between the Corporation and Oxford Finance Corporation, and (vi) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for, or in replacement of, the Common Stock described in clauses (i) through (v) of this definition.

(p) "**Registration Expenses**" shall mean all expenses incurred by the Company in complying with Sections 3.1 or 3.2 of this Agreement, including, without limitation, all federal and state registration, qualification and filing fees, printing expenses, fees and disbursements of counsel for the Company and fees and disbursements of not more than one (1) special counsel for the Holders (if different from the Company) not to exceed twenty-five thousand dollars ($25,000), blue sky fees and expenses, and the expense of any special audits incident to or required by any such Registration.

(q) "**Securities Act**" shall mean the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

(r) "**Selling Expenses**" shall mean all underwriting discounts and selling commissions applicable to the sale of Registrable Securities pursuant to this Agreement.

(s) "**Series A-1 Preferred Stock**" shall mean the Company's Series A-1 Preferred Stock, par value $0.0001 per share.

(t) "**Series A-2 Preferred Stock**" shall mean the Company's Series A-2 Preferred Stock, par value $0.0001 per share.

(u) **"Series A-3 Preferred Stock"** shall mean the Company's Series A-3 Preferred Stock, par value $0.0001 per share.

(v) "**Series A-4 Preferred Stock**" shall mean the Company's Series A-4 Preferred Stock, par value $0.0001 per share, if the circumstances arise which require the creation of such series.

(w) "**Series A-5 Preferred Stock**" shall mean the Company's Series A-5 Preferred Stock, par value $0.0001 per share, if the circumstances arise which require the creation of such series.

(x) "**Special Registration Statement**" shall mean (i) a registration statement relating to any employee benefit plan, (ii) with respect to any corporate reorganization or transaction under Rule 145 of the Securities Act, including any registration statements related to the resale of securities issued in such a transaction, or (iii) a registration related to stock issued upon conversion of debt securities.

SECTION 2. COVENANTS OF THE COMPANY

2.1 Financial Statements and Reports to Stockholders; Budget. (a) As soon as practicable after the end of each fiscal year of the Company, and in any event within one hundred twenty (120) days thereafter, the Company shall deliver to each Investor an audited consolidated balance sheet of the Company as of the end of such year and audited consolidated statements of income, stockholders' equity and cash flows for such year, which year-end financial reports shall be in reasonable detail and shall be

accompanied by the opinion of independent public accountants of recognized standing selected by the Company.

(b) So long as an Investor or subsequent holder of Convertible Securities holds or is deemed to hold at least One Hundred Fifty Thousand (150,000) shares of Registrable Securities (subject to adjustment for stock splits, reverse stock splits, stock dividends and other similar transactions with respect to such shares), the Company shall deliver to such Investor:

(i) as soon as practicable after the end of each month, and in any event within thirty (30) days thereafter, unaudited consolidated balance sheets of the Company and its subsidiaries, if any, as of the end of each such month and unaudited consolidated statements of income and cash flow for such month; and

(ii) within sixty (60) days prior to the end of each fiscal year, an operating budget and plan respecting the Company's next fiscal year in substantially the same form as that which will be subject to the approval of the Board.

2.2 Qualified Small Business. The Company covenants that so long as any Convertible Securities, or the Common Stock into which such shares are converted, are held by a Holder in whose hands such shares of Common Stock are eligible to qualify as "qualified small business stock" as defined in Section 1202(c) of the Internal Revenue Code of 1986, as amended (the "**Code**") ("**Qualified Small Business Stock**"), it will (i) comply with any applicable filing or reporting requirements imposed by the Code on issuers of Qualified Small Business Stock and (ii) execute and deliver to each Holder, from time to time, such forms, documents, schedules and other instruments as may be reasonably requested thereby to cause the Convertible Securities, or the Common Stock into which such shares are converted, to qualify as Qualified Small Business Stock. The Company shall submit to the Investors and to the Internal Revenue Service any reports that may be required under Section 1202(d)(1)(C) of the Code and any related Treasury Regulations. In addition, within ten (10) days after any Investor has delivered to the Company a written request therefor, the Company shall deliver to such Investor a written statement informing the Investor whether, in the Company's good-faith judgment after a reasonable investigation, such Investor's interest in the Company constitutes "qualified small business stock" as defined in Section 1202(c) of the Code, or would constitute "qualified small business stock," if determination of whether stock constitutes "qualified small business stock" were made by taking into account the modifications set forth in Section 1045(b)(4) of the Code. The Company's obligation to furnish a written statement pursuant to this Section 2.2 shall continue notwithstanding the fact that a class of the Company's stock may be traded on an established securities market.

2.3 Board Meeting; Compensation of Directors. The Company hereby covenants that so long as the holders of the Convertible Securities are entitled to appoint any members of the Board pursuant to the Company's Restated Certificate of Incorporation, as amended, the Board shall not meet less frequently than quarterly. All non-employee directors will be compensated by the Company identically; provided however, that additional compensation may be provided to the Chairman of the Board or the Chairman of any Committee of the Board; *provided*, that such compensation is approved by the Board, including the approval of at least one (1) of the Preferred Directors. All out-of-pocket and travel expenses of the directors incurred in attending Board meetings (or meetings of committees thereof) or in connection with the performance of their duties as directors shall be paid or reimbursed promptly by the Company. The Company shall also agree to indemnify each of its officers and directors to the fullest extent permitted by the Delaware General Corporation Law and enter into customary indemnification agreements with each of its officers and directors evidencing such indemnification obligation.

2.4 Employee Stock. With respect to any shares issued or options or rights granted to employees, consultants and directors after the date hereof, unless otherwise approved by the Board, the Company shall cause each employee, consultant, and director of the Company to enter into an agreement providing for vesting of such shares or options or rights over forty-eight (48) months, with no shares or options or rights being vested for twelve (12) months from the date of commencement of services in the case of stock or option grants for new hires, or the date of issuance or grant in the case of subsequent stock or option grants, at which time 1/4th of the shares or options or rights shall be vested and 1/48th of such shares, options or rights shall be vested monthly thereafter. Any options providing for early exercise and any grant of restricted stock shall provide for a repurchase option so that upon termination of the employment or consulting relationship of the stockholder, the Company or its assignee (to the extent permissible under applicable securities law qualification) retains the option to repurchase at cost any unvested shares held by such stockholder.

2.5 Board Observer Rights. For so long as an Investor or subsequent holder of Convertible Securities holds or is deemed to hold at least One Million Five Hundred Thousand (1,500,000) shares of Registrable Securities (subject to adjustment for stock splits, reverse stock splits, stock dividends and other similar transactions with respect to such shares), the Company shall allow one representative designated by such Investor (the "**Observer**") to attend meetings of the Board in a non-voting capacity; provided, however, that no Investor or subsequent holder of Convertible Securities shall be entitled to designate an Observer if such holder or an Affiliate of such holder is entitled to nominate a director to the Board pursuant to the Company's Amended and Restated Voting Agreement, dated as of the date hereof. The Company shall provide the Observer with copies of all materials that are provided by the Company to its directors; *provided, however,* that a majority of the members of the Board shall be entitled to recuse the Observer from portions of any Board meeting and to redact portions of any Board or Board committee materials delivered to the Observer where and to the extent that such majority determines, in good faith that (i) such recusal is reasonably necessary, in the opinion of counsel to the Company, to preserve attorney-client privilege with respect to a material matter, (ii) there exists, with respect to any deliberation or Board materials, an actual or potential conflict of interest between the Investor who has appointed such Observer and the Company or (iii) the presence of the Observer would otherwise be materially injurious to the Company in such circumstances; *provided*, further, that such Investor's right to appoint an Observer to the Board shall automatically expire upon the effectiveness of the registration statement for the Company's Qualified Public Offering. Any Observer will be subject to the confidentiality provisions set forth in Section 2.6. The Observer shall receive no compensation from the Company for service as an Observer and shall not be reimbursed for any expenses incurred by the Observer in connection with attendance of any meeting of the Board.

2.6 Confidentiality. Each Investor agrees and will cause any representative of the Investor, including any Observer, to hold in confidence and trust and not use or disclose any information provided to or learned by it in connection with its rights under this Section 2, except that such Investor may disclose such information to any general partner, limited partner, member, subsidiary or parent (and their respective representatives) of such Investor for the purpose of evaluating its investment in the Company as long as (a) such general partner, limited partner, member, subsidiary or parent is advised of the confidentiality provisions of this Section 2.6 and (b) such Investor uses its commercially reasonable best efforts to ensure that such general partner, limited partner, member, subsidiary or parent holds such information in confidence and trust and will not use or disclose any information provided to or learned by it except as required by law. Notwithstanding the foregoing, however, the obligation of each Investor to hold information confidential as provided herein or any other document or agreement relating thereto shall not prohibit such Investor from disclosing such information: (i) to its board of directors, investment advisers, attorneys, accountants, consultants and other professionals to the extent necessary to obtain their services in connection with its investment in the Company, *provided* that such persons agree to hold such information confidential as provided herein; (ii) to any prospective purchaser of any shares of the

Company owned by such Investor as long as such prospective purchaser agrees in writing to be bound by the confidentiality provisions as provided herein; (iii) to such Investor's investment advisor or any investment companies managed by such Investor's investment advisor, *provided* that such persons agree to hold such information confidential as provided herein; or (iv) as required by applicable law or regulation, regulatory body, stock exchange, court or administrative order, or any listing or trading agreement concerning such Investor or the Company. Furthermore, nothing in this Section 2.6 shall restrict any Investor's ability to disclose the existence or nature of its relationship with the Company, the nature or amount of its investment in securities of the Company or to provide its affiliates with quarterly, annual or other reports and such other information about the Company prepared by such Investor in the ordinary course of its business, *provided* that said Investor takes commercially reasonable measures to ensure that any such affiliates protect the confidential nature of such confidential information.

2.7 Termination of Covenants. The covenants of the Company set forth in this Section 2 shall be terminated and be of no further force or effect upon the earlier of (a) the effective date of the Company's Registration Statement filed in connection with the Company's first Qualified Public Offering and (b) the date of the closing of a sale, lease, or other disposition of all or substantially all of the Company's assets or the Company's merger into or consolidation with any other corporation or other entity, or any other corporate reorganization, in which the holders of the Company's outstanding voting stock immediately prior to such transaction own, immediately after such transaction, securities representing less than fifty percent (50%) of the voting power of the corporation or other entity surviving such transaction, provided that this Section 2.7 shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Company or a sale of shares by the Company for primarily equity financing purposes.

SECTION 3. REGISTRATION RIGHTS

3.1 Demand Registration.

3.1.1. Request for Registration on Form other than Form S-3. Subject to the terms of this Agreement, in the event that the Company shall receive from the Initiating Holders, at any time after, six (6) months from the effective date of the first registration statement for a public offering of securities of the Company (other than a Special Registration Statement), a written request that the Company effect any Registration with respect to all or a part of the Registrable Securities on a form other than Form S-3 for an offering of all or a part of the then outstanding Registrable Securities, the reasonably anticipated aggregate offering price to the public of which would exceed Five Million Dollars ($5,000,000), net of Selling Expenses, the Company shall (i) promptly give written notice of the proposed Registration to all other Holders and shall (ii) as soon as practicable, use its reasonable best efforts to effect Registration of the Registrable Securities specified in such request, together with any Registrable Securities of any Holder joining in such request as are specified in a written request given within twenty (20) days after written notice from the Company. The Company shall not be obligated to take any action to effect any such Registration pursuant to this Section 3.1.1:

(i) in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, unless the Company is already subject to service in such jurisdiction and except as may be required under the Securities Act;

(ii) after the Company has effected two (2) such Registrations pursuant to this Section 3.1.1 and such Registrations have been declared effective;

(iii) during the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on the date one hundred eighty (180)

days following the effective date of the registration statement pertaining to any public offering, other than pursuant to a Special Registration Statement; *provided* that the Company makes reasonable good faith efforts to cause such registration statement to become effective;

(iv) if within thirty (30) days of receipt of a written request from the Initiating Holders pursuant to Section 3.1.1, the Company gives notice to the Holders of the Company's intention to file a registration statement for a public offering, other than pursuant to a Special Registration Statement, within one hundred twenty (120) days; or

(v) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 3.1.3 below.

3.1.2. Right of Deferral of Registration on Form other Than Form S-3. If the Company shall furnish to all such Holders who joined in the request a certificate signed by the President of the Company stating that, in the good faith judgment of the Board, it would be seriously detrimental to the Company for any Registration to be effected as requested under Section 3.1.1, the Company shall have the right to defer the filing of a Registration Statement with respect to such offering for a period of not more than one hundred twenty (120) days from delivery of the request of the Initiating Holders; *provided*, *however*, that the Company may not utilize this right more than once in any twelve (12)-month period.

3.1.3. Request for Registration on Form S-3. Subject to the terms of this Agreement, in the event that the Company receives from Holders of twenty percent (20%) or more of the then outstanding Registrable Securities, a written request that the Company effect any Registration on Form S-3 (or any successor form to Form S-3 regardless of its designation) at a time when the Company is eligible to Register securities on Form S-3 (or any successor form to Form S-3 regardless of its designation) for an offering of Registrable Securities which such Holders in their good faith discretion determine would have an anticipated offering price of at least One Million Dollars ($1,000,000), the Company will promptly give written notice of the proposed Registration to all the Holders and will as soon as practicable use its best efforts to effect Registration of the Registrable Securities specified in such request, together with all or such portion of the Registrable Securities of any Holder joining in such request as are specified in a written request delivered to the Company within twenty (20) days after written notice from the Company of the proposed Registration. There shall be no limit to the number of occasions on which the Company shall be obligated to effect Registration under this Section 3.1.3, but the Company shall not be required to effect more than two (2) such Registrations in any twelve (12)-month period. Notwithstanding the foregoing, the Company shall not be obligated to effect any Registration pursuant to this Section 3.1.3:

(i) if Form S-3 is not available for such offering by the Holders;

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public of less than One Million Dollars ($1,000,000) before deduction of Selling Expenses;

(iii) if within thirty (30) days of receipt of a written request from any Holder or Holders pursuant to this Section 3.1.3, the Company gives notice to such Holder or Holders of the Company's intention to make a public offering within ninety (90) days, other than pursuant to a Special Registration Statement;

(iv) if the Company shall furnish to the Holders a certificate signed by the President of the Company stating that, in the good faith judgment of the Board, it would be seriously detrimental to the Company for any Registration to be effected as requested under Section 3.1.3, the Company shall have the right to defer the filing of a Registration Statement with respect to such offering for a period of not more than ninety (90) days from delivery of the request of the Holders requesting such Registration; *provided, however*, that the Company may not utilize this right more than once in any twelve (12)-month period; or

(v) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance.

3.1.4. Registration of Other Securities in Demand Registration. Any Registration Statement filed pursuant to the request of the Initiating Holders under this Section 3 may, subject to the provisions of Section 3.1.5, include securities of the Company other than Registrable Securities.

3.1.5. Underwriting in Demand Registration.

a. Notice of Underwriting.

If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company, as a part of their request made pursuant to Section 3.1.1, and the Company shall include such information in the written notice referred to in Section 3.1.1 or 3.1.3. The right of any Holder to Registration pursuant to Section 3 shall be conditioned upon such Holder's agreement to participate in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting.

b. Inclusion of other Holders in Demand Registration.

If the Company, officers or directors of the Company holding Common Stock other than Registrable Securities or holders of securities issued by the Company other than Registrable Securities, request inclusion in such Registration, the Initiating Holders, to the extent they deem advisable and consistent with the goals of such Registration, shall, on behalf of all Holders, offer to any or all of the Company, such officers or directors and such holders of securities other than Registrable Securities that such securities other than Registrable Securities be included in the underwriting and may condition such offer on the acceptance by such persons of the terms of this Section 3.1.

c. Selection of Underwriter in Demand Registration.

The Company shall (together with all Holders proposing to distribute their securities through such underwriting) enter into an underwriting agreement with the representative ("**Underwriter's Representative**") of the underwriter or underwriters selected for such underwriting by the Holders of a majority of the Registrable Securities being Registered by the Initiating Holders and agreed to by the Company.

d. Marketing Limitation in Demand Registration.

In the event the Underwriter's Representative advises the Initiating Holders in writing that market factors (including, without limitation, the aggregate number of shares of Common Stock requested to be Registered, the general condition of the market, and the status of the persons proposing to sell securities pursuant to the Registration) require a limitation of the number of

shares to be underwritten, then (i) first the securities other than Registrable Securities and (ii) next the securities requested to be registered by the Company, shall be excluded from such Registration to the extent required by such limitation. If a limitation of the number of shares is still required, the Initiating Holders shall so advise all Holders and the number of shares of Registrable Securities that may be included in the Registration and underwriting shall be allocated among all Holders in proportion, as nearly as practicable, to the respective amounts of Registrable Securities entitled to inclusion in such Registration held by such Holders at the time of filing the Registration Statement. No Registrable Securities or other securities excluded from the underwriting by reason of this Section 3.1.5(d) shall be included in such Registration Statement. To facilitate the allocation of shares in accordance with the above provisions, the Company or the Underwriter's Representative may round the number of shares allocated to any Holder to the nearest one hundred (100) shares.

e. Right of Withdrawal in Demand Registration.

If any Holder of Registrable Securities, or a holder of other securities entitled (upon request) to be included in such Registration, disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by written notice to the Company, the underwriter and the Initiating Holders delivered at least seven (7) business days prior to the effective date of the Registration Statement. The securities so withdrawn shall also be withdrawn from the Registration Statement.

3.1.6. Blue Sky in Demand Registration. In the event of any Registration pursuant to Section 3.1, the Company will exercise its reasonable best efforts to Register and qualify the securities covered by the Registration Statement under such other securities or Blue Sky laws of such jurisdictions (not exceeding twenty (20) at the expense of the Company) as shall be reasonably appropriate for the distribution of such securities; *provided*, *however*, that (i) the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, and (ii) notwithstanding anything in this Agreement to the contrary, in the event any jurisdiction in which the securities shall be qualified imposes a non-waivable requirement that expenses incurred in connection with the qualification of the securities be borne by selling stockholders, such expenses shall be payable pro rata by selling stockholders.

3.2 Piggyback Registration.

3.2.1. Notice of Piggyback Registration and Inclusion of Registrable Securities. Subject to the terms of this Agreement, in the event the Company decides to Register any of its Common Stock (either for its own account or the account of a security holder or holders or other securities under the Securities Act in connection with the public offering of such securities (other than a Special Registration Statement), the Company will: (i) promptly give each Holder written notice thereof (which shall include a list of the jurisdictions in which the Company intends to attempt to qualify such securities under the applicable Blue Sky or other state securities laws) and (ii) include in such Registration (and any related qualification under Blue Sky laws or other compliance), and in any underwriting involved therein, all the Registrable Securities specified in a written request delivered to the Company by any Holder within fifteen (15) days after delivery of such written notice from the Company.

3.2.2. Underwriting in Piggyback Registration.

a. Notice of Underwriting in Piggyback Registration.

If the Registration of which the Company gives notice pursuant to Section 3.2.1 is for a Registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to Section 3.2.1. In such event the right of any

Holder to Registration shall be conditioned upon such underwriting and the inclusion of such Holder's Registrable Securities in such underwriting to the extent provided in this Section 3. All Holders proposing to distribute their securities through such underwriting shall (together with the Company and the other holders distributing their securities through such underwriting) enter into an underwriting agreement with the Underwriter's Representative for such offering. The Holders shall have no right to participate in the selection of the underwriters for an offering pursuant to this Section 3.2.

b. Marketing Limitation in Piggyback Registration.

In the event the Underwriter's Representative advises the Holders seeking Registration of Registrable Securities pursuant to Section 3.2 in writing that market factors (including, without limitation, the aggregate number of shares of Common Stock requested to be Registered, the general condition of the market, and the status of the persons proposing to sell securities pursuant to the Registration) require a limitation of the number of shares to be underwritten, the Underwriter's Representative (subject to the allocation priority set forth in Section 3.2.2(c)) may:

i. in the case of the first registered offering of the Company's securities, exclude some or all Registrable Securities from such Registration and underwriting; and

ii. in the case of any subsequent registered public offering of the Company's securities, limit the number of shares of Registrable Securities to be included in such Registration and underwriting to not less than thirty percent (30%) of the securities included in such Registration (based on aggregate market values).

c. Allocation of Shares in Piggyback Registration.

In the event that the Underwriter's Representative limits the number of shares to be included in a Registration pursuant to Section 3.2.2(b), the number of shares to be included in such Registration shall be allocated (subject to Section 3.2.2(b)) in the following manner: The number of shares, if any, that may be included in the Registration and underwriting by selling stockholders shall first be allocated among all the requesting Holders pro rata according to the respective amounts of Registrable Securities entitled to be included in such offering by such requesting Holders and then among all other holders of securities other than Registrable Securities requesting and legally entitled to include shares in such Registration, in proportion, as nearly as practicable, to the respective amounts of securities (including Registrable Securities) which such Holders and such other holders would otherwise be entitled to include in such Registration. No Registrable Securities or other securities excluded from the underwriting by reason of this Section 3.2.2(c) shall be included in the Registration Statement. To facilitate the allocation of shares in accordance with the above provisions, the Company or the Underwriter's Representative may round the number of shares allocated to any Holder to the nearest one hundred (100) shares.

d. Withdrawal in Piggyback Registration.

If any Holder disapproves of the terms of any such underwriting, he may elect to withdraw therefrom by written notice to the Company and the underwriter delivered at least seven (7) business days prior to the effective date of the Registration Statement. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such Registration.

3.2.3. Blue Sky in Piggyback Registration. In the event of any Registration of Registrable Securities pursuant to Section 3.2, the Company will exercise its best efforts to Register and

qualify the securities covered by the Registration Statement under such other securities or Blue Sky laws of such jurisdictions (not exceeding twenty (20) unless otherwise agreed to by the Company) as shall be reasonably appropriate for the distribution of such securities; *provided, however*, that (i) the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, and (ii) notwithstanding anything in this Agreement to the contrary, in the event any jurisdiction in which the securities shall be qualified imposes a non-waivable requirement that expenses incurred in connection with the qualification of the securities be borne by selling stockholders, such expenses shall be payable pro rata by selling stockholders.

3.3 Expenses of Registration. All Registration Expenses incurred in connection with two (2) Registrations pursuant to Section 3.1.1, all Registrations pursuant to Section 3.1.3 (Form S-3) and all Registrations pursuant to Section 3.2 shall be borne by the Company. All Registration Expenses incurred in connection with any other registration, qualification or compliance shall be apportioned among the Holders and other holders of the securities so registered on the basis of the number of shares so registered. Notwithstanding the above, the Company shall not be required to pay for any expenses of any Registration proceeding begun pursuant to Section 3.1 if the Registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be Registered (which Holders shall bear such expenses), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to demand Registration pursuant to Section 3.1; *provided further, however*, that if at the time of such withdrawal, (a) the Holders have learned of a Material Adverse Event either (i) not known to the Holders at the time of their request or (ii) not made known to the Holders within fifteen (15) days after their request and (b) the Holders have withdrawn the request with reasonable promptness following the discovery of such Material Adverse Event, then the Holders shall not be required to pay any of such expenses and shall retain their rights pursuant to Section 3.1. All Selling Expenses shall be borne by the respective holders of the securities Registered pro rata on the basis of the number of shares registered.

3.4 Registration Procedures. In the case of each registration, qualification or compliance effected by the Company pursuant to this Section 3, the Company will:

(a) Keep each Holder whose Registrable Securities are included in any Registration pursuant to this Agreement advised as to the initiation and completion of such Registration. At its expense the Company will: (i) use its best efforts to keep such Registration effective for a period of one hundred twenty (120) days or until the Holder or Holders have completed the distribution described in the Registration Statement relating thereto, whichever first occurs; and (ii) furnish such number of prospectuses (including preliminary prospectuses) and other documents as a Holder from time to time may reasonably request. With respect to clause (i) of the preceding sentence, the Company may at any time upon written notice to the participating Holders and for a period not to exceed sixty (60) days thereafter (the "**Suspension Period**") delay the filing or effectiveness of any registration statement or suspend the use or effectiveness of any registration statement (and the Holders hereby agree not to offer or sell any Registrable Securities pursuant to such registration statement (or any prospectus relating thereto) during the Suspension Period) if the Company reasonably believes that the Company may, in the absence of such delay or suspension hereunder, be required under state or federal securities laws to disclose any corporate development the disclosure of which could reasonably be expected to have an adverse effect upon the Company, its stockholders, a potentially significant transaction or event involving the Company, or any negotiations, discussions, or proposals directly relating thereto. In the event that the Company shall exercise its rights hereunder, the applicable time period during which the registration statement is to remain effective shall be extended by a period of time equal to the duration of the Suspension Period. The Company may extend the Suspension Period for an additional consecutive sixty (60) days with the consent of the holders of a majority of the Registrable Securities proposed to be sold by the Holders in the applicable Registration, which consent shall not be unreasonably withheld. If so

directed by the Company, the Holders shall use their best efforts to deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Holders' possession, of the prospectus relating to such Registrable Securities current at the time of receipt of such notice. Notwithstanding anything to the contrary contained herein, the Company shall not be required to file, cause to become effective or maintain the effectiveness of any registration statement that contemplates a distribution of securities on a delayed or continuous basis pursuant to Rule 415 under the Securities Act.

(b) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statements as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for a period of up to one hundred twenty (120) days;

(c) Promptly notify each Holder of Registrable Securities covered by the registration statement at any time when the Company becomes aware of the happening of any event as a result of which the registration statement or the prospectus included in such registration statement or any supplement to the prospectus (as then in effect) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of the prospectus, in light of the circumstances under which they were made) not misleading or, if for any other reason it shall be necessary during such time period to amend or supplement the registration statement or the prospectus in order to comply with the Securities Act, whereupon, in either case, each Holder shall immediately cease to use such registration statement or prospectus for any purpose and, as promptly as practicable thereafter, the Company shall prepare and file with the Commission, and furnish without charge to the appropriate Holders and managing underwriters, if any, a supplement or amendment to such registration statement or prospectus which will correct such statement or omission or effect such compliance and such copies thereof as the Holders and any underwriters may reasonably request;

(d) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions except as may be required by law;

(e) Cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed;

(f) Provide a transfer agent and registrar for all Registrable Securities and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(g) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement; and

(h) Use its reasonable best efforts to furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to this Section 3, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Section 3, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public

offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities (to the extent the then applicable standards of professional conduct permit said letter to be addressed to the Holders).

3.5 Information Furnished by Holder. It shall be a condition precedent of the Company's obligations under this Agreement that each Holder of Registrable Securities included in any Registration furnish to the Company such information regarding such Holder and the distribution proposed by such Holder or Holders as the Company may reasonably request.

3.6 Indemnification.

3.6.1. Company's Indemnification of Holders. To the extent permitted by law, the Company will indemnify each Holder, each of its officers, directors and constituent partners, legal counsel for the Holders, and each person controlling such Holder, with respect to which Registration, qualification or compliance of Registrable Securities has been effected pursuant to this Agreement, and each underwriter, if any, and each person who controls any underwriter, against all claims, losses, damages or liabilities (or actions in respect thereof) to the extent such claims, losses, damages or liabilities arise out of or are based upon any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus or other document (including any related Registration Statement) incident to any such Registration, qualification or compliance, or are based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Company of any rule or regulation promulgated under the Securities Act or Exchange Act or state or federal law applicable to the Company and relating to action or inaction required of the Company in connection with any such Registration, qualification or compliance; and the Company will reimburse each such Holder, each such underwriter and each person who controls any such Holder or underwriter for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action; *provided*, *however*, that the indemnity contained in this Section 3.6.1 shall not apply to amounts paid in settlement of any such claim, loss, damage, liability or action if settlement is effected without the consent of the Company (which consent shall not unreasonably be withheld); and *provided*, further, that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based upon any untrue statement or omission based upon written information furnished to the Company by such Holder, underwriter, or controlling person and stated to be for use in connection with the offering of securities of the Company.

3.6.2. Holder's Indemnification of Company. To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such Registration, qualification or compliance is being effected pursuant to this Agreement, indemnify the Company, each of its directors and officers that has signed the registration statement, each underwriter, if any, of the Company's securities covered by such a Registration Statement, each person who controls the Company or such underwriter within the meaning of the Securities Act, and each other such Holder, each of its officers, directors and constituent partners and each person controlling such other Holder, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based upon any untrue statement (or alleged untrue statement) of a material fact contained in any such Registration Statement, prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by such Holder of any rule or regulation promulgated under the Securities Act or Exchange Act or state or federal law applicable to such Holder and relating to action or inaction

required of such Holder in connection with any such Registration, qualification or compliance; and will reimburse the Company, such Holders, such directors, officers, partners, persons, underwriters or control persons for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such Registration Statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use in connection with the offering of securities of the Company; *provided*, *however*, that each Holder's liability under this Section 3.6.2 shall be several, and not joint with other Holders, and shall not exceed such Holder's net proceeds from the offering of securities made in connection with such Registration, except in the case of willful fraud by such holder.

3.6.3. Indemnification Procedure. Promptly after receipt by an indemnified party under this Section 3.6 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 3.6, notify the indemnifying party in writing of the commencement thereof and generally summarize such action. The indemnifying party shall have the right to participate in and to assume the defense of such claim; *provided*, *however*, that the indemnifying party shall be entitled to select counsel for the defense of such claim with the approval of any parties entitled to indemnification, which approval shall not be unreasonably withheld; *provided further, however*, that if either party reasonably determines that there may be a conflict between the position of the indemnifying party and the indemnified party in conducting the defense of such action, suit or proceeding by reason of recognized claims for indemnity under this Section 3.6, then counsel for such party shall be entitled to conduct the defense to the extent reasonably determined by such counsel to be necessary to protect the interest of such party. The failure to notify an indemnifying party promptly of the commencement of any such action, if prejudicial to the ability of the indemnifying party to defend such action, shall relieve such indemnifying party, to the extent so prejudiced, of any liability to the indemnified party under this Section 3.6, but the omission so to notify the indemnifying party will not relieve such party of any liability that such party may have to any indemnified party otherwise other than under this Section 3.6.

3.6.4. Contribution. If the indemnification provided for in this Section 3.6 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

3.6.5. Underwriting Agreement. Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

3.6.6. Survival. The obligations of the Company and Holders under this Section 3.6 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 3, and otherwise. No indemnifying party, in defense of any claim of litigation set forth under this

Section 3.6, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

3.7 Limitations on Registration Rights Granted to Other Securities. From and after the date of this Agreement, the Company shall not enter into any other agreement with any holder or prospective holder of any securities of the Company providing for the granting to such holder of any Registration rights, except that, with the consent of the Holders of sixty-seven percent (67%) of the Convertible Securities then outstanding, additional holders may be added as parties to this Agreement with regard to any or all securities of the Company held by them. Any such additional parties shall execute a counterpart of this Agreement, and upon execution by such additional parties and by the Company, shall be considered an Investor for all purposes of this Agreement. The additional parties and the additional Registrable Securities shall be identified in an amendment to Schedule A hereto.

3.8 Transfer of Rights. The right to cause the Company to Register securities granted by the Company to the Investors under Sections 3.1 and 3.2 may be assigned by any Holder to a transferee or assignee of any Convertible Securities not sold to the public acquiring at least One Hundred Fifty Thousand (150,000) shares of such Holder's Convertible Securities (equitably adjusted for all stock splits, subdivisions, stock dividends, combinations and the like with respect to such shares); *provided, however*, that the Company must receive written notice prior to the time of said transfer, stating the name and address of said transferee or assignee and identifying the securities with respect to which such rights are being assigned. Notwithstanding the limitation set forth in the foregoing sentence respecting the minimum number of shares which must be transferred, (a) any Holder which is a partnership may transfer such Holder's rights to such Holder's constituent partners, limited partners, retired partners (including spouses, ancestors, lineal descendants and siblings of such partners or spouses who acquire Convertible Securities or Registrable Securities by gift, will or intestate succession), (b) any Holder which is a limited liability company may transfer such Holder's rights to such Holder's constituent members or retired members (including spouses, ancestors, lineal descendants and siblings of such members or spouses who acquire Convertible Securities or Registrable Securities by gift, will or intestate succession), (c) any Holder which is a natural person may transfer such Holder's rights to any immediate family member, niece or nephew or to any trust created for the benefit of such Holder or his or her immediate family members, nieces or nephews, (d) any Holder may transfer such Holder's rights to an Affiliate, subject in each case to such transferee's agreeing to be bound by the rights and restrictions of this Agreement, and (e) any Holder may transfer such Holder's rights to any other Holder who has the right to cause the Company to Register securities granted by the Company to the Investors under Sections 3.1 and 3.2. The rights under Sections 4 and 5 may be assigned by an Investor only as provided in such Sections.

3.9 Market Stand-off. If requested in writing by the underwriters for the initial public offering of the Company's Common Stock, each holder of Registrable Securities who is a party to this Agreement shall agree not to sell publicly any shares of Registrable Securities or any other securities of the Company (other than shares of Registrable Securities or other securities of the Company being registered in such offering), without the consent of such underwriters, for a period of not more than one hundred eighty (180 days) following the effective date of the registration statement relating to such offering; *provided, however* that all executive officers and directors of the Company and holders of at least one percent (1%) of the Company's voting securities shall also have agreed not to sell publicly their Common Stock under the circumstances and pursuant to the terms set forth in this section. Each Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company, or the Company's underwriters, which are consistent with the foregoing, or which are reasonably necessary to give further effect thereto. In order to enforce the covenants of this Section 3.9, the Company shall have the right to place restrictive legends on the certificates representing the securities of each Holder and may impose stop-transfer instructions with respect to such securities.

3.10 No-Action Letter or Opinion of Counsel in Lieu of Registration; Conversion of Convertible Securities. Notwithstanding anything else in this Agreement, if the Company shall have obtained from the Commission a "no-action" letter in which the Commission has indicated that it will take no action if, without Registration under the Securities Act, any Holder disposes of Registrable Securities covered by any request for Registration made under this Agreement in the specific manner in which such Holder proposes to dispose of the Registrable Securities included in such request (such as including, without limitation, the inclusion of such Registrable Securities in an underwriting initiated by either the Company or the Holders), or if in the opinion of counsel for the Company concurred in by counsel for such Holder, which concurrence shall not be unreasonably withheld, no Registration under the Securities Act is required in connection with such disposition, the shares included in such request shall not be eligible for Registration under this Agreement; *provided, however*, that any Registrable Securities not so disposed of shall be eligible for Registration in accordance with the terms of this Agreement with respect to other proposed dispositions to which this Section 3.10 does not apply. The Registration rights of the Holders of Convertible Securities set forth in this Agreement are conditioned upon the conversion of the Convertible Securities with respect to which Registration is sought into Common Stock prior to the effective date of the Registration Statement.

3.11 Rule 144 Requirements. Immediately after the date on which a Registration Statement filed by the Company under the Securities Act becomes effective, the Company shall undertake to make publicly available, and available to the Holders of Registrable Securities, such information as is necessary to enable the holders of Registrable Securities to make sales of Registrable Securities pursuant to Rule 144 of the Commission under the Securities Act. The Company shall furnish to any holder of Registrable Securities, upon request, a written statement executed by the Company as to the steps it has taken to comply with the current public information requirements of Rule 144.

3.12 Reports Under Securities Exchange Act of 1934. With a view to making available to the Investors the benefits of Rule 144 and any other rule or regulation of the Commission that may at any time permit an Investor to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to use its commercially reasonable efforts to:

(a) make and keep public information available, as those terms are defined in Rule 144, at all times after ninety (90) days after the effective date of the first registration statement filed by the Company for the offering of its securities to the general public; file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(b) furnish to any Investor, so long as such Investor owns any Registrable Securities or Convertible Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company), the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing any Investor of any rule or regulation of the Commission which permits the selling of any such securities without registration or pursuant to such plan.

3.13 Termination of Company Agreements. The Registration rights set forth in Sections 3.1 and 3.2 shall terminate seven (7) years after the effective date of the Company's Registration Statement filed in connection with the Company's first Qualified Public Offering or, as to any Holder, at any time following the effective date of the Company's first Qualified Public Offering, when such Holder is

entitled to sell all of such Investor's Registrable Securities pursuant to Rule 144 (including Rule 144(k)) of the Commission under the Securities Act.

SECTION 4. RIGHT OF FIRST OFFER

4.1 Right of First Offer. Subject to Section 4.4 hereof, the Company hereby grants to each Investor the right of first refusal (the "**Right of First Offer**") to purchase such Investor's pro rata share of New Securities (as defined in Section 4.2) which the Company may from time to time propose to sell and issue. For purposes of the Right of First Offer an Investor's pro rata share (the "**Pro Rata Share**") shall be determined as follows: an Investor's Pro Rata Share shall be equal to that number or amount of New Securities to be sold multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock owned by such Investor (including shares of Common Stock issuable upon the full exercise and conversion of all convertible or exercisable securities owned by such Investor) and the denominator of which shall be the total number of shares of the Company's Common Stock deemed to be outstanding assuming the conversion of all outstanding convertible securities and the exercise of all outstanding options and warrants. Notwithstanding the foregoing, any Investor that elects to purchase all of its respective Pro Rata Share (a "**Fully-Exercising Investor**") may, at the time it accepts the Company's offer, subscribe to purchase any or all of the securities offered ("**Oversubscription Securities**") which may be available as a result of the rejection, or partial rejection, of the offer by other Investors. All such Oversubscription Securities shall be allocated among each Fully-Exercising Investor subscribing to purchase them in a proportion equal to that number of shares of Common Stock owned by such Fully-Participating Investor (including shares of Common Stock issuable upon the full exercise and conversion of all convertible or exercisable securities owned by such Fully-Participating Investor) bears to the total number of shares of Common Stock (including shares of Common Stock issuable upon the full exercise and conversion of all convertible or exercisable securities) held by all Fully-Exercising Investors who elected to purchase some of the Oversubscribed Securities. Notwithstanding the foregoing, the Company shall not be required to offer or sell such New Securities to any Investor who would cause the Company to be in violation of applicable federal securities laws by virtue of such offer or sale. The Right of First Offer shall be subject to the provisions of this Section 4.

4.2 Definition of New Securities. "**New Securities**" shall mean any shares of Common Stock or Preferred Stock of the Company, whether now authorized or not, and rights, options, or warrants to purchase such shares of Common Stock or Preferred Stock, and all other securities having equity features, such as convertible notes or notes issued in conjunction with options or warrants; *provided* that "**New Securities**" shall not include:

(a) Securities issued pursuant to the Purchase Agreement;

(b) securities issued upon the conversion of any shares of the Convertible Securities;

(c) securities issued to the Company's employees, officers, directors, advisors, outside consultants or contractors pursuant to a plan, agreement or arrangement duly approved by the Board;

(d) securities issued or issuable pursuant to the exercise of options, warrants or convertible securities outstanding as of the date hereof;

(e) securities issued in connection with obtaining equipment lease financing, credit agreements, debt financing and other similar transactions, whether issued to a lessor, guarantor or other Person, *provided* that such issuance is pursuant to an agreement or arrangement duly approved by the Board, and provided, further, that such issuance shall not be primarily for general capital raising purposes;

(f) securities issued to effect any stock split, stock dividend or recapitalization or like transactions of the Company;

(g) securities issued in connection with the acquisition of all or a substantial portion of the assets or the business of another entity by the Company, *provided* that such issuance is pursuant to an agreement or arrangement duly approved by the Board;

(h) securities issued in connection with a research and development partnership, corporate partnering transaction, licensing or collaborative arrangements, strategic alliance, technology acquisition or transfer, or similar transaction, *provided* that such issuance is pursuant to an agreement or arrangement duly approved by the Board; and

(i) securities issued pursuant to a Qualified Public Offering.

4.3 Notices. In the event the Company proposes to undertake an issuance of New Securities, it shall give each Investor written notice (the "**Notice**") of its intention, describing the type of New Securities, the price, and the principal terms upon which the Company proposes to issue the same. Each Investor shall have twenty (20) days from the delivery of the Notice to agree to purchase up to such Investor's Pro Rata Share plus, in the event of a Fully-Participating Investor, any Oversubscription Securities, for the price and upon the terms specified in the Notice by giving written notice to the Company and stating therein the quantity of New Securities and Oversubscription Securities to be purchased.

4.4 Failure to Exercise Right. Unless (i) Investors holding at least 60% of the then outstanding shares of Series A-3 Preferred Stock deem otherwise (by vote or by action by written consent) or (ii) the Company requests in writing a lesser investment commitment of such holders, at any time or from time to time following the date of the issuance of shares of Series A-3 Preferred Stock in the Closing (as defined in the Purchase Agreement), if (A) any Investor holding an aggregate of at least One Million Seven Hundred Thousand (1,700,000) shares of Series A-3 Preferred Stock (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations with respect to such shares) (a "**Significant Holder**") is entitled to exercise the Right of First Offer provided in this Section 4, (B) the Company has complied with its obligations under this Section 4 with respect to the Right of First Offer, and (C) such Significant Holder does not by exercise of such Significant Holder's Right of First Offer to acquire at least its Minimum Share (as defined below) of New Securities (a "**Non-Participating Holder**"), then, effective immediately prior to the issuance of such New Securities each Non-Participating Holder shall lose its Right of First Offer for all subsequent issuances of New Securities which would otherwise trigger the Right of First Offer pursuant to this Section 4**.** Each Significant Holder's "Minimum Share" of the New Securities shall be a number of shares equal to (X) the product of (i) 0.5 multiplied by (ii) (A) sixty percent (60%) of the aggregate original purchase price paid by such Significant Holder for the shares of Series A-3 Preferred Stock held by such Significant Holder, divided by (Y) the per share price of the New Securities, rounded down to a whole number. Notwithstanding anything contained in this Agreement to the contrary, this Section 4.4 may not be amended or modified in a manner that adversely affects the rights or otherwise increases the obligations of a Significant Holder to purchase New Securities without the written consent of such Significant Holder.

4.5 Company Right to Offer New Securities. In the event an Investor does not elect to purchase all of such Investor's Pro Rata Share of the New Securities pursuant to Section 4.1 and such New Securities are not purchased by other Fully-Participating Investors, the Company shall have ninety (90) days after the last date on which any Investor's right to purchase lapsed to sell or enter into an agreement (pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within ninety (90) days from the date of said agreement) to sell the New Securities respecting which such

Investor's option was not exercised, at or above the price and upon terms not materially more favorable to the purchasers of such securities than the terms specified in the initial Notice given in connection with such sale. In the event the Company has not sold the New Securities within said 90-day period (or sold and issued New Securities in accordance with the foregoing within ninety (90) days from the date of said agreement), the Company shall not thereafter issue or sell any New Securities without first offering such New Securities to the Investors in the manner provided in this Section 4.

4.6 Rights of Affiliated Investors. For the purposes of this Section 4, Investors who are Affiliates of one or more other Investors shall, at the election of an Investor and one or more such Affiliates, be treated as a group (an "**Investor Group**"). Members of an Investor Group shall have the right to reallocate the rights granted by this Section 4 among themselves as they determine.

4.7 Assignment. The Right of First Offer set forth in this Section 4 may not be assigned or transferred, except that each Investor shall have the right to assign its right to purchase securities under this Section 4 to any Affiliate of such Investor; *provided* such Affiliate agrees in writing with the Company and the Investor, prior to and as a condition precedent to such transfer, to be bound by all the provisions of Sections 3.9, 4, 5 and 6 of this Agreement.

4.8 Termination. The Right of First Offer granted under this Section 4 shall not apply to, and shall terminate on and be of no further force or effect upon the earlier of (a) the effective date of the Company's Registration Statement filed in connection with the Company's first Qualified Public Offering and (b) the date of the closing of a sale, lease, or other disposition of all or substantially all of the Company's assets or the Company's merger into or consolidation with any other corporation or other entity, or any other corporate reorganization, in which the holders of the Company's outstanding voting stock immediately prior to such transaction own, immediately after such transaction, securities representing less than fifty percent (50%) of the voting power of the corporation or other entity surviving such transaction, provided that this Section 4.8 shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Company or a sale of shares by the Company for primarily equity financing purposes.

SECTION 5. TRANSFERS OF SECURITIES BY INVESTORS.

5.1 Notices. If any Investor (the "**Transferor**") proposes to sell, assign, hypothecate or otherwise transfer (a "**Transfer**") any securities of the Company owned by such Investor from and after the date of this Agreement, other than pursuant to the provisions of Section 5.6 of this Agreement, the Transferor shall first give each of the other Investors the right to purchase such securities by delivering to them a written offer which shall state the price and other terms and conditions of the proposed Transfer. If the Transferor proposes to Transfer the securities for consideration other than solely cash and/or promissory notes, the offer to the Investors shall, to the extent of such consideration, permit each Investor to pay in lieu thereof, cash equal to the fair market value of such consideration, and the offer shall state the estimate of such fair market value as determined by the Board. The Transferor shall fix the period of the offer which shall be a minimum of thirty (30) days or such longer period as is necessary to determine the fair market value of the consideration referred to in the preceding sentence.

5.2 Acceptance of Offer. An Investor may accept an offer ("**Purchasing Investor**") only by giving written notice to the Transferor before the offer expires that such Purchasing Investor has accepted the offer to purchase some or all of the securities offered (the "**Accepted Securities**"); *provided, however*, that the maximum number or amount of securities a Purchasing Investor shall be entitled to purchase shall be equal to that number or amount of securities to be transferred multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock owned by such Purchasing Investor (including shares of Common Stock issuable upon the full exercise and conversion of all convertible or exercisable

securities owned by such Investor) and the denominator of which shall be the aggregate number of shares of Common Stock held by all Investors (including shares of Common Stock issuable upon the full exercise and conversion of all convertible or exercisable securities owned by all Investors), excluding the Transferor's shares of Common Stock. Notwithstanding the foregoing, any Purchasing Investor may, at the time it accepts the offer, subscribe to purchase any or all securities offered which may be available as a result of the rejection, or partial rejection, of the offer by other Investors, which securities shall be allocated on a pro rata basis among those Purchasing Investors subscribing to purchase them.

5.3 Allocation of Securities and Payment. Promptly following the expiration of an offer, the Transferor shall allocate the securities subscribed for among the Purchasing Investors accepting or partially accepting the offer, pro rata, based upon their respective holdings as aforesaid, and shall by written notice (the "**Acceptance Notice**") advise all Purchasing Investors of the number or amount of securities allocated to each of the Purchasing Investors. Within ten (10) days following receipt of the Acceptance Notice, each of the Purchasing Investors shall deliver to the Transferor payment in full for the Accepted Shares purchased by it against delivery by the Transferor to each Purchasing Investor of a certificate or certificates evidencing the Accepted Securities purchased by it.

5.4 Failure to Exercise. To the extent an offer pursuant to Section 5.1 is not accepted by the other Investors, the Transferor may, for a period of ninety (90) days thereafter, transfer the unaccepted securities, or any of them, at or above the price, and upon the other terms and conditions specified in such offer, to any Person or Persons; *provided* that such Person or Persons agrees in writing with the Company and the Investors, prior to and as a condition precedent to such Transfer, to be bound by all of the provisions of Sections 3.9, 5 and 6 of this Agreement.

5.5 Assignment. The right of first refusal set forth in this Section 5 may not be assigned or transferred, except that each Investor shall have the right to assign its rights to purchase such securities under this Section 5 to any Affiliate of such Investor; *provided* such Affiliate agrees in writing with the Company and the Investors, prior to and as a condition precedent to such assignment, to be bound by all of the provisions of Sections 3.9, 5 and 6 of this Agreement.

5.6 Permitted Transfers.

(a) Notwithstanding anything to the contrary contained herein, any Investor which is a partnership or limited liability company may transfer, without first offering any securities of the Company to any other Investor, all or any of its securities to any of its Affiliates or successor funds or to a partner, limited partner, member or retired partner of such partnership or retired member of such limited liability company or to the estate of any such partner or transfer by will or intestate succession to his spouse or to the siblings, lineal descendants or ancestors of such partner or his spouse; *provided* such transferee agrees in writing with the Company and the Investors, prior to and as a condition precedent to such Transfer, to be bound by all of the provisions of Sections 3.9, 5 and 6 of this Agreement.

(b) Notwithstanding anything to the contrary contained herein, any Investor which is a corporation may Transfer, without first offering any securities of the Company to any other Investor, all or any of its securities to any of its Affiliates, *provided* such Affiliate agrees in writing with the Company and the Investors, prior to and as a condition precedent to such Transfer, to be bound by all of the provisions of Sections 3.9, 5 and 6 of this Agreement.

(c) Notwithstanding anything to the contrary contained herein, any Investor who is an individual may Transfer, without first offering any securities of the Company to any other Investor, all or any of his or her securities to his or her spouse or their spouse's siblings, lineal descendants or ancestors, nieces or nephews, or any entity that is an Affiliate of such Investor; *provided* such transferee

agrees in writing with the Company and the Investors, prior to and as a condition precedent to such Transfer, to be bound by all of the provisions of Sections 3.9, 5 and 6 of this Agreement.

5.7 Termination. The right of first refusal granted under this Section 5 shall expire upon the effective date of the Company's registration statement filed in connection with the Company's first Qualified Public Offering and shall not be applicable to any shares sold pursuant thereto.

SECTION 6. MISCELLANEOUS.

6.1 Entire Agreement; Successors and Assigns. This Agreement constitutes the entire contract between the Company and the Investors relative to the subject matter hereof. Any previous agreement between the Company, the Investors and the Holders concerning Registration rights and the other matters set forth herein is superseded by this Agreement. Subject to the exceptions specifically set forth in this Agreement, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective executors, administrators, heirs, successors and assigns of the parties.

6.2 Aggregation of Stock. All Convertible Securities and Registrable Securities held or acquired by affiliated entities or persons shall be aggregate together for the purpose of determining the availability of any rights under this Agreement.

6.3 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS ENTERED INTO AND WHOLLY TO BE PERFORMED WITHIN THE STATE OF CALIFORNIA BY CALIFORNIA RESIDENTS.

6.4 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.5 Headings. The headings of the Sections of this Agreement are for convenience and shall not by themselves determine the interpretation of this Agreement.

6.6 Notices. Any notice required or permitted hereunder shall be given in writing and shall be conclusively deemed effectively given upon personal delivery, or five (5) days after deposit in the United States mail, by registered or certified mail (or airmail, if notice shall be sent outside the United States), postage prepaid, or two (2) days after delivery to a nationally known air courier company, addressed (a) if to the Company, to the Company's address as set forth below the Company's name on the signature page of this Agreement and (b) if to an Investor, to such Investor's address as set forth on the signature page of this Agreement, or at such other address as the Company or such Investor may designate by ten (10) days, advance written notice to the other parties hereto. Any notice sent outside the United States shall also be telexed or telecopied.

6.7 Amendment of Agreement; Waivers. Subject to Section 3.7 and Section 4.4, any provision of this Agreement may be amended or waived by a written instrument signed by the Company and by Persons holding at least 60% of the Convertible Securities issued or issuable upon conversion of the Series A-3 Preferred Stock provided, however, if such amendment would adversely affect the rights of a specific Investor in a manner different from the other Investors, then such amendment shall require the consent of such Investor. Any amendment or waiver effected in accordance with Section 3.7 or this Section 6.7 shall be binding upon the Company and all Holders and each of their respective successors and assigns. In addition, the Company may waive performance of any obligation owing to it, as to some or all of the Investors, or agree to accept alternatives to such performance, without obtaining the consent of any Investor.

6.8 Effect of Amendment or Waiver. The Investors and their successors and assigns acknowledge that by the operation of Section 6.7 hereof Investors holding at least sixty percent (60%) of the Convertible Securities issued or issuable upon conversion of the Series A-3 Preferred Stock, acting in conjunction with the Company, will have the right and power to diminish or eliminate any or all rights pursuant to this Agreement.

6.9 Waiver of Right of First Offer. Upon execution of this Agreement by the Company and Persons holding at least a majority of the Convertible Securities under the Prior Agreement, all provisions of, rights granted and covenants made in the Prior Agreement (including, without limitation, the rights of first offer set forth in Section 4 of the Prior Agreement) are hereby waived, released and terminated in their entirety and shall have no further force and effect (including, without limitation, with respect to the Series A-3 Preferred Stock issued pursuant to the Purchase Agreement and the shares issued upon conversion thereof).

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

COMPANY:

CADENCE PHARMACEUTICALS, INC.

By: /s/ Theodore R. Schroeder

Name: Theodore R. Schroeder
Title: President and Chief Executive Officer

Address: 12730 High Bluff Drive, Suite 410
San Diego, California 92130
Fax No.: (858) 436-1401

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

FRAZIER HEALTHCARE V, LP
By FHM V, LP, its general partner
By FHM V, LLC, its general partner

By /s/ Patrick Heron
Patrick Heron, Authorized Representative

Address: 601 Union Steet, Suite 3200
Seattle, WA 98101
Phone No.: (206) 621-7200
Fax No.: (206) 621-1848

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

VERSANT SIDE FUND II, L.P.

By: Versant Ventures II, L.L.C.
Its: General Partner

By: /s/ Brian G. Atwood

Name: Brian G. Atwood
Title: Managing Director

VERSANT VENTURE CAPITAL II, L.P.

By: Versant Ventures II, L.L.C.
Its: General Partner

By: /s/ Brian G. Atwood

Name: Brian G. Atwood
Title: Managing Director

VERSANT AFFILIATES FUND II-A, L.P.

By: Versant Ventures II, L.L.C.
Its: General Partner

By: /s/ Brian G. Atwood

Name: Brian G. Atwood
Title: Managing Director

Address: 3000 Sand Hill Road, Bldg 4, Suite 210
Menlo Park, CA 94025
Phone No.: (650) 233-7877
Fax No.: (650) 854-9513

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

TECHNOLOGY PARTNERS FUND VII, L.P.
By: TP MANAGEMENT VII, L.L.C.

By: /s/ Sheila Mutter
Managing Member

TECHNOLOGY PARTNERS AFFILIATES VII, L.P.

By: TP MANAGEMENT VII, L.L.C.

By: /s/ Sheila Mutter
Managing Member

Address: 100 Shoreline Hwy, Suite 282, Building B
Mill Valley, CA 94941
Phone No.: (415) 332-9999
Fax No.: (415) 332-9998

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

ABBOTT INVESTMENT COMPANY, LLC

By: /s/ James C. Gilstrap
Name: James C. Gilstrap
Title: President

Address: 5067 Shore Drive
Carlsbad, CA 92008
Fax No.: (858) 756-9518

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

DOMAIN PARTNERS VI, L.P.

By: One Palmer Square Associates VI, L.L.C., its General Partner

By: /s/ Kathleen K. Schoemaker
Name: Kathleen K. Schoemaker
Title: Managing Member

Address: Domain Associates, L.L.C.
One Palmer Square
Princeton, New Jersey 08542
Attn: Kathleen K. Schoemaker
Fax No.: (609) 683-9789

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

DP VI ASSOCIATES, L.P.

By: One Palmer Square Associates VI, L.L.C., its General Partner

By: /s/ Kathleen K. Schoemaker
Name: Kathleen K. Schoemaker
Title: Managing Member

Address: Domain Associates, L.L.C.
One Palmer Square
Princeton, New Jersey 08542
Attn: Kathleen K. Schoemaker
Fax No.: (609) 683-9789

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

PROQUEST INVESTMENTS III, L.P.

By: ProQuest Associates III LLC, its General Partner

By: /s/ Pasquale DeAngelis
Name: Pasquale DeAngelis
Title: Managing Member

Address: 90 Nassau Street, 5th Floor
Princeton, New Jersey 08540
Fax No.: (609) 375-1047

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

WINDAMERE III, LLC

By: /s/ Scott L. Glenn
Name: Scott L. Glenn
Title: Managing Member

Address: c/o Windamere Venture Partners L.L.C.
6402 Cardeno Drive
La Jolla, California 92037
Fax No.: (858) 456-2295

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

GARNER INVESTMENTS, L.L.C.

By: /s/ Cam L. Garner
Name: Cam L. Garner
Title: President

Address: P.O. Box 675866
5949 Greensview Court
Rancho Santa Fe, California 92067
Fax No.: (858) 756-9518

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

HALE FAMILY TRUST UDT 2/10/86, David F. and Linda C. Hale, Trustees

By: /s/ David F. Hale
Name: David F. Hale
Title: Trustee

Address: 2110 Rutherford Road
Carlsbad, California 92008
Fax No.: (760) 431-7917

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

By: /s/ Cam S. Gallagher
Name: Cam Stephen Gallagher

Address: 3888 Quarter Mile Drive
San Diego, California 92130
Fax No.: (858) 436-1601

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

JAMES C. GILSTRAP IRA

By: /s/ James C. Gilstrap
Name: James C. Gilstrap

Address: 5067 Shore Drive
Carlsbad, California 92008
Fax No.: (760) 431-2424

Copy to: Daniel J. Gatto, CPA
Gatto & Pope
550 West C Street, #1700
San Diego, California 92101

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

JAMES C. GILSTRAP TRUST DATED 1/16/95

By: /s/ James C. Gilstrap
Name: James C. Gilstrap, Trustee

Address: 5067 Shore Drive
Carlsbad, California 92008
Fax No.: (760) 431-2424

Copy to: Daniel J. Gatto, CPA
Gatto & Pope
550 West C Street, #1700
San Diego, California 92101

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

WALTERS GROUP GENERAL PARTNERSHIP

By: /s/ Michael E. Luce
Name: Michael E. Luce
Title: President

Address: 5500 East Flamingo Road
Las Vegas, Nevada 89122
Fax No.: (702) 450-8055

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

GRAHAM CAPITAL GROUP, LLC

By: /s/ John Graham
Name: John Graham
Title: Manager

Address: 1505 Westlake Avenue N., Suite 320
Seattle, Washington 98109
Fax No.: (206) 284-4061

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

GRAHAM PACIFIC, INC.

By: /s/ Ron Graham
Name: Ron Graham
Title: President

Address: 1505 Westlake Avenue N., Suite 320
Seattle, Washington 98109
Fax No.: (206) 284-4061

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

STEVEN A. LYMAN TRUST II, dated 8/27/90

By: /s/ Steven A. Lyman
Name: Steven A. Lyman
Title: Trustee

Address: P.O. Box 676046
Ranch Santa Fe, California 92067
Fax No.: (858) 756-7465

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

BB BIOTECH VENTURES II, L.P.

By: Its General Partner, BB BIOTECH VENTURES GP (Guernsey) Limited

By: /s/ Christopher Cochrane
Name: Christopher Cochrane
Title: Director

Address: Trafalgar Court
Les Banques
St Peter Port
Guernsey
Channel Islands
GY1 3QL
Contact :C W Cochrane/P Mahieux
Fax 00 44 1481 745074

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

CDIB BIOSCIENCE VENTURES I, INC.

By: /s/ Benny Hu
Name: Benny Hu
Title: Chairman

Address: c/o CDIB BioScience Venture Management
9F-1, No. 205, Sec 3, Beisin Road
Sindian City, Taipei County 231, Taiwan
Attn: Karen Huang
Phone No.: 886-02-8913-1956
Fax Nos.: 886-02-8913-1955 / 886-02-8913- 1726

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

EPSTEIN FAMILY TRUST DATED 4/14/93

By: /s/ Dan Epstein
Name: Dan Epstein
Title: Trustee

Address: c/o Con Am
3990 Ruffin Road, Suite 100
San Diego, California 92123
Fax No.: (858) 614-1874

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

By: /s/ J. Bradley Forrester
Name: J. Bradley Forrester

Address: c/o Con Am
3990 Ruffin Road, Suite 100
San Diego, California 92123
Fax No.: (858) 614-1874

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

STEPHEN F. GALLAGHER, TRUSTEE WITH FIRST NATIONAL BANK, N.A., AS SUCCESSOR TRUSTEE U/A DATED MARCH 21, 2005 AS MAY BE AMENDED

By: /s/ Stephen F. Gallagher
Name: Stephen F. Gallagher
Title: Trustee

Address: 3015 Fleming Road
Middletown, Ohio 45042
Phone No.: (513) 423-1064
Fax No.: (513) 422-2609

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

LYNDA GALLAGHER

By: /s/ Lynda Gallagher
Lynda Gallagher

Address: 3015 Fleming Road
Middletown, Ohio 45042
Phone No.: (513) 423-1064
Fax No.: (513) 422-2609

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

VP COMPANY INVESTMENTS 2004, LLC

By: /s/ David Raab
Name: David Raab
Title: Member of Management Committee

Address: 555 W. Fifth Street, Suite 800
Los Angeles, California 90013-1010
Attention: Grant Johnson
Fax No.: (213) 891-7123

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

FAYE HUNTER RUSSELL TRUST UTD 7/11/88

By: /s/ Faye H. Russell
Name: Faye H. Russell
Title: Trustee

Address: c/o Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, California 92130
Fax No.: (858) 523-5450

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

/s/ Scott N. Wolfe
Scott N. Wolfe

Address: c/o Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, California 92130
Fax No.: (858) 523-5450

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

/s/ Cheston J. Larson
Cheston J. Larson

Address: c/o Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, California 92130
Fax No.: (858) 523-5450

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

/s/ Adam K. Simpson
Adam K. Simpson

Address: c/o Verus Pharmaceuticals, Inc.
12671 High Bluff Drive, Ste 200
San Diego, California 92130
Fax No.: (858) 436-1601

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTOR:

Print Name: _____

Signature: _____

Title: _____
(*if signing on behalf of a partnership, corporation, trust Or other entity)*

Address: _____

_____

_____

Fax No.: _____

SCHEDULE A

INVESTORS

Investor	Series A-1 Preferred Stock	Series A-2 Preferred Stock	Series A-3 Preferred Stock
FRAZIER HEALTHCARE V, LP	—	—	10,000,000
VERSANT VENTURE CAPITAL II, L.P.	—	—	7,782,747
VERSANT AFFILIATES FUND II-A, L.P.	—	—	147,695
VERSANT SIDE FUND II, L.P.	—	—	69,558
TECHNOLOGY PARTNERS FUND VII, L.P.	—	—	7,520,000
TECHNOLOGY PARTNERS AFFILIATES VII, L.P.	—	—	480,000
ABBOTT INVESTMENT COMPANY, LLC	—	—	400,000
DOMAIN PARTNERS VI, L.P.	3,947,061	6,297,638	12,367,456
DP VI ASSOCIATES, L.P.	42,301	67,492	132,544
PROQUEST INVESTMENTS III, L.P.	2,393,618	3,819,080	6,000,000
WINDAMERE III, LLC	531,915	848,684	—
GARNER INVESTMENTS LLC	106,383	—	100,000
HALE FAMILY TRUST UDT 2/10/86	106,383	50,000	100,000
CAM STEPHEN GALLAGHER	106,383	20,000	10,000
JAMES C. GILSTRAP IRA	319,149	500,000	—
JAMES C. GILSTRAP TRUST DATED 1/16/95	—	—	1,000,000
WALTERS GROUP GENERAL PARTNERSHIP	319,149	500,000	1,400,000
GRAHAM PACIFIC, INC.	106,383	87,453	—
GRAHAM CAPITAL GROUP, LLC	—	—	100,000
STEVEN A. LYMAN TRUST II, DATED 8/27/90	106,383	—	150,000
BB BIOTECH VENTURES II, L.P.	—	3,000,000	4,000,000
CDIB BIOSCIENCE VENTURES I, INC.	—	2,000,000	1,800,000
EPSTEIN FAMILY TRUST DATED 4/14/93	—	250,000	150,000
J. BRADLEY FORRESTER	—	100,000	50,000
STEPHEN F. GALLAGHER, TRUSTEE WITH FIRST NATIONAL BANK, N.A., AS SUCCESSOR TRUSTEE U/A DATED MARCH 21, 2005 AS MAY BE AMENDED	—	85,000	50,000
LYNDA GALLAGHER	—	—	10,000
VP COMPANY INVESTMENTS 2004, LLC	—	25,000	25,000

Investor	Series A-1 Preferred Stock	Series A-2 Preferred Stock	Series A-3 Preferred Stock
FAYE HUNTER RUSSELL TRUST UTD 7/11/88	—	10,000	10,000
SCOTT N. WOLFE	—	5,000	5,000
CHESTON J. LARSON	—	5,000	5,000
ADAM K. SIMPSON	—	5,000	5,000
TOTAL	8,085,108	17,675,347	53,870,000

Exhibit 4.3

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK

Company: CADENCE PHARMACEUTICALS, INC., a Delaware corporation
Number of Shares: 192,500
Class of Stock: Series A-2 Preferred
Warrant Price: $1.00 per shares
Issue Date: February 17, 2006
Expiration Date: Subject to Section 1.6 hereof, the longer of (i) the 10th anniversary after the Issue Date, and (ii) five years after the closing of the Company's initial public offering of its Common Stock

THIS WARRANT CERTIFIES THAT, for the agreed upon value of $1.00 and for other good and valuable consideration, including without limitation the mutual promises contained in that certain Loan and Security Agreement of even date herewith (the "Loan Agreement") entered into by and among SILICON VALLEY BANK ("Holder"), Oxford Finance Corporation and the company named above (the "Company"), Holder is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the "Shares") of the Company at the Warrant Price, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant. This Warrant is issued in connection with the Loan Agreement.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this Warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Article 1.3.

1.3 Fair Market Value. If the Company's common stock is traded in a public market and the Shares are common stock, the fair market value of each Share shall be the closing price of a Share reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company's initial public offering, the "price to public" per share price specified in the final prospectus relating to such offering). If the Company's common stock is traded in a public market and the Shares are preferred stock, the fair market value of a Share shall be the closing price of a share of the Company's common stock reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or, in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company's initial public offering, the initial "price to public" per share price specified in the final prospectus relating to such offering), in both cases, multiplied by the number of shares of the Company's common stock into which a Share is convertible. If the Company's common stock is not traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new Warrant representing the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means any sale, license, or other disposition of all or substantially all of the assets of the Company, or any reorganization, consolidation, or merger of the Company where the holders of the Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction.

1.6.2 Treatment of Warrant at Acquisition.

A) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that is not an asset sale and in which the sole consideration is cash, either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

B) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that is an “arms length” sale of all or substantially all of the Company’s assets (and only its assets) to a third party that is not an Affiliate (as defined below) of the Company (a “True Asset Sale”), either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will continue until the Expiration Date if the Company continues as a going concern following the closing of any such True Asset Sale. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

C) Notwithstanding the foregoing provisions of this Section 1.6, in the event that the acquirer in an Acquisition does not agree to assume this Warrant at and as of the closing thereof, this Warrant, to the extent not exercised or converted on or prior to such closing, shall terminate and be of no further force or effect as of immediately following such closing if all of the following conditions are met: (i) the acquirer is subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended, (ii) the class of stock or other security of the acquirer that would be received by Holder in connection with such Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is listed for trading on a national securities exchange or approved for quotation on an automated inter-dealer quotation system, (iii) the value (determined as of the closing of such Acquisition in accordance with the definitive agreements therefor) of the acquirer stock and/or other securities that would be received by Holder in respect of each Share were Holder to exercise or convert this Warrant on or prior to the closing of such Acquisition is equal to or greater than three (3) times the then-effective Warrant Price, and (iv) upon the exercise or conversion of this Warrant on or prior to the closing of such Acquisition, Holder would be able to publicly resell all of the acquirer stock and/or other securities that would be received by Holder in such Acquisition within 120 days following the closing thereof pursuant to an effective registration statement covering such acquirer stock and/or other securities or pursuant to the provisions of Rule 144 under the Act.

D) Upon the closing of any Acquisition other than those particularly described in subsections (A), (B) and (C) above, the successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price and/or number of Shares shall be adjusted accordingly.

As used herein “Affiliate” shall mean any person or entity that owns or controls directly or indirectly ten (10) percent or more of the stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person’s or entity’s officers, directors, joint venturers or partners, as applicable.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the Shares payable in common stock, or other securities, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend occurred. If the Company subdivides the Shares by reclassification or otherwise into a greater number of shares or takes any other action which increases the amount of stock into which the Shares are convertible, the number of shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Restated Certificate of Incorporation, as may be amended from time to time (the "Certificate of Incorporation") upon the closing of a registered public offering of the Company's common stock, but shall not include any conversions as a result of a failure to participate in any subsequent equity financings of the Company or any "Right of First Offer" or other pay to play provisions set forth in the Company's Certificate of Incorporation. The Company or its successor shall promptly issue to Holder an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Diluting Issuances. The Warrant Price and the number of Shares issuable upon exercise of this Warrant or, if the Shares are preferred stock, the number of shares of common stock issuable upon conversion of the Shares, shall be subject to adjustment, from time to time in the manner set forth in the Company's Certificate of Incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment. The provisions set forth for the Shares in the Company's Certificate of Incorporation relating to the above in effect as of the Issue Date may not be amended, modified or waived, without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification or waiver affects the rights associated with all other shares of the same series and class as the Shares granted to the Holder.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Article against impairment; provided, however, that notwithstanding the foregoing, nothing in this Section 2.4 shall restrict or impair the Company's right to effect changes to the rights, preferences and privileges associated with the Shares with the requisite consent of the stockholders as may be required to amend the Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences and privileges granted to Holder associated with the Shares in the same manner as the other holders of Series A-2 Preferred Stock.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value, as determined in accordance with Section 1.3, of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price in effect upon the date thereof and the series of adjustments leading to such Warrant Price.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants and covenants to the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this Warrant is not greater than the price per share at which the Shares were last issued in an arms-length transaction in which at least $500,000 of the Shares were sold.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. Notwithstanding the foregoing, such Shares of Series A-2 Preferred Stock have not been authorized or reserved for issuance as of the Issue Date, but the Company shall use its best efforts to cause an amendment no later than February 28, 2006 of its Restated Certificate of Incorporation to authorize sufficient shares of Series A-2 Preferred Stock to permit reservation of all Shares which may be issued upon the exercise of the purchase right represented by this Warrant, upon exercise of this Warrant; provided, however, in any event, the Company covenants and agrees that all such Shares of Series A-2

Preferred Stock which may be issued upon the exercise of the purchase right represented by this Warrant shall be authorized and reserved for issuance prior to the earliest to occur of the following: (1) any Liquidation Event (as defined in the Company's Restated Certificate of Incorporation), (2) any amendment to the Company's' Restated Certificate of Incorporation, (3) the closing of the Company's next equity financing or (4) the closing of the Company's initial public offering of its Common Stock.

(c) The Capitalization Table previously provided to Holder remains true and complete as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; or (b) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Company shall give Holder: (1) at least 10 calendar days prior written notice of the date on which a record will be taken for such dividend or distribution (and specifying the date on which the holders of common stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) above; and (2) in the case of the matters referred to in (b) above at least 10 calendar days prior written notice of the date when the same will take place (and specifying the date on which the holders of common stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event). While the Company is a private company, the Company shall send a concurrent written notice to Holder if the Company sends any written notice to its preferred stockholders regarding: (a) the Company offering for sale any shares of the Company's capital stock (or other securities convertible into such capital stock), other than (i) pursuant to the Company's stock option or other compensatory plans, (ii) in connection with commercial credit arrangements or equipment financings, or (iii) in connection with strategic transactions for purposes other than capital raising; or (b) the Company proposing to effect any reclassification or recapitalization of any of its stock. The Company shall send concurrently to Holder the same notice as the Company gives to the holders of registration rights if the Company proposes to offer holders of registration rights the opportunity to participate in an underwritten public offering of the Company's securities for cash.

3.3 Registration Under Securities Act of 1933, as amended. The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall have certain incidental, or "Piggyback," registration rights pursuant to and as set forth in the Company's Amended and Restated Investor Rights Agreement dated September 30, 2005 (as amended from time to time, the "Investor Rights Agreement") or similar agreement. The provisions set forth in the Company's Investors' Right Agreement or similar agreement relating to the above in effect as of the Issue Date may not be amended, modified or waived without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification, or waiver affects the rights associated with all other shares of the same series and class as the Shares granted to the Holder.

3.4 No Shareholder Rights. Except as provided in this Warrant, the Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

3.5 Information. So long as the Company is not a public company and after the Company's obligations to provide financial information under the Loan Agreement have terminated, upon the request by Holder, the Company shall provide to the Holder: (i) the monthly reports furnished to certain of Company's investors under Section 2.1(b)(i) of the Investor Rights Agreement (as defined in Section 3.3 of this Warrant), (ii) the annual reports furnished to certain of Company's investors under Section 2.1(a) of the Investor Rights Agreement; and (iii) the annual budget furnished to certain of Company's investors under Section 2.1(b)(ii) of the Investor Rights Agreement.

ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER. The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by the Holder will be acquired for investment for the Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that the Holder has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. The Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. The Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to the Holder or to which the Holder has access.

4.3 Investment Experience. The Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. The Holder has experience as an investor in securities of companies in the development stage and acknowledges that the Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that the Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables the Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. The Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. The Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the

Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. The Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

ARTICLE 5. MISCELLANEOUS.

5.1 Term: This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to Holder's parent company, SVB Financial Group (formerly Silicon Valley Bancshares), or any other affiliate of Holder. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144, including, without limitation, the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder's notice of proposed sale.

5.4 Transfer Procedure. Upon receipt by Holder of the executed Warrant, Holder will transfer all of this Warrant to Holder's parent company, SVB Financial Group, by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Article 5.3 and upon providing Company with written notice, SVB Financial Group and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in

connection with any such transfer, SVB Financial Group or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable). The Company may refuse to transfer this Warrant or the Shares to any person who directly competes with the Company, unless, in either case, the stock of the Company is publicly traded.

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may (or on the first business day after transmission by facsimile) be, in writing by the Company or such Holder from time to time. Effective upon receipt of the fully executed Warrant and the initial transfer described in Article 5.4 above, all notices to the Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

SVB Financial Group
Attn: Treasury Department
3003 Tasman Drive, HA 200
Santa Clara, CA 95054
Telephone: 408-654-7400
Facsimile: 408-496-2405

Notice to the Company shall be addressed as follows until the Holder receives notice of a change in address:

Cadence Pharmaceuticals, Inc.
12730 High Bluff Drive, Suite 410
San Diego, CA 92130
Attn: Chief Executive Officer
Telephone: (858) 436-1400
Facsimile: (858) 436-1401

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or

converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to the Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

[Remainder of page intentionally left blank; signature page follows]

“COMPANY”

CADENCE PHARMACEUTICALS, INC.

By:	/s/ Theodore R. Schroeder	By:	/s/ David A. Socks
Name:	Theodore R. Schroeder (Print)	Name:	David A. Socks (Print)
Title:	President	Title:	Secretary

“HOLDER”

SILICON VALLEY BANK

By:	/s/ Edgar Arvizu
Name:	Edgar Arvizu (Print)
Title:	Relationship Manager

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase _____ shares of the Common/Series ___ Preferred [strike one] Stock of _____ pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for _____ of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the shares in the name specified below:

_____

Holders Name

_____

_____

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as the date hereof.

HOLDER:

_____

By: _____

Name: _____

Title: _____

(Date): _____

APPENDIX 2

ASSIGNMENT

For value received, Silicon Valley Bank hereby sells, assigns and transfers unto

Name: SVB Financial Group
Address: 3003 Tasman Drive (HA-200)
Santa Clara, CA 95054

Tax ID: 91-1962278

that certain Warrant to Purchase Stock issued by Cadence Pharmaceuticals, Inc. (the "Company"), on ___, 200___ (the "Warrant") together with all rights, title and interest therein.

SILICON VALLEY BANK

By: _____
Name: _____
Title: _____

Date: _____

By its execution below, and for the benefit of the Company, SVB Financial Group makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

SVB Financial Group

By: _____
Name: _____
Title: _____

Exhibit 4.4

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK

Company: CADENCE PHARMACEUTICALS, INC., a Delaware corporation
Number of Shares: 192,500
Class of Stock: Series A-2 Preferred
Warrant Price: $1.00 per shares
Issue Date: February 17, 2006
Expiration Date: Subject to Section 1.6 hereof, the longer of (i) the 10th anniversary after the Issue Date, and (ii) five years after the closing of the Company's initial public offering of its Common Stock

THIS WARRANT CERTIFIES THAT, for the agreed upon value of $1.00 and for other good and valuable consideration, including without limitation the mutual promises contained in that certain Loan and Security Agreement of even date herewith (the "Loan Agreement") entered into by and among OXFORD FINANCE CORPORATION ("Holder"), Silicon Valley Bank and the company named above (the "Company"), Holder is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the "Shares") of the Company at the Warrant Price, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant. This Warrant is issued in connection with the Loan Agreement.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this Warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Article 1.3.

1.3 Fair Market Value. If the Company's common stock is traded in a public market and the Shares are common stock, the fair market value of each Share shall be the closing price of a Share reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company's initial public offering, the "price to public" per share price specified in the final prospectus relating to such offering). If the Company's common stock is traded in a public market and the Shares are preferred stock, the fair market value of a Share shall be the closing price of a share of the Company's common stock reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or, in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company's initial public offering, the initial "price to public" per share price specified in the final prospectus relating to such offering), in both cases, multiplied by the number of shares of the Company's common stock into which a Share is convertible. If the Company's common stock is not traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new Warrant representing the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means any sale, license, or other disposition of all or substantially all of the assets of the Company, or any reorganization, consolidation, or merger of the Company where the holders of the Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction.

1.6.2 Treatment of Warrant at Acquisition.

A) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that is not an asset sale and in which the sole consideration is cash, either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

B) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that is an “arms length” sale of all or substantially all of the Company’s assets (and only its assets) to a third party that is not an Affiliate (as defined below) of the Company (a “True Asset Sale”), either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will continue until the Expiration Date if the Company continues as a going concern following the closing of any such True Asset Sale. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

C) Notwithstanding the foregoing provisions of this Section 1.6, in the event that the acquirer in an Acquisition does not agree to assume this Warrant at and as of the closing thereof, this Warrant, to the extent not exercised or converted on or prior to such closing, shall terminate and be of no further force or effect as of immediately following such closing if all of the following conditions are met: (i) the acquirer is subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended, (ii) the class of stock or other security of the acquirer that would be received by Holder in connection with such Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is listed for trading on a national securities exchange or approved for quotation on an automated inter-dealer quotation system, (iii) the value (determined as of the closing of such Acquisition in accordance with the definitive agreements therefor) of the acquirer stock and/or other securities that would be received by Holder in respect of each Share were Holder to exercise or convert this Warrant on or prior to the closing of such Acquisition is equal to or greater than three (3) times the then-effective Warrant Price, and (iv) upon the exercise or conversion of this Warrant on or prior to the closing of such Acquisition, Holder would be able to publicly resell all of the acquirer stock and/or other securities that would be received by Holder in such Acquisition within 120 days following the closing thereof pursuant to an effective registration statement covering such acquirer stock and/or other securities or pursuant to the provisions of Rule 144 under the Act.

D) Upon the closing of any Acquisition other than those particularly described in subsections (A), (B) and (C) above, the successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price and/or number of Shares shall be adjusted accordingly.

As used herein “Affiliate” shall mean any person or entity that owns or controls directly or indirectly ten (10) percent or more of the stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person’s or entity’s officers, directors, joint venturers or partners, as applicable.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the Shares payable in common stock, or other securities, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend occurred. If the Company subdivides the Shares by reclassification or otherwise into a greater number of shares or takes any other action which increases the amount of stock into which the Shares are convertible, the number of shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Restated Certificate of Incorporation, as may be amended from time to time (the "Certificate of Incorporation") upon the closing of a registered public offering of the Company's common stock, but shall not include any conversions as a result of a failure to participate in any subsequent equity financings of the Company or any "Right of First Offer" or other pay to play provisions set forth in the Company's Certificate of Incorporation. The Company or its successor shall promptly issue to Holder an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Diluting Issuances. The Warrant Price and the number of Shares issuable upon exercise of this Warrant or, if the Shares are preferred stock, the number of shares of common stock issuable upon conversion of the Shares, shall be subject to adjustment, from time to time in the manner set forth in the Company's Certificate of Incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment. The provisions set forth for the Shares in the Company's Certificate of Incorporation relating to the above in effect as of the Issue Date may not be amended, modified or waived, without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification or waiver affects the rights associated with all other shares of the same series and class as the Shares granted to the Holder.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Article against impairment; provided, however, that notwithstanding the foregoing, nothing in this Section 2.4 shall restrict or impair the Company's right to effect changes to the rights, preferences and privileges associated with the Shares with the requisite consent of the stockholders as may be required to amend the Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences and privileges granted to Holder associated with the Shares in the same manner as the other holders of Series A-2 Preferred Stock.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value, as determined in accordance with Section 1.3, of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price in effect upon the date thereof and the series of adjustments leading to such Warrant Price.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants and covenants to the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this Warrant is not greater than the price per share at which the Shares were last issued in an arms-length transaction in which at least $500,000 of the Shares were sold.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. Notwithstanding the foregoing, such Shares of Series A-2 Preferred Stock have not been authorized or reserved for issuance as of the Issue Date, but the Company shall use its best efforts to cause an amendment no later than February 28, 2006 of its Restated Certificate of Incorporation to authorize sufficient shares of Series A-2 Preferred Stock to permit reservation of all Shares which may be issued upon the exercise of the purchase right represented by this Warrant, upon exercise of this Warrant; provided, however, in any event, the Company covenants and agrees that all such Shares of Series A-2

Preferred Stock which may be issued upon the exercise of the purchase right represented by this Warrant shall be authorized and reserved for issuance prior to the earliest to occur of the following: (1) any Liquidation Event (as defined in the Company's Restated Certificate of Incorporation), (2) any amendment to the Company's' Restated Certificate of Incorporation, (3) the closing of the Company's next equity financing or (4) the closing of the Company's initial public offering of its Common Stock.

(c) The Capitalization Table previously provided to Holder remains true and complete as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; or (b) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Company shall give Holder: (1) at least 10 calendar days prior written notice of the date on which a record will be taken for such dividend or distribution (and specifying the date on which the holders of common stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) above; and (2) in the case of the matters referred to in (b) above at least 10 calendar days prior written notice of the date when the same will take place (and specifying the date on which the holders of common stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event). While the Company is a private company, the Company shall send a concurrent written notice to Holder if the Company sends any written notice to its preferred stockholders regarding: (a) the Company offering for sale any shares of the Company's capital stock (or other securities convertible into such capital stock), other than (i) pursuant to the Company's stock option or other compensatory plans, (ii) in connection with commercial credit arrangements or equipment financings, or (iii) in connection with strategic transactions for purposes other than capital raising; or (b) the Company proposing to effect any reclassification or recapitalization of any of its stock. The Company shall send concurrently to Holder the same notice as the Company gives to the holders of registration rights if the Company proposes to offer holders of registration rights the opportunity to participate in an underwritten public offering of the Company's securities for cash.

3.3 Registration Under Securities Act of 1933, as amended. The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall have certain incidental, or "Piggyback," registration rights pursuant to and as set forth in the Company's Amended and Restated Investor Rights Agreement dated September 30, 2005 (as amended from time to time, the "Investor Rights Agreement") or similar agreement. The provisions set forth in the Company's Investors' Right Agreement or similar agreement relating to the above in effect as of the Issue Date may not be amended, modified or waived without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification, or waiver affects the rights associated with all other shares of the same series and class as the Shares granted to the Holder.

3.4 No Shareholder Rights. Except as provided in this Warrant, the Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

3.5 Information. So long as the Company is not a public company and after the Company's obligations to provide financial information under the Loan Agreement have terminated, upon the request by Holder, the Company shall provide to the Holder: (i) the monthly reports furnished to certain of Company's investors under Section 2.1(b)(i) of the Investor Rights Agreement (as defined in Section 3.3 of this Warrant), (ii) the annual reports furnished to certain of Company's investors under Section 2.1(a) of the Investor Rights Agreement; and (iii) the annual budget furnished to certain of Company's investors under Section 2.1(b)(ii) of the Investor Rights Agreement.

ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER. The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by the Holder will be acquired for investment for the Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that the Holder has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. The Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. The Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to the Holder or to which the Holder has access.

4.3 Investment Experience. The Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. The Holder has experience as an investor in securities of companies in the development stage and acknowledges that the Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that the Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables the Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. The Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. The Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the

Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. The Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

ARTICLE 5. MISCELLANEOUS.

5.1 Term: This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to any other affiliate of Holder. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144, including, without limitation, the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder's notice of proposed sale.

5.4 Transfer Procedure. Upon receipt by Holder of the executed Warrant, Holder may transfer this Warrant to any affiliate of Holder, by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Article 5.3 and upon providing Company with written notice, any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with

the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable). The Company may refuse to transfer this Warrant or the Shares to any person who directly competes with the Company, unless, in either case, the stock of the Company is publicly traded.

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may (or on the first business day after transmission by facsimile) be, in writing by the Company or such Holder from time to time. Effective upon receipt of the fully executed Warrant and the initial transfer described in Article 5.4 above, all notices to the Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Oxford Finance Corporation
133 N. Fairfax Street
Alexandria, VA 22314
Attn: Michael J. Altenburger, Chief Financial Officer
Telephone: (703) 519-4900
Facsimile: (703) 519-5225

Notice to the Company shall be addressed as follows until the Holder receives notice of a change in address:

Cadence Pharmaceuticals, Inc.
12730 High Bluff Drive, Suite 410
San Diego, CA 92130
Attn: Chief Executive Officer
Telephone: (858) 436-1400
Facsimile: (858) 436-1401

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to the Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

[Remainder of page intentionally left blank; signature page follows]

“COMPANY”

CADENCE PHARMACEUTICALS, INC.

By: /s/ Theodore R. Schroeder
Name: Theodore R. Schroeder
(Print)
Title: President

By: /s/ David A. Socks
Name: David A. Socks
(Print)
Title: Secretary

“HOLDER”

OXFORD FINANCE CORPORATION

By: /s/ Michael J. Altenburger
Name: Michael J. Altenburger
(Print)
Title: Chief Financial Officer

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase _____ shares of the Common/Series _____ Preferred [strike one] Stock of _____ pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for _____ of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the shares in the name specified below:

_____

Holders Name

_____

_____

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as the date hereof.

HOLDER:

_____

By: _____

Name: _____

Title: _____

(Date): _____

APPENDIX 2

ASSIGNMENT

For value received, Oxford Finance Corporation hereby sells, assigns and transfers unto

Name:
Address:

Tax ID:

that certain Warrant to Purchase Stock issued by Cadence Pharmaceuticals, Inc. (the "Company"), on ___, 200___(the "Warrant") together with all rights, title and interest therein.

OXFORD FINANCE CORPORATION

By: _____
Name: _____
Title: _____

Date: _____

By its execution below, and for the benefit of the Company, ___ makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

_____

By: _____
Name: _____
Title: _____

EXHIBIT 10.3

CADENCE PHARMACEUTICALS, INC.
2004 EQUITY INCENTIVE AWARD PLAN

ARTICLE 1
PURPOSE

1.1 General. The purpose of the Cadence Pharmaceuticals, Inc. 2004 Equity Incentive Award Plan (the "***Plan***") is to promote the success and enhance the value of Cadence Pharmaceuticals, Inc. (the "***Company***") by linking the personal interests of the members of the Board, employees, consultants and other independent advisors, and officers of the Company and any Parent or Subsidiary, to those of Company stockholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to Company stockholders. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of members of the Board, employees, consultants and other independent advisors, and officers of the Company upon whose judgment, interest, and special effort the successful conduct of the Company's operation is largely dependent.

ARTICLE 2
DEFINITIONS AND CONSTRUCTION

2.1 Definitions. The following words and phrases shall have the following meanings:

(a) "***Award***" means an Option, a Restricted Stock award, a Stock Appreciation Right award, a Performance Share award, a Dividend Equivalents award, a Stock Payment award, a Restricted Stock Unit award, or a Performance-Based Award granted to a Participant pursuant to the Plan.

(b) "***Award Agreement***" means any written or electronic agreement, contract, or other instrument or document evidencing an Award.

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

(d) "***Change of Control***" means (i) a merger or consolidation of the Company with or into any other corporation or other entity or person or (ii) a sale, lease, exchange or other transfer in one transaction or a series of related transactions of all or substantially all of the Company's outstanding securities or all or substantially all of the Company's assets; *provided, however*, that the following events shall not constitute a "Change of Control": (A) a merger or consolidation of the Company in which the holders of the voting securities of the Company immediately prior to the merger or consolidation hold at least a majority of the voting securities in the successor corporation immediately after the merger or consolidation; (B) a sale, lease, exchange or other transaction in one transaction or a series of related transactions of all or substantially all of the Company's assets to a wholly-owned subsidiary corporation; (C) a mere reincorporation of the Company; or (D) a transaction undertaken for the sole purpose of creating a holding company that will be owned in substantially the same proportion by the persons who held the Company's securities immediately before such transaction.

(e) "***Code***" means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

(f) "***Committee***" means the Board or a committee of the Board described in Article 12.

(g) "***Covered Employee***" means an Employee who is, or could be, a "covered

employee" within the meaning of Section 162(m) of the Code.

(h) "***Disability***" means a permanent and total disability within the meaning of Section 22(e)(3) of the Code, as it may be amended from time to time.

(i) "***Dividend Equivalents***" means a right granted to a Participant pursuant to Article 8 to receive the equivalent value (in cash or Stock) of dividends that otherwise would have been paid on Stock which is subject to an Award.

(j) "***Employee***" means any officer or other employee (as defined in accordance with Section 3401(c) of the Code) of the Company or any Parent or Subsidiary. A person shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, any Parent or Subsidiary, or any successor. For purposes of Incentive Stock Options, no such leave may exceed ninety days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. Neither service as a director nor payment of a director's fee by the Company shall be sufficient, by itself, to constitute "employment" by the Company.

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

(l) "***Fair Market Value***" shall mean, as of any date, the value of Stock determined as follows:

(i) If the Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system for the last market trading day prior to the date of determination, as reported in *The Wall Street Journal* or such other source as the Committee deems reliable;

(ii) If the Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean of the closing bid and asked prices for the Stock on the date prior to the date of determination as reported in *The Wall Street Journal* or such other source as the Committee deems reliable; or

(iii) In the absence of an established market for the Stock, the Fair Market Value thereof shall be determined in good faith by the Committee.

(m) "***Incentive Stock Option***" means an Option that is intended to meet the requirements of Section 422 of the Code or any successor provision thereto.

(n) "***Misconduct***" means the commission of any act of fraud, embezzlement or dishonesty by the Participant, any unauthorized use or disclosure by such person of confidential information or trade secrets of the Company (or any Parent or Subsidiary), or any other intentional misconduct by such person adversely affecting the business or affairs of the Company (or any Parent or Subsidiary) in a material manner. The foregoing definition shall not in any way preclude or restrict the right of the Company (or any Parent or Subsidiary) to discharge or dismiss any Participant or other person in the service of the Company (or any Parent or Subsidiary) for any other acts or omissions, but such other acts or omissions shall not be deemed, for purposes of the Plan, to constitute grounds for termination for Misconduct.

(o) "***Non-Employee Director***" means a member of the Board who qualifies as a "Non-Employee Director" as defined in Rule 16b-3(b)(3) of the Exchange Act, or any successor definition adopted by the Board under applicable law.

(p) "***Non-Qualified Stock Option***" means an Option that is not intended to be or otherwise does not qualify as an Incentive Stock Option.

(q) "***Option***" means a right granted to a Participant pursuant to Article 5 of the Plan to purchase a specified number of shares of Stock at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Non-Qualified Stock Option.

(r) "***Parent***" means any corporation in an unbroken chain of corporations ending with the Company if each of the corporations other than the Company then owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain at the relevant time, including after the Effective Date (as defined in Section 13.1).

(s) "***Participant***" means a person who, as a member of the Board, consultant to the Company or any Parent or Subsidiary or Employee, has been granted an Award pursuant to the Plan.

(t) "***Performance-Based Award***" means an Award granted to selected Covered Employees, but which is subject to the terms and conditions set forth in Article 9.

(u) "***Performance Criteria***" means the criteria that the Committee selects for purposes of establishing the Performance Goal or Performance Goals for a Participant for a Performance Period. The Performance Criteria that will be used to establish Performance Goals are limited to the following: net earnings (either before or after interest, taxes, depreciation and amortization), net losses, sales or revenue, operating earnings, operating cash flow, return on net assets, return on stockholders' equity, return on assets, return on capital, stockholder returns, gross or net profit margin, earnings per share, price per share of Stock, and market share, any of which may be measured either in absolute terms or as compared to any incremental increase or as compared to results of a peer group.

(v) "***Performance Goals***" means, for a Performance Period, the goals established in writing by the Committee for the Performance Period based upon the Performance Criteria. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a division, business unit, or an individual. The Committee, in its discretion, may adjust or modify the calculation of Performance Goals for such Performance Period in order to prevent the dilution or enlargement of the rights of Participants (i) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event, or development, or (ii) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Company, or the financial statements of the Company, or in response to, or in anticipation of, changes in applicable laws, regulations, accounting principles, or business conditions.

(w) "***Performance Period***" means the one or more periods of time, which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to, and the payment of, a Performance-Based Award.

(x) "***Performance Share***" means a right granted to a Participant pursuant to Article 8, to receive cash, Stock, or other Awards, the payment of which is contingent upon achieving certain performance goals established by the Committee.

(y) "***Plan***" means this Cadence Pharmaceuticals, Inc. 2004 Equity Incentive Award Plan, as it may be amended from time to time.

(z) "***Public Trading Date***" means the first date upon which Stock is listed upon notice of issuance on any securities exchange or designated upon notice of issuance as a national market security on an interdealer quotation system.

(aa) "***Qualified Performance-Based Compensation***" means any compensation that is intended to qualify as "qualified performance-based compensation" as described in Section 162(m)(4)(C) of the Code.

(bb) "***Restricted Stock***" means Stock awarded to a Participant pursuant to Article 6 that is subject to certain restrictions and to risk of forfeiture.

(cc) "***Restricted Stock Unit***" means a right to receive a share of Stock during specified time periods pursuant to Article 8.

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

(ee) "***Stock***" means the common stock of the Company and such other securities of the Company that may be substituted for Stock pursuant to Article 11.

(ff) "***Stock Appreciation Right***" or "***SAR***" means a right granted pursuant to Article 7 to receive a payment equal to the excess of the Fair Market Value of a specified number of shares of Stock on the date the SAR is exercised over the Fair Market Value on the date the SAR was granted as set forth in the applicable Award Agreement.

(gg) "***Stock Payment***" means (a) a payment in the form of shares of Stock, or (b) an option or other right to purchase shares of Stock, as part of any bonus, deferred compensation or other arrangement, made in lieu of all or any portion of the compensation, granted pursuant to Article 8.

(hh) "***Subsidiary***" means any corporation or other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company at the relevant time, including after the Effective Date (as defined in Section 13.1).

ARTICLE 3
SHARES SUBJECT TO THE PLAN

3.1 Number of Shares.

(a) Subject to Article 11, the aggregate number of shares of Stock which may be issued or transferred pursuant to Awards under the Plan shall be 4,500,000 shares.

(b) To the extent that an Award terminates, expires, or lapses for any reason, any shares of Stock subject to the Award shall again be available for the grant of an Award pursuant to the Plan. Additionally, any shares of Stock tendered or withheld to satisfy the grant or exercise price or tax withholding obligation pursuant to any Award shall again be available for the grant of an Award pursuant to the Plan. To the extent permitted by applicable law or any exchange rule, shares of Stock issued in assumption of, or in substitution for, any outstanding awards of any entity acquired in any form of combination by the Company or any Parent or Subsidiary shall not be counted against shares of Stock available for grant pursuant to this Plan. If shares of Stock issued pursuant to Awards are repurchased by

the Company at no less than their original purchase price, such shares of Stock shall become available for future grant under the Plan (unless the Plan has terminated).

(c) Notwithstanding the provisions of this Section 3.1, no shares of Stock may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an Incentive Stock Option under Code Section 422.

3.2 Stock Distributed. Any Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Stock, treasury Stock or, on and after the Public Trading Date, Stock purchased on the open market.

3.3 Limitation on Number of Shares Subject to Awards. Notwithstanding any provision in the Plan to the contrary, and subject to Article 11, on and after the Public Trading Date and upon expiration of any transition period provided for under Section 162(m) of the Code, the maximum number of shares of Stock with respect to one or more Awards that may be granted to any one Participant during a calendar year shall be 2,250,000.

ARTICLE 4
ELIGIBILITY AND PARTICIPATION

4.1 Eligibility.

(a) General. Persons eligible to participate in this Plan include all Employees, consultants to the Company or any Parent or Subsidiary and all members of the Board, as determined by the Committee.

(b) Foreign Participants. In order to assure the viability of Awards granted to Participants employed in foreign countries, the Committee may provide for such special terms, as it may consider necessary or appropriate to accommodate differences in local law, tax policy, or custom. Moreover, the Committee may approve such supplements to, or amendments, restatements, or alternative versions of, the Plan as it may consider necessary or appropriate for such purposes without thereby affecting the terms of the Plan as in effect for any other purpose; *provided, however*, that no such supplements, amendments, restatements, or alternative versions shall increase the share limitations contained in Sections 3.1 and 3.3 of the Plan.

4.2 Actual Participation. Subject to the provisions of the Plan, the Committee may, from time to time, select from among all eligible individuals, those to whom Awards shall be granted and shall determine the nature and amount of each Award. No individual shall have any right to be granted an Award pursuant to this Plan.

ARTICLE 5
STOCK OPTIONS

5.1 General. The Committee is authorized to grant Options to Participants on the following terms and conditions:

(a) Exercise Price. The exercise price per share of Stock subject to an Option shall be determined by the Committee and set forth in the Award Agreement; *provided* that the exercise price for any Option shall not be less than par value of a share of Stock on the date of grant.

(b) Time And Conditions Of Exercise. The Committee shall determine the time or

times at which an Option may be exercised in whole or in part, *provided* that the term of any Option granted under the Plan shall not exceed ten years. The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised.

(c) Payment. The Committee shall determine the methods by which the exercise price of an Option may be paid, the form of payment, including, without limitation:

(1) cash,

(2) on and after the Public Trading Date, shares of Stock held for longer than six months having a Fair Market Value on the date of delivery equal to the aggregate exercise price of the Option or exercised portion thereof,

(3) other property acceptable to the Committee, or

(4) on and after the Public Trading Date, delivery of a notice that the Participant has placed a market sell order with a broker with respect to shares of Stock then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price, *provided* that payment of such proceeds is then made to the Company upon settlement of such sale).

The Committee shall also determine the methods by which shares of Stock shall be delivered or deemed to be delivered to Participants. The Committee may permit any Participant to pay the option exercise price or the purchase price for shares of Stock under an Award by delivering a full-recourse, interest bearing promissory note payable in one or more installments and secured by the purchased shares, as long as the portion of the option exercise price or purchase price, as applicable, which is equal to the par value of the shares purchased thereby is paid in cash or other legal consideration permitted by applicable law. In no event, however, may the maximum credit available to the Participant exceed the sum of (i) the aggregate option exercise price or purchase price payable for the purchased shares (less the par value of those shares) plus (ii) any Federal, state and local income and employment tax liability incurred by the Participant in connection with the option exercise or share purchase; *provided*, *however*, that prior to the first date on which the Company has filed a registration statement under the Securities Act to register the public offering of securities of the Company under the Securities Act, then, to the extent that any director or executive officer of the Company, as defined under Rule 3b-7 promulgated under the Exchange Act, has outstanding a promissory note or other pending mode of payment for shares under the Plan, and the Company has reasonably determined that to permit such promissory note or other pending mode of payment to remain outstanding would be unlawful under the Exchange Act or any other law, then such note or other pending mode of payment must be immediately paid to the Company in full or replaced by a mode of payment provided for under the Plan that is acceptable to the Company and reasonably determined by it to be lawful under the Exchange Act or any other applicable law.

(d) Evidence Of Grant. All Options shall be evidenced by a written Award Agreement between the Company and the Participant. The Award Agreement shall include such additional provisions as may be specified by the Committee.

5.2 Incentive Stock Options. Incentive Stock Options shall be granted only to employees (as defined in accordance with Section 3401(c) of the Code) of the Company or a Subsidiary which constitutes a "subsidiary corporation" of the Company within Section 424(f) of the Code or a Parent which constitutes a "parent corporation" of the Company within the meaning of Section 424(e) of the Code and the terms of any Incentive Stock Options granted pursuant to the Plan must comply with the following additional provisions of this Section 5.2:

(a) Exercise Price. The exercise price per share of Stock shall be set by the Committee, *provided* that the exercise price for any Incentive Stock Option shall not be less than 100% of the Fair Market Value on the date of grant.

(b) Expiration Of Option. An Incentive Stock Option may not be exercised to any extent by anyone after the first to occur of the following events:

(1) Ten years from the date it is granted, unless an earlier time is set in the Award Agreement.

(2) One year after the date of the Participant's termination of employment or service on account of Disability or death, unless in the case of death a shorter or longer period is designated in the Award Agreement. Upon the Participant's Disability or death, any Incentive Stock Options exercisable at the Participant's Disability or death may be exercised by the Participant's legal representative or representatives, by the person or persons entitled to do so pursuant to the Participant's last will and testament, or, if the Participant fails to make testamentary disposition of such Incentive Stock Option or dies intestate, by the person or persons entitled to receive the Incentive Stock Option pursuant to the applicable laws of descent and distribution.

(c) Individual Dollar Limitation. The aggregate Fair Market Value (determined as of the time the Option is granted) of all shares of Stock with respect to which Incentive Stock Options are first exercisable by a Participant in any calendar year may not exceed $100,000 or such other limitation as imposed by Section 422(d) of the Code, or any successor provision. To the extent that Incentive Stock Options are first exercisable by a Participant in excess of such limitation, the excess shall be considered Non-Qualified Stock Options.

(d) Ten Percent Owners. An Incentive Stock Option shall be granted to any individual who, at the date of grant, owns stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or any "subsidiary corporation" of the Company or "parent corporation" of the Company (each within the meaning of Section 424 of the Code) only if such Option is granted at a price that is not less than 110% of Fair Market Value on the date of grant and the Option is exercisable for no more than five years from the date of grant.

(e) Transfer Restriction. The Participant shall give the Company prompt notice of any disposition of shares of Stock acquired by exercise of an Incentive Stock Option within (1) two years from the date of grant of such Incentive Stock Option or (2) one year after the transfer of such shares of Stock to the Participant.

(f) Expiration Of Incentive Stock Options. No Award of an Incentive Stock Option may be made pursuant to this Plan after the tenth anniversary of the Effective Date.

(g) Right To Exercise. During a Participant's lifetime, an Incentive Stock Option may be exercised only by the Participant.

5.3 Early Exercisability. The Committee may provide in the terms of a Participant's Award Agreement that the Participant may, at any time before the Participant's status as an Employee, member of the Board or consultant or other independent advisor to the Company terminates, exercise the Option(s) granted to such Participant in whole or in part prior to the full vesting of the Option(s); *provided, however*, shares of Stock acquired upon exercise of an Option which has not fully vested may be subject to any forfeiture, transfer or other restrictions as the Committee may determine in its sole discretion.

ARTICLE 6
RESTRICTED STOCK AWARDS

6.1 Grant of Restricted Stock. The Committee is authorized to make Awards of Restricted Stock to any Participant selected by the Committee in such amounts and subject to such terms and conditions as determined by the Committee. All Awards of Restricted Stock shall be evidenced by a Restricted Stock Award Agreement.

6.2 Issuance and Restrictions. Restricted Stock shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, without limitation, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock). These restrictions may lapse separately or in combination at such times, pursuant to such circumstances, in such installments, or otherwise, as the Committee determines at the time of the grant of the Award or thereafter.

6.3 Forfeiture. Except as otherwise determined by the Committee at the time of the grant of the Award or thereafter, upon termination of employment or service during the applicable restriction period, Restricted Stock that is at that time subject to restrictions shall be forfeited; *provided, however*, that the Committee may provide in any Restricted Stock Award Agreement that restrictions or forfeiture conditions relating to Restricted Stock will be waived in whole or in part in the event of terminations resulting from specified causes, and the Committee may in other cases waive in whole or in part restrictions or forfeiture conditions relating to Restricted Stock.

6.4 Certificates For Restricted Stock. Restricted Stock granted pursuant to the Plan may be evidenced in such manner as the Committee shall determine. If certificates representing shares of Restricted Stock are registered in the name of the Participant, certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company may, at its discretion, retain physical possession of the certificate until such time as all applicable restrictions lapse.

ARTICLE 7
STOCK APPRECIATION RIGHTS

7.1 Grant of Stock Appreciation Rights. A Stock Appreciation Right may be granted to any Participant selected by the Committee. A Stock Appreciation Right may be granted (a) in connection and simultaneously with the grant of an Option, (b) with respect to a previously granted Option, or (c) independent of an Option. A Stock Appreciation Right shall be subject to such terms and conditions not inconsistent with the Plan as the Committee shall impose and shall be evidenced by an Award Agreement.

7.2 Coupled Stock Appreciation Rights.

(a) A Coupled Stock Appreciation Right ("***CSAR***") shall be related to a particular Option and shall be exercisable only when and to the extent the related Option is exercisable.

(b) A CSAR may be granted to a Participant for no more than the number of shares subject to the simultaneously or previously granted Option to which it is coupled.

(c) A CSAR shall entitle the Participant (or other person entitled to exercise the Option pursuant to the Plan) to surrender to the Company unexercised a portion of the Option to which the CSAR relates (to the extent then exercisable pursuant to its terms) and to receive from the Company

in exchange therefor an amount determined by multiplying the difference obtained by subtracting the Option exercise price from the Fair Market Value of a share of Stock on the date of exercise of the CSAR by the number of shares of Stock with respect to which the CSAR shall have been exercised, subject to any limitations the Committee may impose.

7.3 Independent Stock Appreciation Rights.

(a) An Independent Stock Appreciation Right ("***ISAR***") shall be unrelated to any Option and shall have a term set by the Committee. An ISAR shall be exercisable in such installments as the Committee may determine. An ISAR shall cover such number of shares of Stock as the Committee may determine. The exercise price per share of Stock subject to each ISAR shall be set by the Committee; *provided, however*, that, the Committee in its sole and absolute discretion may provide that the ISAR may be exercised subsequent to a termination of employment or service, as applicable, or following a Change of Control of the Company, or because of the Participant's retirement, death or Disability, or otherwise.

(b) An ISAR shall entitle the Participant (or other person entitled to exercise the ISAR pursuant to the Plan) to exercise all or a specified portion of the ISAR (to the extent then exercisable pursuant to its terms) and to receive from the Company an amount determined by multiplying the difference obtained by subtracting the exercise price per share of the ISAR from the Fair Market Value of a share of Stock on the date of exercise of the ISAR by the number of shares of Stock with respect to which the ISAR shall have been exercised, subject to any limitations the Committee may impose.

7.4 Payment and Limitations on Exercise.

Payment of the amounts determined under Section 7.2(c) and 7.3(b) above shall be in cash, in Stock (based on its Fair Market Value as of the date the Stock Appreciation Right is exercised) or a combination of both, as determined by the Committee.

ARTICLE 8
OTHER TYPES OF AWARDS

8.1 Performance Share Awards. Any Participant selected by the Committee may be granted one or more Performance Share awards which may be denominated in a number of shares of Stock or in a dollar value of shares of Stock and which may be linked to any one or more of the Performance Criteria or other specific performance criteria determined appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee. In making such determinations, the Committee shall consider (among such other factors as it deems relevant in light of the specific type of award) the contributions, responsibilities and other compensation of the particular Participant.

8.2 Dividend Equivalents.

Any Participant selected by the Committee may be granted Dividend Equivalents based on the dividends declared on the shares of Stock that are subject to any Award, to be credited as of dividend payment dates, during the period between the date the Award is granted and the date the Award is exercised, vests or expires, as determined by the Committee. Such Dividend Equivalents shall be converted to cash or additional shares of Stock by such formula and at such time and subject to such limitations as may be determined by the Committee.

8.3 Stock Payments. Any Participant selected by the Committee may receive Stock Payments in the manner determined from time to time by the Committee. The number of shares shall be determined by the Committee and may be based upon the Performance Criteria or other specific performance criteria determined appropriate by the Committee, determined on the date such Stock Payment is made or on any date thereafter.

8.4 Restricted Stock Units. Any Participant selected by the Committee may be granted an award of Restricted Stock Units in the manner determined from time to time by the Committee. The number of Restricted Stock Units shall be determined by the Committee and may be linked to the Performance Criteria or other specific performance criteria determined to be appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee. Stock underlying a Restricted Stock Unit will not be issued until the Restricted Stock Unit has vested, pursuant to a vesting schedule or performance criteria set by the Committee. Unless otherwise provided by the Committee, a Participant awarded Restricted Stock Units shall have no rights as a Company stockholder with respect to such Restricted Stock Units until such time as the Restricted Stock Units have vested and the Stock underlying the Restricted Stock Units has been issued.

8.5 Term. The term of any Award of Performance Shares, Dividend Equivalents, Stock Payments or Restricted Stock Units shall be set by the Committee in its discretion.

8.6 Exercise or Purchase Price. The Committee may establish the exercise or purchase price of any Award of Performance Shares, Restricted Stock Units or Stock Payments; *provided, however*, that such price shall not be less than the par value of a share of Stock, unless otherwise permitted by applicable state law.

8.7 Exercise Upon Termination of Employment or Service. An Award of Performance Shares, Dividend Equivalents, Restricted Stock Units and Stock Payments shall only be exercisable or payable while the Participant is an Employee, consultant to the Company or a member of the Board, as applicable; *provided, however*, that the Committee in its sole and absolute discretion may provide in the Award Agreement or otherwise that an Award of Performance Shares, Dividend Equivalents, Stock Payments or Restricted Stock Units may be exercised or paid subsequent to a termination of employment or service, as applicable, upon or following a Change of Control of the Company, or because of the Participant's retirement, death, Disability, or otherwise.

8.8 Form of Payment. Payments with respect to any Awards granted under this Article 8 shall be made in cash, in Stock or a combination of both, as determined by the Committee.

8.9 Award Agreement. All Awards under this Article 8 shall be subject to such additional terms and conditions as determined by the Committee and shall be evidenced by a written Award Agreement.

ARTICLE 9
PERFORMANCE-BASED AWARDS

9.1 Purpose. The purpose of this Article 9 is to provide the Committee the ability to qualify Awards as Qualified Performance-Based Compensation. If the Committee, in its discretion, decides to grant a Performance-Based Award to a Covered Employee, the provisions of this Article 9 shall control over any contrary provision of the Plan; *provided, however*, that the Committee may in its discretion grant Awards to Covered Employees that are based on Performance Criteria or Performance Goals but that do not satisfy the requirements of this Article 9.

9.2 Applicability. This Article 9 shall apply only to those Covered Employees selected by the Committee to receive Performance-Based Awards which are intended to be Qualified Performance Based Compensation. The designation of a Covered Employee as a Participant for a Performance Period shall not in any manner entitle the Participant to receive an Award for the period. Moreover, designation of a Covered Employee as a Participant for a particular Performance Period shall not require designation of such Covered Employee as a Participant in any subsequent Performance Period and designation of one Covered Employee as a Participant shall not require designation of any other Covered Employees as a Participant in such period or in any other period.

9.3 Procedures With Respect to Performance-Based Awards. To the extent necessary to comply with the Qualified Performance-Based Compensation requirements of Section 162(m)(4)(C) of the Code, with respect to any Award granted under Articles 6 and 8 which may be granted to one or more Covered Employees, no later than ninety days following the commencement of any fiscal year in question or any other designated fiscal period or period of service (or such other time as may be required or permitted by Section 162(m) of the Code), the Committee shall, in writing, (i) designate one or more Covered Employees, (ii) select the Performance Criteria applicable to the Performance Period, (iii) establish the Performance Goals, and amounts of such Awards, as applicable, which may be earned for such Performance Period, and (iv) specify the relationship between Performance Criteria and the Performance Goals and the amounts of such Awards, as applicable, to be earned by each Covered Employee for such Performance Period. Following the completion of each Performance Period, the Committee shall certify in writing whether the applicable Performance Goals have been achieved for such Performance Period. In determining the amount earned by a Covered Employee, the Committee shall have the right to reduce or eliminate (but not to increase) the amount payable at a given level of performance to take into account additional factors that the Committee may deem relevant to the assessment of individual or corporate performance for the Performance Period.

9.4 Payment of Performance-Based Awards. A Participant shall be eligible to receive payment pursuant to a Performance-Based Award for a Performance Period only if the Performance Goals for such period are achieved. In determining the amount earned under a Performance-Based Award, the Committee may reduce or eliminate the amount of the Performance-Based Award earned for the Performance Period, if in its sole and absolute discretion, such reduction or elimination is appropriate.

9.5 Additional Limitations. Notwithstanding any other provision of the Plan, any Award which is granted to a Covered Employee and is intended to constitute Qualified Performance-Based Compensation shall be subject to any additional limitations set forth in Section 162(m) of the Code (including any amendment to Section 162(m) of the Code) or any regulations or rulings issued thereunder that are requirements for qualification as qualified performance-based compensation as described in Section 162(m)(4)(C) of the Code, and the Plan shall be deemed amended to the extent necessary to conform to such requirements.

ARTICLE 10
PROVISIONS APPLICABLE TO AWARDS

10.1 Stand-Alone and Tandem Awards. Awards granted pursuant to the Plan may, in the discretion of the Committee, be granted either alone, in addition to, or in tandem with, any other Award granted pursuant to the Plan. Awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

10.2 Award Agreement. Awards under the Plan shall be evidenced by Award Agreements that set forth the terms, conditions and limitations for each Award which may include the term of an Award, the provisions applicable in the event the Participant’s employment or service terminates, and the

Company's authority to unilaterally or bilaterally amend, modify, suspend, cancel or rescind an Award.

10.3 Limits on Transfer. No right or interest of a Participant in any Award may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or a Parent or Subsidiary, or shall be subject to any lien, obligation, or liability of such Participant to any other party other than the Company or a Parent or Subsidiary. Except as otherwise provided by the Committee, no Award shall be assigned, transferred, or otherwise disposed of by a Participant other than by will or the laws of descent and distribution. The Committee by express provision in the Award or an amendment thereto may permit an Award (other than an Incentive Stock Option) to be transferred to, exercised by and paid to certain persons or entities related to the Participant, including but not limited to members of the Participant's family, charitable institutions, or trusts or other entities whose beneficiaries or beneficial owners are members of the Participant's family and/or charitable institutions, or to such other persons or entities as may be expressly approved by the Committee, pursuant to such conditions and procedures as the Committee may establish. Any permitted transfer may be subject to the condition that the Committee receive evidence satisfactory to it that the transfer is being made for estate and/or tax planning purposes (or to a "blind trust" in connection with the Participant's termination of employment or service with the Company or a Parent or Subsidiary to assume a position with a governmental, charitable, educational or similar non-profit institution) and on a basis consistent with the Company's lawful issue of securities.

10.4 Beneficiaries. Notwithstanding Section 10.3, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Award Agreement applicable to the Participant, except to the extent the Plan and Award Agreement otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If the Participant is married and resides in a community property state, a designation of a person other than the Participant's spouse as his beneficiary with respect to more than 50% of the Participant's interest in the Award shall not be effective without the prior written consent of the Participant's spouse. If no beneficiary has been designated or survives the Participant, payment shall be made to the person entitled thereto pursuant to the Participant's will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is filed with the Committee.

10.5 Stock Certificates; Book Entry Procedures.

(a) The Company shall not be required to issue or deliver any certificates evidencing shares of Stock pursuant to the exercise of any Award, unless and until the Board has determined, with advice of counsel, that the issuance and delivery of such certificates is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the shares of Stock are listed or traded. All Stock certificates delivered pursuant to the Plan are subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal, state, or foreign jurisdiction, securities or other laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Stock is listed, quoted, or traded. The Committee may place legends on any Stock certificate to reference restrictions applicable to the Stock. In addition to the terms and conditions provided herein, the Board may require that a Participant make such reasonable covenants, agreements, and representations as the Board, in its discretion, deems advisable in order to comply with any such laws, regulations, or requirements. The Committee shall have the right to require any Participant to comply with any timing or other restrictions with respect to the settlement or exercise of any Award, including a window-period limitation, as may be imposed in the discretion of the Committee.

(b) Notwithstanding any other provision of the Plan, unless otherwise determined by the Committee or required by applicable law, rule or regulation, the Company shall not deliver to any Participant certificates evidencing shares of Stock issued in connection with any Award or exercise of any Award and instead such shares of Stock will be recorded in the books of the Company (or as applicable, its transfer agent or stock plan administrator).

ARTICLE 11
CHANGES IN CAPITAL STRUCTURE

11.1 Adjustments.

(a) In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation, spin-off, recapitalization or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of Stock or the share price of the Stock, the Committee shall make such proportionate adjustments, if any, as the Committee in its discretion may deem appropriate to reflect such change with respect to (i) the aggregate number and type of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Sections 3.1 and 3.3); (ii) the terms and conditions of any outstanding Awards (including, without limitation, any applicable performance targets or criteria with respect thereto); and (iii) the grant or exercise price per share for any outstanding Awards under the Plan. Any adjustment affecting an Award intended as Qualified Performance-Based Compensation shall be made consistent with the requirements of Section 162(m) of the Code.

(b) In the event of any transaction or event described in Section 11.1(a) or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate (including without limitation any Change of Control), or of changes in applicable laws, regulations or accounting principles, and whenever the Committee determines that action is appropriate in order to prevent the dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles, the Committee, in its sole discretion and on such terms and conditions as it deems appropriate, either by amendment of the terms of any outstanding Awards or by action taken prior to the occurrence of such transaction or event and either automatically or upon the Participant's request, is hereby authorized to take any one or more of the following actions:

(i) To provide for either (A) termination of any such Award in exchange for an amount of cash and/or other property, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Participant's rights (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction or event described in this Section 11.1(b) the Committee determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Participant's rights, then such Award may be terminated by the Company without payment) or (B) the replacement of such Award with other rights or property selected by the Committee in its sole discretion;

(ii) To provide that such Award be assumed by the successor or survivor corporation, or a Parent or Subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a Parent or Subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(iii) To make adjustments in the number and type of shares of Stock (or other securities or property) subject to outstanding Awards, and in the number and kind of outstanding

Restricted Stock or Restricted Stock Units and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding options, rights and awards and options, rights and awards which may be granted in the future;

(iv) To provide that such Award shall be exercisable or payable or fully vested with respect to all shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Award Agreement; and

(v) To provide that the Award cannot vest, be exercised or become payable after such event.

11.2 Acceleration Upon a Change of Control. Notwithstanding anything to the contrary contained in Section 11.1, if a Change of Control occurs and a Participant's Awards are not assumed by the surviving or successor entity or its Parent or Subsidiary and such successor does not substitute substantially similar awards for those outstanding under the Plan, such Awards shall become fully exercisable and/or payable as applicable, and all forfeiture restrictions on such Awards shall lapse. Upon, or in anticipation of, a Change of Control, the Committee may cause any and all Awards outstanding hereunder to terminate at a specific time in the future and shall give each Participant the right to exercise such Awards during a period of time as the Committee, in its sole and absolute discretion, shall determine. The Committee shall have sole discretion to determine whether an Award has been assumed by the surviving or successor entity or its Parent or Subsidiary or whether such successor has substituted substantially similar awards for those outstanding under the Plan in connection with a Change of Control.

11.3 Outstanding Awards – Certain Mergers. Subject to any required action by the stockholders of the Company, in the event that the Company shall be the surviving corporation in any merger or consolidation (except a merger or consolidation as a result of which the holders of shares of Stock receive securities of another corporation), each Award outstanding on the date of such merger or consolidation shall pertain to and apply to the securities that a holder of the number of shares of Stock subject to such Award would have received in such merger or consolidation and the exercise price shall be appropriately adjusted.

11.4 Outstanding Awards – Other Changes. In the event of any other change in the capitalization of the Company or corporate change other than those specifically referred to in this Article 11, the Committee may, in its absolute discretion, make such adjustments in the number and class of shares subject to Awards outstanding on the date on which such change occurs and in the per share grant or exercise price of each Award as the Committee may consider appropriate to prevent dilution or enlargement of rights.

11.5 No Other Rights. Except as expressly provided in the Plan, no Participant shall have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividend, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in the Plan or pursuant to action of the Committee under the Plan, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of shares of Stock subject to an Award or the grant or exercise price of any Award.

ARTICLE 12
ADMINISTRATION

12.1 Committee. Unless and until the Board delegates administration to a committee as set forth below, the Plan shall be administered by the Board. The Board may delegate administration of the Plan to a Committee or Committees of one or more members of the Board, and the term "Committee" shall apply to any person or persons whom at the time has the authority to administer the Plan. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. Notwithstanding the foregoing, however, from and after the Public Trading Date, a Committee of the Board shall administer the Plan and the Committee shall consist solely of two or more members of the Board each of whom is both an "outside director," within the meaning of Section 162(m) of the Code, and a Non-Employee Director. Within the scope of such authority, the Board or the Committee may (i) delegate to a committee of one or more members of the Board who are not "outside directors," within the meaning of Section 162(m) of the Code the authority to grant awards under the Plan to eligible persons who are either (1) not then "covered employees," within the meaning of Section 162(m) of the Code and are not expected to be "covered employees" at the time of recognition of income resulting from such award or (2) not persons with respect to whom the Company wishes to comply with Section 162(m) of the Code and/or (ii) delegate to a committee of one or more members of the Board who are not Non-Employee Directors, the authority to grant awards under the Plan to eligible persons who are not then subject to Section 16 of the Exchange Act. The Board may abolish the Committee at any time and/or revest in the Board the administration of the Plan. Appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written notice to the Board. Vacancies in the Committee may only be filled by the Board. Notwithstanding anything to the contrary, the full Board shall conduct the administration of the Plan with respect to Awards granted to directors and with respect to any individual subject to Section 16 of the Exchange Act; provided, however, that the Board will have only the right to ratify any grants with respect to Awards which are intended to be Qualified Performance Based Compensation issued to individuals who are subject to Section 16 of the Exchange Act in order to exempt such grants under the provisions of Rule 16b-3 of the Exchange Act.

12.2 Action by the Committee. A majority of the Committee shall constitute a quorum. The acts of a majority of the members present at any meeting at which a quorum is present, and acts approved in writing by a majority of the Committee in lieu of a meeting shall be deemed the acts of the Committee. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Parent or Subsidiary, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

12.3 Authority of Committee. Subject to any specific designation in the Plan, the Committee has the exclusive power, authority and discretion to:

(a) Designate Participants to receive Awards;

(b) Determine the type or types of Awards to be granted to each Participant;

(c) Determine the number of Awards to be granted and the number of shares of Stock to which an Award will relate;

(d) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise price, grant price, or purchase price, any reload provision, any restrictions or limitations on the Award, any schedule for lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, any provisions related to non-competition and recapture of gain on an Award, based in each case on such considerations as the Committee in its sole discretion determines; *provided*, *however*, that the Committee shall not have the authority to accelerate the vesting or waive the forfeiture of any Performance-Based Awards;

(e) Determine whether, to what extent, and pursuant to what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;

(f) Prescribe the form of each Award Agreement, which need not be identical for each Participant;

(g) Decide all other matters that must be determined in connection with an Award;

(h) Establish, adopt, or revise any rules and regulations as it may deem necessary or advisable to administer the Plan;

(i) Interpret the terms of, and any matter arising pursuant to, the Plan or any Award Agreement; and

(j) Make all other decisions and determinations that may be required pursuant to the Plan or as the Committee deems necessary or advisable to administer the Plan.

12.4 Decisions Binding. The Committee's interpretation of the Plan, any Awards granted pursuant to the Plan, any Award Agreement and all decisions and determinations by the Committee with respect to the Plan are final, binding, and conclusive on all parties.

ARTICLE 13
EFFECTIVE AND EXPIRATION DATE

13.1 Effective Date. The Plan will be submitted for the approval of the Company's stockholders within twelve months after the date of the Board's initial adoption of the Plan (the "***Effective Date***"). Awards may be granted or awarded prior to such stockholder approval, provided that such Awards shall not be exercisable, shall not vest and the restrictions thereon shall not lapse prior to the time when the Plan is approved by the stockholders, and provided further that if such approval has not been obtained at the end of said twelve-month period, all Awards previously granted or awarded under the Plan shall thereupon be canceled and become null and void.

13.2 Expiration Date. The Plan will expire on, and no Award may be granted pursuant to the Plan after, the earlier of (A) the tenth anniversary of (i) the Effective Date or (ii) the date this Plan is approved by the Company's stockholders; (B) the date on which all shares available for issuance under the Plan shall have been issued as vested shares; or (C) the termination of all outstanding options in connection with a Change of Control. Any Awards that are outstanding on the tenth anniversary of the Effective Date shall remain in force according to the terms of the Plan and the applicable Award Agreement.

ARTICLE 14
AMENDMENT, MODIFICATION, AND TERMINATION

14.1 Amendment, Modification, and Termination. With the approval of the Board, at any time and from time to time, the Committee may terminate, amend or modify the Plan; *provided*, *however*, that to the extent necessary and desirable to comply with any applicable law, regulation, or stock exchange rule, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required. The Committee shall have the authority to effect, at any time and from time to time, with the consent of the affected Option holders, the cancellation of any or all outstanding Options under the Plan and to grant in substitution therefor new options covering the same or different number of shares of Stock but with an exercise price per share based on the Fair Market Value per share of Stock on the new option grant date.

14.2 Awards Previously Granted. No termination, amendment, or modification of the Plan shall adversely affect in any material way any Award previously granted pursuant to the Plan without the prior written consent of the Participant.

ARTICLE 15
GENERAL PROVISIONS

15.1 No Rights to Awards. No Participant, employee, or other person shall have any claim to be granted any Award pursuant to the Plan, and neither the Company nor the Committee is obligated to treat Participants, employees, and other persons uniformly.

15.2 No Stockholders Rights. No Award gives the Participant any of the rights of a stockholder of the Company unless and until shares of Stock are in fact issued to such person in connection with such Award.

15.3 Withholding. The Company or any Parent or Subsidiary shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, local and foreign taxes (including the Participant's payroll, social security or other tax obligations) required by law to be withheld with respect to any taxable event concerning a Participant arising as a result of this Plan. The Committee may in its discretion and in satisfaction of the foregoing requirement allow a Participant to elect to have the Company withhold shares of Stock otherwise issuable under an Award (or allow the return of shares of Stock) having a Fair Market Value equal to the sums required to be withheld. Notwithstanding any other provision of the Plan, the number of shares of Stock which may be withheld with respect to the issuance, vesting, exercise or payment of any Award (or which may be repurchased from the Participant of such Award within six months after such shares of Stock were acquired by the Participant from the Company) in order to satisfy the Participant's federal, state, local and foreign tax liabilities with respect to the issuance, vesting, exercise or payment of the Award shall be limited to the number of shares which have a Fair Market Value on the date of withholding or repurchase equal to the aggregate amount of such liabilities based on the minimum statutory withholding rates for federal, state, local and foreign tax purposes that are applicable to such taxable income.

15.4 No Right to Employment or Services. Nothing in the Plan or any Award Agreement shall interfere with or limit in any way the right of the Company or any Parent or Subsidiary to terminate any Participant's employment or services at any time, nor confer upon any Participant any right to continue in the employ or service of the Company or any Parent or Subsidiary.

15.5 Unfunded Status of Awards. The Plan is intended to be an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing

contained in the Plan or any Award Agreement shall give the Participant any rights that are greater than those of a general creditor of the Company or any Parent or Subsidiary.

15.6 Indemnification. To the extent allowable pursuant to applicable law, each member of the Committee or of the Board shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her, *provided* he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

15.7 Relationship to Other Benefits. No payment pursuant to the Plan shall be taken into account in determining any benefits pursuant to any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Parent or Subsidiary except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.

15.8 Expenses. The expenses of administering the Plan shall be borne by the Company and its Subsidiaries.

15.9 Titles and Headings. The titles and headings of the Sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

15.10 Fractional Shares. No fractional shares of Stock shall be issued and the Committee shall determine, in its discretion, whether cash shall be given in lieu of fractional shares or whether such fractional shares shall be eliminated by rounding up or down as appropriate.

15.11 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan, the Plan, and any Award granted or awarded to any Participant who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

15.12 Government And Other Regulations. The obligation of the Company to make payment of awards in Stock or otherwise shall be subject to all applicable laws, rules, and regulations, and to such approvals by government agencies as may be required. The Company shall be under no obligation to register pursuant to the Securities Act any of the shares of Stock paid pursuant to the Plan. If the shares paid pursuant to the Plan may in certain circumstances be exempt from registration pursuant to the Securities Act, the Company may restrict the transfer of such shares in such manner as it deems advisable to ensure the availability of any such exemption.

15.13 Governing Law. The Plan and all Award Agreements shall be construed in accordance with and governed by the laws of the State of California.

15.14 Compliance with California Securities Laws. Prior to the Public Trading Date, this Plan is intended to comply with Section 25102(o) of the California Corporations Code and the regulations issued thereunder. If any of the provisions contained in this Plan are inconsistent with such requirements, such provisions shall be deemed null and void. The invalidity of any provision of this Plan shall not affect the validity or enforceability of any other provision of this Plan, which shall remain in full force and effect.

15.15 Appendices. The Committee may approve such supplements to, or amendments, or appendices to, the Plan as it may consider necessary or appropriate for purposes of compliance with applicable laws or otherwise and such supplements, amendments or appendices shall be considered a part of the Plan; *provided*, *however*, that no such supplements, amendments or appendices shall increase the share limitations contained in Sections 3.1 and 3.3 of the Plan.

APPENDIX I

TO
CADENCE PHARMACEUTICALS, INC.
2004 EQUITY INCENTIVE AWARD PLAN

California State Securities Law Compliance

Notwithstanding anything to the contrary contained in the Plan, the provisions set forth in this Appendix shall apply to all Awards granted under the Cadence Pharmaceuticals, Inc. 2004 Equity Incentive Award Plan (the "***Plan***") prior to the Public Trading Date. This Appendix shall be of no further force and effect on or after the Public Trading Date. Definitions as set out in Section 2 of the Plan are applicable to this Appendix.

The purpose of this Appendix is to set forth those provisions of the Plan necessary to comply with Section 25102(o) of the California Corporations Code and the regulations issued thereunder. If any of the provisions contained in this Appendix are inconsistent with such requirements, such provisions shall be deemed null and void. The invalidity of any provision of this Appendix shall not affect the validity or enforceability of any other provision of this Appendix, which shall remain in full force and effect.

References to Articles set forth in this Appendix are to those Articles of the Plan.

1.1 Term of Awards. The term of each Award shall be no more than ten years from the date of grant thereof.

2.1 Award Exercise or Purchase Price. Except as provided in Article 11, the per share exercise or purchase price for the Stock to be issued upon exercise of an Award shall be such price as is determined by the Administrator, but shall be subject to the following:

In the case of an Award:

(a) granted to a Participant who, at the time of grant of such Award, owns stock representing more than 10% of the voting power of all classes of stock of the Company or any parent (as defined in Section 175 of the California Corporations Code) or Subsidiary, the per share exercise or purchase price shall be no less than 110% of the Fair Market Value per share on the date of the grant (100% in the case of an Award other than an Option); and

(b) granted to any other Participant, the per share exercise or purchase price shall be no less than 85% of the Fair Market Value per share on the date of grant.

Notwithstanding the foregoing, Awards may be granted with a per share exercise or purchase price other than as required above pursuant to a merger or other corporate transaction.

3.1 Exercisability. Except with regard to Awards granted to officers, members of the Board, managers or consultants, in no event shall an Award granted hereunder become vested and exercisable at a rate of less than 20% per year over five years from the date the Award is granted, subject to reasonable conditions, such as continuing to be a service provider.

4.1 Exercisability Following Termination of Relationship as a Service Provider.

(a) Termination Other Than Death, Disability or Misconduct. If a Participant's employment or service terminates for any reason other than by reason of the Participant's Disability, death or Misconduct, such Participant may exercise his or her Award within such period of time as is specified in the Award Agreement to the extent that the Award is vested on the date of termination; *provided*, *however*, that prior to the Public Trading Date, such period of time shall not be less than thirty days (but in no event later than the expiration of the term of the Award as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the Option shall remain exercisable for three months following the Participant's termination for any reason other than death, Disability or Misconduct.

(b) Death. If a Participant's employment or service terminates as a result of the Participant's death, the Award may be exercised within such period of time as is specified in the Award Agreement; *provided*, *however*, that prior to the Public Trading Date, such period of time shall not be less than six months (but in no event later than the expiration of the term of such Award as set forth in the Notice of Grant), by the Participant's estate or by a person who acquires the right to exercise the Award by bequest or inheritance, but only to the extent that the Award is vested on the date of death. In the absence of a specified time in the Award Agreement, the Award shall remain exercisable for twelve months following the Participant's termination for death.

(c) Disability of Participant. If a Participant's employment or service terminates as a result of the Participant's Disability, the Participant may exercise his or her Award within such period of time as is specified in the Award Agreement to the extent the Award is vested on the date of termination; *provided*, *however*, that prior to the Public Trading Date, such period of time shall not be less than six months (but in no event later than the expiration of the term of such Award as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the Award shall remain exercisable for twelve months following the Participant's termination for Disability.

(d) Misconduct of Participant. If a Participant's employment or service terminates as a result of the Participant's Misconduct or should Participant otherwise engage in Misconduct while holding one or more outstanding Awards under the Plan, the Award shall terminate immediately and cease to remain outstanding.

5.1 Repurchase Provisions. In the event the Committee provides that the Company may repurchase Stock acquired upon exercise of an Award upon the occurrence of certain specified events, including, without limitation, termination of a Participant's employment or service, divorce, bankruptcy or insolvency, then any such repurchase right shall be set forth in the applicable Award Agreement or in another agreement referred to in such agreement and, to the extent required by Section 260.140.41 and Section 260.140.42 of Title 10 of the California Code of Regulations (or any successor regulation), any such repurchase right set forth in an Award granted prior to the Public Trading Date to a person who is not an officer, member of the Board, manager or consultant shall be upon the following terms: (i) if the repurchase option gives the Company the right to repurchase the shares upon the Participant's termination of employment or service at not less than the Fair Market Value of the shares to be purchased on the date of termination of employment or service, then (A) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares within ninety days of termination of employment or service (or in the case of shares issued upon exercise of Awards after such date of termination, within ninety days after the date of the exercise) or such longer period as may be agreed to by the Administrator and the Participant and (B) the right terminates on the Public Trading Date; and (ii) if the repurchase option gives the Company the right to repurchase the Stock upon the Participant's termination of employment or service at the original purchase price for such Stock, then (A) the right to

repurchase at the original purchase price shall lapse at the rate of at least 20% of the shares per year over five (5) years from the date the Award is granted (without respect to the date the Award was exercised or became exercisable) and (B) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares within ninety days of termination of employment or service (or, in the case of shares issued upon exercise of Awards, after such date of termination, within ninety days after the date of the exercise) or such longer period as may be agreed to by the Company and the Participant.

6.1 Information Rights. Prior to the Public Trading Date and to the extent required by Section 260.140.46 of Title 10 of the California Code of Regulations, the Company shall provide to each Participant and to each individual who acquires Stock pursuant to the Plan, not less frequently than annually during the period such Participant has one or more Awards outstanding, and, in the case of an individual who acquires Stock pursuant to the Plan, during the period such individual owns such Stock, copies of annual financial statements. Notwithstanding the preceding sentence, the Company shall not be required to provide such statements to key employees whose duties in connection with the Company assure their access to equivalent information.

7.1 Transferability. Prior to the Public Trading Date, no Award shall be assigned, transferred, or otherwise disposed of by a Participant other than by will or the laws of descent and distribution or, with respect to Awards other than Incentive Stock Options, as permitted by Rule 701 of the Securities Act.

8.1 Limitation on Number of Shares. Prior to the Public Trading Date, at no time shall the total number of shares of Stock issuable upon exercise of all outstanding Options under the Plan and any shares of Stock provided for under any bonus or similar plan or agreement of the Company exceed 30% of the then-outstanding shares of Stock of the Company, as calculated pursuant to Section 260.140.45 of Title 10 of the California Code of Regulations (or any successor regulation), unless a percentage higher than 30% is approved by at least two-thirds of the outstanding securities of the Company entitled to vote. The number of shares of Stock which may be issued or transferred pursuant to Awards under the Plan shall be reduced to the extent necessary to comply with this provision.

CADENCE PHARMACEUTICALS, INC.

STOCK OPTION GRANT NOTICE AND STOCK OPTION AGREEMENT
UNDER THE 2004 EQUITY INCENTIVE AWARD PLAN

Cadence Pharmaceuticals, Inc. (the "***Company***"), pursuant to its 2004 Equity Incentive Award Plan (the "***Plan***"), hereby grants to the Optionee listed below ("***Optionee***"), an option to purchase the number of shares of the Company's Stock set forth below. This option is subject to all of the terms and conditions as set forth herein and in the Stock Option Agreement and the Plan, each of which are incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same meanings in this Stock Option Agreement.

Optionee: _____

Grant Date: _____

Vesting Commencement Date: _____

Exercise Price per Share: $_____ per share

Total Number of Shares Granted: _____

Total Exercise Price: $_____

Expiration Date: _____

Type of Option: o Incentive Stock Option o Non-Qualified Stock Option

Vesting Schedule: ***[***25% of the shares of Stock subject to the Option (rounded down to the next whole number of shares) shall vest one year after the Vesting Commencement Date, and 1/48th of the shares of Stock subject to the Option (rounded down to the next whole number of shares) shall vest on the first day of each full month thereafter, so that all of the shares subject to the Option shall be vested on the first day of the 48th month after the Vesting Commencement Date.***]***

By his or her signature and the Company's signature below, Optionee agrees to be bound by the terms and conditions of the Plan and the Stock Option Agreement attached hereto. Optionee has reviewed the Stock Option Agreement and the Plan in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this option and fully understands all provisions of this Grant Notice, the Stock Option Agreement and the Plan. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the administrator of the Plan upon any questions arising under the Plan or this option. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

CADENCE PHARMACEUTICALS, INC.:

By: _____
Print Name:
Title:
Address: 12730 High Bluff Drive, Suite 410
San Diego, CA 92130

OPTIONEE:

By: _____
Print Name:

Address:

CADENCE PHARMACEUTICALS, INC.
2004 EQUITY INCENTIVE AWARD PLAN

STOCK OPTION AGREEMENT

Pursuant to the Stock Option Grant Notice ("***Grant Notice***") to which this Stock Option Agreement (this "***Agreement***") is attached, Cadence Pharmaceuticals, Inc. (the "***Company***") has granted to the Optionee an option under the Company's 2004 Equity Incentive Award Plan (the "***Plan***") to purchase the number of shares of Stock indicated in the Grant Notice at the exercise price indicated in the Grant Notice.

ARTICLE I
GENERAL

Capitalized terms not specifically defined herein shall have the meanings specified in the Plan. The Option is subject to the terms and conditions of the Plan which are incorporated herein by reference.

ARTICLE II
GRANT OF OPTION

2.1 Grant of Option. In consideration of the Optionee's agreement to remain in the employ of the Company or its Parents or Subsidiaries and for other good and valuable consideration, effective as of the Grant Date set forth in the Grant Notice (the "***Grant Date***"), the Company irrevocably grants to the Optionee the Option to purchase any part or all of an aggregate of the number of shares of Stock set forth in the Grant Notice, upon the terms and conditions set forth in this Agreement. Unless designated as a Non-Qualified Stock Option in the Grant Notice, the Option shall be an Incentive Stock Option to the maximum extent permitted by law.

2.2 Purchase Price. The purchase price of the shares of Stock subject to the Option per share shall be as set forth in the Grant Notice, without commission or other charge; *provided*, *however*, that if this Option is designated as an Incentive Stock Option the price per share of the shares subject to the Option shall not be less than the greater of (i) 100% of the Fair Market Value of a share of Stock on the Grant Date, or (ii) 110% of the Fair Market Value of a share of Stock on the Grant Date in the case of an Optionee then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any "subsidiary corporation" of the Company or any "parent corporation" of the Company (each within the meaning of Section 424 of the Code).

2.3 Consideration to the Company. In consideration of the granting of the Option by the Company, the Optionee agrees to render faithful and efficient services to the Company or any Parent or Subsidiary, with such duties and responsibilities as the Company shall from time to time prescribe. Nothing in the Plan or this Agreement shall confer upon the Optionee any right to (a) continue in the employ of the Company or any Parent or Subsidiary or shall interfere with or restrict in any way the rights of the Company and its Parents or Subsidiaries, which are hereby expressly reserved, to discharge the Optionee, if the Optionee is an Employee, or (b) continue to provide services to the Company or any Parent or Subsidiary or shall interfere with or restrict in any way the rights of the Company or its Parents or Subsidiaries, which are hereby expressly reserved, to terminate the services of Optionee, if the Optionee is a consultant, at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company and the Optionee.

ARTICLE III
PERIOD OF EXERCISABILITY

3.1 Commencement of Exercisability.

(a) Subject to Sections 3.3 and 5.11, the Option shall become exercisable in such amounts and at such times as are set forth in the Grant Notice.

(b) No portion of the Option which has not become exercisable at Termination of Service (as defined below) shall thereafter become exercisable, except as may be otherwise provided by the Committee or as set forth in a written agreement between the Company and the Optionee.

3.2 Duration of Exercisability. The installments provided for in the vesting schedule set forth in the Grant Notice are cumulative. Each such installment which becomes exercisable pursuant to Section 3.1 shall remain exercisable until it becomes unexercisable under Section 3.3.

3.3 Expiration of Option. The Option may not be exercised to any extent by anyone after the first to occur of the following events:

(a) The expiration of ten years from the Grant Date; or

(b) If this Option is designated as an Incentive Stock Option and the Optionee owned (within the meaning of Section 424(d) of the Code), at the time the Option was granted, more than 10% of the total combined voting power of all classes of stock of the Company or any "subsidiary corporation" of the Company or any "parent corporation" of the Company (each within the meaning of Section 424 of the Code), the expiration of five years from the date the Option was granted; or

(c) The expiration of ninety days following the date of the Optionee's Termination of Service, unless such Termination of Service occurs by reason of the Optionee's death, Disability or Misconduct or as set forth in a written agreement with the Company; or

(d) The expiration of one year following the date of the Optionee's Termination of Service by reason of the Optionee's death or Disability; or

(e) The Optionee's Termination of Service as a result of the Optionee's Misconduct or in the event the Optionee otherwise engages in Misconduct while the Option is outstanding.

(f) For purposes of this Agreement, "***Termination of Service***" means the time when the service relationship (whether as an Employee or a consultant) between the Optionee and the Company or any Parent or Subsidiary is terminated for any reason, with or without cause, including, but not by way of limitation, a termination by resignation, discharge, death, Disability or Misconduct; but excluding (i) a termination where there is a simultaneous reemployment or continuing employment or consultancy of the Optionee by the Company or any Subsidiary or Parent of the Company, (ii) at the discretion of the Committee, a termination which results in a temporary severance of the employee-employer relationship, and (iii) at the discretion of the Committee, a termination which is followed by the simultaneous establishment of a consulting relationship by the Company or a Parent or Subsidiary with the former Employee. The Committee, in its absolute discretion, shall determine the effect of all matters and questions relating to Termination of Service for the purposes of this Agreement, including, but not by way of limitation, the question of whether, for Optionees who are Employees of the Company or any of its Parents or Subsidiaries, a Termination of Service resulted from a discharge for cause, and all questions of whether particular leaves of absence for Optionees who are Employees of the Company or any of its

Parents or Subsidiaries constitute Terminations of Service; *provided*, *however*, that, if this Option is designated as an Incentive Stock Option, unless otherwise determined by the Committee in its discretion, a leave of absence, change in status from an Employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Service if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the Code and the then applicable regulations and revenue rulings under said Section. Notwithstanding any other provision of the Plan or this Agreement, the Company or any Parent or Subsidiary has an absolute and unrestricted right to terminate the Optionee's employment and/or consultancy at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company and the Optionee.

3.4 Special Tax Consequences. The Optionee acknowledges that, to the extent that the aggregate Fair Market Value of Stock with respect to which Incentive Stock Options (but without regard to Section 422(d) of the Code), including the Option, are exercisable for the first time by the Optionee during any calendar year (under the Plan and all other incentive stock option plans of the Company, any "subsidiary corporation" of the Company and any "parent corporation" of the Company (each within the meaning of Section 424 of the Code)) exceeds $100,000, the Option and such other options shall be treated as not qualifying under Section 422 of the Code but rather shall be taxed as Non-Qualified Stock Options. The Optionee further acknowledges that the rule set forth in the preceding sentence shall be applied by taking options into account in the order in which they were granted. For purposes of these rules, the Fair Market Value of Stock shall be determined as of the time the option with respect to such Stock is granted.

ARTICLE IV
EXERCISE OF OPTION

4.1 Person Eligible to Exercise. Except as provided in Sections 5.2(b) and 5.2(c), during the lifetime of the Optionee, only the Optionee may exercise the Option or any portion thereof. After the death of the Optionee, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3, be exercised by the Optionee's beneficiary designated in accordance with Section 10.4 of the Plan. If no beneficiary has been designated or survives the Optionee, the Option may be exercised by the person entitled to such exercise pursuant to the Optionee's will or the laws of descent and distribution.

4.2 Partial Exercise. Any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised in whole or in part at any time prior to the time when the Option or portion thereof becomes unexercisable under Section 3.3.

4.3 Manner of Exercise. The Option, or any exercisable portion thereof, may be exercised solely by delivery to the Secretary of the Company or the Secretary's office of all of the following prior to the time when the Option or such portion thereof becomes unexercisable under Section 3.3:

(a) An exercise notice in writing signed by the Optionee or the other person then entitled to exercise the Option or portion thereof, stating that the Option or portion thereof is thereby exercised, such notice complying with all applicable rules established by the Committee. Such notice shall be substantially in the form attached as Exhibit A (or such other form as is prescribed by the Committee) (the "***Exercise Notice***");

(b) (i) Full payment (in cash or by check) for the shares with respect to which the Option or portion thereof is exercised, to the extent permitted under applicable laws; or

(ii) On and after the Public Trading Date, and with the consent of the Committee, such payment may be made, in whole or in part, through the delivery of shares of Stock which have been owned by the Optionee for at least six months, duly endorsed for transfer to the Company with a Fair Market Value on the date of delivery equal to the aggregate exercise price of the Option or exercised portion thereof; or

(iii) On and after the Public Trading Date, and to the extent permitted under applicable laws, through the delivery of a notice that the Optionee has placed a market sell order with a broker with respect to shares of Stock then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price, *provided*, that payment of such proceeds is made to the Company upon settlement of such sale; or

(iv) With the consent of the Committee, such payment may be made through the delivery of a promissory note in accordance with the provisions of Section 4.3(f) below; or

(v) With the consent of the Committee, any combination of the consideration provided in the foregoing subparagraphs (i), (ii), (iii) and (iv); and

(c) A bona fide written representation and agreement, in such form as is prescribed by the Committee, signed by the Optionee or other person then entitled to exercise such Option or portion thereof, stating that the shares of Stock are being acquired for the Optionee's own account, for investment and without any present intention of distributing or reselling said shares or any of them except as may be permitted under the Securities Act and then applicable rules and regulations thereunder, and that the Optionee or other person then entitled to exercise such Option or portion thereof will indemnify the Company against and hold it free and harmless from any loss, damage, expense or liability resulting to the Company if any sale or distribution of the shares by such person is contrary to the representation and agreement referred to above. The Committee may, in its absolute discretion, take whatever additional actions it deems appropriate to ensure the observance and performance of such representation and agreement and to effect compliance with the Securities Act and any other federal or state securities laws or regulations. Without limiting the generality of the foregoing, the Committee may require an opinion of counsel acceptable to it to the effect that any subsequent transfer of shares acquired on an Option exercise does not violate the Securities Act, and may issue stop-transfer orders covering such shares. Share certificates evidencing Stock issued on exercise of the Option shall bear an appropriate legend referring to the provisions of this subsection (c) and the agreements herein. The written representation and agreement referred to in the first sentence of this subsection (c) shall, however, not be required if the shares to be issued pursuant to such exercise have been registered under the Securities Act, and such registration is then effective in respect of such shares; and

(d) Full payment to the Company (or other employer corporation) of all amounts which, under federal, state or local tax law, it is required to withhold upon exercise of the Option. With the consent of the Committee, (i) shares of Stock owned by the Optionee for at least six months duly endorsed for transfer or (ii) shares of Stock issuable to the Optionee upon exercise of the Option, having a Fair Market Value at the date of Option exercise equal to the statutory minimum sums required to be withheld, may be used to make all or part of such payment; and

(e) In the event the Option or portion thereof shall be exercised pursuant to Section 4.1 by any person or persons other than the Optionee, appropriate proof of the right of such person or persons to exercise the Option.

(f) The Committee may permit the Optionee to pay the option exercise price for the shares with respect to which the Option or portion thereof is exercised by delivering a full-recourse, interest bearing promissory note payable in one or more installments and secured by the purchased shares, as long as the portion of the option exercise price which is equal to the par value of the shares purchased thereby is paid in cash or other legal consideration permitted by applicable law. In no event, however, may the maximum credit available to the Optionee exceed the sum of (i) the aggregate option exercise price or purchase price payable for the purchased shares (less the par value of those shares) plus (ii) any Federal, state and local income and employment tax liability incurred by the Optionee in connection with the option exercise or share purchase; *provided*, *however*, that prior to the first date on which the Company has filed a registration statement under the Securities Act to register the public offering of securities of the Company under the Securities Act, then, to the extent that the Optionee is a director or executive officer of the Company, as defined under Rule 3b-7 promulgated under the Exchange Act, and has outstanding a promissory note or other pending mode of payment for shares under the Plan, and the Company has reasonably determined that to permit such promissory note or other pending mode of payment to remain outstanding would be unlawful under the Exchange Act or any other law, then such note or other pending mode of payment must be immediately paid to the Company in full or replaced by a mode of payment provided for under the Plan that is acceptable to the Company and reasonably determined by it to be lawful under the Exchange Act or any other applicable law.

4.4 Conditions to Issuance of Stock Certificates. The shares of Stock deliverable upon the exercise of the Option, or any portion thereof, may be either previously authorized but unissued shares or issued shares which have then been reacquired by the Company. Such shares shall be fully paid and nonassessable. The Company shall not be required to issue any shares of Stock purchased upon the exercise of the Option or portion thereof prior to fulfillment of all of the following conditions:

(a) The admission of such shares to listing on all stock exchanges on which such Stock is then listed; and

(b) The completion of any registration or other qualification of such shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or of any other governmental regulatory body, which the Committee shall, in its absolute discretion, deem necessary or advisable; and

(c) The obtaining of any approval or other clearance from any state or federal governmental agency which the Committee shall, in its absolute discretion, determine to be necessary or advisable; and

(d) The receipt by the Company of full payment for such shares, including payment of all amounts which, under federal, state or local tax law, the Company (or other employer corporation) is required to withhold upon exercise of the Option; and

(e) The lapse of such reasonable period of time following the exercise of the Option as the Committee may from time to time establish for reasons of administrative convenience.

4.5 Rights as Stockholder; Book Entry Procedures. The holder of the Option shall not be, nor have any of the rights or privileges of, a stockholder of the Company in respect of any shares purchasable upon the exercise of any part of the Option unless and until such shares shall have been issued by the Company to such holder. Notwithstanding any other provision of the Plan or this Agreement, unless otherwise determined by the Committee or required by applicable law, rule or regulation, the Company shall not deliver to the Optionee certificates evidencing shares of Stock issued in

connection with the exercise of this Option and instead such shares of Stock will be recorded in the books of the Company (or as applicable, its transfer agent or stock plan administrator).

ARTICLE V
OTHER PROVISIONS

5.1 Administration. The Committee shall have the power to interpret the Plan and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Committee in good faith shall be final and binding upon the Optionee, the Company and all other interested persons. No member of the Committee shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan, this Agreement or the Option. In its absolute discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan and this Agreement.

5.2 Option Not Transferable.

(a) Subject to Section 5.2(b), the Option may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution unless and until the Option has been exercised, or the shares underlying such Option have been issued, and all restrictions applicable to such shares have lapsed. Neither the Option nor any interest or right therein shall be liable for the debts, contracts or engagements of the Optionee or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

(b) Notwithstanding any other provision in this Agreement, with the consent of the Committee and to the extent the Option is designated as a Non-Qualified Stock Option, the Option may be transferred to, exercised by and paid to certain persons or entities related to the Optionee, including but not limited to members of the Optionee's family, charitable institutes or trusts or other entities whose beneficiaries or beneficial owners are members of the Optionee's family or to such other persons or entities as may be expressly approved by the Committee (each a "***Permitted Transferee***"), pursuant to such conditions and procedures as the Committee may require.

(c) Unless transferred to a Permitted Transferee in accordance with Section 5.2(b), during the lifetime of the Optionee, only the Optionee may exercise the Option or any portion thereof. Subject to such conditions and procedures as the Committee may require, a Permitted Transferee may exercise the Option or any portion thereof during the Optionee's lifetime. After the death of the Optionee, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3, be exercised by the Optionee's beneficiary designated in accordance with Section 10.4 of the Plan. If no beneficiary has been designated or survives the Optionee, the Option may be exercised by the person entitled to such exercise pursuant to the Optionee's will or the laws of descent and distribution.

5.3 Lock-Up Period. The Optionee hereby agrees that, if so requested by the Company or any representative of the underwriters (the "***Managing Underwriter***") in connection with any registration of the offering of any securities of the Company under the Securities Act, the Optionee shall not sell or otherwise transfer any shares of Stock or other securities of the Company during such period as may be requested in writing by the Managing Underwriter and agreed to in writing by the Company (which

period shall not be longer than one hundred eighty days) (the "***Market Standoff Period***") following the effective date of a registration statement of the Company filed under the Securities Act; *provided*, *however*, that such restriction shall apply only to the first registration statement of the Company to become effective under the Securities Act that includes securities to be sold on behalf of the Company to the public in an underwritten public offering under the Securities Act.

5.4 Restrictive Legends and Stop-Transfer Orders.

(a) The share certificate or certificates, if issued, evidencing the shares of Stock purchased hereunder shall be endorsed with any legends that may be required by state or federal securities laws.

(b) The Optionee agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) The Company shall not be required: (i) to transfer on its books any shares of Stock that have been sold or otherwise transferred in violation of any of the provisions of this Agreement, or (ii) to treat as owner of such shares of Stock or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such shares shall have been so transferred.

5.5 Shares to Be Reserved. The Company shall at all times during the term of the Option reserve and keep available such number of shares of Stock as will be sufficient to satisfy the requirements of this Agreement.

5.6 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company, and any notice to be given to the Optionee shall be addressed to the Optionee at the address given beneath the Optionee's signature on the Grant Notice. By a notice given pursuant to this Section 5.6, either party may hereafter designate a different address for notices to be given to that party. Any notice which is required to be given to the Optionee shall, if the Optionee is then deceased, be given to the Optionee's designated beneficiary if any, or the person otherwise entitled to exercise his or her Option pursuant to Section 4.1 by written notice under this Section 5.6. Any notice shall be deemed duly given when sent via email or enclosed in a properly sealed envelope or wrapper addressed as aforesaid and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

5.7 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

5.8 Stockholder Approval. The Plan will be submitted for approval by the Company's stockholders within twelve months after the date the Plan was initially adopted by the Board. The Option may not be exercised to any extent by anyone prior to the time when the Plan is approved by the stockholders, and if such approval has not been obtained by the end of said twelve month period, the Option shall thereupon be canceled and become null and void.

5.9 Notification of Disposition. If this Option is designated as an Incentive Stock Option, the Optionee shall give prompt notice to the Company of any disposition or other transfer of any shares of stock acquired under this Agreement if such disposition or transfer is made (a) within two years from the Grant Date with respect to such shares or (b) within one year after the transfer of such shares to him. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash,

other property, assumption of indebtedness or other consideration, by the Optionee in such disposition or other transfer.

5.10 Construction. This Agreement shall be administered, interpreted and enforced under the laws of the State of California without regard to conflicts of laws thereof.

5.11 Conformity to Securities Laws. The Optionee acknowledges that the Plan is intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act and any and all regulations and rules promulgated by the Securities and Exchange Commission thereunder, and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Option is granted and may be exercised, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

5.12 Amendments. This Agreement may not be modified, amended or terminated except by an instrument in writing, signed by the Optionee or such other person as may be permitted to exercise the Option pursuant to Section 4.1 and by a duly authorized representative of the Company.

5.13 Restrictions on Shares. Optionee hereby agrees that shares of Stock purchased upon the exercise of the Option shall be subject to such terms and conditions as the Committee shall determined in its sole discretion, including, without limitation , restrictions on the transferability of shares of Stock, the right of the Company to repurchase shares of Stock, and a right of first refusal in favor of the Company with respect to permitted transfers of shares of Stock. Such terms and conditions may, in the Committee's sole discretion, be contained in the Exercise Notice with respect to the Option or in such other agreement as the Committee shall determine and which the Optionee hereby agrees to enter into at the request of the Company.

EXHIBIT A

TO GRANT NOTICE AND STOCK OPTION AGREEMENT

FORM OF EXERCISE NOTICE

Effective as of today, _____, _____, the undersigned ("***Optionee***") hereby elects to exercise Optionee's option to purchase _____ shares of the Common Stock (the "***Shares***") of Cadence Pharmaceuticals, Inc. (the "***Company***") under and pursuant to the Cadence Pharmaceuticals, Inc. 2004 Equity Incentive Award Plan (the "***Plan***") and the Grant Notice and Stock Option Agreement dated _____, _____, (the "***Option Agreement***"). Capitalized terms used herein without definition shall have the meanings given in the Option Agreement.

Grant Date: _____

Number of Shares as to which Option is Exercised: _____

Exercise Price per Share: $ _____

Total Exercise Price: $ _____

Certificate to be issued in name of: _____

Cash Payment delivered herewith: $ _____ (Representing the full Exercise Price for the Shares, as well as any applicable withholding tax)

Type of Option: ☐ Incentive Stock Option ☐ Non-Qualified Stock Option

1. Representations of Optionee. Optionee acknowledges that Optionee has received, read and understood the Plan and the Option Agreement. Optionee agrees to abide by and be bound by their terms and conditions.

2. Rights as Stockholder. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to Shares subject to the Option, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Article 11 of the Plan.

Optionee shall enjoy rights as a stockholder until such time as Optionee disposes of the Shares or the Company and/or its assignee(s) exercises the Right of First Refusal hereunder. Upon such exercise, Optionee shall have no further rights as a holder of the Shares so purchased except the right to receive payment for the Shares so purchased in accordance with the provisions of this Agreement, and Optionee shall forthwith cause the certificate(s), if any issued, evidencing the Shares so purchased to be surrendered to the Company for transfer or cancellation.

3. Optionee's Rights to Transfer Shares.

(a) Company's Right of First Refusal. Before any Shares held by Optionee or any permitted transferee (each, a "***Holder***") may be sold, pledged, assigned, hypothecated, transferred, or otherwise disposed of (each, a "***Transfer***"), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares proposed to be Transferred on the terms and conditions set forth in this Section (the "***Right of First Refusal***"). In the event that the Company's Bylaws contain a right of first refusal with respect to the Shares, such right of first refusal shall apply to the Shares to the extent such provisions are more restrictive than the Right of First Refusal set forth in this Section.

(b) Notice of Proposed Transfer. In the event any Holder desires to Transfer any Shares, the Holder shall deliver to the Company a written notice (the "***Notice***") stating: (i) the Holder's bona fide intention to sell or otherwise Transfer such Shares; (ii) the name of each proposed purchaser or other transferee ("***Proposed Transferee***"); (iii) the number of Shares to be Transferred to each Proposed Transferee; and (iv) the price for which the Holder proposes to Transfer the Shares (the "***Offered Price***"), and the Holder shall offer such Shares at the Offered Price to the Company or its assignee(s).

(c) Exercise of Right of First Refusal. Within twenty-five days after receipt of the Notice, the Company and/or its assignee(s) may elect in writing to purchase all, but not less than all, of the Shares proposed to be Transferred to any one or more of the Proposed Transferees by delivery of a written exercise notice to the Holder (a "***Company Notice***"). The purchase price will be determined in accordance with subsection (d) below.

(d) Purchase Price. The purchase price ("***Purchase Price***") for the Shares repurchased under this Section shall be the Offered Price.

(e) Payment. Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within five days after delivery of the Company Notice or in the manner and at the times mutually agreed to by the Company and the Holder. Should the Offered Price specified in the Notice be payable in property other than cash, the Company shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. If the Holder and the Company cannot agree on such cash value within ten days after the Company's receipt of the Notice, the valuation shall be made by the Board. The payment of the purchase price shall then be held on the later of (i) five days following delivery of the Company Notice or (ii) five days after such valuation shall have been made.

(f) Holder's Right to Transfer. If all or a portion of the Shares proposed in the Notice to be Transferred are not purchased by the Company and/or its assignee(s) as provided in this Section, then the Holder may sell or otherwise Transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other Transfer is consummated within sixty days after the date of the Notice and provided further that any such sale or other Transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Section shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not Transferred to the Proposed Transferee within such sixty-day period, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal as provided herein before any Shares held by the Holder may be sold or otherwise Transferred.

(g) Exception for Certain Family Transfers. Anything to the contrary contained in this Section notwithstanding, the Transfer of any or all of the Shares during the Optionee's lifetime or

upon the Optionee's death by will or intestacy to the Optionee's Immediate Family or a trust for the benefit of the Optionee's Immediate Family shall be exempt from the Right of First Refusal. As used herein, "***Immediate Family***" shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister or stepchild (whether or not adopted). In such case, the transferee or other recipient shall receive and hold the Shares so Transferred subject to the provisions of this Section (including the Right of First Refusal) and the Restricted Stock Purchase Agreement, if applicable, and there shall be no further Transfer of such Shares except in accordance with the terms of this Section.

(h) Termination of Right of First Refusal. The Right of First Refusal shall terminate as to all Shares upon the Public Trading Date.

(i) Transfer Restrictions. Any transfer or sale of the Shares is subject to restrictions on transfer imposed by any applicable state and federal securities laws. Any Transfer or attempted Transfer of any of the Shares not in accordance with the terms of this Agreement shall be void and the Company may enforce the terms of this Agreement by stop transfer instructions or similar actions by the Company and its agents or designees.

4. Tax Consultation. Optionee understands that Optionee may suffer adverse tax consequences as a result of Optionee's purchase or disposition of the Shares. Optionee represents that Optionee has consulted with any tax consultants Optionee deems advisable in connection with the purchase or disposition of the Shares and that Optionee is not relying on the Company for any tax advice.

5. Restrictive Legends and Stop-Transfer Orders.

(a) Legends. Optionee understands and agrees that the Company shall cause any certificates issued evidencing the Shares shall have the legends set forth below or legends substantially equivalent thereto, together with any other legends that may be required by state or federal securities laws:

> THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"), NOR HAVE THEY BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE. NO TRANSFER OF SUCH SECURITIES WILL BE PERMITTED UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER, THE TRANSFER IS MADE IN ACCORDANCE WITH RULE 144 UNDER THE ACT, OR IN THE OPINION OF COUNSEL (WHICH MAY BE COUNSEL FOR THE COMPANY) REGISTRATION UNDER THE ACT IS UNNECESSARY IN ORDER FOR SUCH TRANSFER TO COMPLY WITH THE ACT AND WITH APPLICABLE STATE SECURITIES LAWS.
>
> THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY. SUCH TRANSFER RESTRICTIONS ARE BINDING ON TRANSFEREES OF THESE SHARES.

(b) Stop-Transfer Notices. Optionee agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) Refusal to Transfer. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

6. Optionee Representations. Optionee hereby makes the following certifications and representations with respect to the Shares listed above:

(a) Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Optionee is acquiring these Shares for investment for Optionee's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act.

(b) Optionee acknowledges and understands that the Shares constitute "restricted securities" under the Securities Act and have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Optionee's investment intent as expressed herein. Optionee understands that the Shares must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Optionee further acknowledges and understands that the Company is under no obligation to register the Shares. Optionee understands that the certificate evidencing the Shares will be imprinted with a legend which prohibits the transfer of the Shares unless they are registered or such registration is not required in the opinion of counsel satisfactory to the Company and any other legend required under applicable state securities laws.

(c) Optionee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of the grant of the Option to the Optionee, the exercise will be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, ninety days thereafter (or such longer period as any market stand-off agreement may require) the securities exempt under Rule 701 may be resold, subject to the satisfaction of certain of the conditions specified by Rule 144, including: (i) the resale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Exchange Act); and, in the case of an affiliate, (ii) the availability of certain public information about the Company, (iii) the amount of securities being sold during any three month period not exceeding the limitations specified in Rule 144(e), and (iv) the timely filing of a Form 144, if applicable.

(d) In the event that the Company does not qualify under Rule 701 at the time of grant of the Option, then the securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which requires the resale to occur not less than one year after the later of the date the securities were sold by the Company or the date the securities were sold by an affiliate of the Company, within the meaning of Rule 144; and, in the case of acquisition of the securities by an affiliate,

or by a non-affiliate who subsequently holds the securities less than two years, the satisfaction of the conditions set forth in sections (i), (ii), (iii) and (iv) of paragraph (c) above.

(e) Optionee further understands that in the event all of the applicable requirements of Rule 701 or 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rules 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk. Optionee understands that no assurances can be given that any such other registration exemption will be available in such event.

7. Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon Optionee and his or her heirs, executors, administrators, successors and assigns.

8. Interpretation. Any dispute regarding the interpretation of this Agreement shall be submitted by Optionee or by the Company forthwith to the Committee, which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on the Company and on Optionee.

9. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding that body of law pertaining to conflicts of law. Should any provision of this Agreement be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and shall remain enforceable.

10. Notices. Any notice required or permitted hereunder shall be given in accordance with the provisions set forth in Section 5.6 of the Option Agreement.

11. Further Instruments. The parties agree to execute such further instruments and to take such further action as may be reasonably necessary to carry out the purposes and intent of this Agreement.

12. Entire Agreement. The Plan and Option Agreement are incorporated herein by reference. This Agreement, the Plan and the Option Agreement constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof.

(Signature Page Follows)

ACCEPTED BY:

CADENCE PHARMACEUTICALS, INC.

By: _____
Name: _____
Its: _____

SUBMITTED BY:

OPTIONEE

_____
Optionee

Address:

_____

_____

_____

CADENCE PHARMACEUTICALS, INC.
STOCK OPTION GRANT NOTICE AND STOCK OPTION AGREEMENT
UNDER THE 2004 EQUITY INCENTIVE AWARD PLAN

Cadence Pharmaceuticals, Inc. (the "***Company***"), pursuant to its 2004 Equity Incentive Award Plan (the "***Plan***"), hereby grants to the Optionee listed below ("***Optionee***"), an option to purchase the number of shares of the Company's Stock set forth below. This option is subject to all of the terms and conditions as set forth herein and in the Stock Option Agreement and the Plan, each of which are incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same meanings in this Stock Option Agreement.

Optionee: _____

Grant Date: _____

Vesting Commencement Date: _____

Exercise Price per Share: $ _____ per share

Total Number of Shares Granted: _____

Total Exercise Price: $ _____

Expiration Date: _____

Type of Option: ☐ Incentive Stock Option ☐ Non-Qualified Stock Option

Exercise Schedule: ☑ Early Exercise Permitted

Vesting Schedule: This Option is exercisable immediately, in whole or in part, at such times as are established by the Committee, conditioned upon Optionee entering into a Restricted Stock Purchase Agreement with respect to any unvested shares of Stock. The shares subject to this Option shall vest and/or be released from the Company's Repurchase Option, as set forth in the Restricted Stock Purchase Agreement attached hereto as Exhibit B (the "***Restricted Stock Purchase Agreement***"), according to the following schedule:

[25% of the shares of Stock subject to the Option (rounded down to the next whole number of shares) shall vest one year after the Vesting Commencement Date, and 1/48th of the shares of Stock subject to the Option (rounded down to the next whole number of shares) shall vest on the first day of each full month thereafter, so that all of the shares subject to the Option shall be vested on the first day of the 48th month after the Vesting Commencement Date.***]***

By his or her signature and the Company's signature below, Optionee agrees to be bound by the terms and conditions of the Plan and the Stock Option Agreement attached hereto. Optionee has reviewed the Stock Option Agreement and the Plan in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this option and fully understands all provisions of this Grant Notice, the Stock Option Agreement and the Plan. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the administrator of the Plan upon any questions arising under the Plan or this option. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

CADENCE PHARMACEUTICALS, INC.:

By: _____
Print Name:
Title:
Address: 12730 High Bluff Drive, Suite 410 San Diego, CA 92130

OPTIONEE:

By: _____
Print Name:

Address:

CADENCE PHARMACEUTICALS, INC.
2004 EQUITY INCENTIVE AWARD PLAN

STOCK OPTION AGREEMENT

Pursuant to the Stock Option Grant Notice ("***Grant Notice***") to which this Stock Option Agreement (this "***Agreement***") is attached, Cadence Pharmaceuticals, Inc. (the "***Company***") has granted to the Optionee an option under the Company's 2004 Equity Incentive Award Plan (the "***Plan***") to purchase the number of shares of Stock indicated in the Grant Notice at the exercise price indicated in the Grant Notice.

ARTICLE I
GENERAL

Capitalized terms not specifically defined herein shall have the meanings specified in the Plan. The Option is subject to the terms and conditions of the Plan which are incorporated herein by reference.

ARTICLE II
GRANT OF OPTION

2.1 Grant of Option. In consideration of the Optionee's agreement to remain in the employ of the Company or its Parents or Subsidiaries and for other good and valuable consideration, effective as of the Grant Date set forth in the Grant Notice (the "***Grant Date***"), the Company irrevocably grants to the Optionee the Option to purchase any part or all of an aggregate of the number of shares of Stock set forth in the Grant Notice, upon the terms and conditions set forth in this Agreement. Unless designated as a Non-Qualified Stock Option in the Grant Notice, the Option shall be an Incentive Stock Option to the maximum extent permitted by law.

2.2 Purchase Price. The purchase price of the shares of Stock subject to the Option per share shall be as set forth in the Grant Notice, without commission or other charge; *provided*, *however*, that if this Option is designated as an Incentive Stock Option the price per share of the shares subject to the Option shall not be less than the greater of (i) 100% of the Fair Market Value of a share of Stock on the Grant Date, or (ii) 110% of the Fair Market Value of a share of Stock on the Grant Date in the case of an Optionee then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any "subsidiary corporation" of the Company or any "parent corporation" of the Company (each within the meaning of Section 424 of the Code).

2.3 Consideration to the Company. In consideration of the granting of the Option by the Company, the Optionee agrees to render faithful and efficient services to the Company or any Parent or Subsidiary, with such duties and responsibilities as the Company shall from time to time prescribe. Nothing in the Plan or this Agreement shall confer upon the Optionee any right to (a) continue in the employ of the Company or any Parent or Subsidiary or shall interfere with or restrict in any way the rights of the Company and its Parents or Subsidiaries, which are hereby expressly reserved, to discharge the Optionee, if the Optionee is an Employee, or (b) continue to provide services to the Company or any Parent or Subsidiary or shall interfere with or restrict in any way the rights of the Company or its Parents or Subsidiaries, which are hereby expressly reserved, to terminate the services of Optionee, if the Optionee is a consultant, at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company and the Optionee.

ARTICLE III
PERIOD OF EXERCISABILITY

3.1 Commencement of Exercisability.

(a) Subject to Sections 3.3 and 5.11, the Option shall become exercisable in such amounts and at such times as are set forth in the Grant Notice. Alternatively, at the election of the Optionee, this Option may be exercised in whole or in part at such times as are established by the Committee as to shares of Stock which have not yet vested. Vested shares shall not be subject to the Company's Repurchase Option (as set forth in the Restricted Stock Purchase Agreement). As a condition to exercising this Option for unvested shares of Stock, the Optionee shall execute the Restricted Stock Purchase Agreement.

(b) No portion of the Option which has not become exercisable at Termination of Service (as defined below) shall thereafter become exercisable, except as may be otherwise provided by the Committee or as set forth in a written agreement between the Company and the Optionee.

3.2 Duration of Exercisability. The installments provided for in the vesting schedule set forth in the Grant Notice are cumulative. Each such installment which becomes exercisable pursuant to Section 3.1 shall remain exercisable until it becomes unexercisable under Section 3.3.

3.3 Expiration of Option. The Option may not be exercised to any extent by anyone after the first to occur of the following events:

(a) The expiration of ten years from the Grant Date; or

(b) If this Option is designated as an Incentive Stock Option and the Optionee owned (within the meaning of Section 424(d) of the Code), at the time the Option was granted, more than 10% of the total combined voting power of all classes of stock of the Company or any "subsidiary corporation" of the Company or any "parent corporation" of the Company (each within the meaning of Section 424 of the Code), the expiration of five years from the date the Option was granted; or

(c) The expiration of ninety days following the date of the Optionee's Termination of Service, unless such Termination of Service occurs by reason of the Optionee's death, Disability, Misconduct or as set forth in a written agreement with the Company;

(d) The expiration of one year following the date of the Optionee's Termination of Service by reason of the Optionee's death or Disability; or

(e) The Optionee's Termination of Service as a result of the Optionee's Misconduct or in the event the Optionee otherwise engages in Misconduct while the Option is outstanding.

(f) For purposes of this Agreement, "***Termination of Service***" means the time when the service relationship (whether as an Employee or a consultant) between the Optionee and the Company or any Parent or Subsidiary is terminated for any reason, with or without cause, including, but not by way of limitation, a termination by resignation, discharge, death, Disability or Misconduct; but excluding (i) a termination where there is a simultaneous reemployment or continuing employment or consultancy of the Optionee by the Company or any Parent or Subsidiary of the Company, (ii) at the discretion of the Committee, a termination which results in a temporary severance of the employee-employer relationship, and (iii) at the discretion of the Committee, a termination which is followed by the simultaneous establishment of a consulting relationship by the Company or a Parent or Subsidiary with the former

Employee. The Committee, in its absolute discretion, shall determine the effect of all matters and questions relating to Termination of Service for the purposes of this Agreement, including, but not by way of limitation, the question of whether, for Optionees who are Employees of the Company or any of its Parents or Subsidiaries, a Termination of Service resulted from a discharge for cause, and all questions of whether particular leaves of absence for Optionees who are Employees of the Company or any of its Parents or Subsidiaries constitute Terminations of Service; *provided, however*, that, if this Option is designated as an Incentive Stock Option, unless otherwise determined by the Committee in its discretion, a leave of absence, change in status from an Employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Service if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the Code and the then applicable regulations and revenue rulings under said Section. Notwithstanding any other provision of the Plan or this Agreement, the Company or any Parent or Subsidiary has an absolute and unrestricted right to terminate the Optionee's employment and/or consultancy at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company and the Optionee.

3.4 Special Tax Consequences. The Optionee acknowledges that, to the extent that the aggregate Fair Market Value of Stock with respect to which Incentive Stock Options (but without regard to Section 422(d) of the Code), including the Option, are exercisable for the first time by the Optionee during any calendar year (under the Plan and all other incentive stock option plans of the Company, any "subsidiary corporation" of the Company and any "parent corporation" of the Company (each within the meaning of Section 424 of the Code)) exceeds $100,000, the Option and such other options shall be treated as not qualifying under Section 422 of the Code but rather shall be taxed as Non-Qualified Stock Options. The Optionee further acknowledges that the rule set forth in the preceding sentence shall be applied by taking options into account in the order in which they were granted. For purposes of these rules, the Fair Market Value of Stock shall be determined as of the time the option with respect to such Stock is granted.

ARTICLE IV
EXERCISE OF OPTION

4.1 Person Eligible to Exercise. Except as provided in Sections 5.2(b) and 5.2(c), during the lifetime of the Optionee, only the Optionee may exercise the Option or any portion thereof. After the death of the Optionee, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3, be exercised by the Optionee's beneficiary designated in accordance with Section 10.4 of the Plan. If no beneficiary has been designated or survives the Optionee, the Option may be exercised by the person entitled to such exercise pursuant to the Optionee's will or the laws of descent and distribution.

4.2 Partial Exercise. Any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised in whole or in part at any time prior to the time when the Option or portion thereof becomes unexercisable under Section 3.3.

4.3 Manner of Exercise. The Option, or any exercisable portion thereof, may be exercised solely by delivery to the Secretary of the Company or the Secretary's office of all of the following prior to the time when the Option or such portion thereof becomes unexercisable under Section 3.3:

(a) An exercise notice in writing signed by the Optionee or the other person then entitled to exercise the Option or portion thereof, stating that the Option or portion thereof is thereby exercised, such notice complying with all applicable rules established by the Committee. Such notice

shall be substantially in the form attached as Exhibit A (or such other form as is prescribed by the Committee) (the "***Exercise Notice***");

(b) A Restricted Stock Purchase Agreement, if applicable, substantially in the form attached as Exhibit B;

(c) (i) Full payment (in cash or by check) for the shares with respect to which the Option or portion thereof is exercised, to the extent permitted under applicable laws; or

(ii) On and after the Public Trading Date, and with the consent of the Committee, such payment may be made, in whole or in part, through the delivery of shares of Stock which have been owned by the Optionee for at least six months, duly endorsed for transfer to the Company with a Fair Market Value on the date of delivery equal to the aggregate exercise price of the Option or exercised portion thereof; or

(iii) On and after the Public Trading Date, and to the extent permitted under applicable laws, through the delivery of a notice that the Optionee has placed a market sell order with a broker with respect to shares of Stock then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price, *provided*, that payment of such proceeds is made to the Company upon settlement of such sale;

(iv) With the consent of the Committee, such payment may be made through the delivery of a promissory note in accordance with the provisions of Section 4.3(g) below; or

(v) With the consent of the Committee, any combination of the consideration provided in the foregoing subparagraphs (i), (ii), (iii) and (iv); and

(d) A bona fide written representation and agreement, in such form as is prescribed by the Committee, signed by the Optionee or other person then entitled to exercise such Option or portion thereof, stating that the shares of Stock are being acquired for the Optionee's own account, for investment and without any present intention of distributing or reselling said shares or any of them except as may be permitted under the Securities Act and then applicable rules and regulations thereunder, and that the Optionee or other person then entitled to exercise such Option or portion thereof will indemnify the Company against and hold it free and harmless from any loss, damage, expense or liability resulting to the Company if any sale or distribution of the shares by such person is contrary to the representation and agreement referred to above. The Committee may, in its absolute discretion, take whatever additional actions it deems appropriate to ensure the observance and performance of such representation and agreement and to effect compliance with the Securities Act and any other federal or state securities laws or regulations. Without limiting the generality of the foregoing, the Committee may require an opinion of counsel acceptable to it to the effect that any subsequent transfer of shares acquired on an Option exercise does not violate the Securities Act, and may issue stop-transfer orders covering such shares. Share certificates evidencing Stock issued on exercise of the Option shall bear an appropriate legend referring to the provisions of this subsection (d) and the agreements herein. The written representation and agreement referred to in the first sentence of this subsection (d) shall, however, not be required if the shares to be issued pursuant to such exercise have been registered under the Securities Act, and such registration is then effective in respect of such shares; and

(e) Full payment to the Company (or other employer corporation) of all amounts which, under federal, state or local tax law, it is required to withhold upon exercise of the Option. With the consent of the Committee, (i) shares of Stock owned by the Optionee for at least six months duly

endorsed for transfer or (ii) shares of Stock issuable to the Optionee upon exercise of the Option, having a Fair Market Value at the date of Option exercise equal to the statutory minimum sums required to be withheld, may be used to make all or part of such payment; and

(f) In the event the Option or portion thereof shall be exercised pursuant to Section 4.1 by any person or persons other than the Optionee, appropriate proof of the right of such person or persons to exercise the Option.

(g) The Committee may permit the Optionee to pay the option exercise price for the shares with respect to which the Option or portion thereof is exercised by delivering a full-recourse, interest bearing promissory note payable in one or more installments and secured by the purchased shares, as long as the portion of the option exercise price which is equal to the par value of the shares purchased thereby is paid in cash or other legal consideration permitted by applicable law. In no event, however, may the maximum credit available to the Optionee exceed the sum of (i) the aggregate option exercise price or purchase price payable for the purchased shares (less the par value of those shares) plus (ii) any Federal, state and local income and employment tax liability incurred by the Optionee in connection with the option exercise or share purchase; *provided*, *however*, that prior to the first date on which the Company has filed a registration statement under the Securities Act to register the public offering of securities of the Company under the Securities Act, then, to the extent that the Optionee is a director or executive officer of the Company, as defined under Rule 3b-7 promulgated under the Exchange Act, and has outstanding a promissory note or other pending mode of payment for shares under the Plan, and the Company has reasonably determined that to permit such promissory note or other pending mode of payment to remain outstanding would be unlawful under the Exchange Act or any other law, then such note or other pending mode of payment must be immediately paid to the Company in full or replaced by a mode of payment provided for under the Plan that is acceptable to the Company and reasonably determined by it to be lawful under the Exchange Act or any other applicable law.

4.4 Conditions to Issuance of Stock Certificates. The shares of Stock deliverable upon the exercise of the Option, or any portion thereof, may be either previously authorized but unissued shares or issued shares which have then been reacquired by the Company. Such shares shall be fully paid and nonassessable. The Company shall not be required to issue any shares of Stock purchased upon the exercise of the Option or portion thereof prior to fulfillment of all of the following conditions:

(a) The admission of such shares to listing on all stock exchanges on which such Stock is then listed; and

(b) The completion of any registration or other qualification of such shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or of any other governmental regulatory body, which the Committee shall, in its absolute discretion, deem necessary or advisable; and

(c) The obtaining of any approval or other clearance from any state or federal governmental agency which the Committee shall, in its absolute discretion, determine to be necessary or advisable; and

(d) The receipt by the Company of full payment for such shares, including payment of all amounts which, under federal, state or local tax law, the Company (or other employer corporation) is required to withhold upon exercise of the Option; and

(e) The lapse of such reasonable period of time following the exercise of the Option as the Committee may from time to time establish for reasons of administrative convenience.

4.5 Rights as Stockholder; Book Entry Procedures. The holder of the Option shall not be, nor have any of the rights or privileges of, a stockholder of the Company in respect of any shares purchasable upon the exercise of any part of the Option unless and until such shares shall have been issued by the Company to such holder. Notwithstanding any other provision of the Plan or this Agreement, unless otherwise determined by the Committee or required by applicable law, rule or regulation, the Company shall not deliver to the Optionee certificates evidencing shares of Stock issued in connection with the exercise of this Option and instead such shares of Stock will be recorded in the books of the Company (or as applicable, its transfer agent or stock plan administrator).

ARTICLE V
OTHER PROVISIONS

5.1 Administration. The Committee shall have the power to interpret the Plan and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Committee in good faith shall be final and binding upon the Optionee, the Company and all other interested persons. No member of the Committee shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan, this Agreement or the Option. In its absolute discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan and this Agreement.

5.2 Option Not Transferable.

(a) Subject to Section 5.2(b), the Option may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution unless and until the Option has been exercised, or the shares underlying such Option have been issued, and all restrictions applicable to such shares have lapsed. Neither the Option nor any interest or right therein shall be liable for the debts, contracts or engagements of the Optionee or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

(b) Notwithstanding any other provision in this Agreement, with the consent of the Committee and to the extent the Option is designated as a Non-Qualified Stock Option, the Option may be transferred to, exercised by and paid to certain persons or entities related to the Optionee, including but not limited to members of the Optionee's family, charitable institutes or trusts or other entities whose beneficiaries or beneficial owners are members of the Optionee's family or to such other persons or entities as may be expressly approved by the Committee (each a "***Permitted Transferee***"), pursuant to such conditions and procedures as the Committee may require.

(c) Unless transferred to a Permitted Transferee in accordance with Section 5.2(b), during the lifetime of the Optionee, only the Optionee may exercise the Option or any portion thereof. Subject to such conditions and procedures as the Committee may require, a Permitted Transferee may exercise the Option or any portion thereof during the Optionee's lifetime. After the death of the Optionee, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3, be exercised by the Optionee's beneficiary designated in accordance with Section 10.4 of the Plan. If no beneficiary has been designated or survives the Optionee, the Option

may be exercised by the person entitled to such exercise pursuant to the Optionee's will or the laws of descent and distribution.

5.3 Lock-Up Period. The Optionee hereby agrees that, if so requested by the Company or any representative of the underwriters (the "***Managing Underwriter***") in connection with any registration of the offering of any securities of the Company under the Securities Act, the Optionee shall not sell or otherwise transfer any shares of Stock or other securities of the Company during such period as may be requested in writing by the Managing Underwriter and agreed to in writing by the Company (which period shall not be longer than one hundred eighty days) (the "***Market Standoff Period***") following the effective date of a registration statement of the Company filed under the Securities Act; *provided*, *however*, that such restriction shall apply only to the first registration statement of the Company to become effective under the Securities Act that includes securities to be sold on behalf of the Company to the public in an underwritten public offering under the Securities Act.

5.4 Restrictive Legends and Stop-Transfer Orders.

(a) The share certificate or certificates, if issued, evidencing the shares of Stock purchased hereunder shall be endorsed with any legends that may be required by state or federal securities laws.

(b) The Optionee agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) The Company shall not be required: (i) to transfer on its books any shares of Stock that have been sold or otherwise transferred in violation of any of the provisions of this Agreement, or (ii) to treat as owner of such shares of Stock or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such shares shall have been so transferred.

5.5 Shares to Be Reserved. The Company shall at all times during the term of the Option reserve and keep available such number of shares of Stock as will be sufficient to satisfy the requirements of this Agreement.

5.6 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company, and any notice to be given to the Optionee shall be addressed to the Optionee at the address given beneath the Optionee's signature on the Grant Notice. By a notice given pursuant to this Section 5.6, either party may hereafter designate a different address for notices to be given to that party. Any notice which is required to be given to the Optionee shall, if the Optionee is then deceased, be given to the Optionee's designated beneficiary if any, or the person otherwise entitled to exercise his or her Option pursuant to Section 4.1 by written notice under this Section 5.6. Any notice shall be deemed duly given when sent via email or enclosed in a properly sealed envelope or wrapper addressed as aforesaid and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

5.7 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

5.8 Stockholder Approval. The Plan will be submitted for approval by the Company's stockholders within twelve months after the date the Plan was initially adopted by the Board. The Option may not be exercised to any extent by anyone prior to the time when the Plan is approved by the

stockholders, and if such approval has not been obtained by the end of said twelve month period, the Option shall thereupon be canceled and become null and void.

5.9 Notification of Disposition. If this Option is designated as an Incentive Stock Option, the Optionee shall give prompt notice to the Company of any disposition or other transfer of any shares of stock acquired under this Agreement if such disposition or transfer is made (a) within two years from the Grant Date with respect to such shares or (b) within one year after the transfer of such shares to him. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by the Optionee in such disposition or other transfer.

5.10 Construction. This Agreement shall be administered, interpreted and enforced under the laws of the State of California without regard to conflicts of laws thereof.

5.11 Conformity to Securities Laws. The Optionee acknowledges that the Plan is intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act and any and all regulations and rules promulgated by the Securities and Exchange Commission thereunder, and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Option is granted and may be exercised, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

5.12 Amendments. This Agreement may not be modified, amended or terminated except by an instrument in writing, signed by the Optionee or such other person as may be permitted to exercise the Option pursuant to Section 4.1 and by a duly authorized representative of the Company.

5.13 Restrictions on Shares. Optionee hereby agrees that shares of Stock purchased upon the exercise of the Option shall be subject to such terms and conditions as the Committee shall determine in its sole discretion, including, without limitation, restrictions on the transferability of shares of Stock, the right of the Company to repurchase shares of Stock, and a right of first refusal in favor of the Company with respect to permitted transfers of shares of Stock. Such terms and conditions may, in the Committee's sole discretion, be contained in the Exercise Notice with respect to the Option or in such other agreement as the Committee shall determine and which the Optionee hereby agrees to enter into at the request of the Company.

EXHIBIT A

TO GRANT NOTICE AND STOCK OPTION AGREEMENT

FORM OF EXERCISE NOTICE

Effective as of today, _____, _____, the undersigned ("***Optionee***") hereby elects to exercise Optionee's option to purchase _____ shares of the Common Stock (the "***Shares***") of Cadence Pharmaceuticals, Inc. (the "***Company***") under and pursuant to the Cadence Pharmaceuticals, Inc. 2004 Equity Incentive Award Plan (the "***Plan***") and the Grant Notice and Stock Option Agreement dated _____, _____, (the "***Option Agreement***"). Capitalized terms used herein without definition shall have the meanings given in the Option Agreement.

Grant Date: _____

Number of Shares as to which Option is Exercised: _____

Exercise Price per Share: $ _____

Total Exercise Price: $ _____

Certificate to be issued in name of: _____

Cash Payment delivered herewith: $ _____ (Representing the full Exercise Price for the Shares, as well as any applicable withholding tax)

Type of Option: o Incentive Stock Option o Non-Qualified Stock Option

1. Representations of Optionee. Optionee acknowledges that Optionee has received, read and understood the Plan and the Option Agreement. Optionee agrees to abide by and be bound by their terms and conditions.

2. Rights as Stockholder. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to Shares subject to the Option, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Article 11 of the Plan.

Optionee shall enjoy rights as a stockholder until such time as Optionee disposes of the Shares or the Company and/or its assignee(s) exercises the Right of First Refusal hereunder. Upon such exercise, Optionee shall have no further rights as a holder of the Shares so purchased except the right to receive payment for the Shares so purchased in accordance with the provisions of this Agreement, and Optionee shall forthwith cause the certificate(s), if any issued, evidencing the Shares so purchased to be surrendered to the Company for transfer or cancellation.

3. Optionee's Rights to Transfer Shares.

(a) Company's Right of First Refusal. Before any Shares held by Optionee or any permitted transferee (each, a "***Holder***") may be sold, pledged, assigned, hypothecated, transferred, or otherwise disposed of (each, a "***Transfer***"), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares proposed to be Transferred on the terms and conditions set forth in this Section (the "***Right of First Refusal***"). In the event that the Company's Bylaws contain a right of first refusal with respect to the Shares, such right of first refusal shall apply to the Shares to the extent such provisions are more restrictive than the Right of First Refusal set forth in this Section.

(b) Notice of Proposed Transfer. In the event any Holder desires to Transfer any Shares, the Holder shall deliver to the Company a written notice (the "***Notice***") stating: (i) the Holder's bona fide intention to sell or otherwise Transfer such Shares; (ii) the name of each proposed purchaser or other transferee ("***Proposed Transferee***"); (iii) the number of Shares to be Transferred to each Proposed Transferee; and (iv) the price for which the Holder proposes to Transfer the Shares (the "***Offered Price***"), and the Holder shall offer such Shares at the Offered Price to the Company or its assignee(s).

(c) Exercise of Right of First Refusal. Within twenty-five days after receipt of the Notice, the Company and/or its assignee(s) may elect in writing to purchase all, but not less than all, of the Shares proposed to be Transferred to any one or more of the Proposed Transferees by delivery of a written exercise notice to the Holder (a "***Company Notice***"). The purchase price will be determined in accordance with subsection (d) below.

(d) Purchase Price. The purchase price ("***Purchase Price***") for the Shares repurchased under this Section shall be the Offered Price.

(e) Payment. Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within five days after delivery of the Company Notice or in the manner and at the times mutually agreed to by the Company and the Holder. Should the Offered Price specified in the Notice be payable in property other than cash, the Company shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. If the Holder and the Company cannot agree on such cash value within ten days after the Company's receipt of the Notice, the valuation shall be made by the Board. The payment of the purchase price shall then be held on the later of (i) five days following delivery of the Company Notice or (ii) five days after such valuation shall have been made.

(f) Holder's Right to Transfer. If all or a portion of the Shares proposed in the Notice to be Transferred are not purchased by the Company and/or its assignee(s) as provided in this Section, then the Holder may sell or otherwise Transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other Transfer is consummated within sixty days after the date of the Notice and provided further that any such sale or other Transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Section and the Restricted Stock Purchase Agreement, if applicable, shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not Transferred to the Proposed Transferee within such sixty-day period, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal as provided herein before any Shares held by the Holder may be sold or otherwise Transferred.

(g) Exception for Certain Family Transfers. Anything to the contrary contained in this Section notwithstanding, the Transfer of any or all of the Shares during the Optionee's lifetime or

upon the Optionee's death by will or intestacy to the Optionee's Immediate Family or a trust for the benefit of the Optionee's Immediate Family shall be exempt from the Right of First Refusal. As used herein, "***Immediate Family***" shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister or stepchild (whether or not adopted). In such case, the transferee or other recipient shall receive and hold the Shares so Transferred subject to the provisions of this Section (including the Right of First Refusal) and the Restricted Stock Purchase Agreement, if applicable, and there shall be no further Transfer of such Shares except in accordance with the terms of this Section.

(h) Termination of Right of First Refusal. The Right of First Refusal shall terminate as to all Shares upon the Public Trading Date.

(i) Transfer Restrictions. Any transfer or sale of the Shares is subject to restrictions on transfer imposed by any applicable state and federal securities laws. Any Transfer or attempted Transfer of any of the Shares not in accordance with the terms of this Agreement shall be void and the Company may enforce the terms of this Agreement by stop transfer instructions or similar actions by the Company and its agents or designees.

4. Tax Consultation. Optionee understands that Optionee may suffer adverse tax consequences as a result of Optionee's purchase or disposition of the Shares. Optionee represents that Optionee has consulted with any tax consultants Optionee deems advisable in connection with the purchase or disposition of the Shares and that Optionee is not relying on the Company for any tax advice.

5. Restrictive Legends and Stop-Transfer Orders.

(a) Legends. Optionee understands and agrees that the Company shall cause any certificates issued evidencing the Shares shall have the legends set forth below or legends substantially equivalent thereto, together with any other legends that may be required by state or federal securities laws:

> THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"), NOR HAVE THEY BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE. NO TRANSFER OF SUCH SECURITIES WILL BE PERMITTED UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER, THE TRANSFER IS MADE IN ACCORDANCE WITH RULE 144 UNDER THE ACT, OR IN THE OPINION OF COUNSEL (WHICH MAY BE COUNSEL FOR THE COMPANY) REGISTRATION UNDER THE ACT IS UNNECESSARY IN ORDER FOR SUCH TRANSFER TO COMPLY WITH THE ACT AND WITH APPLICABLE STATE SECURITIES LAWS.
>
> THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY. SUCH TRANSFER RESTRICTIONS ARE BINDING ON TRANSFEREES OF THESE SHARES.

(b) Stop-Transfer Notices. Optionee agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) Refusal to Transfer. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

6. Optionee Representations. Optionee hereby makes the following certifications and representations with respect to the Shares listed above:

(a) Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Optionee is acquiring these Shares for investment for Optionee's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act.

(b) Optionee acknowledges and understands that the Shares constitute "restricted securities" under the Securities Act and have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Optionee's investment intent as expressed herein. Optionee understands that the Shares must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Optionee further acknowledges and understands that the Company is under no obligation to register the Shares. Optionee understands that the certificate evidencing the Shares will be imprinted with a legend which prohibits the transfer of the Shares unless they are registered or such registration is not required in the opinion of counsel satisfactory to the Company and any other legend required under applicable state securities laws.

(c) Optionee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of the grant of the Option to the Optionee, the exercise will be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, ninety days thereafter (or such longer period as any market stand-off agreement may require) the securities exempt under Rule 701 may be resold, subject to the satisfaction of certain of the conditions specified by Rule 144, including: (i) the resale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Exchange Act); and, in the case of an affiliate, (ii) the availability of certain public information about the Company, (iii) the amount of securities being sold during any three month period not exceeding the limitations specified in Rule 144(e), and (iv) the timely filing of a Form 144, if applicable.

(d) In the event that the Company does not qualify under Rule 701 at the time of grant of the Option, then the securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which requires the resale to occur not less than one year after the later of the date the securities were sold by the Company or the date the securities were sold by an affiliate of the Company, within the meaning of Rule 144; and, in the case of acquisition of the securities by an affiliate,

or by a non-affiliate who subsequently holds the securities less than two years, the satisfaction of the conditions set forth in sections (i), (ii), (iii) and (iv) of paragraph (c) above.

(e) Optionee further understands that in the event all of the applicable requirements of Rule 701 or 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rules 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk. Optionee understands that no assurances can be given that any such other registration exemption will be available in such event.

7. Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon Optionee and his or her heirs, executors, administrators, successors and assigns.

8. Interpretation. Any dispute regarding the interpretation of this Agreement shall be submitted by Optionee or by the Company forthwith to the Committee, which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on the Company and on Optionee.

9. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding that body of law pertaining to conflicts of law. Should any provision of this Agreement be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and shall remain enforceable.

10. Notices. Any notice required or permitted hereunder shall be given in accordance with the provisions set forth in Section 5.6 of the Option Agreement.

11. Further Instruments. The parties agree to execute such further instruments and to take such further action as may be reasonably necessary to carry out the purposes and intent of this Agreement.

12. Entire Agreement. The Plan and Option Agreement are incorporated herein by reference. This Agreement, the Plan, the Option Agreement and the Restricted Stock Purchase Agreement, if applicable, constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof.

(Signature Page Follows)

ACCEPTED BY:

CADENCE PHARMACEUTICALS, INC.

By: _____
Name: _____
Its: _____

SUBMITTED BY:

OPTIONEE

_____
Optionee

Address:

_____
_____
_____

EXHIBIT B

TO GRANT NOTICE AND STOCK OPTION AGREEMENT

RESTRICTED STOCK PURCHASE AGREEMENT

THIS RESTRICTED STOCK PURCHASE AGREEMENT is made between _____ (the "***Purchaser***") and Cadence Pharmaceuticals, Inc. (the "***Company***"), as of _____, _____.

RECITALS

(1) Pursuant to the exercise of the Option granted to Purchaser under the Company's 2004 Equity Incentive Award Plan (the "***Plan***") and pursuant to the Stock Option Agreement (the "***Option Agreement***") dated _____, _____, by and between the Company and Purchaser with respect to such grant, which Option Agreement is hereby incorporated by reference, Purchaser has elected to purchase _____ of those shares which have not become vested under the vesting schedule set forth in the Option Agreement ("***Unvested Shares***"). The Unvested Shares and the shares subject to the Option Agreement which have become vested are sometimes collectively referred to herein as the "***Shares***".

(2) As required by the Option Agreement, as a condition to Purchaser's election to exercise the option, Purchaser must execute this Restricted Stock Purchase Agreement, which sets forth the rights and obligations of the parties with respect to Shares acquired upon exercise of the Option.

1. Repurchase Option.

(a) In the event of Purchaser's Termination of Service (as defined in the Option Agreement) for any reason, including for cause, death, Disability or Misconduct, the Company shall have the right and option to purchase from Purchaser, or Purchaser's personal representative, as the case may be, all of Purchaser's Unvested Shares as of the date of the Purchaser's Termination of Service at the exercise price paid by Purchaser for such Shares in connection with the exercise of the Option (the "***Repurchase Option***").

(b) The Company may exercise its Repurchase Option by delivering, personally or by registered mail, to Purchaser (or his or her transferee or legal representative, as the case may be), within ninety days of the date of the Purchaser's Termination of Service, a notice in writing indicating the Company's intention to exercise the Repurchase Option and setting forth a date for closing not later than thirty days from the mailing of such notice. The closing shall take place at the Company's office. At the closing, the holder of the certificates for the Unvested Shares being transferred shall deliver the stock certificate or certificates evidencing the Unvested Shares, and the Company shall deliver the purchase price therefor.

(c) At its option, the Company may elect to make payment for the Unvested Shares to a bank selected by the Company. The Company shall avail itself of this option by a notice in writing to Purchaser stating the name and address of the bank, date of closing, and waiving the closing at the Company's office.

(d) If the Company does not elect to exercise the Repurchase Option conferred above by giving the requisite notice within ninety days following the date of Purchaser's Termination of Service, the Repurchase Option shall terminate.

(e) 100% of the Unvested Shares shall initially be subject to the Repurchase Option. The Unvested Shares shall be released from the Repurchase Option in accordance with the Vesting Schedule set forth in the Option Agreement until all Shares are released from the Repurchase Option. Fractional Shares shall be rounded down to the nearest whole share.

2. Transferability of the Shares; Escrow.

(a) Purchaser hereby authorizes and directs the secretary of the Company, or such other person designated by the Company from time to time, to transfer the Unvested Shares as to which the Repurchase Option has been exercised from Purchaser to the Company.

(b) To insure the availability for delivery of Purchaser's Unvested Shares upon repurchase by the Company pursuant to the Repurchase Option under Section 1, Purchaser hereby appoints the assistant secretary, or any other person designated by the Company from time to time as escrow agent, as its attorney-in-fact to sell, assign and transfer unto the Company, such Unvested Shares, if any, repurchased by the Company pursuant to the Repurchase Option. If certificates for the Shares are issued, then Purchaser shall, upon execution of this Agreement, deliver and deposit with the assistant secretary of the Company, or such other person designated by the Company from time to time, any share certificate(s) issued representing the Unvested Shares, together with the stock assignment duly endorsed in blank, attached hereto as Exhibit B-1. The Unvested Shares and stock assignment shall be held by the assistant secretary in escrow, pursuant to the Joint Escrow Instructions of the Company and Purchaser attached as Exhibit B-2 hereto, until the Company exercises its Repurchase Option as provided in Section 1, until such Unvested Shares are vested, or until such time as this Agreement no longer is in effect. As a further condition to the Company's obligations under this Agreement, the spouse of Purchaser, if any, shall execute and deliver to the Company the Consent of Spouse set forth on the signature page hereto. Upon vesting of the Unvested Shares, the escrow agent shall promptly deliver to Purchaser the certificate or certificates representing such Shares in the escrow agent's possession belonging to Purchaser, and the escrow agent shall be discharged of all further obligations hereunder; *provided*, *however*, that the escrow agent shall nevertheless retain such certificate or certificates as escrow agent if so required pursuant to other restrictions imposed pursuant to this Agreement. If the Shares are held in book entry form, then such entry will reflect that the Shares are subject to the restrictions of this Agreement.

(c) The Company, or its designee, shall not be liable for any act it may do or omit to do with respect to holding the Shares in escrow and while acting in good faith and in the exercise of its judgment.

(d) Transfer or sale of the Shares is subject to restrictions on transfer imposed by any applicable state and federal securities laws. Any transferee shall hold such Shares subject to all the provisions hereof and the Exercise Notice executed by Purchaser with respect to any Unvested Shares purchased by Purchaser and shall acknowledge the same by signing a copy of this Agreement. Any transfer or attempted transfer of any of the Shares not in accordance with the terms of this Agreement shall be void and the Company may enforce the terms of this Agreement by stop transfer instructions or similar actions by the Company and its agents or designees.

3. Ownership, Voting Rights, Duties. This Agreement shall not affect in any way the ownership, voting rights or other rights or duties of Purchaser, except as specifically provided herein.

4. Legends. Any share certificate evidencing the Shares issued hereunder shall be endorsed with the following legend (in addition to any legend required under applicable securities laws):

> THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

5. Adjustment for Stock Split. All references to the number of Shares and the purchase price of the Shares in this Agreement shall be appropriately adjusted to reflect any stock split, stock dividend or other change in the Shares which may be made by the Company after the date of this Agreement.

6. Notices. Notices required hereunder shall be given in person or by registered mail to the address of Purchaser shown on the records of the Company, and to the Company at its principal executive office.

7. Survival of Terms. This Agreement shall apply to and bind Purchaser and the Company and their respective permitted assignees and transferees, heirs, legatees, executors, administrators and legal successors.

8. Section 83(b) Elections.

(a) Election for Unvested Shares Purchased Pursuant to a Non-Qualified Stock Option. Purchaser hereby acknowledges that he or she has been informed that, with respect to the exercise of a Non-Qualified Stock Option for Unvested Shares, that unless an election is filed by Purchaser with the Internal Revenue Service and, if necessary, the proper state taxing authorities, within thirty days of the purchase of the Shares, electing pursuant to Section 83(b) of the Code (and similar state tax provisions if applicable) to be taxed currently on any difference between the purchase price of the Shares and their Fair Market Value on the date of purchase, there will be a recognition of taxable income to the Optionee, measured by the excess, if any, of the fair market value of the Shares, at the time the Company's Repurchase Option lapses over the purchase price for the Shares. Optionee represents that Optionee has consulted any tax consultant(s) Optionee deems advisable in connection with the purchase of the Shares or the filing of the Election under Section 83(b) and similar tax provisions.

(b) Election for Unvested Shares Purchased Pursuant to an Incentive Stock Option. Purchaser hereby acknowledges that he or she has been informed that, with respect to the exercise of an Incentive Stock Option for Unvested Shares, that unless an election is filed by Purchaser with the Internal Revenue Service and, if necessary, the proper state taxing authorities, within thirty days of the purchase of the Shares, electing pursuant to Section 83(b) of the Code (and similar state tax provisions if applicable) to be taxed currently on any difference between the purchase price of the Shares and their Fair Market Value on the date of purchase, there will be a recognition of income to the Purchaser, for alternative minimum tax purposes, measured by the excess, if any, of the fair market value of the Shares at the time the Company's

Repurchase Option lapses over the purchase price for the Shares. Purchaser represents that Purchaser has consulted any tax consultant(s) Purchaser deems advisable in connection with the purchase of the Shares or the filing of the Election under Section 83(b) and similar tax provisions.

PURCHASER ACKNOWLEDGES THAT IT IS PURCHASER'S SOLE RESPONSIBILITY AND NOT THE COMPANY'S TO FILE TIMELY THE ELECTION UNDER SECTION 83(b), EVEN IF PURCHASER REQUESTS THE COMPANY OR ITS REPRESENTATIVE TO MAKE THIS FILING ON PURCHASER'S BEHALF.

9. Representations. Purchaser has reviewed with his or her own tax advisors the federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement. Purchaser is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. Purchaser understands that Purchaser (and not the Company) shall be responsible for his or her own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement.

10. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding that body of law pertaining to conflicts of law. Should any provision of this Agreement be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and shall remain enforceable.

Purchaser represents that he or she has read this Agreement and is familiar with its terms and provisions. Purchaser hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under this Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, this Agreement is deemed made as of the date first set forth above.

CADENCE PHARMACEUTICALS, INC.

By: _____

Title: _____

PURCHASER

By: _____

Name: _____

Address:

_____

_____

CONSENT OF SPOUSE

I, _____, spouse of the Purchaser listed above, have read and approve this Agreement. In consideration of granting of the right to my spouse to purchase shares of the Company as set forth in this Agreement, I hereby appoint my spouse as my attorney-in-fact in respect to the exercise of any rights under this Agreement and agree to be bound by the provisions of this Agreement insofar as I may have any rights in said Agreement or any shares issued pursuant thereto under the community property laws or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of this Agreement.

_____

Signature of Spouse

EXHIBIT B-1

TO RESTRICTED STOCK PURCHASE AGREEMENT

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED I, _____, hereby sell, assign and transfer unto _____ (_____) shares of the Common Stock of Cadence Pharmaceuticals, Inc. registered in my name on the books of said corporation represented by Certificate No. _____ herewith and do hereby irrevocably constitute and appoint _____ to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

This Assignment Separate from Certificate may be used only in accordance with the Restricted Stock Purchase Agreement between Cadence Pharmaceuticals, Inc. and the undersigned dated _____, _____.

Dated: _____, _____

Signature: _____

INSTRUCTIONS: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise the Repurchase Option, as set forth in the Restricted Stock Purchase Agreement, without requiring additional signatures on the part of Purchaser.

EXHIBIT B-2

TO RESTRICTED STOCK PURCHASE AGREEMENT

JOINT ESCROW INSTRUCTIONS

_____, _____

Secretary
Cadence Pharmaceuticals, Inc.
12730 High Bluff Drive, Suite 410
San Diego, CA 92130

As Escrow Agent for both Cadence Pharmaceuticals, Inc. (the "***Company***") and the undersigned purchaser of stock of the Company (the "***Purchaser***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Restricted Stock Purchase Agreement ("***Agreement***") between the Company and the undersigned, in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company (referred to collectively for convenience herein as the "***Company***") exercises the Company's Repurchase Option set forth in the Agreement, the Company shall give to Purchaser and you a written notice specifying the number of shares of stock to be purchased, the purchase price, and the time for a closing hereunder at the principal office of the Company. Purchaser and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company or its assignee, against the simultaneous delivery to you of the purchase price (by cash, a check, or a combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Repurchase Option.

3. Purchaser irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares as defined in the Agreement. Purchaser does hereby irrevocably constitute and appoint you as Purchaser's attorney-in-fact and agent for the term of this escrow to execute, with respect to such securities, all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of this paragraph 3, Purchaser shall exercise all rights and privileges of a stockholder of the Company while the stock is held by you.

4. Upon written request of Purchaser, but no more than once per calendar year, unless the Company's Repurchase Option has been exercised, you will deliver to Purchaser a certificate or certificates representing the number of shares of stock as are not then subject to the Company's Repurchase Option. Within one hundred twenty days after the date of the Purchaser's Termination of Service (as defined in the Agreement), you will deliver to Purchaser a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Repurchase Option.

5. If at the time of termination of this escrow you should have in your possession any documents, securities, or other property belonging to Purchaser, you shall deliver all of the same to Purchaser and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Purchaser while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the expiration of any rights under any applicable state, federal or local statute of limitations or similar statute or regulation with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefore.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States Post Office, by registered or certified mail with postage and fees prepaid, addressed to each of the other parties thereunto entitled at such addresses as a party may designate by written notice to each of the other parties hereto.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding that body of law pertaining to conflicts of law.

(Signature Page Follows)

IN WITNESS WHEREOF, these Joint Escrow Instructions shall be effective as of the date first set forth above.

CADENCE PHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

PURCHASER:

By: _____

Name: _____

Address:

_____

_____

ESCROW AGENT:

By: _____

Name: _____

Title: _____

EXHIBIT 10.8

SUBLEASE

THIS SUBLEASE (the "**Sublease**") is dated for reference purposes only as of the 31st day of August, 2004, and is by and between Townsend and Townsend and Crew, LLP, a California limited liability partnership ("**Sublessor**") and Strata Pharmaceuticals, Inc., a Delaware corporation ("**Sublessee**").

RECITALS

A. Sublessor, as tenant, and Square 24 Associates L.P., a District of Columbia limited partnership, as landlord (the "Landlord"), previously entered into that certain Lease dated as of June 30, 2003, as amended by that certain First Amendment to Lease dated as of June 9, 2004, (collectively the "**Lease**") for Suites 400 and 410 (the "**Premises**") in the Building constituting a portion of the Project known as Highlands Corporate Center located at 12730 High Bluff Drive, San Diego, California. A copy of the Lease is attached hereto as Exhibit A.

B. All capitalized terms used but not defined in this Sublease shall have the respective meanings assigned to such terms in the Lease.

C. Sublessor desires to sublease the Subleased Premises (as hereinbelow defined) to Sublessee and Sublessee desires to sublease the Subleased Premises from Sublessor.

NOW, THEREFORE, the parties agree as follows:

1. Subleased Premises. Sublessor hereby leases to Sublessee and Sublessee hereby leases from Sublessor that portion of the Premises commonly known as Suite 410 of the Building (the "**Subleased Premises**") consisting of 5,928 rentable square feet, as depicted on Exhibit B attached hereto.

2. Tender of Subleased Premises; Condition of Subleased Premises. Sublessor shall deliver the Subleased Premises to Sublessee upon Sublessor's Substantial Completion of the tenant improvements ("**Tenant Improvements**") as more specifically set forth on Exhibit C attached thereto (the "**Commencement Date**"). As used herein, the term "Substantial Completion" shall mean that date on which Sublessor's or Sublessor's agent or architect notifies Sublessee that the Tenant Improvements are substantially complete, or would have been completed absent a Sublessee Delay, except for such work as cannot be complete until Sublessee performs portions of Sublessee's work, and Sublessor's or Sublessor's agent or architect notifies Sublessee thereof. The term "Sublessee Delay" as used herein shall mean any delay in construction of the Tenant Improvements caused by any acts or omissions of Sublessee (i) in failing to grant any approvals or consents required of Sublessee within the stipulated period of time; (ii) in unreasonably withholding any approval or consent required by Sublessee; (iii) in materially interfering with construction of the Tenant Improvements; or (iv) in failing diligently to obtain any consents or approvals required of Landlord. Sublessor agrees to pay an amount not to exceed Three Thousand Dollars ($3,000.00) towards the costs of expediting the delivery of Tenant Improvement materials (including, but not

limited to doors, door frames and door hardware) to enable Sublessee to occupy the perimeter offices of the Premises on or about September 15, 2004 and it is anticipated that Substantial Completion of the Tenant Improvements by Sublessor will occur on or about September 22, 2004. Sublessee shall be solely responsible for the costs of expediting the delivery of Tenant Improvement materials in excess of Three Thousand Dollars ($3,000.00) and shall promptly reimburse Sublessor for such excess costs upon demand. Provided Sublessee does not interfere with the construction of the Tenant Improvements, Sublessee shall have the right with the prior consent of Landlord, if required, to enter the Subleased Premises for the purpose of installing Sublessee's furniture, trade fixtures, data and telecommunication wiring and equipment, photocopy equipment and other business equipment and to conduct limited business activities (the "**Early Access Period**"); provided, all of the terms of this Sublease shall apply to such Early Access Period, except that no Rent shall be due for any period of time prior to the Commencement Date, including the Early Access Period. Sublessee and Sublessor shall coordinate such early access during the Early Access Period. Sublessee shall immediately cease any work being undertaken by Sublessee and vacate the Subleased Premises if Sublessee is notified that Sublessee is interfering with construction of the Tenant Improvements. Sublessee shall also have access and use of the mailbox corresponding to the Subleased Premises during the Early Access Period at no additional cost to Sublessee. Sublessee agrees and acknowledges that, except as set forth on Exhibit C attached hereto, Sublessor has not agreed to install any improvements to the Subleased Premises or perform any work to ready the Subleased Premises for occupancy by Sublessee. Except as otherwise set forth in this Sublease (including Exhibit C), Sublessee accepts the Subleased Premises "as is," in its present condition. Sublessee acknowledges that certain acts or conduct of Sublessee under this Sublease or otherwise affecting the Subleased Premises may require the prior consent of Landlord. Sublessor shall bear no responsibility in the event the Landlord withholds its consent under the Lease to certain proposed conduct of Sublessee as provided for under the terms of this Sublease, but Sublessor agrees to use its reasonable efforts and due diligence to obtain such consent from Landlord.

3. Master Lease. Except as otherwise specifically set forth herein, this Sublease is subject to all of the terms and conditions of the Lease during the Term (as hereinabove defined.). During the Term, Sublessee assumes and agrees to perform each and every obligation, and to comply with each and every negative covenant, of Sublessor, as Tenant under the Lease, to the extent such terms and conditions are applicable to the Subleased Premises, except Sublessee's obligation for payment of Base Rent and Sublessee's Proportionate Share of Operating Costs Share Rent, Tax Share Rent and Electricity Share Rent which shall be as set forth in Section 6 below. Sublessee shall not commit or permit to be committed on the Subleased Premises any act or omission which would violate any such term or condition of the Lease and shall indemnify and hold Sublessor harmless against any and all loss, cost, expense, liability, claim, judgment, demand or cause of action arising from any such violation committed or permitted to be committed by Sublessee in connection with the Subleased Premises during the Term. Sublessor shall not by its act or omission to act, cause a default under the Lease. Accordingly, in order to afford to Sublessee the benefits of this Sublease and of those provisions of the Lease which by their nature are intended to benefit Sublessee, and in order to protect Sublessor against a default by Sublessee which might cause a default or event of default by Sublessor under the Lease:

(a) provided Sublessee shall timely pay all Rent when and as due under this Sublease, Sublessor shall pay, when and as due, all Rent and other charges payable by Sublessor to Landlord under the Lease;

(b) except as otherwise expressly provided herein, Sublessor shall perform its covenants and obligations under the Lease which do not require for their performance possession of the Subleased Premises and which are not otherwise to be performed hereunder by Sublessee on behalf of Sublessor; and

(c) Sublessor hereby grants to Sublessee the right to receive all of the services and benefits with respect to the Subleased Premises which are to be provided by Landlord under the Lease.

4. Incorporation of Terms. Except for the following provisions of the Lease which impose obligations on Landlord; Schedule items 6, 7, 8, 9, 10, 11, 12, and 14, Sections 1 (second sentence through remainder of paragraph), 2.A(1), 2.D.(3) (reference to square footage of Premises only), 2.D.(4), 3.A. (first sentence), 3.B, 4.H. (second sentence), 20, 23, 25, 30, 31, 32, Appendix C, and Appendix E of the Lease; First Amendment to Lease Sections 4, 5, 6, 8 (last sentence), all of the terms and conditions contained in the Lease are incorporated herein as terms and conditions of this Sublease (with each reference therein to "Landlord" and "Tenant" to be deemed to refer to Sublessor and Sublessee, respectively, and each reference therein to the "Premises" to be deemed to refer to the Subleased Premises, to the extent applicable) and, along with all of the paragraphs contained in this Sublease, shall be the complete terms and conditions of this Sublease. Sublessee hereby assumes and agrees to perform all of the obligations of the "Tenant" under the Lease with respect to the Subleased Premises (to the extent applicable); provided, however, Sublessee shall have no right to exercise any option to extend, option to expand, right of first offer, right of first negotiation, right of first refusal, or any other similar right granted to Sublessor as "Tenant" under the Lease and Sublessee shall only be obligated to perform such obligations as they relate to the Subleased Premises during the Term. All waivers of claims against, and exculpations of, Landlord under the incorporated provisions of the Lease shall run from Sublessee in favor of Sublessor. All waivers of claims against, and exculpations of, Tenant, under the incorporated provisions of the Lease shall run from Sublessor in favor of Sublessee. To the extent there is a conflict between the provisions of the Lease which are incorporated herein by reference and the express provisions of this Sublease, the express provisions of this Sublease shall prevail to the extent Landlord's rights under the Lease are not affected. The Lease contains express representations made by Landlord and describes Landlord's duties in connection with the operation of the Premises, Building and Project. Sublessor is not obligated to perform any of Landlord's obligations under the Lease, and Sublessor shall not be liable for Landlord's violation of any provision of the Lease or for any misrepresentation by Landlord. If Landlord fails to perform any of its obligations under the Lease, then Sublessee shall notify Sublessor of such failure, and thereafter Sublessor shall promptly notify Landlord and demand performance. If Landlord continues to fail to perform, then Sublessee may seek recourse against Landlord. If Sublessor has the right to proceed against Landlord, or otherwise enforce any rights of Sublessee against Landlord, and Sublessee has no standing to enforce such rights, then Sublessor, upon request, shall take such action as is reasonably necessary to enforce such rights. Sublessee shall indemnify Sublessor against all expenses, including reasonable attorneys' fees,

incurred by Sublessor as a result of or in connection with enforcing rights against Landlord on behalf of Sublessee.

5. Term. The term (the " **Term**") of this Sublease shall commence on the Commencement Date and shall expire twenty-four (24) months after the Commencement Date (the "**Expiration Date**").

6. Base Rent.

(a) Base Rent. Sublessee shall pay monthly base rent ("**Base Rent**") for the Subleased Premises for the Term in the amount of Sixteen Thousand Eight Hundred Ninety-Four and 80/100 Dollars ($16,894.80), in advance on the first day of each month, commencing on the Commencement Date, without deduction, offset, prior notice or demand, in lawful money of the United States of America. Concurrently with the execution of this Sublease, Sublessee shall pay to Sublessor the Base Rent due for the first full month of the Term.

(b) Other Payment Obligations. Commencing on the Commencement Date and continuing during each Fiscal Year or part thereof during the Term, Sublessee shall pay to Sublessor, monthly in advance, as Additional Rent within twenty (20) days after receipt of an invoice therefor, Sublessee's Proportionate Share, as defined below, of (i) Sublessor's Proportionate Share of Excess Operating Costs (as defined in the Lease), (ii) Sublessor's Proportionate Share of Excess Taxes (as defined in the Lease), and (iii) Sublessor's Electricity Share Rent (as defined in the Lease) for the applicable Fiscal Year. Sublessee's Proportionate Share is 45.85% of Sublessor's Proportionate Share of the Building and/or Sublessor's Proportionate Share of Project. In addition, Sublessee shall reimburse to Sublessor, within twenty (20) days after receipt of an invoice, for all amounts paid by Sublessor pursuant to the Lease to the extent attributable to the Subleased Premises or to the acts or omission of Sublessee, its agents or employees. To the extent Sublessor is able to obtain the same from Landlord, Sublessor shall, promptly after execution of this Sublease, provide Sublessee with an itemized estimate of projected Additional Rent for 2005.

(c) General Conditions. If the Term commences on a day other than the first (1st) day of a calendar month or ends on a day other than the last day of a calendar month, a prorated monthly installment of Base Rent and other charges shall be paid at the then current rate for the fractional month during which the Sublease commences and/or terminates. All Base Rent and other sums required to be paid by Sublessee shall be paid to Sublessor at the address specified at the end of this Sublease or at such other place as Sublessor may designate in writing.

(d) Security Deposit. Upon execution of this Sublease, Sublessee shall deposit with Sublessor the sum of Fifty Thousand Six Hundred Eighty-Five and 00/100 Dollars ($50,685.00), which shall be held by Sublessor as a security deposit for Sublessee's performance of all the terms, covenants and conditions of this Sublease (the "**Security Deposit**"). If Sublessee defaults under any provision of this Sublease, Sublessor may (but shall not be required to) use, apply or retain all or any part of this Security Deposit for the payment of any amount Sublessor may spend by reason of Sublessee's default or to compensate Sublessor for any loss or damage Sublessor may suffer because of Sublessee's default. If any portion of the Security Deposit is so used or applied, Sublessee shall, immediately after written demand, deposit cash with Sublessor in an

amount sufficient to restore the Security Deposit to its original amount. Sublessor is not required to keep the Security Deposit separate from its general funds, and all interest earned on the security deposit shall accrue to the benefit of Sublessor. If Sublessee performs each of its obligations under this Sublease, the Security Deposit, or any balance thereof, shall be returned to Sublessee within thirty (30) days after the later of (i) the expiration of the Term or sooner termination of the Sublease; (ii) the date Sublessee vacates the Subleased Premises; or (iii) the date Sublessee will have no further unperformed obligations herein. Sublessee hereby waives the provisions of Section 1950.7 of the California Civil Code (providing that a landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by a tenant, or to clean the premises); provided, in so waiving the provisions of Section 1950.7, Sublessee shall not be deemed to have agreed to permit Sublessor to retain any portion of the Security Deposit in excess of that which would be required to make Sublessor whole (whether prior to or following termination of the Sublease).

(d) Rent. As used in this Sublease, the term Rent includes Base Rent, Additional Rent and all other sums payable by Sublessee under this Sublease.

8. Late Charge; Interest. If any sums due from Sublessee are not received by Sublessor within five (5) days when due, Sublessee shall pay to Sublessor a late charge equal to five percent (5%) of such overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Sublessor will incur by reason of late payment by Sublessee. In addition, every payment due hereunder from Sublessee to Sublessor which is not paid when due shall bear interest at ten percent (10%) per annum from the date that the same became due and payable until paid, whether or not demand be made therefor.

9. Use. Sublessee shall use the Subleased Premises in compliance with the Lease. Sublessee shall not store, use or dispose of any Hazardous Materials in, on or about the Subleased Premises, the Building or the Project. Sublessee shall immediately provide Sublessor with copies of any notice, report or other correspondence between Sublessee and any governmental agency concerning any Hazardous Materials in, on or about the Subleased Premises, the Building or the Project.

10. Default.

(a) Events of Default. In addition to any other event specified in this Sublease as an event of default, the occurrence of any one or more of the following events ("**Events of Default**") shall constitute a breach of this Sublease by Sublessee: (i) failure by Sublessee to pay rent or any other sum when and as the same becomes due and payable and such failure continues for more than four (4) days after Sublessor gives written notice thereof to Sublessee; or (ii) failure by Sublessee to perform or observe any other obligations of Sublessee and such failure continues for more than fourteen (14) days (or such shorter period as is allowed for the cure of the subject default pursuant to the Lease) after Sublessor gives written notice thereof to Sublessee; provided, however, that, except as hereinbelow set forth, if, by the nature of such agreement, covenant or condition, such failure cannot reasonably be cured within the allotted time, an Event of Default shall not exist as long as Sublessee commences with due diligence and dispatch the curing of such failure within the allotted time and, having so commenced, thereafter prosecutes with diligence and dispatch and

completes the curing of such failure. Anything herein to the contrary notwithstanding, in no event shall any grace period provided in this Section 10(a)(ii) be longer than the grace period for such default provided in the Lease.

(b) Sublessor's Remedies. If an Event of Default occurs, Sublessor shall be entitled to exercise against Sublessee all of the rights and remedies afforded to Landlord under the Lease with respect to breaches of the Lease by Sublessor, and Sublessee shall indemnify, defend and hold Sublessor harmless from all damages resulting from such Event of Default and shall reimburse Sublessor for all sums incurred by Sublessor in fulfilling Sublessee's obligations, together with interest on those sums at ten percent (10%) per annum.

11. Holding Over. Sublessor and Sublessee recognize that Sublessor's damages resulting from Sublessee's failure to timely surrender possession of the Subleased Premises may be substantial, may exceed the amount of the Rent payable hereunder, and will be impossible to accurately measure. Accordingly, if possession of the Subleased Premises is not surrendered to Sublessor on the Expiration Date or sooner termination of this Sublease, in addition to any other rights or remedies Sublessor may have hereunder or at law, Sublessee shall pay to Sublessor during the period Sublessee holds over in the Subleased Premises after the Expiration Date or sooner termination of this Sublease, a sum equal to 200% of the Base Rent payable under this for each full or partial month plus all other sum due under this Sublease. In addition, Sublessee shall indemnify Sublessor against any and all claims, losses and liabilities for damages resulting from failure to surrender possession, including, without limitation, any claims made by Landlord or any succeeding tenant, and any Rent and other charges due under the Lease. In addition, no holding-over by Sublessee, nor the payment to Sublessor of the amounts specified above, shall operate to extend the Term hereof. Nothing herein contained shall be deemed to authorize Sublessee to retain possession of the Subleased Premises after the Expiration Date or sooner termination of this Sublease.

12. Assignment and Subletting.

(a) General. Sublessee shall not, without the prior written consent of Landlord and Sublessor, which consent as to Sublessor shall not be unreasonably withheld, assign, sublet, mortgage, pledge, encumber or otherwise transfer (collectively, "Transfer") this Sublease, the term or estate hereby granted, or any interest hereunder, or permit the Subleased Premises to be used or occupied by anyone other than Sublessee. The foregoing notwithstanding, Sublessee acknowledges that it shall be reasonable for Sublessor to withhold its consent to the proposed Transfer if the Transferee proposes making any alterations to the Subleased Premises or Sublessee is not transferring the entire Subleased Premises. In addition, Sublessee acknowledges and agrees that Landlord may withhold its consent to a Transfer pursuant to the terms of the Lease, and that Sublessor will not consent to any Transfer if Landlord does not consent to such Transfer. The foregoing notwithstanding, Verus Pharmaceuticals, Inc. will be entitled to cohabitate with Sublessee during the Term, provided that no alterations are made to the Subleased Premises.

(b) Notice and Procedure. If at any time during the Term, Sublessee desires to Transfer this Sublease, then Sublessee shall give Sublessor a notice (the "**Notice**") which shall set forth the name, address and business of the proposed transferee, financial statements and references

of the proposed assignee or sublessee and all material terms and conditions of the proposed assignment or subletting, all in such detail as Sublessor may reasonably require. Within ten (10) days of receipt of the Notice, Sublessor shall have the option, exercisable by giving notice to Sublessee, to (a) consent to the Transfer, (b) withhold consent to the Transfer to the extent it is reasonable to do so, or (c) terminate this Sublease as of the date upon which the Transfer was to have occurred, in which event Sublessee shall be relieved of all further obligations hereunder. No failure of Sublessor to exercise its termination right shall be deemed to be Sublessor's consent to the assignment or subletting.

(c) Continuing Liability of Sublessee. No Transfer shall release Sublessee from its obligation or alter the primary liability of Sublessee to pay the Rent and to perform all other obligations to be performed by Sublessee hereunder. The acceptance of Rent by Sublessor from any other person shall not be deemed a waiver by Sublessor of any provision hereof.

13. Waiver of Liability; Indemnity.

(a) Sublessor shall not be liable or responsible for, and Sublessee waives all claims against Sublessor, its agents, employees, officers, directors and invitees with respect to or arising out of, any death of or injury to Sublessee, its agents, employees, officers, directors invitees, or any other person, from any causes whatsoever, or for any loss of or damage to any property outside or within the Subleased Premises, unless such death, injury, loss or damage is caused by the negligence or willful misconduct of Sublessor or its agents, employees, officers, directors and invitees.

(b) Sublessee shall hold Sublessor and Landlord and their respective agents and employees harmless and defend Sublessor and Landlord, and their agents, employees, officers, directors and invitees from and against any and all losses, damages, claims or liability for any damage to any property or injury, illness or death of any person occurring in or about the Subleased Premises arising at any time during the Term and from any cause whatsoever other than by reason of the negligence or willful misconduct of Sublessor or Landlord or either of their agents, employees, officers, directors and invitees including without limitation, claims, costs and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the removal, cleanup or abatement of any hazardous materials which may be in or about the Subleased Premises or the Premises as a result of any act or omission of Sublessee, its employees, agents or contractors during the Term. This Section 13(b) shall survive the termination of this Sublease.

14. Insurance.

(a) With respect to the Subleased Premises only, Sublessee shall comply with the obligations of Tenant under the Lease with respect to insurance and subrogation including those obligations set forth, without limitation, in Article 8 of the Lease, and shall cause Landlord and Sublessor to be named as additional insureds and/or loss payees within all required policies of insurance with waivers of subrogation in favor of Landlord and Sublessor.

(b) Insurance Criteria. All the insurance required under this Sublease shall: (i) be issued by insurance companies authorized to do business in the State in which the Building is located and which are reasonably satisfactory to Sublessor; (ii) name Sublessor, Landlord and any

managing agent and other designee as an additional insured; (iii) be issued as a primary policy and not "excess over" or contributory with any other applicable insurance in force for or on behalf of Sublessor and/or Landlord; (iv) contain an endorsement requiring thirty (30) days' written notice from the insurance company to both parties before cancellation or change in the coverage, scope, or amount of any policy; and (v) specifically include the liability to be assumed hereunder by Sublessee (provided, however, that the amount of such insurance shall not be construed to limit the liability of Sublessee hereunder). A certificate of each policy, together with evidence of payment of premiums, shall be deposited with Sublessor the earlier of Sublessee's entry on the Subleased Premises or the Commencement Date, and on renewal of the policy not less than twenty (20) days before expiration of the term of the policy.

15. Notices. All notices or demands shall be given only by personal service, certified mail with a return-receipt (which shall be deemed delivered two (2) days after mailing, postage prepaid) or delivery by a reputable overnight air courier service which provides written evidence of delivery (which shall be deemed to be given on the next business day after delivery to the courier service, prepaid). Notices shall be addressed to the addresses under the signatures below. Either party may change its address for notices or demands by written notice delivered as set forth above. Sublessee shall promptly after receipt thereof send to Sublessor copies of all notices Sublessee receives from Landlord. For purposes of Sublessor's response to any request by Sublessee, all time periods in the Lease within which Landlord is required to act or respond shall be extended by ten (10) business days.

16. Parking. Sublessee have the right to use within the Project twenty (23) unreserved surface parking spaces at no additional cost or expense to Sublessee, so long as Landlord does not impose a charge for such surface parking, and if Landlord does impose a charge for such parking, at Landlord's prevailing monthly rate, without markup by Sublessor.

17. Termination, Amendment and Modification of Lease. Except as specifically permitted in the Lease, Sublease shall not terminate, amend or otherwise modify the Lease in any way that could reasonably be expected to have a materially adverse effect on Sublessee's rights under this Sublease without the prior written consent of Sublessee, which consent shall not be unreasonably withheld or delayed.

18. Signage. Subject to Landlord's consent, Sublessee shall be entitled have its name listed in the Building standard directory and its name next to the door of the Subleased Premise.

19. Attorneys' Fees. The prevailing party in any action or proceeding (whether at the administrative, trial or appellate levels) brought by either party against the other under this Sublease shall recover attorneys' fees and costs in such amount as the court or administrative body may adjudge reasonable.

20. Administration of this Sublease. If Sublessee requests that Sublessor execute any document relating to or in connection with the Sublease or approve any assignment or subletting, Sublessee shall reimburse Sublessor, within ten (10) days after billing, for the reasonable cost of review and processing of Sublessee's request including, without limitation, reasonable attorneys' fees.

21. Estoppel Certificate. Sublessee shall, without charge to Sublessor or Landlord, and Sublessor, without charge to Sublessee, at any time from time to time, within ten (10) business days after receipt of written request therefor, deliver an executed certificate certifying, if true: (a) that this Sublease is unmodified and in full force and effect, or if there have been any modifications, that same is in full force and effect as modified and stating any such modifications; (b) whether or not there is then existing any claim of default of the other party hereunder and if so, specifying the nature thereof; and (c) the current amount of Base Rent payable hereunder by Sublessee and the date to which the same has been paid.

22. Damage and Destruction/Eminent Domain. If the Lease confers upon Sublessor the right to terminate the Lease in the event of damage, destruction, eminent domain or similar circumstances, the exercise by Sublessor of such termination right shall not constitute a default or breach by Sublessor hereunder.

23. Brokers. Sublessee and Sublessor represent to each other that they have not dealt with any brokers in connection with this Sublease other than Corporate Real Estate Advisors and Cushman & Wakefield of California, and Sublessee and Sublessor shall indemnify, protect, defend and hold each other harmless from and against any and all claims, costs or liability arising out of or relating to its breach of this representation. Sublessor shall pay the brokerage commissions or fees owed to Corporate Real Estate Advisors pursuant to a separate agreement.

24. Severability. If any provision of this Sublease shall be judicially or administratively held invalid or unenforceable for any reason, such holding shall not be deemed to affect, alter, modify or impair in any manner any other provision of this Sublease.

25. Entire Agreement. This Sublease and the exhibits attached hereto constitute the sole and exclusive agreement between the parties with respect to the Subleased Premises. No amendment, modification of or supplements to this Sublease shall be effective unless in writing and executed by Sublessor and Sublessee.

26. Survival. All indemnities contained in this Sublease shall survive the expiration or termination hereof.

27. Landlord Consent. The effectiveness of this Sublease is contingent upon Landlord’s written consent to the terms and conditions of this Sublease.

28. Exhibits. Exhibits A, B and C attached hereto are incorporated herein by reference.

29. Counterparts. This Sublease may be executed concurrently in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Sublease is made the day and year first above written.

SUBLESSOR:

Townsend and Townsend and Crew, LLP, a California limited liability partnership

By: /s/ [Unintelligible]
Its: Executive Director

By: _____
Its: _____

Address:

Two Embarcadero Center, Suite 700
San Francisco, CA 94111
Attn: Executive Director

SUBLESSEE:

Strata Pharmaceuticals, Inc., a Delaware corporation

By: /s/ Theodore R. Schroeder
Its: President & CEO

By: _____
Its: _____

Address:

10923 Cloverhurst Way
San Diego, CA 92130

EXHIBIT 10.9

SUMMARY OF BASIC LEASE INFORMATION AND DEFINITIONS

This SUMMARY OF BASIC LEASE INFORMATION AND DEFINITIONS ("**Summary**") is hereby incorporated into and made a part of the attached Office Lease which pertains to the Building described in Section 1.4 below. All references in the Lease to the "**Lease**" shall include this Summary. All references in the Lease to any term defined in this Summary shall have the meaning set forth in this Summary for such term. Any initially capitalized terms used in this Summary and any initially capitalized terms in the Lease which are not otherwise defined in this Summary shall have the meaning given to such terms in the Lease. If there is any inconsistency between the Summary and the Lease, the provisions of the Lease shall control.

1.1 **Landlord's Address**:

For Notice:
Prentiss/Collins Del Mar Heights LLC
c/o Prudential Real Estate Investors
4 Embarcadero Center, Suite 2700
San Francisco, California 94111
Attn: Asset Management, PRISA II Portfolio
Facsimile: (415) 398-1025

With a copy to:
Prentiss/Collins Del Mar Heights LLC
c/o Prudential Real Estate Investors
8 Campus Drive, 4th Floor
Parsippany, New Jersey 07054
Attention: Gregory D. Shanklin, Law Department

With a copy to:
c/o Brandywine Realty Trust
705 Palomar Airport Road, Suite 320
Carlsbad, California 92011
Attention: Vice President

For Payment:
Prentiss/Collins Del Mar Heights LLC
P.O. Box 100125
Pasadena, California 91189-0125

1.2 **Tenant's Address**:
Cadence Pharmaceuticals, Inc.
12730 High Bluff Drive, Suite 410
San Diego, California 92130
Attn: David Socks
Telephone: (858) 436-1400
Facsimile: (858) 436-1401
(Prior to Commencement Date)

12481 High Bluff Drive, Suite 200
San Diego, California 92130
Attn: Chief Financial Officer
Telephone: (858) 436-1400
Facsimile: (858) 436-1401
(After Commencement Date)

1.3 **Site; Project**: The Site consists of the parcel(s) of real property in that certain Project commonly known as High Bluff Ridge at Del Mar located at 12481-12531 High Bluff Drive, City of San Diego, County of San Diego, State of California, as shown on the site plan attached hereto as Exhibit "A" as such area may be expanded or reduced from time to time. The Project includes the Site and all buildings, improvements and facilities, now or subsequently located on the Site from time to time, including, without limitation, the buildings currently located on the Site, as depicted on the site plan attached hereto as Exhibit "A". The aggregate rentable square feet of the Project contains (as of the date hereof) approximately 157,567 rentable square feet.

1.4 **Building**: The term "**Building**" shall mean (i) a three (3) story office building located on the Site and containing approximately 68,038 rentable square feet, the address of which is 12481 High Bluff Drive, San Diego, California 92130 (the "**12481 Building**") and (ii) during the 12531 term only (as defined below), a four (4) story office building located on the Site and containing approximately 89,529 rentable square feet, the address of which is 12531 High Bluff Drive, San Diego, California 92130 (the "**12531 Building**").

1.5 **Premises**: The term "**Premises**" shall mean (i) those certain premises known as Suite 200 as generally shown on the plan attached hereto as Exhibit "B-1", located on the second (2nd) floor of the 12481 Building, and containing approximately 23,494 rentable square feet (22,405 usable square feet) (the "**12481 Premises**" and (ii) during the 12531 Term only, those certain premises known as Suite 120 as generally shown on the plan attached hereto as Exhibit "B-2", located on the first (1st) floor of the 12531 Building, and containing approximately 1,832 rentable square feet (1,655 usable square feet) (the "**12531 Premises**").

1.6 **Term**: As used herein, "**Term**" shall mean (i) with respect to the 12481 Premises, a term of six (6) years, with one option to extend for five (5) years pursuant to Section 37 below (the "**12481 Term**"), and (ii) with respect to the 12531 Premises, month-to-month, terminable by either party upon 30 days' written notice to the other party (the "**12531 Term**").

1.7 **Commencement Date**: The Commencement Date for the 12481 Term shall be the later to occur of (i) the date upon which Substantial Completion (as such term is defined in Exhibit "C" attached hereto) of the Tenant Improvements for the 12481 Premises occurs, or (ii) September 15, 2006. The Commencement Date for the 12531 Term shall be June 1, 2006.

1.8 **Monthly Basic Rent**: Upon the commencement of the 12481 Term of this Lease, and on the first day of each month thereafter during the Term of this Lease, Tenant shall pay to Landlord, in advance and without offset, as Monthly Basic Rent for the Premises the following monthly payments:

Months of Term	Monthly Basic Rent	Monthly Basic Rent per Rentable Square Foot*
**Commencement Date – 01/31/07	***$ 56,553.10	$3.65
02/01/07 – 09/30/07	$ 85,753.10	$3.65
10/01/07 – 09/30/08	$ 88,807.32	$3.78
10/01/08 – 09/30/09	$ 91,861.54	$3.91
10/01/09 – 09/30/10	$ 95,150.70	$4.05
10/01/10 – 09/30/11	$ 98,439.86	$4.19
10/01/11 – 09/30/12	$101,963.96	$4.34

* Monthly Basic Rent is calculated solely based on the approximately 23,494 rentable square feet contained in the 12481 Premises.

** Including any partial month at the beginning of the Term if the Commencement Date does not fall on the first day of the month.

*** Monthly Basic Rent for the period from 09/15/06 through 01/31/07 is abated with respect to 8,000 square feet of the approximately 23,494 rentable square feet contained in the 12481 Premises.

1.9 **Tenant's Percentage**: The term "**Tenant's Percentage**" shall mean 14.91%, which is the ratio that the rentable square footage of the 12481 Premises bears to the rentable square footage of the Project. Tenant's Percentage is subject to adjustment in accordance with Section 1.3 of the Lease.

1.10 **Landlord's Contribution to Operating Expenses**: Landlord's Contribution to Operating Expenses shall mean Tenant's Percentage of Operating Expenses incurred by Landlord during calendar year 2007 (the "**Base Year**"), adjusted to reflect an assumption that the Project is fully assessed for real property tax purposes as a completed Project ready for occupancy and that the Project is ninety-five percent (95%) occupied during such year.

1.11 **Security Deposit**: In the form of a Letter of Credit in the amount of $1,581,130, subject to the terms and conditions of, Section 5 below.

1.12 **Permitted Use**: General office purposes only consistent with the character of the Building as a first class office building and for no other purpose or purposes whatsoever.

1.13 **Brokers**: Grubb & Ellis/BRE Commercial representing Landlord and Cushman & Wakefield representing Tenant.

1.14 **Interest Rate**: The lesser of: (a) the rate announced from time to time by Wells Fargo Bank or, if Wells Fargo Bank ceases to exist or ceases to publish such rate, then the rate announced from time to time by the largest (as measured by deposits) chartered bank operating in California, as its "prime rate" or "reference rate", plus five percent (5%); or (b) the maximum rate permitted by law.

1.15 **Tenant Improvements**: The tenant improvements installed or to be installed in the Premises as described in the Work Letter Agreement attached hereto as Exhibit "C".

1.16 **Parking**: A total of one hundred six (106) parking privileges at the 12481 Building, which shall be comprised of (i) a minimum of seventy-nine (79) unreserved, uncovered parking privileges at no additional cost to Tenant, and (ii) a maximum of twenty-seven (27) reserved, covered parking privileges at an additional cost to Tenant of $100 per stall per month. All such parking privileges shall be subject to the provisions set forth in Section 6.2 of this Lease.

1.17 **Business Hours for the Building**. 7:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 8:00 a.m. to 12:00 p.m. on Saturdays (except Building Holidays). "**Building Holidays**" shall mean New Year's Day, Labor Day, Thanksgiving Day, Memorial Day, Independence Day and Christmas Day.

1.18 **Guarantor(s)**: N/A.

OFFICE LEASE

This LEASE (the "**Lease**"), which includes the preceding Summary of Basic Lease Information and Definitions (the "**Summary**") attached hereto and incorporated herein by this reference, is made and entered into as of the 12th day of May, 2006, by and between PRENTISS/COLLINS DEL MAR HEIGHTS LLC, a Delaware limited liability company ("**Landlord**"), and CADENCE PHARMACEUTICALS, INC, a Delaware corporation ("**Tenant**").

1. **Premises**.

1.1 **Premises**. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises described in Section 1.5 of the Summary above, improved or to be improved with the Tenant Improvements. Such lease is upon, and subject to, the terms, covenants and conditions herein set forth and each party covenants, as a material part of the consideration for this Lease, to keep and perform their respective obligations under this Lease.

1.2 **Landlord's Reservation of Rights**. Provided Tenant's use of and access to the Premises is not materially interfered with in an unreasonable manner, and subject to the terms of this Lease, Landlord reserves for itself the right from time to time to install, use, maintain, repair, replace and relocate pipes, ducts, conduits, wires and appurtenant meters and equipment above the ceiling surfaces, below the floor surfaces and within the walls of the Building and the Premises.

1.3 **Measurement of Premises, Building and/or the Project**. Landlord and Tenant each hereby stipulate and agree that (a) the terms **usable area**," "**usable square footage**," "**rentable area**" and "**rentable square footage**" shall refer to the square footage measurements set forth in Sections 1.3, 1.4 and 1.5, (b) such measurements shall be conclusive for purposes of this Lease and (c) any re-measurement of the Premises, the Building and/or the Project shall not result in the adjustment of any provisions of this Lease which are based upon the area of the Premises, the Building and/or the Project such as Tenant's Percentage, Building's Share, Monthly Basic Rent, and the Allowance, if any. As used in this Lease, the following terms have the meanings indicated:

1.4 **Project**. The term "**Project**," as used in this Lease, shall include, collectively, (i) the 12481 Building and the 12531 Building, (ii) the other buildings in the Project (if and when constructed), (iii) any outside plaza areas, walkways, driveways, courtyards, public and private streets, transportation facilitation areas and other improvements and facilities now or hereafter constructed surrounding and/or servicing the Building and the other buildings in the Project (if and when constructed), including parking structures and surface parking facilities now or hereafter servicing the Building and the other buildings in the Project (if and when constructed) (collectively, the "**Parking Facilities**"), which are designated from time to time by Landlord as common areas (or parking facilities, as the case may be) appurtenant to or servicing the Building and the other buildings in the Project; (iv) any additional buildings, improvements, facilities, parking areas and structures and common areas which Landlord (and/or any common area association formed by Landlord or Landlord's assignee for the Project) may add thereto from time to time within or as part of the Project; and (v) the land upon which any of the foregoing are situated. The site plan depicting the current configuration of the proposed Project is set forth in Exhibit "A" attached hereto (the "**Site**"). Notwithstanding the foregoing or anything contained in this Lease to the contrary, (1) Landlord has no obligation to expand or otherwise make any improvements within the Project, including, without limitation, any of the outside plaza areas, walkways, driveways, courtyards, public and private streets, transportation facilitation areas and other improvements and facilities depicted on Exhibit "A" attached hereto (as the same may be modified by Landlord from time to time without notice to Tenant), other than Landlord's obligations set forth in the Work Letter Agreement to construct the Base, Shell and Core of the Building, and (2) Landlord shall have the right from time to time to include or exclude any improvements or facilities within the Project, at Landlord's reasonable discretion.

2. **Term**. The Term of this Lease shall be for the periods designated in Section 1.6 of the Summary commencing on the Commencement Date, and ending on the expiration of such period, unless the Term is sooner terminated as provided in this Lease. Notwithstanding the foregoing, if the Commencement Date falls on any day other than the first day of a calendar month then the term of this Lease will be measured from the first day of the month following the month in which the Commencement Date occurs so that the Term will end on the last day of a month. By written instrument substantially in the form of Exhibit "D" attached hereto, Landlord shall notify Tenant of the Commencement Date, the rentable and usable square feet of the Premises, Tenant's Percentage and all other matters stated therein, and Tenant shall, within ten (10) days following delivery of such Commencement Notice, either (i) acknowledge and agree to all matters set forth in the Commencement Notice by executing the same and delivering the fully executed Commencement Notice to Landlord (in which case the Commencement Notice shall be conclusive and binding on Tenant as to all matters set forth therein), or (ii) deliver written notice to Landlord of any objections to matters contained in the Commencement Notice. The foregoing notwithstanding, Landlord's failure to deliver any Commencement Notice to Tenant shall not affect Landlord's determination of the Commencement Date nor Tenant's right to object thereto.

3. **Rent**.

3.1 **Basic Rent**. Tenant agrees to pay Landlord, as basic rent for the Premises, the Monthly Basic Rent in the amounts designated in Section 1.8 of the Summary. The Monthly Basic Rent shall be paid by Tenant in monthly installments in the amounts designated in Section 1.8 of the Summary in advance on the first day of each and every calendar month during the Term, without demand, notice, deduction or offset except that the first full month's Monthly Basic Rent shall be paid upon Tenant's execution and delivery of this Lease to Landlord. Monthly Basic Rent for any partial month shall be prorated in the proportion that the number of days this Lease is in effect during such month bears to the actual number of days in such month.

3.2 **Additional Rent**. All amounts and charges payable by Tenant under this Lease in addition to the Monthly Basic Rent described in Section 3.1 above (including, without limitation, payments for insurance, repairs and parking, and Tenant's Percentage of Operating Expenses in excess of Landlord's Contribution to Operating Expenses as provided in Section 1.10 of the Summary) shall be considered additional rent for the purposes of this Lease, and the word "**rent** " in this Lease shall include such additional rent unless the context specifically or clearly implies that only the Monthly Basic Rent is referenced. The Monthly Basic Rent and additional rent shall be paid to Landlord as provided in Section 7, without any prior notice or demand therefor and without any deduction or offset whatever, in lawful money of the United States of America.

4. **Common Areas; Operating Expenses**.

4.1 **Definitions; Tenant's Rights**. During the Term of this Lease, Tenant shall have the non-exclusive right to use, in common with other tenants in the Project, and subject to the Rules and Regulations referred to in Section 6 below, those portions of the Project (the "**Common Areas** ") not leased or designated for lease to tenants that are provided for use in common by Landlord, Tenant and any other tenants of the Project (or by the sublessees (agents, employees, customers invitees, guests or licensees of any such party), whether or not those areas are open to the general public. The Common Areas shall include, without limitation,

(i) any fixtures, systems, decor, facilities and landscaping contained, maintained or used in connection with those areas, and shall be deemed to include any city sidewalks adjacent to the Project, any pedestrian walkway system, park or other facilities located on the Site and open to the general public;

(ii) the common entrances, lobbies, restrooms on multi-tenant floors, elevators, stairways and accessways, loading docks, ramps, drives and platforms and any passageways and serviceways thereto to the extent not exclusively serving another tenant or contained within another tenant's premises, and the common pipes, conduits, wires and appurtenant equipment serving the Project; and

(iii) the parking structure and parking areas (subject to Section 6.2 below), exercise facilities, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways and landscaped areas appurtenant to the Project.

4.2 **Landlord's Reserved Rights**. Landlord reserves the right from time to time to use any of the Common Areas and to do any of the following, as long as such acts do not unreasonably interfere with Tenant's use of or access to the Premises:

(a) expand the Building and construct or alter other buildings or improvements on the Site;

(b) make any changes, additions, improvements, repairs or replacements in or to the Project, the Site, the Common Areas and/or the Building (including the Premises if required to do so by any law or regulation) and the fixtures and equipment thereof, including, without limitation: (i) maintenance, replacement and relocation of pipes, ducts, conduits, wires and meters; and (ii) changes in the location, size, shape and number of driveways, entrances, stairways, elevators, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas and walkways and, subject to Section 6.2, parking spaces and parking areas;

(c) close temporarily any of the Common Areas while engaged in making repairs, improvements or alterations to the Project, Site and/or Building;

(d) perform such other acts and make such other changes with respect to the Project, Site, Common Areas and Building, as Landlord may, in the exercise of its good faith business judgment, reasonably deem to be appropriate;

(e) form a common area association or associations under covenants, conditions and restrictions to own, manage, operate, maintain, repair and/or replace all or any portion of the landscaping, driveways, walkways, parking areas, public and private streets, plazas, courtyards, transportation facilitation areas and/or other common areas located outside of the Building and, subject to Section 4.4 below, include the common area assessments, fees and taxes charged by the association(s) and the cost of maintaining, managing, administering and operating the association(s), in Operating Expenses; and

(f) perform such other acts and make such other changes with respect to the Project as Landlord may, in the exercise of good faith business judgment, reasonably deem to be appropriate.

Tenant hereby agrees that Landlord's actions pursuant to this Section 4.2 shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of rent. Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from Landlord's actions with respect to this Section 4.2, nor shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from Landlord's actions with respect to this Section 4.2, or for any inconvenience or annoyance occasioned by Landlord's actions with respect to this Section 4.2.

4.3 **Excess Expenses**. In addition to the Monthly Basic Rent required to be paid by Tenant pursuant to Section 3.1 above, during each month during the Term of this Lease (after the Base Year noted in Section 1.10 of the Summary), Tenant shall pay to Landlord (a) the amount by which Tenant's Percentage of Operating Expenses for such calendar year exceeds Landlord's Contribution to Operating Expenses (such amount shall be referred to in this Section 4 as the "**Excess Expenses**"), in the manner and at the times set forth in the following provisions of

this Section 4, and (b) during the 12531 Term only, the sum of One Thousand Six Hundred Seventy Five and No/100 Dollars ($1,675.00) per month.

4.4 **Definition of Operating Expenses**. As used in this Lease, the term "**Operating Expenses** " shall consist of all costs and expenses of operation, maintenance, repair and replacement of the Project and the Common Areas as determined by Landlord utilizing standard commercial real estate accounting practices consistently applied and calculated assuming the Project is ninety-five percent (95%) occupied. Operating Expenses shall include the following costs by way of illustration but not limitation: (a) Real Property Taxes and Assessments (as defined in Section 4.5 below) and any taxes or assessments imposed in lieu thereof; (b) any and all assessments imposed with respect to the Project, Common Areas, and/or Site pursuant to any covenants, conditions and restrictions affecting the Site, Common Areas or Project; (c) except to the extent paid by Tenant as part of Electricity Utility Charges (as defined in Section 16.1 below), water and sewer charges and the costs of electricity, heating, ventilating, air conditioning and other utilities; (d) except to the extent paid by Tenant as part of Electricity Utility Charges, utilities surcharges and any other costs, levies or assessments resulting from statutes or regulations promulgated by any government authority in connection with the use or occupancy of the Site, Project or the Premises or the parking facilities serving the Site, Project or the Premises; (e) costs of insurance obtained by Landlord pursuant to Section 21 of this Lease; (f) except to the extent paid by Tenant as part of Electricity Utility Charges, waste disposal and janitorial services; (g) security (if any); (h) costs incurred in the management of the Site, Project and Common Areas, including, without limitation: (1) supplies, (2) wages, salaries, benefits, pension payments, fringe benefits, uniforms and dry-cleaning thereof (and payroll taxes, insurance and similar governmental charges related thereto) of employees used exclusively in the operation and maintenance of the Site, Project and Common Areas, (3) the rental of personal property used by Landlord's personnel in the maintenance, repair and operation of the Project, (4) reasonable management office expenses including rent and operating costs, (5) accounting fees, legal fees and real estate consultant's fees, and (6) a management/administrative fee not to exceed five percent (5%) of the annual gross revenues of the Project; (i) supplies, materials, equipment and tools; (j) repair, replacement and maintenance of the elevators and the structural portions of the Project, including the plumbing, heating, ventilating, air-conditioning, electrical and other utility systems installed or furnished by Landlord; (k) maintenance, costs and upkeep of all parking and Common Areas; (l) amortization on a straight-line basis over the useful life (as reasonably determined by Landlord utilizing standard commercial real estate accounting practices consistently applied), together with interest at the Interest Rate (as defined in Section 1.14 of the Summary of this Lease) on the unamortized balance of all costs of a capital nature (including, without limitation, capital improvements, capital replacements, capital repairs, capital equipment and capital tools): (1) intended to produce a reduction in operating charges or energy consumption or effect other economies in the operation or maintenance of the Project; or (2) required after the date of this Lease under any governmental law or regulation; (3) for repair or replacement of any equipment or improvements needed to operate and/or maintain the Project, the Common Areas and/or the Site at the same quality levels as prior to the repair or replacement; or (4) which are reasonably determined by Landlord to be in the best interests of the Project; (m) costs and expenses of gardening and landscaping; (n) maintenance of signs; (o) personal property taxes levied on or attributable to personal property used in connection with the Project, the Common Areas and/or the Site; and (p) costs and expenses of repairs, resurfacing, repairing, maintenance, painting, lighting, cleaning, refuse removal, security and similar items, including appropriate reserves. For purposes of determining Landlord's Contribution to Operating Expenses, Operating Expenses shall not include (i) one-time special assessments, charges, costs or fees or extraordinary charges or costs incurred in the Base Year only, (ii) market-wide labor-rate increases due to extraordinary circumstances including, but not limited to, boycotts and strikes, (iii) utility rate increases due to extraordinary circumstances including, but not limited to, conservation surcharges, boycotts, embargoes or other shortages, and (iv) amortization of any capital items including, but not limited to, capital improvements, capital repairs and capital replacements (including such amortized costs where the actual improvement, repair or replacement was made in prior years). In no event shall costs for any item of utilities included in Operating Expenses for any year subsequent to the Base Year be less than the amount included in Operating Expenses for the Base Year for such utility item. In addition, if in any calendar year subsequent to the Base Year, the amount of Operating Expenses decreases due to a reduction in the cost of providing utilities, security and/or other services to the Project for any reason, including without limitation, because of deregulation of the utility industry and/or reduction in rates achieved in contracts with utilities and/or service providers, then for purposes of the calendar year in which such decrease in Operating Expenses occurred and all subsequent calendar years, the Operating Expenses for the Base Year shall be decreased by an amount equal to such decrease.

Landlord shall have the right, from time to time, to equitably and in good faith allocate some or all of the Operating Expenses between the different tenants of the Project and/or different buildings of the Project as and when such different buildings are constructed and added to (and/or excluded from) the Project or otherwise (the "**Cost Pools**"); provided that such Cost Pools may not exceed 100% of the actual cost of such items. Such Cost Pools may include, without limitation, the office space tenants of the Project or of a building or buildings in the Project. Such Cost Pools may also include an allocation of certain Operating Expenses within or under covenants, conditions and restrictions affecting the Project. In addition, Landlord shall have the right from time to time, in its reasonable discretion, to include or exclude existing or future buildings in the Project for purposes of determining Operating Expenses and/or the provision of various services and amenities thereto, including allocation of Operating Expenses in any such Cost Pools.

Notwithstanding anything in the definition of Operating Expenses set forth above, Operating Expenses shall not include the following:

(a) costs incurred in correcting construction defects in the original construction of the Project;

(b) the following costs incurred with respect to the tenant leases at the Project: (i) the legal expenses and brokerage fees incurred in connection with negotiating and documenting such leases, (ii) the cost with respect to tenant

improvements to the premises demised by such leases, (iii) free rent and tenant allowance concessions provided by Landlord to tenants under such leases, and (iv) the expenses of advertising the Project to prospective tenants;

(c) depreciation, interest and principal payments on mortgage debt and other non-operating debt of Landlord, if any;

(d) costs for which the Landlord is reimbursed, or would have been reimbursed, if Landlord had carried the insurance Landlord is required to carry pursuant to this Lease;

(e) any bad debt loss, rent loss, or reserves for bad debts or rent loss or any reserves of any kind (but Operating Expenses may include reasonable reserves imposed upon the Project as part of the assessments under any covenants, conditions and restrictions recorded against the Project);

(f) costs associated with the operation of the business of the partnership or entity which constitutes the Landlord, as the same are distinguished from the costs of operation of the Project, including partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of the Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of the Landlord's interest in the Project, and costs incurred in connection with any disputes between Landlord and its employees, between Landlord and Project management, or between Landlord and other tenants or occupants (and not such other tenants or occupants generally);

(g) the wages and benefits of any employee who does not devote substantially all of his or her employed time to the Project unless such wages and benefits are prorated to reflect time spent on operating and managing the Project vis-à-vis time spent on matters unrelated to operating and managing the Project; provided, that in no event shall Operating Expenses for purposes of this Lease include wages and/or benefits attributable to personnel above the level of Project general manager unless those personnel are acting in the capacity of their respective positions and the amount of salary being charged to the Project is comparable to Comparable Buildings in the area;

(h) late charges, penalties, liquidated damages, and interest arising out of Landlord's failure to make timely payment of any of Taxes or Operating Expenses;

(i) amount paid by Landlord as ground rental for the Project;

(j) costs of capital improvements (including rentals which would constitute a capital improvement if purchased), alterations and repairs except as set forth in clause (l) of the first paragraph of this Section 4.4 above;

(k) any amount paid by Landlord or to the parent organization or a subsidiary or affiliate of the Landlord for supplies and/or services in the Project to the extent the same exceeds the costs of such supplies and/or services rendered by qualified, first-class unaffiliated third parties on a competitive basis;

(l) the cost of all items and services for which Tenant or any other tenant in the Project is obligated to reimburse Landlord such cost, or the cost of such items and services for which Landlord provides selectively to one or more tenants (other than Tenant) without reimbursement;

(m) electric power costs or costs for other utilities for which any tenant (including Tenant) directly contracts with a public service company;

(n) costs, other than those incurred in ordinary maintenance and repair, for sculpture, paintings or other objects of art not constituting fixtures;

(o) depreciation;

(p) Landlord's general corporate overhead and general and administrative expenses, except for the property management fee and except as they relate to the specific management of the Project such as tax management services and project accounting fees;

(q) costs arising from the gross negligence or willful misconduct of Landlord;

(r) costs incurred to comply with applicable laws with respect to Hazardous Materials (as such term is defined in Section 6.4 below) in, on or under the Project and/or the Building to the extent such Hazardous Materials are: (1) in existence as of the Commencement Date and in violation of any applicable Environmental Law (as defined in Section 6.4 below) in effect as of the Commencement Date, and were of such a nature that a federal, state or municipal governmental or quasi-governmental authority, if it had then had knowledge of the presence of such Hazardous Materials, in the state and under the conditions that the same existed in the Building or on the Project, would have then required removal, remediation or other action with respect to such Hazardous Materials; or (2) introduced onto the Project and/or the Building after the Commencement Date by Landlord or other tenants of the Project in violation of applicable laws in effect at the date of introduction, and were of such a nature that a federal, state or municipal governmental or quasi-governmental authority, if it had then had knowledge of the presence of such Hazardous Materials, in the state and under the conditions that the same existed in the Building or on the Project, would have then required removal, remediation or other action with respect to such Hazardous Materials;

(s) costs arising from Landlord's charitable or political contributions;

(t) the cost of any employee training or incentive programs, other than for tenant life safety information services; and

(u) in-house legal and/or accounting (as opposed to office building bookkeeping) fees.

Landlord shall (i) not make a profit by charging items to Operating Expenses that are otherwise also charged separately to others and (ii) Landlord shall not collect Operating Expenses from Tenant and all other tenants/occupants in the Building in an amount in excess of what Landlord incurred for the items included in Operating Expenses. All assessments and premiums which are not specifically charged to Tenant hereunder, which can be paid by Landlord in installments without the imposition of fees, penalties or interest, shall be paid by Landlord in the maximum number of installments that are permitted by law without the imposition of fees, penalties or interest and not included as Operating Expenses except in the calendar year in which the assessment or premium installment is actually paid; provided, however, that if the prevailing practice in Comparable Buildings is to pay such assessments or premiums on an earlier basis, and Landlord pays on such earlier basis, such assessments or premiums shall be included in Operating Expenses, as the case may be, in the calendar year that such assessments or premiums are paid by Landlord; provided further, however, that in such event, Landlord shall pro-rate the amount of any such assessment and/or premiums and Tenant shall only pay the amount allocable to the Term.

4.5 **Definition of Real Property Taxes and Assessments**. All Real Property Taxes and Assessments shall be adjusted to reflect an assumption that the Project is fully assessed for real property tax purposes as a completed building(s) ready for occupancy. As used in this Lease, the term "**Real Property Taxes and Assessments**" shall mean: any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, charge, improvement bond, tax, water and sewer rents and charges, utilities and communications taxes and charges or similar or dissimilar imposition imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, or any other governmental charge, general and special, ordinary and extraordinary, foreseen and unforeseen, which may be assessed against any legal or equitable interest of Landlord in the Premises, Building, Common Areas, Site or Project, including the following by way of illustration but not limitation:

(a) any tax on Landlord's "right" to rent or "right" to other income from the Premises or as against Landlord's business of leasing the Premises;

(b) any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June, 1978 election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of "Real Property Taxes and Assessments" for the purposes of this Lease;

(c) any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises or other premises in the Building or the rent payable by Tenant hereunder or other tenants of the Project, including, without limitation, any gross receipts tax or excise tax levied by state, city or federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof but not on Landlord's other operations;

(d) any assessment, tax, fee, levy or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and/or

(e) any assessment, tax, fee, levy or charge by any governmental agency related to any transportation plan, fund or system (including assessment districts) instituted within the geographic area of which the Project is a part.

Notwithstanding the foregoing, if after the Commencement Date Real Property Taxes and Assessments are reduced, then for purposes of all subsequent calendar years including the calendar year in which the reduction occurs, Landlord's Contribution to Operating Expenses shall be proportionately reduced. Notwithstanding the foregoing provisions of this Section 4.5 above to the contrary, "**Real Property Taxes and Assessments** " shall not include Landlord's federal or state income, franchise, inheritance, estate, capital, stock, succession, transfer, franchise, or gift tax; (ii) any item to the extent otherwise included in Operating Costs; (iii) costs or fees payable to public authorities in connection with any future construction, renovation and/or improvements to the Project other than the Improvements to the Premises made by or for Tenant, including fees for transit, housing, schools, open space, child care, arts programs, traffic mitigation measures, environmental impact reports, traffic studies, and transportation system management plans; (iv) reserves for future Taxes; or (v) any personal property taxes attributable to sculptures, paintings or other objects of art (except for objects of art installed in the Common Areas pursuant to requirements of public authority). If any Taxes are payable in installments over a period of time, Tenant shall be liable only for the payment of those installments falling due and payable during the Term, with appropriate proration for fractional years.

4.6 **Estimate Statement**. By the first day of April of each calendar year during the Term of this Lease (after the Base Year noted in Section 1.10 of the Summary), Landlord shall deliver to Tenant a statement ("**Estimate Statement**") estimating the Operating Expenses for the current calendar year and the estimated amount of Excess Expenses payable by Tenant. Landlord shall have the right no more than three (3) times in any calendar year to deliver a revised Estimate Statement showing the Excess Expenses for such calendar year if Landlord determines that the Excess Expenses are greater than those set forth in the original Estimate Statement (or previously delivered revised Estimate Statement) for such calendar year. The Excess Expenses shown on the Estimate Statement (or revised Estimate Statement, as applicable) shall be divided into twelve (12) equal monthly installments, and

Tenant shall pay to Landlord, concurrently with the regular Monthly Basic Rent payment next due following the receipt of the Estimate Statement (or revised Estimate Statement, as applicable), an amount equal to one (1) monthly installment of such Excess Expenses multiplied by the number of months from January in the calendar year in which such statement is submitted to the month of such payment, both months inclusive (less any amounts previously paid by Tenant with respect to any previously delivered Estimate Statement or revised Estimate Statement for such calendar year). Subsequent installments shall be paid concurrently with the regular monthly rent payments for the balance of the calendar year and shall continue until the next calendar year's Estimate Statement (or current calendar year's revised Estimate Statement) is received.

4.7 **Actual Statement**. By the first day of April of each succeeding calendar year during the Term of this Lease, Landlord shall deliver to Tenant a statement ("**Actual Statement**") of the actual Operating Expenses and Excess Expenses for the immediately preceding calendar year. If the Actual Statement reveals that Excess Expenses were over-stated or under-stated in any Estimate Statement (or revised Estimate Statement) previously delivered by Landlord pursuant to Section 4.6 above, then within thirty (30) days after delivery of the Actual Statement, Tenant shall pay to Landlord the amount of any such under-payment, or, Landlord shall credit Tenant against the next monthly rent falling due (or promptly refund such amount if after the expiration or earlier termination of the Lease), the amount of such over-payment, as the case may be. Such obligation will be a continuing one which will survive the expiration or earlier termination of this Lease.

4.8 **No Release**. Any delay or failure by Landlord in delivering any Estimate or Actual Statement pursuant to this Section 4 shall not constitute a waiver of its right to receive Tenant's payment of Excess Expenses, nor shall it relieve Tenant of its obligations to pay Excess Expenses pursuant to this Section 4, except that Tenant shall not be obligated to make any payments based on such Estimate or Actual Statement until ten (10) business days after receipt of such statement.

4.9 **Audit Rights**. In the event Tenant disputes the amount of the Operating Expenses set forth in the Actual Statement for any particular calendar year delivered by Landlord to Tenant pursuant to Section 4.7 above, Tenant shall have the right, at Tenant's cost, after reasonable notice to Landlord, to have Tenant's authorized employees or agents inspect, at Landlord's office during normal business hours, Landlord's books, records and supporting documents concerning the Operating Expenses set forth in such Actual Statement and any Operating Expenses attributable to the Base Year; provided, however, Tenant shall have no right to conduct such inspection, have an audit performed by the Accountant as described below, or object to or otherwise dispute the amount of the Operating Expenses set forth in any such Actual Statement, unless Tenant notifies Landlord of such objection and dispute, and has the Accountant commence such audit within ninety (90) days immediately following Landlord's delivery of the particular Actual Statement in question (the "**Review Period**"); provided, further, that notwithstanding any such timely objection, dispute, inspection, and/or audit, and as a condition precedent to Tenant's exercise of its right of objection, dispute, inspection and/or audit as set forth in this Section 4.9, Tenant shall not be permitted to withhold payment of, and Tenant shall timely pay to Landlord, the full amounts as required by the provisions of this Section 4 in accordance with such Actual Statement. However, such payment may be made under protest pending the outcome of any audit which may be performed by the Accountant as described below. In connection with any such inspection by Tenant, Landlord and Tenant shall reasonably cooperate with each other so that such inspection can be performed pursuant to a mutually acceptable schedule, in an expeditious manner and without interference with Landlord's operation and management of the Building. If after such inspection and/or request for documentation, Tenant still disputes the amount of the Operating Expenses set forth in the Actual Statement, Tenant shall have the right, within the Review Period, to cause an independent certified public accountant which is not paid on a contingency basis, which is not performing and has not performed similar audit work for other tenants of the Project in connection with the Project, and which is mutually approved by Landlord and Tenant (the "**Accountant**") to complete an audit of Landlord's books and records pertaining to Operating Expenses for the calendar year which is the subject of such Actual Statement to determine the proper amount of the Operating Expenses incurred and amounts payable by Tenant for such calendar year. Such audit by the Accountant shall be final and binding upon Landlord and Tenant. If Landlord and Tenant cannot mutually agree as to the identity of the Accountant within thirty (30) days after Tenant notifies Landlord that Tenant desires an audit to be performed, then the Accountant shall be one of the "Big 4" accounting firms or other national or regional accounting firms, which is not paid on a contingency basis, which is not performing and has not performed similar audit work for other tenants of the Project in connection with the Project, and which is selected by Tenant and reasonably approved by Landlord. If such audit reveals that Landlord has over-charged Tenant, then within thirty (30) days after the results of such audit are made available to Landlord, Landlord shall reimburse to Tenant the amount of such over-charge. If the audit reveals that the Tenant was under-charged, then within thirty (30) days after the results of such audit are made available to Tenant, Tenant shall reimburse to Landlord the amount of such under-charge. Tenant agrees to pay the cost of such audit unless it is subsequently determined that Landlord's original Actual Statement which was the subject of such audit was in error to Tenant's disadvantage by five percent (5%) or more of the total Operating Expenses which was the subject of such audit. The payment by Tenant of any amounts pursuant to this Section 4 shall not preclude Tenant from questioning the correctness of any Actual Statement provided by Landlord at any time during the Review Period, but the failure of Tenant to object thereto, conduct and complete its inspection and have the Accountant conduct and complete the audit as described above prior to the expiration of the Review Period shall be conclusively deemed Tenant's approval of the Actual Statement in question and the amount of Operating Expenses shown thereon. In connection with any inspection and/or audit conducted by Tenant pursuant to this Section 4.9, Tenant agrees to keep, and to cause all of Tenant's employees and consultants and the Accountant to keep, all of Landlord's books and records and the audit, and all information pertaining thereto and the results thereof, confidential, and in connection therewith, Tenant shall cause such employees, consultants and the Accountant to execute such commercially reasonable confidentiality agreements as Landlord may require prior to conducting any such inspections and/or audits.

5. **Security Deposit**.

5.1 **Letter of Credit**. The Security Deposit shall be in the form of a Letter of Credit in the amount set forth in Section 1.11 of the Summary above, subject to the following additional terms and conditions:

(a) (i) Tenant shall cause a Letter of Credit, in the amount of the Security Deposit to be issued by a financial institution reasonably acceptable to Landlord and Tenant (the "**L/C Bank**") in favor of Landlord, and its successors, assigns, and transferees; (ii) Tenant will cause the Letter of Credit to remain in full force and effect during the entire Term and thereafter until thirty (30) days after expiration or earlier termination of the Lease; (iii) the initial Letter of Credit will be delivered to Landlord upon Tenant's execution and delivery of this Lease to Landlord. The specific requirements for the Letter of Credit and the rights of Landlord to make draws thereon will be as set forth in this Section 5.1. Tenant's failure to deliver and/or thereafter cause the Letter of Credit to remain in full force and effect during the entire Term shall constitute a default under the Lease.

(b) Immediately upon, and at any time or from time to time after, the occurrence of any one or more Draw Events (as hereinafter defined), Landlord will have the unconditional right to draw on the Letter of Credit in accordance with this Section 5.1. Upon the payment to Landlord of the Draw Proceeds (as hereinafter defined), Landlord will hold the Draw Proceeds in its own name and for its own account, without liability for interest, to use and apply any and all of the Draw Proceeds only (i) to cure any Event of Default by Tenant; (ii) to pay any other sum to which Landlord becomes obligated by reason of Tenant's failure to carry out its obligations under this Lease; or (iii) to compensate Landlord for any monetary loss or damage which Landlord suffers thereby arising from Tenant's failure to carry out its obligations under this Lease. In addition, if the Draw Event is the failure of Tenant to renew the Letter of Credit as required hereunder, the Landlord shall be entitled to draw the entire Letter of Credit as a cash security deposit, held as a pledge to secure Tenant's obligations under this Lease. Among other things, it is expressly understood that the Draw Proceeds will not be considered an advance payment of Basic Rent or Additional Rent or a measure of Landlord's damages resulting from any Event of Default hereunder (past, present or future). Further, immediately upon the occurrence and during the continuance of any one or more Draw Events, Landlord may, from time to time and without prejudice to any other remedy, use the Draw Proceeds (whether from a contemporaneous or prior draw on the Letter of Credit) to the extent necessary to make good any arrearages of Basic Rent or Additional Rent, to pay to Landlord any and all amounts to which Landlord is entitled in connection with the pursuit of any one or more of its remedies hereunder, and to compensate Landlord for any and all other damage, injury, expense, or liability caused to Landlord by any and all such Events of Default. Any delays in Landlord's draw on the Letter of Credit or in Landlord's use of the Draw Proceeds as provided in this Section 5.1 will not constitute a waiver by Landlord of any of its rights hereunder with respect to the Letter of Credit or the Draw Proceeds. Following any such application of the Draw Proceeds, Tenant will either pay to Landlord on demand the cash amount so applied in order to restore the Draw Proceeds to the full amount thereof immediately prior to such application or cause the Letter of Credit to be replenished to its full amount thereunder. In no event shall Tenant be required to deposit or post at any time any amount which would result in Landlord's having a Security Deposit larger than the then-required amount of the Letter of Credit after giving effect to all Scheduled Decreases (as hereinafter defined) to which Tenant shall then be entitled under the provisions of this Section 5.1. Landlord will not be liable for any indirect, consequential, special, or punitive damages incurred by Tenant arising from a claim that Landlord violated the Bankruptcy Code's automatic stay in connection with any draw by Landlord of any Draw Proceeds, Landlord's liability (if any) under such circumstances being limited to the reimbursement of direct costs as and to the extent expressly provided in this Section 5.1. Nothing in this Lease or in the Letter of Credit will confer upon Tenant any property rights or interests in any Draw Proceeds; provided, however, that upon the expiration or earlier termination of this lease, and so long as there then exist no Draw Events or Events of Default hereunder, Landlord agrees to return any remaining unapplied balance of the Draw Proceeds then held by Landlord, and the Letter of Credit itself (if and to the extent not previously drawn in full) to the L/C Bank.

(c) Applicable Definitions.

"**Draw Event**" means each of the following events:

(i) the occurrence of any one or more of the following which shall have also been preceded, simultaneously accompanied, or succeeded by a Tenant's Default (as hereinafter defined) under this Lease regardless of the absence of any notice of default which might otherwise be required with respect to a Tenant's Default if the giving of notice to Tenant about such breach by Tenant is stayed or barred due to one of the following events: (A) Tenant's filing of a petition under any chapter of the Bankruptcy Code, or under any federal, state or foreign bankruptcy or insolvency statute now existing or hereafter enacted, or Tenant's making a general assignment or general arrangement for the benefit of creditors, (B) the filing of an involuntary petition under any chapter of the Bankruptcy Code, or under any federal, state or foreign bankruptcy or insolvency statute now existing or hereafter enacted, or the filing of a petition for adjudication of bankruptcy or for reorganization or rearrangement, by or against Tenant and such filing not being dismissed within sixty (60) days, (C) the entry of an order for relief under any chapter of the Bankruptcy Code, or under any federal, state or foreign bankruptcy or insolvency statute now existing or hereafter enacted, (D) the appointment of a "custodian," as such term is defined in the Bankruptcy Code (or of an equivalent thereto under any federal, state or foreign bankruptcy or insolvency statute now existing or hereafter enacted), for Tenant, or the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession not being restored to Tenant within sixty (60) days, or (E) the subjection of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease to attachment, execution or other judicial seizure and such subjection not being discharged within sixty (60) days;

(ii) the failure of Tenant, not less then thirty (30) days prior to the stated expiration date of the Letter of Credit then in effect, to cause an extension, renewal or replacement issuance of the Letter of Credit, at the

reduced amount, if any, applicable under this Section 5.1, to be effected, which extension, renewal or replacement issuance will be made by the L/C Bank, and, except as expressly provided in this Section 5.1, will otherwise meet all of the requirements of the initial Letter of Credit hereunder, which failure will be an Event of Default under this Lease;

(iii) the failure of Tenant to make when due any payment of Base Rent, of any monthly installment of any Additional Rent, or pay any other monetary obligation within ten (10) business days after the amount is due; or

(iv) the payment by Landlord of any sum to cure a failure by Tenant to comply with any non-monetary obligation hereunder which Tenant has not cured within thirty (30) days after notice thereof by Landlord (or, if Landlord is prevented from giving notice by application of the Bankruptcy Code's automatic stay, the payment of Landlord of any sum to cure a failure by Tenant to comply with any non-monetary obligation hereunder that Tenant has not cured within thirty (30) days from the date of breach).

"**Draw Proceeds**" means the proceeds of any draw or draws made by Landlord under the Letter of Credit, together with any and all interest accruing thereon.

"**L/C Bank**" means any United Stated bank which is approved by Landlord, with such approval not to be unreasonably withheld, conditioned or delayed.

"**Letter of Credit**" means that certain one-year irrevocable letter of credit, in the amount set forth in Section 1.11 of the Summary above, issued by the L/C Bank, as required under this Section 5.1 and, if applicable, as extended, renewed, replaced or modified from time to time in accordance with this Lease, which letter of credit will be in substantially the same form as Exhibit "G" attached hereto.

(d) If the Security Deposit is in the form of a Letter of Credit, then notwithstanding the preceding or any other provision of this Lease or the Letter of Credit to the contrary, the parties understand and agree that: (i) the annual anniversary dates of this Lease and the annual extension date(s) of the Letter of Credit could be different due to the Letter of Credit possibly being posted on a date other than the first (1st) day of the anniversary of the date of this Lease; and (ii) due to such non-synchronous timing as described in the immediately preceding clause, there could be certain periods when Tenant is entitled to a Scheduled Decrease that is not yet reflected in the Letter of Credit because the Scheduled Decrease occurs only upon the extension date of the Letter of Credit, and not upon the anniversary of the date of this Lease; and (iii) notwithstanding that the then-face amount of the Letter of Credit may exceed the amount that Landlord is entitled to draw upon under the Lease because a Scheduled Decrease has not yet been given effect under the Letter of Credit for the reasons described in the immediately preceding clauses (i) and (ii), Landlord shall not be entitled to, nor shall Landlord, draw upon the Letter of Credit in an amount which would result in Landlord's obtaining proceeds from the Letter of Credit which include all or any portion of that amount which should otherwise have been a Scheduled Decrease to such Letter of Credit to which Tenant is otherwise entitled under this Lease.

5.2 **Scheduled Decreases**. Commencing on the first anniversary of the Commencement Date, the Security Deposit shall be decreased automatically on each of the first four anniversaries of the Commencement Date by an amount equal to twenty-two percent (22%) of the face amount of the Security Deposit as of the Commencement Date (a "**Scheduled Decrease**").

5.3 **Transfer of Letter of Credit**. If Landlord transfers its interest in the Premises, or any portion thereof, during the Term, Landlord may transfer the Security Deposit (whether in the form of case or if Tenant has provided a Letter of Credit, then the Letter of Credit and all Draw Proceeds held by Landlord) to the transferee and thereafter will have no further liability with respect to the Security Deposit, including, without limitation, any liability for the return of the Letter of Credit (if issued). Landlord shall pay any and all fees or costs (whether payable to the L/C Bank or otherwise) in order to effectuate such transfer of the Letter of Credit.

6. **Use**.

6.1 **General**. Tenant shall use the Premises solely for the Permitted Use specified in Section 1.12 of the Summary, and shall not use or permit the Premises to be used for any other use or purpose whatsoever. Tenant shall observe and comply with the "**Rules and Regulations**" attached hereto as Exhibit "E", and all reasonable non-discriminatory modifications thereof and additions thereto from time to time put into effect and furnished to Tenant by Landlord; provided that such modifications do not materially increase Tenant's obligations or decrease Tenant's rights under this Lease. Landlord shall use commercially reasonable efforts to enforce the Rules and Regulations, but shall have no liability to Tenant for the violation or non-performance by any other tenant or occupant of the Project or the Building of any such Rules and Regulations. Tenant shall, at its sole cost and expense, observe and comply with all requirements of any board of fire underwriters or similar body relating to the Premises, all recorded covenants, conditions and restrictions now or hereafter affecting the Premises and all laws, statutes, codes, rules and regulations now or hereafter in force relating to or affecting the condition, use, occupancy, alteration or improvement of the Premises, including, without limitation, the provisions of Title III of the Americans with Disabilities Act of 1990 as it pertains to Tenant's use, occupancy, improvement and alteration of the Premises (whether, except as otherwise expressly provided herein, structural or nonstructural, including unforeseen and/or extraordinary alterations and/or improvements to the Premises, regardless of the period of time remaining in the Lease Term). Tenant shall not use or allow the Premises to be used (a) in violation of any recorded covenants, conditions and restrictions affecting the Site or of any law or governmental rule or regulation, or of any certificate of occupancy issued for the Premises or Building, or (b) for any improper, immoral, unlawful or reasonably objectionable purpose. Tenant shall not do or permit to be done anything which will unreasonably obstruct or interfere with the rights of other tenants or occupants of the Project or the Building, or injure them.

Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises, the Building, the Project or the Site, nor commit or suffer to be committed any waste in, on or about the Premises.

6.2 **Parking**.

(a) Tenant's Parking Privileges. During the Term of this Lease and any extensions thereof, Landlord shall lease to Tenant, and Tenant shall lease from Landlord, the number of parking privileges specified in Section 1.16 of the Summary hereof for use by Tenant's employees in the common parking areas for the Building within the Project, as designated by Landlord from time to time. Landlord shall at all times have the right to establish and modify the nature and extent of the parking areas for the Building and Project (including whether such areas shall be surface, underground and/or other structures) as long as Tenant is provided the number of parking privileges designated in Section 1.16 of the Summary. In addition, Landlord may, in its sole discretion, assign any unreserved and unassigned parking privileges, and/or make all or a portion of such privileges reserved.

(b) Visitor Parking. In addition to such parking privileges for use by Tenant's employees, Landlord shall permit access to the uncovered, unreserved parking areas for Tenant's visitors free of charge, subject to availability of spaces.

(c) Parking Rules. The use of the parking areas shall be subject to the Parking Rules and Regulations contained in Exhibit "E" attached hereto and any other reasonable, non-discriminatory rules and regulations adopted by Landlord and/or Landlord's parking operators from time to time, including any system for controlled ingress and egress. Tenant shall not use more parking privileges than its allotment and shall not use any parking spaces specifically assigned by Landlord to other tenants of the Building or Project or for such other uses as visitor parking. Tenant's parking privileges shall be used only for parking by vehicles no larger than normally sized passenger automobiles or pick-up trucks. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described herein, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost thereof to Tenant, which cost shall be immediately payable by Tenant upon demand by Landlord.

6.3 **Signs and Auctions**. Tenant shall be entitled, at its sole cost and expense, to one (1) identification sign on or near the entry doors of the Premises. Such sign shall be installed by a signage contractor designated by Landlord. The location, quality, design, style, lighting and size of such signs shall be consistent with the Landlord's Building standard signage program and shall be subject to Landlord's prior written approval, in its reasonable discretion. Upon the expiration or earlier termination of this Lease, Tenant shall be responsible, at its sole cost and expense, for the removal of such signage and the repair of all damage to the Building caused by such removal. Except for such identification sign, Tenant may not install any signs on the exterior or roof of the Building or the common areas of the Building or the Project. Any signs, window coverings, or blinds (even if the same are located behind the Landlord approved window coverings for the Building), or other items visible from the exterior of the Premises or Building are subject to the prior approval of Landlord, in its reasonable discretion. Tenant shall have no right to conduct any auction in, on or about the Premises, the Building or Site. Tenant shall be entitled to one (1) line on the Building directory to display Tenant's name and suite number. Tenant shall also be entitled to a sign on the Building's monument, located on the south side of the Project. Tenant's logo shall appear on the upper right quadrant of the monument sign.

6.4 **Hazardous Materials**. Tenant will (i) obtain and maintain in full force and effect all Environmental Permits (as defined below) that may be required from time to time under any Environmental Laws (as defined below) applicable to Tenant's use of the Premises and (ii) be and remain in compliance in all respects with all terms and conditions of all such Environmental Permits and with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in all Environmental Laws applicable to Tenant's use of the Premises. As used in this Lease, the term "**Environmental Law**" means any past, present or future federal, state, local or foreign statutory or common law, or any regulation, ordinance, code, plan, order, permit, grant, franchise, concession, restriction or agreement issued, entered, promulgated or approved thereunder, relating to (a) the environment, human health or safety, including, without limitation, emissions, discharges, releases or threatened releases of Hazardous Materials (as defined below) into the environment (including, without limitation, air, surface water, groundwater or land), or (b) the manufacture, generation, refining, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport, arranging for transport, or handling of Hazardous Materials. "**Environmental Permits**" means, collectively, any and all permits, consents, licenses, approvals and registrations of any nature at any time required pursuant to, or in order to comply with, any Environmental Law. Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household cleaning materials (some or all of which may constitute "Hazardous Materials" as defined in this Lease), Tenant agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, released or disposed of on, in, under or about the Premises, the Building, the Common Areas or any other portion of the Project by Tenant, its agents, employees, subtenants, assignees, licensees, contractors or invitees (collectively, "**Tenant's Parties**"), without the prior written consent of Landlord, which consent Landlord may withhold in its reasonable discretion. Upon the expiration or earlier termination of this Lease, Tenant agrees to promptly remove from the Premises, the Building and the Project, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under or about the Premises, the Building and/or the Project or any portion thereof by Tenant or any of Tenant's Parties. To the fullest extent permitted by law, Tenant agrees to promptly indemnify, protect, defend and hold harmless Landlord and Landlord's partners, officers, directors, employees, agents, successors and assigns (collectively, "**Landlord Indemnified Parties**") from and against any and all claims, damages, judgments, suits, causes of action, losses,

liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the presence of Hazardous Materials on, in, under or about the Premises, the Building or any other portion of the Project to the extent caused or permitted by Tenant or any of Tenant's Parties. Tenant agrees to promptly notify Landlord of any release of Hazardous Materials in the Premises, the Building or any other portion of the Project which Tenant becomes aware of during the Term of this Lease, whether caused by Tenant or any other persons or entities. In the event of any release of Hazardous Materials caused or permitted by Tenant or any of Tenant's Parties, Landlord shall have the right, but not the obligation, to cause Tenant, at Tenant's sole cost and expense, to immediately take all steps required under Environmental Law to remediate such release and prevent any similar future release. At all times during the Term of this Lease, but not more frequently than once in any twelve (12) month period, Landlord, at Landlord's expense, will have the right, but not the obligation, to enter upon the Premises to inspect, investigate, sample and/or monitor the Premises to determine if Tenant is in compliance with the terms of this Lease regarding Hazardous Materials. Tenant will, upon the request of Landlord or any mortgagee at any time during which Tenant is in default under this Lease, cause to be performed an environmental audit of the Premises at Tenant's expense by an established environmental consulting firm reasonably acceptable to Landlord and Landlord's mortgagee(s). As used in this Lease, the term "**Hazardous Materials**" shall mean and include any hazardous or toxic materials, substances or wastes as now or hereafter designated under any Environmental Laws, including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls ("**PCBs**"), and freon and other chlorofluorocarbons. The provisions of this Section 6.4 will survive the expiration or earlier termination of this Lease.

Landlord represents to its actual knowledge that, as of the Commencement Date, the Premises do not contain Hazardous Materials in violation of any applicable Environmental Law. If the foregoing representation shall prove to be false, Tenant's sole remedies shall be to require Landlord to remediate such violation, at Landlord's expense, and, if Tenant is unable to use the Premises as a result of such violation, to abate Monthly Basic Rent and Operating Expenses pursuant to Section 16.4, provided, however that the Eligibility Period shall not apply with respect to such abatement.

7. **Payments and Notices**. All rent and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated in Section 1.1 of the Summary, or to such other persons and/or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery (including delivery by nationally recognized overnight courier or express mailing service), facsimile transmission sent by a machine capable of confirming transmission receipt, with a hard copy of such notice delivered no later than one (1) business day after facsimile transmission by another method specified in this Section 7, or by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at the address(es) designated in Section 1.2 of the Summary, or to Landlord at the address designated in Section 1.1 of the Summary. Either party may, by prior written notice to the other, specify a different address for notice purposes. Notice given in the foregoing manner shall be deemed given (i) upon confirmed transmission if sent by facsimile transmission, provided such transmission is prior to 5:00 p.m. on a business day (if such transmission is after 5:00 p.m. on a business day or is on a non-business day, such notice will be deemed given on the following business day), (ii) when actually received or refused by the party to whom sent if delivered by a carrier or personally served or (iii) if mailed, on the day of actual delivery or refusal as shown by the certified mail return receipt or the expiration of three (3) business days after the day of mailing, whichever first occurs. For purposes of this Section 7, a "**business day**" is Monday through Friday, excluding holidays observed by the United States Postal Service.

8. **Brokers**. Landlord has entered into an agreement with the real estate broker specified in Section 1.13 of the Summary as representing Landlord ("**Landlord's Broker** "), and Landlord shall pay any commissions or fees that are payable to Landlord's Broker with respect to this Lease in accordance with the provisions of a separate commission contract. Landlord shall have no further or separate obligation for payment of commissions or fees to any other real estate broker, finder or intermediary. Tenant represents that it has not had any dealings with any real estate broker, finder or intermediary with respect to this Lease, other than Landlord's Broker and the broker specified in Section 1.13 of the Summary as representing Tenant ("**Tenant's Broker**"). Any commissions or fees payable to Tenant's Broker with respect to this Lease shall be paid exclusively by Landlord's Broker. Each party represents and warrants to the other, that, to its knowledge, no other broker, agent or finder (a) negotiated or was instrumental in negotiating or consummating this Lease on its behalf, and (b) is or might be entitled to a commission or compensation in connection with this Lease. Tenant shall indemnify, protect, defend (by counsel reasonably approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any breach by Tenant of the foregoing representation, including, without limitation, any claims that may be asserted against Landlord by any broker, agent or finder undisclosed by Tenant herein. Landlord shall indemnify, protect, defend (by counsel reasonably approved in writing by Tenant) and hold Tenant harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any breach by Landlord of the foregoing representation, including, without limitation, any claims that may be asserted against Tenant by any broker, agent or finder undisclosed by Landlord herein. The foregoing indemnities shall survive the expiration or earlier termination of this Lease.

9. **Surrender; Holding Over**.

9.1 **Surrender of Premises**. Upon the expiration or sooner termination of this Lease, Tenant shall surrender all keys for the Premises to Landlord, and exclusive possession of the Premises to Landlord broom clean and in a condition customary for office space leased for a similar term and in good repair, reasonable wear and tear and casualty excepted, with all of Tenant's personal property (and those items, if any, of Tenant Improvements and Tenant Changes identified by Landlord pursuant to Section 12.2 below) removed therefrom and all damage caused by such removal repaired, as required pursuant to Sections 12.2 and 12.3 below. If, for any reason,

Tenant fails to surrender the Premises on the expiration or earlier termination of this Lease (including upon the expiration of any subsequent month-to-month tenancy consented to by Landlord pursuant to Section 9.2 below), with such removal and repair obligations completed, then, in addition to the provisions of Section 9.3 below and Landlord's rights and remedies under Section 12.4 and the other provisions of this Lease, Tenant shall indemnify, protect, defend (by counsel approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from such failure to surrender, including, without limitation, any claim made by any succeeding tenant based thereon. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

9.2 **Hold Over With Landlord's Consent**. If, with or without Landlord's express written consent, Tenant remains in possession of the Premises after the expiration or earlier termination of the Lease Term, Tenant shall become a tenant from month-to-month upon the terms and conditions set forth in this Lease (including Tenant's obligation to pay all Excess Expenses and any other additional rent under this Lease), but at a Monthly Basic Rent equal to the greater of: (a) one hundred fifty percent (150%) of the Monthly Basic Rent applicable to the Premises immediately prior to the date of such expiration or earlier termination; or (b) one hundred fifty percent (150%) of the prevailing market rate (as reasonably determined by Landlord) for the Premises in effect on the date of such expiration or earlier termination. Tenant shall pay an entire month's Monthly Basic Rent calculated in accordance with this Section 9.2 for any portion of a month it holds over and remains in possession of the Premises pursuant to this Section 9.2. This Section 9.2 shall not be construed to create any expressed or implied right to holdover beyond the expiration of the Lease Term or any extension thereof.

9.3 **No Effect on Landlord's Rights**. The foregoing provisions of this Section 9 are in addition to, and do not affect, Landlord's right of re-entry or any other rights of Landlord hereunder or otherwise provided by law or equity.

10. **Taxes on Tenant's Property**. Tenant shall be liable for, and shall pay before delinquency, all taxes and assessments (real and personal) levied against (a) any personal property or trade fixtures placed by Tenant in or about the Premises (including any increase in the assessed value of the Premises based upon the value of any such personal property or trade fixtures); and (b) any Tenant Improvements or alterations in the Premises (whether installed and/or paid for by Landlord or Tenant) to the extent such items are assessed at a valuation higher than the valuation at which tenant improvements conforming to the Building's standard tenant improvements are assessed. If any such taxes or assessments are levied against Landlord or Landlord's property, Landlord may, after written notice to Tenant, pay such taxes and assessments, and Tenant shall reimburse Landlord therefor within thirty (30) days after demand by Landlord.

11. **Condition of Premises; Repairs**.

11.1 **Condition of Premises**. Tenant acknowledges and agrees that it has had an opportunity to inspect the Premises, the Building, the Site and the Project, and finds the same in satisfactory condition and repair. Tenant accepts the Premises, the Building, the Site and the Project in their "then as-is" condition as of the date hereof, subject to Landlord's obligations hereunder. Tenant also acknowledges that, except as otherwise expressly set forth in this Lease, neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises, the Building, the Site or the Project or their condition, or with respect to the suitability thereof for the conduct of Tenant's business. The taking of possession of the Premises by Tenant shall conclusively establish that the Project, the Site, the Premises, the Tenant Improvements therein, the Building and the Common Areas were at such time complete and in good, sanitary and satisfactory condition and repair with all work required to be performed by Landlord, if any, pursuant to Exhibit "C" completed and without any obligation on Landlord's part to make any alterations, upgrades or improvements thereto, subject to Landlord's obligations hereunder (including, but not limited to, Landlord's obligations in Section 6 of Exhibit "C"); provided, however, in the event that, as of the date of Substantial Completion, (A) the Base, Shell and Core of the Building (as defined in Section 1 of Exhibit "C"), in its condition existing as of such date without regard to any of the Tenant Improvements, alterations or other improvements to be constructed or installed by or on behalf of Tenant in the Premises or Tenant's specific use of the Premises, but based on an intended occupancy for general office, does not comply with all applicable laws in effect as of the Commencement Date (including, without limitation, any Environmental Law or the Americans with Disabilities Act of 1990), or (B) the Base, Shell and Core or Tenant Improvements contain latent defects (not caused by Tenant's acts or omissions), then Landlord shall be responsible, at its sole cost and expense which shall not be included in Operating Expenses (except as otherwise permitted in (and not excluded in) Section 4 hereof), for promptly correcting any such non-compliance to the extent and as and when required by applicable laws, and/or correcting any such latent defects as soon as reasonably possible after receiving notice thereof from Tenant.

11.2 **Landlord's Repair Obligations**. Subject to Sections 4.4, 18 and 19 of this Lease, Landlord shall, as part of the Operating Expenses, repair, maintain and replace, as necessary (a) the Building shell and other structural portions of the Building (including the roof and foundations), (b) the basic heating, ventilating, air conditioning ("**HVAC**"), sprinkler, mechanical, plumbing and electrical systems within the Building core and standard conduits, connections and distribution systems thereof within the Premises (but not any above standard improvements installed in the Premises such as, for example, but by way of limitation, custom lighting, special or supplementary HVAC or plumbing systems or distribution extensions, special or supplemental electrical panels or distribution systems, or kitchen or restroom facilities and appliances to the extent such facilities and appliances are intended for the exclusive use of Tenant), and (c) the Common Areas and exterior glass (including exterior plate glass); provided, however, to the extent such maintenance, repairs or replacements are required as a result of any act, neglect, fault or omission of Tenant or any of Tenant's agents, employees, contractors, licensees or invitees, Tenant shall pay to Landlord, as additional rent, the costs of such maintenance, repairs and replacements. Landlord shall not be liable to Tenant for failure to perform any such maintenance, repairs or replacements, unless Landlord shall fail to make such maintenance, repairs or replacements and such failure shall continue for

an unreasonable time following written notice from Tenant to Landlord of the need therefor. Notwithstanding the foregoing, Landlord shall be responsible, as part of the Operating Expenses for repairing, maintaining and replacing, as necessary, the plumbing in the kitchen and restroom facilities, provided, however, that if such work is necessary due to the neglect, fault or omission of Tenant or any of Tenant's agents, employees, contractors, licensees or invitees, such work shall be performed at Tenant's expense and shall not be included in Operating Expenses. Without limiting the foregoing, Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect (including the provisions of California Civil Code Section 1942 and any successive sections or statutes of a similar nature). Except as otherwise expressly provided in this Lease, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring.

11.3 **Tenant's Repair Obligations**. Except for Landlord's obligations specifically set forth in Sections 11.1, 11.2, 16.1, 18.1 and 19.2 hereof, Tenant shall at all times and at Tenant's sole cost and expense, keep, maintain, clean, repair, preserve and replace, as necessary, the Premises and all parts thereof including, without limitation, all Tenant Improvements, Tenant Changes, utility meters, all special or supplemental HVAC systems, electrical systems, pipes and conduits, located within the Premises, all fixtures, furniture and equipment, Tenant's storefront (if any), Tenant's signs, locks, closing devices, security devices, windows, window sashes, casements and frames, floors and floor coverings, shelving, kitchen and/or restroom facilities and appliances located within the Premises to the extent such facilities and appliances are intended for the exclusive use of Tenant, if any, custom lighting, and any alterations, additions and other property located within the Premises in good condition and repair, reasonable wear and tear and casualty excepted. Tenant shall replace, at its expense, any and all interior glass in the Premises which is damaged or broken from any cause whatsoever except due to the gross negligence or willful misconduct of Landlord, its agents, contractors or employees and not covered by insurance maintained, or required to be maintained, by Tenant hereunder. Such maintenance and repairs shall be performed with due diligence, lien-free and in a good and workmanlike manner, by licensed contractor(s) which are selected by Tenant and approved by Landlord, which approval Landlord shall not unreasonably withhold or delay. Except as otherwise expressly provided in this Lease, Landlord shall have no obligation to alter, remodel, improve, repair, renovate, redecorate or paint all or any part of the Premises.

12. **Alterations**.

12.1 **Tenant Changes; Conditions**. After installation of the initial Tenant Improvements for the Premises pursuant to Exhibit "C", Tenant may, at its sole cost and expense, make alterations, additions, improvements and decorations to the Premises (collectively, "**Tenant Changes**") subject to and upon the following terms and conditions:

(a) Notwithstanding any provision in this Section 12 to the contrary, Tenant is absolutely prohibited from making any alterations, additions, improvements or decorations which: (i) affect any area outside the Premises; (ii) affect the Building's structure, equipment, services or systems, or the proper functioning thereof, or Landlord's access thereto; (iii) affect the outside appearance, character or use of the Project, the Building or the Common Areas; (iv) weaken or impair the structural strength of the Building; (v) in the reasonable opinion of Landlord, lessen the value of the Project or Building; or (vi) will violate or require a change in any occupancy certificate applicable to the Premises.

(b) Before proceeding with any Tenant Change which is not otherwise prohibited in Section 12.1(a) above, Tenant must first obtain Landlord's written approval thereof (including approval of all plans, specifications and working drawings for such Tenant Change), which approval shall not be unreasonably withheld. However, Landlord's prior approval shall not be required for any Tenant Change which satisfies the following conditions (hereinafter a "**Pre-Approved Change**"): (i) the costs of such Tenant Change does not exceed Ten Thousand Dollars ($10,000) individually; (ii) the costs of such Tenant Change when aggregated with the costs of all other Tenant Changes made by Tenant during the Term of this Lease do not exceed Thirty Thousand Dollars ($30,000); (iii) Tenant delivers to Landlord final plans, specifications and working drawings for such Tenant Change at least ten (10) days prior to commencement of the work thereof; (iv) the Tenant Change is not prohibited in Section 12.1(a) above; (v) the Tenant Change does not require a building permit; and (vi) Tenant and such Tenant Change otherwise satisfy all other conditions set forth in this Section 12.1.

(c) After Landlord has approved the Tenant Changes and the plans, specifications and working drawings therefor (or is deemed to have approved the Pre-Approved Changes as set forth in Section 12.1(b) above), Tenant shall: (i) enter into an agreement for the performance of such Tenant Changes with such contractors and subcontractors selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed; (ii) before proceeding with any Tenant Change (including any Pre-Approved Change), provide Landlord with ten (10) days' prior written notice thereof; and (iii) pay to Landlord, within ten (10) days after written demand, the costs of any increased insurance premiums incurred by Landlord to include such Tenant Changes in the fire and extended coverage insurance obtained by Landlord pursuant to Section 21 below, if Landlord elects in writing to insure such Tenant Changes. Landlord shall not be required to include the Tenant Changes under such insurance. If such Tenant Changes are not included in Landlord's insurance, Tenant shall insure the Tenant Changes under its casualty insurance pursuant to Section 20.1(a) below. In addition, before proceeding with any Tenant Change, Tenant's contractors shall obtain, on behalf of Tenant and at Tenant's sole cost and expense: (A) all necessary governmental permits and approvals for the commencement and completion of such Tenant Change; and (B) security reasonably satisfactory to Landlord for such Tenant Change. Landlord's approval of any contractor(s) and subcontractor(s) of Tenant shall not release Tenant or any such contractor(s) and/or subcontractor(s) from any liability for any conduct or acts of such contractor(s) and/or subcontractor(s).

(d) Tenant shall pay to Landlord, as additional rent, the reasonable costs of Landlord's engineers and other consultants (but not Landlord's on-site management personnel) for review of all plans, specifications and working drawings for the Tenant Changes and for the incorporation of such Tenant Changes in the Landlord's master Building drawings, within ten (10) business days after Tenant's receipt of invoices either from Landlord or such consultants together with (in any event) an administrative charge of five percent (5%) of the actual costs of such work.

(e) All Tenant Changes shall be performed: (i) in accordance with the approved plans, specifications and working drawings; (ii) lien-free and in a first-class workmanlike manner; (iii) in compliance with all laws, rules, regulations of all governmental agencies and authorities including, without limitation, the provisions of Title III of the Americans with Disabilities Act of 1990; (iv) in such a manner so as not to interfere with the occupancy of any other tenant in the Project or Building, nor impose any additional expense upon nor delay Landlord in the maintenance and operation of the Project or Building; and (v) at such times, in such manner and subject to such rules and regulations as Landlord may from time to time reasonably designate.

(f) Throughout the performance of the Tenant Changes, Tenant shall obtain, or cause its contractors to obtain, workers compensation insurance and general liability insurance in compliance with the provisions of Section 20 of this Lease.

12.2 **Removal of Tenant Changes and Tenant Improvements**. All Tenant Changes and the initial Tenant Improvements in the Premises (whether installed or paid for by Landlord or Tenant), shall become the property of Landlord and shall remain upon and be surrendered with the Premises at the end of the Term of this Lease; provided, however, Landlord may, by written notice delivered to Tenant (i) at the same time as Landlord's consent to such Tenant Change is given (if consent is required), (ii) within thirty (30) days following notice of any Tenant Change for which Landlord's consent is not required or (iii) with respect to any Tenant Improvements, at the same time as Landlord approves the Final Space Plan described in Section 3.2 of Exhibit "C" attached hereto, require Tenant to remove such Tenant Change or Tenant Improvement, as applicable, at the end of the Term of this Lease. If Landlord requires Tenant to remove any such items as described above, Tenant shall, at its sole cost, remove the identified items on or before the expiration or sooner termination of this Lease and repair any damage to the Premises caused by such removal (or, at Landlord's option, shall pay to Landlord all of Landlord's costs of such removal and repair).

12.3 **Removal of Personal Property**. All articles of personal property owned by Tenant or installed by Tenant at its expense in the Premises (including business and trade fixtures, furniture and moveable partitions) shall be, and remain, the property of Tenant, and shall be removed by Tenant from the Premises, at Tenant's sole cost and expense, on or before the expiration or sooner termination of this Lease. Tenant shall promptly repair any damage caused by such removal.

12.4 **Tenant's Failure to Remove**. If Tenant fails to remove by the expiration or sooner termination of this Lease all of its personal property, or any items of Tenant Improvements or Tenant Changes identified by Landlord for removal pursuant to Section 12.2 above, or if Tenant fails to comply with its obligations under Section 12.3, Landlord may, at its option, treat such failure as a hold over pursuant to Section 9.3 above, and/or may (without liability to Tenant for loss thereof, at Tenant's sole cost and in addition to Landlord's other rights and remedies under this Lease, at law or in equity: (a) remove and store such items in accordance with applicable law; and/or (b) upon ten (10) days' prior notice to Tenant, sell all or any such items at private or public sale for such price as Landlord may obtain as permitted under applicable law. Landlord shall apply the proceeds of any such sale to any amounts due to Landlord under this Lease from Tenant (including Landlord's attorneys' fees and other costs incurred in the removal, storage and/or sale of such items), with any remainder to be paid to Tenant.

13. **Liens**. Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against all or any part of the Project, the Site, the Building or the Premises, nor against Tenant's leasehold interest in the Premises, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Tenant or any other act or omission of Tenant or any Tenant Parties. Tenant shall, at Landlord's request, provide Landlord with enforceable, unconditional and final lien releases (and other evidence reasonably requested by Landlord to demonstrate protection from liens) from all persons furnishing labor and/or materials with respect to the Premises. Landlord shall have the right at all reasonable times to post on the Premises and record any notices of non-responsibility which it deems necessary for protection from such liens. If any such liens are filed, Tenant shall, at its sole cost, cause such lien to be released of record or bonded to Landlord's reasonable satisfaction within ten (10) business days of Tenant's obtaining knowledge of such a lien, so that the lien no longer affects title to the Project, the Site, the Building or the Premises. If Tenant fails to cause such lien to be so released or bonded, Landlord may, without waiving its rights and remedies based on such breach, and without releasing Tenant from any of its obligations, cause such lien to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord within five (5) days after receipt of invoice from Landlord, any sum paid by Landlord to remove such liens, together with interest at the Interest Rate from the date of such payment by Landlord. NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER TENANT, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE PREMISES.

14. **Assignment and Subletting**.

14.1 **Restriction on Transfer**. Except as otherwise expressly provided in this Section 14, Tenant shall not, without the prior written consent of Landlord, which consent Landlord will not unreasonably withhold, condition or delay, assign this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use or occupancy

of the Premises by any party other than Tenant (any such assignment, encumbrance, sublease, license or the like shall sometimes be referred to as a "**Transfer**"). In no event may Tenant encumber or hypothecate this Lease. Any Transfer without Landlord's consent (except for a Permitted Transfer pursuant to Section 14.2 below) shall constitute a default by Tenant under this Lease, without the benefit of any additional notice or cure period specified in Section 23.1 below, and in addition to all of Landlord's other remedies at law, in equity or under this Lease, such Transfer shall be voidable at Landlord's election. In addition, this Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. For purposes of this Section 14, other than with respect to a Permitted Transfer under Section 14.2 and transfers of stock of Tenant if Tenant is a publicly-held corporation and such stock is transferred publicly over a recognized security exchange or over-the-counter market, if Tenant is a corporation, partnership or other entity, any direct or indirect transfer, assignment, encumbrance or hypothecation of fifty percent (50%) or more (individually or in the aggregate) of any stock or other ownership interest in such entity, and/or any transfer, assignment, hypothecation or encumbrance of any controlling ownership or voting interest in such entity, shall be deemed a Transfer and shall be subject to all of the restrictions and provisions contained in this Section 14.

14.2 **Permitted Controlled Transfers**. Notwithstanding the provisions of Section 14.1 above to the contrary, Tenant may assign this Lease or sublet the Premises or any portion thereof (herein, a "**Permitted Transfer**"), without Landlord's consent and without extending any sublease or termination option to Landlord, to any entity which controls, is controlled by or is under common control with Tenant, or to any entity resulting from a merger or consolidation with Tenant, or to any person or entity which acquires substantially all the assets of Tenant's business as a going concern, provided that: (a) at least twenty (20) days prior to such assignment or sublease, Tenant delivers to Landlord the financial statements and other financial and background information of the assignee or sublessee described in Section 14.3 below; (b) if an assignment, the assignee assumes, in full, the obligations of Tenant under this Lease (or if a sublease, the sublessee of a portion of the Premises or Term assumes, in full, the obligations of Tenant with respect to such portion); (c) if an assignment, the financial net worth of the assignee or sublessee equals or exceeds that of Tenant as of the date of execution of this Lease; (d) Tenant remains fully liable under this Lease; (e) the use of the Premises under Section 6 remains unchanged; and (f) such transaction is not entered into as a subterfuge to avoid the restrictions and provisions of this Lease.

14.3 **Landlord's Options**. If at any time or from time to time during the Term Tenant desires to effect a Transfer (other than a Permitted Transfer), Tenant shall deliver to Landlord, at least thirty (30) days prior to the date Tenant desires the Transfer to be effective ("**Transfer Date**"), written notice ("**Transfer Notice**") setting forth the Transfer Date, the terms and provisions of the proposed Transfer, the identity of the proposed assignee, sublessee or other transferee (sometimes referred to hereinafter as a "**Transferee**"), and any ownership or commercial relationship between Tenant and the proposed Transferee. Tenant shall also deliver to Landlord with the Transfer Notice, a current financial statement and financial statements for the preceding two (2) years of the Transferee which (i) with respect to any assignee or sublessee proposing to sublease more than one half (1/2) of the rentable square footage in the Premises, have been certified or audited by a reputable independent accounting firm acceptable to Landlord, or (ii) with respect to any sublessee proposing to sublease less than one half (1/2) of the rentable square footage of the Premises, have been certified or audited by a reputable independent accounting firm acceptable to Landlord if such financial statements are available, otherwise which have been certified by such sublessee's chief financial officer or equivalent officer, and in any event such other information concerning the business background and financial condition of the proposed Transferee as Landlord may reasonably request. Except with respect to a Permitted Transfer, Landlord shall have the option, exercisable by written notice delivered to Tenant within thirty (30) days after Landlord's receipt of the Transfer Notice, such financial statements and other information requested by Landlord, either to:

(a) approve or disapprove such Transfer, which approval shall not be unreasonably withheld, conditioned or delayed; or

(b) sublet from Tenant that portion of the Premises which Tenant has requested to sublease at the rental and on the other terms set forth in this Lease prorated for the portion of the Premises to be sublet and for the term set forth in Tenant's Notice, or, in the case of an assignment or encumbrance, terminate this Lease with respect to the entire Premises and recapture the Premises, which termination shall be effective as set forth in Landlord's notice.

If Landlord exercises its option to sublease any such space from Tenant following Tenant's request for Landlord's approval of the proposed sublease of such space, (i) Landlord shall be responsible for the construction of any partitions which Landlord reasonably deems necessary to separate such space from the remainder of the Premises, and (ii) Landlord and any sub-subtenant or assignee of Landlord with respect to such subleased space shall have the right to use in common with Tenant all lavatories, corridors and lobbies which are within the Premises and which are reasonably required for the use of such space. Landlord may sub-sublease such space or lease the Premises to any person, including, without limitation, Tenant's proposed sublessee or assignee.

14.4 **Additional Conditions; Excess Rent**. If for a Transfer other than a Permitted Transfer Landlord does not exercise its sublease or termination option and instead approves of the proposed Transfer pursuant to Section 14.3(a) above, Tenant may enter into the proposed Transfer with such proposed Transferee subject to the following further conditions:

(a) the Transfer shall be on the same terms set forth in the Transfer Notice delivered to Landlord (if the terms have changed, Tenant must submit a revised Transfer Notice to Landlord and Landlord shall have another twenty (20) days after receipt thereof to make the election in Sections 14.3(a) or 14.3(b) above);

(b) no Transfer shall be valid and no Transferee shall take possession of the Premises until an executed counterpart of the assignment, sublease or other instrument affecting the Transfer has been delivered to Landlord pursuant to which the Transferee shall expressly assume all of Tenant's obligations under this Lease (or with respect to a sublease of a portion of the Premises or for a portion of the Term, all of Tenant's obligations applicable to such portion) and the Transferee shall have executed Landlord's standard form of consent;

(c) no Transferee shall have a further right to assign, encumber or sublet, except on the terms herein contained; and

(d) fifty percent (50%) of any rent or other economic consideration received by Tenant as a result of such Transfer which exceeds, in the aggregate, (i) the total rent which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased, but excluding any amortized tenant improvement costs, if any), (ii) any reasonable brokerage commissions, attorneys' fees, and moving costs actually paid by Tenant in connection with such Transfer, and (iii) the actual, reasonable, out-of-pocket costs of any improvements to the Premises (subject to Section 12 of this Lease) and/or any space planning, architectural or design fees or marketing costs incurred by Tenant in connection with such Transfer, provided that such costs shall be amortized over the remaining Lease Term if such Transfer is an assignment or, if such Transfer is a sublease, over the term of such sublease, shall be paid to Landlord within ten (10) days after receipt thereof as additional rental under this Lease, without affecting or reducing any other obligations of Tenant hereunder. Notwithstanding the foregoing, if and to the extent Tenant subleases any portion of the Premises in accordance with this Section 14 during the period that Monthly Basic Rent hereunder is abated with respect to 8,000 rentable square feet of the 12481 Premises as set forth in Section 1.8 of the Summary (i.e., the period between the Commencement Date and January 31, 2007), the excess rent payable during such period to Landlord pursuant to this paragraph shall be calculated based on the Monthly Basic Rent payable immediately following such period for the full rentable square footage of the 12481 Premises.

14.5 **Reasonable Disapproval**. Landlord and Tenant hereby acknowledge that Landlord's approval of any proposed Transfer (other than a Permitted Transfer) pursuant to Section 14.3(a) shall be deemed reasonably withheld if based upon any reasonable factor, including, without limitation, any or all of the following factors: (a) the proposed Transfer would result in more than two subleases of portions of the Premises being in effect at any one time during the Term; (b) the net effective rent payable by the Transferee (adjusted on a rentable square foot basis) is less than 82% of the net effective rent then being paid by Tenant (unless competing space of comparable size, as reasonably determined by Landlord, is then available for lease in the Building, in which case Landlord's approval shall be deemed reasonably withheld if the net effective rent payable by the Transferee (adjusted on a rentable square foot basis) is less than the net effective rent being quoted by Landlord for new leases in the Building for comparable size space for a comparable period of time; (c) the proposed Transferee is an existing tenant of the Project or is negotiating with Landlord (or has negotiated with Landlord in the last six (6) months) for space in the Project; (d) the proposed Transferee is a governmental entity; (e) the portion of the Premises to be sublet or assigned is irregular in shape with inadequate means of ingress and egress; (f) the use of the Premises by the Transferee (i) is not permitted by the use provisions in Section 6 hereof, or (ii) violates any exclusive use granted by Landlord to another tenant in the Building; (g) the Transfer would likely result in significant increase in the use of the parking areas or Common Areas by the Transferee's employees or visitors, and/or significantly increase the demand upon utilities and services to be provided by Landlord to the Premises; (h) the Transferee does not have the financial capability to fulfill the obligations imposed by the Transfer; or (i) the Transferee is not in Landlord's reasonable opinion of reputable or good character or consistent with Landlord's desired tenant mix. Notwithstanding any contrary provision of this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent to a proposed Transfer or otherwise has breached its obligations under this Section 14, Tenant's and such Transferee's only remedy shall be to seek a declaratory judgment and/or injunctive relief, and Tenant, on behalf of itself and, to the extent permitted by law, such proposed Transferee waives all other remedies against Landlord, including, without limitation, the right to seek monetary damages or to terminate this Lease. Landlord and Tenant hereby acknowledge that Tenant intends to sublease a portion of the 12481 Premises consisting of no more than 8,000 rentable square feet commencing on or near the Commencement Date, which sublease (the "**Initial Sublease**") shall be subject to the terms and conditions of this Section 14 and any other provision of this Lease relating to subleases and transfers. Notwithstanding clause (b) of this Section 14.5, however, but subject to the other provisions of this Section 14.5, Landlord's consent to such Initial Sublease shall be deemed reasonably withheld if the net effective rent payable by the sublessee under such Initial Sublease is less than 82% of the net effective rent being paid by Tenant at the time such Initial Sublease is executed, whether or not competing space (as described in clause (b)) is then available for lease in the Building.

14.6 **No Release**. No Transfer shall release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. Landlord may require that, during any period of default (beyond applicable notice and cure periods) by Tenant, any Transferee remit directly to Landlord on a monthly basis, all monies due Tenant by said Transferee, and each sublease shall provide that if Landlord gives said sublessee written notice that Tenant is in default under this Lease, said sublessee will thereafter make all payments due under the sublease directly to or as directed by Landlord, which payments will be credited against any payments due under this Lease. Tenant hereby irrevocably and unconditionally assigns to Landlord all rents and other sums payable under any sublease of the Premises; provided, however, that Landlord hereby grants Tenant a license to collect all such rents and other sums so long as Tenant is not in default under this Lease. Tenant shall, within ten (10) days after the execution and delivery of any assignment or sublease, deliver a duplicate original copy there of to Landlord. However, the acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent by Landlord to one Transfer shall not be deemed consent to any subsequent Transfer. In the event of default by any Transferee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against

such Transferee or successor. Landlord may consent to subsequent assignments of the Lease or sublettings or amendments or modifications to the Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and any such actions shall not relieve Tenant of liability under this Lease.

14.7 **Administrative and Attorneys' Fees**. If Tenant effects a Transfer or requests the consent of Landlord to any Transfer, then Tenant shall, upon demand, pay any reasonable attorneys' and paralegal fees and costs (not to exceed $2,000) incurred by Landlord in connection with such Transfer or request for consent (whether attributable to Landlord's in-house attorneys or paralegals or otherwise). Acceptance of the reimbursement of Landlord's attorneys' and paralegal fees shall in no event obligate Landlord to consent to any proposed Transfer.

14.8 **Material Inducement**. Tenant understands, acknowledges and agrees that (a) Landlord's option to sublease from Tenant any space which Tenant proposes to sublease or terminate this Lease upon any proposed assignment or encumbrance of this Lease by Tenant as provided in Section 14.3(b) above rather than approve the proposed sublease, assignment or encumbrance, and (b) Landlord's right to receive any excess consideration paid by a Transferee in connection with an approved Transfer as provided in Section 14.4(d) above, are a material inducement for Landlord's agreement to lease the Premises to Tenant upon the terms and conditions herein set forth.

15. **Entry by Landlord**. Landlord and its employees and agents shall at all reasonable times have the right to enter the Premises to inspect the same, to supply janitorial service and any other service required to be provided by Landlord to Tenant under this Lease, to exhibit the Premises to prospective lenders or purchasers (or during the last six (6) months of the Term, to prospective tenants), to post notices of non-responsibility, and/or to alter, improve or repair the Premises or any other portion of the Building or Project, all without being deemed guilty of or liable for any breach of Landlord's covenant of quiet enjoyment or any eviction of Tenant, and without abatement of rent. In exercising such entry rights, Landlord shall use good faith, commercially reasonable efforts to comply with Tenant's reasonable security and confidentiality requirements (which may include having such person escorted by an employee of Tenant and/or having such person execute Tenant's non-disclosure/confidentiality agreement) and to minimize, as reasonably practicable, the interference with Tenant's business, and shall provide Tenant with at least 24 hours' advance written notice of such entry (except in emergency situations and for scheduled services). For each of the foregoing purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults, secure storage rooms, office furnishings (including file cabinets and document storage systems) and safes, and Landlord shall have the means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any of said means or otherwise shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, or grounds for any abatement or reduction of rent and Landlord shall not have any liability to Tenant for any damages or losses on account of any such entry by Landlord except, subject to the provisions of Section 22.1, to the extent of Landlord's gross negligence or willful misconduct.

16. **Utilities and Services**.

16.1 **Standard Utilities and Services**. Subject to the terms and conditions of this Lease and the obligations of Tenant as set forth hereinbelow, and so long as the Lease has not been terminated due to an uncured default by Tenant under the Lease, Landlord shall furnish or cause to be furnished to the Premises the following utilities and services, the costs of which shall be included in Operating Expenses, unless otherwise specified below:

(a) Landlord shall make the elevator of the Building available for Tenant's non-exclusive use, twenty-four (24) hours per day, seven (7) days per week.

(b) Landlord shall furnish during the Business Hours for the Building specified in Section 1.17 of the Summary, heating, ventilation and air conditioning ("**HVAC**") for the Premises as required in Landlord's judgment for the comfortable and normal occupancy of the Premises. The cost of maintenance and service calls to adjust and regulate the HVAC system shall be charged to Tenant if the need for maintenance work results from either Tenant's adjustment of room thermostats or Tenant's failure to comply with its obligations under this Section 16, including keeping window coverings closed as needed. Such work shall be charged at hourly rates equal to then-current journeyman's wages for HVAC mechanics. If Tenant desires HVAC at any time other than during the Business Hours for the Building, Landlord shall provide such "after-hours" usage after advance reasonable request by Tenant, and Tenant shall pay to Landlord, as additional rent (and not as part of the Operating Expenses) the actual cost, as fairly determined by Landlord, of such after-hours usage (as well as the cost of any HVAC used by Tenant in excess of standard usage for the Building), including any minimum hour charges for after-hours requests and any special start-up costs for after-hours services which requires a special start-up (such as late evenings, weekends and holidays) together with an administrative fee of ten percent (10%) of the cost of such after-hours usage, which administrative fee shall also be payable by Tenant to Landlord for the cost of any other services provided by Landlord to Tenant that are not otherwise required to be provided by Landlord to Tenant hereunder. Landlord's "**cost**" for such after-hours usage shall be based on Landlord's actual direct utility costs, plus Landlord's other direct costs. Landlord agrees that such hourly rate shall be established at an amount which will reimburse Landlord for the actual cost to Landlord to supply the service, but without a profit to Landlord.

(c) Landlord shall furnish janitorial services to the Premises five (5) days per week pursuant to janitorial and cleaning specifications as may be adopted by Landlord from time to time. No person(s) other than those persons approved by Landlord shall be permitted to enter the Premises for such purposes. Janitorial service shall include ordinary dusting and cleaning by the janitor assigned to do such work and shall not include cleaning of carpets or rugs, except normal vacuuming, or moving of furniture, interior window cleaning, coffee or eating area cleaning and other special services. Such additional services may be rendered by Landlord pursuant to written agreement

with Tenant as to the extent of such services and the payment of the cost thereof. Janitorial service will not be furnished to rooms that are occupied after 7:30 p.m. or to rooms which are locked unless a key is furnished to the Landlord for use by the janitorial contractor. Window cleaning shall be done only by Landlord, at such time and frequency as determined by Landlord in Landlord's reasonable discretion, but otherwise consistent with other first-class office buildings in the Carmel Valley area of San Diego. Tenant shall pay to Landlord the cost of removal of any of Tenant's refuse and rubbish to the extent that the same exceeds the refuse and rubbish usually attendant upon the use of the Premises as offices.

(d) Landlord may, in Landlord's sole discretion, provide security service or protection in the Building and/or the Project, in any manner deemed reasonable by Landlord at Landlord's sole discretion, from the Commencement Date throughout the Term.

(e) At Landlord's option and at Landlord's sole expense, Landlord may install water, electricity and/or HVAC meters in the Premises to measure Tenant's consumption of such utilities, including any after-hours and extraordinary usage described above.

16.2 **Tenant's Obligations**. Tenant shall control and be separately metered for the electricity, gas, water, and telephone service for the Premises or other services which are metered (collectively, the "**Electricity Utility Charges**") to the Premises, at Tenant's sole cost and expense. Tenant shall make all such payments directly to the utility provider as and when bills are rendered. Should Tenant fail to pay such amounts, Landlord shall have the right to pay the same on Tenant's behalf and Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in conjunction with such payment within ten (10) days after demand therefor. All such costs and expenses incurred by Landlord on Tenant's behalf shall be deemed additional rent payable by Tenant and collectible by Landlord as such. At no time shall use of electricity in the Premises exceed the capacity of existing feeders and risers to or wiring in the Premises. Any risers or wiring to meet Tenant's excess electrical requirements shall, upon Tenant's written request, be installed by Landlord, at Tenant's sole cost, if, in Landlord's reasonable judgment, the same are necessary and shall not (i) cause permanent damage or injury to the Project, the Building or the Premises, (ii) cause or create a dangerous or hazardous condition, (iii) entail excessive or unreasonable alterations, repairs or expenses, or (iv) interfere with or disturb other tenants or occupants of the Building. Tenant shall cooperate fully at all times with Landlord, and abide by all reasonable regulations and requirements which Landlord may prescribe for the proper functioning and protection of the Building's services and systems. Tenant shall not use any apparatus or device in, upon or about the Premises which may in any way increase the amount of services or utilities usually furnished or supplied to the Premises or other premises in the Building. In addition, except for Tenant Changes permitted under Section 12, Tenant shall not connect any conduit, pipe, apparatus or other device to the Building's water, waste or other supply lines or systems for any purpose. Except for Tenant Changes permitted under Section 12, neither Tenant nor its employees, agents, contractors, licensees or invitees shall at any time enter, adjust, tamper with, touch or otherwise in any manner affect the mechanical installations or facilities of the Building.

16.3 **Failure to Provide Services**. Landlord's failure to furnish or delay in furnishing any of the services described in Section 16.1 above when such failure is caused by all or any of the following shall not result in any liability of Landlord: (a) casualty, accident, breakage or repairs; (b) acts of terrorism, strikes, lockouts or other labor disturbances or labor disputes of any such character; (c) governmental regulation, moratorium or other governmental action; (d) inability, despite the exercise of reasonable diligence, to obtain electricity, water or fuel, including due to shortages, blackouts or any other cause; or (e) any other cause beyond Landlord's reasonable control. In addition, in the event of the failure of any said utilities or services, Tenant shall not be entitled to any abatement or reduction of rent (except as expressly provided in Sections 18.3 and 19.2 if such failure is a result of a damage or taking described therein), no eviction of Tenant shall result, and Tenant shall not be relieved from the performance of any covenant or agreement in this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services as set forth in this Section 16. In the event of any stoppage or interruption of services or utilities, Landlord shall diligently attempt to resume such services or utilities as promptly as practicable. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future law, ordinance or governmental regulation permitting the termination of this Lease due to an interruption, failure or inability to provide any services.

16.4 **Abatement of Rent When Tenant Is Prevented From Using Premises**. In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof, for five (5) consecutive business days (the "**Eligibility Period**") as a result of (i) any repair, maintenance or alteration performed by Landlord after the Commencement Date, or (ii) any failure to provide to the Premises any of the essential utilities and services required to be provided in Sections 16.1(a), 16.1(b) or 16.1(c) above, (iii) any failure to provide access to the Premises, or (iv) Landlord's exercise of its rights in Section 4.1 of this Lease, then Tenant's obligation to pay Monthly Basic Rent and Operating Expenses shall be abated or reduced, as the case may be, from and after the first (1st) day following the Eligibility Period and continuing until such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable square feet of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable square feet of the Premises; provided, however, that Tenant shall only be entitled to such abatement of rent if the matter described in clauses (i), (ii), (iii) or (iv) of this sentence is caused by Landlord's gross negligence or willful misconduct. To the extent Tenant shall be entitled to abatement of rent because of a damage or destruction pursuant to Section 18 or a taking pursuant to Section 19, then the Eligibility Period shall not be applicable

17. **Indemnification and Exculpation**.

17.1 **Tenant's Assumption of Risk and Waiver**. Except to the extent such matter is not covered by the insurance required to be maintained by Tenant under this Lease and such matter is attributable to the gross negligence or willful misconduct of Landlord, Landlord shall not be liable to Tenant, Tenant's employees, agents or invitees for: (i) any damage to property of Tenant, or of others, located in, on or about the Premises, nor for (ii) the loss of or damage to any property of Tenant or of others by theft or otherwise, (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause of whatsoever nature, or (iv) any such damage caused by other tenants or persons in the Project, occupants of adjacent property of the Project, or the public, or caused by operations in construction of any private, public or quasi-public work. Landlord shall in no event be liable to Tenant for any consequential damages or for loss of revenue or income and Tenant waives any and all claims for any such damages. Notwithstanding anything to the contrary contained in this Section 17.1, all property of Tenant, its agents, employees and invitees kept or stored on the Premises, whether leased or owned by any such parties, shall be so kept or stored at the sole risk of Tenant and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers.

17.2 **Tenant's Indemnification of Landlord**. Tenant shall be liable for, and shall indemnify, defend, protect and hold Landlord and Landlord's partners, officers, directors, employees, agents, property manager, successors and assigns (collectively, "**Landlord Indemnified Parties**") harmless from and against, any and all claims, damages, judgments, suits, causes of action, losses, liabilities and expenses, including attorneys' fees and court costs (collectively, "**Indemnified Claims**"), to the extent arising or resulting from (a) any occurrence at the Premises, unless caused by the gross negligence or willful misconduct of Landlord or its agents, employees or contractors and not covered by the insurance required to be maintained by Tenant under this Lease, (b) any act or omission of Tenant or any of Tenant's agents, employees, contractors, subtenants, assignees, licensees or invitees (collectively, "**Tenant Parties**"); (c) the use of the Premises and Common Areas and conduct of Tenant's business by Tenant or any Tenant Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any Tenant Parties, in or about the Premises, the Building or elsewhere on the Project; and/or (d) any default by Tenant of any obligations on Tenant's part to be performed under the terms of this Lease or the terms of any contract or agreement to which Tenant is a party or by which it is bound, affecting this Lease or the Premises. The foregoing indemnification shall include, but not be limited to, any injury to, or death of, any person, or any loss of, or damage to, any property on the Premises, or on adjoining sidewalks, streets or ways, or connected with the use, condition or occupancy thereof, whether or not Landlord or its mortgagee has or should have knowledge or notice of the defect or conditions causing or contributing to such injury, death, loss or damage. In case any action or proceeding is brought against Landlord or any Landlord Indemnified Parties by reason of any such Indemnified Claims, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel approved in writing by Landlord, which approval shall not be unreasonably withheld. Notwithstanding anything in this Lease to the contrary, Tenant shall in no event be liable to any Landlord Indemnified Party for any consequential or incidental damages or for loss of revenue, and Landlord, for itself waives and shall cause the other Landlord Indemnified Parties to waive, any and all claims for any such damages.

17.3 **Reciprocal Indemnity**. Notwithstanding any provisions of Lease Sections 17.1 and 17.2 to the contrary, Tenant shall not be required to indemnify and hold Landlord harmless from any Indemnified Claims to any person, property or entity resulting from the gross negligence or willful misconduct of Landlord or its agents, contractors, servants, employees or licensees in connection with Landlord's activities in the Building (except for damage to the Tenant Improvements and Tenant's personal property, fixtures, furniture and equipment in the Premises, to the extent Tenant is required to obtain the requisite insurance coverage pursuant to the Lease) or the Site. Landlord shall indemnify and hold Tenant harmless from any such Indemnified Claims (but not including any loss of business, loss of profits or other consequential damages); provided, however, to the extent any damage or repair obligation is covered by insurance obtained by Landlord as part of Operating Expenses, but is not covered by insurance obtained by Tenant, then Tenant shall be relieved of its indemnity obligation up to the amount of the insurance proceeds which Landlord is entitled to receive.

17.4 **Survival; No Release of Insurers**. The indemnification obligations under Section 17.2 and Section 17.3 shall survive the expiration or earlier termination of this Lease. The covenants, agreements and indemnification in Sections 17.1, 17.2 and 17.3 above are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant or Landlord, as applicable, pursuant to the provisions of this Lease to the extent that such policies cover the results of such acts, omissions or willful misconduct.

18. **Damage or Destruction**.

18.1 **Landlord's Rights and Obligations**. In the event the Premises or any part of the Building is damaged by fire or other casualty to an extent not exceeding twenty-five percent (25%) of the full replacement cost thereof, and Landlord's contractor estimates in a writing delivered to the parties that the damage thereto is such that the Building and/or Premises may be repaired, reconstructed or restored to substantially its condition immediately prior to such damage within two hundred seventy (270) days from the date of such casualty, and Landlord will receive insurance proceeds sufficient to cover the costs of such repairs, reconstruction and restoration (including proceeds from Tenant and/or Tenant's insurance which Tenant is required to deliver to Landlord pursuant to Section 18.2 below), then Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect. If, however, the Premises or any other part of the Building is damaged to an extent exceeding twenty-five percent (25%) of the full replacement cost thereof, or Landlord's contractor estimates that such work of repair, reconstruction and restoration will require longer than two hundred seventy (270) days to complete, or Landlord will not receive insurance proceeds (and/or proceeds

from Tenant, as applicable) sufficient to cover the costs of such repairs, reconstruction and restoration, then Landlord may elect to either:

(a) repair, reconstruct and restore the portion of the Building and Premises damaged by such casualty (including the, to the extent of insurance proceeds received from Tenant, the Tenant Improvements and the Tenant Changes), in which case this Lease shall continue in full force and effect; or

(b) terminate this Lease effective as of the date which is thirty (30) days after Tenant's receipt of Landlord's election to so terminate.

Under any of the conditions of this Section 18.1, Landlord shall give written notice to Tenant of its intention to repair or terminate within the later of sixty (60) days after the occurrence of such casualty, or fifteen (15) days after Landlord's receipt of said estimate from Landlord's contractor.

18.2 **Abatement of Rent**. In the event that as a result of any such damage, repair, reconstruction and/or restoration of the Premises or the Building, Tenant is prevented from using, and does not use, the Premises or any portion thereof, then the Monthly Basic Rent and Excess Expenses shall be abated or reduced, as the case may be, during the period that Tenant continues to be so prevented from using and does not use the Premises or portion thereof, in the proportion that the rentable square feet of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable square feet of the Premises. Notwithstanding the foregoing to the contrary, if the damage is due to the gross negligence or willful misconduct of Tenant or any Tenant Parties, there shall be no abatement of Monthly Basic Rent or Excess Expenses. Except for abatement of Monthly Basic Rent and Excess Expenses as provided hereinabove, Tenant shall not be entitled to any compensation or damages for loss of, or interference with, Tenant's business or use or access of all or any part of the Premises resulting from any such damage, repair, reconstruction or restoration.

18.3 **Inability to Complete**. Notwithstanding anything to the contrary contained in this Section 18, in the event Landlord is obligated or elects to repair, reconstruct and/or restore the damaged portion of the Building or Premises pursuant to Section 18.1 above, but is delayed from completing such repair, reconstruction and/or restoration beyond the date which is three (3) months after the date estimated by Landlord's contractor for completion thereof pursuant to Section 18.1, by reason of any causes beyond the reasonable control of Landlord (including, without limitation, delays due to Force Majeure events as defined in Section 32.15, and delays caused by Tenant or any Tenant Parties), then Landlord or Tenant may elect to terminate this Lease upon thirty (30) days' prior written notice to Tenant.

18.4 **Damage Near End of Term**. In addition to its termination rights in Sections 18.1 and 18.4 above, Landlord and Tenant shall have the right to terminate this Lease if any damage to the Building or Premises occurs during the last twelve (12) months of the Term of this Lease and Landlord's contractor estimates in a writing delivered to the parties that the repair, reconstruction or restoration of such damage cannot be completed within the earlier of (a) the scheduled expiration date of the Lease Term, or (b) one hundred twenty (120) days after the date of such casualty.

18.5 **Tenant's Termination Right**. In addition to any other right of termination which Tenant may have under this Section 18, if the Premises or the Building is damaged to an extent that Landlord's contractor estimates that such work of repair, reconstruction and restoration will require longer than two hundred seventy (270) days to complete such that Tenant can make full use of the Premises as contemplated under this Lease, then, regardless of whether Landlord elects to repair the Premises, Tenant shall have the right to terminate this Lease by notice delivered to Landlord within thirty (30) days of Tenant's receipt of the notice from Landlord described in the last sentence of Section 18.1, which termination shall be effective as of the date which is thirty (30) days after Landlord's receipt of Tenant's election to so terminate.

18.6 **Waiver of Termination Rights**. This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of any damage or destruction. Accordingly, the parties hereby waive the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4 (and any successor statutes thereof permitting the parties to terminate this Lease as a result of any damage or destruction).

19. **Eminent Domain**.

19.1 **Substantial Taking**. Subject to the provisions of Section 19.4 below in case the whole of the Premises, or such part thereof as shall substantially interfere with Tenant's use and occupancy of the Premises as reasonably determined by Landlord, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, either party shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority.

19.2 **Partial Taking; Abatement of Rent**. In the event of a taking of a portion of the Premises which does not substantially interfere with the conduct of Tenant's business, then, except as otherwise provided in the immediately following sentence, neither party shall have the right to terminate this Lease and Landlord shall thereafter proceed to make a functional unit of the remaining portion of the Premises (but only to the extent Landlord receives proceeds therefor from the condemning authority), and rent shall be abated with respect to the part of the Premises which Tenant shall be so deprived on account of such taking. Notwithstanding the immediately preceding sentence to the contrary, if any part of the Building or the Site shall be taken (whether or not such taking substantially interferes with Tenant's use of the Premises), Landlord may terminate this Lease upon thirty (30) days' prior written notice to Tenant.

19.3 **Condemnation Award**. Subject to the provisions of Section 19.4 below, in connection with any taking of the Premises or Building, Landlord shall be entitled to receive the entire amount of any award which may be made or given in such taking or condemnation, without deduction or apportionment for any estate or interest of Tenant, it being expressly understood and agreed by Tenant that no portion of any such award shall be allowed or paid to Tenant for any so-called bonus or excess value of this Lease, and such bonus or excess value shall be the sole property of Landlord. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking (including any claim for bonus or excess value of this Lease); provided, however, if any portion of the Premises is taken, Tenant shall be granted the right to recover from the condemning authority (but not from Landlord) any compensation as may be separately awarded or recoverable by Tenant for the taking of Tenant's furniture, fixtures, equipment and other personal property within the Premises and for Tenant's relocation expenses.

19.4 **Temporary Taking**. In the event of a taking of the Premises or any part thereof for temporary use, (a) this Lease shall be and remain unaffected thereby and rent shall not abate, and (b) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term, provided that if such taking shall remain in force at the expiration or earlier termination of this Lease, Tenant shall perform its obligations under Section 9 with respect to surrender of the Premises and shall pay to Landlord the portion of any award which is attributable to any period of time beyond the Term expiration date. For purpose of this Section 19.4, a temporary taking shall be defined as a taking for a period of two hundred seventy (270) days or less.

19.5 **Waiver of Termination Right**. This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of a taking. Accordingly, the parties waive the provisions of the California Code of Civil Procedure Section 1265.130 and any successor or similar statutes permitting the parties to terminate this Lease as a result of a taking.

20. **Tenant's Insurance**.

20.1 **Types of Insurance**. On or before the earlier of the Commencement Date or the date Tenant occupies all or any portion of the Premises or commences or causes to be commenced any work of any type in or on the Premises pursuant to this Lease, and continuing during the entire Term, Tenant shall obtain and keep in full force and effect, the following insurance:

(a) Special Form (fka All Risk) insurance, including fire and extended coverage, sprinkler leakage (including earthquake sprinkler leakage), vandalism, malicious mischief and earthquake and flood coverage upon property of every description and kind owned by Tenant and located in the Premises or Building, or for which Tenant is legally liable including, without limitation, furniture, equipment and any other personal property, in an amount not less then the full replacement cost thereof.

(b) Commercial general liability insurance coverage, on an occurrence basis, including personal injury, bodily injury (including wrongful death), broad form property damage, operations hazard, owner's protective coverage, contractual liability (including Tenant's indemnification obligations under this Lease, including Section 17 hereof), products and completed operations liability, and owned/non-owned auto liability, with an initial combined single limit of liability of not less than Three Million Dollars ($3,000,000.00). The limits of liability of such commercial general liability insurance shall be increased every five (5) years during the Term of this Lease to an amount reasonably required by Landlord in an amount consistent with other first class office projects in the Carmel Valley area of San Diego.

(c) Worker's compensation and employer's liability insurance, with limits no less than One Million Dollars ($1,000,000.00) per occurrence, covering all persons employed in connection with any work done on or about the Premises for which claims for death or bodily injury could be asserted against Landlord, Tenant or the Premises.

(d) Loss of income, extra expense and business interruption insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises, Tenant's parking areas or to the Building as a result of such perils.

(e) Any other form or forms of insurance as Tenant or Landlords of comparable buildings or the mortgagees of Landlord may reasonably require from time to time, in form, amounts and for insurance risks against which a prudent tenant would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

20.2 **Requirements**. Each policy required to be obtained by Tenant hereunder shall: (a) be issued by insurers which are approved by Landlord and/or Landlord's mortgagees and are authorized to do business in the state in which the Building is located and are rated not less than financial class X, and not less than policyholder rating A in the most recent version of Best's Key Rating Guide (provided that, in any event, the same insurance company shall provide the coverages described in Sections 20.1(a) and 20.1(d) above); (b) be in form reasonably satisfactory from time to time to Landlord; (c) name Tenant as named insured thereunder and shall name Landlord and, at Landlord's request, Landlord's mortgagees, ground lessors (if any) and managers of which Tenant has been informed in writing, as additional insureds thereunder, all as their respective interests may appear; (d) not have a deductible amount exceeding Ten Thousand Dollars ($10,000.00), which amount shall be deemed self-insured with full waiver of subrogation); (e) specifically provide that the insurance afforded by such policy for the benefit of Landlord and Landlord's mortgagees and ground lessors shall be primary, and any insurance carried by Landlord or Landlord's mortgagees and ground lessors shall be excess and non-contributing; (f) contain an endorsement

that the insurer waives its right to subrogation as described in Section 22 below; (g) contain an undertaking by the insurer to notify Landlord (and the mortgagees and ground lessors of Landlord who are named as additional insureds) in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation or other termination thereof; (h) contain a cross liability or severability of interest endorsement; and (i) be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. Each such policy shall also provide that any loss otherwise payable thereunder shall be payable notwithstanding (i) any act or omission of Landlord or Landlord Indemnified Parties or Tenant which might, absent such provision, result in a forfeiture of all or a part of such insurance payment, (ii) the occupation or use of the Premises for purposes more hazardous than permitted by the provisions of such policy, (iii) any foreclosure or other action or proceeding taken by any mortgagee pursuant to any provision of the mortgage upon the happening of a default thereunder, or (iv) any change in title or ownership of the Premises. Tenant agrees to deliver to Landlord, in no event later than the earlier of (i) the Commencement Date or (ii) the date Tenant takes possession of all or any part of the Premises, certified copies of each such insurance policy (or certificates from the insurance company evidencing the existence of such insurance and Tenant's compliance with the foregoing provisions of this Section 20). Tenant shall cause replacement policies or certificates to be delivered to Landlord not less than thirty (30) days prior to the expiration of any such policy or policies. If any such initial or replacement policies or certificates are not furnished within the time(s) specified herein, Tenant shall be deemed to be in material default under this Lease without the benefit of any additional notice or cure period provided in Section 23.1 below, and Landlord shall have the right, but not the obligation, to procure such policies and certificates at Tenant's expense.

20.3 **Effect on Insurance**. Tenant shall not do or permit to be done anything which will (a) violate or invalidate any insurance policy maintained by Landlord or Tenant hereunder, or (b) increase the costs of any insurance policy maintained by Landlord pursuant to Section 21 or otherwise with respect to the Building or the Project. If Tenant's occupancy or conduct of its business in, on or about the Premises results in any increase in premiums for any insurance carried by Landlord with respect to the Building or the Project, Tenant shall pay such increase as additional rent within ten (10) days after being billed therefor by Landlord. If any insurance coverage carried by Landlord pursuant to Section 21 or otherwise with respect to the Building or the Project shall be cancelled or reduced (or cancellation or reduction thereof shall be threatened) by reason of the use or occupancy of the Premises by Tenant or by anyone permitted by Tenant to be upon the Premises, and if Tenant fails to remedy such condition within five (5) days after notice thereof, Tenant shall be deemed to be in default under this Lease, without the benefit of any additional notice or cure period specified in Section 23.1 below, and Landlord shall have all remedies provided in this Lease, at law or in equity, including, without limitation, the right (but not the obligation) to enter upon the Premises and attempt to remedy such condition at Tenant's cost.

21. **Landlord's Insurance**. During the Term, Landlord shall insure the Building and the Premises (excluding, however, Tenant's furniture, equipment and other personal property) against damage by fire and standard extended coverage perils and with vandalism and malicious mischief endorsements, rental loss coverage, at Landlord's option, earthquake damage coverage, and such additional coverage as Landlord deems appropriate. Landlord shall also carry commercial general liability insurance, in such reasonable amounts and with such reasonable deductibles as would be carried by a prudent owner of a similar building in the State of California. At Landlord's option, all such insurance may be carried under any blanket or umbrella policies which Landlord has in force for other buildings and projects. In addition, at Landlord's option, Landlord may elect to self-insure all or any part of such required insurance coverage. Landlord may, but shall not be obligated to, carry any other form or forms of insurance as Landlord or the mortgagees or ground lessors of Landlord may reasonably determine is advisable. The cost of insurance obtained by Landlord pursuant to this Section 21 (including self-insured amounts and deductibles) shall be included in Operating Expenses except to the extent excluded by the terms of this Lease.

22. **Waiver of Claims; Waiver of Subrogation**.

22.1 **Mutual Waiver of Parties**. Landlord and Tenant hereby waive their rights against each other with respect to any claims or damages or losses which are caused by or result from (a) occurrences insured against under any insurance policy carried by Landlord or Tenant (as the case may be) pursuant to the provisions of this Lease and enforceable at the time of such damage or loss, or (b) occurrences which would have been covered under any insurance required to be obtained and maintained by Landlord or Tenant (as the case may be) under Sections 20 and 21 of this Lease (as applicable) had such insurance been obtained and maintained as required therein. The foregoing waivers shall be in addition to, and not a limitation of, any other waivers or releases contained in this Lease.

22.2 **Waiver of Insurers**. Each party shall cause each property and loss of income insurance policy required to be obtained by it pursuant to Sections 20 and 21 to provide that the insurer waives all rights of recovery by way of subrogation against either Landlord or Tenant, as the case may be, in connection with any claims, losses and damages covered by such policy. If either party fails to maintain property or loss of income insurance required hereunder, such insurance shall be deemed to be self-insured with a deemed full waiver of subrogation as set forth in the immediately preceding sentence.

23. **Tenant's Default and Landlord's Remedies**.

23.1 **Tenant's Default**. The occurrence of any one or more of the following events shall constitute a default under this Lease by Tenant:

(a) the vacation or Abandonment of the Premises by Tenant. "**Abandonment**" is defined in Section 1951.3 of the California Civil Code;

(b) the failure by Tenant to make any payment of rent or additional rent or any other payment required to be made by Tenant hereunder, where such failure continues for three (3) business days after written notice thereof from Landlord that such payment was not received;

(c) the failure by Tenant to observe or perform any of the express covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Sections 23.1(a) or (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion;

(d) (i) the making by Tenant of any general assignment for the benefit of creditors, (ii) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days), (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within sixty (60) days, or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within sixty (60) days;

(e) any material representation or warranty made by Tenant in this Lease or any other document delivered in connection with the execution and delivery of this Lease or pursuant to this Lease proves to be incorrect in any material respect;

(f) Tenant shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution; and

(g) The failure by Tenant to deliver and/or maintain in full force and effect the Letter of Credit described in Section 5.

Any notice sent by Landlord to Tenant pursuant to this Section 23.1 shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161.

23.2 **Landlord's Remedies; Termination**. In the event of any default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom including, but not limited to: unamortized Tenant Improvement costs; attorneys' fees; brokers' commissions; the costs of refurbishment, alterations, renovation and repair of the Premises; and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, Tenant Changes, Tenant Improvements and any other items which Tenant is required under this Lease to remove but does not remove.

As used in Sections 23.2(a) and 23.2(b) above, the "**worth at the time of award** " is computed by allowing interest at the Interest Rate set forth in Section 1.14 of the Summary. As used in Section 23.2(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

23.3 **Landlord's Remedies; Re-Entry Rights**. In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall also have the right, subject to applicable law, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of pursuant to Section 12.4 of this Lease or any other procedures permitted by applicable law. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 23.3, and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

23.4 **Continuation of Lease**. Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

23.5 **Landlord's Right to Perform**. Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of rent. If Tenant shall fail to pay any sum of money (other than Monthly Basic Rent) or perform any other act on its part to be paid or performed hereunder and such failure shall continue for five (5) business days with respect to monetary obligations (or thirty (30) days with respect to non-monetary obligations, except in case of emergencies, in which such case, such shorter period of time as is reasonable under the circumstances) after Tenant's receipt of written notice thereof from Landlord, Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within five (5) days after demand therefor as additional rent.

23.6 **Interest**. If any monthly installment of Rent or Operating Expenses, or any other amount payable by Tenant hereunder is not received by Landlord within five (5) days following the date when due, it shall bear interest at the Interest Rate set forth in Section 1.14 of the Summary from the date due until paid. All interest, and any late charges imposed pursuant to Section 23.7 below, shall be considered additional rent due from Tenant to Landlord under the terms of this Lease.

23.7 **Late Charges**. Tenant acknowledges that, in addition to interest costs, the late payments by Tenant to Landlord of any Monthly Basic Rent or other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such other costs include, without limitation, processing, administrative and accounting charges and late charges that may be imposed on Landlord by the terms of any mortgage, deed of trust or related loan documents encumbering the Premises, the Building or the Project. Accordingly, if any monthly installment of Monthly Basic Rent or Operating Expenses or any other amount payable by Tenant hereunder is not received by Landlord within five (5) days following the date when due, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue amount as a late charge, but in no event more than the maximum late charge allowed by law. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any late payment as hereinabove referred to by Tenant, and the payment of late charges and interest are distinct and separate in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for Landlord's processing, administrative and other costs incurred by Landlord as a result of Tenant's delinquent payments. Acceptance of a late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or at law or in equity now or hereafter in effect.

23.8 **Rights and Remedies Cumulative**. All rights, options and remedies of Landlord contained in this Section 23 and elsewhere in this Lease (including Section 28 below) shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Section 23 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

23.9 **Tenant's Waiver of Redemption**. Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have under any present or future law to redeem any of the Premises or to have a continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof, and (ii) the benefits of any present or future law which exempts property from liability for debt or for distress for rent.

23.10 **Costs Upon Default and Litigation**. Tenant shall pay to Landlord and its mortgagees as additional rent all the expenses incurred by Landlord or its mortgagees in connection with any default by Tenant hereunder or the exercise of any remedy by reason of any default by Tenant hereunder, including reasonable attorneys' fees and expenses. If Landlord or its mortgagees shall be made a party to any litigation commenced against Tenant or any litigation pertaining to this Lease or the Premises, at the option of Landlord and/or its mortgagees, Tenant, at its expense, shall provide Landlord and/or its mortgagees with counsel approved by Landlord and/or its mortgagees and shall pay all costs incurred or paid by Landlord and/or its mortgagees in connection with such litigation.

24. **Landlord's Default**. Landlord shall not be in default in the performance of any obligation required to be performed by Landlord under this Lease unless Landlord has failed to perform such obligation within thirty (30) days after the receipt of written notice from Tenant specifying in detail Landlord's failure to perform; provided however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed in default if it commences such performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Upon any such uncured default by Landlord, Tenant may exercise any of its rights provided in law or at equity; provided, however: (a) Tenant shall have no right to offset or abate rent in the event of any default by Landlord under this Lease, except to the extent offset rights are specifically provided to Tenant in this Lease; (b) Tenant shall have no right to terminate this Lease; (c) Tenant's rights and remedies hereunder shall be limited to the extent (i) Tenant has expressly waived in this Lease any of such rights or remedies and/or (ii) this Lease otherwise expressly limits Tenant's rights or remedies, including the limitation on Landlord's liability contained in Section 31 hereof, and (d) in no event will Landlord be liable for consequential damages or loss of business profits. Notwithstanding anything in this Lease to the contrary, if Landlord fails beyond the foregoing cure periods to perform its maintenance and repair obligations under this Lease, and, as a consequence, Tenant's use of the Premises is substantially impaired, then Tenant shall have the right to cause such repair or maintenance to be performed at Landlord's expense and Landlord agrees to reimburse Tenant for the actual, reasonable, out-of-pocket costs thereof within fifteen (15) business days following written request for the same.

25. **Subordination**. Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, except as otherwise provided in Section 26 below, and at the election of Landlord or any mortgagee of a mortgage or a beneficiary of a deed of trust now or hereafter encumbering all or any portion of the Building or Site, or any lessor of any ground or master lease now or hereafter affecting all or any portion of the Building or Site, this Lease shall be subject and subordinate at all times to such ground or master leases (and such extensions and modifications thereof), and to the lien of such mortgages and deeds of trust (as well as to any advances made thereunder and to all renewals, replacements, modifications and extensions thereof). Notwithstanding the foregoing, Landlord and any mortgagee and/or ground lessor of Landlord ("**Holder**"), as applicable, shall have the right to subordinate or cause to be subordinated any or all ground or master leases or the lien of any or all mortgages or deeds of trust to this Lease. In the event that any ground or master lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, at the election of Landlord's successor in interest, Tenant shall attorn to and become the tenant of such successor. Tenant hereby waives its rights under any current or future law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Tenant covenants and agrees to execute and deliver to Landlord within ten (10) business days after receipt of written demand by Landlord and in the form reasonably required by Landlord and reasonably acceptable to Tenant, any additional documents evidencing the priority or subordination of this Lease with respect to any such Holder or the lien of any such mortgage or deed of trust or Tenant's agreement to attorn. Such documents may include commercially reasonable provisions in favor of such Holder, including, without limitation, additional time on behalf of such Holder to cure defaults of the Landlord and provide that (a) neither Holder nor any successor-in-interest shall be bound by (i) any payment of the rent, additional rent, or other sum due under this Lease for more than 1 month in advance or (ii) any amendment or modification of the Lease made without the express written consent of Holder or any successor-in-interest; (b) neither Holder nor any successor-in-interest will be liable for (i) any act or omission or warranties of any prior landlord (including Landlord), (ii) the breach of any warranties or obligations relating to construction of improvements on the Project or any tenant finish work performed or to have been performed by any prior landlord (including Landlord), or (iii) the return of any security deposit, except to the extent such deposits have been received by Holder; and (c) neither Holder nor any successor-in-interest shall be subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord). Should Tenant fail to sign and return any such documents within said ten (10) business day period, Tenant shall be in default hereunder without the benefit of any additional notice or cure periods specified in Section 23.1 above. Tenant shall indemnify, defend (with counsel reasonably approved by Landlord in writing) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) attributable to any failure by Tenant to timely deliver any such documents to Landlord. Notwithstanding the foregoing, it shall be a condition precedent to the subordination of this Lease to any future ground or underlying lease or to the lien of any future mortgage or deed of trust that Landlord shall obtain for the benefit of Tenant a subordination, non-disturbance and attornment agreement from the Holder in connection with such future instrument. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default beyond applicable notice and grace periods and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any Holder shall elect to have this Lease and any Options granted hereby prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease and such Options shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease or such Options are dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

26. **Estoppel Certificate**.

26.1 **Landlord's and Tenant's Obligations**. Within ten (10) business days following written request from one party, the other party shall execute and deliver to the requesting party an estoppel certificate, in a form substantially similar to the form of Exhibit "F" attached hereto, certifying: (a) the Commencement Date of this Lease; (b) that this Lease is unmodified and in full force and effect (or, if modified, that this Lease is in full force and effect as modified, and stating the date and nature of such modifications); (c) the date to which the rent and other sums payable under this Lease have been paid; (d) that there are not, to the best of the responding party's knowledge, any defaults under this Lease by either Landlord or Tenant, except as specified in such certificate; and (e) such other matters as are reasonably requested by the requesting party. Any such estoppel certificate delivered pursuant to this Section 26.1 may be relied upon by any mortgagee, beneficiary, Transferee (including a Permitted Transferee), purchaser or prospective purchaser of any portion of the Site, as well as their assignees.

26.2 **Failure to Deliver**. The failure by the responding party to deliver such estoppel certificate within such time shall constitute a default hereunder without the applicability of the notice and cure periods specified in Section 23.1 above and shall be conclusive upon the responding party that: (a) this Lease is in full force and effect without modification, except as may be represented by the requesting party; (b) there are no uncured defaults in Landlord's or Tenant's performance (other than the responding party's failure to deliver the estoppel certificate); and (c) not more than one (1) month's rental has been paid in advance.

27. **[Intentionally Deleted]**

28. **Modification and Cure Rights of Landlord's Mortgagees and Lessors**.

28.1 **Modifications**. If, in connection with Landlord's obtaining or entering into any financing or ground lease for any portion of the Building or Site, the lender or ground lessor shall request modifications to this Lease, Tenant shall, within ten (10) business days after request therefor, execute an amendment to this Lease including such modifications, provided such modifications are reasonable, do not increase the obligations of Tenant hereunder, or adversely affect the leasehold estate created hereby or Tenant's rights hereunder.

28.2 **Cure Rights**. In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgagee covering the Premises or ground lessor of Landlord whose address shall have been furnished to Tenant, and shall offer such beneficiary, mortgagee or ground lessor a reasonable opportunity to cure the default (including with respect to any such beneficiary or mortgagee, time to obtain possession of the Premises, subject to this Lease and Tenant's rights hereunder, by power of sale or a judicial foreclosure, if such should prove necessary to effect a cure).

29. **Quiet Enjoyment**. Landlord covenants and agrees with Tenant that, so long as Tenant performs all of the covenants and provisions on Tenant's part to be observed and performed under this Lease (including payment of rent hereunder), Tenant shall have the right to use and occupy the Premises in accordance with and subject to the terms and conditions of this Lease as against all persons claiming by, through or under Landlord.

30. **Transfer of Landlord's Interest**. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of, the Site. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall be automatically relieved of all covenants and obligations on the part of Landlord contained in this Lease accruing after the date of such transfer or conveyance provided that such transferee expressly assumes Landlord's obligations hereunder. Landlord and Landlord's transferees and assignees shall have the absolute right to transfer all or any portion of their respective title and interest in the Site, the Building, the Premises and/or this Lease without the consent of Tenant, and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

31. **Limitation on Liability**

31.1 **Limitation on Landlord's Liability**. Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual partners, directors, officers, members or shareholders of Landlord or Landlord's partners, and Tenant shall not seek recourse against the individual partners, directors, officers, members or shareholders of Landlord or against Landlord's partners or any other persons or entities having any interest in Landlord, or any of their personal assets for satisfaction of any liability with respect to this Lease. In addition, in consideration of the benefits accruing hereunder to Tenant and notwithstanding anything contained in this Lease to the contrary, Tenant hereby covenants and agrees for itself and all of its successors and assigns that the liability of Landlord for its obligations under this Lease (including any liability as a result of any actual or alleged failure, breach or default hereunder by Landlord), shall be limited solely to, and Tenant's and its successors' and assigns' sole and exclusive remedy shall be against, Landlord's interest in the Project, and no other assets of Landlord.

31.2 **Limitation on Tenant's Liability**. Notwithstanding anything contained in this Lease to the contrary, the obligations of Tenant under this Lease (including any actual or alleged breach or default by Tenant) do not constitute personal obligations of the individual directors, officers or shareholders of Tenant, and Landlord shall not seek recourse against the individual directors, officers or shareholders of Tenant or any other persons or entities having any interest in Tenant, or any of their personal assets for satisfaction of any liability with respect to this Lease.

32. **Miscellaneous**.

32.1 **Governing Law**. This Lease shall be governed by, and construed pursuant to, the laws of the State of California.

32.2 **Successors and Assigns**. Subject to the provisions of Section 30 above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and permitted successors and assigns; provided, however, no rights shall inure to the benefit of any Transferee of Tenant unless the Transfer to such Transferee is made in compliance with the provisions of Section 14, and no options or other rights which are expressly made personal to the original Tenant hereunder or in any rider attached hereto shall be assignable to or exercisable by anyone other than the original Tenant and any Permitted Transferee under this Lease.

32.3 **No Merger**. The voluntary or other surrender of this Lease by Tenant or a mutual termination thereof shall not work as a merger and shall, at the option of Landlord, either (a) terminate all or any existing subleases, or (b) operate as an assignment to Landlord of Tenant's interest under any or all such subleases.

32.4 **Professional Fees**. If either Landlord or Tenant should bring suit against the other with respect to this Lease, including for unlawful detainer or any other relief against the other hereunder, then all costs and expenses incurred by the prevailing party therein (including, without limitation, its actual appraisers', accountants', attorneys' and other professional fees and court costs), shall be paid by the other party.

32.5 **Waiver**. The waiver by either party of any breach by the other party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant and condition herein contained, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of any party to insist upon the performance by the other in strict accordance with said terms. No waiver of any default of either party hereunder shall be implied from any acceptance by Landlord or delivery by Tenant (as the case may be) of any rent or other payments due hereunder or any omission by the non-defaulting party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other

than as specified in said waiver. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

32.6 **Terms and Headings**. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language.

32.7 **Time**. Time is of the essence with respect to performance of every provision of this Lease in which time or performance is a factor. All references in this Lease to "**days**" shall mean calendar days unless specifically modified herein to be "business" days.

32.8 **Prior Agreements; Amendments**. This Lease (and the Exhibits attached hereto) contain all of the covenants, provisions, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and any other matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to the Premises or any such other matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not expressly incorporated herein.

32.9 **Severability**. The invalidity or unenforceability of any provision of this Lease (except for Tenant's obligation to pay Monthly Basic Rent and Excess Expenses under Sections 3 and 4 hereof) shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by law.

32.10 **Recording**. Except as otherwise provided in this Lease, neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant, and the recording thereof in violation of this provision shall make this Lease null and void at Landlord's election.

32.11 **Exhibits**. All Exhibits attached to this Lease are hereby incorporated in this Lease as though set forth at length herein.

32.12 **Accord and Satisfaction**. No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any statute or at common law.

32.13 **Financial Statements**. Upon ten (10) days prior written request from Landlord (which Landlord may make at any time during the Term but no more often than once in any calendar year), Tenant shall deliver to Landlord a current financial statement of Tenant. Such statements shall be prepared in accordance with generally acceptable accounting principles and certified as true in all material respects by Tenant (if Tenant is an individual) or by an authorized officer of Tenant (if Tenant is a corporation or limited liability company) or a general partner or CFO of Tenant (if Tenant is a partnership).

32.14 **No Partnership**. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant by reason of this Lease.

32.15 **Force Majeure**. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations), injunction or court order, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Lease (but excluding delays due to financial inability) (herein collectively, "**Force Majeure Delays**"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 32.15 shall not apply to nor operate to excuse Tenant from the payment of Monthly Basic Rent, Operating Expenses, additional rent or any other payments strictly in accordance with the terms of this Lease.

32.16 **Counterparts**. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement.

32.17 **Nondisclosure of Lease Terms**. Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms could adversely affect the ability of Landlord to negotiate other leases and impair Landlord's relationship with other tenants. Accordingly, Tenant

agrees that it, and its partners, officers, directors, employees, agents and attorneys, shall not intentionally and voluntarily disclose the terms and conditions of this Lease to any newspaper or other publication or any other person, including without limitation, any other tenant or apparent prospective tenant of the Building or other portion of the Project, or real estate agent, either directly or indirectly, without the prior written consent of Landlord, which Landlord may withhold in its sole discretion, provided, however, that Tenant may disclose the terms to prospective subtenants or assignees under this Lease.

32.18 **Independent Covenants**. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord; provided, however, that the foregoing shall in no way impair the right of Tenant to commence a separate action against Landlord for any violation by Landlord of the provisions hereof so long as notice is first given to Landlord and any holder of a mortgage or deed of trust covering the Building, Project or any portion thereof, of whose address Tenant has theretofore been notified, and an opportunity is granted to Landlord and such holder to correct such violations as provided above.

33. **Lease Execution**.

33.1 **Tenant's Authority**. If Tenant executes this Lease as a limited liability company, partnership or corporation, then Tenant represents and warrants that: (a) Tenant is a duly organized and validly existing limited liability company, partnership or corporation, as the case may be, and is qualified to do business in the state in which the Premises are located; (b) such persons and/or entities executing this Lease are duly authorized to execute and deliver this Lease on Tenant's behalf in accordance with the Tenant's operating agreement (if Tenant is a limited liability company), Tenant's partnership agreement (if Tenant is a partnership), or a duly adopted resolution of Tenant's board of directors and Tenant's by-laws (if Tenant is a corporation); and (c) this Lease is binding upon Tenant in accordance with its terms. Concurrently with Tenant's execution and delivery of this Lease to Landlord and/or at any time during the Lease Term within ten (10) days of Landlord's request, Tenant shall provide to Landlord a copy of any documents reasonably requested by Landlord evidencing Tenant's representations and warranties hereunder.

33.2 **Joint and Several Liability**. If more than one person or entity executes this Lease as Tenant: (a) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (b) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of the persons and entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

33.3 **Building Name and Signage**. Landlord shall have the right at any time to designate and/or change the name and/or address of the Project, the Building and/or any other building in the Project, and to install, affix and maintain any and all signs on the exterior and on the interior of the Project, the Building and/or any other building in the Project, as Landlord may, in Landlord's sole discretion, desire. Tenant shall not use the name of the Project, the Building or any other building in the Project, or use pictures or illustrations of the Project, the Building or any other building in the Project, in advertising or other publicity, without the prior written consent of Landlord, which Landlord may withhold in its sole discretion.

33.4 **Landlord's Title; Air Rights**. Landlord's title is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord. No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease.

33.5 **Time of Essence**. Time is of the essence of this Lease and each of its provisions.

33.6 **No Option**. The submission of this Lease for examination or execution by Tenant does not constitute a reservation of or option for the Premises and this Lease shall not become effective as a Lease until it has been executed by Landlord and delivered to Tenant.

34. **Waiver of Jury Trial**. EACH PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION SEEKING SPECIFIC PERFORMANCE OF ANY PROVISION OF THIS LEASE, FOR DAMAGES FOR ANY BREACH UNDER THIS LEASE, OR OTHERWISE FOR ENFORCEMENT OF ANY RIGHT OR REMEDY HEREUNDER (EACH A "DISPUTE" AND COLLECTIVELY, THE "DISPUTES").

35. **Consent to Judicial Reference**. If and to the extent that Section 34 immediately above is determined by a court of competent jurisdiction to be unenforceable or is otherwise not applied by any such court, each of Landlord and Tenant hereby consents and agrees that (a) any and all Disputes shall be heard by a referee in accordance with the general reference provisions of California Code of Civil Procedure Section 638, sitting without a jury in the County of San Diego, California, (b) such referee shall hear and determine all of the issues in any Dispute (whether of fact or of law), including issues pertaining to a "provisional remedy" as defined in California Code of Civil Procedure Section 1281.8, including without limitation, entering restraining orders, entering temporary restraining orders, issuing temporary and permanent injunctions and appointing receivers, and shall report a statement of decision; provided that, if during the course of any Dispute, any party desires to seek such a "provisional remedy" at a time when a referee has not yet been appointed or is otherwise unavailable to hear the request for such provisional remedy, then such party may apply to the San Diego County Superior Court for such provisional relief, and (c) pursuant to California Code of Civil Procedure Section 640(a), judgment may be entered upon the decision of such referee in the same manner as if the Dispute had been tried directly

by a court. The parties shall use their respective commercially reasonable and good faith efforts to agree upon and select such referee, provided that such referee must be a retired California state or federal judge, and further provided that if the parties cannot agree upon a referee, the referee shall be appointed by the Presiding Judge of the San Diego County Superior Court. Each party hereto acknowledges that this consent and agreement is a material inducement to enter into this Agreement, the Loan Documents and all other agreements and instruments provided for herein or therein, and that each will continue to be bound by and to rely on this consent and agreement in their related future dealings. The parties shall share the cost of the referee and reference proceedings equally; provided that, the referee may award attorneys' fees and reimbursement of the referee and reference proceeding fees and costs to the prevailing party, whereupon all referee and reference proceeding fees and charges will be payable by the non-prevailing party (as so determined by the referee). Each party hereto further warrants and represents that it has reviewed this consent and agreement with legal counsel of its own choosing, or has had an opportunity to do so, and that it knowingly and voluntarily gives this consent and enters into this agreement having had the opportunity to consult with legal counsel. This consent and agreement is irrevocable, meaning that it may not be modified either orally or in writing, and this consent and agreement shall apply to any subsequent amendments, renewals, supplements, or modifications to this Agreement or any other agreement or document entered into between the parties in connection with this Agreement. In the event of litigation, this Agreement may be filed as evidence of either or both parties' consent and agreement to have any and all Disputes heard and determined by a referee under California Code of Civil Procedure Section 638.

36. **ERISA**. Tenant represents and warrants to Landlord that: (i) Tenant is not an employee pension benefit plan subject to the provisions of Title IV of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") or subject to the minimum funding standards under Part 3, Subtitle B, Title I of ERISA or Section 412 of the Internal Revenue Code or Section 302 of ERISA, and none of its assets constitutes or will constitute assets of any such employee benefit plan subject to Part 4, Subtitle B, Title I of ERISA; (ii) Tenant is not a "governmental plan" within the meaning of Section 3(32) of ERISA and the funds used by Tenant to satisfy its obligations under the Lease are not subject to State statutes regulating investments of and fiduciary obligations with respect to governmental plans; (iii) The assets of Tenant do no constitute plan assets of one or more employee benefit plans within the meaning of 29 C.F.R. 2510.3-101; and (iv) Tenant is not The Prudential Insurance Company of America, a separate account of Prudential or an "affiliate" of Prudential as defined in Section IV(b) of Prohibited Transaction Exemption 90-1 granted by the U.S. Department of Labor.

37. **Option**.

37.1 **Grant of Option**. Landlord hereby grants to Tenant the option to extend the term of this Lease for a five (5) year period (the "**Option**") commencing on the date the prior term expires (the "**Option Period**") upon each and all of the following terms and conditions:

(a) Tenant gives to Landlord, and Landlord actually receives, on a date which is prior to the date that the Option Period would commence (if exercised) by at least nine (9) and not more than twelve (12) months, a written notice of exercise of the option to extend this Lease for said additional term, time being of the essence. If said notification of the exercise of said option is not so given and received, this option shall automatically expire;

(b) All of the terms and conditions of this Lease shall apply, except that Tenant shall have no further option to extend the term of this Lease;

(c) Any prior Tenant that has not been expressly released from liability under this Lease expressly reaffirms in writing the extension of its liability for the term of the Option; and

(d) The Monthly Basic Rent for each month of the Option Period shall be the Fair Market Rent (as defined below) of the Premises as of the commencement of the Option Period.

37.2 **Effect of Default**.

(a) Tenant shall have no right to exercise the Option, notwithstanding any provision in the grant of the Option to the contrary, (i) during the time commencing from the date Landlord gives to Tenant a notice of default pursuant to Sections 23.1(b) or 23.1(c) (or the date of the default if notice is not required pursuant to the terms of this Lease) and continuing until the default alleged in said notice of default is cured, or (ii) during the period of time commencing on the day after a monetary obligation to Landlord is due from Tenant and unpaid (without any necessity for notice thereof to Tenant) continuing until the obligation is paid, or (iii) at any time after an event of default described in Sections 23.1(a), 23.1(d), 23.1(e) or 23.1(f) (without any necessity of Landlord to give notice of such default to Tenant), or (iv) in the event that Landlord has given to Tenant three or more notices of default under Section 23.1(b), where a late charge has become payable under Section 23.7 for each of such defaults, or Section 23.1(c), whether or not the defaults are cured, during the 12 month period prior to the time that Tenant intends to exercise the Option.

(b) All rights of Tenant under the provisions of the Option shall terminate and be of no further force or effect, notwithstanding Tenant's due and timely exercise of the Option, if, after such exercise and during the term of this Lease, (i) Tenant fails to pay to Landlord a monetary obligation of Tenant for a period of 30 days after such obligation becomes due (without any necessity of Landlord to give notice thereof to Tenant), or (ii) Tenant fails to commence to cure a default specified in Section 23.1(c) within 30 days after the date that Landlord gives notice to Tenant of such default and/or Tenant fails thereafter to diligently prosecute said cure to completion, (iii) Tenant commits a default described in Sections 23.1(a), 23.1(d), 23.1(e) or 23.1(f) (without any necessity of Landlord to give notice of such default to Tenant), or (iv) Landlord gives to Tenant three or more notices of default under Section 23.1(b), where a late charge becomes payable under Section 23.7 for each such default, or Section 23.1(c), whether or not the defaults are cured or (v) Tenant commits a default under this Lease where this Lease provides that no notice or cure period is afforded the Tenant.

37.3 **Personal to Tenant**. The Option is personal to Tenant and may not be exercised or be assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant. The Option is not assignable separate and apart from this Lease.

37.4 **Fair Market Rent**.

(a) The term "Fair Market Rent" as used in this Lease is defined to mean the rent, including all escalations, at which tenants are leasing non-sublease, non-encumbered, non-equity space comparable in size and quality to the Premises for the Option Period the San Diego, California metropolitan area, giving appropriate consideration to the annual rental rates per square foot and the standard of measurement by which the square footage is measured. In determining Fair Market Rent it shall be assumed that:

(i) The Premises are in excellent condition and repair and there shall be no deduction for depreciation, obsolescence or deferred maintenance (but less reasonable wear and tear as long as maintained by Tenant in accordance with this Lease);

(ii) The Premises would be leased for the Option Period by a tenant with the credit standing of Tenant, as the same exists at that time;

(iii) The Premises would be leased on the same terms of this Lease insofar as the obligations for repair, maintenance, insurance and real estate taxes existed as of the expiration of the original term of this Lease.

(iv) No deduction shall be given nor consideration given to allowances for real estate brokerage commissions.

(v) The Premises will be used for its highest and best use.

(vi) An minimum annual rent escalation of three percent (3%) would be applicable.

(vii) The Base Year set forth in the Basic Lease Information will be adjusted to correspond with the first year of the extended term.

(b) Landlord shall initially determine the Fair Market Rent in each instance, and shall give Tenant notice (the "Market **Rent Notice**") of such determination and the basis on which such determination was made on or before the 60th day prior to the date on which such determination is to take effect, or as soon thereafter as is reasonably practicable.

(c) In the event that Tenant notifies Landlord in writing, on or before the 20th business day following any Market Rent Notice, that Tenant disagrees with the applicable determination, Landlord and Tenant shall negotiate in good faith to resolve such dispute within 10 business days thereafter (The 30th business day after any Market Rent Notice is referred to herein as the "**Outside Agreement Date**"). If not resolved by the Outside Agreement Date each party shall submit to the other its determination of Fair Market Rent and the dispute shall be submitted to arbitration in accordance with the procedures outlined in the following subsection (d). Until any such dispute is resolved, any applicable payments due under this Lease shall correspond to Landlord's determination and, if Tenant's determination becomes the final determination, Landlord shall refund any overpayments to Tenant, within 5 business days following the final resolution of the dispute.

(d) The arbitration procedures referred to in subsection (c) are:

(i) Landlord and Tenant shall each appoint one (1) arbitrator who shall by profession be a licensed real estate broker or appraiser who shall have been active over the five (5) year period ending on the date of such appointment in the leasing or appraising of properties similar to the Premises in the surrounding area of San Diego County. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Rent for the Premises is the closest to the actual Fair Market Rent for the Premises as determined by the arbitrators, taking into account the requirements of this subparagraph regarding the same. Each such arbitrator shall be appointed within 15 days after the Outside Agreement Date. Landlord and Tenant may not consult with either such arbitrator prior to resolution.

(ii) The two arbitrators so appointed shall within fifteen (15) days of the date of the appointment of the last appointed arbitrator, meet and attempt to reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Fair Market Rent, and shall notify Landlord and Tenant of their decision, if any.

(iii) If the two arbitrators are unable to reach a decision, the two (2) arbitrators shall, within thirty (30) days of the date of the appointment of the last appointed arbitrator, agree upon and appoint a third arbitrator who shall be a broker who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) arbitrators.

(iv) The three (3) arbitrators shall, within thirty (30) days of the appointment of the third arbitrator, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Fair Market Rent, and shall notify Landlord and Tenant thereof.

(v) The decision of the majority of the three (3) arbitrators shall be binding upon Landlord and Tenant.

(vi) If either Landlord or Tenant fails to appoint an arbitrator within fifteen (15) days after the Outside Agreement Date, the arbitrator appointed by one (1) of them shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant.

(vii) If the two (2) arbitrators fail to agree upon and to appoint a third arbitrator, then the appointment of the third arbitrator shall be dismissed, and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association, but subject to the instructions set forth in this Lease.

(viii) The cost of arbitration shall be paid by Landlord and Tenant equally.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

TENANT:

CADENCE PHARMACEUTICALS, INC,
a Delaware corporation

*By: /s/ Theodore R. Schroeder
Print Name: Theodore R. Schroeder
Print Title: President & CEO

*By: /s/ David A. Socks
Print Name: David A. Socks
Print Title: V.P. Business Development & Corporate Secretary

LANDLORD:

PRENTISS/COLLINS DEL MAR HEIGHTS LLC,
a Delaware limited liability company

By: Cognac High Bluffs LLC,
a Delaware limited liability company,
its managing member

By: The Prudential Insurance Company of America,
a New Jersey corporation,
its sole member

By: /s/ Darin Bright
Name: Darin Bright
Title: Vice President

* NOTE:

If Tenant is a California corporation, then one of the following alternative requirements must be satisfied:

(i) This Lease must be signed by two (2) officers of such corporation: one being the chairman of the board, the president or a vice president, and the other being the secretary, an assistant secretary, the chief financial officer or an assistant treasurer. If one (1) individual is signing in two (2) of the foregoing capacities, that individual must sign twice; once as one officer and again as the other officer.

(ii) If there is only one (1) individual signing in two (2) capacities, or if the two (2) signatories do not satisfy the requirements of (A) above, then Tenant shall deliver to Landlord a certified copy of a corporate resolution in a form reasonably acceptable to Landlord authorizing the signatory(ies) to execute this Lease.

If Tenant is a corporation incorporated in a state other than California, then Tenant shall deliver to Landlord a certified copy of a corporate resolution in a form reasonably acceptable to Landlord authorizing the signatory(ies) to execute this Lease.

EXHIBIT "A"

PROJECT SITE PLAN

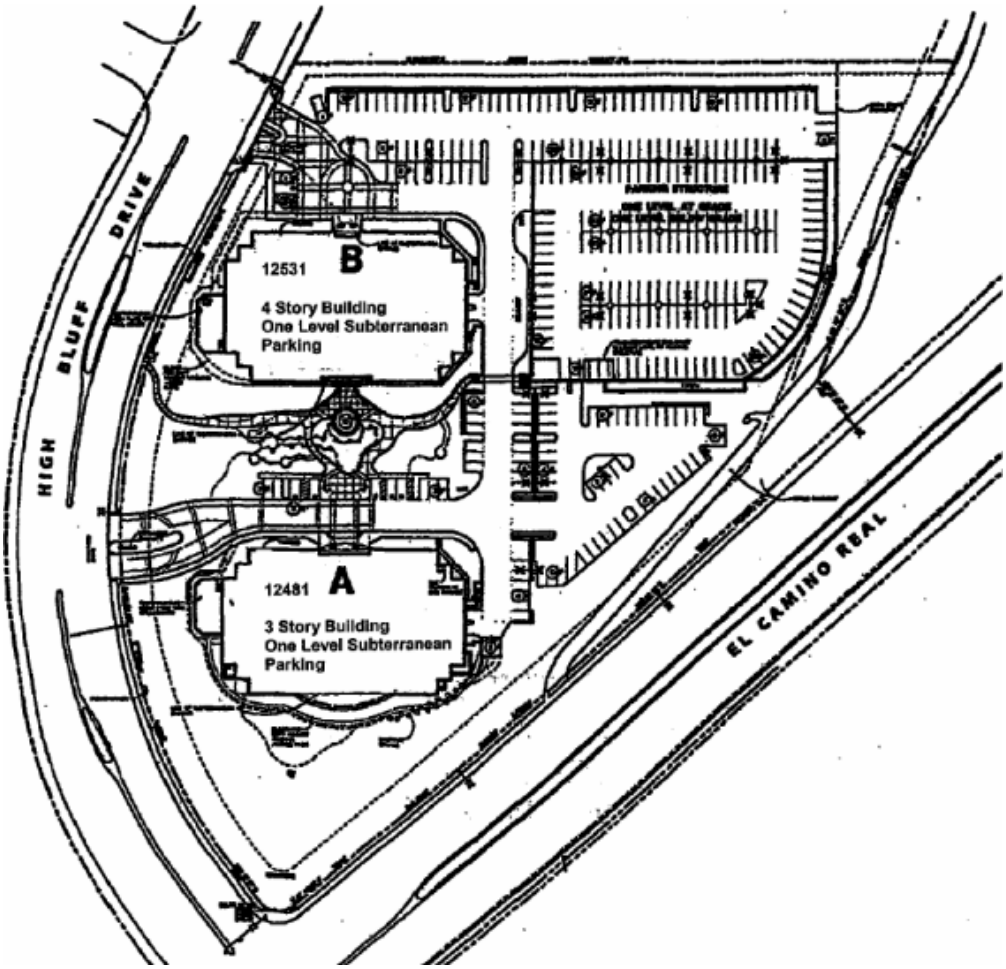
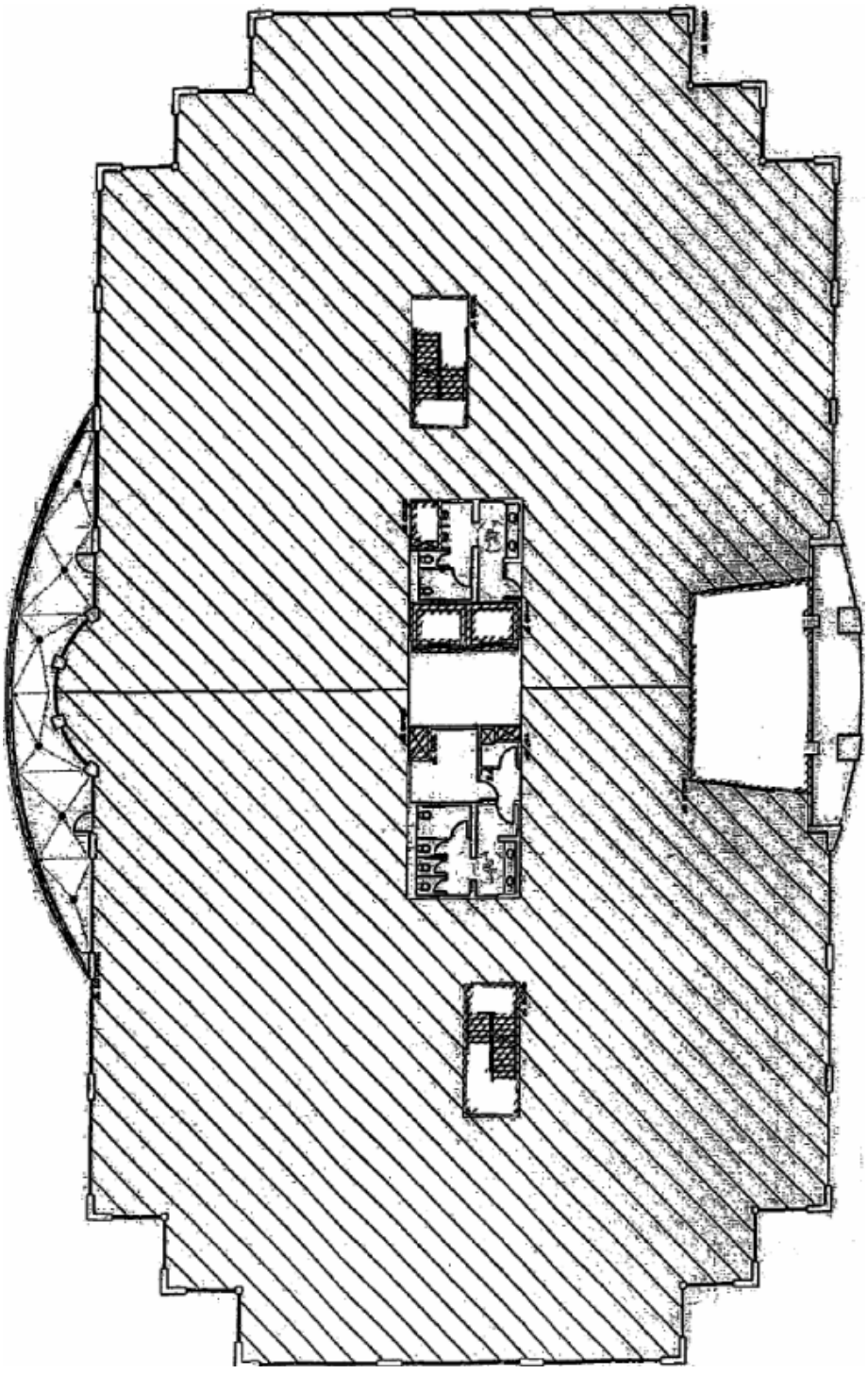


EXHIBIT "B-1"

12481 PREMISES

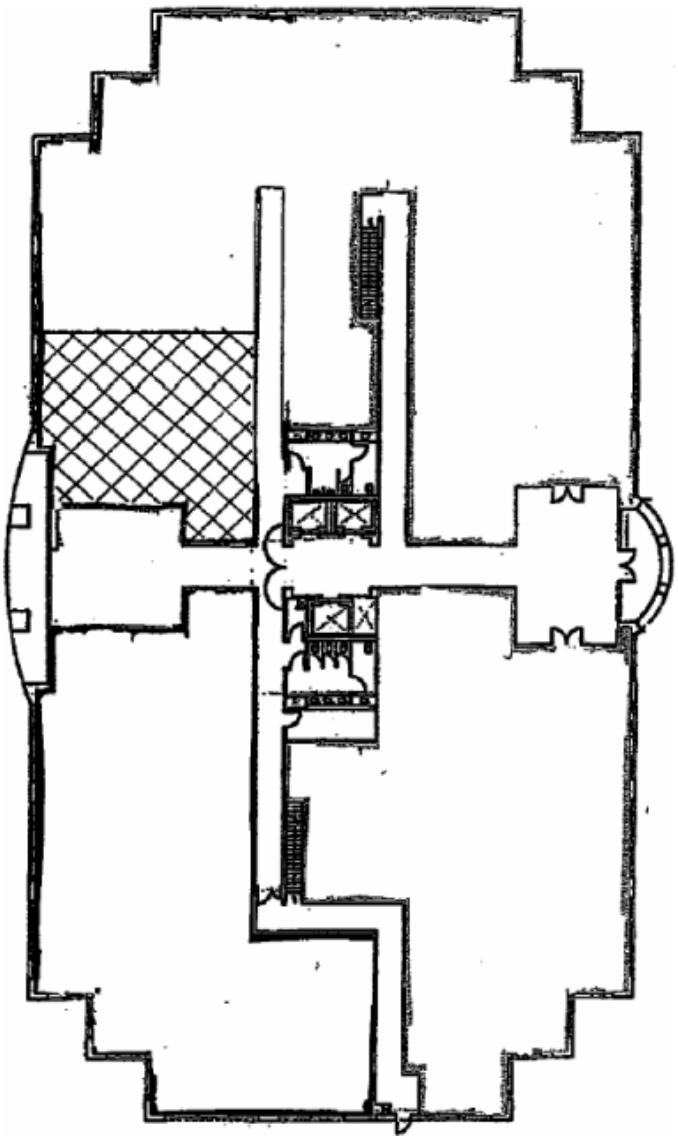


High Bluff Ridge
12481 High Bluff Drive

2nd Floor

EXHIBIT "B-2"

12531 PREMISES



High Bluff Ridge
12531 High Bluff Driver

1st Floor

EXHIBIT "C"

WORK LETTER AGREEMENT

This Work Letter Agreement ("**Work Letter Agreement**") sets forth the terms and conditions relating to the construction of improvements for the 12481 Premises. All references in this Work Letter Agreement to "the **Lease**" shall mean the relevant portions of the Lease to which this Work Letter Agreement is attached as Exhibit "C".

SECTION 1.

BASE, SHELL AND CORE

Landlord has constructed, through its contractor, the base, shell and core of the 12481 Premises and the Building (collectively, the "**Base, Shell and Core**"), and Tenant shall accept the Base, Shell and Core in its current "As-Is" condition existing as of the date of the Lease and the Commencement Date, subject to the terms of the Lease. Landlord shall install in the 12481 Premises certain "Tenant Improvements" (as defined below) pursuant to the provisions of this Work Letter Agreement. Except for the Tenant Improvement work described in this Work Letter Agreement and except for the Tenant Improvement Allowance set forth below and except as otherwise provided in the Lease, Landlord shall not be obligated to make or pay for any alterations or improvements to the 12481 Premises, the Building or the Project.

SECTION 2.

TENANT IMPROVEMENTS

2.1 Tenant Improvement Allowance. Tenant shall be entitled to a one-time tenant improvement allowance (the "**Tenant Improvement Allowance**") in the amount of up to, but not exceeding Fifty-Five Dollars ($55.00) per usable square foot of the 12481 Premises (i.e., up to One Million One Hundred Ninety Thousand Five Hundred Thirty Dollars ($1,190,530) based on a usable square footage for the 12481 Premises of 21,646 square feet for purposes of this Work Letter Agreement), for the costs relating to the initial design and construction of Tenant's improvements which are permanently affixed to the 12481 Premises (the "**Tenant Improvements**"), which costs shall include all hard and soft costs, including project management, but excluding data cabling, security systems and fees for consultants other than the Architect and Engineers (as defined below). In no event shall Landlord be obligated to make disbursements pursuant to this Work Letter Agreement in a total amount which exceeds the Tenant Improvement Allowance. Tenant shall not be entitled to receive any cash payment or credit against rent or otherwise for any portion of the Tenant Improvement Allowance which is not used to pay for the Tenant Improvement Allowance Items (as such term is defined below).

2.2 Disbursement of the Tenant Improvement Allowance. Except as otherwise set forth in this Work Letter Agreement, the Tenant Improvement Allowance shall be disbursed by Landlord (each of which disbursement shall be made pursuant to Landlord's standard disbursement process), only for the following items and costs (collectively, the "**Tenant Improvement Allowance Items**"):

2.2.1 Payment of the fees of the "**Architect**" and the "**Engineers**," as those terms are defined in Section 3.1 of this Work Letter Agreement (provided, however, that only an amount not to exceed Three and 00/100 Dollars ($3.00) per usable square foot of the 12481 Premises (i.e., up to Sixty Four Thousand Nine Hundred Thirty Eight and No/100 Dollars ($64,938.00) based on a usable square footage of 21,646 square feet for the 12481 Premises for purposes of this Work Letter Agreement) may be deducted from the Tenant Improvement Allowance to pay for such fees), and payment of the fees incurred by, and the cost of documents and materials supplied by, Tenant or Landlord and Tenant's or Landlord's consultants in connection with the preparation and review of the Construction Drawings, as that term is defined in Section 3.1 of this Work Letter Agreement;

2.2.2 The payment of plan check, permit and license fees relating to construction of the Tenant Improvements;

2.2.3 The cost of construction of the Tenant Improvements, including, without limitation, contractors' fees and general conditions, testing and inspection costs, costs of utilities, trash removal, parking and hoists, and the costs of after-hours freight elevator usage;

2.2.4 The cost of any changes in the Base, Shell and Core when such changes are required by the Construction Drawings (including if such changes are due to the fact that such work is prepared on an unoccupied basis), such cost to include all direct architectural and/or engineering fees and expenses incurred in connection therewith;

2.2.5 The cost of any changes to the Construction Drawings or Tenant Improvements required by any applicable laws;

2.2.6 Sales and use taxes and Title 24 fees related to the Tenant Improvements;

2.2.7 Landlord's Supervision Fee, as that term is defined in Section 4.3.2 of this Work Letter Agreement; and

2.2.8 All other costs to be expended by Landlord in connection with the construction of the Tenant Improvements.

2.3 Specifications for Building Standard Improvements. Landlord has established specifications (the "**Specifications**") for the Building standard components to be used in the construction of the Tenant Improvements in the

12481 Premises which Specifications have been received by Tenant. Unless otherwise agreed to by Landlord, the Tenant Improvements shall comply with or exceed the Specifications.

SECTION 3.

CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Drawings. Tenant shall retain an architect/space planner (the "**Architect**") approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, to prepare the Construction Drawings. Tenant shall retain engineering consultants reasonably approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed (the "**Engineers** "), to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life-safety, and sprinkler work in the 12481 Premises. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with the drawing format and specifications determined by Landlord, and shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, compliance with applicable laws or other applicable laws or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings.

3.2 Final Space Plan. On or before the date set forth in Schedule 1, attached hereto, Tenant and Architect shall prepare the final space plan for Tenant Improvements in the 12481 Premises (the "**Final Space Plan**"), which Final Space Plan shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein, and shall deliver the Final Space Plan to Landlord for Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

3.3 Final Working Drawings. On or before the date set forth in Schedule 1, Tenant, Architect and the Engineers shall complete the architectural and engineering drawings for the 12481 Premises, and Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Final Working Drawings**"), and shall submit the same to Landlord for Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

3.4 Approved Working Drawings. On or before the date set forth therefor in Schedule 1, Tenant shall submit the Final Working Drawings approved by Landlord (the "**Approved Working Drawings**") to the applicable local governmental agency for all applicable building permits necessary to allow "Contractor," as that term is defined in Section 4.1 of this Work Letter Agreement, to commence and fully complete the construction of the Tenant Improvements (collectively, the "**Permits**"), and, in connection therewith, Tenant shall coordinate with Landlord in order to allow Landlord, at Landlord's option, to take part in all phases of the permitting process, and shall supply Landlord, as soon as possible, with all plan check numbers and dates of submittal. Notwithstanding the foregoing, Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the 12481 Premises and that the obtaining of the same shall be Tenant's responsibility; provided, however, that Landlord shall, in any event, cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, provided that Landlord may not unreasonably withhold, condition or delay its consent.,

3.5 Time Deadlines. Landlord and Tenant shall cooperate with Architect, the Engineer, and each other to complete all phases of the Construction Drawings and the permitting process and to receive the permits, and with Contractor, for approval of the "Cost Proposal," as that term is defined in Section 4.2 below, in accordance with the dates set forth in Schedule 1. Tenant shall meet with Landlord on a weekly (or such other basis as Landlord shall determine) to discuss Tenant's progress in connection with the same. Certain of applicable dates for approval of items, plans and drawings as described in this Section 3, Section 4, below, and in this Work Letter Agreement are set forth and further elaborated upon in Schedule 1 (the "**Time Deadlines**"), attached hereto. Tenant agrees to comply with the Time Deadlines, subject to Force Majeure.

SECTION 4.

CONSTRUCTION OF THE TENANT IMPROVEMENTS

4.1 Contractor. A contractor, under the supervision of and selected by Landlord, shall construct the Tenant Improvements (the "**Contractor**"); provided, however that one (1) of the following contractors will be recommended by Tenant for Landlord's selection and once selected shall be deemed approved by Tenant: Pacific Building Group, Bycor, Burger Construction, Bilbro and Roel.

4.2 Cost Proposal. After the Approved Working Drawings are signed by Landlord and Tenant, Landlord shall provide Tenant with a cost proposal in accordance with the Approved Working Drawings, which cost proposal shall include, as nearly as possible, the cost of all Tenant Improvement Allowance Items to be incurred by Tenant in connection

with the construction of the Tenant Improvements (the "**Cost Proposal**"). Notwithstanding the foregoing, portions of the cost of the Tenant Improvements may be delivered to Tenant as such portions of the Tenant Improvements are priced by Contractor (on an individual item-by-item or trade-by-trade basis), even before the Approved Working Drawings are completed (the "**Partial Cost Proposal**"). Tenant shall approve and deliver the Cost Proposal to Landlord within five (5) business days of the receipt of the same (or, as to a Partial Cost Proposal, within two (2) business days of receipt of the same). The date by which Tenant must approve and deliver the Cost Proposal, or the last Partial Cost Proposal to Landlord, as the case may be, shall be known hereafter as the "**Cost Proposal Delivery Date**." The total of all Partial Cost Proposals, if any, shall be known as the Cost Proposal.

4.3 Construction of Tenant Improvements by Landlord's Contractor under the Supervision of Landlord.

4.3.1 Over-Allowance Amount. On the Cost Proposal Delivery Date and throughout the construction process, Tenant shall deliver to Landlord cash in an amount (the "**Over-Allowance Amount**") equal to the difference between (i) the amount of the Cost Proposal and (ii) the amount of the Tenant Improvement Allowance (less any portion thereof already disbursed by Landlord, or in the process of being disbursed by Landlord, on or before the Cost Proposal Delivery Date). Tenant shall deliver the Over-Allowance Amount in the following manner: 50% of the Over-Allowance Amount on the Cost Proposal Delivery Date, 35% of the Over-Allowance Amount upon completion of dry-wall taping, and the remaining 15% of the Over-Allowance Amount upon Substantial Completion (as defined in Section 5 of this Work Letter). The Over-Allowance Amount shall be disbursed by Landlord prior to the disbursement of any then remaining portion of the Tenant Improvement Allowance, and such disbursement shall be pursuant to the same procedure as the Tenant Improvement Allowance. In the event that, after the Cost Proposal Date, any revisions, changes, or substitutions shall be made to the Construction Drawings or the Tenant Improvements, any additional costs which arise in connection with such revisions, changes or substitutions shall be added to the Cost Proposal and shall be paid by Tenant to Landlord immediately upon Landlord's request to the extent such additional costs increase any existing Over-Allowance Amount or result in an Over-Allowance Amount. Following completion of the Tenant Improvements, Landlord shall deliver to Tenant a final cost statement which shall indicate the final costs of the Tenant Improvement Allowance Items, and if such cost statement indicates that Tenant has underpaid or overpaid the Over-Allowance Amount, then within ten (10) business days after receipt of such statement, Tenant shall deliver to Landlord the amount of such underpayment or Landlord shall return to Tenant the amount of such overpayment, as the case may be.

4.3.2 Landlord Supervision. After Landlord selects the Contractor, Landlord shall independently retain Contractor to construct the Tenant Improvements in accordance with the Approved Working Drawings and the Cost Proposal and Landlord shall supervise the construction by Contractor, and Tenant shall pay a construction supervision and management fee (the "**Landlord's Supervision Fee**") to Landlord in an amount equal to the product of (i) three percent (3%) and (ii) an amount equal to the Tenant Improvement Allowance plus the Over-Allowance Amount (as such Over-Allowance Amount may increase pursuant to the terms of this Work Letter Agreement).

4.3.3 Contractor's Warranties and Guaranties. Landlord hereby assigns to Tenant all warranties and guaranties by Contractor relating to the Tenant Improvements, which assignment shall be on a non-exclusive basis such that the warranties and guarantees may be enforced by Landlord and/or Tenant, and Tenant hereby waives all claims against Landlord relating to, or arising out of the construction of, the Tenant Improvements.

4.3.4 Tenant's Covenants. Tenant hereby indemnifies Landlord for any loss, claims, damages or delays arising from the actions of Architect and the Engineers on the 12481 Premises or in the Building. Within ten (10) days after completion of construction of the Tenant Improvements, Landlord shall cause a Notice of Completion to be recorded in the office of the Recorder of the County in which the Building is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute and furnish a copy thereof to Landlord upon recordation, failing which, Landlord may itself execute and file the same on behalf of Tenant as Tenant's agent for such purpose. In addition, Tenant, immediately after the Substantial Completion of the 12481 Premises, shall have prepared and delivered to the Building management office a copy of the "as built" plans and specifications (including all working drawings) for the Tenant Improvements, together with a computer disk containing the Approved Working Drawings in AutoCAD format.

SECTION 5.

SUBSTANTIAL COMPLETION

5.1 Substantial Completion. For purposes of the Lease, including for purposes of determining the Commencement Date (as set forth in Section 1.7 of the Summary to the Lease), "**Substantial Completion**" of the 12481 Premises shall occur upon satisfaction of both of the following conditions: (a) the completion of the construction of the Tenant Improvements in the 12481 Premises pursuant to the Approved Working Drawings, with the exception of the any punchlist items, and (b) the issuance by the City Building Inspector of a temporary certificate of occupancy or certificate of occupancy.

5.2 Tenant Delays. To the extent there are any delays in Substantial Completion of the 12481 Premises as a direct, indirect, partial, or total result of any of the following (collectively, "**Tenant Delays**"):

5.2.1 Tenant's failure to comply with the Time Deadlines (except as a result of Force Majeure);

5.2.2 Tenant's failure to timely approve any matter requiring Tenant's approval, including a Partial Cost Proposal or the Cost Proposal (except as a result of Force Majeure);

5.2.3 a breach by Tenant of the terms of this Work Letter Agreement or the Lease;

5.2.4 changes in any of the Construction Drawings because the same do not comply with applicable laws;

5.2.5 Tenant's request for changes in the Approved Working Drawings;

5.2.6 Tenant's requirement for materials, components, finishes or improvements which are not available in a reasonable time (based upon the anticipated date of the Commencement Date set forth in Section 1.7 of the Summary) or which are different from, or not included in, the Specifications;

5.2.7 changes to the Base, Shell and Core required by the Approved Working Drawings;

5.2.8 any changes in the Construction Drawings and/or the Tenant Improvements required by applicable laws if such changes are directly attributable to Tenant's use of the 12481 Premises or Tenant's specialized tenant improvement(s); or

5.2.9 any other acts or omissions of Tenant, or its agents, or employees;

then, notwithstanding anything to the contrary set forth in the Lease and regardless of the actual date of the Substantial Completion of the 12481 Premises, the Commencement Date (as set forth in Section 1.7 of the Summary) shall be deemed to be the date the Commencement Date would have occurred if no Tenant Delays, as set forth above, had occurred.

SECTION 6.

MISCELLANEOUS

6.1 Tenant's Entry Into the 12481 Premises Prior to Substantial Completion. Subject to the terms hereof and provided that Tenant and its agents do not interfere with, or delay, Contractor's work in the Building and the 12481 Premises, at Landlord's reasonable discretion, Landlord and Contractor shall allow Tenant access to the 12481 Premises prior to the Substantial Completion of the 12481 Premises for the purpose of Tenant installing overstandard equipment or fixtures (including Tenant's data and telephone equipment and furniture) in the 12481 Premises. Prior to Tenant's entry into the 12481 Premises as permitted by the terms of this Section 6.1, Tenant shall submit a schedule to Landlord and Contractor, for their approval, which schedule shall detail the timing and purpose of Tenant's entry. In connection with any such entry, Tenant acknowledges and agrees that Tenant's employees, agents, contractors, consultants, workmen, mechanics, suppliers and invitees shall fully cooperate, work in harmony and not, in any manner, interfere with Landlord or Landlord's Contractor, agents or representatives in performing work in the Building and the 12481 Premises, or interfere with the general operation of the Building and/or the Project. If at any time any such person representing Tenant shall not be cooperative or shall otherwise cause or threaten to cause any such disharmony or interference, including, without limitation, labor disharmony, and Tenant fails to immediately institute and maintain corrective actions as directed by Landlord, then Landlord may revoke Tenant's entry rights upon twenty-four (24) hours' prior written notice to Tenant. Tenant acknowledges and agrees that any such entry into and occupancy of the 12481 Premises or any portion thereof by Tenant or any person or entity working for or on behalf of Tenant shall be deemed to be subject to all of the terms, covenants, conditions and provisions of the Lease, excluding only the covenant to pay rent (until the occurrence of the Commencement Date). Tenant further acknowledges and agrees that Landlord shall not be liable for any injury, loss or damage which may occur to any of Tenant's work made in or about the 12481 Premises in connection with such entry or to any property placed therein prior to the Commencement Date, the same being at Tenant's sole risk and liability. Tenant shall be liable to Landlord for any damage to any portion of the 12481 Premises, including the Tenant Improvement work, caused by Tenant or any of Tenant's employees, agents, contractors, consultants, workmen, mechanics, suppliers and invitees. In the event that the performance of Tenant's work in connection with such entry causes extra costs to be incurred by Landlord or requires the use of any Building services, Tenant shall promptly reimburse Landlord for such extra costs and/or shall pay Landlord for such Building services at Landlord's standard rates then in effect. In addition, Tenant shall hold Landlord harmless from and indemnify, protect and defend Landlord against any loss or damage to the Building or 12481 Premises and against injury to any persons caused by Tenant's actions pursuant to this Section 6.1.

6.2 Tenant's Representative. Tenant has designated Steve Shupp of Cushman & Wakefield as its sole representative with respect to the matters set forth in this Work Letter Agreement, who, until further notice to Landlord, shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter Agreement.

6.3 Landlord's Representative. Landlord has designated Steven Stewart as its sole representative with respect to the matters set forth in this Work Letter Agreement, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Work Letter Agreement.

6.4 Time of the Essence in This Work Letter Agreement. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. In all instances where Tenant is required to approve or deliver an item, if no written notice of approval is given or the item is not delivered within the stated time period, at Landlord's sole option, at the end of said period the item shall automatically be deemed approved or delivered by Tenant and the next succeeding time period shall commence.

6.5 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in the Lease, so long as an event of default by Tenant, beyond all applicable notice and cure periods, as described in Section 23 of the Lease or any default by Tenant, beyond all applicable notice and cure periods under this Work Letter Agreement, has occurred at any time on or before the Substantial Completion of the 12481 Premises and is continuing, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, at law and/or in equity, Landlord shall have the right to withhold payment of all or any portion of the Tenant Improvement Allowance and/or Landlord may cause Contractor to

cease the construction of the 12481 Premises (in which case, Tenant shall be responsible for any delay in the Substantial Completion of the 12481 Premises caused by such work stoppage as set forth in Section 5.2 of this Work Letter Agreement), and (ii) all other obligations of Landlord under the terms of this Work Letter Agreement shall be forgiven until such time as such default is cured pursuant to the terms of the Lease (in which case, Tenant shall be responsible for any delay in the Substantial Completion of the 12481 Premises caused by such inaction by Landlord). In addition, if the Lease is terminated prior to the Commencement Date for any reason due to a default by Tenant of Tenant's obligations under the Lease or under this Work Letter Agreement (except for obligations of Tenant that cannot, as a practical matter, take effect until Tenant takes possession of the Premises), in addition to any other remedies available to Landlord under the Lease, at law and/or in equity, Tenant shall pay to Landlord, as additional rent under the Lease, within five (5) days of receipt of a statement therefor, any and all costs incurred by Landlord (including any portion of the Tenant Improvement Allowance disbursed by Landlord) and not reimbursed or otherwise paid by Tenant through the date of such termination in connection with the Tenant Improvements to the extent planned, installed and/or constructed as of such date of termination, including, but not limited to, any costs related to the removal of all or any portion of the Tenant Improvements and restoration costs related thereto.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Work Letter Agreement as of the day and year first above written.

TENANT:

CADENCE PHARMACEUTICALS, INC,
a Delaware corporation

*By: _____
Print Name: _____
Print Title: _____

*By: _____
Print
Name: _____
Print Title: _____

LANDLORD:

PRENTISS/COLLINS DEL MAR HEIGHTS LLC,
a Delaware limited liability company

By: Cognac High Bluffs LLC,
a Delaware limited liability company,
its managing member

By: The Prudential Insurance Company of America,
a New Jersey corporation,
its sole member

By: _____
Name: _____
Title: _____

SCHEDULE 1

TIME DEADLINES

Dates	Actions to be Performed
1. May 9, 2006	Final Space Plan to be completed by Tenant and delivered to Landlord.
2. June 4, 2006	Tenant to deliver Final Working Drawings to Landlord.
3. June 4, 2006	Tenant to submit Approved Working Drawings to the City of San Diego for all applicable building permits.
4. Five (5) business days after the receipt of the Cost Proposal by Tenant.	Tenant to approve Cost Proposal and deliver Cost Proposal to Landlord.

EXHIBIT "D"

FORM OF COMMENCEMENT NOTICE

This Commencement Notice is delivered this _____ day of _____, 2006, by PRENTISS/COLLINS DEL MAR HEIGHTS, LLC, a California limited liability company ("Landlord") to CADENCE PHARMACEUTICALS, INC. ("Tenant"), pursuant to the provisions of Section 2.1 of that certain Office Lease (the "Lease") dated _____, 2006 , by and between Landlord and Tenant covering certain space in the Building known as 12481 & 12531 High Bluff Ridge. All terms used herein with their initial letter capitalized shall have the meaning assigned to such terms in the Lease.

Gentlemen:

In accordance with the above-referenced Lease, we wish to advise and/or confirm as follows:

1. That the Building, the Premises, the Parking Facilities, and all other improvements required to be constructed and furnished by Landlord in accordance with the terms of the Lease have been accepted by Tenant as being substantially complete and that there is no deficiency in construction.

2. That Tenant has accepted and is in possession of the Premises, and acknowledges that under the provisions of the Lease, the Term of the Lease is for Six (6) years, with One (1) options to renew for Five (5) years each, and commenced upon the Commencement Date of **[SEPTEMBER 15, 2006]** and is currently scheduled to expire on **[SEPTEMBER 30, 2012]**, subject to earlier termination as provided in the Lease.

3. That in accordance with the Lease, rental payment has commenced (or shall commence) on **[SEPTEMBER 15, 2006]**.

4. If the Commencement Date of the Lease is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Lease.

5. Rent is due and payable in advance on the first day of each and every month during the Term of the Lease. Your rent checks should be made payable to Prentiss/Collins Del Mar Heights LLC, at P.O. Box 100555 Pasadena, California 91189-0555.

6. The exact number of rentable square feet within the 12481 Premises is _____ square feet. The exact number of usable square feet within the 12481 Premises is _____ square feet. The exact number of rentable square feet within the 12531 Premises is _____ square feet. The exact number of usable square feet within the 12531 Premises is _____ square feet.

7. Tenant's Percentage, as adjusted based upon the exact number of Rentable Square Feet within the 12481 Premises, is _____%.

IN WITNESS WHEREOF, this instrument has been duly executed by Landlord as of the date first written above.

LANDLORD:

PRENTISS/COLLINS DEL MAR HEIGHTS LLC,
a Delaware limited liability company

By: Cognac High Bluffs LLC,
a Delaware limited liability company,
its managing member

By: The Prudential Insurance Company of America,
a New Jersey corporation,
its sole member

By: _____
Name: _____
Title: _____

[Signatures continue on following page]

ACKNOWLEDGED AND AGREED TO THIS _____ DAY
OF _____, 2006, BY TENANT:

CADENCE PHARMACEUTICALS, INC,
a Delaware corporation

*By: _____
Print Name: _____
Print Title: _____

*By: _____
Print Name: _____
Print Title: _____

SAMPLE ONLY [NOT FOR EXECUTION]

EXHIBIT "E"

RULES AND REGULATIONS

Notwithstanding anything to the contrary contained in this Exhibit E, if any rule or regulation is in conflict with any term, covenant or condition of the Lease, the Lease shall prevail. In addition, no rule or regulation, or any subsequent amendment thereto shall in any way alter, reduce or adversely affect any of Tenant's rights or increase Tenant's obligations under this Lease. Following a written request from Tenant, Landlord shall use commercially reasonable efforts to enforce the rules and regulations in a non-discriminatory manor against Tenant and other tenants of the Site.

1. No sign, advertisement, name or notice shall be installed or displayed on any part of the outside or inside of the Building without the prior written consent of Landlord. Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved by Landlord, using materials and in a style and format approved by Landlord.

2. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises. No awnings or other projection shall be attached to the outside walls of the Building without the prior written consent of Landlord. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises, other than Building standard materials, without the prior written consent of Landlord.

3. Tenant shall not obstruct any sidewalks, halls, passages, exits, entrances, elevators, escalators or stairways of the Building. The halls, passages, exits, entrances, elevators, escalators and stairways are not for the general public, and Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interests of the Building and its tenants; provided, that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant and no employee, invitee, agent, licensee or contractor of Tenant shall go upon or be entitled to use any portion of the roof of the Building.

4. The directory of the Building will be provided exclusively for the display of the name and location of tenants only, and Landlord reserves the right to exclude any other names therefrom.

5. All cleaning and janitorial services for the Building and the Premises shall be provided exclusively through Landlord or Landlord's janitorial contractors in accordance with the provisions of Section 18.1(d) of the Lease. No person or persons other than those approved by Landlord shall be employed by Tenant or permitted to enter the Building for the purpose of cleaning the same. Tenant shall not cause any unnecessary labor by carelessness or indifference to the good order and cleanliness of the Premises. Landlord shall not in any way be responsible to Tenant for loss of property on the Premises, however occurring, or for any damage to Tenant's property by the janitors or any other employee or any other person.

6. Landlord will furnish Tenant, free of charge, with two keys to each door lock in the Premises and 24-hour access cards to the Building for each of Tenant's employees. Landlord may impose a reasonable charge for any additional keys or replacement access cards. Tenant may not make or have made additional keys, and Tenant shall not alter any lock or install a new additional lock or bolt on any door or window of its Premises. Tenant, upon termination of its tenancy, shall deliver to Landlord the keys of all doors which have been furnished to, or otherwise procured by Tenant, and, in the event of loss of any keys, shall pay Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such change.

7. Electric wires, telephones, telegraphs, burglar alarms or other similar apparatus shall not be installed in the Premises except with the approval and under the direction of Landlord. The location of telephones, call boxes and any other equipment affixed to the Premises shall be subject to the approval of Landlord. Any installation of telephones, telegraphs, electric wires or other electric apparatus made without permission shall be removed by Tenant at Tenant's own expense. No machines other than standard office machines, such as typewriters and calculators, photo copiers, personal computers and word processors, UL listed kitchenette appliances, and vending machines permitted by the Lease, shall be used in the Premises without the approval of Landlord.

8. No furniture, freight, or equipment of any kind shall be brought into the Building without prior notice to Landlord and all moving of the same into or out of the Building shall be done at such time and in such manner as Landlord shall designate. No furniture, equipment or merchandise shall be received in the Building or carried up or down in the elevator, except between such hours as shall be designated by Landlord. Deliveries during normal office hours shall be limited to normal office supplies and other small items. No deliveries shall be made which impede or interfere with other tenants or the operation of the Building.

9. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Landlord shall have the right to reasonably prescribe the weight and size of all unusually heavy equipment, materials, furniture or other property brought into the Building. Heavy objects, if such objects are considered necessary by Tenant, as reasonably determined by Landlord, shall stand on such platforms as determined by Landlord to be necessary to properly distribute the weight. Business machines and mechanical equipment which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord or to any tenants in the Building, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices

sufficient to eliminate noise or vibration. Landlord will not be responsible for loss of, or damage to, any such equipment or other property from any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant. Landlord acknowledges and agrees that Tenant may use and maintain fire-rated storage and filing cabinets that are heavier in nature than typical filing systems.

10. Tenant shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of office equipment. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Project by reason of noise, odors or vibrations, nor shall Tenant bring into or keep in or about the Premises any birds or animals.

11. Tenant shall not use any method of heating or air-conditioning other than that supplied by Landlord.

12. Tenant shall not waste electricity, water or air-conditioning and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air-conditioning and to comply with any governmental energy-saving rules, laws or regulations of which Tenant has actual notice, and shall not adjust controls other than room thermostats installed for Tenant's use. Tenant shall keep corridor doors closed and shall close window coverings at the end of each business day.

13. Landlord reserves the right from time to time, in Landlord's sole and absolute discretion, exercisable without prior notice and without liability to Tenant, to: (a) name or change the name of the Building, Site or Project; (b) change the address of the Building or Project, and/or (c) install, replace or change any signs in, on or about the Common Areas, the Building or Site (except for Tenant's signs, if any, which are expressly permitted by the Lease).

14. Landlord reserves the right to exclude from the Building between the hours of 6:00 p.m. and 7:00 a.m., or such other hours as may be established from time to time by Landlord, and on legal holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. Landlord shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord reserves the right to prevent access to the Building in case of invasion, mob, riot, public excitement or other commotion by closing the doors or by other appropriate action.

15. Tenant shall close and lock all doors of its Premises and entirely shut off all water faucets or other water apparatus, and, except with regard to Tenant's computers and other equipment which reasonably require electricity on a 24-hour basis, all electricity, gas or air outlets before Tenant and its employees leave the Premises. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Building or by Landlord for noncompliance with this rule.

16. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substances of any kind whatsoever shall be thrown therein.

17. Tenant shall not sell, or permit the sale at retail, of newspapers, magazines, periodicals, theater tickets, or any other goods or merchandise to the general public in or on the Premises. Tenant shall not make any room-to-room solicitation of business from other tenants in the Project. Tenant shall not use the Premises for any business or activity other than that specifically provided for in the Lease.

18. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.

19. Except as expressly permitted in the Lease, Tenant shall not mark, drive nails, screw or drill into the partitions, window mullions, woodwork or plaster, or in any way deface the Premises or any part thereof, except to install normal wall hangings. Tenant shall repair any damage resulting from noncompliance under this rule.

20. Tenant shall not install, maintain or operate upon the Premises any vending machines without the prior written consent of Landlord, which shall not be unreasonably withheld.

21. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in and around the Project or the Building are expressly prohibited, and each tenant shall cooperate to prevent same.

22. Landlord reserves the right to exclude or expel from the Project and/or the Building any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Project or Building.

23. Tenant shall store all its trash and garbage within its Premises. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions reasonably issued from time to time by Landlord.

24. The Premises shall not be used for the storage of merchandise held for sale to the general public, or for lodging or for manufacturing of any kind. No cooking shall be done or permitted by Tenant on the Premises, except that

use by Tenant of Underwriters' Laboratory-approved equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted and the use of a microwave shall be permitted, provided that such equipment and use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations.

25. Tenant shall not use in any space, or in the public halls of the Building, any hand trucks except those equipped with rubber tires and side guards, or such other material-handling equipment as Landlord may approve. Tenant shall not bring any other vehicles of any kind into the Building.

26. Tenant agrees that it shall comply with all fire and security regulations that may be issued from time to time by Landlord, and Tenant also shall provide Landlord with the name of a designated responsible employee to represent Tenant in all matters pertaining to such fire or security regulations. Tenant shall cooperate fully with Landlord in all matters concerning fire and other emergency procedures.

27. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage. Such responsibility shall include keeping doors locked and other means of entry to the Premises closed.

28. Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other such tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any and all of the tenants in the Building.

29. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of premises in the Project or Building.

30. Landlord reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety, security, care and cleanliness of the Project and/or Building and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.

31. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, clients, customers, invitees or guests.

32. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except by a paste, or other material which may easily be removed with water, the use of cement or other similar adhesive materials being expressly prohibited. The method of affixing any such linoleum, tile, carpet or other similar floor covering shall be subject to the approval of Landlord. The expense of repairing any damage resulting from a violation of this rule shall be borne by Tenant.

PARKING RULES AND REGULATIONS

In addition to the parking provisions contained in the Lease to which this Exhibit "E" is attached, the following rules and regulations shall apply with respect to the use of the Building's parking facilities.

1. Every parker is required to park and lock his/her own vehicle. All responsibility for damage to or loss of vehicles is assumed by the parker and Landlord shall not be responsible for any such damage or loss by water, fire, defective brakes, the act or omissions of others, theft, or for any other cause.

2. Tenant shall not park or permit its employees to park in any parking areas designated by Landlord as areas for parking by visitors to the Project. Tenant shall not leave vehicles in the parking areas overnight nor park any vehicles in the parking areas other than automobiles, motorcycles, motor driven or non-motor driven bicycles or four wheeled trucks.

3. Parking stickers or any other device or form of identification supplied by Landlord as a condition of use of the parking facilities shall remain the property of Landlord. Such parking identification device must be displayed as requested and may not be mutilated in any manner. The serial number of the parking identification device may not be obliterated. Devices are not transferable and any device in the possession of an unauthorized holder will be void.

4. No overnight or extended term storage of vehicles shall be permitted.

5. Vehicles must be parked entirely within painted stall lines of a single parking stall.

6. All directional signs and arrows must be observed.

7. The speed limit within all parking areas shall be five (5) miles per hour.

8. Parking is prohibited: (a) in areas not striped for parking; (b) in aisles; (c) where "no parking" signs are posted; (d) on ramps; (e) in cross-hatched areas; and (f) in reserved spaces and in such other areas as may be designated by Landlord or Landlord's parking operator.

9. Loss or theft of parking identification devices must be reported to the Management Office immediately, and a lost or stolen report must be filed by the Tenant or user of such parking identification device at the time. Landlord has the right to exclude any vehicle from the parking facilities that does not have an identification device.

10. Any parking identification devices reported lost or stolen found on any unauthorized car will be confiscated and the illegal holder will be subject to prosecution.

11. Washing, waxing, cleaning or servicing of any vehicle in any area not specifically reserved for such purpose is prohibited.

12. The parking operators, managers or attendants are not authorized to make or allow any exceptions to these rules and regulations.

13. Tenant's continued right to park in the parking facilities is conditioned upon Tenant abiding by these rules and regulations and those contained in this Lease. Further, if the Lease terminates for any reason whatsoever, Tenant's right to park in the parking facilities shall terminate concurrently therewith.

14. Tenant agrees to sign a parking agreement with Landlord or Landlord's parking operator within five (5) days of request, which agreement shall provide the manner of payment of monthly parking fees for covered reserved parking spaces and otherwise be consistent with the Lease and these rules and regulations.

15. Landlord reserves the right to refuse the sale or use of monthly stickers or other parking identification devices to any tenant or person who willfully refuse to comply with these rules and regulations and all city, state or federal ordinances, laws or agreements.

16. Landlord reserves the right to establish and change parking fees, and to modify and/or adopt such other reasonable and non-discriminatory rules and regulations for the parking facilities as it deems necessary for the operation of the parking facilities. Landlord may refuse to permit any person who violates these rules to park in the parking facilities, and any violation of the rules shall subject the vehicle to removal, at such vehicle owner's expense.

EXHIBIT "F"

SAMPLE FORM OF TENANT ESTOPPEL CERTIFICATE

The undersigned _____ hereby certifies to _____, and _____, a _____ corporation as follows:

1. Attached hereto is a true, correct and complete copy of that certain Office Lease dated _____, 2006 between PRENTISS/COLLINS DEL MAR HEIGHTS LLC, a Delaware limited liability company ("**Landlord**"), and CADENCE PHARMACEUTICALS, INC, a Delaware corporation ("**Tenant**") (the "**Lease**"), which demises Premises which are located at 12481 & 12531 High Bluff Drive, San Diego, CA 92130. To the undersigned's best knowledge, the Lease is now in full force and effect, and the Lease has not been amended, modified or supplemented, except as set forth in Section 6 below.
2. The term of the Lease commenced on _____, 2006.
3. The term of the Lease is currently scheduled to expire on September 30, 2012.
4. Tenant has no option to renew or extend the Term of the Lease except: One option to renew the lease for a period of Five (5) years.
5. Tenant has no preferential right to purchase the Premises or any portion of the Building or Site upon which the Premises are located, and Tenant has no rights or options to expand into other space in the Building.
6. The Lease has: (Initial One)

   ( ) not been amended, modified, supplemented, extended, renewed or assigned.

   ( ) been amended, modified, supplemented, extended, renewed or assigned by the following described agreements, copies of which are attached hereto: _____&n bsp;____.
7. Tenant has accepted and is now in possession of the Premises and has not sublet, assigned or encumbered the Lease, the Premises or any portion thereof except as follows: _____.
8. The current Monthly Basic Rent is $_____; and current monthly parking charges are $_____.
9. Tenant's Percentage is _____%, and Tenant's Percentage of Operating Expenses currently payable by Tenant is $_____ per month, which amount is Landlord's current estimate of Tenant's Percentage of Operating Expenses in excess of the Operating Expenses incurred in calendar year _____.
10. The amount of security deposit (if any) is $_____. No other security deposits have been made.
11. All rental payments payable by Tenant have been paid in full as of the date hereof. No rent under the Lease has been paid for more than thirty (30) days in advance of its due date.
12. All work required to be performed by Landlord under the Lease has been completed and has been accepted by Tenant, and all tenant improvement allowances have been paid in full.
13. To the best of the undersigned's knowledge, as of the date hereof, there are no defaults on the part of Landlord or Tenant under the Lease.
14. To the undersigned's knowledge, as of the date hereof, Tenant has no defense as to its obligations under the Lease and claims no set-off or counterclaim against Landlord.
15. Tenant has no right to any concession (rental or otherwise) or similar compensation in connection with renting the space it occupies, except as expressly provided in the Lease.
16. All insurance required of Tenant under the Lease has been provided by Tenant and all premiums have been paid.
17. There has not been filed by or against the undersigned a petition in bankruptcy, voluntary or otherwise, any assignment of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or any state thereof, or any other action brought pursuant to such bankruptcy laws with respect to the undersigned.
18. Tenant pays rent due Landlord under the Lease to Landlord and does not have any knowledge of any other person who has any right to such rents by collateral assignment or otherwise.

The foregoing certification is made with the knowledge that is about to **[FUND A LOAN TO LANDLORD/TENANT OR PURCHASE THE BUILDING FROM LANDLORD OR TAKE AN ASSIGNMENT FROM TENANT]**, and that is relying upon the representations herein made in **[FUNDING SUCH LOAN OR PURCHASING THE BUILDING OR TAKING SUCH ASSIGNMENT]**.

Dated: _____, 20_____.

"TENANT"

_____ ,
a _____

By: _____
Print Name: _____
Its: _____

EXHIBIT "G"

FORM OF LETTER OF CREDIT

(On Letterhead of Issuing Bank)

Date: (Insert Date)

Credit Number: (Insert Number)

Expiration Date: (Insert Date)

Beneficiary:

(Insert Identification of Landlord)

Applicant: (Insert Identification of Tenant)

Ladies/Gentlemen:

We hereby establish our irrevocable letter of credit (the "Credit") in favor of Beneficiary, in the aggregate amount of _____ Dollars U.S. Currency ($_____).

All or any part of the Credit is available by sight draft or drafts drawn on us by you. Such draft or drafts must be accompanied by a statement, signed by an officer or agent of Beneficiary, to the effect that the amount drawn herewith represents funds which Beneficiary is entitled to draw from this Credit pursuant to that certain Office Space Lease dated ___ by and between Beneficiary, as landlord, and Applicant, as tenant.

All documents presented to us in connection with any demand for payment hereunder, as well as all notices and other communications to us in respect of this Credit, shall be in writing and shall make specific reference to this Credit by number. All drafts must be marked "Drawn under (Insert Name of Issuing Bank) Credit No. (Insert Number)."

We hereby agree that drafts drawn under and in compliance with the terms of this Credit will be honored upon presentation and delivery of drafts as specified, without inquiry by us into the accuracy of any of the statements contained in any of such drafts, if presented at this office, (Insert Address of Issuing Bank as Shown on Letterhead). We further acknowledge and agree that: (a) this Credit shall permit partial draws and, in the event you elect to draw upon less than the full stated amount hereof, the stated amount of this Credit shall be automatically reduced by the amount of such partial draw; and (b) you shall be entitled to assign your interest in this Credit from time to time without our approval and without charge.

This Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 revision) ICC Publication No. 500. This Credit is transferable in accordance with ICC Publication 500. The transfer fee payable in connection with such transfer, if any, shall be paid by Applicant.

This Credit will be automatically renewed for a one year period upon the expiration date set forth above and upon each anniversary of such date, unless we notify you in writing by registered mail, at least thirty (30) days prior to such expiration date or at least thirty (30) days prior to the expiration of the period for which this Credit is renewed, that we elect not to so renew this Credit. Upon renewal, we will notify you in writing that this Credit has been automatically renewed.

(INSERT IDENTIFICATION OF AND EXECUTION BY ISSUING BANK)

HIGH BLUFF RIDGE AT DEL MAR

OFFICE LEASE

LANDLORD:

PRENTISS/COLLINS DEL MAR HEIGHTS, LLC,
a California limited liability company

TENANT:

CADENCE PHARMACEUTICALS, INC.,
a Delaware corporation

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EXHIBIT 10.10

CERTAIN MATERIAL (INDICATED BY AN ASTERISK) HAS BEEN OMITTED FROM THIS DOCUMENT PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT. THE OMITTED MATERIAL HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

COLLABORATION AND LICENSE AGREEMENT

between

MICROLOGIX BIOTECH INC.

and

STRATA PHARMACEUTICALS INC.

Dated: July 30, 2004

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COLLABORATION AND LICENSE AGREEMENT

This Collaboration and License Agreement (this "**Agreement**") is made as of July 30, 2004 (the "**Effective Date**") by and between **Micrologix Biotech Inc.**, a British Columbia corporation having its offices at BC Research Complex, 3650 Wesbrook Mall, Vancouver, BC, Canada V6S 2L2 ("**Micrologix**") and **Strata Pharmaceuticals Inc.**, a corporation having its offices at 10923 Coverhurst Way, San Diego, California 92130, USA ("**Strata**"). Micrologix and Strata are sometimes referred to collectively herein as the "**Parties**" or singly as a "**Party**".

R E C I T A L S

WHEREAS, Micrologix has developed and owns or controls certain proprietary technology, patents, patent applications, and know-how relating to Micrologix's proprietary Compound (as defined below);

WHEREAS, on June 2, 2004, the Parties signed a term sheet (the "**Term Sheet**"), whereby Strata paid Micrologix the Exclusivity Fee, in exchange for, among other things, Micrologix's agreement to negotiate solely and exclusively with Strata with respect to any license to the Compound and the Micrologix Technology for development and commercialization in the Field in the Territory (as such terms are defined herein); and

WHEREAS, Micrologix wishes to grant to Strata, and Strata wishes to obtain from Micrologix, an exclusive license under the Micrologix Technology to use, market, advertise, promote, distribute, offer for sale, sell, manufacture, have manufactured, export and import, and co-develop with and/or in addition to Micrologix, the Compound in the Field in the Territory, or have the foregoing done on its behalf, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

Section 1.1 "Acceptance for Filing"

means notification from the FDA indicating receipt of an NDA submission in the United States or equivalent marketing application pursuant to Applicable Laws in each country in the Territory.

Section 1.2 "Act"

means the Federal Food Drug and Cosmetic Act (21 U.S.C. Section 301 et seq.) in the United States and any other comparable, applicable legislation in any other country in the Territory.

Section 1.3 “Affiliate”

means any company or entity controlled by, controlling or under common control with a Party. As used in this Section 1.3, “control” means (a) that an entity or company owns, directly or indirectly, fifty percent (50%) or more of the voting stock of another entity, or (b) that an entity, person or group has the actual ability to control and direct the management of the entity, whether by contract or otherwise.

Section 1.4 “Applicable Law(s)”

means the Act, Regulations and all other applicable laws, rules, regulations and guidelines within the Territory that apply to the import, export, research and development, manufacture, marketing, distribution or sale of the Product in the Field in the Territory or the performance of either Party’s obligations under this Agreement (including disclosure obligations as required by the United States Securities and Exchange Commission or other comparable exchange or securities commission having authority over a Party) to the extent applicable and relevant to such Party.

Section 1.5 “Approval Letter”

means a letter issued by the FDA indicating approval of a product for commercialization, as defined in 21 CFR § 314.105 in the United States, or equivalent letter issued by the applicable Competent Authority in any other country in the Territory, pursuant to Applicable Laws in each country in the Territory.

Section 1.6 “Books and Records”

means, in whatever media, any and all books and records, documents, reports and accounts in connection with or relative to: any Reimbursable Costs, any costs Strata or Micrologix is obligated to reimburse or pay to the other Party under this Agreement; the Development; the Development Plan; as well as any other books and records as may be required from time to time by Applicable Laws or this Agreement. Books and Records shall not include any market research and competitive reports, marketing reports and data.

Section 1.7 “CFR”

means the United States Code of Federal Regulations in the United States and any other comparable, applicable code of regulations in any other country in the Territory.

Section 1.8 “cGMP”

means the current good manufacturing protocols as defined in 21 CFR § 210 and § 211 in the United States or other comparable, applicable regulations in other countries in the Territory.

Section 1.9 “Collaboration”

means the activities of the Parties carried out in performance of, and the relationship between the Parties established by this Agreement.

Section 1.10 “Commercially Reasonable Efforts”

means, except as otherwise explicitly set forth in this Agreement, [***] shall be fairly determined based upon relevant factors, including [***]. Except as expressly set out in this Agreement, “Commercially Reasonable Efforts”, as applied to development and commercialization efforts, shall be as applied to, and assessed upon, [***], and therefore, Strata shall not be required to:

(a) [***]; or

(b) [***];

except as may be required in respect of the Product and uses of the Product when using Commercially Reasonable Efforts [***]. In addition to the foregoing, during the [***] immediately following the Effective Date, when assessing whether Commercially Reasonable Efforts have been applied by a Party to an obligation under this Agreement other than the obligations set out in Section 2.1(b), in addition to the foregoing considerations, the Parties shall take into account [***].

Section 1.11 “Common Shares”

means common shares in the capital of Micrologix.

Section 1.12 “Competent Authority(ies)”

means collectively the entities in each country in the Territory responsible for: (i) the regulation of medicinal products intended for human use, including the FDA; or (ii) the establishment, maintenance and/or protection of rights related to the Micrologix Patent Rights, or any other successor entities thereto.

Section 1.13 “Compound”

means [***].

Section 1.14 “Confidential Information”

means any and all information (including the Micrologix Technology) of a Party relating to any trade secret, Reimbursable Costs, Books and Records, process, method, compound, research project, work in process, future development, scientific, engineering, manufacturing, marketing, sales, business plan, financial or personnel matter relating to the disclosing Party, its present or future products, sales, suppliers, customers, employees, investors or business, whether in oral, written, graphic or electronic form. Confidential Information shall not include any information which the receiving Party can prove by competent evidence:

*** Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

(a) is now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known or available;

(b) is known by the receiving Party at the time of receiving such information, as evidenced by its written records maintained in the ordinary course of business;

(c) is hereafter furnished to the receiving Party by a Third Party, as a matter of right and without restriction on disclosure;

(d) is independently developed by the receiving Party, as evidenced by its written records, without knowledge of, and without the aid, application or use of, the disclosing Party's Confidential Information; or

(e) is the subject of a written permission to disclose provided by the disclosing Party.

Section 1.15 "Control"

means the possession of the ability to grant a license or sublicense as provided for herein without violating the terms of any agreement or other arrangement with any Third Party, licensee or sublicensee or the payment of any material licensing fees or royalties to any Third Party, licensee or sublicensee.

Section 1.16 "Costs"

means any and all costs, expenses, fees (including attorneys' fees and costs), charges, monies, license fees, upfront fees and royalties paid in connection with any proceeding, action, suit or claim and/or paid to any Third Party.

Section 1.17 "CRBSI"

means catheter related blood stream infection.

Section 1.18 "Development"

means work conducted under the Development Plan(s) and as set out in Section 2.3.

Section 1.19 "Development Plan(s)"

means the detailed plan(s) related to the research and the development (including work to obtain Governmental Approvals, including Marketing Authorizations), and the budget therefor as amended from time to time pursuant to which the Parties shall conduct the Development under the terms of this Agreement. The initial Development Plan is attached hereto as Exhibit "A".

Section 1.20 "Development Subcontract"

has the meaning set out in Section 2.1.

Section 1.21 “DMF”

means drug master file.

Section 1.22 “Europe”

means the European Union as of the Effective Date, European Union Candidate Countries (namely, Bulgaria, Croatia, Romania and Turkey), and the following European Countries: Albania, Andorra, Belarus, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Moldova, Monaco, Norway, Russia, San Marino, Serbia & Montenegro, Switzerland, Ukraine, and Vatican City.

Section 1.23 “Exclusivity Fee”

means the $200,000 payment made by Strata to Micrologix under the Term Sheet which Micrologix acknowledges it received in two $100,000 payments, the first on June 3, 2004 and the second on July 6, 2004.

Section 1.24 “Exclusivity Period”

has the meaning set out in Section 3.7(b).

Section 1.25 “Extended Field”

has the meaning set out in Section 3.7(a).

Section 1.26 “FDA”

means the United States Food and Drug Administration in the United States and any other comparable, applicable administrative agency in any other country in the Territory, or any successor entity thereto.

Section 1.27 “Field”

means any or all of the following: [***]. For the avoidance of doubt, the Field specifically excludes [***].

Section 1.28 “First Commercial Sale”

means (a) with respect to a country in the Territory, the first sale for use, consumption or resale of the Product by Strata, its sublicensees or its Affiliates in such country (excluding any sales for clinical trials or other non-commercial purposes) and (b) with respect to the Territory, the First Commercial Sale in any country within the Territory. A sale to a sublicensee or an Affiliate shall

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not constitute a First Commercial Sale unless the sublicensee or Affiliate is the end user of the Product.

Section 1.29 "First Phase III Study**"**means the Phase III Study for the Product completed prior to the Effective Date, namely #226-98-002.

Section 1.30 "GAAP"

means United States generally accepted accounting principles, as consistently applied in the Territory.

Section 1.31 "Good Clinical Practices" or "GCP"

means good clinical practices as defined in 21 CFR § 50 et seq., § 56 et seq., and § 312 et seq. in the United States or other comparable, applicable regulations in other countries in the Territory.

Section 1.32 "Governmental Approval(s)"

means any and all permits, licenses and authorizations, including Marketing Authorizations required by any Competent Authority as a prerequisite to the development, manufacturing, packaging, marketing and selling of the Product in the Field in the Territory; excluding however import permits.

Section 1.33 "IMS Data"

means the data reported from IMS Health Incorporated of Plymouth Meeting, PA, or any successor to IMS Health Incorporated or any other independent reporting service used by Strata to provide information related to the marketing of the Product and other pharmaceutical products.

Section 1.34 "Improvements"

means, subject to Section 3.6, any and all developments, derivative works, enhancements, modifications, inventions or discoveries relating to the Compound, the Product, for use in the Field and under the Control of Micrologix or developed, created or acquired by Micrologix at any time during the Term, whether patentable or not, and shall include, but not be limited to, developments, inventions or discoveries intended to enhance the safety or efficacy of the Product and all intellectual property rights related thereto.

Section 1.35 "IND(s)"

means an investigational new drug application as defined in 21 C.F.R. Section 312 et seq for the FDA in the United States or equivalent application to the Competent Authorities of other countries in the Territory, to commence clinical testing of a drug in humans, as defined by the FDA in the United States, or other applicable Competent Authority, as the same may be amended, supplemented or replaced from time to time.

Section 1.36 “Know-How”

means any and all know-how, trade secrets, inventions, data, processes, techniques, procedures, compositions, devices, methods, formulas, protocols, any and all pre-clinical and clinical data, and information, whether or not patentable, which are not generally publicly known, including but not limited to any and all chemical, biochemical, toxicological, and scientific research information, whether in written, electronic, graphic or video form or any other form or format.

Section 1.37 “knowledge” or “best of its knowledge”

means, with respect to each Party, the actual knowledge of the senior officers of such Party, without the duty of inquiry.

Section 1.38 “Labelled” or “Labelling”

means any and all labels and other written, printed or graphic matter, including artwork, upon (a) the Product or any container utilized with the Product; (b) packaging; or (c) the package inserts.

Section 1.39 “LCSI”

means local catheter site infection.

Section 1.40 “Major European Market Country”

means France, Germany and United Kingdom.

Section 1.41 “manufacture(d)” or “manufacturing”

means the storage, handling, assembly, production, processing, Labelling, testing, disposition, packaging and quality control of raw materials and components and the Product.

Section 1.42 “Manufacturing Development Costs”

has the meaning set out in Section 5.3(f).

Section 1.43 “Market Price”

of the Common Shares means the U.S. Dollar Equivalent of the weighted average of the trading prices of the Common Shares on The Toronto Stock Exchange, for the five consecutive Trading Days ending on the last Trading Day prior to the Effective Date.

Section 1.44 “Marketing Authorization”

means all necessary and appropriate regulatory approvals, including NDAs and Pricing and Reimbursement Approvals, where applicable, to allow the Product to be marketed and sold in the Field in a particular country in the Territory.

Section 1.45 “MBI 594AN”

means [***].

Section 1.46 “Micrologix Know-How”

means any and all Know-How related to the Compound or the Product, including research and development and clinical studies hereunder and other obligations of Micrologix hereunder, and which is under the Control of Micrologix as of the Effective Date and any and all Improvements thereto, which is not covered by the Micrologix Patent Rights, but is necessary or useful to the use, development, manufacture, marketing, promotion, distribution, sale and/or commercialization of the Product in the Territory for use in the Field.

Section 1.47 “Micrologix Patent Rights” or “Micrologix Patent”

means any and all Patent Rights that claim Micrologix’s proprietary technology for the Product or the Compound which is under the Control of Micrologix as of the Effective Date and any and all Patent Rights covering Improvements thereto, which are necessary or useful to the use, development, manufacture, marketing, promotion, distribution, sale and/or commercialization of the Product in the Territory for use in the Field. The Micrologix Patent Rights as of the Effective Date are set forth on Exhibit “B”. Any Micrologix Patent Rights issued after the Effective Date shall be added to Exhibit “B”.

Section 1.48 “Micrologix Technology”

means the Micrologix Patent Rights and the Micrologix Know-How.

Section 1.49 “NDA”

means a New Drug Application, and all amendments and supplements thereto, for regulatory approval by the FDA as defined in 21 CFR § 314.50 et seq., as such act or regulations may be amended, supplemented or replaced from time to time, to commence commercial sale of the Product in the United States and any other comparable term and act as applicable with regard to a new drug application and all amendments, supplements or replacements to such act or regulations in any other country in the Territory.

Section 1.50 “Negotiation Period”

has the meaning set out in Section 3.7(c).

Section 1.51 “Net Sales”

means collectively, the gross amount invoiced by Strata, its sublicensees, or its Affiliates for sales of the Product to a Third Party (excluding sales among Strata and a sublicensee or Affiliate

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of Strata for resale, but including the subsequent final sales to Third Parties by such sublicensees or Affiliates), less the following as they pertain to the Product:

(a) [***].

(b) [***].

The Product shall be considered "sold" when billed out or invoiced.

No deductions shall be made from Net Sales for items (a) and (b) above except to the extent of amounts for such items actually granted or paid with respect to the Product; provided that a Party may reconcile all such amounts within a given calendar quarter regardless of when such amounts were actually granted or paid.

No deductions shall be made from Net Sales [***].

Components of Net Sales shall be determined in the ordinary course of business using the accrual method of accounting in accordance with GAAP, provided that a Party may reconcile all such amounts within a given calendar quarter regardless of when such amounts were actually granted or paid.

In the event a Party transfers Product to a Third Party in a bona fide arm's length transaction, for consideration, in whole or in part, other than cash or to a Third Party in other than a bona fide arm's length transaction, the Net Sales price for such Product shall be deemed to be the standard invoice price then being invoiced by a Party in an arm's length transaction with similar customers.

Notwithstanding anything herein to the contrary, the transfer of a Product to a Third Party without consideration to Strata in connection with the development or testing of a Product shall not be considered a sale of a Product under this Agreement.

Section 1.52 "Notification Period"

has the meaning set out in Section 3.7(c).

Section 1.53 "packaging"

means any and all containers, cartons, shipping cases, inserts, package inserts or other similar material used in packaging or accompanying the Product.

Section 1.54 "Patent Rights"

means any and all rights under patents and patent applications, and any and all patents issuing therefrom (including utility, model and design patents and certificates of invention), together

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with any and all substitutions, extensions (including supplemental protection certificates), registrations, confirmations, reissues, divisionals, continuations, continuations-in-part, re-examinations, renewals, and foreign counterparts of the foregoing and all supplements and modifications thereto.

Section 1.55 "Phase III Study"

means that portion of the clinical development program that provides for human clinical trials, performed after preliminary evidence suggesting dose and effectiveness of a Product has been obtained, which is intended to gather the additional information about the effectiveness and safety that is needed to evaluate the overall benefit-risk relationship of the Product and to provide adequate basis for labelling, performed in accordance with the *U.S.A. Federal Food, Drug and Cosmetic Act* and applicable regulations promulgated thereunder (including 21 CFR Part 312), as amended from time to time.

Section 1.56 "Phase IV Study"

means, as applicable, a study or program, designed to: (a) obtain additional safety or efficacy data in support of the Product; or (b) determine effectiveness for additional labelled indications, in either case commenced after Governmental Approval of the Product in the subject country in the Territory.

Section 1.57 "Post Marketing Commitments"

means any post-approval commitments required by the FDA in the United States or any other Competent Authority in any other country in the Territory.

Section 1.58 "Pricing and Reimbursement Approvals"

means any pricing and reimbursement approvals which must be obtained before placing the Product on the market in the Field in any country in the Territory in which such approval is required.

Section 1.59 "Prime Rate of Interest"

means the prime rate of interest published from time to time in The Wall Street Journal as the prime rate; provided, however that if The Wall Street Journal does not publish the Prime Rate of Interest, then the term "Prime Rate of Interest" shall mean the rate of interest publicly announced by Bank of America, N.A., as its prime rate, base rate, reference rate or the equivalent of such rate, whether or not such bank makes loans to customers at, above, or below said rate.

Section 1.60 "Product"

means any and all pharmaceutical formulations containing any and all concentrations, sizes of volume, configurations and combinations of the Compound.

Section 1.61 “Promotional Material(s)”

has the meaning set out in Section 6.6(a).

Section 1.62 “raw materials and components”

means any and all raw materials and components (such as bulk drug, chemicals, containers, closures, packaging, Labelling, etc.) needed to manufacture the Product.

Section 1.63 “Regulations”

means regulations, statutes, rules, guidelines and procedures promulgated by the FDA or other Competent Authority pursuant to the Act or other Applicable Laws, including current Good Clinical Practices, current Good Manufacturing Practices, as well as those regulations currently contained in Title 21 of the CFR.

Section 1.64 “Reimbursable Costs**”**means the fees and costs owed by Strata pursuant to Section 2.5. Reimbursable Costs do not include [***]. Marketing Authorizations will be paid for by Strata in accordance with Section 2.3(c).

Section 1.65 “Representatives”

means, in respect of a Party, its Affiliates, licensees, sublicensees, and their respective employees, agents, consultants, Subcontractors, and other representatives.

Section 1.66 “Royalty Term”

means the period of time commencing on the First Commercial Sale of the Product in a particular country in the Territory and ending on the expiration of the last to expire of the Micrologix Patent Rights containing Valid Claims covering such Product in such country in the Territory; provided, however, that with respect to a country in the Territory in which a Micrologix Patent has not been issued at the time of the First Commercial Sale in that country, the Royalty Term shall commence on the First Commercial Sale in such country and continue for the greater of (i) the period in which a Valid Claim covering such Product exists in the United States; or (ii) if a Micrologix Patent is subsequently issued in such country, for the period of time in which a Valid Claim covering such Product exists in such country. The Royalty Term shall apply on a country-by-country basis. Notwithstanding anything to the contrary provided in this Section 1.66, if no Valid Claim covering such Product exists in a given country in the Territory, then the Royalty Term in such country shall be for a period of ten (10) years from the date of the First Commercial Sale in that country.

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Section 1.67 "Second Phase III Study**"**

means a Phase III Study to support a Marketing Authorization for a LCSI, and if reasonably prudent to pursue same, for CRBSI.

Section 1.68 "Subcontractors"

means Third Parties engaged to perform obligations of the Parties as permitted by this Agreement.

Section 1.69 "Territory"

means North America (including the United States, Canada and Mexico) and Europe, and as may be expanded or reduced pursuant to the terms of this Agreement.

Section 1.70 "Third Party"

means any entity, other than Micrologix or Strata.

Section 1.71 "Trading Day"

means any day on which the Toronto Stock Exchange is open for business.

Section 1.72 "U.S." or the "United States"

means the 50 states of the United States of America, its territories or possessions, and the District of Columbia and Puerto Rico.

Section 1.73 "U.S. Dollar Equivalent"

means the equivalent amount of U.S. dollars calculated from Canadian currency using the Bank of Canada noon rate for such conversion as reported on the Bank of Canada's website on the business day prior to the applicable date.

Section 1.74 "U.S. PTO"

means the Unites States Patent and Trademark Office or any successor entity thereto.

Section 1.75 "Valid Claim"

means a claim of an issued and unexpired Micrologix Patent that, with respect to a specific country in the Territory: (i) has not been revoked, declared unenforceable or unpatentable, or held invalid by a court or other governmental agency of competent jurisdiction that is unappealable or unappealed within the time allowed for appeal, (ii) has not been admitted to be rendered invalid or unenforceable through reissue, disclaimer or otherwise, and (iii) has not been finally cancelled, withdrawn, abandoned, allowed to lapse, or rejected by any governmental agency of competent jurisdiction.

ARTICLE 2
PRODUCT DEVELOPMENT

Section 2.1 Objectives.

(a) Pursuant to the Development Plan(s) and under the oversight of the JDMC, Strata, (along with the collaboration and assistance of Micrologix as described in any applicable development subcontract ("**Development Subcontract**")), shall use Commercially Reasonable Efforts to obtain Marketing Authorizations for the Product in the Field in the Territory.

(b) Strata shall use Commercially Reasonable Efforts:

(i) to submit a protocol and request a special protocol assessment for the Second Phase III Study in the US, in sufficient time to obtain feedback from the FDA, on or before the end of the [***]; and

(ii) within [***] after receiving satisfactory feedback from the FDA on such protocol, provided that Strata has secured an adequate supply of Product ready for use in human trials, enrol a patient in the Second Phase III Study;

(iii) within [***] after filing an NDA in the US, provided that no Competent Authority in Europe requires an additional phase III clinical study in order to file a common technical document in Europe, file a common technical document in Europe.

(c) After receiving satisfactory feedback from the FDA on the protocol referred to in Section 2.1(b)(ii), Strata shall use Commercially Reasonable Efforts to [***].

(d) In addition, in its absolute discretion, Strata may file an NDA and seek Marketing Authorization for CRBSI based on [***].

(e) Strata shall use Commercially Reasonable Efforts to market and sell the Product as contemplated hereunder.

Section 2.2 Collaboration Guidelines; Amendments to the Development Plan(s).

(a) In all matters related to the Collaboration, the Parties shall strive to balance as best they can the legitimate interests and concerns of the Parties and to realize the economic potential of the Product.

(b) Any Development Plan may only be modified by the JDMC. The Development Plan(s) and any modifications thereto, as each may be approved by the JDMC in

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accordance with this Section 2.2(b), shall be incorporated into this Agreement as though fully set forth herein and without requiring formal or additional amendment to this Agreement.

Section 2.3 Development.

(a) Strata shall have responsibility for the Development under the oversight and based on the Development Plan, including a timeline, as approved by the JDMC. In addition to any other responsibilities as may be provided in the Development Plan(s), Strata shall:

(i) use Commercially Reasonable Efforts to develop the Product in accordance with the Development Plan(s) and as otherwise in accordance with the terms and conditions of this Agreement;

(ii) use Commercially Reasonable Efforts to secure the Marketing Authorizations, in accordance with the Development Plan(s) and/or otherwise in accordance with Article 6;

(iii) promptly advise Micrologix of any issues of which Strata becomes aware that materially and adversely affect Strata's ability to develop the Product or meet the timelines on the critical path set out in the Development Plan(s);

(iv) use Commercially Reasonable Efforts to manufacture or have manufactured the Compound and the Product to supply the Product to carry out the Development Plan(s).

(b) Strata may from time to time and where appropriate, engage Micrologix to perform regulatory, clinical and other development work pursuant to a Development Subcontract consistent with the provisions of this Article 2.

(c) Strata shall pay [***] of the Reimbursable Costs incurred by Micrologix, including those arising under Section 2.5. Micrologix shall invoice Strata for such Reimbursable Costs on a quarterly basis within forty-five (45) days after the end of each calendar quarter and such invoices shall be accompanied by the appropriate documentation, including a listing of expenditures, in reasonably specific detail. Strata shall pay such invoices within thirty (30) days after receipt of the invoice. Micrologix shall keep Books and Records as necessary to document the inclusion of the out-of-pocket and internal costs within the Reimbursable Costs including time sheets, invoices, etc. Pursuant to Section 11.4, Strata has the right to inspect such Books and Records upon request and

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during normal business hours, and Micrologix shall provide copies of such Books and Records to Strata.

(d) Notwithstanding anything to the contrary contained in this Agreement, if the Second Phase III Study is commenced, Strata shall not terminate such study except on notice to Micrologix:

(i) at any time within [***] after Strata's receipt of any interim results or the executive summary following database lock of the LCSI endpoint;

(ii) if Strata elects to continue such study by enrolling patients thereafter, at any time within [***] after Strata's receipt of any subsequent interim results or the executive summary following database lock of the CRBSI endpoint;

unless Strata terminates this Agreement for Micrologix's breach pursuant to Section 13.2.

Section 2.4 Joint Development Management Committee.

(a) **Creation of JDMC; Scope**. Within ten (10) days after the Effective Date, the Parties will form a Joint Development Management Committee ("**JDMC**"), which shall oversee, review and coordinate the Development under the Development Plan(s) and otherwise under the terms and conditions of this Agreement. The JDMC may delegate certain responsibilities to the Parties. The JDMC shall be responsible for (i) coordinating the Parties' respective duties and efforts under this Article 2; (ii) overseeing the Development, including responsibility for all regulatory strategies involving Marketing Authorizations, meetings with the FDA and other Competent Authorities, review of draft submissions to the FDA and other Competent Authorities, as well as shelf-life and other manufacturing issues; (iii) making all decisions related to development, clinical trials and budgets in connection with the Development and the Development Plan(s); (iv) managing the Development conducted under the Development Plan(s); (v) coordinating the Parties' respective obligations under Section 2.3(a) and Section 2.3(b); (vi) managing the manufacturing development for the Compound referred to in Section 5.3(a)(i)(C); (vii) monitoring the progress and results of such work, all based on the principles of prompt, diligent and commercially reasonable development of the Product consistent with generally accepted practices in the pharmaceutical industry; and (viii) performing any Post Marketing Commitments. Any changes to any Development Plan shall be approved in advance by the JDMC. Notwithstanding the foregoing and anything to the contrary in this Agreement, the JDMC shall have a consulting role only in regard to, and no right to vote upon, any matters relating to burns and surgical

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infections indications for the Product. The JDMC shall not have any responsibilities in connection with: (i) any Phase IV Study; (ii) any commercialization or marketing activities in connection with the Product; or (iii) subject to Section 2.4(a)(vi), any manufacturing of commercial supplies of the Compound or the Product. Subject to the obligations to make Commercially Reasonable Efforts set out in Section 2.1 and Section 2.3 of this Agreement: (i) any such commercialization, marketing and manufacturing activities shall be the sole right and responsibility of Strata; and (ii) any Phase IV Study(ies) shall be the sole right and responsibility, but not obligation, of Strata.

(b) **Membership**. The JDMC shall be comprised of three (3) voting representatives of each of Micrologix and Strata. Each Party may change its representatives on the JDMC at any time upon written notice to the other Party. Strata shall select one (1) member of the JDMC to act as the chairperson of the JDMC and Micrologix shall select one member of the JDMC to act as the secretary of the JDMC.

(c) **Meetings of the JDMC**. The JDMC shall meet on a quarterly basis or at such other frequency and at such time (and place, as applicable) as agreed to by the members of the JDMC or upon the reasonable request of either Party. Such meetings may be conducted in person or via teleconference. The JDMC Secretary will be responsible for calling meetings, preparing and circulating an agenda in advance of each meeting, and preparing and issuing minutes of each meeting within thirty (30) days thereafter. Any such agenda or minutes shall be approved by the other Party in advance of any issuance. A reasonable number of additional representatives of a Party may attend meetings of the JDMC in a non-voting observer capacity.

(d) **Decisions of the JDMC**. A quorum of the JDMC shall be deemed to be present at any meeting of the JDMC if at least two (2) JDMC members or their designees of each Party are present at such meeting in person or by telephone. If a quorum exists at any meeting, a majority vote of the members of the JDMC present at such meeting is required to take any action on behalf of the JDMC. In the event that any vote within the JDMC results in a tie, Strata shall have the tie-breaking vote, which shall be exercised in good faith, and make the final determination. Such final determination shall be binding upon the Parties.

(e) **Limitation of Powers**. The JDMC shall not have the right to amend or interpret this Agreement. Issues regarding the interpretation of this Agreement shall be referred to the respective Chief Executive Officers of each Party, or their designees (who must be members of a Party's senior management), as provided in Section 14.1. The actions or decisions of the JDMC shall not substitute for either Party's ability to exercise any right set forth herein or excuse the performance of any obligation set forth herein.

(f) **Liaisons**. Each Party will designate an individual to serve as the liaison between the Parties to undertake and coordinate any day-to-day communications as may be

required between the Parties relating to their respective activities under this Agreement. Each Party may change such liaison from time to time during the Term upon written notice thereof to the other Party.

Section 2.5 Technology Transfer.

(a) Micrologix shall, upon Strata's request, transfer to or make available to Strata the then most-current version of all relevant Micrologix Know-How to enable Strata's reasonably capable personnel to understand such Micrologix Know-How as reasonably necessary to undertake the manufacture, development and commercialization of the Compound and generally any Product in the Field under this Agreement. Such transfer shall include:

(i) transfer of the results of the clinical trials conducted prior to and as of the Effective Date relating to the Product to Strata (including all regulatory information, clinical data, hard-copy CRFs and reports together with any patient samples (such as blood samples, microbiology samples, and tissue samples), if available, without regard to the condition of such samples);

(ii) transfer of any communications with the FDA and the minutes of any meetings with the FDA relating to the Product to Strata;

(iii) transfer of the data and results of any CMC related activities incident to Section 2.5(a)(i) and Section 2.5(a)(ii);

(iv) coordination of communication between Strata and the clinical trial groups that conducted the clinical trials referred to in Section 2.5(a)(i) prior to and as of the Effective Date; and

(v) providing Strata reasonable access to Micrologix personnel with relevant clinical and regulatory expertise to explain the information transferred pursuant to Section 2.5(a)(i), Section 2.5(a)(ii) and Section 2.5(a)(iii).

(b) Micrologix shall update the Micrologix Know-How related to the Compound and Products previously transferred to Strata regularly at JDMC meetings.

(c) Micrologix shall work cooperatively with and provide reasonable assistance to Strata upon Strata's request, under the oversight of the JDMC, to prepare the first NDA filing in the United States pursuant to a Development Subcontract.

(d) Strata shall pay for the maintenance by Micrologix of the certain Governmental Approvals in connection with the research and development of the Product pursuant to Section 6.7(b) and the services of Micrologix personnel provided pursuant to this Section 2.5, as follows:

(i) For the first three months from the Effective Date, Strata shall pay to Micrologix Micrologix's documented out-of-pocket costs of providing such services.

(ii) Commencing after the expiry of three months from the Effective Date, Strata shall pay to Micrologix the hourly rate of [***] ($[***]) per hour, plus the documented out-of-pocket costs of providing such services.

(iii) Strata is responsible for, and will pay all reasonable, documented, actual travel and associated accommodation expenses of Micrologix personnel who, at Strata's request, travels to provide transition support under this Section.

ARTICLE 3
LICENSE

Section 3.1 License Terms.

Subject to the terms and conditions of this Agreement, Micrologix hereby grants to Strata an exclusive, royalty-bearing license under the Micrologix Technology to use, market, advertise, promote, distribute, offer for sale, sell, make, manufacture, have manufactured, export and import, and develop the Product in the Territory for use in the Field with the right to sublicense (as provided in Section 3.5), and/or assign (as provided Section 15.2) the foregoing.

Section 3.2 Micrologix's Reservation of Rights.

Except as otherwise licensed to Strata hereunder and subject to Section 11.1, Micrologix may exploit the Micrologix Technology for any purpose, including to use, develop, market, advertise, promote, distribute, offer for sale, make, manufacture, sell, export and import the Product:

(a) outside the Territory; and

(b) inside the Territory but outside the Field.

Section 3.3 Third Party Licensees of Micrologix.

In the event that Micrologix or a licensee of Micrologix develops and/or markets a Product outside the Territory but inside the Field, Micrologix shall use Commercially Reasonable Efforts to work cooperatively with Strata to coordinate the development and marketing activities of Micrologix or such licensee of Micrologix with the development and marketing activities hereunder.

Section 3.4 Work Product and Intellectual Property.

(a) Strata acknowledges that it shall have no right, title or interest in or to the Micrologix Technology except as set forth in this Agreement. Nothing in this Agreement shall be construed to grant Strata any rights or license to any

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intellectual property of Micrologix other than as expressly set forth in this Agreement.

(b) Except as set forth in Section 5.2 and the termination Sections of this Agreement

(i) Micrologix acknowledges that it shall have no right, title or interest in or to any data, inventions, discoveries, improvements, derivative works, and/or any other work product, whether patentable or not, developed hereunder by Strata or on behalf of Strata by its Representatives ("**Strata Work Product**").

(ii) Nothing herein shall be construed to grant Micrologix any rights or license to the Strata Work Product or any other intellectual property of Strata (collectively, "**Strata Intellectual Property**"). Strata reserves all rights in and to any such Strata Work Product and the Strata Intellectual Property.

Section 3.5 Sublicenses.

(a) Strata shall have the right to sublicense rights granted in Section 3.1 to its Affiliates. Strata shall cause its Affiliates to comply with and be bound by those terms and conditions of Strata under this Agreement that by their terms are intended to obligate Strata or its Affiliates commercializing the Product as permitted hereunder, including Section 3.4, Section 3.5, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11 (excluding however Section 11.1), Article 12 and Section 14.5. Notwithstanding the foregoing, Strata shall remain primarily responsible for complying with such applicable terms and conditions. A breach by any such Affiliate of any such obligation shall constitute a breach by Strata of this Agreement and shall entitle Micrologix to exercise its rights hereunder, in addition to any other rights and remedies to which Micrologix may be entitled.

(b) Strata shall also have the right to sublicense rights granted in Section 3.1 to Third Parties, subject to the following: Strata shall give Micrologix prompt notice of the execution of any sublicense. Within ten (10) calendar days after execution of a sublicensing agreement, Strata shall provide Micrologix with a copy thereof (provided that Strata shall be permitted to redact the financial terms and other confidential information in such agreement). Each sublicense shall contain covenants by the sublicensee for such sublicensee to observe and perform materially the same terms and conditions as those set out for Strata in this Agreement to the extent applicable. In the event Strata grants sublicenses to others to sell Product, such sublicenses shall include an obligation for the sublicensee to account for and report its Net Sales on the same basis as if such sales were Net Sales by Strata, and Micrologix shall receive royalties from Strata in the same amounts as if the Net Sales of the sublicensee were Net Sales of Strata. In the event that Strata becomes aware of a material breach of any such sublicense by the sublicensee, Strata shall promptly notify Micrologix of the particulars of same and use its Commercially Reasonable Efforts to enforce the

terms of such sublicense. Upon the request of Micrologix, Strata shall act reasonably in considering any request of Micrologix for Strata to terminate such sublicense for cause, but Strata shall have the final and sole right and responsibility and decision making authority with respect to any such sublicense (provided that Strata acts reasonably in such regard).

(c) The terms of this Section 3.5 shall apply to each subsequent sublicensee or sub-sublicensee, as if same were Strata's original sublicensee.

(d) Micrologix will, upon request by any sublicensee of Strata, provide such sublicensee with a letter whereby Micrologix agrees that if Micrologix gives notice of default to Strata pursuant to Section 13.2 or Section 13.4, then, prior to any termination of this Agreement, Micrologix will give such sublicensee written notice of such default or intention to terminate this Agreement, and in the event of any breach or default by Strata, which may be cured pursuant to Section 13.2 or Section 13.4, will for 60 days from the date of such notice to the sublicensee, give the sublicensee the opportunity to cure such default or breach on the terms provided in Section 13.2 or Section 13.4, mutatis mutandis. Further, such letter shall evidence Micrologix's agreement that if this Agreement is terminated, and provided that the sublicense between Strata and the sublicensee is in good standing at such time, Micrologix will then grant to the sublicensee a license of the same rights conferred on the sublicensee by the sublicense agreement on substantially those same terms and conditions as are contained in this Agreement as would correspond to the sublicense rights granted in the sublicense agreement, on the financial terms set out in the relevant sublicense agreement.

Section 3.6 Certain Improvements.

(a) When Micrologix enters into any agreement or other arrangement with a Third Party or licensee or sublicensee that may result in the development, creation or acquisition by Micrologix of any developments, derivative works, enhancements, modifications, inventions or discoveries relating to the Compound or the Product for use in the Field (collectively, **"Certain Improvements**"), Micrologix will use Commercially Reasonable Efforts not to limit or otherwise restrict Micrologix's ability to grant a license or sublicense to any such Certain Improvements as provided for herein without violating the terms of any such agreement or other arrangement.

(b) If Micrologix develops, creates or acquires any developments, derivative works, enhancements, modifications, inventions or discoveries relating to the Compound or the Product for use in the Field, where the grant of a license or sublicense to same as provided for herein requires the payment of material licensing fees or royalties to any Third Party, licensee or sublicensee, then Micrologix shall in a timely fashion offer to Strata in writing a license or sublicense to the rights to such developments, derivative works, enhancements, modifications, inventions or

discoveries. Within a reasonable period of time (but not to exceed [***] after receipt of Micrologix's offer), Strata shall either accept the license or sublicense of same and pay to Micrologix the amount of such material licensing fees or royalties owed by Micrologix to such Third Party due to Strata's activities under such license or sublicense, or advise Micrologix that Strata does not wish to obtain such rights.

(c) In the event that:

(i) Micrologix, using Commercially Reasonable Efforts, fails to obtain the ability to grant a license or sublicense as provided for in Section 3.6(a) without violating the terms of any such agreement or other arrangement, then the rights to any such Certain Improvements shall be excluded from the definition of Improvements under this Agreement; or

(ii) Strata advises Micrologix that Strata does not wish to obtain the rights referred to in Section 3.6(b), or if Strata fails to notify Micrologix within a reasonable period of time (not to exceed [***] as noted above) that it accepts such license or sublicense, then such rights shall be excluded from the definition of Improvements under this Agreement; or

(iii) Strata advises Micrologix that Strata does wish to obtain the rights referred to in Section 3.6(b) within a reasonable period of time (not to exceed [***] as noted above) and pays such licensing fees or royalties, then such rights shall be included in the definition of Improvements under this Agreement without further formality.

Section 3.7 Exclusive Option to Extend Field.

(a) Subject to the terms and conditions of this Section, Micrologix hereby grants to Strata the right of first negotiation to obtain an exclusive license under the Micrologix Technology to use, market, advertise, promote, distribute, offer for sale, sell, make, manufacture, have manufactured, export and import, and develop the Product to reduce or eliminate the nasal carriage of infectious organisms (the "**Extended Field**") in the Territory.

(b) From the Effective Date and for a period of [***] thereafter (the "**Exclusivity Period**"), Micrologix shall notify Strata in writing prior to any:

(i) use, marketing, advertising, promotion, distribution, offer for sale, sale, making, manufacturing, having manufactured, exporting, importing or developing the Product or the Compound for the Extended Field in all or any part of the Territory for itself or through its Affiliates, or

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(ii) grant to any Third Party any rights to do any of the foregoing.

(c) Strata shall have a period of [***] from its receipt of a notice described in Section 3.7(b) (the "**Notification Period**") to notify Micrologix in writing if Strata is interested in obtaining such license for the Extended Field for such territory. If, by the end of the Notification Period, Micrologix receives written notice from Strata that it desires to obtain such a license, then Micrologix and Strata for a period of [***] or such longer period of time as mutually agreed to by the Parties in writing (the "**Negotiation Period**") shall negotiate in good faith, on an exclusive basis, a definitive license agreement(s) for an exclusive license to the Extended Field upon such terms and conditions as are mutually agreeable to the Parties.

(d) If the Parties fail to execute such definitive license agreement(s) as described in Section 3.7(c), by the end of the Negotiation Period or if Strata fails to give notice of its interest in obtaining a license to the Extended Field before the expiry of the Notification Period, then Strata's right of first negotiation with respect to the Extended Field shall terminate; provided, however, that if Micrologix disposes of rights to the Micrologix Technology for the Extended Field to a Third Party prior to the end of the Exclusivity Period, then the financial terms of such transaction shall not be substantially less favorable to Micrologix in the aggregate than the best terms offered to Strata by Micrologix in writing during the Negotiation Period. If, prior to the end of the Exclusivity Period, Micrologix desires to offer a Third Party rights to the Extended Field on financial terms substantially less favorable to Micrologix in the aggregate than the best terms offered to Strata by Micrologix in writing during the Negotiation Period, then Micrologix shall first offer such terms to Strata, and if within [***] of such offer, Strata informs Micrologix that it is prepared to enter into an agreement with Micrologix in accordance with such terms, Micrologix shall conclude such agreement with Strata upon such terms. If no such statement is made by Strata within said [***], Micrologix shall be free to enter into an agreement in accordance with such terms with a Third Party.

ARTICLE 4
ADDITIONAL PAYMENTS

Section 4.1 License Fee.

(a) **Upfront Payment to Micrologix.** In partial consideration for the licenses granted under Section 3.1, Strata shall pay to Micrologix a one-time, non-refundable license fee equal to One and One Half Million Dollars ($1,500,000) one business day after the Effective Date by wire transfer of immediately available funds to an account designated in writing by Micrologix to Strata prior

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to the Effective Date (the "**Upfront Fee**"). Strata may deduct the Exclusivity Fee from the Upfront Fee.

(b) **Upfront Equity Investment in Micrologix.** Strata shall purchase from Micrologix on the Effective Date such number of Common Shares as equals Five Hundred Thousand Dollars ($500,000), based on the Market Price plus a [***] ([***]) premium, and as issued pursuant to a separate stock purchase agreement.

Section 4.2 Product Milestone Payments.

Strata shall pay to Micrologix, as licensing fees, the following non-refundable milestone payments as follows:

(a) for milestones referred to in Section 4.3 and Section 4.4,

(i) if Strata can make the payment respecting such milestone within 45 days of the date on which Strata receives a copy of the applicable letter or notice from the FDA in the U.S. or from a foreign equivalent in the Territory, Strata shall pay to Micrologix such milestone within [***] of achieving such milestone;

(ii) if Strata cannot make the payment respecting such milestone within [***] of the date on which Strata receives a copy of the applicable letter or notice from the FDA in the U.S. or from a foreign equivalent in the Territory, Strata shall:

(A) within [***] of achieving such milestone, notify Micrologix in writing that it cannot make the payment respecting such milestone; and

(B) provided that Micrologix receives such notice within the period for the receipt of same, Strata shall pay to Micrologix such milestone within [***] of achieving such milestone, [***].

(b) for milestones referred to in Section 4.5, [***] after Strata receives a copy of the applicable letter or notice from the FDA in the U.S. or from a foreign equivalent in the Territory.

Section 4.3 Milestones for a Second Phase III.

For NDA Filings and Marketing Authorizations for either LCSI or CRBSI based upon a second Phase III trial, the following milestones shall apply:

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[***]

Section 4.4 Milestones for the First Phase III.

For an NDA Filing and Marketing Authorization for CRBSI based upon the First Phase III Study, the following milestones shall apply; provided however that notwithstanding anything in this Agreement to the contrary, the milestone for receipt of [***] in the United States in this Section 4.4 shall only be payable when the milestone for [***] in the United States in this Section 4.4 becomes payable:

[***]

The CRBSI milestones set forth in Section 4.3 and Section 4.4 regarding the CRBSI indication in the United States are alternative milestones and as such only one milestone shall be due and payable for [***] and [***], as applicable, under Section 4.3 and Section 4.4, but not both.

Section 4.5 Burns or Surgical Infections milestones.

For Marketing Authorizations for burns or surgical infection indications, the following milestones shall apply:

[***]

Section 4.6 Commercial Milestone Payments**.**

Strata shall pay to Micrologix, as additional licensing fees, the following one-time, non-refundable milestone payments within [***] following the end of the calendar quarter in which the relevant commercial milestone is achieved.

[***]

Section 4.7 Royalties.

(a) **Royalty Payment**. During the Royalty Term, Strata shall owe and pay to Micrologix the following royalties on Net Sales:

(i) [***]% of Net Sales, on aggregate Net Sales in each calendar year which does not exceed [***] ($[***]);

(ii) [***]% of Net Sales, on aggregate Net Sales in each calendar year which is greater than [***] ($[***]) but does not exceed [***] ($[***]); and

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(iii) [***]% of Net Sales, on aggregate Net Sales in each calendar year which is greater than [***]($[***]).

(b) **Reductions in Royalty Rates**. Strata's royalty obligation under Section 4.7(a) shall be [***] in the manner herein described:

(i) In the event (and for the period that) a non-proprietary version or versions of the Product enters the market in a country in the Territory in any calendar quarter during the Term, [***]. For the purposes of this Section, "non-proprietary" means a product containing the amino acid sequence [***] for use in the Field which does not infringe a Valid Claim. The [***] shall be effective beginning on the first calendar quarter of the launch of such generic product. The royalty rate shall be adjusted quarterly and shall be reconciled quarterly at such time as the applicable IMS Data has been made available to Strata.

(ii) Any such [***] in Section 4.7(b)(i) shall be credited against the next payment(s) owed Micrologix. [***].

(c) **Certain Recoveries**. If Micrologix owes Strata Micrologix's share of the Costs pursuant to Section 7.3, Section 7.4 or Section 10.4, Strata shall recover such amounts [***]. The Parties acknowledge and agree that the maximum amount of any such [***] in accordance with Section 7.3, Section 7.4 and Section 10.4 from any royalty payments due Micrologix hereunder in a given quarter shall not exceed [***] of the royalty payment owed in such quarter (the [***]). Any amounts in excess of [***] for any quarter(s) shall be [***] against subsequent quarterly royalty payments owed to Micrologix, subject to the [***] limitation for any such subsequent quarter, [***].

(d) **After Royalty Term**. After the expiration of the Royalty Term in any relevant country, Strata shall have no further obligation to pay royalties to Micrologix in such country.

(e) **Payment of Royalties and Reports**. Within [***] of the end of each calendar quarter following the First Commercial Sale, Strata shall provide Micrologix with a written report, in a form to be agreed between the parties, acting reasonably, accompanied by full payment of all royalties accrued and owing to Micrologix during such quarter, of: (i) Net Sales during such quarter and cumulative Net Sales for the current calendar year; (ii) deductions from Net Sales; (iii) withholding taxes, if any, required by Applicable Laws to be deducted with respect to such sales; (iv) the dates of the First Commercial Sale of the Product in any country in the Territory during the reporting period; (v) the exchange rates, if any used to determine the amount of United States dollars; and (vi) the calculation

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of the royalties owed (collectively, the "**Royalty Statement**"). The Royalty Statement shall be in reasonably specific detail, on a country-by-country basis, and segmented according to sales by Strata, each Affiliate and each sublicensee.

(f) **Exchange Rate; Manner and Place of Payment**. All payments hereunder shall be payable in United States dollars. With respect to each month in each calendar quarter, whenever conversion of payments from any foreign currency shall be required, such conversion shall be made at the rate of exchange reported in The Wall Street Journal on the last business day of such month within the applicable calendar quarter. All payments owed under this Agreement shall be made by wire transfer to a bank account designated in writing by the receiving Party.

(g) **Late Payments**. In the event that any payments due hereunder are not made when due, each such payment shall accrue interest from the date due until paid at the Prime Rate of Interest. The payment of such interest shall not limit or otherwise be deemed to be in satisfaction of a Party exercising any other rights it may have under this Agreement arising from the other Party's failure to make such payment when due.

(h) **Taxes**. All taxes levied on account of the payments accruing to either Party (the "**Receiving Party**") under this Agreement shall be paid by the Receiving Party for its own account, including taxes levied thereon as income to the Receiving Party. If provision is made under Applicable Laws for withholding, such tax shall be deducted from the payment made by the other Party paid to the proper taxing authority and a receipt of payment of the tax secured and promptly delivered to the Receiving Party, provided that it is understood that if this Agreement is assigned by Strata, Micrologix should be no worse off than if this Agreement was made and remained with a United States company and the payments to Micrologix were made from the United States to Canada. Each Party agrees to assist the other Party in claiming exemption from such deductions or withholdings under any double taxation or similar agreement or treaty from time to time in force.

(i) **Prohibited Payments**. Notwithstanding any other provision of this Agreement, if either Party is prevented from paying any payments by virtue of the Applicable Laws of the country from which the payment is to be made, then such payment may be paid by depositing funds in the currency in which it accrued to the Receiving Party's account in a bank acceptable to the Receiving Party in the country whose currency is involved.

(j) **Non-Monetary Consideration**. In the event Strata, its sublicensee(s) or its Affiliate(s) receive any non-monetary consideration in connection with the sale of the Product, the Net Sales of such Product shall be calculated based on the fair market value of such other consideration. Strata shall disclose the terms of such arrangement to Micrologix and the Parties shall endeavour in good faith to agree on such fair market value as promptly as possible.

(k) **Manufacturing Development Costs**. Strata shall recover Manufacturing Development Costs owed by Micrologix pursuant to Section 5.3(f) [***].

ARTICLE 5
COMMERCIALIZATION OF THE PRODUCT

Section 5.1 Marketing Efforts.

(a) Subject to Section 2.4(a) and Section 5.3(f), Strata shall: (i) have the exclusive right, at its cost, to make, manufacture, market, advertise, promote, sell, distribute, and commercialize the Product in the Field in the Territory; (ii) be solely responsible using Commercially Reasonable Efforts, for the making, manufacture, marketing, advertising promotion, sale, distribution and commercialization of the Product in the Field in the Territory; and (iii) have the sole responsibility and decision making authority using Commercially Reasonable Efforts with regard to any and all aspects of the making, manufacturing, marketing, advertising, promotion, sale, distribution and commercialization of the Product in the Field in the Territory, including all Labelling, marketing plans, marketing strategy, pricing decisions, and the nature and type of advertising and marketing materials, including all Promotional Materials.

(b) Subject to the terms of this Agreement, Strata agrees to: (i) use Commercially Reasonable Efforts to market, advertise, promote, sell, distribute, and commercialize the Product in the Field in the Territory; and (ii) commence commercial sales of the Product in each country in the Territory within six (6) months after receiving a copy of each of the relevant Marketing Authorization.

(c) Strata shall promptly advise Micrologix of any issues of which Strata becomes aware that materially and adversely affect Strata's ability to market or sell the Product in the Territory. In such event, senior executives of Strata and Micrologix shall meet and in good faith discuss what actions should be taken in light of such issues. If the Parties cannot resolve any such issue, either Party may invoke the dispute resolution procedure in Article 14.

(d) Strata shall provide Micrologix prompt notice of the following events during the Term: (i) the First Commercial Sale of Product in each country in the Territory, if and when such occurrence takes place; and (ii) when any milestone referred to in Section 4.3, Section 4.4, Section 4.5, or Section 4.6 has occurred.

Section 5.2 Marketing Update.

(a) Following receipt of an Approval Letter from the FDA for the Product or an equivalent letter from a Competent Authority, Strata shall provide Micrologix on

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an annual basis during the Term, through the JDMC or otherwise, with reports in reasonable detail describing Strata's material marketing efforts with respect to the Product in the Territory during the preceding year and forecasts and plans for such efforts for the following year.

(b) Strata agrees to consider Micrologix's input and comments that Micrologix may provide related to any such report for any applicable period; provided, however, Strata shall have the right to either accept or reject such input and/or comments in whole or in part in Strata's sole discretion for any reason whatsoever, and Strata shall have the final and sole right and responsibility and decision-making authority for all matters related to any such report(s).

Section 5.3 Manufacturing.

(a) Unless Strata is prevented, restricted, interfered with or delayed in making such sales by reason of: (i) Force Majeure; or (ii) otherwise due to any breach of this Agreement by Micrologix; Strata shall use Commercially Reasonable Efforts to:

(i) identify, select, qualify, and enter into definitive agreement(s) with Third Party(ies) to:

(A) manufacture commercial supplies of the Product for use in the Field in the Territory; and

(B) supply raw materials and components for such commercial supply, including the Compound; and

(C) conduct manufacturing and process development activities, including manufacturing scale up and start up process development, and analytical and quality assurance and control method development, and activities related to the foregoing, for the Compound; and

(D) conduct manufacturing and process development activities, including manufacturing scale up and start up process development, and analytical and quality assurance and control method development, and activities related to the foregoing, for the Product (excluding the Compound) for use in the Field in the Territory; and

(ii) manufacture or have manufactured adequate supplies of the Product for use in the Field in the Territory.

(b) Strata shall use its Commercially Reasonable Efforts to resolve any shelf-life, regulatory and other manufacturing issues respecting the Product.

(c) Strata agrees that: (i) Micrologix and its Representatives shall be entitled to contract directly with any Third Party with whom Strata has entered into such

definitive agreement(s) under Section 5.3(a) and (ii) such definitive agreement(s) shall not contain any contractual provision that would prohibit Micrologix and its Representatives from contracting directly or otherwise having access to any such Third Party(ies) as part of either manufacturing any product for use outside the Territory or any product for use inside the Territory, but outside the Field. Strata further agrees that, if there is any Strata Intellectual Property developed by Strata or such Third Party(ies) in the course of the activities described in Section 5.3(a), Micrologix shall have a non-exclusive, royalty free license to use such Strata Intellectual Property as part of either manufacturing any product for use outside the Territory or any product for use inside the Territory, but outside the Field. Strata will use Commercially Reasonable Efforts not to limit or restrict Strata's ability to grant Micrologix such license as provided for herein without violating the terms of any agreement or other arrangement with any such Third Party. The Parties acknowledge that if Strata is required to pay material license fees or royalties to any such Third Party(ies) in order to grant Micrologix such license to use the Strata Intellectual Property, then Strata shall in a timely fashion offer to Micrologix in writing a license or sublicense to such Strata Intellectual Property. Within a reasonable period of time (but not to exceed [***] after receipt of Strata's offer), Micrologix shall either accept the license or sublicense of same and pay to Strata the amount of such material licensing fees or royalties, or advise Strata that Micrologix does not wish to obtain such rights.

(d) In the event that:

(i) Strata, using Commercially Reasonable Efforts, fails to obtain the ability to grant a license or sublicense as provided for in Section 5.3(c) without violating the terms of any such agreement or other arrangement, then Strata shall have no obligation to grant such license to Micrologix under Section 5.3(c); or

(ii) Micrologix advises Strata that Micrologix does not wish to obtain the rights referred to in Section 5.3(c), or if Micrologix fails to notify Strata within a reasonable period of time (not to exceed [***] as noted above) that it accepts such license or sublicense, then Strata shall have no obligation to grant such license or sublicense to Micrologix under Section 5.3(c); or

(iii) Micrologix advises Strata that Micrologix does wish to obtain the rights referred to in Section 5.3(c) within a reasonable period of time (not to exceed [***] as noted above) and pays such licensing fees or royalties then Strata shall be deemed to have granted such license or sublicense to Micrologix under Section 5.3(c) without further formality.

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(e) If Strata manufactures the Product itself, rather than through Third Part(ies), Strata will provide reasonable technical assistance, at Micrologix's cost and expense to provide Micrologix and its Representatives the technology and Know How necessary to permit Micrologix or its Representatives to manufacture or have manufactured any product for use outside the Territory or any product for use inside the Territory, but outside the Field.

(f) Strata and Micrologix shall share in the manufacturing development costs for the Compound. Strata shall recover such costs from Micrologix as set forth in Section 4.7(k) for [***] of Strata's documented out-of-pocket costs of conducting the activities set out in Section 5.3(a)(i)(C) up to a maximum of [***] (the "**Manufacturing Development Costs**").

(g) **Transfer of Micrologix Compound and Product Inventory**.

(i) Subject to Section 5.3(g)(vi), at the request of Strata, such request to be made within six (6) months after the Effective Date, Micrologix shall make available to Strata at Micrologix's documented out-of-pocket cost, all or any part of Micrologix's inventory of "MBI 226 – GMP Inventory" as set out in Exhibit "C" conforming to the specifications mutually agreed upon by the Parties to the extent such inventory has not been used or dedicated for use by Micrologix for other purposes.

(ii) Subject to Section 5.3(g)(vi), at the request of Strata, such request to be made within six (6) months after the Effective Date, Micrologix shall make available to Strata at [***] of Micrologix's documented out-of-pocket cost, all or any part of Micrologix's inventory of "MBI 266 Reference Standard" as set out in Exhibit "C" to the extent such inventory has not been used or dedicated for use by Micrologix for other purposes.

(iii) At the request(s) of Strata, such request(s) to be made within twelve (12) months after the Effective Date, Micrologix shall make available to Strata at [***] of Micrologix's documented out-of-pocket cost, all or any part of Micrologix's inventory of "MBI 226 non-GMP Inventory", all for use as contemplated hereunder, as set out in Exhibit "C".

(iv) As soon as practical, and in any event before the expiry of three (3) months from after the Effective Date, Micrologix shall transfer to Strata at [***], all of Micrologix's inventory of "MBI 266 1.0% Gel Inventory", on an "as is" basis, all for use as contemplated hereunder, as set out in Exhibit "C".

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(v) Pursuant to Micrologix making Compound available to Strata in Section 5.3(g)(i), Micrologix shall cause its Representative to release or re-release such Compound to Strata with all release documentation including all certificates of analyses confirming the identity, strength, quality and purity of the lots of Compound, certificates of compliance confirming that the same lots of Compound were manufactured, tested, stored and supplied in compliance with cGMPs and all Applicable Laws, each such certificate signed by an authorized signatory of Micrologix's Representative, any deviation or discrepancy reports pertaining to Compound relating to deviations that may require reporting to the FDA, and all such other documentation and information as is reasonably required by Strata.

(vi) With respect to the inventories that are made available by Micrologix pursuant to Section 5.3(g)(i) and Section 5.3(g)(ii), until the expiry of three (3) months from the Effective Date, Micrologix will not use or dedicate for use any of such inventory. Thereafter, until the expiry of six (6) months from the Effective Date, Micrologix will not use or dedicate for use any of such inventory without first giving Strata ten (10) days prior written notice of same. If Strata gives notice in writing within such period of its intention to purchase such inventory, Micrologix shall sell such inventory to Strata and same shall not be used or dedicated for use by Micrologix. If Strata gives notice in writing within such period that it does not intend to purchase such inventory, or if Strata fails to give notice within such period, Micrologix may use or dedicate such inventory, and same shall not be sold to Strata.

(h) **Co-negotiation for Commercial Supply of the Compound**. In the event that both Parties require commercial supplies of the Compound and it is in the best interests of each Party to obtain a single source of supply for both Parties, the Parties acknowledge that they intend to approach jointly and co-negotiate with Third Party suppliers for the manufacture of commercial supplies of the Compound. Any such co-negotiation shall be under the oversight of the JDMC. The Parties acknowledge and agree that any benefits from any economies of scale recognized from such co-negotiation for commercial supplies of the Compound shall be shared by the Parties. Nothing in this Section will oblige either Party to enter into any agreement with any Third Party, or restrict either Party's ability to enter into any agreement with a Third Party without the other Party.

Section 5.4 Patent Marking.

Each Party shall use Commercially Reasonable Efforts to ensure that where permissible under Applicable Law(s) and provided there is adequate space available on any such packaging, such Party shall identify by number any applicable Micrologix Patent Rights and applicable patent rights within the Strata Intellectual Property with any reasonable patent marking notification(s).

ARTICLE 6
REGULATORY COMPLIANCE

Section 6.1 Ownership and Maintenance of Governmental Approvals.

(a) Strata will own all Marketing Authorizations for each country in the Territory for use in the Field. Without limiting the generality of the foregoing, Strata shall prepare and submit in its own name and at its expense the NDA with the FDA in the U.S. and any other equivalent application with the Competent Authorities in other countries in the Territory. Without acting as a limitation to any other provision under this Agreement, Strata shall maintain a current and valid DMF on the Compound and the Product, whether as an independent document or as part of the NDA, which it shall keep up to date at all times during the Term and shall cause any Subcontractor to similarly maintain the same or grant the Subcontractor reference rights to Strata's DMF for the Product.

(b) Other than those required to be maintained by Micrologix under Section 6.7(b), Strata shall secure and maintain in good standing, at its sole cost and expense, any and all Governmental Approvals (including, Marketing Authorizations, licenses, permits and consents, facility licenses and permits required by Applicable Laws or by the applicable Competent Authorities) necessary and/or required for Strata to perform its obligations under this Agreement and use Commercially Reasonable Efforts at its cost and expense to secure and maintain any variations and renewals thereof.

(c) Excluding Marketing Authorizations and subject to Section 6.7(b), Micrologix shall secure and maintain, at its sole cost and expense, any and all Governmental Approvals (including, licenses, permits and consents, facility licenses and permits required by Applicable Laws or by the applicable Competent Authorities) necessary and/or required for Micrologix to perform its obligations under this Agreement and any Development Subcontract and use Commercially Reasonable Efforts, at its cost and expense to secure and maintain any variations or renewals thereof.

Section 6.2 Rights of Reference.

(a) For the Products in the Field in the Territory, Micrologix shall grant and hereby grants to Strata and its Representatives (subject to the terms of Section 3.5), a free-of-charge right to reference and use and have full access to all Governmental Approvals and all other regulatory documents owned or Controlled by Micrologix to the extent relating to the Compound, the Product, and MBI 594AN, including any IND, any NDA and any DMF (whether as an independent document or as part of any NDA, and all chemistry, manufacturing and controls information), and any supplements, amendments or updates to the foregoing.

(b) For use outside the Territory, or for any Product for use inside the Territory but outside the Field, Strata shall grant and hereby grants to Micrologix and its

Representatives a free-of-charge right to reference and use and have full access to all Governmental Approvals and all regulatory documents owned or Controlled by Strata to the extent relating to the Compound or the Product, including any NDA and DMF (whether as an independent document or as part of any NDA, and all chemistry, manufacturing and controls information), and any supplements, amendments or updates to the foregoing.

(c) For the Products in the Field in the Territory, Micrologix shall make Commercially Reasonable Efforts to grant or have granted to Strata (subject to the terms of Section 3.5), a free-of-charge right of reference and use and have full access to all Governmental Approvals and all other regulatory documents owned or Controlled by Fujisawa Healthcare, Inc. or by any Third Party licensee of Micrologix to the extent related to the Compound, the Product, and MBI 594AN, including any IND, any NDA and any DMF (whether as an independent document or as part of any NDA, and all chemistry, manufacturing and controls information), and any supplements, amendments or updates to the foregoing.

(d) For use outside the Territory, or for any Product for use inside the Territory but outside the Field, Strata shall make Commercially Reasonable Efforts to grant or have granted to Micrologix and its Representatives a free-of-charge right of reference and use and have full access to all Governmental Approvals and all other regulatory documents owned or Controlled by any Third Party licensee of Strata to the extent related to the Compound or the Product, including any IND, any NDA and any DMF (whether as an independent document or as part of any NDA, and all chemistry, manufacturing and controls information), and any supplements, amendments or updates to the foregoing. Such rights of reference, use and access shall survive termination of this Agreement.

(e) For avoidance of doubt, no transfer by a Party of Control in respect of any Governmental Approvals or other regulatory documents referred to in this Section shall limit the rights of the other Party to the most current version of same up to the time of such transfer.

Section 6.3 Adverse Drug Event Reporting and Post Marketing Surveillance.

(a) Each Party, on behalf of itself, its Affiliates and any permitted sublicensees, shall advise the other Party, by telephone or facsimile, promptly but in no event later than seventy-two (72) hours or such shorter time period as may be required by a Competent Authority after a Party, its Affiliates and/or sublicensees becomes aware of any serious adverse drug event (as defined in 21 CFR Section 312.32(a) or its equivalent under Applicable Law(s) as the same may be amended, supplemented or replaced from time to time) (a "**SADE**") involving the Product or the Compound. Such advising Party shall provide the other Party with a written report delivered by confirmed facsimile of any SADE, stating the full facts known to such Party, including customer name, address, telephone number, batch, lot and serial numbers, and other information as required by Applicable Laws. After receipt by the Parties of an Approval Letter in any country, Strata

shall have full responsibility in such country for: (i) monitoring such SADEs; (ii) data collection activities that occur between Strata and the patient or medical professional, as appropriate, including any follow-up inquiries which Strata deems necessary or appropriate; and (iii) meeting the requirements of the Competent Authorities, including the submission of SADE individual reports and periodic reports as necessary. As the holder of the Marketing Authorizations, any reporting (and follow-up thereto) to the Competent Authorities relating to the Compound and the Product in the Field in the Territory shall remain the responsibility of Strata.

(b) In the event either Party requires information regarding SADEs with respect to reports required to be filed by it in order to comply with Applicable Laws, including obligations to report SADEs to the Competent Authorities, each Party agrees to provide such information to the other in sufficient time to enable each Party to report such SADEs to the Competent Authorities in accordance with Applicable Laws.

(c) If the report of an SADE causes a Competent Authority to request a Labelling revision and/or any other corrective action, or if Strata believes it is necessary to have a Labelling revision or conduct a post marketing surveillance program as a result of an SADE, then Strata shall determine all of the material terms and conditions of such Labelling revision, corrective action or post marketing surveillance program in consultation with the applicable Competent Authority. Upon Strata's request, Micrologix will cooperate with Strata with respect to any of the foregoing. The costs of such Labelling revision, corrective action or post marketing surveillance program shall be borne one hundred percent (100%) by Strata. Notwithstanding the foregoing, however, the Parties agree that if any such Labelling revision or corrective action or post marketing surveillance program is due to the negligence or willful misconduct in the conduct by Micrologix and/or its Representatives of the pre-clinical and clinical research and development activities in connection with the Product prior to and after the Effective Date, then, in such event, the costs of any such Labelling revision, corrective action, or post marketing surveillance program, as the case may be, shall be borne one hundred percent (100%) by Micrologix. Subject to Section 5.3 and Section 6.2, the Parties agree that Strata shall own the results and underlying data from any Phase IV Study.

(d) Within thirty (30) days of the filing of each report with the FDA on drug related adverse events associated with the Compound as may be required under Applicable Laws, each Party will provide to the other Party particulars of such adverse events.

Section 6.4 Post Marketing Commitments. If the FDA or other Competent Authority requires a Post Marketing Commitment for the Product, then Strata shall use Commercially Reasonable Efforts to implement such Post Marketing Commitment at Strata's expense.

Section 6.5 Assistance.

Each Party shall provide reasonable assistance to the other at the other's request, in connection with their obligations pursuant to this Article 6, the requesting Party shall reimburse all of the other Party's reasonable documented out-of-pocket costs of such assistance, subject to the allocation of costs determined pursuant to this Article 6.

Section 6.6 Compliance.

Subject to the other terms and conditions of this Agreement, the Parties agree to the following general compliance provisions:

(a) Strata shall be responsible for compliance in all material respects with Applicable Laws and the Governmental Approvals relating to its activities under the Development, the making, manufacturing, marketing, advertising, promoting, selling, distributing, and commercializing the Product, including the maintenance of the Marketing Authorizations and other requirements of a Competent Authority applicable thereto, obtaining and holding all necessary permits and any other requirements relating to its activities under the Development, the making, manufacture, import, export, storage, sale and distribution of the Product. Any and all Labelling, packaging and artwork and any and all proposed change to any such Labelling, packaging and/or artwork shall be determined by Strata, which shall have the sole right and decision-making authority with respect thereto. Strata shall have the sole right and decision making authority with respect to any and all advertising, sales and marketing materials (collectively the "**Promotional Material(s)**") and shall be responsible for all interactions with the Competent Authorities in connection with such Promotional Materials. Strata shall submit any required changes to the Labelling, packaging and/or artwork to the Competent Authorities in a timely fashion at Strata's expense.

(b) Micrologix shall be responsible for compliance in all material respects with Applicable Laws and Governmental Approvals relating to Development to be conducted by Micrologix pursuant to any Development Subcontract. Strata shall be responsible for compliance in all material respects with Applicable Laws and Governmental Approvals relating to the Development to be conducted by Strata. Each Party shall cause their respective Subcontractors to comply with this Section 6.6(b).

(c) As provided in this Agreement with regard to each Party's obligations hereunder, Strata and Micrologix (as the case may be) shall each comply in all material respects with all Applicable Laws within the Territory, including the provision of information by Strata and Micrologix to each other necessary for Micrologix and Strata, as the case may be, to comply with any applicable reporting requirements

and Governmental Approvals required; and maintaining any and all licenses, permits and consents necessary and/or required for complying with such Party's obligations under this Agreement. During the Term, each Party agrees to execute and deliver to the other Party any certifications that may be required by Applicable Laws, including any debarment certification.

(d) Each Party shall promptly notify the other Party of any written or oral notices received from, or inspections by, the FDA, or other Competent Authority, which materially impact the Product, the Development and/or the Marketing Authorizations, and shall promptly inform the other Party of any responses to such written notices or inspections and the resolution of any issue raised by the FDA or other Competent Authority.

Section 6.7 General Regulatory Matters.

(a) Subject to Micrologix's obligations under Section 6.7(b) and Applicable Laws during the period in which it is the IND holder, Strata shall have all regulatory responsibility with respect to and relative to the Product and has the sole right and decision making authority with respect to all such regulatory matters, including without limitation reaching agreement on all regulatory matters with the FDA and/or any other Competent Authority.

(b) The Parties acknowledge that Micrologix, as of the Effective Date, owns and holds certain Governmental Approvals in connection with the research and development of the Product, including without limitation the IND listed in Exhibit "D". Micrologix shall be responsible for the filing and maintenance in good standing of all such Governmental Approvals, with costs and expenses associated therewith to be included in Reimbursable Costs. During the time that Micrologix is the holder of the IND, Micrologix shall comply with all Applicable Laws applicable to the holder of the IND, including, without limitation, process, track and report all IND Safety Reports (as defined by the FDA). Upon Strata's request, such request to be made as soon as reasonably possible, Micrologix shall transfer to Strata, without any additional consideration, those Governmental Approvals (including without limitation the IND) requested by Strata.

(c) During the time that Micrologix is the holder of such Governmental Approvals, Strata shall be entitled to attend any and all meetings and participate in telephone calls with the Competent Authorities, including without limitation any meeting preparation, meeting co-ordination, preparation of minutes and pre-NDA meeting with the FDA. During such time as Micrologix is the holder of such Governmental Approvals, subject to Micrologix's obligations under Section 6.7(b) and Applicable Laws during the period of time in which it is the IND holder:

(i) Strata has the sole right and decision making authority for all regulatory matters with respect to or relative to the Product.

(ii) While it is still the holder of the IND in the United States, Micrologix shall give Strata no less than three (3) business days notice following the scheduling of any such meeting and/or telephone call with the FDA and/or other Competent Authority (or such shorter period of time, if the meeting and/or telephone call is scheduled within such three (3) business days and in such event such notice shall be in sufficient time so that Strata shall be able to attend and/or participate in such meeting and/or telephone call).

(iii) Micrologix shall provide Strata copies of any materials relating to any regulatory matter prior to their presentation to the FDA or other Competent Authority during the Development, so that Strata shall have an opportunity to review and comment thereon.

(iv) The JDMC shall approve all such materials prior to presentation.

ARTICLE 7
PATENTS

Section 7.1 Maintenance of Patents or Marks.

(a) Micrologix shall, at Micrologix's expense and on a timely basis in each country in the Territory: (i) use Commercially Reasonable Efforts to obtain Micrologix Patent Rights in all countries in the Territory; (ii) pay all fees and file all documentation and other materials required by any Competent Authority in each applicable country to maintain and/or renew Micrologix Patent Rights; and (iii) shall use Commercially Reasonable Efforts to otherwise maintain the Micrologix Patent Rights in all countries in which Strata has the right and elects to exercise any or all of its rights hereunder related to the Product; provided however, that upon written request by Micrologix, Strata shall, at no cost or expense to Strata, provide such reasonable assistance as may be necessary to enable Micrologix to comply with the administrative formalities necessary to register or maintain any Micrologix Patent Rights.

(b) In the event Micrologix intends to abandon the prosecution or maintenance of all or any part of Micrologix Patent Rights claiming the Product or the Compound (which it shall only be permitted to do in the event it has a bona fide belief that obtaining or maintaining rights are not possible using Commercially Reasonable Efforts), Micrologix shall notify Strata no less than [***] (or such shorter period of time if there is a shorter period of time required by a Competent Authority) prior to the date it intends to abandon the prosecution or maintenance, as applicable, of any such Micrologix Patent Rights.

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(c) In the event Micrologix notifies Strata within the period provided in Section 7.1(b), Strata has the right but not the obligation to assume such prosecution and/or maintenance and shall notify Micrologix if, and when, Strata wishes to assume the responsibility for prosecuting and maintaining such Micrologix Patent Rights, as applicable, whereupon Micrologix shall permit Strata, at Strata's expense, to take over such prosecution and/or maintenance, as applicable, and Micrologix shall cooperate in any such transfer of responsibilities and rights as necessary or prudent for the benefit of Strata to prosecute and/or maintain the foregoing rights. Thereafter, Strata shall have the right but not the obligation to prosecute or maintain any such Micrologix Patent Right, as the case may be, at its expense; provided that Strata keep Micrologix reasonably informed of the progress of any such prosecution. Micrologix shall have the right to review all such pending applications and other proceedings and make recommendations to Strata concerning them and their conduct, but the final decision with respect thereto shall rest with Strata, provided that Strata acts reasonably.

(d) Each Party shall make available to the other Party or its authorized attorneys, agents or representatives, its employees, agents or consultants necessary or appropriate to enable the other Party to file, prosecute and maintain its patent applications covering the Product for a reasonable period of time sufficient for the other Party to obtain the assistance it needs from such personnel. Micrologix shall provide Strata with copies of all material correspondence, documentation and/or submissions provided to, and received from, U.S. PTO and comparable Competent Authorities that may materially affect Strata's rights under this Agreement.

Section 7.2 Cooperation and Procedures Relative to Actions Brought Under Section 7.3 and Section 7.4.

(a) The Parties shall reasonably cooperate with each other with respect to any litigation, action, suit, claim or other proceeding under Section 7.3 or Section 7.4 (an "**Article 7 Proceeding**"). Without limiting the generality of the foregoing, the "Non-Litigating Party" (as hereinafter defined) agrees to cooperate reasonably in any Article 7 Proceeding, as may be requested by or necessary to the "Litigating Party" (as hereinafter defined) including, joining any Article 7 Proceeding as a party, executing all necessary documents, supplying essential documentary evidence and making available essential witnesses then in its employment or engaged as a consultant.

(b) The Party prosecuting any Article 7 Proceeding under Section 7.3 or controlling the defence of any Article 7 Proceeding under Section 7.4 shall be referred to in this context, as the "**Litigating Party**"). The other Party in this context shall be referred to as the "**Non-Litigating Party**". Except as provided in Section 7.2(e) or Section 7.4(b), the Litigating Party shall have the right to control any Article 7 Proceeding. In addition, the Litigating Party shall have the right to control the settlement or compromise of any Article 7 Proceeding and may so settle or compromise without the Non-Litigating Party's prior written consent, provided

that the terms of any such settlement or compromise: (i) does not materially impair the Non-Litigating Party's rights hereunder (including each Party's rights in the Micrologix Technology or the validity or enforceability thereof); (ii) would not require the Non-Litigating Party to be subject to an injunction or to make a monetary payment or would restrict the claims in or admit any invalidity or unenforceability of the Micrologix Patent Rights; (iii) provide for the unconditional release of the Non-Litigating Party; and (iv) expressly state that neither the fact of settlement, nor the settlement agreement shall constitute or be construed or interpreted, as, an admission by the Non-Litigating Party of any issue, fact, allegation or any other aspect of the claim being settled. In all other cases, the Litigating Party may not settle any Article 7 Proceeding without the prior written consent of the Non-Litigating Party, which consent shall not be unreasonably withheld or delayed. The Non-Litigating Party may not pay or voluntarily permit the determination of any liability which is subject to any such Article 7 Proceeding while the Litigating Party is negotiating the settlement thereof or contesting the matter, except with the prior written consent of the Non-Litigating Party, which consent shall not be unreasonably withheld or delayed.

(c) Upon learning of any actual, contemplated or threatened Article 7 Proceeding involving any of the Micrologix Patent Rights that claims the Product or the Compound, each Party shall promptly notify the other Party of such and shall, upon request, provide to the other Party an assessment of the status of any such proceeding.

(d) To the extent any cooperation provided by Micrologix hereunder requires Micrologix to disclose information that would be deemed Micrologix Confidential Information (other than any information which shall become the property and right of Strata under Section 3.4), Strata shall treat such information in accordance with Section 8.1.

(e) The Parties acknowledge and agree that circumstances may arise in which a Party hereto may desire to protect its interests by joining or intervening in litigation or other proceeding involving the Micrologix Patent Rights, which proceeding has neither been brought by that Party nor levied against that Party. Accordingly, neither Party shall object or oppose any effort by the other Party, at its own expense, to join or intervene in such litigation or other proceedings involving the Micrologix patent Rights. In the event the Non-Litigating Party seeks to join or intervene in any litigation or other proceeding where such joining or intervention is neither requested by nor necessary to the Litigating Party, then (i) the Litigating Party's right to control the litigation under Section 7.3 or Section 7.4 (as the case may be) shall not be extended to the conduct of the Non-Litigating Party after intervention or joining; and (ii) notwithstanding anything to the contrary contained in Section 7.3 and Section 7.4, the Non-Litigating Party shall bear its own costs associated with its involvement in any such litigation or other proceeding after intervening or joining.

Section 7.3 Prosecution of Infringement.

(a) During the Term, each Party shall give prompt notice to the other of any Third Party act which may infringe one or more claims of the Micrologix Patent Rights that claims the Product or the Compound.

(b) **Infringement within the Field.**

(i) Strata may (but shall have no obligation to do so) prosecute any Article 7 Proceeding under this Section 7.3 against such Third Party infringement of any claims of Micrologix Patent Rights where such infringement primarily relates to such Third Party activities in the Field in the Territory in accordance with the terms of Section 7.2 and this Section 7.3 and in such event Strata shall become the Litigating Party.

(ii) In the event Strata fails to institute any Article 7 Proceeding and terminate any Third Party infringement of the claims of Micrologix Patent Rights that the claim the Product or the Compound within thirty (30) days of the later of: (i) receiving notification from Micrologix of any such infringement or (ii) sending notice to Micrologix of such action, Micrologix may take (but shall have no obligation to do so) such action as it deems appropriate, including the filing of a lawsuit against such Third Party. In such event Micrologix shall promptly notify Strata of any such Article 7 Proceeding and shall become the Litigating Party.

(c) **Infringement outside the Field.**

(i) Micrologix may (but shall have no obligation to do so) prosecute any Article 7 Proceeding under this Section 7.3 against such Third Party infringement of any claims of Micrologix Patent Rights where such infringement does not primarily relate to such Third Party activities in the Field in the Territory in accordance with the terms of Section 7.2 and this Section 7.3 and in such event Micrologix shall become the Litigating Party.

(ii) In the event Micrologix fails to institute any Article 7 Proceeding and terminate any Third Party infringement of the claims of Micrologix Patent Rights that claim the Product or the Compound within thirty (30) days of the later of: (i) receiving notification from Strata of any such infringement or (ii) sending notice to Strata of such action, Strata may take (but shall have no obligation to do so) such action as it deems appropriate, including the filing of a lawsuit against such Third Party. In such event Strata shall promptly notify Micrologix of any such Article 7 Proceeding and shall become the Litigating Party.

(d) Micrologix and Strata shall share all Costs in connection with any Article 7 Proceeding under this Section 7.3, on the basis of [***] % paid by the Litigating Party and [***]% paid by the Non-Litigating Party, provided that Micrologix and Strata shall first recover their respective actual documented out-of-pocket Costs, or equitable proportions thereof, associated with any Article 7 Proceeding under this Section 7.3, or settlement thereof from any recovery made by the Litigating Party. Any excess amount recovered by the Litigating Party shall be shared between Strata and Micrologix on the basis of [***]% to the Litigating Party and [***]% to the Non-Litigating Party. In the event there is no recovery from a Third Party or if any such recovery does not cover all of the Costs of the Litigating and/or Non-Litigating Party, as the case may be, then the Parties agree to share any such unrecovered Costs on the basis of [***]% to the Litigating Party and [***]% to the Non-Litigating Party. If Strata is the Litigating Party, Strata shall recover such amounts by [***].

Section 7.4 Infringement Claimed by Third Parties.

(a) In the event a Third Party commences, or threatens to commence, any Article 7 Proceeding against a Party to this Agreement alleging infringement of a Third Party's intellectual property rights by the making, manufacture, use, sale, offer for sale, export and/or import by Strata, its Affiliates or sublicensees of the Product, the Party against whom such proceeding is threatened or commenced shall give prompt notice to the other Party ("**Infringement Notice**").

(b) Strata shall control the defense and settlement of any such Article 7 Proceeding under this Section 7.4 in accordance with the terms of Section 7.2 and this Section 7.4 and shall become the Litigating Party; provided that, in the event that the validity and enforceability of the claims of Micrologix Patent Rights are in issue in any such Article 7 Proceeding under this Section 7.4, Micrologix may (but shall have no obligation to do so) control the defense and settlement of any such Article 7 Proceeding under this Section 7.4 in accordance with the terms of Section 7.2 and this Section 7.4 solely to the extent that such defense and settlement relates to validity and enforceability of the claims of the Micrologix Patent Rights.

(c) Micrologix shall be liable for its own Costs in connection with any Article 7 Proceeding under this Section 7.4.

Section 7.5 Co-operation with Other Licensees.

Strata acknowledges that Micrologix may grant to licensees rights in the Micrologix Technology in the Territory in respect of fields outside the Field, and may grant to other licensees rights

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outside the Territory. If Micrologix grants such rights to other licensees, in the event of any litigation in respect of:

(a) fields outside of the Field that may reasonably affect Strata's use of the Micrologix Technology in the Field or the use or sale of Products by Strata; or

(b) the Field that may reasonably affect Micrologix or one or more of Micrologix's licensee's use of the Micrologix Technology outside the Field or the making, manufacture, use or sale of products outside the Field by Micrologix or one or more other such licensee(s);

then Micrologix, Strata and such other licensee(s) will use good faith efforts to determine jointly the course of action, if any, necessary or appropriate to prosecute or defend the litigation. Micrologix will use Commercially Reasonable Efforts to include in its other license agreements, provisions that allow the participation of Strata as contemplated herein. If Micrologix is unable to include in any such other license agreement such provisions, then with respect to the licensee under such other license agreement, Strata shall not be bound by the terms and conditions of this Section 7.5.

ARTICLE 8
CONFIDENTIALITY

Section 8.1 Confidentiality.

(a) During the Term and for a period of five (5) years thereafter, each Party shall maintain all Confidential Information of the other Party as confidential and shall not disclose any such Confidential Information to any Third Party or use any such Confidential Information for any purpose, except (i) as expressly authorized by this Agreement or with the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, (ii) as required by Applicable Laws or court order of a court of competent jurisdiction (provided that the disclosing Party shall first notify the other Party to afford the other Party, for a period of ten (10) business days or such lesser period as may be provided by Applicable Law, an opportunity to seek whatever protective relief it deems appropriate, and the disclosing Party shall use Commercially Reasonable Efforts to obtain confidential treatment of any such information required to be disclosed), (iii) to its Representatives to accomplish the purposes of this Agreement, so long as such Representatives are under an obligation of confidentiality no less stringent than as set forth herein, (iv) to bona fide potential investors and their respective advisors during financing or an acquisition, merger or other like reorganization, so long as such investors and advisors are under an obligation of confidentiality no less stringent than as set forth herein, except as otherwise provided herein, and (v) as is required to exercise its rights and perform its obligations under this Agreement, so long as the recipients of such information are under an obligation of confidentiality no less stringent than as set forth herein. Each Party may use such Confidential Information only to the extent required to accomplish the purposes of this Agreement.

(b) Notwithstanding any provision to the contrary herein or in any confidentiality or nondisclosure agreement between the Parties, from time to time, either Party may disclose to bona fide potential investors and their respective advisors during financing or an acquisition, merger or other like reorganization the following Confidential Information:

(i) [***];

(ii) [***];

(iii) [***];

(iv) [***];

(v) [***];

(vi) [***];

(vii) [***];

(viii) this Agreement, in the form as redacted and filed with the SEC and available for disclosure, as may be modified by SEC filings, press releases or other public disclosures, or if not filed with the SEC, as executed with the financial particulars in Article 4 redacted to the extent not publicly disclosed; and

(ix) such additional information and materials as may be agreed-to by the Parties;

all without obtaining written agreement of confidence and non-use from the recipient. The disclosing Party remains liable to the other Party for any use or disclosure made of such information by such investors and advisors, as if such investors and advisors were bound by the terms of this Article 8. No information disclosed pursuant to this Section 8.1(b) that becomes generally known or available, directly or indirectly as a result of a disclosure permitted by this Section, shall be excluded from the definition of Confidential Information pursuant to the exclusion set out in Section 1.14(a).

(c) Each Party shall use at least the same standard of care as it uses to protect its own Confidential Information to ensure that it and its Affiliates and Representatives do not disclose or make any unauthorized use of the other Party's Confidential Information. Each Party shall be responsible for any breach of this Agreement by its Representatives. Each Party shall promptly notify the other Party upon

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discovery of any unauthorized use or disclosure of the other Party's Confidential Information.

(d) Micrologix acknowledges and agrees that the Micrologix Know-How licensed to Strata has value to Strata in being maintained as confidential. Therefore, Micrologix shall keep the Micrologix Know-How confidential as if it were Confidential Information of Strata as set forth in this Article 8.

Section 8.2 Publicity Review.

The Parties agree that the public announcement of the execution of this Agreement shall be in the form of a press release to be mutually agreed upon by the Parties on or before the Effective Date and thereafter each Party shall be entitled to make or publish any public statement consistent with the contents thereof. Thereafter, except as allowed in the preceding sentence, the Parties will jointly discuss and agree, based on the principles of this Section 8.2, on any statement to the public regarding this Agreement or any aspect of this Agreement, and the results of clinical studies conducted as part of the Development, subject in each case to disclosure otherwise required by Applicable Laws. When a Party elects to make any such statement or disclosure required under Applicable Law, it will give the other Party at least five (5) business days notice to review and comment on such statement, unless the applicable Competent Authority requires disclosure such that a Party is prohibited by Applicable Law to provide such advance review by the other Party (in which case it shall be disclosed according to such requirement and notice will be provided as soon as possible). The terms of this Agreement may also be disclosed to Competent Authorities, including the United States Securities and Exchange Commission or any other exchange or securities commission having authority over a Party, where required by Applicable Law, with redaction of financial information not otherwise required to be disclosed under Applicable Laws in which event the disclosing Party shall provide in advance of submission to the other Party for review and comment a copy of such redactions made to this Agreement.

ARTICLE 9
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 9.1 Corporate Power.

Each Party hereby represents, warrants and covenants that such Party is, and will remain through the Term, duly organized and validly existing under the laws of the state of its incorporation and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof.

Section 9.2 Due Authorization.

Each Party hereby represents and warrants that such Party is duly authorized to execute and deliver this Agreement and covenants to perform its obligations hereunder.

Section 9.3 Binding Obligation/No Conflict.

Each Party hereby represents, warrants and covenants that: (i) this Agreement is a legal and valid obligation binding upon it and is enforceable in accordance with its terms; and (ii) the execution, delivery and performance of this Agreement by such Party does not, and will not during the Term, conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor to the best knowledge of each Party as of the Effective Date, violate any Applicable Laws.

Section 9.4 Ownership of Micrologix Technology.

Micrologix represents, warrants, and covenants, as the case may be, that:

(a) as of the Effective Date and during the Term, it is and shall remain the sole owner of all right, title and interest in and to the Micrologix Technology, subject to Micrologix's ability to license and assign as permitted hereunder; and, to the best of the knowledge of Micrologix as of the Effective Date, no Representative of Micrologix or any Third Party has any rights to the Micrologix Technology;

(b) as of the Effective Date, it has not granted and will not grant after the Effective Date any license under the Micrologix Technology for any product in the Territory for use in the Field to any Third Party, and is under no obligation to grant any such license, except to Strata, and there are, and will be, no rights granted to any Third Party and/or no agreements, either written or oral, regarding either the Micrologix Technology which are inconsistent or in conflict with this Agreement;

(c) as of the Effective Date, there are no outstanding liens, judgments, injunctions, decrees, rulings, security interests, or other encumbrances on the Micrologix Technology, and through the Term, there shall be no liens, judgments, injunctions, decrees, rulings, security interests, or any other encumbrances (other than security interests filed by Micrologix's lender(s) and licensee(s) in the ordinary course of business) on the Micrologix Technology which could materially affect Strata's interests in the Micrologix Technology;

(d) as of the Effective Date and during the Term, it has taken and will take Commercially Reasonable Efforts to ensure that all Micrologix Know-How has been and will continue to be fully protected and maintained in accordance with appropriate procedures for its protection;

(e) (i) as of the Effective Date, Micrologix has made available to Strata all material information in its possession or Control relating to the Product in the Field; and (ii) as of the Effective Date, to the best of Micrologix's knowledge, all art that Micrologix believes to be material to the patentability of any claims within the Micrologix Patent Rights claiming the Product or the Compound has been cited by Micrologix to the U.S. PTO for U.S. patent rights or to the comparable Competent Authority in such other jurisdictions in the Territory that require disclosure of material information in possession or Control of the patentee; and

(f) Exhibit “B” is a true, complete and current listing of the Micrologix Patents as of the Effective Date.

Section 9.5 Patent and Other Intellectual Property Rights Proceedings.

As of the Effective Date, Micrologix represents and warrants that:

(a) to the best of its knowledge, no patent within the Micrologix Patent Rights, or patent application with regard to the Micrologix Patent Rights, as the case may be, is the subject of any pending interference, opposition, cancellation or other protest proceeding, or judicial proceeding;

(b) to the best of its knowledge, the Micrologix Technology and any process, procedure or method used to manufacture the Compound and the Product do not infringe, interfere with, or misappropriate the intellectual property rights of any Third Party;

(c) to the best of its knowledge, the practice of the Micrologix Patent Rights and any process, procedure or method used to manufacture the Compound and the Product in the Territory do not and will not infringe, interfere with, or misappropriate any intellectual property rights of any Third Party;

(d) there has been no lapse of any claims within the Micrologix Patents in the Territory;

(e) Micrologix has not received any: (i) notices or communications that the development, making, manufacture, use, marketing, advertising, promoting, distributing, offer for sale, selling, importation or exportation of the Compound or the Product or use of the Micrologix Technology would infringe or misappropriate any intellectual property rights of any Third Party; or (ii) allegation regarding the legality, enforceability, or validity of the Micrologix Technology, other than those made by the U.S. PTO or other comparable Competent Authorities in other countries in the prosecution of the Micrologix Patent Rights and previously disclosed to Strata;

(f) Micrologix is not aware of any Third Party having infringed or misappropriated the Micrologix Technology and has not sent any notices or communications to any Third Party that the activities of such Third Party infringe or misappropriate the Micrologix Technology.

Section 9.6 Micrologix’s Additional Warranties.

As of the Effective Date, Micrologix represents and warrants that:

(a) Exhibit “D” is a true, complete and current listing of the regulatory filings relating to Product or Compound owned or Controlled by Micrologix as of the Effective Date, including, all INDs; and

(b) Micrologix has not deliberately withheld any material information or data known to Micrologix relating to:

(i) the results of preclinical and clinical studies of the Compound and the Product conducted by or on behalf of Micrologix;

(ii) Micrologix's ongoing clinical development activities in the United States for the Product, including the status of all such studies; and

(iii) the manufacturing, testing and release of the Compound and Product, including CMC information therefor.

Section 9.7 Strata's Additional Warranties.

As of the Effective Date, Strata represents and warrants that upon completion of transactions related to this Agreement, which transactions are conditional only upon the execution and delivery of this Agreement, Strata shall be entitled to receive proceeds of a financing of not less than $5 million.

Section 9.8 Pre-Clinical and Clinical Studies Prior to Effective Date.

Micrologix represents and warrants that all of the pre-clinical and clinical trials related to the Product prior to the Effective Date have been conducted in accordance with Applicable Laws.

Section 9.9 Debarment.

During the Term, neither of the Parties shall knowingly utilize any employee, representative, agent, assistant or associate who has been debarred by the FDA pursuant to 21 U.S.C. Section 335a (a) or (b) of the Act in connection with any of the activities to be carried out under this Agreement. Micrologix further represents and warrants that, as of the Effective Date, to the best of its knowledge, none of the entities, laboratories or clinical sites participating in the clinical studies prior to the Effective Date had been debarred at the relevant time.

Section 9.10 Limitation on Warranties.

(a) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT:

(i) NOTHING HEREIN SHALL BE CONSTRUED AS A REPRESENTATION OR WARRANTY BY MICROLOGIX TO STRATA THAT THE MICROLOGIX TECHNOLOGY IS NOT INFRINGED BY ANY THIRD PARTY, OR THAT THE PRACTICE OF SUCH RIGHTS DOES NOT INFRINGE ANY PUBLISHED INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

(ii) NEITHER PARTY MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT.

(b) NEITHER PARTY MAKES ANY OTHER WARRANTIES HEREUNDER, EXPRESS OR IMPLIED, INCLUDING WARRANTIES CONCERNING THE SUCCESS OF THE DEVELOPMENT PROGRAM, THE SUCCESS OF THE MARKETING AND COMMERCIALIZATION OF THE PRODUCT OR THE COMMERCIAL UTILITY OF THE PRODUCT.

ARTICLE 10
INDEMNIFICATION AND INSURANCE

Section 10.1 Strata Indemnified by Micrologix.

(a) Micrologix shall indemnify, defend and hold Strata, and its Representatives (in respect of each Party, its "**Indemnitees**"), harmless from and against any Third Party liabilities, obligations, damages, losses, claims, encumbrances, costs or expenses (including attorneys' fees) (any or all of the foregoing herein referred to as "**Loss**") insofar as a Loss or actions in respect thereof, occurred subsequent to the Effective Date (except as provided in Section 10.1(a)(iii) below), and arises out of or is based upon:

(i) any breach by Micrologix of its representations, warranties, covenants, obligations or agreements under this Agreement; or

(ii) the negligence or willful misconduct of Micrologix and/or any of Micrologix's Indemnitees, including violation of Applicable Laws in their performance under this Agreement; or

(iii) Micrologix's (or any Subcontractor's) conduct of the pre-clinical and clinical research and development activities in connection with the Product prior to and after the Effective Date; provided however, Micrologix's duty to indemnify under this Section 10.1(a)(iii) shall not include product liability claims unless Micrologix's liability for same arises pursuant to Section 10.1(a)(i) or Section 10.1(a)(ii).

(b) Micrologix's obligations to indemnify Strata hereunder shall not apply to the extent any such Loss arises out of or is based on the:

(i) inactions or actions of Strata or its Indemnitees for which Strata is obligated to indemnify Micrologix under Section 10.2; or

(ii) negligence or willful misconduct of Strata and/or its Indemnitees.

Section 10.2 Micrologix Indemnified by Strata.

(a) Strata shall indemnify, defend and hold harmless Micrologix and its Indemnitees from and against any Loss insofar as such Loss or actions in respect thereof occurred subsequent to the Effective Date, and arises out of or is based upon:

(i) any breach by Strata of its representations, warranties, covenants, obligations or agreements under this Agreement; or

(ii) the negligence or willful misconduct of Strata and/or any of Strata's Indemnitees, including any violation of Applicable Law in their performance under this Agreement; or

(iii) Strata's or its Indemnitees' making, manufacture, marketing, sale, distribution, storage or promotion of the Product, including any injury or death to any person or damage to any property caused by any Product provided by Strata or its Indemnitees, whether by reason of breach of warranty, negligence, product defect or otherwise, and regardless of the form in which any such claim is made.

(b) Strata's obligations to indemnify Micrologix hereunder shall not apply to the extent any such Loss arises out of or is based on the:

(i) inactions or actions of Micrologix or its Indemnitees for which Micrologix is obligated to indemnify Strata under Section 10.1; or

(ii) the negligence or willful misconduct of Micrologix and/or its Indemnitees.

Section 10.3 Prompt Notice Required.

No claim for indemnification hereunder shall be valid unless notice of the matter which may give rise to such claim is given in writing by the Party seeking indemnification (the "**Indemnified Party**") to the persons against whom indemnification may be sought (the "**Indemnitor**") as soon as reasonably practicable after such Indemnified Party becomes aware of such claim. Such notice shall state that the Indemnitor is required to indemnify the Indemnified Party and its Indemnitees for a Loss and shall specify the amount of Loss, if available, and relevant details thereof. The Indemnitor shall notify Indemnified Party no later than thirty (30) days from such notice of its intention to assume the defense of any such claim. Failure of the Indemnified Party to notify Indemnitor within such notice period shall not relieve Indemnitor of any liability hereunder, except to the extent the Indemnitor reasonably demonstrates that the defense of such Third Party claim is prejudiced by such failure.

Section 10.4 Indemnitor May Settle.

The Indemnitor shall, at its expense, have the right to settle and defend any action which may be brought in connection with all matters for which indemnification is available. In such event the Indemnified Party shall cooperate with the Indemnitor as reasonably requested by the Indemnitor in connection with such action; provided that the Indemnified Party shall have the right to fully participate in such defence at its own expense. The defence by the Indemnitor of any such actions shall not be deemed a waiver by the Indemnitor of its right to assert a claim with respect to the responsibility of the Indemnified Party with respect to the Loss in question. The Indemnitor shall have the right to settle or compromise any claim against the Indemnified Party without the consent of the Indemnified Party provided that the terms of any settlement or compromise: (a) does not materially impair the Indemnified Party's rights hereunder (including

each Party's rights in the Micrologix Technology); (b) would not require the Indemnified Party to be subject to an injunction or to make a monetary payment or would restrict the claims in or admit any invalidity or unenforceability of the Micrologix Patent Rights; (c) provide for the unconditional release of the Indemnified Party; and (d) expressly state that neither the fact of settlement nor the settlement agreement shall constitute, or be construed or interpreted as, an admission by the Indemnified Party of any issue, fact, allegation or any other aspect of the claim being settled. In all other cases, the Indemnitor may not settle any such action without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed. No Indemnified Party shall pay or voluntarily permit the determination of any liability which is subject to any such action while the Indemnitor is negotiating the settlement thereof or contesting the matter, except with the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld or delayed. If the Indemnitor fails to give Indemnified Party notice of its intention to defend any such action as provided herein, the Indemnified Party involved shall have the right to assume the defence thereof with counsel of its choice and defend, settle or otherwise dispose of such action. If Strata is the Indemnified Party in such case, Strata shall recover its Costs by deducting its Costs from any royalty payments or any other amounts payable to Micrologix hereunder in accordance with Section 4.7(c).

Section 10.5 Insurance.

Each Party shall, at its sole cost and expense, obtain and keep in force during the Term and for a period of not less than three (3) years after termination, cancellation or expiration of this Agreement the following insurance: (a) general liability insurance, including blanket contractual liability coverage with bodily injury, death and property damage with limits of $[***] per occurrence and $[***] in the aggregate within six months after the Effective Date; and (b) clinical studies and product liability insurance with bodily injury death and property damage limits of not less than $[***] per occurrence and $[***] in the aggregate; provided, however, each Party's obligation to maintain such product liability insurance shall not commence until immediately prior to the First Commercial Sale of the Product in the first country in the Territory and each Party's obligation to maintain such clinical studies insurance shall not commence until immediately prior to the first human dosing by such Party. Upon execution of this Agreement, and upon the other Party's request thereafter, each Party shall furnish the other with a certificate of insurance signed by an authorized representative of such Party's insurance underwriter evidencing the insurance coverage required by this Agreement and providing for at least thirty (30) days prior written notice to the other Party of any cancellation, termination or reduction of such insurance coverage. Each Party shall use its Commercially Reasonable Efforts to cause Third Parties engaged by a Party to perform its obligations under this Agreement to maintain such types of insurance coverages and for such period of time as are customary for such Third Parties given the nature of the services to be provided.

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ARTICLE 11
ADDITIONAL COVENANTS OF THE PARTIES

Section 11.1 Micrologix Covenant Not To Compete.

Micrologix hereby covenants and agrees, and shall cause its Affiliates to agree, not to, in whole or in part, develop, in-license, market, make, manufacture or have manufactured, sell, promote, distribute or have marketed, have sold or have distributed any product in the Territory in the Field (in this Section, a "**Section 11.1 Competitive Product**") during the Term and for a period of [***] thereafter. Notwithstanding the foregoing, if Micrologix acquires an entity or all or substantially all of the assets of an entity during such period of time and such entity distributes or such assets include a Section 11.1 Competitive Product, Micrologix or its Affiliate shall have [***] in which to divest itself of such Section 11.1 Competitive Product or to otherwise cease distribution of such Section 11.1 Competitive Product, and Micrologix shall not be in breach of this Section 11.1 if it so divests or ceases distribution within such [***] period. Strata and Micrologix hereby agree that the covenants set forth in this Section 11.1 are a material and substantial part of the transactions contemplated by this Agreement.

Section 11.2 Launch of Competitive Product by Strata.

Strata hereby agrees that in the event Strata and/or its Affiliates develop, in-license, market, sell, promote, distribute or have marketed, or have sold any product in the Field in a particular country in the Territory that is not a Product hereunder (in this Section, a "**Competitive Product**") during the Term, directly for themselves or by a Third Party, licensee or sublicensee on behalf of Strata and/or its Affiliates, then pursuant to Section 13.4, Strata's rights with respect to such country under this Agreement shall terminate and revert to Micrologix. No termination pursuant to this Section shall terminate this Agreement with respect to any other country in the Territory. Notwithstanding the foregoing, if Strata or an Affiliate acquires an entity or all or substantially all of the assets of an entity during such period of time and such entity distributes or such assets include a Competitive Product, Strata, or its Affiliate(s), shall have [***] in which to divest itself of such Competitive Product or to otherwise cease distribution of such Competitive Product, and Strata shall not be in violation of this Section 11.2 if it so divests or ceases distribution within such [***] period. The Parties mutually agree that Strata's (or Affiliates') commercialization, as described above, of any Competitive Product shall not be deemed a breach of this Agreement, and Micrologix sole recourse for such an event shall be that as described in this Section 11.2 only.

Section 11.3 Limitation To The Territory.

Strata hereby covenants that it will not directly or indirectly, without the prior written authorization of Micrologix: (i) promote or actively solicit the sale of the Product or advertise the Product, outside of the Territory; (ii) purchase or cause to be purchased Product which Strata has represented, directly or indirectly, as being for the purpose of sale in a specific country in the

*** Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

Territory for sale in any other country outside the Territory; (iii) contact any of Micrologix's suppliers or vendors of the Product or element thereof for the purpose of causing the Product to be sold outside the Territory; (iv) knowingly sell or distribute for resale the Product purchased hereunder to a Third Party who intends to sell the Product outside of the Territory; and (vi) knowingly sell or distribute for resale Product purchased from a Third Party outside the Territory for resale in the Territory.

Section 11.4 Records and Audits.

(a) Each Party shall keep or cause to be kept true, accurate and complete Books and Records as are required to determine, in a manner consistent with accrual method of accounting in accordance with GAAP, any sums or credits due under this Agreement during the Term and for a period of three years thereafter or as otherwise required to comply with Applicable Laws. Without limiting the generality of the foregoing, the Parties agree that such Books and Records shall include the following:

(i) Strata shall keep such Books and Records to permit Micrologix to confirm the completeness and accuracy of (A) the information presented in each Royalty Statement and all payments due hereunder; (B) the calculation of Net Sales; (C) any payments due Micrologix under this Agreement; and (D) any other payment obligations of Strata hereunder.

(ii) Micrologix shall keep such Books and Records to permit Strata to confirm the completeness and accuracy of (A) Reimbursable Costs; (B) any payments due Strata under this Agreement; and (C) any other obligations of Micrologix hereunder.

(b) With regard to sums or credits due or related reports, at the request (and expense) of the requesting Party, the other Party shall permit the requesting Party and/or such requesting Party's independent certified public accountant selected by such Party and reasonably acceptable to the other Party to audit and/or inspect only those Books and Records of the other Party as may be necessary to determine, with respect to any calendar year ending no more than three years prior to such Party's request, the completeness and accuracy of any reports made and/or any sums or credits due under this Agreement. Any such independent accounting firm shall be subject to the confidentiality provisions of this Agreement. Such inspection shall be conducted during the Party's normal business hours, no more than once in any twelve (12) month period and upon at least thirty (30) days prior written notice by the requesting Party. If such requesting Party concludes that such payments were underpaid during the periods reviewed by such requesting Party and/or its accountants, the other Party shall pay the requesting Party the amount of any such underpayments, plus interest at a rate equal to the Prime Rate of Interest, within thirty (30) days of the date the requesting Party delivers to the other Party the report so concluding that such payments were underpaid. If such requesting Party and/or its accounting firm concludes that such payments were overpaid during such period, the Party shall pay to the other Party the amount of

any such overpayments, without interest, within thirty (30) days of the date the requesting Party delivers to the other Party the report so concluding that such payments were overpaid. The requesting Party shall bear the full cost of such audit unless such audit discloses an underpayment by more than [***] of the amount due during such period. In such case, the other Party shall bear the full cost of such audit.

(c) In the event the non-requesting Party does not agree with the conclusions of such report under Section 11.4(b), (whether such payments were underpaid or overpaid), then such Party shall notify the other Party within thirty (30) days after receipt of such report. Thereafter, the Parties shall in good faith try and resolve such differences. If the Parties are unable to reach a mutual agreement within fifteen (15) days after the date of notice then independent auditors of each Party shall meet and select an independent accounting firm (being an accounting firm not used by either Party) to make the final determination within fifteen (15) days thereafter. The determination of such independent accounting firm shall be binding and conclusive on the Parties, and the cost of such firm shall be borne by the Party against whom the determination by such firm is made.

(d) Micrologix shall, upon prior, reasonable notice by Strata and during normal business hours, allow Strata or its Representative to inspect and audit Micrologix's facilities, equipment, personnel and operating procedures (and of any Subcontractor, as applicable) used to develop the Product and any Books and Records related thereto to confirm compliance with the terms and conditions of this Agreement, including compliance with Applicable Laws and Governmental Approvals; provided that Strata shall use Commercially Reasonable Efforts to ensure that such inspection and audit shall not interfere with Micrologix's (or its Subcontractor's, as applicable) normal operations. However, notwithstanding the foregoing, Strata shall be permitted to inspect and audit as provided above immediately on notice in the event of a bona fide belief that (i) an Applicable Law is being, or may be, violated or (ii) there is, or may be, an SADE or imminent and otherwise material harm to the public due to the Product. Without limiting anything else under this Agreement, if any of the obligations of Micrologix is performed by a Subcontractor, then Micrologix shall cause any such Subcontractor to comply with the terms and conditions of this Section 11.4(d). If any inspection or audit hereunder reveals that Micrologix (or its Subcontractor(s) or other Representatives) is not in compliance in all material respects with the terms and conditions of this Agreement, Applicable Laws, or/and applicable Governmental Approvals, Micrologix, at its sole cost, shall use Commercially Reasonable Efforts to promptly correct (and, as applicable, cause its Subcontractor(s) to use Commercially Reasonable Efforts to promptly correct) any such deficiencies to ensure compliance as required hereunder. Micrologix

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shall keep Strata informed on a regular, on-going and periodic basis as to the status of any such deficiencies and such corrections.

Section 11.5 Marketing Expenses.

Strata covenants and agrees that, except as otherwise specified in this Agreement, Strata shall be solely responsible for the cost and implementation of any and all marketing, sales, promotional and related activities concerning or related to the marketing, sale, distribution and promotion of the Product under this Agreement.

Section 11.6 Further Actions.

Upon the terms and subject to the conditions hereof, each of the Parties shall use its Commercially Reasonable Efforts to take, or cause to be taken, all appropriate action and do, or cause to be done, all things necessary or advisable under Applicable Laws or otherwise to consummate and make effective the transactions contemplated by this Agreement.

ARTICLE 12
PRODUCT RECALL

Section 12.1 Product Recalls or Withdrawal.

If at any time or from time to time during the Term: (a) any Competent Authority of any country in the Territory requests Strata to recall or withdraw the Product; (b) a court of competent jurisdiction issues an order or directive for the Product to be recalled or withdrawn; or (c) if a voluntary recall or withdrawal of the Product is contemplated by Strata (individually or collectively, a "**Recall**"), then Strata shall carry out any Recall in the Territory in as expeditious a manner as reasonably possible to preserve the goodwill and reputation of the Product and the goodwill and reputation of the Parties. Strata shall in all events be responsible for conducting any Recall in the Territory, market withdrawals or corrections with respect to the Product in the Territory. Strata shall maintain records of all sales and distribution of Product and customers sufficient to adequately administer a Recall for the period required by Applicable Law. Micrologix shall cooperate as reasonably requested by Strata in connection with any such Recall. Strata will be responsible for complying with all Applicable Laws and Governmental Approvals during the Recall and will be responsible for all interactions with appropriate Competent Authorities, including, the FDA Office of Compliance in the U.S. and the appropriate FDA local district office(s) in the U.S. Strata shall be responsible for preparing and timely submitting any reports any other documentation required by the Competent Authorities in connection with any such Recall.

Section 12.2 Recall Costs.

Strata shall be responsible for conducting any Recall of the Product in the Territory and the cost and expense therefor shall be paid by Strata, unless such Recall is due to, prior to or during the Development: (i) any breach by Micrologix of its representations, warranties, covenants, obligations or agreements under this Agreement; or (ii) the negligence or willful misconduct of Micrologix and/or any of Micrologix's Representatives under this Agreement, including violation of Applicable Laws in their performance under this Agreement; in which case all such

costs and expenses, to the extent same are reasonable, shall be borne and paid solely by Micrologix. In such event, Micrologix will reimburse Strata for any such costs and expenses paid by Strata within thirty (30) days of its receipt of a reasonably detailed invoice(s) for such costs and expenses from Strata.

Section 12.3 Notification Of Complaints.

During the Term and for a period of four (4) years after the termination, expiration or cancellation of this Agreement or for such longer period as may be required by Applicable Law(s), each Party agrees to (a) notify the other Party immediately of all available material information concerning any complaint, product defect reports, and similar notices received by either Party with respect to the Product, whether or not determined to be attributable to the Product and (b) with respect to an SADE, comply with the provisions of Section 6.6. Strata shall define and implement appropriate and necessary regulatory compliance procedures for product defect reporting, including action plans and an SOP and will handle all product complaints in the Territory. In connection with any such product complaint Micrologix shall cooperate as reasonably requested by Strata. Strata, at its sole cost and expense, will have the responsibility for preparing and submitting any reports to the Competent Authorities, including FDA field alerts.

Section 12.4 Notification Of Threatened Action.

During the Term and, for a period of four years after the termination, expiration or cancellation of this Agreement or for such longer period as may be required by Applicable Law(s), each Party agrees to immediately notify the other Party of any information it receives regarding any threatened or pending action, inspection or communication by or from a concerned Competent Authority which may affect the safety or efficacy claims of the Product or the continued marketing or distribution of the Product. Upon receipt of such information, the Parties shall consult with each other in an effort to arrive at a mutually acceptable procedure for taking appropriate action, provided that, subject to Micrologix's obligation under Section 6.1 and Applicable Laws during the Period Micrologix is the IND holder, Strata shall have the final decision making authority with respect thereto.

ARTICLE 13
TERM AND TERMINATION

Section 13.1 Term.

This Agreement shall become effective on the Effective Date and shall expire on the date of the expiration of the last to expire Royalty Term in any country in the Territory (the "**Term**"), unless earlier terminated as provided in Section 13.2, Section 13.3 or Section 13.4.

Section 13.2 Termination by Either Party.

Either Party may terminate this Agreement (in its entirety or on a country by country basis as hereinafter provided) prior to the expiration of the Term upon the occurrence of any of the following:

(a) upon or after the cessation of operations of the other Party or the bankruptcy, dissolution or winding up of the other Party (other than dissolution or winding up for the purposes or reconstruction or amalgamation which includes an assignment permitted by this Agreement) or the filing of any involuntary petition for bankruptcy, dissolution, liquidation or winding up of the affairs of the other Party which is not dismissed within ninety (90) days after the date on which it is filed or commenced, and in the case of any of the foregoing events, the non-defaulting Party may terminate the Agreement in its entirety; or

(b) upon or after the breach of any material provision of this Agreement by the allegedly breaching Party if the allegedly breaching Party has not cured such breach within sixty (60) days after written notice thereof by the non-breaching Party, the non-breaching Party may, at its sole option, terminate this Agreement with respect to the particular country in the Territory that is the subject of such breach, and this Agreement shall remain in effect as it applies to all other countries; provided, however, that if such breach and failure to cure occurred in the United States, the non-breaching Party may terminate this Agreement in its entirety, and if such breach and failure to cure occurred in a Major European Market Country, the non-breaching Party may terminate this Agreement in respect of the whole of Europe. For the avoidance of doubt, performance of the development and commercialization obligations required to be performed in accordance with Commercially Reasonable Efforts hereunder are evaluated based upon the Territory as a whole as set out in Section 1.10.

Section 13.3 Termination by Strata.

Strata may terminate this Agreement in its entirety, or on a country-by-country basis prior to the expiration of the Term as follows:

(a) subject to Section 2.3(d), prior to issuance of a Marketing Authorization in the US, at any time on written notice to Micrologix if it is determined by Strata in good faith, acting reasonably and in accordance with prudent scientific and business judgment and otherwise in accordance with generally accepted practices in the pharmaceutical industry, that the Product is not reasonably expected to demonstrate safety or efficacy; or

(b) if the Second Phase III Study is commenced, at any time on written notice to Micrologix if Strata exercises its right to terminate such study pursuant to Section 2.3(d); or

(c) if the Second Phase III Study is not commenced, or after the completion of the Second Phase III Study, at any time upon one hundred twenty (120) days prior written notice to Micrologix.

Section 13.4 Termination by Micrologix.

Micrologix may terminate this Agreement in its entirety or on a country by country basis prior to the expiration of the Term upon thirty (30) days prior written notice if Strata conducts any of the activities respecting a Competitive Product in a particular country as set forth in Section 11.2.

Section 13.5 Effect of Termination.

(a) **Payment Obligations**. If this Agreement is terminated by either Party pursuant to Section 13.2, Section 13.3 or Section 13.4, subject to the rights and obligations of Strata related to selling off Product inventory as provided in Section 13.5(b)(ii) and Section 13.5(b)(iii) and to pay Reimbursable Costs and certain wind down costs as set forth in Sections Section 13.5(b)(iv)(A), Strata shall not be obligated to pay any other wind down costs, milestone payments and/or other monies to Micrologix under this Agreement, other than payments due and owing prior to the effective date of termination.

(b) **Termination by Either Party**. Upon the early termination of this Agreement by either Party pursuant to Section 13.2, Section 13.3 or Section 13.4, the following shall occur:

(i) Subject to Section 13.7, Strata, its sublicensees and Affiliates (as the case may be) shall have no right to practice within the Micrologix Patent Rights or use any of the Micrologix Technology, and all rights, title or interest in, or other incidents of ownership under, the Micrologix Technology shall revert to and become the sole property of Micrologix, and the licenses granted to Strata under Section 3.1 shall automatically terminate.

(ii) Notwithstanding Section 13.5(b)(i), provided that this Agreement is terminated other than: (A) by Micrologix due to the breach of Strata pursuant to Section 13.2 or Section 13.4; or (B) by Strata pursuant to Section 13.3; Strata may, in its sole discretion, elect to sell-off or distribute, as applicable, its existing inventory of Product to which the termination pertains in accordance with the terms set forth in Section 13.5(b)(iii), after the effective date of termination, by notifying Micrologix of its decision within thirty (30) days after the date it receives a notice of termination by Micrologix or the date it provides a notice of termination to Micrologix, as the case may be.

(iii) If Strata elects pursuant to Section 13.5(b)(ii) to sell-off or distribute, as applicable, its existing inventory, it shall not, either directly or indirectly, use or permit the use of the Product except as set forth under this Section 13.5(b)(iii) and shall proceed as follows:

(A) continue to comply with its royalty obligations for the Product to Micrologix under Article 4;

(B) continue to sell off or distribute, as applicable, existing inventory of Product until such time as the inventory is depleted but in no event more than six (6) months after the applicable notice of termination. At the expiration of such period, Strata shall sell all existing inventory of Product to Micrologix. In such case, Micrologix shall pay to Strata the full amount of the actual cost paid by Strata, or Strata's documented out-of-pocket costs, as applicable, for such remaining inventory of Product;

(C) if Strata does not elect pursuant to Section 13.5(b)(ii) to sell-off or distribute, as applicable, any existing inventory of Product, or if this Agreement is terminated by Micrologix under Section 13.2 or Section 13.4 for Strata's breach, or by Strata pursuant to Section 13.3, Strata shall, at Micrologix's election, either:

(1) sell all existing inventory of Product to Micrologix at Strata's actual cost of acquisition, or Strata's documented out-of-pocket costs, as applicable; or

(2) destroy all remaining inventory of Product in accordance with Applicable Laws and provide Micrologix with written proof of destruction sufficient to comply with Applicable Laws.

In either case, Micrologix shall pay to Strata the actual cost paid by Strata for such remaining inventory of Product;

(D) if Strata sells any inventory of Product to Micrologix pursuant to this Section 13.5(b)(iii), it shall warrant that such inventory of Product has been stored in material compliance with the applicable specifications therefor, Governmental Approvals and all Applicable Laws, has not been adulterated within the meaning of Applicable Laws and has otherwise been maintained by Strata according to such specifications, Governmental Approvals and Applicable Laws; and

(E) any sales of Product made by Strata to Micrologix pursuant to this Section 13.5(b)(iii) shall be made by Strata within thirty (30) days after the date it becomes obligated to do so and shall be shipped to Micrologix appropriately packaged and stored. All transportation costs in connection with such sale, including insurance, freight and duties, and all reasonable costs of re-working the Product so that such Product is in saleable form, shall be shared equally by Strata and Micrologix. Amounts owed by either Party to the other pursuant to this Section 13.5(b)(iii) for the Product shall be paid by such Party within ten (10) days after receipt by a Party of a

reasonably detailed invoice from the other Party for the amount so owing to it by the other Party under this Section 13.5(b)(iii).

(iv) if this Agreement is terminated prior to the completion of the Development and the payment therefor:

(A) by Micrologix pursuant to Section 13.2 for Strata's breach or pursuant to Section 13.4, or by Strata pursuant to Section 13.3(a) or Section 13.3(b), Strata shall, at Micrologix's election, pay Micrologix's reasonable, wind-down costs under any Development Subcontract provided that Micrologix uses Commercially Reasonable Efforts to minimize, or if possible eliminate, such costs.

(B) by Strata pursuant to Section 13.2 due to the breach of Micrologix, Strata shall have no obligation to pay for any wind-down costs, milestone payments and/or any other monies due and owing from and after the effective date of such termination under this Agreement.

(v) if this Agreement is terminated by Micrologix pursuant to Section 13.2 for Strata's breach or pursuant to Section 13.4, or by Strata pursuant to Section 13.3(a) or Section 13.3(b), to the extent of its legal right to do so, Strata shall immediately assign or transfer to Micrologix any Governmental Approvals and trademarks for the Product held in the name of or Controlled by Strata, if any, in any country in the Territory.

(vi) to the extent of its legal right to do so, Strata shall, at Micrologix's request, grant Micrologix a worldwide royalty-bearing, license under any Strata Work Product necessary to use, market, advertise, promote, distribute, offer for sale, sell, make, manufacture, have manufactured, export and import, and develop Products with the right to sublicense and assign the foregoing, in consideration of such reasonable royalties on net sales by Micrologix or Product to be negotiated in good faith between Micrologix and Strata at such time, and if the Parties cannot agree on such license and royalties, either Party may refer the matter to arbitration pursuant to Article 14. Nothing in this Section shall cause a royalty to be payable in respect of rights obtained by Micrologix pursuant to Section 5.3 or Section 6.2.

(vii) if this Agreement is terminated by Strata pursuant to Section 13.2 due to the breach of Micrologix, to the extent of its legal right to do so, Strata shall immediately assign or transfer to Micrologix any Governmental Approvals and trademarks for the Product held in the name of or Controlled by Strata, if any, in any country in the Territory, in consideration of such reasonable royalties on net sales by Micrologix of Product to be negotiated in good faith between Micrologix and Strata at

such time, and if the Parties cannot agree on such license and royalties, either Party may refer the matter to arbitration pursuant to Article 14. Nothing in this Section shall cause a royalty to be payable in respect of rights obtained by Micrologix pursuant to Section 6.2.

(viii) at the sole option and request of Micrologix, which request shall be made no more than sixty (60) days after the effective date of termination, if Micrologix chooses to permit Third Party sublicenses related to the Product to survive termination of this Agreement, Strata will cooperate reasonably to facilitate the transfer of Third Party sublicenses from Strata to Micrologix or its designee.

(ix) except as otherwise provided in this Agreement, expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing prior to such expiration or termination. Except as set forth below or elsewhere in this Agreement, the obligations and rights of the Parties under Article 1 (as needed), Section 3.4, Section 4.7(b)(ii), Section 4.7(c), Section 5.3(c), Section 5.3(e) (for a one year period after expiration or termination of this Agreement, in respect of the manufacture of Product for use in the Field in the Territory), Section 6.2(b), Section 7.2, Section 7.4, Article 8, Article 9, Article 10, Article 12, Article 13, Article 14 and Article 15, and any other that by its terms is intended to survive, shall survive expiration or termination of this Agreement.

(x) subject to the provision of Section 13.7, within thirty (30) days following the expiration or termination of this Agreement, each Party shall return to the other Party, or destroy, upon the written request of the other Party, any and all Confidential Information of the other Party in its possession and upon a Party's request, such destruction (or delivery) shall be confirmed in writing to such Party by a responsible officer of the other Party, except for such Confidential Information which the receiving Party is required to keep under Applicable Laws, in which event such Confidential Information shall be held subject to the terms and conditions of Article VIII.

(c) **Termination on a Country-by-Country Basis**. In the event any termination under this Agreement relates solely to one or more countries in the Territory as permitted herein, then this Agreement and the license contained in Section 3.1 shall only be terminated to the extent it applies to such country or countries in the Territory and this Agreement shall remain in effect as it applies to all other countries in the Territory.

(d) **Bankruptcy Rights**. In the event this Agreement is terminated or rejected by a Party or its receiver or trustee under applicable bankruptcy laws due to such Party's bankruptcy, then all rights and licenses granted under or pursuant to this Agreement by such Party to the other Party are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the Bankruptcy Code in the United States

and other comparable Applicable Law in any other country in the Territory (collectively "**Other Bankruptcy Laws**"), licenses of rights to "intellectual property" as defined under Section 101(52) of the United State Bankruptcy Code. The Parties agree that all intellectual property rights licensed hereunder, including any patents or patent applications of a Party in any country covered by the license grants under this Agreement, are part of the "intellectual property" as defined in Section 101(52) of the United States Bankruptcy Code, subject to protections afforded the non-terminating Party under Section 365(n) of United States Bankruptcy Code or Other Bankruptcy Laws.

Section 13.6 Remedies.

All of the non-breaching Party's remedies shall be cumulative, and the exercise of one remedy hereunder by the non-defaulting Party shall not be deemed to be an election of remedies. These remedies shall include the non-breaching Party's other rights of recovery for such breach with or without terminating this Agreement.

Section 13.7 License Following Expiration.

Upon expiration of each of the applicable Royalty Terms in each country in the Territory, Strata shall thereafter have an irrevocable, non-exclusive, royalty-free license in such country, with the right to sublicense, to use, develop, market, advertise, promote, distribute, make, manufacture, have manufactured, offer for sale, sell, export and import the Product for use in the Field in the Territory. Upon request by Strata, Micrologix shall continue to allow Strata to manufacture and sell the Product under the Micrologix Technology pursuant to a separate agreement to be negotiated in good faith between the Parties.

ARTICLE 14
DISPUTE RESOLUTION/DAMAGES

Section 14.1 Disputes.

The Parties recognize that disputes as to certain matters may from time to time arise during the Term which relate to either Party's rights and/or obligations hereunder or to the interpretation, performance, breach, or termination of this Agreement, (a "**Dispute**"). It is the objective of the Parties to establish procedures to facilitate the resolution of a Dispute in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Parties agree to follow the procedures set forth in this Article 14 if and when a Dispute arises under this Agreement. The Parties acknowledge and agree that nothing under this Article 14 shall in any way affect, alter, negate or modify Strata's tie-breaking vote in the JDMC under Section 2.4(d).

Subject to Section 11.4(c), a Dispute among the Parties will be resolved as recited in this Article 14. Any Disputes relating to this Agreement shall be promptly presented to the Chief Executive Officers of Micrologix and Strata, or their respective designees (who must be members of a Party's senior management) for resolution. From the date of referral of a Dispute to the Chief Executive Officers or their designees of the Parties and until such time as any matter has been resolved by the Parties or has been finally settled by arbitration hereunder, the running of the cure periods (if any) as to which a Party must cure a breach that is part of the subject matter of

any Dispute shall be suspended. In the event that the Chief Executive Officers of Micrologix and Strata, or their respective designees, cannot after good faith negotiations resolve the Dispute within 10 days (or such other period of time as mutually agreed to by the Parties in writing) of being requested by a Party to resolve a Dispute, the Parties agree that such Dispute shall be resolved by binding arbitration in accordance with this Section 14.1.

If a Party intends to begin arbitration to resolve such Dispute, such Party shall provide written notice (the "**Arbitration Notice**") to the other Party informing such other Party of such intention and the issues to be resolved. Any arbitration hereunder shall be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("**AAA**"), including the Supplementary Procedures for Large Complex Disputes (the "**AAA Rule**") except as modified herein. The arbitration shall be conducted by a panel of three (3) arbitrators (the "**Panel**") to be mutually agreed upon by the Parties and appointed by the AAA. The arbitrators shall be industry experts experienced in the issues comprising the Dispute and shall have no past, present or anticipated future affiliation with either Party. If the Parties are unable to agree upon all or any number of the three (3) mutually acceptable arbitrators within thirty (30) days after the filing of the Arbitration Notice, the AAA shall promptly appoint the arbitrator(s) to complete the Panel in accordance with the criteria set forth in this Section 14.1. The arbitration shall take place in Denver, Colorado. The Panel shall apply the laws of the State of Delaware, without regard to its conflicts of laws provisions. The Panel shall issue appropriate protective orders to protect each Party's Confidential Information. If a Party can demonstrate to the Panel that the complexity of the issue or other reasons warrant the extension of one or more timetables in the AAA Rules, the Panel may extend such timetables but in no event shall the proceeding extend more than twelve (12) months from the date of filing of the Arbitration Notice with the AAA. The Panel's decision shall be in writing. The Panel shall have the authority to award any remedy allowed by law or in equity, including compensatory damages, pre-judgment interest and to grant final, complete, interim, or interlocutory relief, including specific performance, injunctions and other equitable relief, but not punitive or other damages set forth in Section 14.5 and each Party shall be deemed to have waived any right to such excluded damages. Each Party shall bear its own costs, fees and expenses in the arbitration and shall share equally the Panel's fees, unless the Panel determines that its fees are to be paid by the non-prevailing Party.

Section 14.2 Performance to Continue.

Each Party shall continue to perform its obligations under this Agreement pending final resolution of any Dispute arising out of or related to this Agreement; including continuing the Development, provided, however, that a Party may suspend performance of its obligations during any period in which the other Party fails or refuses to perform its obligations.

Section 14.3 Determination of Patents and Other Intellectual Property.

Notwithstanding the foregoing, any dispute relating to the determination of validity of claims, infringement or claim interpretation relating to Micrologix's Patents shall be submitted exclusively to the federal courts.

Section 14.4 Injunctive Relief.

Nothing in this Agreement shall prevent either Party from seeking a temporary restraining order or injunction against the other Party as required to prevent such other Party's misuse of the intellectual property or Confidential Information of the other Party seeking such temporary restraining order or injunction. In addition nothing in this Agreement shall prevent Strata from seeking a temporary restraining order or injunction against Micrologix to prevent any breach by Micrologix under Section 11.1. The Parties understand and agree that because of the difficulty in measuring economic losses to the non breaching Party as a result of a breach of the covenants set forth in this Agreement respecting intellectual property and Confidential Information and because of the immediate and irreparable damage that may be caused to the non breaching Party for which monetary damages would not be a sufficient remedy, the Parties agree that the non breaching Party will be entitled to seek specific performance, temporary and permanent injunctive relief, and such other equitable remedies to which it may then be entitled against the breaching Party. This Section 14.4 shall not limit any other legal or equitable remedies that the non breaching Party may have against the breaching Party.

Section 14.5 No Consequential Damages.

EXCEPT WITH REGARD TO DAMAGES ARISING UNDER SECTION 8.1(B) AND EACH PARTY'S DUTY TO INDEMNIFY THE OTHER FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RECOVERED BY A THIRD PARTY AS PROVIDED UNDER ARTICLE 10, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES INCURRED BY EITHER PARTY UNDER THIS AGREEMENT OR OTHERWISE.

Section 14.6 Attorney's Fees.

In the event of any claim hereunder related to either Party's infringement of the intellectual property rights of the other Party or the misuse of Confidential Information of the other Party, the prevailing party in any such dispute shall pay the reasonable legal fees and costs related thereto.

ARTICLE 15
MISCELLANEOUS

Section 15.1 No Solicitation.

Neither Party nor its Affiliates (collectively, the "**Initiating Group**") shall, directly or through its representatives, solicit for employment any officer, director, employee or consultant of the other Party or its subsidiaries or Affiliates (collectively, the "**Other Group**") with whom the Initiating Group has contact in connection with, or who otherwise is known by the Initiating

Group to participate in, the transactions contemplated by this Agreement for a period of [***]. The Initiating Group shall not be precluded from hiring any such person who has been terminated by the Other Group prior to commencement of employment discussions between such person and the Initiating Group or its representatives. "**Solicitation**" shall not include any generalized public advertisement or any other solicitation by the Initiating Group or its representatives that is not specifically directed toward any such employee of the Other Group or toward any group of such employees of the Other Group.

Section 15.2 Assignment; Binding Effect.

Except as otherwise provided in this Agreement, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto (whether by operation of Applicable Laws or otherwise) without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may sell, transfer or assign its rights under this Agreement to any Third Party, as part of a sale or transfer of substantially all of a Party's assets; provided that such Third Party agrees in writing to be bound by the terms and conditions of this Agreement. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing herein, expressed or implied, is intended to confer on any person other than the Parties hereto or their Representatives, respective heirs, successors, executors, administrators and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. Any purported assignment, sale, transfer, delegation or other disposition by a Party, except as permitted herein, shall be null and void.

Section 15.3 Force Majeure.

Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party, including fire, flood, embargo, war, act of war (whether war be declared or not), act of terrorism, failure of supplier, insurrection, riot, civil commotion, strike, lockout or other labour disturbance, act of God (a "**Force Majeure**"); provided that the Party whose performance is delayed or prevented shall provide prompt notice of the Force Majeure to the other Party. Performance shall be excused so long as the condition constituting Force Majeure continues and the non-performing Party uses good faith diligent efforts to mitigate, avoid or end such delay of failure in performance as soon as practicable.

Section 15.4 Governing Law.

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, except that no conflict of laws provision shall be applied to make the laws of any other jurisdiction applicable to this Agreement.

*** Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

Section 15.5 Waiver.

Except as specifically provided for herein, the waiver from time to time by either of the Parties of any of their rights or their failure to exercise any remedy shall not operate or be construed as a continuing waiver of same or of any other of such Party's rights or remedies provided in this Agreement.

Section 15.6 Severability.

In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 15.7 No Right to Use Names.

Except as otherwise provided herein, no right, express or implied, is granted by the Agreement to use in any manner the name "Micrologix," "Strata" or any other trade name or trademark of the other Party or its Affiliates in connection with the performance of the Agreement.

Section 15.8 Notices.

All notices and other communications provided for hereunder shall be in writing and shall be mailed by first-class, registered or certified mail, postage paid, or delivered personally, by overnight delivery service or by facsimile, computer mail or other electronic means, with confirmation of receipt, addressed as follows:

If to Micrologix:	Micrologix Biotech Inc. BC Research Complex 3650 Wesbrook Mall Vancouver, BC Canada V6S 2L2 Attention: President
With a copy to:	Farris, Vaughan, Wills & Murphy 2600 — 700 West Georgia Street Vancouver, BC Canada V7Y 1B3 Attention: James Hatton
If to Strata:	Strata Pharmaceuticals, Inc. 10923 Cloverhurst Way San Diego, California 92130 Attention: CEO
With copies to:	Morrison & Foerster LLP 3811 Valley Centre Drive, Suite 500 San Diego, California 92130-2332 Attention: Jay de Groot

Notice so given shall be deemed given and received (a) if by mail on the fourth day after posting; (b) by cable, telegram, telex or personal delivery on the date of actual transmission, with evidence of transmission acceptance, or (as the case may be) personal or other delivery; and (c) if by overnight delivery courier, on the next business day following the day such notice is delivered to the overnight delivery courier service.

Section 15.9 Independent Contractors.

The activities and resources of each Party shall be managed by such Party, acting independently and in its individual capacity. It is expressly agreed that Micrologix and Strata shall be independent contractors and that the relationship between the two Parties shall not constitute a partnership or agency of any kind. Neither Micrologix nor Strata shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior written consent of the other Party.

Section 15.10 Rules of Construction.

The Parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

Section 15.11 Entire Agreement; Amendment.

This Agreement (including the Exhibits attached hereto) sets forth all of the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto with respect to the subject matter hereof and supersedes and terminates all prior agreements and understandings between the Parties, including the Letter Agreement. There are no covenants, promises, agreements, warranties, representations conditions or understandings, either oral or written, between the Parties other than as set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless reduced to writing and signed by the respective authorized officers of the Parties. Purchase orders, purchase order releases, confirmations, acceptances and similar documents submitted by a Party in conducting the activities contemplated under this Agreement are for administrative purposes only and shall not add to or modify the terms of the Agreement. To the extent of any conflict or inconsistency between this Agreement and any such document, the terms of this Agreement shall govern.

Section 15.12 Counterparts; Facsimile.

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. This Agreement may be signed and delivered to the other Party by facsimile signature; such transmission will be deemed a valid signature.

Section 15.13 Interpretation.

The Section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Except where the context clearly requires to the contrary: (i) each reference in this Agreement to a designated "Section" or "Exhibit" is to the corresponding Section or Exhibit of or to this Agreement; (ii) instances of gender or entity-specific usage (e.g., "his" "her" "its" "person" or "individual") shall not be interpreted to preclude the application of any provision of this Agreement to any individual or entity; (iii) "including" shall mean "including, without limitation"; (iv) references to Applicable Laws shall mean such Applicable Laws in effect during the Term (taking into account any amendments thereto effective at such time without regard to whether such amendments were enacted or adopted after the Effective Date); (v) references to "$" or "dollars" shall mean the lawful currency of the United States; (vi) references to "Federal" or "federal" shall be to laws, agencies or other attributes of the United States (and not to any State or locality thereof); (vii) references to "days" shall mean calendar days, unless it is expressly stated as "business days"; and (viii) the English language version of this Agreement shall govern all questions of interpretation relating to this Agreement, notwithstanding that this Agreement may have been translated into, and executed in, other languages.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

Micrologix Biotech Inc.

By: /s/ James DeMesa
Name: James DeMesa
Title: President and CEO

Strata Pharmaceuticals, Inc.

By: /s/ Theodore R. Schroeder
Name: Theodore R. Schroeder
Title: President and Chief Executive Officer

EXHIBIT A

DEVELOPMENT PLANS

Please refer to the following documents:

- Strata Pharmaceuticals Inc. Development Plan, Timeline and Budget for NDA for LCSI Based on Second Phase III Study, dated July___, 2004; and
- Strata Pharmaceuticals Inc. Development Plan, Timeline and budget for NDA for CRBSI Based on First Phase III Study, dated July ___, 2004.

EXHIBIT B

PATENTS

Country	Application or Patent No.
USA	[***]
USA	[***]
USA	[***]
USA	[***]
USA	[***]
PCT	[***]
Canada	[***]
Europe	[***]
Belgium	[***]
Switzerland	[***]
Germany	[***]
Spain	[***]
France	[***]
Great Britain	[***]
Hong Kong	[***]
Ireland	[***]
Italy	[***]
Europe	[***]
Hong Kong	[***]

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Country	Application or Patent No.
USA	[***]
USA	[***]
USA	[***]
USA	[***]
PCT	[***]
Canada	[***]
Europe	[***]
Hong Kong	[***]
USA	[***]
USA	[***]
PCT	[***]
CA	[***]
Europe	[***]

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EXHIBIT C

INVENTORY

[***]

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EXHIBIT D

REGULATORY FILINGS

[***]

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EXHIBIT 10.11

CERTAIN MATERIAL (INDICATED BY AN ASTERISK) HAS BEEN OMITTED FROM THIS DOCUMENT PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT. THE OMITTED MATERIAL HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

IV APAP AGREEMENT
(US and Canada)

by and between

BRISTOL-MYERS SQUIBB COMPANY

and

CADENCE PHARMACEUTICALS, INC.

February 21, 2006

TABLE OF CONTENTS

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INDEX OF DEFINED TERMS

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IV APAP AGREEMENT

(US and Canada)

This IV APAP Agreement (US and Canada) (the "**Agreement**") is entered into as of February 21, 2006 (the "**Execution Date**"), by and between Bristol-Myers Squibb Company, a Delaware corporation having an address at 345 Park Avenue, New York, New York 10154 ("**BMS**"), and Cadence Pharmaceuticals, Inc., a Delaware corporation having an address at 12730 High Bluff Drive, San Diego, California 92130 ("**Cadence**"), effective as of March 29, 2006 (the "**Effective Date**"). Cadence and BMS are sometimes collectively referred to herein as the "**Parties**" and each individually as a "**Party**."

BACKGROUND

1. BMS has licensed from SCR Pharmatop, a civil law partnership organized under the laws of France, having its head office's address at 10, Square St. Florentin, 78150 Le Chesnay, France, recorded with the Register of Commerce and Companies of Versailles under No. 407552702 ("**Pharmatop**"), rights under certain patents and patent applications relating to parenteral paracetamol (also referred to in the United States as "acetaminophen") formulations in the United States, Canada and Mexico.

2. The License Agreement dated as of December 23, 2002, between Pharmatop and BMS (the "**Pharmatop License Agreement**") sets forth such rights.

3. BMS desires to sublicense to Cadence BMS's intellectual property rights and related obligations under the Pharmatop License Agreement to Cadence with respect to the Territory (as defined below) upon the terms and conditions set forth in this Agreement and to provide for certain other matters.

AGREEMENT

THEREFORE, the Parties, intending to be legally bound, agree as follows:

ARTICLE I — DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"**Adverse Event**" means any untoward medical occurrence in a patient or clinical investigation subject administered any Product, and which does not necessarily have a causal relationship with such product. An adverse event can therefore be any unfavorable and unintended sign (including an abnormal laboratory finding, for example), symptom or disease temporally associated with the use of a medicinal product, whether or not considered related to the medicinal product. For the avoidance of doubt, in the U.S. an Adverse Event shall include an adverse experience or test result in connection with the use of the Product

that requires a written IND safety report in accordance with 21 CFR Part 312.32(c), as amended or superseded from time to time.

"**Affiliated Company**" of a Party means any corporation, firm, partnership or other entity that directly or indirectly Controls, is Controlled by or is under common Control with such Party at any time during the term of this Agreement, but only for so long as such entity directly or indirectly Controls, is Controlled by or is under common Control with such Party.

"**Agreement**" has the meaning given to such term in the introductory paragraph hereof.

"**Annual Operating Plan**" has the meaning given to such term in Section 3.1 hereof.

"[***]" has the meaning given to such term in Section 3.2 hereof.

"**Applicable Law**" means any applicable federal, state, local or foreign statute, law, ordinance, rule or regulation, judicial order, or industry standard imposed by regulation or law, including the laws of the United States and Canada, and regulations promulgated by any other applicable Governmental Entity or Drug Regulatory Authority.

"**Approval**" means, with respect to any Product in any regulatory jurisdiction, approval from the applicable Drug Regulatory Authority sufficient for the importation, manufacture, distribution, use and sale of the Product in such jurisdiction in accordance with Applicable Law, including receipt of pricing and reimbursement approvals, where applicable.

"**Available** [[***]" has the meaning set forth in Section 2.24(a).

"**Balance Sheet**" has the meaning given to such term in Section 6.2(b) hereof.

"**Balance Sheet Date**" has the meaning given to such term in Section 6.2(b) hereof.

"**Bankruptcy**" means with respect to a Party the first to occur of:

(i) such Party shall have (A) voluntarily commenced any proceeding or filed any petition seeking relief under Title 11 of the United States Code, or any other bankruptcy, insolvency or similar law or any law for the protection of creditors of the United States, any state thereof, or any other applicable jurisdiction, (B) applied for or consented to the appointment of a receiver, trustee, custodian, sequestrator, conciliator, administrator or similar official for it or a substantial part of its property, (C) filed an answer admitting the material allegations of a petition filed against or in respect of it in any such proceeding, (D) made a general assignment for the benefit of creditors, (E) admitted in writing its inability, to pay its debts as they become due or (F) taken corporate action for the purpose of effecting any of the foregoing; or

(ii) an involuntary proceeding shall have been commenced or any involuntary petition shall have been filed in a court of competent jurisdiction seeking (A) relief in respect of such Party or of a substantial part of its or their property, under Title 11 of the

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United States Code, or any other bankruptcy, insolvency or similar law of the United States, any state thereof or any other applicable jurisdiction, (B) the appointment of a receiver, trustee, custodian, sequestrator, conciliator, administrator or similar official for such Party or all or substantially all of its property or (C) the winding-up or liquidation of such Party; and such proceeding or petition shall have continued undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall have continued unstayed and in effect for 30 days.

"**BMS**" has the meaning given to such term in the introductory paragraph hereof.

"[***]" means (i) [***]and (ii) [***].

"**BMS Indemnitees**" has the meaning given to such term in Section 7.2 hereof.

"**BMS Know-How**" means formulation and manufacturing know-how that is used by BMS and its Affiliated Companies as of the Execution Date or during the Supply Term (as defined in the Clinical Supply Agreement) to make or formulate the Product or the Clinical Testing Products (as defined in the Clinical Supply Agreement) in the European Union.

"**BMS Patent Product**" means any Product for which the manufacture, use, import, sale or offer for sale in the United States would otherwise infringe a Valid Claim of any of the BMS Patents but for the license rights granted by BMS in Article 2 hereof.

"**BMS Patent Royalty Term**" means the date commencing upon the expiration of the Pharmatop Royalty Term in the United States and terminating upon the date that the manufacture, use, import, sale or offer for sale of BMS Patent Products in the United States is no longer covered by any Valid Claim of a BMS Patent (including any patent term extensions, such as pediatric exclusivity extensions, as may be available under Applicable Law) or covered by any data or regulatory exclusivity.

"**BMS Patents**" means the Patents listed on Schedule 1.1.

"**BMS Rights**" means (i) BMS's rights under the Pharmatop Patents and Pharmatop Know-How with respect to the Products in the Territory licensed to BMS under the Pharmatop License Agreement during the term of this Agreement, subject to the limitations, terms and conditions set forth in the Pharmatop License Agreement and (ii) the right granted to BMS in Section 2.1 of the Pharmatop License Agreement to make and have made the Products outside the Territory for use within the Territory.

"**Business Day**" means any day other than a Saturday, a Sunday or a United States Federal holiday.

"**Cadence**" has the meaning given to such term in the introductory paragraph hereof.

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"**Cadence Claims**" has the meaning given to such term in Section 6.2(d) hereof.

"**Cadence Indemnitees**" has the meaning given to such term in Section 7.3 hereof.

"**Calendar Quarter**" means each of the periods of time from (a) January 1 through March 31; (b) April 1 through June 30; (c) July 1 through September 30; and (d) October 1 through December 31.

"**Calendar Year**" means a year that begins on January 1 and ends on December 31.

"[***]" has the meaning set forth in Section 2.1(c)(i).

"[***]" has the meaning set forth in Section 2.24(d).

"[***]" has the meaning set forth in Section 2.24(a).

"[***]" has the meaning set forth in Section 3.2(f).

"**Clinical Study Countries**" means the countries set forth on a list of such countries that has been Previously Disclosed, as such list is amended from time to time in accordance with the last paragraph of Section 3.6.

"**Clinical Supply Agreement**" means the Clinical Supply Agreement dated as of the Execution Date between Lawrence Laboratories and Cadence (and BMS, as guarantor).

"**Clinical Testing Product**" has the meaning set forth in the Clinical Supply Agreement.

"**Confidential Information**" means (a) with respect to a Party and its Affiliated Companies (collectively, the "**Receiving Party**"), all information, Technology and confidential or proprietary materials which are disclosed by the other Party and its Affiliated Companies (collectively, the "**Disclosing Party**") to the Receiving Party hereunder or under the Clinical Supply Agreement or that has previously been disclosed under the Mutual Confidential Disclosure Agreement between the Parties dated July 6, 2005, as amended, or to any of its employees, consultants, Affiliated Companies or sublicensees and any information that is considered Confidential Information for purposes of the Clinical Supply Agreement, (b) the Product Data, which shall be Confidential Information of BMS to the extent resulting from work, trials or studies conducted by or on behalf of BMS and which shall be Confidential Information of Cadence to the extent resulting from work, trials or studies conducted by or on behalf of Cadence, (c) correspondence with Drug Regulatory Authorities, which shall be Confidential Information of the Party that conducted such correspondence, and (d) all reports (including any development, commercialization and/or financial reports), plans (including the Development Plan and the Annual Operating Plan) and other documents and budgets provided by Cadence and/or its Affiliated Companies to BMS pursuant to this Agreement, all of which shall be considered Confidential Information of Cadence except, in each of (a), (b),(c) or (d), to the extent that any such information (i) as of the date of disclosure is known to the Receiving Party

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or its Affiliated Companies, as demonstrated by credible written documentation existing and in the possession of the Receiving Party prior to the date of disclosure, other than by virtue of a prior confidential disclosure to such Receiving Party; (ii) as of the date of disclosure is in, or subsequently enters, the public domain, through no fault or omission of the Receiving Party; (iii) is obtained without restriction from a Third Party having a lawful right to make such disclosure free from any obligation of confidentiality to the Disclosing Party; or (iv) is independently developed by or for the Receiving Party without reference to or reliance upon any Confidential Information of the Disclosing Party as demonstrated by credible written documentation. The amount of the payments made to BMS under this Agreement shall be Confidential Information of both BMS and Cadence. A Party's Affiliated Company that has disclosed Confidential Information to a Receiving Party shall continue to be considered a Disclosing Party even after it ceases to be an Affiliated Company of such Party. A Party's Affiliated Company that has received Confidential Information from a Disclosing Party shall continue to be considered a Receiving Party even after it ceases to be an Affiliated Company of such Party.

"**Consent**" has the meaning given to such term in Section 6.1(d) hereof.

"**Contract Research Organization**" means a reputable Third Party research or development organization one of whose principal businesses is the provision of contract research or development services to unrelated Persons.

"**Contracts**" means all contracts, agreements, commitments and other legally binding arrangements, whether oral or written.

"**Control**" means (a) with respect to any intellectual property (including any Patents or Technology), the possession by a Party of the ability to grant a license or sublicense of such intellectual property without violating the terms of, or requiring a consent under, any agreement or arrangement between such Party and any Third Party and (b) when used with respect to any Person means the power to direct or cause the direction of the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise. "**Controlled**" and "**Controlling**" shall have correlative meanings.

"**Covenant Termination Date**" has the meaning set forth in Section 2.24(c).

"**Derivative**" of paracetamol means any compound whose chemical structure is derived from the chemical structure for paracetamol through structural modifications and/or chemical changes that retain those portions of paracetamol's chemical structure that are known to contribute materially to the activity, specificity and selectivity of paracetamol.

"**Development Plan**" has the meaning given to such term in Section 3.3 hereof.

"**Disclosing Party**" has the meaning given to such term in the definition of "Confidential Information" herein.

"**Dispute**" has the meaning given to such term in Section 7.6 hereof.

"**Dollar**" or "**$** " means United States dollars, the lawful currency of the United States.

"**Drug Regulatory Authority**" means any Governmental Entity with responsibility for granting any licenses, approvals or authorizations or granting pricing and/or reimbursement approvals necessary for the marketing and sale of pharmaceutical products in any regulatory jurisdiction.

"**Effective Date**" has the meaning given to such term in the introductory paragraph hereof.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time.

"[***] **Date**" means [***] on which (i) [***], (ii) [***] or (iii) [***]; provided that (A) [***] and (B) [***].

"[***] **Period**" means the [***] not include any period during which [***].

"[***] **Date**" has the meaning given to such term in Section 2.1(c).

"**Execution Date**" has the meaning given to such term in the introductory paragraph hereof.

"**FDA**" means the United States Food and Drug Administration or any successor agency.

"**FDCA**" means the Federal Food, Drug & Cosmetics Act, 21 U.S.C. 321 et seq., any amendments or supplements thereto, or any regulations promulgated or adopted thereunder or any successor act thereof.

"**Financial Statements**" has the meaning given to such term in Section 6.2(a) hereof.

"**Force Majeure**" has the meaning given to such term in Section 9.6(b) hereof."**Governmental Entity**" means any Federal, state, local or foreign government or any court of competent jurisdiction, regulatory or administrative agency or commission or other governmental authority or instrumentality, domestic or foreign.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"**ICC**" has the meaning given to such term in Section 7.6(a) hereof.

"**Improvement**" means any adaptation, improvement, enhancement or upgrade with respect to the formulation and/or manufacture of the Products, whether such Improvement can be protected by patent or not.

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"**In Accordance With GAAP**" has the meaning given to such term in Section 6.2(a) hereof.

"**IND**" means an Investigational New Drug Application (as defined in 21 CFR Part 312.3, as amended or superseded from time to time) that is required to be filed with the FDA before beginning clinical testing of a Product in human subjects in the United States, or any successor application or procedure.

"**Indemnified Party**" has the meaning given to such term in Section 7.4 hereof.

"**Indemnifying Party**" has the meaning given to such term in Section 7.1 hereof.

"**Indemnitees**" has the meaning given to such term in Section 7.1 hereof.

"**Judgments**" has the meaning given to such term in Section 6.1(d) hereof.

"**License**" has the meaning given to such term in Section 2.1(a) hereof.

"**Lien**" means any pledge, encumbrance, mortgage, security interest, purchase option, call or similar right.

"**Loan Agreement**" has the meaning given to such term in Section 6.2(b) hereof.

"**Losses**" has the meaning given to such term in Section 7.1 hereof.

"**Material Adverse Effect**" means, with respect to any applicable representation and warranty of a Party or to any other matter to which such phrase is applied, a material adverse change in or effect on (i) such Party's (and its subsidiaries') business, operations, assets, condition (financial or otherwise) taken as a whole or (ii) such Party's ability to perform its obligations under any Transaction Document to which it is a party.

"**NDA**" means a new drug application or an abbreviated new drug application (as described in 21 CFR 314.50), including any amendments or supplements thereto, filed with the FDA pursuant to the FDCA and includes any Common Technical Document for the Registration of Pharmaceuticals for Human Use filed with the FDA or any Drug Regulatory Authority in Canada.

"**NDA Acceptance**" means the earlier of (i) the date Cadence receives written notice from the FDA of acceptance by the FDA of an NDA filed by or on behalf of Cadence or its licensees with respect to any Product in the United States, or (ii) sixty (60) days following filing of such NDA with the FDA, provided that Cadence has not received a "Notice of Refusal to File" from the FDA with respect to such NDA.

"**Net Sales**" means the total revenue invoiced by Cadence, its Affiliated Companies, sublicensees, co-promotion and co-marketing partners and any other Person selling or promoting Products on behalf of any such Person from the sale of a Product to independent Third Parties in the Territory less the following amounts: (a) credits, allowances and rebates to, and chargebacks from the account of, such customers for spoiled, damaged, out-dated and returned Product;

(b) trade discounts, cash discounts, quantity discounts, rebates and other price reduction programs, and other charge back payments; (c) sales, value-added and other similar taxes (including duties or other governmental charges levied on, absorbed or otherwise imposed on the sales of Products including governmental charges otherwise measured by the billing amount); (d) customs duties, surcharges and other governmental charges incurred in connection with the exportation or importation of the Product; and (e) bad debts on Product sales written off in accordance with generally accepted accounting principles, consistently applied. For the purposes of this definition, samples distributed by Cadence, its Affiliated Companies, sublicensees, co-promotion and co-marketing partners and any other Person selling or promoting Products on behalf of any such Person to their customers free of charge, and any Product used or provided for clinical or research purposes, shall not be included in Net Sales.

When Products are sold for monies other than Dollars, the monies due will first be determined in the foreign currency of the country in which such Products were sold and then converted into equivalent Dollars, on a monthly basis, using the applicable U.S. Federal Reserve rate in effect on the last business day of each calendar month.

In the event that Cadence makes sales of Products to an Affiliated Company, sublicensee, co-promotion or co-marketing partner or any other person selling or promoting Products on behalf of any such Person, the calculation of Net Sales shall be based on the greater of (x) the revenue received by Cadence from its sale of Products to the Affiliated Company, sublicensee, co-promotion or co-marketing partner or other person selling or promoting Products on behalf of any such Person, as the case may be, and (y) the revenue received by the Affiliated Company, sublicensee, co-promotion or co-marketing partner or other person selling or promoting Products on behalf of any such Person from its sale of Products to Third Parties.

"[***] **Date**" has the meaning set forth in Section 2.1(c).

"[***] **Date**" has the meaning set forth in Section 2.24(d).

"**Organizational Documents**" means, with respect to any Person at any time, such Person's certificate or articles of incorporation, by-laws, memorandum and articles of association, certificate of formation of limited liability company, limited liability company agreement, and other similar organizational or constituent documents, as applicable, in effect at such time.

"**Other Chemical Entity**" means any chemical entity that is not parenteral paracetamol or a Derivative thereof.

"**Other Reportable Information**" has the meaning set forth in Section 2.15(e).

"**Parties**" has the meaning given to such term in the introductory paragraph hereof.

"**Party**" has the meaning given to such term in the introductory paragraph hereof.

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"**Patents**" means, to the extent that they have been or are filed or issued in the Territory: (a) patents and patent applications existing as of the Execution Date and/or at any time thereafter; and (b) any divisionals, continuations, substitutions, continuations-in-part, extensions, renewals, re-examinations or reissues of such patents and/or applications as of the Execution Date and/or at any time thereafter.

"**Person**" means any individual, firm, corporation, partnership, limited liability company, trust, joint venture, governmental authority or other entity.

"**Pharmatop**" has the meaning given to such term in Background.

"**Pharmatop Know-How**" means the Know-How (as such term is defined in the Pharmatop License Agreement) licensed to BMS under the Pharmatop License Agreement.

"**Pharmatop License Agreement**" has the meaning given to such term in Background.

"**Pharmatop Patent Challenge**" has the meaning given to such term in Section 2.16(a).

"**Pharmatop Patents**" means the Licensed Patents (as such term is defined in the Pharmatop License Agreement) filed or issued in the Territory and licensed to BMS under the Pharmatop License Agreement.

"**Pharmatop Royalty Term**" means, with respect to each country in the Territory on a country-by-country basis, the date commencing with the date of first commercial sale of a Product in such country, and terminating upon the latest of (a) the date that is ten (10) years after such first commercial sale in such country, (b) the date that the manufacture, use and sale of a Product in such country is no longer covered by any Valid Claim of a Pharmatop Patent in such country (including any patent term extensions, such as pediatric exclusivity extensions, as may be available under Applicable Law) or (c) the date that the obligation of BMS to pay royalties to Pharmatop (or any successor licensor), pursuant to the Pharmatop License Agreement, terminates.

"**Previously Disclosed**" means with respect to any document or information, a document or information set forth in a mutually agreed letter or memorandum delivered by Cadence or BMS to the other contemporaneously with the execution of this Agreement which identifies such document or information as "Previously Disclosed" for purposes of this Agreement.

"**Proceedings**" has the meaning given to such term in Section 6.1(e) hereof.

"**Product**" means (i) any parenterally administered dosage form containing paracetamol (or any Derivative thereof) alone or in combination with one or more other drugs (as defined, as of December 23, 2002, in Section 201 of the FDCA), and for which the manufacture, use or sale in a country in the Territory (x) would otherwise infringe any of the Pharmatop Patents or BMS Patents but for the license rights granted by BMS in Article 2 hereof, and/or (y) incorporates or uses to any material extent any Pharmatop Know-How and/or (ii) any parenterally administered dosage form containing paracetamol (or any Derivative thereof) alone or in combination with

one or more other drugs (as defined, as of December 23, 2002, in Section 201 of the FDCA) that is manufactured by a process that incorporates or uses to any material extent any BMS Know-How. When used with respect to any jurisdiction outside the Territory, "Product" shall refer to any parenterally administered dosage form containing paracetamol (or any Derivative thereof) alone or in combination with one or more other drugs (as defined, as of December 23, 2002, in Section 201 of the FDCA).

"**Product Data**" means data, information and conclusions resulting from any analytical, galenical, stability, toxicology or pharmacokinetic work and/or clinical studies and/or clinical trials relating to, or conducted by or on behalf of BMS or Cadence and filed in support of, Approval of Products in the United States.

"**Qualifying** [***]" means a [***], with respect to which [***].

"**Qualifying [***]**" means any [***] (i) [***], (ii) [***], and (iii) [***].

"**Receiving Party**" has the meaning given to such term in the definition of "Confidential Information" herein.

"**Registrational Information**" has the meaning set forth in the Pharmatop License Agreement.

"**Regulatory Filings**" means, collectively, any and all INDs, NDAs or any other filings (including any foreign equivalents) as may be required by any Drug Regulatory Authority for the development, manufacture or commercialization of Products, as applicable.

"[***] **Product**" has the meaning given to such term in Section 2.24(b) hereof.

"**Royalties**" has the meaning given to such term in Section 4.1(h) hereof.

"**Rules**" has the meaning given to such term in Section 7.6(a) hereof.

"[***]" has the meaning given to such term in Section 2.24(a).

"[***]" has the meaning set forth in Section 2.24(a).

"**Specified Number of Days**" has the meaning given to such term in Section 8.3.

"**Sublicense**" has the meaning given to such term in Section 2.1(a) hereof.

"**Tax**" means all taxes, charges, fees, levies or other assessments, and all estimated payments thereof, including income, excise, license, severance, stamp, occupation, premium, profits, windfall profits, customs duties, capital stock, employment, disability, registration, alternative or add-on minimum, property, sales, use, value added, environmental, franchise, payroll, transfer, gross receipts, withholding, social security or similar unemployment taxes, and any other tax of any kind whatsoever, imposed by any federal, state, local or foreign

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governmental authority, including any interest, penalties and additions to tax relating to such taxes, charges, fees, levies or other assessments.

"**Tech Transfer Period**" has the meaning given to such term in Section 2.12 hereof.

"**Tech Transfer Plan**" has the meaning given to such term in Section 2.10 hereof.

"**Technology**" means and includes all inventions, discoveries, Improvements, trade secrets, know-how, processes, procedures, research records, records of inventions, test information, market surveys and other similar proprietary methods, materials or property, whether or not patentable, relating to Products, including (a) samples of, methods of production or use of, and structural and functional information pertaining to, chemical compounds, proteins or other biological substances, (b) data, formulations, techniques and know-how (including any negative results), and (c) rights under patents, patent applications and copyrights.

"**Technology Documentation**" means a written description of the BMS Know-How.

"**Territory**" means the United States (including Puerto Rico and all U.S. possessions and territories) and Canada.

"**Third Party**" means any Person other than Cadence, BMS and their respective Affiliated Companies.

"**Title 11**" has the meaning given to such term in Section 8.10 hereof.

"**Transaction Documents**" means this Agreement and the Clinical Supply Agreement.

"**Transfer Taxes**" means taxes and assessments imposed upon the transfer, such as transfer, sales, value added, and stamp taxes, and not Taxes measured by income or gain, but including any interest, penalties or other additions thereto.

"[***]" has the meaning set forth in Section 2.24(a).

"[***]" has the meaning set forth in Section 2.24(a).

"**Valid Claim**" means a claim in any unexpired issued Pharmatop Patent or BMS Patent that has not been held invalid or unenforceable by a non-appealed or unappealable decision by a court or other appropriate body of competent jurisdiction, and which is not admitted to be invalid through disclaimer, dedication to the public, and which has not been cancelled or abandoned in accordance with and as permitted by (i) both the terms of this Agreement and the Pharmatop License Agreement in the case of the Pharmatop Patents, or (ii) the terms of this Agreement in the case of the BMS Patents.

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ARTICLE II — GRANT OF U.S. AND CANADIAN RIGHTS AND RELATED TRANSFERS

2.1 Grant of Sublicense and License .

(a) Effective as of the Effective Date and subject to Section 3.4 and the reservation of rights set forth in Section 2.2 and subject to early termination as provided in Article VIII, BMS hereby grants to Cadence on behalf of itself and its Affiliated Companies:

(i) subject to the terms, conditions and limitations set forth in the Pharmatop License Agreement and subject to Section 2.1(c):

(A) an exclusive (even as to BMS), royalty-bearing sublicense under the BMS Rights with the right to sublicense as provided in Section 2.4, to import, use, sell and offer for sale Products in the Territory;

(B) an exclusive (even as to BMS) sublicense under the BMS Rights, with the right to sublicense as provided in Section 2.4, to make and have made the Products in the Territory solely for (1) import, use, sale and offer for sale within the Territory or (2) import and use in clinical trials in the Clinical Study Countries as permitted by Section 3.6; and

(C) an exclusive (even as to BMS) sublicense under the BMS Rights, with the right to sublicense as provided in Section 2.4, to make and have made the Products anywhere in the world solely for (1) import, use, sale and offer for sale within the Territory, subject to the limitations set forth in Section 2.1 of the Pharmatop License Agreement (other than the consent of UPSA S.A., which has been obtained as of the Effective Date) and subject to Section 3.8, or (2) import or use in Cadence's clinical trials in the Clinical Study Countries as permitted by Section 3.6 hereof;

(ii) a non-exclusive license under the BMS Patents, with the right to sublicense as provided in Section 2.4, to import, use, sell and offer for sale Products in the Territory; provided, however, that the license granted in this paragraph shall not grant any right to the composition of matter of any Other Chemical Entity, or the right to import, use, sell or offer for sale any Other Chemical Entity or to any use not claimed by the BMS Patents;

(iii) a non-exclusive license under the BMS Patents, with the right to sublicense as provided in Section 2.4, to make and have made the Products in the Territory solely for import, use, sale and offer for sale within the Territory; *provided*, *however*, that the license granted in this paragraph shall not grant any right to the composition of matter of any Other Chemical Entity, or the right to make or have made any Other Chemical Entity or to any use not claimed by the BMS Patents;

(iv) a non-exclusive license under the BMS Know-How, with the right to sublicense as provided in Section 2.4, to make and have made the Products anywhere in the world solely for (1) use and sale within the Territory and (2) import and use in clinical trials in the Clinical Study Countries as permitted by Section 3.6; and.

(v) a non-exclusive right to use, copy, translate, display and distribute (subject to any confidentiality obligations), improve and make derivative works of the BMS Technology Documentation for the purpose of making and having made the Products consistent with the license set forth above with respect to the BMS Know-How.

The sublicenses granted in Section 2.1(a)(i) are referred to herein collectively as the "**Sublicense**"), and the licenses granted in Sections 2.1(a)(ii), (iii), (iv) and (v) are referred to herein collectively as the "**License**").

The Sublicense granted to Cadence hereby shall only permit Cadence to sell Products that are packaged, finished products ready for use, and the Sublicense shall not extend to any sales in bulk or of semi-finished products except to permitted sublicensee(s) of Cadence. Except as may be otherwise agreed in writing by BMS in its sole discretion, the License granted to Cadence hereby shall only permit Cadence to sell Products that are packaged, finished products ready for use, and the License shall not extend to any sales in bulk or of semi-finished products except to permitted sublicensee(s) of Cadence.

(b) Cadence hereby (i) accepts such Sublicense and License, (ii) acknowledges that the Sublicense rights granted hereunder are subject and subordinate to the rights of Pharmatop under, and all the terms and conditions of, the Pharmatop License Agreement and (iii) agrees to comply with all the restrictions of the Pharmatop License Agreement that relate to the exercise of the rights sublicensed to Cadence hereunder.

(c) If on the [***], then [***]; provided that:

(i) [***] (A) Cadence may [***] and (B) such [***]. Cadence shall provide to BMS evidence reasonably satisfactory to BMS of the accuracy of such report. Notwithstanding the foregoing, [***] (A) [***] or (B) [***]. In the event [***] as provided in this Section 2.1(c).

(ii) Such [***].

(iii) Such [***].

Each date, if any, as of which such [***].

(d) Any Affiliated Companies on whose behalf BMS has made any of the foregoing license grants that hereafter ceases to be an Affiliated Company of BMS shall nevertheless continue to be obligated under such license grants in accordance with the terms of this Agreement.

2.2 No Implied Licenses; Reservation of Rights .

(a) Cadence shall have no licenses or other rights other than those expressly granted in this Agreement, and, in particular and without limiting the foregoing, nothing in this

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Agreement shall be construed to grant Cadence any licenses or other rights in any intellectual property rights, information or data (i) owned or Controlled by BMS or any of its Affiliated Companies, except as expressly set forth in this Agreement or (ii) owned or Controlled by Pharmatop or any of its Affiliated Companies that is not licensed by Pharmatop to BMS under the Pharmatop License Agreement.

(b) Cadence acknowledges that BMS or one or more of its Affiliated Companies holds certain license rights from Pharmatop (whether under the Pharmatop License Agreement or otherwise) relating to countries outside the Territory, and, except for the right of cross-reference provided for in Section 2.8(d), the rights granted to Cadence under this Agreement do not include any license or other rights with respect to such other rights of BMS and its Affiliated Companies, all of which are expressly reserved to BMS and its Affiliated Companies.

(c) Notwithstanding the [***], BMS hereby reserves the non-exclusive, sublicensable right under the BMS Rights, BMS Patents and BMS Know-How (i) to make and have made the Products in the Territory for supply to Cadence, or to the extent otherwise necessary or appropriate for BMS or any of its Affiliated Companies or sublicensees to perform its obligations, under the Clinical Supply Agreement, (ii) to make and have made the Products anywhere in the world for import, use, sale and offer for sale outside the Territory and (iii) to import, make, have made and use Products in the Territory for any non-clinical or clinical research purpose of BMS and its Affiliated Companies (subject, to the extent applicable, to Section 3.7) or in support of any Regulatory Filings or other activities outside the Territory (subject, to the extent applicable, to Section 3.7); *provided* that the rights reserved pursuant to clause (iii) above shall not be sublicensable.

(d) BMS is not sublicensing or granting to Cadence, and Cadence acknowledges and agrees that it is not receiving any rights under Section 2.10 or the proviso of the last sentence of Section 2.3 of the Pharmatop License Agreement, all of which are reserved to BMS.

(e) BMS shall have no licenses or other rights other than those expressly granted in this Agreement, and, in particular and without limiting the foregoing, nothing in this Agreement shall be construed to grant BMS any licenses or other rights in any intellectual property rights, information or data owned or Controlled by Cadence or any of its Affiliated Companies, except as expressly set forth in this Agreement.

2.3 Rights of Pharmatop .

(a) Nothing in this Agreement shall reduce or limit any of Pharmatop's rights under the Pharmatop License Agreement.

(b) Pharmatop shall have the same right to supervise the activities of Cadence hereunder as Pharmatop has with respect to BMS's activities under the Pharmatop License Agreement.

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(c) Pharmatop shall have the same rights to audit Cadence's (and any of its sublicensee's) activities relevant to this Agreement, and to inspect Cadence's (and any sublicensee's) facilities involved in the manufacture of Products, in the same manner as Pharmatop has with respect to BMS's activities and facilities under the Pharmatop License Agreement.

2.4 Further Sublicenses.

(a) Except as set forth in Section 2.5, the rights licensed to Cadence under Section 2.1 shall be sublicensable to a Third Party [***] (except to the extent otherwise agreed to by BMS in writing in its sole discretion, which writing shall, to the extent applicable, specifically waive compliance with this Section 2.4(a)): (i) such sublicense shall refer to this Agreement and shall be subject and subordinate to this Agreement and, with respect to the Sublicense, the Pharmatop License Agreement, (ii) the sublicensee shall assume and agree in writing to be bound by and comply with the terms and conditions of this Agreement in the same manner as Cadence, and without limiting the generality of the foregoing to maintain insurance coverage at the same levels and on the same terms and conditions as set forth in Section 7.5, provide sales reports pursuant to Section 4.7 hereof and keep books and records and permit BMS to review such books and records pursuant to Section 4.8 hereof, (iii) BMS shall be made an express third party beneficiary of the sublicensee's obligations under such sublicense that relate to compliance with the terms and conditions of this Agreement with the express right to enforce the same directly against the sublicensee, (iv) a copy of the proposed sublicense (except that any confidential financial terms may be redacted) shall be provided to BMS at the time Cadence seeks BMS's consent to such sublicense as aforesaid, (v) an executed copy of the sublicense (except that any confidential financial terms may be redacted) shall be provided to BMS promptly after execution, (vi) each sublicense or other right granted by Cadence with respect to any right licensed to it hereunder shall terminate immediately upon the termination of the Sublicense or License from BMS to Cadence with respect to such right; and (vii) such sublicensees shall not have the right to grant further sublicenses or otherwise transfer any rights sublicensed to them with respect to the Products except in accordance with and subject to this Section 2.4 and all of the other terms and conditions of this Agreement. The foregoing shall also apply in the event of any subsequent amendment or modification of such sublicense agreement. In the event Cadence desires to effect any such sublicense, it shall provide BMS with such information concerning the proposed arrangement as BMS may reasonably request. BMS shall use reasonable efforts to provide its response within [***] ([***])[***] (or, if BMS so requests, [***] ([***])[***]) after receiving such information. The failure of BMS to consent to or disapprove of such proposed sublicense within such [***] period shall not constitute a consent to such sublicense.

(b) Cadence may grant sublicenses to its Affiliated Companies under the Sublicense and the License [***], subject, in the case of a sublicense of rights licensed to Cadence pursuant to the Sublicense, to compliance with the Pharmatop License, and then shall be sublicensable only as follows (except to the extent otherwise agreed to by BMS in writing in its sole discretion, which writing shall, to the extent applicable, specifically waive compliance

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with this Section 2.4(a)): (i) such sublicense shall be subject and subordinate to this Agreement and, with respect to the Sublicense, the Pharmatop License Agreement, (ii) such sublicense shall terminate immediately in the event such Affiliated Company ceases to be an Affiliated Company of Cadence, (iii) an executed copy of the sublicense shall be provided to BMS promptly after execution, (iv) each sublicense or other right granted by Cadence with respect to any right licensed to it hereunder shall terminate immediately upon the termination of the Sublicense or License from BMS to Cadence with respect to such right and (v) such sublicensees shall not have the right to grant further sublicenses or otherwise transfer any rights sublicensed to them with respect to the Products except in accordance with and subject to this Section 2.4 and all of the other terms and conditions of this Agreement. The foregoing shall also apply in the event of any subsequent amendment or modification of such sublicense agreement. Without limiting any of Cadence's responsibilities under Section 2.4(c), Cadence shall cause its Affiliated Company to comply with the terms and conditions of this Agreement in the same manner as Cadence.

(c) Cadence shall be primarily responsible for all payments due and the making of reports under this Agreement by its sublicensees and for compliance with all applicable terms of this Agreement, and Cadence shall remain jointly and severally liable with each of its sublicensees (whether or not such sublicensee is an Affiliated Company of Cadence) for any failure by such sublicensee to perform, observe or comply with the terms and conditions of this Agreement or the Pharmatop License Agreement.

(d) Any purported sublicense hereunder not entered into in compliance with this Section 2.4 shall be null and void and without effect.

(e) Cadence or its Affiliated Companies may engage a Third Party, including a contractor, consultant, or Contract Research Organization, to perform research or development activities with respect to Products on behalf of Cadence or its Affiliated Companies and such activities shall not be deemed a sublicense if no rights under the BMS Rights, BMS Patents or BMS Know-How are licensed or granted; *provided*, that (i) none of the rights of BMS hereunder are diminished or otherwise adversely affected as a result of such engagement, (ii) any such Third Party shall enter into an appropriate written agreement obligating such Third Party to be bound by obligations of confidentiality and restrictions on use of Confidential Information that are no less restrictive than the obligations in this Agreement; and (iii) Cadence shall at all times be responsible for the performance of such Third Party. Cadence shall use all reasonable efforts to cause such Third Party to agree in writing to assign to Cadence inventions made by such Third Party in performing such services for Cadence.

2.5 Delegation of Manufacturing. Subject to the scope of the rights granted to Cadence in the Sublicense and the License and subject to Section 3.8, Cadence may arrange by written agreement to have the Products manufactured by a Third Party manufacturer without the prior consent of BMS but subject to compliance with the Pharmatop License Agreement with respect to sublicensing, if applicable, and subject to clauses (i), (iii), (v), (vi) and (vii) of Section 2.4(a) and the provision to BMS of a copy of the agreement or agreements relating to such manufacturing arrangement (subject to redaction of confidential financial terms) promptly after the execution thereof. If the Products are manufactured by a Third Party manufacturer (other than pursuant to the Clinical Supply Agreement), Cadence shall notify BMS and Pharmatop and shall provide BMS and Pharmatop with the identity of each such manufacturer

and provide proof to BMS and Pharmatop that (a) each such manufacturer has been informed in writing that the products to be made are subject to the Licensed Patents (as defined in the Pharmatop License Agreement) held by Pharmatop and (b) each such manufacturer has agreed to manufacture the Products only pursuant to a written agreement with Cadence and solely for the benefit of Cadence and its sublicensees. In addition Cadence shall use reasonable efforts to have such Third Party agree in writing to assign or license to Cadence Improvements made by such Third Party with respect to the manufacture of the Products, which license if obtained by Cadence shall include the right to sublicense such rights to BMS and Pharmatop as contemplated by Section 2.7. The above restrictions do not apply to raw materials, packaging items or other incidental articles from outside suppliers, or to the performance of packing operations in accordance with customary practices in the pharmaceutical industry.

2.6 Development and Commercialization Arrangements. Cadence shall not enter into any co-development or other development collaboration with any Third Party with respect to the Products without the prior written consent of BMS. The engagement of a Contract Research Organization to perform research or development services on behalf of Cadence or its Affiliated Companies, which research is funded entirely by Cadence and its Affiliated Companies (and not indirectly by a Third Party through Cadence or any of its Affiliated Companies), shall not constitute a co-development or other development collaboration that requires the consent of BMS. In the event Cadence enters into any co-promotion or co-marketing arrangement with any Third Party with respect to the Products or any other arrangement with a Third Party whereby such Third Party would distribute or commercialize any Product, Cadence shall include in the quarterly reports provided to BMS pursuant to Section 3.2 information concerning the activities of the other party to such co-promotion, co-marketing, distribution or commercialization arrangement. In connection with any arrangement with a Third Party whereby such Third Party would distribute, co-promote, co-market or otherwise develop or commercialize any Product (or collaborate with Cadence in the development or commercialization of any Product), Cadence shall comply, and shall cause such Third Party to comply, with all applicable terms and conditions of this Agreement and the Pharmatop License Agreement. Cadence shall remain jointly and severally liable with any such Third Party for any failure by such Third Party to perform, observe or comply with the terms and conditions of this Agreement or the Pharmatop License Agreement.

2.7 Improvements.

(a) BMS shall inform Cadence in a timely manner of any Improvements made by Pharmatop (or any Third Party sublicensees of Pharmatop) as to which BMS receives notice pursuant to Section 2.2 or Article 8 of the Pharmatop License Agreement. If requested by Cadence, BMS will request that Pharmatop license such Improvements to BMS and, upon receipt of such license, shall sublicense such Improvements to Cadence on a non-exclusive, [***] basis ([***]), consistent with the license thereof from Pharmatop and the Pharmatop License Agreement, to the extent not already covered by the Sublicense.

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(b) BMS shall notify Cadence in writing of any Improvements made in whole or in part by its (and its Affiliated Companies') employees, agents, sublicensees and Third Party manufacturers after the Effective Date and Controlled and implemented by BMS and its Affiliated Companies. Upon the request of Cadence, BMS shall grant Cadence a non-exclusive, [***] license to practice and use such Improvements, including the right to grant sublicenses, anywhere in the world to make and have made Products solely (i) to import, use, sale and offer for sale within the Territory and (ii) to import and use in clinical trials in the Clinical Study Countries as permitted by Section 3.6. BMS shall provide Cadence with such information in BMS's possession as may be reasonably requested by Cadence in order to practice such Improvements.

(c) Cadence shall notify BMS and Pharmatop in writing of any Improvements made in whole or in part by its (and its Affiliated Companies') employees, agents, sublicensees and Third Party manufacturers after the Effective Date and Controlled and implemented by Cadence and its Affiliated Companies, and Cadence shall license such Improvements to Pharmatop on the basis described in Article 8 of the Pharmatop License Agreement. In addition, upon the request of BMS, Cadence shall grant BMS a non-exclusive [***] license to practice and use such Improvements, including the right to grant sublicenses, anywhere in the world (i) to make and have made the Products in the Territory for supply to Cadence, or to the extent otherwise necessary or appropriate for BMS or any of its Affiliated Companies or sublicensees to perform its obligations, under the Clinical Supply Agreement, (ii) to make and have made the Products anywhere in the world for import, use, sale and offer for sale outside the Territory and (iii) to import, make, have made and use Products in the Territory for any non-clinical or clinical research purpose of BMS and its Affiliated Companies (subject, to the extent applicable, to Section 3.7) or in support of any Regulatory Filings or other activities outside the Territory (subject, to the extent applicable, to Section 3.7); *provided* that the rights granted pursuant to clause (iii) above shall not be sublicensable. Cadence shall provide BMS with such information in Cadence's possession as may be reasonably requested by BMS in order to practice such Improvements.

2.8 Transfer of Regulatory Filings; Communications with Regulatory Authorities .

(a) As of the Effective Date, BMS hereby cedes and assigns to Cadence all right, title and interest in and to the Regulatory Filings with Drug Regulatory Authorities in the Territory relating to the Products and shall use reasonable efforts to take any actions with the applicable Drug Regulatory Authority in the Territory that are necessary to transfer ownership and control of such Regulatory Filings to Cadence not later than five (5) days after the Effective Date.

(b) During the [***]([***])[***] period following the Effective Date, BMS shall transfer to Cadence copies of all Regulatory Filings with Drug Regulatory Authorities in the Territory relating to Products and shall provide Cadence with copies of all material correspondence with Drug Regulatory Authorities in the Territory relating to Products. Following the Effective Date, Cadence shall have sole responsibility for (i) communicating with Drug Regulatory Authorities in the Territory with respect to Products, including responsibility for all Regulatory Filings in the Territory and all associated official correspondence and informal

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communications, and (ii) subject to Section 2.15, reporting to Drug Regulatory Authorities in the Territory any Adverse Event relating to Products in compliance with the requirements of Applicable Law in the Territory. If BMS maintains such Regulatory Filings and correspondence in electronic form, BMS shall provide such copies to Cadence in electronic form, but BMS shall have no obligation to reformat or otherwise alter or modify any materials or to create or recreate any such materials in electronic form in order to provide them to Cadence.

(c) BMS and its Affiliated Companies and licensees and, subject to the terms of Sections 3.1 and 3.3 of the Pharmatop License Agreement, Pharmatop shall have a right to cross-reference, file or incorporate by reference any Regulatory Filings in the Territory transferred hereunder or subsequently made by Cadence and its Affiliated Companies and sublicensees with respect to Products in the Territory (and any data contained therein) to support Regulatory Filings by BMS and its Affiliated Companies and licensees for Products outside the Territory.

(d) Cadence and its Affiliated Companies and licensees shall have a right to cross-reference, file or incorporate by reference any Regulatory Filings made by BMS and its Affiliated Companies and sublicensees of the BMS Rights with respect to Products outside the Territory (and any data contained therein) to support Regulatory Filings by Cadence and its Affiliated Companies and licensees in the Territory (or Regulatory Filings in such additional jurisdictions where Cadence may in the future acquire rights).

2.9 Transfer of Data and Transition Arrangements . Following the Effective Date:

(a) During the [***] ([***])[***] period following the Effective Date, BMS shall provide to Cadence a copy of (i) all Product Data, (ii) other written information, data and reports in BMS's possession that relate exclusively to the Products to the extent such information, data and reports are necessary (in the reasonable judgment of both BMS and Cadence) to the development of the Products in the Territory, and (iii) the full Marketing Authorization dossier submitted to Drug Regulatory Authorities in the EU with respect to the Products (in non-Common Technical Document format) and the variation dossiers submitted to Drug Regulatory Authorities in the EU with respect to the Products after the initial Approval, including (1) with respect to Perfalgan (A) copies of the applicable clinical study reports (and the appendices, tables, listings and graphs therein), (B) copies of the raw data from the applicable clinical studies included in the Marketing Authorization Application, (C) to the extent available, rendered PDF copies of such clinical study reports (and such appendices, tables, listings and graphs) and (D) to the extent available, SAS data sets containing such raw data and (2) with respect to ProDafalgan, to the extent they exist, (A) copies of the applicable clinical study reports (and the appendices, tables, listings and graphs therein), (B) copies of the raw data from the applicable clinical studies included in the Marketing Authorization Application, (C) rendered PDF copies of such clinical study reports (and such appendices, tables, listings and graphs) and (D) SAS data sets containing such raw data, but only to the extent such information, data and reports described in clauses (i), (ii) and (iii) above are reasonably available to BMS or its Affiliated Companies without undue searching (the information, data and reports described in clauses (ii) and (iii) above being referred to herein as "**Other Product Data**"); *provided*,

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however, that the foregoing shall in no event require BMS or its Affiliated Companies to provide copies of laboratory notebooks or manufacturing run records required to be maintained by BMS or its Affiliated Companies under Applicable Law. If BMS or its Affiliated Company maintains such Product Data or Other Product Data in electronic form, BMS shall provide such copies to Cadence in electronic form, but BMS shall have no obligation to reformat or otherwise alter or modify any materials or to create or recreate any such materials in electronic form in order to provide them to Cadence. BMS shall retain ownership of such Product Data and Other Product Data, may retain a copy of the Product Data and Other Product Data and retains the right to use and reference such Product Data and Other Product Data for any purpose to the extent consistent with BMS's other retained rights and the rights granted to Cadence hereunder, including the right to cross-reference, file or incorporate by reference such Product Data and Other Product Data and to assign, transfer or license to other Persons any or all of such rights of use and reference. Cadence shall have the right to use such Product Data and Other Product Data for any purpose in connection with the exercise of the rights granted to Cadence under this Agreement. In the event that any such Regulatory Filing is supplemented or modified, BMS shall notify Cadence that supplements or modifications have been made not later than [***] ([***])[***] after such supplementation or modification, and BMS shall provide Cadence with copies thereof upon Cadence's request.

(b) Cadence shall notify BMS in writing of the completion of any additional registrational clinical trials or studies (Phase I – Phase III) or large-scale safety studies performed by or on behalf of Cadence relating to Products within [***]([***])[***] after the final study report relating to such trial or study has been completed and received all necessary internal Cadence approvals in accordance with Cadence's customary procedures. Cadence shall provide BMS semi-annually with copies of any such final study reports and copies of the final study reports relating to any non-registrational clinical trials or studies performed by or on behalf of Cadence relating to Products that have received all necessary internal Cadence approvals in accordance with Cadence's customary procedures, in each case that have received such necessary approvals in the preceding semi-annual period, and BMS and its Affiliated Companies and licensees shall have a right to cross-reference, file or incorporate by reference such final study reports and any existing or future Regulatory Filings (and any data contained therein) made or maintained by Cadence and its Affiliated Companies for Products in the Territory (including the foreign equivalent of any NDA relating to Products) to support Regulatory Filings by BMS and its Affiliated Companies and licensees for Products outside the Territory and to use such final study reports, Regulatory Filings and data for other commercially reasonable uses to support commercialization activities outside the Territory. In the event that any such Regulatory Filing is supplemented or modified, Cadence shall notify BMS that supplements or modifications have been made not later than [***]([***])[***] after such supplementation or modification, and Cadence shall provide BMS with copies thereof upon Cadence's request.

(c) BMS shall notify Cadence in writing of the completion of any additional registrational clinical trials or studies (Phase I — Phase III) or large-scale safety studies done within the then existing label performed by or on behalf of BMS relating to Products within [***]([***])[***] after the final study report relating to such trial or study has been completed

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and received all necessary internal BMS approvals in accordance with BMS's customary procedures. BMS shall provide Cadence semi-annually with copies of any such final study reports and copies of the final study reports relating to any non-registrational clinical trials or studies performed by or on behalf of BMS relating to Products that have received all necessary internal BMS approvals in accordance with BMS's customary procedures, in each case that have received such necessary approvals in the preceding semi-annual period, and Cadence and its Affiliated Companies and licensees shall have a right to cross-reference, file or incorporate by reference such final study reports and any existing or future Regulatory Filings (and any data contained therein) made or maintained by BMS and its Affiliated Companies for Products outside the Territory (including the foreign equivalent of any NDA relating to Products) to support Regulatory Filings by Cadence and its Affiliated Companies and licensees for Products in the Territory and to use such final study reports, Regulatory Filings and data for other commercially reasonable uses to support commercialization activities in the Territory.

(d) BMS shall provide Cadence with prompt written notice of any Registrational Information of Pharmatop made available to BMS pursuant to Article III of the Pharmatop License Agreement. To the extent permitted by the Pharmatop License Agreement, Cadence and its Affiliated Companies and licensees shall have a right to cross-reference, file or incorporate by reference any such Registrational Information to support Regulatory Filings by Cadence and its Affiliated Companies and licensees for Products in the Territory, *provided* [***] reimburses [***] directly (or indirectly through payment to [***]) [***] ([***]) of the [***] to develop or obtain such Pharmatop Registrational Information consistent with Sections 3.1 and 3.3 of the Pharmatop License Agreement.

2.10 Tech Transfer Plan. Within [***]([***])[***] of the Effective Date, the Parties shall meet to develop a technology transfer plan (the **"Tech Transfer Plan"**) containing a plan and schedule for transferring and otherwise providing Cadence access to the BMS Know-How and Technology Documentation.

2.11 Technology Documentation. Pursuant to the Tech Transfer Plan, BMS shall provide Cadence with one (1) copy (which may be in paper or electronic form as provided below) of the Technology Documentation to which BMS or its Affiliated Companies have access to without undue searching (unless such documents are material to the manufacture of the Products or Clinical Testing Products in which case BMS shall use all reasonable commercial efforts to locate such Technology Documentation); *provided*, *however*, that the foregoing shall in no event require BMS to provide copies of laboratory notebooks or manufacturing run records required to be maintained by BMS under Applicable Law (other than one blank batch record which shall be provided to Cadence). If BMS maintains such Technology Documentation in electronic form, BMS shall provide such Technology Documentation to Cadence in electronic form. Otherwise, BMS may provide such Technology Documentation in paper form. All Technology Documentation shall be in the English language, reasonably comprehendible and, if any Technology Documentation requires translation, authenticated translation shall be provided by BMS at no cost to Cadence. BMS shall not have any obligation to translate any documentation relating to the Pharmatop Know-How. The Technology Documentation at the

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time provided to Cadence shall be written with sufficient detail and clarity for Cadence, a Cadence Affiliated Company or a Third Party sublicensee or supplier of Cadence to practice and/or otherwise utilize the manufacturing processes disclosed thereunder. The Technology Documentation shall not be used by Cadence for any purpose other than to manufacture the Products and Clinical Testing Products as permitted under this Agreement and the Clinical Supply Agreement. The Technology Documentation shall be Confidential Information of BMS, and Cadence shall have full responsibility and liability to BMS for any unauthorized use or disclosure of such Confidential Information; *provided* that Cadence shall have the right to disclose and otherwise provide such Technology Documentation to one or more Third Party manufacturers and/or suppliers so long as such Third Parties agree to maintain the confidentiality of such information. BMS shall be responsible for the cost of providing one (1) set of copies only; *provided*, *however*, that BMS shall have no obligation to reformat or otherwise alter or modify any such materials to the extent provided consistent with this Section 2.11, or to create materials in electronic form, in order to provide them to Cadence.

2.12 Technical Assistance. During the period commencing on the Effective Date and ending on [***] (the "**Tech Transfer Period**"), BMS shall provide the technical assistance provided for in this Section 2.12. During the Tech Transfer Period, BMS shall provide Cadence with the assistance of up to [***] of BMS employees having knowledge relevant to the Clinical Testing Products, the Technology Documentation and the BMS Know-How to provide Cadence with a reasonable level of technical assistance and consultation in connection with the technology transfer and implementation of the manufacturing processes included in the Technology Documentation for the purpose of assisting Cadence in assuming the responsibility for manufacturing the Products. The first [***]([***])[***] of such technical assistance and consultation shall be without charge to Cadence other than for the reasonable out-of-pocket costs of BMS and its Affiliated Companies. For technical assistance and consultation in excess of [***]([***])[***], Cadence shall pay BMS for such technical assistance and consultation at the rate of [***]. [***]. Cadence shall bear [***] implementing the Technology Documentation, including all costs and expenses it incurs in connection with such technology transfer, process development, manufacturing scale-up, quality control and quality assurance. BMS makes no warranty, express or implied, that Cadence shall be able to successfully implement and use the Technology Documentation. Cadence shall be responsible for ensuring that its personnel who receive such assistance are appropriately qualified and experienced for such purpose. At Cadence's written request, BMS shall, during the Tech Transfer Period and upon reasonable prior notice and subject to BMS's customary rules and restrictions with respect to site visits by non-BMS personnel, permit Cadence's technical personnel to visit the facilities utilized by BMS for the supply of Clinical Testing Products under the Clinical Supply Agreement for the purpose of personally observing the production of the Clinical Testing Products. The time of BMS employees expended in connection with any such visit (but not visits contemplated by the Clinical Supply Agreement) shall be charged against the [***] of technical assistance and consultation to be provided by BMS hereunder and compensated as provided in this Section 2.12. BMS shall not have any obligation to provide any such technical assistance or consultation following the expiration of the Tech Transfer Period.

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2.13 Cooperation. The Parties shall cooperate to implement processes to ensure a close, cooperative working relationship between the Parties and their respective technical personnel in order to facilitate the technology transfer assistance contemplated above.

2.14 Additional Assistance. In the event Cadence desires any additional technical assistance or consultation, Cadence may request such additional technical assistance or consultation from BMS. BMS shall consider such request in good faith, but BMS shall not have any obligation to provide any such additional technical assistance or consultation unless BMS agrees in writing in its sole discretion to provide such additional technical assistance or consultation. In the event BMS agrees in its sole discretion to provide any such additional technical assistance or consultation, Cadence shall pay BMS for such additional technical assistance or consultation at a rate equal to [***].

2.15 Pharmacovigilance; Adverse Event Reporting. Subject to the terms of this Agreement, and within [***] ([***])[***] after the Effective Date of this Agreement, BMS and Cadence (under the guidance of their respective Pharmacovigilance Departments, or equivalent thereof) shall in good faith define and finalize the responsibilities the Parties shall employ to protect patients and promote their well-being in their respective territories. These responsibilities shall include mutually acceptable guidelines and procedures for the receipt, investigation, recordation, communication, and exchange (as between the Parties) of adverse event reports, pregnancy reports, and any other information concerning the safety of the Product. Such guidelines and procedures shall be in accordance with, and enable the Parties and their Affiliated Companies to fulfill, local and international regulatory reporting obligations to government authorities. Furthermore, such agreed procedures shall be consistent with relevant International Council for Harmonization guidelines, except where said guidelines may conflict with existing local regulatory safety reporting requirements, in which case local reporting requirements shall prevail.

Until such guidelines and procedures are set forth in an agreement between the Parties, hereafter referred to as the Safety Data Exchange Agreement, the terms of paragraphs (a) – (d) and (f) below, of this Section, shall apply. Following the execution of the Safety Data Exchange Agreement, paragraphs (a) – (d) and (f) shall have no further force or effect.

(a) Each Party shall notify the other Party as soon as practicable, but not later than [***]([***])[***] after it receives information about the initiation of any investigation, review or inquiry by any Drug Regulatory Authority concerning the safety of the Product.

(b) Individual Case Safety Reports and pregnancy reports which come to the attention of either Party shall be notified to the other Party, in English, in the form of a source document or CIOMS Form by secure email or fax within [***]([***])[***] of receipt.

(c) Each Party is responsible for complying with all applicable investigational and post-marketing safety reporting regulations with respect to the use of the Product in the territory in which its affiliated companies, its sublicensees, its agents, or its contractors promotes

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the Product, as subject to the terms of this Agreement. This includes the submission of expedited and periodic reports to the appropriate Drug Regulatory Authority(s).

(d) All information to be reported to a Party under this Section shall be sent as follows (or to such other address, contact person, telephone number, facsimile number or e-mail address as may be specified in writing to the other Party):

(i) To BMS, at:

Bristol-Myers Squibb Company
Global Pharmacovigilance
Adverse Event Processing
311 Pennington-Rocky Hill Road
Mail Stop HW 19-1.01
Pennington, NJ 08534
USA
FAX Number: 609-818-3804
Email: worldwide.safety@bms.com

(ii) To Cadence, at:

Cadence Pharmaceuticals, Inc.
12730 High Bluff Drive, Suite 410
San Diego, CA 92130
Attention: Vice President, Regulatory Affairs and Quality Assurance
Telephone: [***]
Facsimile: 858-436-1401
Email: [***]

(e) A Party's costs incurred in connection with receiving, investigating, recording, reviewing, communicating, and exchanging Adverse Events and Other Reportable Information shall be borne solely by such Party. As used herein, "**Other Reportable Information**" means any communication or other information that questions the purity, identity, potency or quality of the Product and all reports of Product exposure during pregnancy and Product overdose whether or not resulting in an Adverse Event.

(f) If any Drug Regulatory Authority (1) should contact Cadence with respect to the improper development, use, distribution, manufacture or commercialization of any Product, (2) conducts, or gives notice of its intent to conduct, an inspection at Cadence's facilities, or (3) takes, or gives notice of its intent to take, any other regulatory action with respect to any activity of Cadence that could reasonably be expected to adversely affect any development or commercialization activities of any Product under this Agreement, then Cadence shall promptly notify BMS of such contact or notice. Cadence shall provide BMS with copies of all pertinent information and documentation issued by any such Drug Regulatory Authority within two (2) Business Days of receipt and copies of any responses to such Drug Regulatory

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Authority that pertain to the Products promptly after the submission thereof to such Drug Regulatory Authority.

2.16 Infringement – Pharmatop Patents.

(a) In the event either Party becomes aware that the Pharmatop Patents (or their inventorship) have become the subject to an administrative or judicial action, suit or challenge by a Third Party (including any reexamination or other proceeding challenging the validity or enforceability of the Pharmatop Patents) with respect to the Territory (to the extent relating to the Territory, a "**Pharmatop Patent Challenge**"), such Party shall promptly notify the other Party and BMS and Cadence shall consult with each other in order to attempt to determine the appropriate response to such Pharmatop Patent Challenge. If Pharmatop undertakes the defense thereof, Cadence shall have the right, to the extent permitted by the Pharmatop License Agreement, to participate and be represented in any such Pharmatop Patent Challenge by its own counsel [***]. To the extent Cadence is not permitted by the Pharmatop License Agreement to participate directly in such Pharmatop Patent Challenge, BMS shall (i) consult with Cadence during the defense of such Pharmatop Patent Challenge and (ii) if requested by Cadence, participate in such Pharmatop Patent Challenge [***] and cooperate with Cadence, [***], to arrange for the interests of the Parties (including Cadence) to be represented in such Pharmatop Patent Challenge.

If Pharmatop does not defend any such Pharmatop Patent Challenge, BMS shall provide written notice to Cadence promptly after receiving notice of Pharmatop's decision not to defend and shall consult with Cadence concerning the defense of such Pharmatop Patent Challenge. BMS shall use reasonable efforts (in light of relevant time and other deadlines) to determine whether it will defend such Pharmatop Patent Challenge and, if BMS elects not to defend such Pharmatop Patent Challenge, shall use reasonable efforts to provide Cadence with sufficient notice to permit Cadence to defend such Pharmatop Patent Challenge as permitted by Section 6.3 of the Pharmatop License Agreement and as set forth in this Section 2.16.

If BMS elects to defend against any such Pharmatop Patent Challenge as permitted by Section 6.3 of the Pharmatop License Agreement, BMS shall consult with Cadence during the defense of such Pharmatop Patent Challenge and BMS shall permit Cadence to participate and be represented in any such Pharmatop Patent Challenge by its own counsel [***].

The Parties shall reasonably assist Pharmatop and the other Party in the defense of any Pharmatop Patent Challenge. In the event the Party defending such Pharmatop Patent Challenge requests the assistance of the other Party, [***] shall reimburse the [***] for its [***] incurred in connection with such assistance. BMS shall not, without the written consent of Cadence, consent to the entry into any such settlement agreement by Pharmatop, that would restrict the scope, or adversely affect the enforceability or validity of, any of the Pharmatop Patents in the Territory.

If neither Pharmatop nor BMS elects to defend against a Pharmatop Patent Challenge, then BMS shall provide written notice to Cadence promptly after the later of BMS

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receiving notice of such decision by Pharmatop or such decision by BMS (in accordance with the last sentence of the second paragraph of this Section 2.16(a)) and, to the extent permitted by the Pharmatop License Agreement, Cadence shall have the right to defend [***] any such Pharmatop Patent Challenge in accordance with Section 6.3(b) of the Pharmatop License Agreement, and BMS shall be entitled to participate and be represented in any such Pharmatop Patent Challenge by its own counsel [***]. Cadence shall not enter into any settlement agreement with respect to such Pharmatop Patent Challenge, without the written consent of Pharmatop to the extent required by the Pharmatop License Agreement, and the written consent of BMS. If Cadence is not permitted by the Pharmatop License Agreement to defend such Pharmatop Patent Challenge, then at the written request of Cadence, BMS shall defend such action, suit or challenge as provided above, at [***].

(b) In the event either Party becomes aware of any infringement of a Valid Claim in the Territory under the Pharmatop Patents, such Party shall promptly notify the other Party and BMS and Cadence shall consult with each other and with Pharmatop in order to attempt to end such infringement, consistent with the Pharmatop License Agreement and shall take all appropriate action to do so. BMS shall have the right in the first instance, but not the obligation, to initiate legal action against an infringing party. Cadence shall reasonably assist BMS and Pharmatop in any action or proceeding prosecuted against the infringing Person by BMS or Pharmatop. If neither Pharmatop nor BMS prosecutes a legal action against the infringing Person (or if Pharmatop or BMS ceases to pursue or withdraws from such action), Cadence may initiate and prosecute such action (or substitute itself for Pharmatop or BMS in such action) at its own expense to the extent permitted by and in accordance with Section 6.5 of the Pharmatop License Agreement. Cadence shall not enter into a settlement agreement concerning such action, suit or challenge without the written consent of BMS.

If neither Pharmatop nor BMS prosecutes a legal action against the infringing Person (or if Pharmatop or BMS ceases to pursue or withdraws from such action) and Cadence is not permitted by Section 6.5 of the Pharmatop License Agreement to initiate and prosecute such action (or substitute itself for Pharmatop or BMS in such action), then at the written request of Cadence, BMS shall initiate and prosecute such action at the expense of Cadence and shall not, without the written consent of Cadence, enter into a settlement agreement with such infringing Person that would restrict the scope, or adversely affect the enforceability or validity of, any of the Pharmatop Patents in the Territory.

(c) Subject to the rights of Pharmatop set forth in the Pharmatop License Agreement, in the event either Party recovers any damages or other sums in such action in relation to any infringement of a Valid Claim under a Pharmatop Patent in the Territory or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees, subject to any allocation due to Pharmatop pursuant to the Pharmatop License Agreement. If such recovery (after giving effect to any allocation due to Pharmatop pursuant to the Pharmatop License Agreement) is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total of such costs and expenses incurred by each

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Party. If after such reimbursement any funds shall remain from such damages or other sums recovered (after giving effect to any allocation due to Pharmatop pursuant to the Pharmatop License Agreement), such funds shall be shared [***] ([***]) by Cadence and [***] ([***]) by BMS. In the event any such action involves patent rights outside the Territory, Cadence shall be entitled to share only in the portion of any recovery that relates to infringement of any Pharmatop Patents in the Territory and shall not have any right to share in any recovery with respect to rights outside the Territory.

2.17 Infringement – BMS Patents.

(a) In the event the BMS Patents (or their inventorship) become the subject to an administrative or judicial challenge by a Third Party with respect to the Territory, BMS shall notify Cadence of such challenge within [***]([***])[***] of receipt of notice of such challenge. BMS shall have the right, but not the obligation, to defend such action, suit or challenge, and BMS shall notify Cadence of its decision regarding whether or not it will defend such action, suit or challenge. If BMS decides in its sole discretion to enter into any settlement agreement with respect to such action, suit or proceeding, BMS shall notify Cadence of such intent. If such settlement restricts the scope, or adversely affects the license to the BMS Patents granted to Cadence under Section 2.1, Cadence shall have the right, but not the obligation, to enter into discussions with BMS for the purpose of renegotiating the terms of said license in view of such settlement.

(b) If BMS does not defend any such action, suit or challenge and Cadence disagrees with BMS's decision, Cadence shall have the right, but not the obligation, to (i) enter into discussion with BMS for the purpose of renegotiating the terms of the license to the BMS Patents granted to Cadence under Section 2.1 or (ii) notwithstanding Article 8 of this Agreement, terminate the License granted under Sections 2.1(a)(ii) – (v) subject to the confidentiality provisions set forth in Sections 5.2 and 5.3.

2.18 Maintenance of BMS Patents. In the event BMS determines that it no longer desires to maintain any of the BMS Patents, BMS shall notify Cadence in writing of the BMS Patents that it no longer desires to maintain, and Cadence shall have the right to retain counsel of its own choosing to prosecute and maintain such BMS Patents and to make all maintenance and other payments as may be necessary to maintain such BMS Patents in effect.

2.19 Noncontravention. Neither BMS nor Cadence shall be required to take any action pursuant to Section 2.16, 2.17, 2.21 and 2.22 that it determines in its sole judgment and discretion conflicts with or violates any court or government order or decree to which it is then subject.

2.20 Patent Extensions. Subject to applicable terms of the Pharmatop License Agreement, BMS and Cadence shall each cooperate with one another to obtain patent term extensions (including any pediatric exclusivity extensions as may be available) or supplemental protection certificates or their equivalents in any country in the Territory with respect to a BMS Patent or Pharmatop Patent in the Territory.

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2.21 Data Exclusivity and Orange Book Listings. Subject to applicable terms of the Pharmatop License Agreement: (i) with respect to data exclusivity periods in the Territory (such as those periods listed in the FDA's Orange Book (including any available pediatric extensions)) Cadence, as appropriate, shall use commercially reasonable efforts consistent with its obligations under Applicable Law in the Territory to seek, maintain and enforce all such data exclusivity periods available for Products, and (ii) with respect to filings in the FDA Orange Book for issued patents for a Product, the appropriate Party shall, consistent with its obligations under Applicable Law in the Territory, list (and update as appropriate) in a timely manner all applicable Patents required to be filed by it, or that it is permitted to file, under such Applicable Law in connection with such Product. At least [***] ([***])[***] prior to an anticipated deadline for the filing of patent listing information for such Patents, the Party making such filing shall notify in writing and consult with the other Party regarding the content of such filing. In the event of a dispute between the Parties as to whether a particular Patent can be listed and/or the content of the filing for such listing, the Parties shall take expedited steps to resolve the dispute as promptly as possible, including seeking advice of an independent legal counsel to guide their decision. The other Party shall provide, consistent with its obligations under Applicable Law in the Territory, reasonable cooperation to the Party making such listing in filing and maintaining such Orange Book (and foreign equivalent) listings.

2.22 Notification of Patent Certifications. A Party receiving any allegation of patent invalidity, unenforceability or non-infringement of a Pharmatop Patent or a BMS Patent pursuant to a paragraph IV patent certification by a Third Party filing an Abbreviated New Drug Application, an application under §505(b)(2) of the FDCA or other similar patent certification by a Third Party, and/or any foreign equivalent thereof in connection with a Product in the Territory shall notify the other Party and shall provide the other Party with copies of all such allegations. Such notification and copies shall be provided to the other Party within five (5) days after receipt of such certification. If and to the extent such allegation relates to a Pharmatop Patent, and subject to the terms of the Pharmatop License Agreement, Cadence shall have the right (but not the obligation) to contest such patent certification in the Territory and initiate and control actions with respect thereto in accordance with Section 2.16, and upon request by Cadence, BMS shall provide reasonable assistance and cooperation at Cadence's expense in any actions reasonably undertaken by Cadence to contest any such patent certification.

2.23 Audit, Inspection and Review. BMS shall have the right [***] during business hours and upon reasonable prior notice to enter, inspect and evaluate that part of any plant or other facility that is engaged in the production, preparation, processing or storage of the Products for compliance with applicable environmental, health and safety regulations, cGMP and other Applicable Law in the Territory and for compliance with the terms of this Agreement; *provided* that such inspections may not be made more than [***] in any [***]; and *provided*, further, that if material corrective measures are necessary, BMS may [***] verify the implementation of such corrective measures. In addition to the other rights of BMS set forth in this Agreement: (i) BMS shall have the same right to inspect and review the activities of Cadence hereunder as Pharmatop has with respect to BMS under the Pharmatop License Agreement, and (ii) BMS shall have the same rights to audit Cadence's (and any of its sublicensee's) activities relevant to this

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Agreement, and to inspect Cadence's (and any sublicensee's) facilities involved in the manufacture of Products, in the same manner as Pharmatop has with respect to BMS's activities and facilities under the Pharmatop License Agreement. Cadence shall cause its sublicensees, suppliers, toll manufacturers and other Third Parties involved in the production, preparation, processing or storage of the Products to provide such access to BMS and shall include an appropriate provision in the applicable contract with any such Third Party providing for such access and shall cause such sublicensees, suppliers, toll manufacturers and other Third Parties to grant such access to BMS. Cadence shall notify BMS within [***] ([***])[***] after receipt of any notice of any inquiry, inspection or legal action by any Drug Regulatory Authority related to any aspect of the production of the Products. Cadence shall provide to BMS, promptly after receipt by Cadence, a copy of the results of any inspection reports and/or legal actions with or by any Drug Regulatory Authority in the Territory relating to such matters. Cadence shall keep BMS informed on an on-going basis as to any proposed responses regarding corrective or remedial actions to be taken as a result of any such inquiry, inspection or legal action, including actions relating to plants and facilities of Third Parties.

2.24 [***] Covenant; [***] Covenant.

(a) Certain Definitions. As used herein:

"**Available** [***]" means, as of any date, [***] determined In Accordance With GAAP [***].

"[***]" means as of any date, [***] determined In Accordance with GAAP [***]:

(1) (A) [***], or

(B) [***], and

(2) (A) [***], (B) [***] and (C) [***],

but only to the extent any such items are not already included in [***].

"[***]" means, as of any date [***] plus [***], in each case determined In Accordance With GAAP.

"[***]" means, as of any date, the [***].

"[***]" means, as of any date, the [***].

"[***]" means, as of any date, the [***].

(b) [***] Covenant. Provided that neither [***]:

(A) [***]; or

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(B) [***].

The foregoing covenant is referred to herein as the "[***] **Covenant**". [***] shall be entitled to temporary and permanent injunctive relief in order to restrain any violation of this Section 2.24(b).

As used herein, the term "[***] **Product**" means (i) [***] and/or (ii) [***].

(c) Termination of Covenant. If on [***] Covenant shall immediately terminate without any action on the part of [***]. Each such date of such termination is referred to herein as a "**Covenant Termination Date**". In the event [***].

During any period in which [***] shall have the right to (i) [***] and (ii) [***].

(d) Permanent Termination of Covenant; [***]. If [***]

(e) Reinstatement of [***]. As set forth in Section 2.1(c), if and when [***].

ARTICLE III — ADDITIONAL COVENANTS

3.1 Annual Operating Plan. Not later than [***]([***])[***] prior to the beginning of each Calendar Year, Cadence shall provide to BMS a written operating plan (each an "**Annual Operating Plan**") setting forth in reasonable detail Cadence's plans for the continued development (including plans for clinical and other studies and plans for obtaining any necessary Approvals in the Territory) and commercialization of the Products for such Calendar Year, together with the related budgets therefore and the estimated timelines for completion of key activities. The initial Annual Operating Plan for 2006 is as Previously Disclosed. Each subsequent Annual Operating Plan shall include a comparable level of information and detail as set forth in such Previously Disclosed Annual Operating Plan (and following first commercial sale of the Product in the Territory, shall include a line item for advertising and promotional expenses). Cadence shall promptly notify BMS in writing of any material change in any such Annual Operating Plan or of any material deviation from any Annual Operating Plan.

3.2 Development, Commercialization and Financial Reports and Consultations.

(a) Quarterly Development and Commercialization Reports. Cadence shall provide quarterly written reports to BMS, within [***]([***])[***]) following the end of each Calendar Quarter, presenting a summary in reasonable detail of the development and commercialization actions taken by Cadence relating to the Products in the Territory and results obtained through the end of such Calendar Quarter and a summary of any material changes to the Development Plan since the last such quarterly report. The report with respect to commercialization activities shall include, among other things, the number of full-time equivalent sales representatives assigned to each Product by Cadence and any co-promotion or

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co-marketing partner or any Third Party with which Cadence has any other arrangement for such Third Party to market, promote or sell any Product.

(b) [***] Reports. [***]:

(i) [***].

(ii) [***];

(iii) [***].

(c) [***] Statements. If [***] shall be In Accordance With GAAP [***].

(d) Calculations, Notifications and Consultations concerning [***]. If [***]:

(i) [***](A) [***] and (B) [***].

(ii) [***].

(iii) [***].

(e) [***] Reports. If on the [***], if any:

(i) [***], within [***]([***])[***]:

(A) [***],

(B) [***],

(C) [***],

(D) [***],

(E) [***],

(F) [***] Section 3.2(b):

(1) the [***] In Accordance With GAAP.

(2) a [***];

(G) a [***].

(ii) [***]:

(A) within [***]([***])[***]; and

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(B) not later than [***] ([***])[***].

In the event [***].

(f) Standards for Determining [***]. All projections used to determine [***] (i) [***] (A) [***] and (B) [***] and (ii) [***]. If any calculation of [***].

(g) Presentations concerning Development and Commercialization Activities. In addition, on reasonable request by BMS, Cadence shall meet with BMS to make presentations concerning the development and commercialization activities taken relating to the Products and to permit BMS to ask reasonable questions and receive answers from Cadence with respect to such matters (including advertising and promotional expenditures and measures of sales effort); *provided*, *however*, that Cadence shall not be required to make more than [***] in any Calendar Year. [***].

(h) Date of NDA Approval. Cadence shall notify BMS in writing as soon as reasonably practicable of the expected date of approval by the FDA of the NDA with respect to any Product in the United States and shall notify BMS of any such Approval not later than [***]([***])[***] following the date on which Cadence receives written notice of such approval or receives an "approvable letter" from the FDA with respect to any such NDA.

(i) Correspondence with Pharmatop. Each Party shall provide to the other Party copies of all material correspondence and reports provided by it to Pharmatop or by Pharmatop to it after the Effective Date with respect to the Products in the Territory.

3.3 Development Responsibilities and Costs.

(a) Cadence's initial plan (current as of the Execution Date) for the development of the Products, including the clinical and other studies it contemplates as of the date of this Agreement in order to obtain Approval of the Products in the United States and related budgets and timelines as of the Execution Date as the same may be amended from time to time in accordance with Section 3.3(c) (collectively, the "**Development Plan**") has been Previously Disclosed.

(b) Cadence shall have sole responsibility for, and shall bear the cost of the development and commercialization of the Products in the Territory. Cadence shall develop and commercialize the Products in compliance with all Applicable Law. Without limiting the foregoing, Cadence shall cause all Products manufactured, labeled, advertised and sold by it and its Affiliated Companies and sublicensees or on its or their behalf to comply in all material respects with Applicable Law.

(c) Without limiting Cadence's obligations under the Pharmatop License Agreement, Cadence shall use reasonable commercial efforts to pursue, fund and complete the development of the Products as set forth in the Development Plan as modified from time to time in accordance with this Agreement (including obtaining all necessary Approvals in the

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Territory). In the event that the results of clinical or other studies or communications from Drug Regulatory Authorities require a material modification to the Development Plan, Cadence shall consult with BMS concerning such results or communications and potential changes to the Development Plan that would offer a reasonable prospect for obtaining Approvals on a reasonably expeditious basis. Any modification to the Development Plan that involves [***]. No such consent by BMS shall relieve Cadence of any obligation under the Pharmatop License Agreement.

3.4 Obligations in respect of the Pharmatop License Agreement. Notwithstanding any other provision of this Agreement, Cadence (i) hereby unconditionally assumes and agrees during the term of this Agreement to perform as and when due all the obligations of BMS under the Pharmatop License Agreement that relate to the Territory (except (A) to the extent such obligations were required to be performed by BMS prior to the Effective Date and (B) for any obligation to indemnify Pharmatop for any breach by BMS of any such obligations prior to the Effective Date), the BMS Rights or the exercise of the rights sublicensed to Cadence under this Agreement and (ii) shall comply with all the terms and conditions of the Pharmatop License Agreement that relate to the Territory, the BMS Rights or the exercise of the rights sublicensed to Cadence under this Agreement, it being understood that Cadence shall be obligated to perform such obligations and comply with such terms and conditions in respect of its activities under this Agreement and the Pharmatop License Agreement but shall not have any obligation to cause BMS to perform such obligations or to cause BMS to comply with such terms and conditions. Without limiting the foregoing, Cadence shall be obligated to perform and comply, but shall not have any liability with respect to any failure by BMS (but not its own failure) to perform and comply, with Section 4.6(a), Article 10 or Article 12 of the Pharmatop License Agreement. Without limiting any other right or remedy of BMS under this Agreement and in order to prevent, ameliorate, mitigate or cure a breach of the Pharmatop License Agreement, in the event that Cadence fails to perform any of such obligations under the Pharmatop License Agreement (except to the extent that a breach by BMS of its obligations under this Agreement or the Pharmatop License Agreement or any other act or omission by BMS prevents such performance by Cadence or any of its Affiliated Companies, sublicensees, contractors or agents), which failure is not cured within ninety (90) days after written notice from BMS, BMS may perform such obligation on behalf of Cadence at Cadence's expense, and [***] *provided*, *however*, that this Section 3.4 shall not authorize BMS to control the conduct of any clinical trial or study under the Development Plan. This Agreement sets forth the obligations of the Parties *inter se*, and nothing in this Agreement (including any standard of effort set forth herein) shall limit or modify the obligations of the Parties assumed under the Pharmatop License Agreement.

3.5 Certain Rights and Obligations under the Pharmatop License Agreement.

(a) BMS shall provide Cadence with copies of written communications received by BMS from Pharmatop after the Effective Date pursuant to Section 2.2 of the Pharmatop License Agreement with respect to the results of research and development work performed by Pharmatop and concerning any inventions or Know-How (as defined in the Pharmatop License Agreement) made by Pharmatop relating to the Products.

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(b) If Pharmatop provides to BMS a copy of any application, filing or request for review and comment by BMS, BMS shall provide a copy of each application, filing or request to Cadence promptly after receipt thereof, and shall give reasonable consideration to any comments of Cadence in any comments provided by BMS to Pharmatop.

(c) If Pharmatop provides to BMS a quarterly written patent report pursuant to Section 5.1(d) of the Pharmatop License Agreement, BMS shall provide a copy of such report to Cadence within a reasonable period of time after receipt thereof, provided that BMS may redact information relating to Patents outside the Territory.

(d) To the extent that Pharmatop is obligated to indemnify sublicensees of BMS pursuant to Section 12.1 of the Pharmatop License Agreement and Cadence desires to assert a claim for indemnification pursuant to such section, Cadence shall have the right, to the extent permitted by the Pharmatop License Agreement, to assert such claim for indemnification against Pharmatop. In the event Cadence is not permitted by the Pharmatop License Agreement to assert such claim directly against Pharmatop, BMS shall cooperate with Cadence (at Cadence's expense and subject to Section 7.7 of this Agreement) to permit Cadence to assert such claim, including, if necessary, allowing Cadence to bring such claim in the name of BMS, unless BMS has a reasonable objection to such procedure; *provided* that Cadence shall give BMS written notice of any proposed settlement with Pharmatop and a reasonable opportunity to review and comment on such proposed settlement, and Cadence shall not enter into any settlement with Pharmatop that could adversely affect the rights of BMS hereunder or under the Pharmatop License Agreement without the prior written consent of BMS in its sole discretion.

(e) To the extent that BMS is permitted to assert against Pharmatop a claim on behalf of Cadence (as BMS's sublicense) for (i) indemnification and defense pursuant to Section 3.2 of the Pharmatop License Agreement based on any use made by Pharmatop, its Affiliated Companies or its or their licensees of the Registrational Information or with respect to the breach of any representation, warranty or covenant of Pharmatop contained in the Pharmatop License Agreement or (ii) for specific performance of any covenant of Pharmatop contained in the Pharmatop License Agreement, BMS shall use reasonable efforts to cooperate with Cadence (at Cadence's expense and subject to Section 7.7 of this Agreement) to permit Cadence to assert such claim or request for specific performance by Pharmatop, including, if necessary, allowing Cadence to bring such claim in the name of BMS, unless BMS has a reasonable objection to such procedure; *provided* that Cadence shall give BMS written notice of any proposed settlement with Pharmatop and a reasonable opportunity to review and comment on such proposed settlement, and Cadence shall not enter into any settlement with Pharmatop that could adversely affect the rights of BMS hereunder or under the Pharmatop License Agreement without the prior written consent of BMS in its sole discretion. BMS makes no representation or warranty as to whether BMS is permitted to assert any such claim on behalf of Cadence.

(f) Whenever Cadence provides any report, notice or other communication to Pharmatop in compliance with of any of the obligations under the Pharmatop License Agreement assumed by Cadence pursuant to Section 3.4 (e.g., the obligation to provide quarterly updates pursuant to Section 4.3 of the Pharmatop License Agreement), Cadence shall provide a copy of

such report or notice to BMS at least [***] ([***])[***] prior to the time such report, notice or communication is provided to Pharmatop or, if it is impracticable to provide such copy at least [***]([***])[***]) ahead of time, Cadence shall provide such copy to BMS as early as practicable prior to the provision thereof to Pharmatop.

(g) BMS agrees that it shall, if reasonably requested by Cadence and at Cadence's expense, take reasonable efforts to enforce the material obligations of Pharmatop under the Pharmatop License Agreement as it relates to the Territory, including obligations under Article 5 of the Pharmatop License Agreement.

(h) BMS covenants that it shall not agree or consent to any amendment, supplement or other modification to the Pharmatop License Agreement or exercise any other right of agreement or consent thereunder, in each case as it relates to the Territory, unless Cadence has consented in its sole discretion in writing to the same.

(i) If Cadence is not in breach of any of its material obligations under this Agreement, BMS shall not terminate the Pharmatop License Agreement (either unilaterally or by mutual agreement with Pharmatop) with respect to any country in the Territory without the prior written consent of Cadence, which consent may be given or withheld in Cadence's sole discretion. If Cadence is in breach of any of its material obligations under this Agreement, BMS may terminate the Pharmatop License Agreement in its sole discretion. If BMS determines to terminate the Pharmatop Agreement, BMS shall consult with Cadence in advance to the extent reasonably practical.

(j) BMS shall not market a Competing Product (as defined in the Pharmatop License Agreement) in any country in the Territory during the Pharmatop Royalty Term for such country without obtaining a written waiver from Pharmatop of the consequences of such marketing under Section 7.4 of the Pharmatop License Agreement.

(k) Cadence shall provide written notice to BMS of any use by Pharmatop of which Cadence is aware of any Registrational Information of Cadence as to which BMS has the right [***] from Pharmatop as contemplated by Sections 3.1 and 3.3 of the Pharmatop License Agreement, and, if requested by Cadence, BMS shall thereafter request from Pharmatop [***] contemplated by Sections 3.1 and 3.3 of the Pharmatop License Agreement. If BMS [***] from Pharmatop for the use by Pharmatop of any Cadence Registrational Information as contemplated by Section 3.1 and 3.3 of the Pharmatop License Agreement, BMS shall [***] over to Cadence within [***]([***])[***] after the receipt thereof.

3.6 Conduct of Clinical Trials of Products by Cadence in Clinical Study Countries. In the event (i) Cadence is unable (or reasonably believes that it will be unable) to recruit in the Territory sufficient clinical study subjects to conduct clinical trials necessary for Approval of the Products in the Territory due to US treatment parameters that would significantly delay or impair Cadence's ability to recruit patients or otherwise complete the study on a timely basis and (ii) Cadence desires to conduct all or a portion of such clinical study in any of the Clinical Study Countries where BMS retains rights to commercialize the Product, then Cadence shall notify

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BMS in writing and provide BMS with a copy of the clinical trial study design and protocol(s) for the conduct of such clinical study in the Clinical Study Countries in which it plans to conduct such study and a statement of the proposed number of patients proposed to be recruited in each city in such Clinical Study Countries. Cadence shall not conduct any such study without the prior written consent of BMS and the license provided for below, which consent and license shall not be unreasonably withheld if: (i) such study design and protocols are reasonably satisfactory to BMS (and its Affiliated Companies in the Clinical Study Countries) and (ii) such study is lawful to conduct in the regulatory jurisdictions where such study will be conducted and meets prevailing ethical standards and guidelines (including BMS internal policies) relating to the conduct of clinical trials and the use of the Product. In the event BMS consents to the conduct of such study in a Clinical Study Country, BMS shall cause its applicable Affiliated Companies to grant a limited license or sublicense to Cadence's Affiliated Company in such Clinical Study Country where the BMS Affiliated Companies have rights to grant such license or sublicense solely for the purpose of permitting such clinical study solely in accordance with such study design and protocol; *provided* that (1) not later than [***] ([***])[***] after [***] during such clinical trial, Cadence shall provide BMS with a written report of the number of vials of Product administered to patients in such clinical study in each country outside the Territory where such study is conducted and [***], and (2) such clinical study shall be subject to such reasonable limitations as may be reasonably satisfactory to BMS to avoid undue concentration of study subjects in a particular city.

Neither BMS nor any of its Affiliated Companies shall have any duties or responsibilities in connection with such clinical trial, other than (to the extent applicable) the supply of Clinical Testing Products pursuant to the Clinical Supply Agreement, except that this provision shall not affect the obligations of BMS and Cadence to exchange safety information as provided in Section 2.15 and the Safety Data Exchange Agreement to be entered into pursuant to Section 2.15.

In the event Cadence desires to conduct all or a portion of such clinical study in [***], then Cadence may request that BMS consent to the inclusion of [***] as an additional Clinical Study Country. In the event (i) Cadence is unable (or reasonably believes that it will be unable) to recruit in the Territory and the Clinical Study Countries sufficient clinical study subjects to conduct clinical trials necessary for Approval of the Products in the Territory due to treatment parameters in the US and the Clinical Study Countries that would significantly delay or impair Cadence's ability to recruit patients or otherwise complete the study on a timely basis and (ii) Cadence desires to conduct all or a portion of such clinical study in any of the other countries where BMS retains rights to commercialize the Product, then Cadence may request that BMS consent to the inclusion of up to [***]([***]) additional countries as Clinical Study Countries; provided that Cadence may not request the inclusion of more [***]([***]) additional countries as Clinical Study Countries, including [***], over the term of this Agreement. In the event Cadence makes such request, BMS shall cause its Alliance Manager to use reasonable efforts to obtain the necessary internal BMS consents and approvals of the applicable BMS Affiliated Company in the applicable country to the inclusion of such country as a Clinical Study Country, which consents and approvals may be given or withheld in the sole discretion of such BMS

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Affiliated Company. In the event such consents and approvals are obtained, the Parties shall amend the list of Clinical Study Countries to include such country.

Cadence acknowledges that as of the Effective Date, BMS does not commercialize, and has not effected the registration of, Products in certain of the Clinical Study Countries and other countries where Cadence may desire to conduct clinical trials or studies. Nothing in this Agreement shall obligate BMS or any of its Affiliated Companies (i) to maintain, retain, obtain or seek any rights in any Clinical Study Country or any other country where Cadence may desire to conduct clinical trials or studies or (ii) to make, maintain, refile, renew or reinstate any Regulatory Filing in any such country.

3.7 Conduct of US or Canadian Clinical Trials of Products by BMS. In the event BMS is unable (or reasonably believes that it will be unable) to recruit outside the Territory sufficient clinical study subjects to conduct clinical trials necessary for Approval of the Products in any jurisdiction outside the Territory due to local treatment parameters that would significantly delay or impair BMS's ability to recruit patients or otherwise complete the study on a timely basis and BMS desires to conduct any clinical trials or studies of Products in the Territory, then BMS shall notify Cadence in writing and provide Cadence with a copy of the clinical trial study design and protocol(s) for the conduct of such clinical trial in the Territory and a statement of the proposed number of patients proposed to be recruited in each city in the Territory. BMS shall not conduct such study without the prior written consent of Cadence, which shall not be unreasonably withheld if: (i) such study design and protocols are reasonably satisfactory to Cadence; and (ii) such study is lawful to conduct in the country in the Territory where such study will be conducted and meets prevailing ethical standards and guidelines (including Cadence internal policies) relating to the conduct of clinical trials and the use of the Product. In the event Cadence consents to the conduct of such study in the Territory, BMS may conduct such study solely in accordance with such study design and protocol; *provided* that:

(A) if such clinical trial or study will take place prior to the launch of the Product by Cadence in the country where BMS proposes to conduct such clinical trial or study, such study is subject to such reasonable limitations designed to avoid impairing Cadence's ability to recruit patients for its own contemporaneous clinical trials; or

(B) if such clinical trial or study will take place after the launch of the Product by Cadence in the country where BMS proposes to conduct such clinical trial or study, then (1) not later than [***] ([***])[***] after [***] during such clinical trial, BMS shall provide Cadence with a written report of the number of vials of Product administered to patients in such clinical study in each country in the Territory where such study is [***], and (2) such clinical study shall be subject to such reasonable limitations as may be reasonably satisfactory to Cadence to avoid undue concentration of study subjects in a particular city in the Territory.

Neither Cadence nor any of its Affiliated Companies shall have any duties or responsibilities in connection with such clinical trial by BMS or its Affiliated Companies, except that this provision shall not affect the obligations of BMS and Cadence to exchange safety

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information as provided in Section 2.15 and the Safety Data Exchange Agreement to be entered into pursuant to Section 2.15.

3.8 Existing BMS Suppliers. [***].

ARTICLE IV — FINANCIAL TERMS

4.1 Payments to BMS. In partial consideration of the rights granted to Cadence hereunder:

(a) On the Effective Date, Cadence shall pay to BMS Twenty-Five Million Dollars ($25,000,000).

(b) Within ten (10) Business Days following the [***], Cadence shall pay to BMS [***]([***]). Such amount shall be paid only once, regardless of [***].

(c) Within ten (10) Business Days after [***], Cadence shall pay to BMS an amount equal to [***]([***])[***]; *provided*, *however*, that such payment shall not exceed [***]([***]).

(d) Not later than [***]([***][***] following the [***] in which the [***], Cadence shall pay to BMS [***]([***]); *provided*, *however*, if [***], Cadence shall pay such amount to BMS not later than [***]([***])[***] following the [***].

(e) In addition to the payment provided for in Section 4.1(d) above, not later than [***]([***][***] following the [***] in which the [***], Cadence shall pay to BMS [***]([***]); *provided*, *however*, if such [***], Cadence shall pay such amount to BMS not later than [***]([***]) [***].

(f) During the Pharmatop Royalty Term, Cadence shall pay to BMS royalties calculated at the rate of:

(i) [***] of that portion of aggregate Net Sales in each Calendar Year that is [***],

(ii) [***] of that portion of aggregate Net Sales in each Calendar Year that is [***] and up to and including Net Sales of [***], and

(iii) [***] of that portion of aggregate Net Sales in each Calendar Year that is [***],

with the aggregate amount of Royalties payable pursuant to clauses (i) – (iii) above [***] by the amount of the [***] and any [***] and [***] of this Agreement and the terms of the Pharmatop License Agreement (which [***] provided for in [***]). In the event the amount of [***] and any [***] with respect to any [***].

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In the event the royalties payable to Pharmatop are reduced in respect of any Combination Product (as defined in the Pharmatop License Agreement) sold by Cadence or its Affiliated Companies or sublicensees in the Territory, the Royalties payable to BMS pursuant to this Section 4.1(f) in respect of such Combination Product shall be reduced (dollar-for-dollar) by the amount of the reduction in such royalties payable to Pharmatop.

[***].

(g) During the BMS Patent Royalty Term, Cadence shall pay to BMS royalties calculated at the rate of:

(i) [***] of that portion of aggregate Net Sales of Products that are BMS Patent Products in each Calendar Year that is [***],

(ii) [***] of that portion of aggregate Net Sales of Products that are BMS Patent Products in each Calendar Year that is in [***] and up to and including Net Sales of such Products of [***], and

(iii) [***] of that portion of aggregate Net Sales of Products that are BMS Patent Products in each Calendar Year that is [***].

[***].

The Royalties payable by Cadence to BMS pursuant to this Section 4.1(g) shall be [***] for any Calendar Quarter if:

(i) [***]

(ii) [***]

(iii) [***]

but only to the extent such Royalties are [***] as of the date of such event.

[***].

(h) The royalties payable pursuant to Section 4.1(f) and Section 4.1(g) are referred to herein as "**Royalties**"). Such Royalties shall be paid quarterly as provided in Section 4.7 of this Agreement.

(i) [***].

4.2 Reduction of Certain Milestone Payments.

(a) If (i) after the Effective Date, a Third Party claim or action challenging the Pharmatop Patents succeeds so as to deprive Pharmatop (and therefore BMS and Cadence) of any of its rights under the Pharmatop Patents in the United States or (ii) after the Effective Date, Pharmatop or BMS is unable to maintain, or a material alteration of the scope or content occurs with respect to, any of the claims under any of the Pharmatop Patents, in the United States, then

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(1) the payment provided for in Section 4.1(b) shall, if not yet earned, be reduced to [[***] ([***]) and (2) the payment provided for in Section 4.1(c) shall, if not yet earned, be reduced by [***].

(b) If a Third Party should market in the United States after the Effective Date a parenterally-administered liquid solution product, in a stable and readily injectible form, that (i) contains paracetamol and one or more other analgesic ingredients, (ii) uses any of the Technology contained within any issued claim of any Pharmatop Patent in such country or any Pharmatop Know-How, and (iii) is not considered to infringe any Pharmatop Patent or BMS Patent in such country (whether by judicial determination or settlement, by joint agreement of either BMS and Pharmatop or BMS and Cadence or by the failure of Pharmatop, BMS and Cadence to prosecute such Third Party for infringement under Section 6.5 of the Pharmatop License Agreement or Section 2.16 of this Agreement), then (1) the payment provided for in Section 4.1(b) shall, if not yet earned, be reduced to [***]([***]) and (2) the payment provided for in Section 4.1(c) shall, if not yet earned, be reduced by [***]; *provided* that (A) during the pendency of any legal action against such Third Party with respect to the possible infringement of a Pharmatop Patent or BMS Patent the amount of such reduction (the "**Retained Sum**") shall be temporarily retained by Cadence until such litigation ends, (B) if the outcome of the litigation is the invalidation of the Pharmatop Patents so that the Third Party is free to sell such product in the United States, [***] and (C) if the outcome of the litigation is not as described in clause (B) above, [***].

(c) The reductions provided for in Sections 4.2(a) and 4.2(b) shall not be [***] and (i) the aggregate amount of the reduction in the payment provided for in Section 4.1(b) shall not exceed [***]([***]) and (ii) the aggregate amount of the reduction in the payment provided for in Section 4.1(c) shall not exceed [***].

(d) Notwithstanding the foregoing Sections 4.2(a) and 4.2(b), if aggregate Net Sales during any Calendar Year [***], then (i) for the [***] such Calendar Year Cadence shall pay to BMS [***]([***]) of the aggregate amount of the reduction [***], (ii) for the [***] such Calendar Year Cadence shall pay to BMS an [***]([***]) of the aggregate [***] and (iii) for the [***] such Calendar Year Cadence shall pay to BMS an [***]([***]) of the aggregate [***]. Such [***] shall be made not later than [***]([***])[***] following the applicable Calendar Year.

4.3 Payments by Cadence to Pharmatop. In partial consideration of the rights granted to Cadence hereunder and without limiting any of the other obligations assumed by Cadence under the Pharmatop License Agreement:

(a) Within ten (10) business days (as such term is used in the Pharmatop License Agreement) following the [***], Cadence shall pay to Pharmatop [***] ([***]) in satisfaction of the obligation set forth in Section 7.1(b) of the Pharmatop License Agreement.

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(b) Cadence shall pay to Pharmatop all royalties payable to Pharmatop pursuant to the Pharmatop License Agreement with respect to the Territory in the manner provided for in such agreement.

(c) If for any period a Guaranteed Payment is due under the Pharmatop License Agreement, Cadence shall pay to Pharmatop the amount of such Guaranteed Payment in the manner provided for in the Pharmatop License Agreement.

(d) Cadence shall provide to BMS evidence reasonably satisfactory to BMS of each such payment.

(e) The amount of the payments made to BMS under this Agreement shall be Confidential Information of BMS and of Cadence. Cadence shall not disclose to Pharmatop in the reports provided by Cadence to Pharmatop pursuant to the Pharmatop License Agreement or otherwise the amount of any payments to BMS hereunder.

4.4 Manner of Payment. All payments to be made to BMS or Cadence hereunder shall be paid in Dollars by wire transfer of immediately available funds to a bank account designated in writing by the payee not less than [***] ([***])[***] prior to the required payment date.

4.5 Interest. Any payment by Cadence to BMS hereunder not made as and when due shall bear interest at the rate of [***]([***]) per annum, compounded daily, from the due date to the date of payment.

4.6 Expenses; Taxes.

(a) *Expenses*. Except as expressly set forth in this Agreement, all costs and expenses incurred in connection with the preparation and negotiation of this Agreement and the other Transaction Documents and the transactions contemplated hereby shall be paid by the Party incurring such expense. Each Party shall bear the fees and expenses of any agent, broker, investment banker, finder or other Person engaged by it or any of its Affiliated Companies in connection with the transactions contemplated by this Agreement and the other Transaction Documents.

(b) *Transfer Taxes*. Any Transfer Tax, if any, applicable to the transactions contemplated by this Agreement shall be borne and paid by Cadence.

(c) *Tax Withholding*. The withholding tax, duties, and other levies (if any) applied by a government of any country of the Territory on payments made by Cadence to BMS hereunder shall be borne by BMS. Cadence, its Affiliated Companies and sublicensees shall cooperate with BMS to enable BMS to claim exemption therefrom under any double taxation or similar agreement in force, shall provide to BMS proper evidence of payments of withholding tax, and shall assist BMS by obtaining or providing in as far as possible the required documentation for the purpose of BMS's tax returns.

4.7 Sales Reports and Royalty and Other Payments. The Royalties payable under Section 4.1 shall be calculated and will be payable quarterly for sales made in each Calendar

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Quarter in the Royalty Term and the BMS Patent Royalty Term, as applicable. Cadence shall prepare and send to BMS within [***] ([***])[***] after the end of each Calendar Quarter ([***]([***])[***] after the last Calendar Quarter in a Calendar Year to allow for additional time to determine any adjustments required to be made on an annual basis) a detailed statement, country by country and by dosage and pharmaceutical form, of the Net Sales (and, during the BMS Patent Royalty Term, the Net Sales of BMS Patent Products), the calculation of the Royalties payable under Section 4.1, the calculation of any amounts payable to Pharmatop pursuant to the Pharmatop License Agreement with respect to the Territory and the calculation of any reduction in the Royalties or other amounts deducted from the payments to BMS as contemplated by Section 4.1 together with a description of any facts or circumstances that Cadence believes entitles it to a reduction in, or deduction from, the Royalties payable under this Agreement as contemplated by Section 4.1 and information reasonably satisfactory to BMS to permit the calculation of any such reduction or deduction, accompanied by payment in accordance with Section 4.4 of the Royalties due BMS. Cadence shall provide to BMS a copy of each statement of Net Sales provided by Cadence to Pharmatop contemporaneously with the provision of such statement to Pharmatop, which statements shall not disclose the Royalties or other amounts payable to BMS under this Agreement.

4.8 Sales Record Audit. Cadence shall keep, and shall cause each of its Affiliated Companies, sublicensees, distributors and agents to keep, full and accurate books of accounting In Accordance With GAAP containing all particulars that may be necessary for the purpose of calculating all Royalties payable to BMS. Such books of accounting (including those of Cadence's Affiliated Companies, sublicensees, distributors and agents) shall be kept at their principal place of business, together with all necessary supporting data. BMS may, on reasonable (but not less than [***]([***])[***]) written notice to Cadence, have the calculation of the Royalties payable under Section 4.1 and any calculation or reconciliation statement provided pursuant to Section 4.7 audited at its own expense by an accounting firm selected by BMS that is reasonably acceptable to Cadence and that is bound by a written agreement of confidentiality to Cadence. The auditor's assignment will be limited to reviewing the accuracy of a calculation or reconciliation statement sent by Cadence, and to disclosing only if there are any errors in payment and, if an error exists, the amount of such error(s) and the calculation thereof, and no additional or any other information. If an audit discloses that the amount of Royalties owed to BMS was understated by more than [***]([***][***], then [***] must reimburse [***] for the cost of the audit, in addition to paying the additional Royalties together with interest on the additional amounts, calculated from the date on which the additional amount should have been paid, as provided in Section 4.5. Such audit rights may be exercised only once in any given Calendar Year, and any such audit shall apply [***].

ARTICLE V — MUTUAL COVENANTS OF THE PARTIES

5.1 Publicity. Neither Party shall issue any public release or announcement concerning this Agreement or the transactions contemplated hereby without the prior consent of the other Party, except to the extent required by Applicable Law or the rules or regulations of any

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United States or foreign securities exchange (or inter-dealer quotation system) or regulatory commission (in which case such Party shall, to the extent practicable, allow the other Party reasonable time to comment on such release or announcement in advance of such issuance); *provided*, *however*, that prior to any such disclosure, such Party shall use reasonable efforts to give advance notice to the other Party of the timing and content of such disclosure. Nothing contained in this Section 5.1 shall prevent either Party from making internal announcements to its and its Affiliated Companies' employees.

5.2 Confidentiality.

(a) *Confidentiality Obligations*. Each Party recognizes that the other Party's Confidential Information constitutes highly valuable and proprietary confidential information and material. Each Party agrees that until the date that is [***]([***])[***] after the date of disclosure to it of any given item of Confidential Information, it will keep confidential, and will cause its officers, employees, consultants, agents, Affiliated Companies and sublicensees to keep confidential, such Confidential Information disclosed to it by the other Party; *provided* that if the Pharmatop License Agreement requires a longer period of confidentiality with respect to any Confidential Information of Pharmatop disclosed to a Party, such Party shall also observe such longer period of confidentiality in accordance with the Pharmatop License Agreement. Neither BMS nor Cadence nor any of their respective employees, consultants, Affiliated Companies or sublicensees shall use Confidential Information of the other Party for any purpose whatsoever except as otherwise expressly permitted by this Agreement.

(b) *Limited Disclosure*. Each Party agrees that any disclosure of the other Party's Confidential Information to any officer, employee, consultant, agent or Affiliated Company of such Party, shall be made only if and to the extent necessary to carry out its obligations and responsibilities, or to exercise its rights, under this Agreement, shall be limited to the maximum extent possible consistent with such rights and responsibilities, and shall only be made to persons who are bound by their employment (or other) contract (or, in the case of counsel or other licensed professionals, by applicable rules of professional conduct) to maintain the confidentiality thereof and not to use such Confidential Information except as expressly permitted by this Agreement. Each Party further agrees not to disclose or transfer the other Party's Confidential Information to any Third Party under any circumstance without the prior written approval from the other Party (such approval not to be unreasonably withheld, delayed or conditioned if such Confidential Information is appropriately protected by the recipient), except as otherwise required by law, and except as otherwise expressly permitted by this Agreement. Each Party shall take such action, and shall cause its officers, employees, consultants, agents, Affiliated Companies and sublicensees to take such action, to preserve the confidentiality of the other Party's Confidential Information as it would customarily take to preserve the confidentiality of its own Confidential Information, using a level of care that shall not under any circumstances be less than reasonable care. Each of the Receiving Party's Affiliated Companies shall be bound by the confidentiality obligations set forth in this Section 5.2 for the entire period

*** Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

set forth in Section 5.2(a), including any entity that becomes an Affiliated Company after the date of the relevant disclosure by the Disclosing Party, whether or not such Affiliated Company ceases to be an Affiliated Company of the Receiving Party during the term of the confidentiality obligations hereunder; and the Receiving Party shall be responsible for any unauthorized disclosure of such Confidential Information by any of its Affiliated Companies to which such Confidential Information is disclosed, including after such company ceases to be an Affiliated Company.

(c) *Authorized Disclosure*. The Receiving Party may disclose Confidential Information belonging to the other Party to the extent (and only to the extent) such disclosure is reasonably necessary in the following instances:

(i) as reasonably necessary for filing or prosecuting Patents as contemplated by this Agreement;

(ii) as reasonably necessary for Regulatory Filings and other communications with Drug Regulatory Authorities as contemplated by this Agreement;

(iii) as reasonably necessary for prosecuting or defending litigation;

(iv) subject to Section 5.2(e) of this Agreement, as reasonably necessary to comply with Applicable Law (including the rules and regulations of the Securities and Exchange Commission or any national securities exchange) and with judicial process, if in the reasonable opinion of the Receiving Party's counsel, such disclosure is necessary for such compliance; and

(v) in connection with the performance of this Agreement and solely on a "reasonable need to know basis", to Affiliated Companies, potential collaborators (including potential co-marketing and co-promotion contractors), sublicensees, potential sublicensees, research collaborators, potential investment bankers, lenders, investors, employees, consultants, medical professionals participating in the conduct of clinical trials, 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 Section 5.2; *provided*, that in the case of disclosure to academic researchers and academic institutions, the confidentiality period hereunder shall be the longest such period as the applicable Party may reasonably negotiate with such researchers or institutions; and *provided*, that the Receiving Party shall remain responsible for any failure by any Person who receives Confidential Information pursuant to this Section 5.2 to treat such Confidential Information as required under this Section 5.2;

provided, however, that nothing in this Agreement shall limit or affect the Parties' confidentiality obligations under the Pharmatop License Agreement.

If and whenever any Confidential Information is disclosed in accordance with this Section 5.2, such disclosure shall not cause any such information to cease to be Confidential Information except to the extent that such disclosure results in a public disclosure of such information (otherwise than by breach of this Agreement). With respect to disclosures under Sections 5.2(c)(iii) and 5.2(c)(iv), where reasonably possible, the Receiving Party shall notify the

Disclosing Party of the Receiving Party's intent to make such disclosure sufficiently prior to making such disclosure so as to allow the Disclosing Party adequate time to take whatever action it may deem appropriate to protect the confidentiality of the information, and the Receiving Party shall further reasonably assist the Disclosing Party to obtain confidential treatment of such Confidential Information.

The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. For the avoidance of doubt, this Section 5.2 shall in no way prevent a Party from disclosing the existence of this Agreement or any terms of this Agreement in order to seek legal advice whenever deemed appropriate by such Party or to enforce such Party's rights under this Agreement, whether through arbitration proceedings, court proceedings or otherwise, or to defend itself against allegations or claims relating to this Agreement, or to disclose such terms as it may be advised in written opinion of outside counsel are required to be disclosed to comply with Applicable Law (a copy of which opinion shall be provided to the other Party).

(d) *Employees and Consultants*. Each Party hereby represents that all of its employees and any consultants to such Party or its Affiliated Companies that will have access to the Confidential Information of the other Party shall be bound by written obligations (or, in the case of counsel or other licensed professionals, bound by rules of professional conduct) to maintain such information in confidence consistent with the terms of this Agreement and not to use such information except as expressly permitted herein. Each Party agrees to enforce confidentiality obligations to which its employees and consultants (and those of its Affiliated Companies) are obligated with respect to any such Confidential Information and agrees to be responsible for any breach or violation by such Persons of any provisions of this Agreement or the Pharmatop License Agreement relating to the confidentiality or non-use of any such Confidential Information by such Persons.

(e) *Securities Filings*. In the event either Party proposes to file with the Securities and Exchange Commission or the securities regulators of any state or other jurisdiction a registration statement or any other disclosure document which describes or refers to this Agreement under the Securities Act of 1933, as amended, the Exchange Act, or any other Applicable Law relating to securities matters, that Party shall notify the other Party of such intention and shall provide such other Party with a copy of relevant portions of the proposed filing not less than five (5) Business Days prior to such filing (and any revisions to such portions of the proposed filing a reasonable time prior to the filing thereof), including any exhibits thereto relating to this Agreement, and shall use reasonable efforts to obtain confidential treatment of any information concerning this Agreement that such other Party requests be kept confidential, and shall only disclose Confidential Information which it is advised by counsel or the Securities and Exchange Commission is legally required to be disclosed. No such notice shall be required under this Section 5.2(e) if the substance of the description of or reference to this Agreement contained in the proposed filing has been included in any previous filing made by either Party hereunder or otherwise approved by the other Party.

(f) *Academic Publications*. The Parties recognize that independent investigators have been engaged, and will be engaged in the future, to conduct clinical trials and studies of the Products. The Parties recognize that such investigators operate in an academic

environment and may release information regarding such studies in a manner consistent with academic standards and as further provided in this paragraph. In the event that any such independent investigator of a Party desires to publish any abstract, manuscript or article or make any presentation (including verbal presentations) or other publication that includes any Confidential Information of the other Party, such Party shall (i) require such independent investigator to provide the other Party and its patent counsel the opportunity to review any proposed abstract, manuscript, article, presentation (including verbal presentations) or other publication at least thirty (30) days prior to its intended submission for publication or such presentation and (ii) upon request of the other Party not to submit any such abstract, article or manuscript for publication or not to make such presentation for such additional reasonable period of time (but not to exceed an additional thirty (30) days) to enable the other Party to secure patent protection for any material in such publication which it believes to be patentable or to consider the implications of publication on eventual commercialization.

(g) *Additional Confidentiality Obligations under the Pharmatop License Agreement*. The provisions of this Section 5.2 are in addition to and not in limitation of any applicable obligation of confidentiality under the Pharmatop License Agreement.

5.3 Restrictions Binding on Affiliated Companies and Investors. Each Party shall require each of its Affiliated Companies and investors to which Confidential Information of the other Party is disclosed as permitted hereunder to comply with the covenants and restrictions set forth in Sections 5.1 and 5.2 as if each such Affiliated Company and each such investor were a Party to this Agreement and shall be fully responsible for any breach of such covenants and restrictions by any such Affiliated Company or investor.

5.4 Alliance Management. Each of the Parties shall appoint one senior representative who possesses a general understanding of development, regulatory and commercialization issues to act as its Alliance Manager. The role of the Alliance Manager is to act as a single point of contact between the Parties to assure a successful working relationship. Each Party may change its designated Alliance Manager from time to time upon written notice to the other Party. Any Alliance Manager may designate a substitute to temporarily perform the functions of that Alliance Manager.

5.5 Liens.

(a) Cadence shall not during the term of this Agreement (i) grant any Lien (excluding any permitted sublicenses) with respect to this Agreement or any of the rights licensed or sublicensed to it under this Agreement or (ii) permit such a lien, security interest or other encumbrance (excluding any permitted sublicenses) to attach to this Agreement or any of such rights. For sake of clarity, any breach of this Section 5.5(a) by Cadence that is not cured within ten (10) Business Days after written notice thereof shall be deemed a material breach of this Agreement.

(b) BMS shall not during the term of this Agreement (i) grant any Lien (excluding any permitted sublicenses) with respect to any of the BMS Rights, BMS Patents or BMS Know-How that would prevent BMS from granting the licenses hereunder or performing its obligations under this Agreement, or (ii) permit such a Lien to attach to the BMS Rights,

BMS Patents or BMS Know-How. For sake of clarity, any breach of this Section 5.5(b) by BMS that is not cured within ten (10) Business Days after written notice thereof shall be deemed a material breach of this Agreement.

5.6 BMS Confidential Disclosure Agreements. Promptly following the Effective Date, BMS shall assign to Cadence the Confidential Disclosure Agreements executed by BMS and the other potential sublicensees considered by BMS in connection with the sublicense of the BMS Rights contemplated hereby, to the extent assignable; *provided*, *however*, that if BMS is not permitted by the terms of such Confidential Disclosure Agreements to so assign them, BMS shall request the other parties to such Confidential Disclosure Agreement to (i) return or destroy all the confidential information of BMS relating to the Products and the BMS Rights provided to them by BMS in connection with such transaction and (ii) certify to BMS that such confidential information has been returned or destroyed; *provided*, *further*, that BMS shall not have any obligation to bring any suit or take any other action against any such other party to enforce the obligations thereunder. BMS shall provide to Cadence copies of any such certifications received by BMS.

ARTICLE VI — REPRESENTATIONS AND WARRANTIES

6.1 Mutual Representations and Warranties. Each of BMS and Cadence represents and warrants to the other Party as follows:

(a) *Organization*. Such Party is a corporation duly organized, validly existing and in good standing (or subsisting) under the laws of the jurisdiction of its organization, is qualified to do business and is in good standing (or subsisting) as a foreign corporation or company in each jurisdiction in which the performance of its obligations under this Agreement requires such qualification, and has full corporate or company power and authority and possesses all governmental franchises, licenses, permits, authorizations and approvals (other than the termination or expiration of any waiting periods under the HSR Act, if applicable) necessary to enable it to perform its obligations under this Agreement, other than such franchises, licenses, permits, authorizations and approvals the lack of which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) *Authorization*. The execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate action and do not and will not require any further consent or approval of its shareholders or members. Such Party has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to grant the rights and licenses granted (or to be granted) by it in this Agreement.

(c) *Binding Agreement*. Such Party has duly executed and delivered this Agreement, and this Agreement (assuming the due authorization, execution and delivery by each other party thereto), constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws and judicial decisions of general applicability relating to or affecting creditors' rights generally and to general principles of equity (regardless of whether enforceability is sought in equity or at law).

(d) *No Conflicts; Consents*. The execution and delivery by such Party of this Agreement do not, and the consummation of the transactions contemplated by this Agreement do not and will not, conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit under, or to increased, additional or accelerated rights or entitlements of any Third Party under, or result in the creation of any Lien upon any of the assets of such Party under, any provision of (i) its Organizational Documents, (ii) any Contract to which such Party is a party or by which any of its properties or assets is bound, except for the rights of Pharmatop under the Pharmatop License Agreement or (iii) any judgment, order or decree (collectively, "**Judgments**") or any Applicable Law applicable to such Party or its properties or assets. No consent, approval, license, permit, order or authorization (collectively, "**Consent**") of, or registration, declaration or filing with, any Governmental Entity (other than any filing under the HSR Act) or any other Third Party is required to be obtained or made by or with respect to such Party in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated by this Agreement.

(e) *Litigation*. There are no (a) outstanding Judgments against or affecting such Party, or (b) claims, actions, suits, proceedings, arbitrations, investigations, inquiries, or hearings or notices of hearings (collectively, "**Proceedings**") pending or, to the knowledge of such Party, threatened in writing against or affecting such Party, its Affiliated Companies, by or against any Governmental Entity or any other Person, that in any manner challenges or seeks to prevent, enjoin, materially alter or materially delay the transactions contemplated by this Agreement or that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on such Party or on the exploitation (including the import, use, manufacture, sale and offer for sale) of the Products hereunder.

6.2 Additional Representations of Cadence. Without limiting the generality of the representations and warranties set forth in Section 6.1 above, Cadence represents and warrants to BMS as follows:

(a) *Financial Statements*. True and complete copies of the audited balance sheet of Cadence as of December 31, 2004, and the related statements of income, shareholders' equity and cash flows for the fiscal year ended on such date, together with the notes thereto and the unaudited consolidated balance sheets of Cadence and its subsidiaries as of December 31, 2005, and the related statements of income, shareholders' equity and cash flows for the twelve (12) months ended on such date (collectively, the "**Financial Statements**") have been Previously Disclosed. The Financial Statements are In Accordance With GAAP (as defined below). As used herein with respect to any financial statements, "**In Accordance With GAAP**" means that such financial statements: (i) are in accordance with the books and records of Cadence and its subsidiaries, if any, (ii) are true and correct and fairly present in all material respects the financial position, results of operations, shareholders' equity and cash flows of Cadence and its subsidiaries, if any, on a consolidated basis, if applicable, as of the dates and for the periods indicated, in each case in conformity with United States generally accepted accounting principles consistently applied during the applicable periods and (iii) if such financial statements are audited, include all required footnotes and, if such financial statements are unaudited, include all required footnotes concerning contingent liabilities, if any. The statements of income included

in the Financial Statements do not contain any items of special or nonrecurring income, revenue or expense and have not been affected by the inclusion of transactions entered into otherwise than on normal commercial terms or by any other factors rendering such profits for all or any of such periods exceptionally high or low, except as expressly specified therein. Except as specified in the Financial Statements or the notes thereto, the balance sheets included in the Financial Statements do not reflect any write-up or revaluation increasing the book value of any assets. The books and accounts of Cadence and its subsidiaries are true and complete in all material respects and fully and fairly reflect all of the transactions of Cadence and its subsidiaries.

(b) *Absence of Undisclosed Liabilities*. To the knowledge of Cadence, Cadence and its subsidiaries have no liability of any nature whatsoever (whether known or unknown, due or to become due, accrued, absolute, contingent, existing, inchoate or otherwise) including any unfunded obligation under any benefit plan (as defined in ERISA) or liabilities for Taxes, except for (i) liabilities reflected or reserved against in the consolidated balance sheet of Cadence and its subsidiaries as of December 31, 2005 (the "**Balance Sheet Date**") included in the Financial Statements (collectively, the "**Balance Sheet**"), or in the notes thereto, (ii) liabilities under the Loan and Security Agreement among Cadence, Oxford Finance Corporation and Silicon Valley Bank dated February 17, 2006 (the "**Loan Agreement**"), (iii) current liabilities incurred in the ordinary course of business and consistent with past practice from the Balance Sheet Date to the Effective Date which, individually and in the aggregate, do not exceed [***] and (iv) liabilities which individually or in the aggregate would not have a Material Adverse Effect on Cadence. The collateral pledged by Cadence pursuant to the Loan Agreement does not include any of Cadence's rights in, to or under this Agreement.

(c) *Absence of Material Adverse Effect*. To the knowledge of Cadence, since the Balance Sheet Date and through the Effective Date, Cadence and its subsidiaries have not experienced a Material Adverse Effect and no event or circumstance has occurred or developed which is reasonably likely to result in such a Material Adverse Effect or which has resulted, or is reasonably likely to result, in any loss or liability to Cadence and its subsidiaries in excess of [***].

Without limiting the foregoing, since the Balance Sheet Date there has not been, occurred or arisen: (i) any declaration, setting aside or payment of any dividend or distribution (whether in cash, stock or property) in respect of capital stock of Cadence or any of its subsidiaries, or any direct or indirect redemption, purchase or other acquisition of shares of such capital stock or any split, combination or reclassification of such capital stock (other than redemption of shares issued pursuant to early-exercised options under Cadence's 2004 Equity Incentive Award Plan), (ii) any Lien on any of the assets or properties of Cadence and its subsidiaries (other than the pledge of assets pursuant to the Loan Agreement); or (iii) any authorization, approval, agreement or commitment to do any of the foregoing. The pledge of assets pursuant to the Loan Agreement does not grant any Lien with respect to this Agreement or any of the rights licensed or sublicensed to it under this Agreement.

*** Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

(d) *Legal Matters*. Since Cadence's date of incorporation (May 26, 2004), there has not been any, and there is no, claim, action, suit, litigation, investigation, inquiry, review or proceeding (collectively, "**Cadence Claims**") pending against Cadence or any of its subsidiaries relating to the business or assets of Cadence or its subsidiaries before or by any court, arbitrator or

Governmental Entity; and to the knowledge of Cadence no such Cadence Claim has been threatened. Neither Cadence nor any of its subsidiaries is subject to any judgment, decree, writ, injunction, ruling, award or order of any Governmental Entity or any arbitrator relating to the business or assets of Cadence and its subsidiaries.

(e) *Receipt of Financing; Restrictions*. Between the Execution Date and the Effective Date, Cadence will have received additional financing in an amount that is not less than $50 million from the sale of equity securities. The holders of the equity securities of Cadence and its subsidiaries do not have (by virtue of the terms of such equity securities, by contract or otherwise) any right (mandatory or optional) to require the redemption of any of such equity securities. On or before the Effective Date, Cadence will have entered into the Loan Agreement obligating the lender or lenders thereunder to lend to Cadence not less than $7 million, subject to the terms and conditions set forth therein. Cadence has provided to BMS true and complete copies of the documents relating to such equity financing and such Loan Agreement.

6.3 BMS Rights.

(a) Pharmatop Patents. As of the Execution Date, BMS represents and warrants to Cadence as follows with respect to the Pharmatop Patents and Pharmatop Know-How:

(i) Schedule 6.3(a) sets forth a list of all the Pharmatop Patents. To the knowledge of BMS's in-house patent counsel after reasonable due diligence, (A) the most recent Patent report provided to BMS pursuant to Section 5.1 of the Pharmatop License Agreement relating to the Pharmatop Patents has been provided to Cadence, except for information that may have been redacted relating to Patents outside the Territory, and (B) BMS has not received any written notices of allowances for the Pharmatop Patents or written notices of interferences proceedings with respect thereto, except as previously disclosed to Cadence.

(ii) To the knowledge of BMS's in-house patent counsel after reasonable due diligence, there are no unpaid maintenance, annuity or renewal fees currently overdue for any of the Pharmatop Patents.

(iii) To the knowledge of BMS's in-house patent counsel, BMS is the sole and exclusive licensee of the Pharmatop Patents in the Territory.

(iv) BMS has not sublicensed, granted any interest in or options to the Pharmatop Patents to any Third Party in the Territory and covenants not do so prior to the expiration or termination of this Agreement, except in the exercise of BMS's retained rights pursuant to Section 2.2.

(b) To the knowledge of BMS's in-house counsel, BMS is not, nor has it received any notice that it is, in default (or that with the giving of notice or lapse of time or both it would be in default) with respect to the BMS Rights under the Pharmatop License Agreement that would permit Pharmatop to terminate, or exercise a right of rescission, revision or amendment of, the Pharmatop License Agreement with respect to the Territory and covenants that it shall not take, and shall cause its Affiliated Companies not to take, any action or omit to take any action after the Execution Date that would permit Pharmatop to terminate, or exercise a right of rescission, revision or amendment of, the Pharmatop License Agreement with respect to the Territory, other than the omission of the performance of obligations assumed by Cadence hereunder.

(c) To the knowledge of BMS's in-house patent counsel, BMS has not received written notice of any claim, action, suit or litigation alleging that BMS's exploitation (including the import, use, manufacture, sale and offer for sale) of the BMS Rights for the Product interferes with, infringes, or misappropriates any intellectual property rights of any Third Party (including written notice of any claim, action, suit or litigation that BMS must license or refrain from using any intellectual property rights of any Third Party in order to exploit(including the import, use, manufacture, sale and offer for sale) any Products. To the knowledge of BMS's in-house patent counsel, BMS has not received written notice that any claim, action, suit or litigation is pending or threatened which challenges the legality, validity, enforceability, use or ownership of any BMS Rights.

(d) BMS represents and warrants to Cadence that a true and correct copy of the Pharmatop License Agreement as of the Effective Date, including any and all amendments, supplements or other modifications thereto, except for the redaction of certain financial information in Section 7.1 thereof, has been Previously Disclosed. A copy of the Licensor Confirmation provided by Pharmatop with respect to certain intellectual property and other matters as of February 6, 2006, has been Previously Disclosed.

(e) To the knowledge of BMS, no circumstances or grounds exist that would entitle Pharmatop to terminate or exercise a right of rescission, revision, or amendment of the Pharmatop License Agreement with respect to the Territory, and the execution, delivery and performance of this Agreement will not constitute such a circumstance or ground.

(f) BMS has protected the Pharmatop Know-How in a manner not materially different from the manner in which it customarily protects its other proprietary know-how of comparable commercial value.

6.4 BMS Patents and Know-How. As of the Execution Date, BMS represents and warrants to Cadence with respect to the BMS Patents and BMS Know-How that to the knowledge of its in-house patent counsel:

(a) there are no unpaid maintenance, annuity or renewal fees currently overdue for any of the BMS Patents; and

(b) there are no claims, judgments or settlements against or owed by BMS and no litigation pending or threatened in writing relating to the BMS Patents; and

(c) BMS has protected the BMS Know-How in a manner not materially different from the manner in which it customarily protects its other proprietary know-how of comparable commercial value.

6.5 DISCLAIMER.

(a) EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE VI OR IN SECTION 5.2(D), BMS MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE BMS RIGHTS, BMS PATENTS OR BMS KNOW-HOW, IMPROVEMENTS, REGISTRATIONAL INFORMATION, REGULATORY FILINGS, APPROVALS, PRODUCT DATA, OTHER PRODUCT DATA OR REPORTS, STUDIES, PATENTS, PROCESSES, FORMULATIONS, TECHNIQUES OR OTHER TRADE SECRETS OR CONFIDENTIAL INFORMATION PROVIDED BY BMS TO CADENCE HEREUNDER OR ANY LICENSE GRANTED BY BMS HEREUNDER, OR WITH RESPECT TO ANY COMPOUNDS OR PRODUCTS. WITHOUT LIMITING THE FOREGOING, BMS MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE BMS RIGHTS, BMS PATENTS OR BMS KNOW-HOW OR ANY LICENSE GRANTED BY BMS HEREUNDER, OR WITH RESPECT TO ANY COMPOUNDS OR PRODUCTS. FURTHERMORE, NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION OR WARRANTY BY BMS THAT ANY OF THE FOREGOING IS VALID OR ENFORCEABLE OR THAT CADENCE'S USE THEREOF CONTEMPLATED HEREUNDER DOES NOT INFRINGE ANY PATENT RIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

(b) EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE VI OR IN SECTION 5.2(D), CADENCE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE IMPROVEMENTS, REGISTRATIONAL INFORMATION, REGULATORY FILINGS, APPROVALS, PRODUCT DATA, OTHER PRODUCT DATA OR REPORTS, STUDIES, PATENTS, PROCESSES, FORMULATIONS, TECHNIQUES OR OTHER TRADE SECRETS OR CONFIDENTIAL INFORMATION PROVIDED BY CADENCE TO BMS HEREUNDER OR ANY LICENSE GRANTED BY CADENCE HEREUNDER, OR WITH RESPECT TO ANY COMPOUNDS OR PRODUCTS. WITHOUT LIMITING THE FOREGOING, CADENCE MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY LICENSE GRANTED BY CADENCE HEREUNDER, OR WITH RESPECT TO ANY COMPOUNDS OR PRODUCTS. FURTHERMORE, NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION OR WARRANTY BY CADENCE THAT ANY OF THE FOREGOING IS VALID OR ENFORCEABLE OR THAT BMS'S USE THEREOF CONTEMPLATED HEREUNDER DOES NOT INFRINGE ANY PATENT RIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

6.6 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE, (I) NEITHER PARTY SHALL BE LIABLE TO THE

OTHER (OR TO ANY INDEMNIFIED PARTIES) WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, WHETHER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, MULTIPLE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, LOSS OF USE, DAMAGE TO GOODWILL, OR LOSS OF BUSINESS), EXCEPT THAT SUCH LIMITATION SHALL NOT APPLY TO (A) PUNITIVE OR CONSEQUENTIAL DAMAGES PAID OR PAYABLE TO A THIRD PARTY BY AN INDEMNIFIED PARTY FOR WHICH THE INDEMNIFIED PARTY IS ENTITLED TO INDEMNIFICATION HEREUNDER, (B) A BREACH OF THE [***] COVENANT, (C) ANY FAILURE BY CADENCE OR ITS AFFILIATED COMPANIES TO (1) OBSERVE OR COMPLY WITH THE TERMS OF THE PHARMATOP LICENSE AGREEMENT OR (2) PERFORM ANY OF THE OBLIGATIONS UNDER THE PHARMATOP LICENSE AGREEMENT ASSUMED BY CADENCE HEREUNDER THAT, IN THE CASE OF EACH OF PART (1) AND (2) OF THIS CLAUSE (C) RESULTS IN A TERMINATION OF THE PHARMATOP LICENSE AGREEMENT WITH RESPECT TO ANY COUNTRY IN THE TERRITORY OR A TERMINATION OF THE PHARMATOP LICENSE AGREEMENT IN ITS ENTIRETY, (D) ANY BREACH OF THE PHARMATOP LICENSE AGREEMENT BY BMS OR ITS AFFILIATED COMPANIES (OTHER THAN WITH RESPECT TO ANY OBLIGATION TO BE PERFORMED BY CADENCE) THAT RESULTS IN A TERMINATION OF THE PHARMATOP LICENSE AGREEMENT WITH RESPECT TO ANY COUNTRY IN THE TERRITORY OR A TERMINATION OF THE PHARMATOP LICENSE AGREEMENT IN ITS ENTIRETY OR (E) ANY BREACH OF [***] OF THIS AGREEMENT BY BMS OR ITS AFFILIATED COMPANIES OR OF [***] OF THIS AGREEMENT BY CADENCE OR ITS AFFILIATED COMPANIES AS TO WHICH CADENCE OR BMS, AS THE CASE MAY BE, TERMINATES THIS AGREEMENT PURSUANT TO SECTION 8.3(B) (IT BEING UNDERSTOOD THAT A BREACH OF ANY OF SUCH SECTIONS IS NOT NECESSARILY A MATERIAL BREACH THAT WOULD PERMIT TERMINATION UNDER SECTION 8.3(B)), AND (II) EXCEPT AS PROVIDED IN [***] ABOVE, BMS SHALL NOT BE LIABLE IN RESPECT OF ANY BREACH OF ANY REPRESENTATION OR WARRANTY OF BMS CONTAINED IN THIS AGREEMENT IN AN AMOUNT GREATER THAN THE AMOUNTS PAID BY CADENCE TO BMS UNDER SECTION 4.1 OF THIS AGREEMENT.

ARTICLE VII — INDEMNIFICATION; ARBITRATION

7.1 Mutual Indemnification. Each Party (the "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party, its Affiliated Companies and their respective directors, officers, employees, and agents and their respective successors, heirs and permitted assigns (the "**Indemnitees**"), against any liability, damage, loss or expense (including reasonable attorneys' fees and expenses of litigation) (collectively, but subject to Section 6.6 hereof, "**Losses**") incurred by or imposed upon the Indemnitees, or any one of them arising out of or resulting from (or alleged to arise out of or result from) any of the following:

*** Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

(i) any breach of any representation or warranty of the Indemnifying Party contained in this Agreement; and

(ii) any breach of any covenant or agreement of the Indemnifying Party contained in this Agreement.

7.2 Additional Indemnification Obligations of Cadence. Without limiting its obligations under Section 7.1, Cadence further agrees to indemnify, defend and hold harmless BMS, its Affiliated Companies and their respective directors, officers, employees, and agents and their respective successors, heirs and assigns (the "**BMS Indemnitees**"), against any Losses payable by the BMS Indemnitees, or any one of them, to any Third Party arising out of or resulting from (or alleged to arise out of or result from) (A) any breach of the Pharmatop License Agreement (other than a breach by Pharmatop) resulting from (i) any failure of Cadence or any of its Affiliated Companies, sublicensees, contractors or agents to perform, observe or comply with any provision of the Pharmatop License Agreement that relates to the Territory (except to the extent that a breach by BMS of its obligations under this Agreement or the Pharmatop License Agreement or any other act or omission by BMS prevents such performance, observance or compliance by Cadence or its Affiliated Companies, sublicensees, contractors or agents) or (ii) the exercise by Cadence or its Affiliated Companies, sublicensees, contractors or agents of the BMS Rights sublicensed to Cadence under this Agreement, (B) the development of Products by or on behalf of Cadence or any of its Affiliated Companies or sublicensees for the Territory or any other jurisdiction as to which Cadence or any of its Affiliated Companies has or may acquire rights with respect to Products, (C) the marketing, promotion, sale, use, consumption of, or exposure to, Products in the Territory or any such other jurisdiction, (D) the manufacturing (other than pursuant to the Clinical Supply Agreement) of Products for sale, use or consumption in the Territory or any such other jurisdiction, (E) the use by Cadence and its Affiliated Companies or any of its or their sublicensees, contractors or agents of BMS's Product Data, Other Product Data or Regulatory Filings or other data, information, records, filings or Confidential Information that BMS provides to Cadence pursuant to this Agreement or (F) any failure by Cadence and its Affiliated Companies and its and their sublicensees to comply with Applicable Law in connection with the development and commercialization (including the manufacture, marketing, promotion and sale) of the Products hereunder.

7.3 Additional Indemnification Obligations of BMS. Without limiting its obligations under Section 7.1, BMS further agrees to indemnify, defend and hold harmless Cadence, its Affiliated Companies and their respective directors, officers, employees, and agents and their respective successors, heirs and assigns (the "**Cadence Indemnitees**"), against any Losses payable by the Cadence Indemnitees, or any one of them, to any Third Party arising out of or resulting from (or alleged to arise out of or result from) (A) any breach of the Pharmatop License Agreement (other than a breach by Pharmatop or a failure by Cadence or any of Cadence's Affiliated Companies or any of their sublicensees, contractors or agents to perform, observe or comply with any of the provisions of the Pharmatop License Agreement, except to the extent that a breach by BMS of its obligations under this Agreement or the Pharmatop License Agreement or any other act or omission by BMS prevents such performance, observance or compliance by Cadence or its Affiliated Companies, sublicensees, contractors or agents) resulting from (i) any failure of BMS or any of its Affiliated Companies or its or their sublicensees (other than Cadence), contractors or agents to perform, observe or comply with anyprovision of the Pharmatop License Agreement

that relates to the Territory (except to the extent such failure results from any act or omission of Cadence and its Affiliated Companies, sublicensees contractors and agents to perform, observe or comply with any provision of the Pharmatop License Agreement that relates to the Territory or with this Agreement), (B) any breach of the Pharmatop License Agreement by BMS or any of its Affiliated Companies or its or their sublicensees (other than Cadence), contractors or agents that arises out of activities of BMS or any of its Affiliated Companies or its or their sublicensees (other than Cadence) outside the Territory, (C) the exploitation (including the import, use, manufacture, sale and offer for sale) of the Products by BMS or any of its Affiliated Companies or its or their sublicensees (other than Cadence), contractors or agents outside the Territory or inside the Territory pursuant to the rights retained by BMS under this Agreement, (D) the exploitation (including the import, use, manufacture, sale and offer for sale) of the Products by BMS or any of its Affiliated Companies or its or their sublicensees (other than Cadence), contractors or agents inside the Territory prior to the Effective Date or (E) the use by BMS and its Affiliated Companies or any of its or their sublicensees (other than Cadence), contractors or agents of Cadence's Product Data, Other Product Data or Regulatory Filings or other data, information, records, filings or Confidential Information that Cadence provides to BMS pursuant to this Agreement.

7.4 Conditions to Indemnification; Third Party Claims. Subject to Article 12 of the Pharmatop License Agreement, to the extent applicable, a Party seeking indemnification under this Article VII (the "**Indemnified Party**") with respect to any claim brought by any Third Party shall give prompt notice of the claim to the Indemnifying Party and, provided that the Indemnifying Party is not contesting the indemnity obligation, shall permit the Indemnifying Party to control and assume the defense of any litigation relating to such claim and disposition of any such claim unless the Indemnifying Party is also a party (or likely to be named a party) to the proceeding in which such claim is made and the Indemnified Party gives notice to the Indemnifying Party that it may have defenses to such claim or proceeding that are in conflict with the interests of the Indemnifying Party, in which case the Indemnifying Party shall not be so entitled to assume the defense of the case. If the Indemnifying Party does assume the defense of any claim or proceeding, it (i) shall act diligently and in good faith with respect to all matters relating to the settlement or disposition of any claim as the settlement or disposition relates to Parties being indemnified under this Article VII, (ii) shall cause such defense to be conducted by counsel reasonably acceptable to the Indemnified Party and (iii) shall not settle or otherwise resolve any claim without prior notice to the Indemnified Party and the consent of the Indemnified Party if such settlement involves anything other than the payment of money by the Indemnifying Party. The Indemnified Party shall cooperate with the Indemnifying Party in its defense of any claim for which the Indemnifying Party has assumed the defense in accordance with this Section 7.4, and shall have the right (at its own expense) to be present in person or through counsel at all legal proceedings giving rise to the right of indemnification.

7.5 Insurance. Cadence shall, beginning with the initiation of its first clinical trial for a Product, maintain at all times thereafter during the term of this Agreement, and until the later of (i) [***] ([***])[***] after termination or expiration of this Agreement or (ii) the date that all statutes of limitation covering claims or suits that may be brought for personal injury based on

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the sale or use of a Product have expired in all countries in the Territory, comprehensive general liability insurance from a recognized, creditworthy insurance company having an Excellent rating (A rating or above by A.M. Best), a financial performance rating of at least Strong (A rating or above by A.M. Best) and an A.M. Best Class Size of at least VIII, on a claims-made basis, with endorsements for contractual liability and product liability, and with coverage limits of not less than [***] ([***]) per occurrence and, [***], [***]([***])in the aggregate or, [***], [***]([***]) in the aggregate and which shall name BMS as an "additional insured" thereunder. The minimum level of insurance set forth herein shall not be construed to create a limit on Cadence's liability hereunder. Within [***]([***])[***] following written request from BMS, Cadence shall furnish to BMS a certificate of insurance evidencing such coverage as of the date. Cadence shall provide BMS with not less than [***]([***]) days' prior written notice of any modification or cancellation of coverage by Cadence and shall provide written notice to BMS not less than [***]([***])[***] after receiving notice from its insurer (or insurance broker) of any modification or cancellation of coverage by the insurer. In the case of a modification or cancellation of such coverage, Cadence shall promptly provide BMS with a new certificate of insurance evidencing that Cadence's coverage meets the requirements in the first sentence of this Section. The collection by BMS of any proceeds under any such insurance policy shall not affect BMS's right to obtain indemnification or other remedies under this Agreement, except to the extent that the collection of such proceeds reduces BMS's Losses, and the assertion by BMS of a claim under any such insurance policy shall not impair BMS's right to assert a claim against Cadence or any other Person for indemnification or otherwise pursuant to this Agreement.

7.6 Arbitration. Except as set forth in Section 7.7, any controversy or claim arising out of or relating to this Agreement or the validity, inducement or breach thereof (a "**Dispute**") shall be settled by binding arbitration as follows:

(a) A Party may submit such Dispute to arbitration by notifying the other Party, in writing, of such Dispute and demanding arbitration of such Dispute in accordance with this Section 7.6. Any such Dispute shall, except as provided herein, be finally resolved under the Rules of Arbitration of the International Chamber of Commerce (the "**ICC**") before an arbitration tribunal of three (3) arbitrators appointed and ruling in accordance with such Rules of Arbitration (the "**Rules**"), except where the Rules conflict with this Section 7.6, in which case this Section shall control. Each of the arbitrators shall be an attorney who has at least fifteen (15) years of experience with a law firm or corporate law department of over twenty-five (25) lawyers or a judge of a court of general jurisdiction. The governing law set forth in Section 9.8 shall govern any such proceedings, unless otherwise required by Section 7.7. The language of the arbitration shall be English.

(b) Within thirty (30) days after the designation of the arbitrator, the arbitrator and the Parties shall meet, and each Party shall provide to the arbitrator a written summary of all disputed issues, such Party's position on such disputed issues and such Party's proposed ruling on the merits of each such issue.

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(c) The arbitrator shall set a date for a hearing, which shall be no later than thirty (30) days after the submission of written proposals pursuant to Section 7.6(b), for the presentation of evidence and legal argument concerning each of the issues identified by the Parties. The Parties shall have the right to be represented by counsel.

(d) The arbitrator shall use his or her best efforts to rule on each disputed issue within thirty (30) days after completion of the hearing described in Section 7.6(c). The determination of the arbitrator as to the resolution of any dispute shall be binding and conclusive upon all Parties. All rulings of the arbitrator shall be in writing and shall be delivered to the Parties except to the extent that the Rules provide otherwise. Nothing contained herein shall be construed to permit the arbitrator to award punitive, exemplary or any similar damages.

(e) [***].

(f) Any arbitration pursuant to this Section 7.6 shall be conducted in Chicago, Illinois or, if such arbitration includes Pharmatop as contemplated by Section 7.7, Paris, France. Any arbitration award may be entered in and enforced by any court with jurisdiction.

(g) The Parties acknowledge and agree that the breach by any Party of the provision of this Agreement related to the protection of trade secrets or confidentiality would not be fully compensable by money damages and would result in irreparable harm to the other Party. Notwithstanding anything in this Article 7, each Party shall have the right to seek injunctive or other equitable relief from a court of competent jurisdiction that may be necessary to avoid irreparable harm, maintain the status quo or preserve the subject matter of the arbitration, including any breach or threatened breach of Section 5.1 or 5.2.

7.7 Pharmatop Arbitration. In the event of any controversy or claim between Pharmatop and BMS relating to or affecting the rights thereunder with respect to the Territory arising out of or relating to the Pharmatop License Agreement or the performance by Cadence of its obligations under this Agreement or the Pharmatop License Agreement that is the subject of an arbitration proceeding pursuant to Section 13.1 of the Pharmatop License Agreement, Cadence agrees that, if requested by BMS (or if requested by Cadence to the extent such proceeding relates to the Territory) and to the extent permitted by the Pharmatop License Agreement or by Pharmatop or the arbitrators, (i) Cadence will (if requested by BMS) join in and participate in such proceeding; (ii) if requested by Cadence with respect to any such proceeding that relates to the Territory, BMS shall use reasonable efforts to seek to include Cadence in such proceeding, and (iii) if Cadence participates or is included in such proceeding, any controversy or claim between BMS and Cadence relating thereto shall be settled by arbitration in such proceeding to the extent possible rather than in a proceeding under Section 7.6. In the event of any controversy or claim between Pharmatop and Cadence arising out of or relating to the Pharmatop License Agreement or the performance by Cadence of its obligations under this Agreement or the Pharmatop License Agreement that is the subject of an arbitration proceeding

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pursuant to Section 13.1 of the Pharmatop License Agreement or otherwise, BMS shall be entitled to participate in such proceeding, and to the extent permitted by the Pharmatop License Agreement or by Pharmatop or the arbitrators, any controversy or claim between BMS and Cadence relating thereto shall be settled by arbitration in such proceeding. In the event BMS reasonably believes that the participation of Pharmatop in any arbitration proceeding between BMS and Cadence pursuant to Section 7.6 would facilitate the orderly resolution of such Dispute, BMS shall be entitled to have Pharmatop participate in such arbitration proceeding.

ARTICLE VIII — TERM AND TERMINATION

8.1 Term. This Agreement shall commence as of the Effective Date and, unless sooner terminated in accordance with the terms hereof or by mutual written consent, shall expire in each country in the Territory, on a country-by-country basis, upon the expiration of both the Royalty Term and BMS Patent Royalty Term in such country.

8.2 Automatic Termination. This Agreement shall terminate automatically in the event of the termination of the Pharmatop License Agreement. In the event of a partial termination of the Pharmatop License Agreement, this Agreement shall terminate in respect of the rights so terminated under the Pharmatop License Agreement.

8.3 Termination by Either Party. Either Party shall have the right to terminate this Agreement on a country-by-country basis (except that any termination with respect to the United States shall also apply to Canada), at its sole discretion, upon delivery of written notice to the other Party, upon the occurrence of any of the following:

(a) the Bankruptcy of the other Party; and

(b) a material breach of this Agreement by the other Party with respect to any country in the Territory (or, in the case of any covenant that is qualified by materiality, any breach) that is not cured within the Specified Number of Days (as defined below) after written notice of such breach is given; *provided* that such additional cure period shall not apply to any breach of Section 5.5; and *provided*, *further* that the Parties acknowledge that a series of breaches which are immaterial individually may, when considered in the aggregate, result in a material breach and that such opportunity to cure shall run in respect of each such immaterial breach from the date that the Party seeking to terminate has given notice of such material breach.

As used herein "**Specified Number of Days**" means [***] ([***]) days (or [***] in the case of a termination based on the second proviso of the first paragraph of this Section 8.3(b)), except that:

(i) if [***] have not occurred:

(A) [***],

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(B) [***] and

(C) [***];

(ii) if the [***] has occurred, the Specified Number of Days shall be [***]([***])[***]; and

(iii) if the [***] has occurred, the Specified Number of Days shall be [***]([***])[***].

8.4 Termination by BMS. BMS shall have the right to terminate this Agreement, at BMS's sole discretion, upon delivery of written notice to Cadence, upon the occurrence of any of the following:

(a) the failure of Cadence or any of its Affiliated Companies, sublicensees, contractors or agents to perform, observe or comply with any provision of the Pharmatop License Agreement that relates to the Territory, the BMS Rights or the exercise of the rights sublicensed or licensed to Cadence under this Agreement or any other act or omission of Cadence or any of its Affiliated Companies or any of their sublicensees, contractors or agents that results in a material breach of the Pharmatop License Agreement or would permit Pharmatop to terminate, or exercise a right of rescission with respect to, the Pharmatop License Agreement (except to the extent that a breach by BMS of its obligations under this Agreement or any other act or omission by BMS prevents such performance, observance or compliance by Cadence or its Affiliated Companies, sublicensees, contractors or agents);

(b) the failure of Cadence to deliver to BMS any of the reports, statements or other information required to be delivered to BMS pursuant to Section 3.2(e) which failure is not cured within the [***] ([***])[***] period provided for in such Section.

8.5 Termination by Cadence.

(a) Upon the occurrence of any of the following, Cadence shall have the right to terminate this Agreement on a country-by-country basis (except that, unless otherwise specifically provided herein, any termination with respect to the United States shall also apply to Canada), at Cadence's sole discretion, upon delivery prior written notice to BMS of not less than (A) [***]([***])[***] more notice than is required under the Pharmatop License Agreement or (B) [***]([***])[***] if no notice period is specified under the Pharmatop License Agreement:

(i) the occurrence after the Effective Date of an event that relates to the Territory and would entitle BMS to terminate the Pharmatop License Agreement pursuant to Section 5.3, 6.2(a), 6.2(b), 6.3(a) or 6.3(b) thereof, whether or not BMS exercises such right of termination; *provided*, *however*, that if such right of termination relates only to a specific country in the Territory then the right of Cadence to terminate this Agreement shall apply only to such country; and *provided*, further, that if any such event would permit a reduction in the royalty payable to Pharmatop under the Pharmatop

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License Agreement and Cadence elects to pay such reduced royalty, then Cadence shall not have any right to terminate this Agreement as a result of such event; or

(ii) a failure by Pharmatop to perform any of its material obligations under the Pharmatop License Agreement with respect to the Territory that would permit BMS to terminate the Pharmatop License Agreement with respect to the Territory and is not cured within any cure period applicable under the Pharmatop License Agreement; *provided* that if such right of termination relates only to a specific country in the Territory then the right of Cadence to terminate this Agreement shall apply only to such country.

(b) If the [***] Date occurs, Cadence may terminate this Agreement upon not less than ninety (90) days' prior written notice to BMS.

8.6 Scope of Termination. Except as otherwise provided in this Agreement, any termination of this Agreement pursuant to this Article 8 shall be as to all countries in the Territory and all Products, except that in the event of a termination at the election of a Party the terminating Party may elect by written notice to the other Party to have such termination apply in respect to one (but not both) of the countries in the Territory, as designated by such Party in such notice, in which case the rights and obligations of the Parties as to the remaining country of the Territory shall be unaffected by such termination as to the non-terminated country; *provided*, *however*, that, except for a termination pursuant to Section 8.5(ii), any termination with respect to the United States shall also apply to Canada.

8.7 Effect of Termination. Upon termination of this Agreement with respect to any country or all countries in the Territory:

(a) All rights and licenses granted to Cadence in Article 2 and Sections 3.5, 3.6 and 3.7 shall terminate with respect to each terminated country and all rights of Cadence under the BMS Rights and the Pharmatop License Agreement, the BMS Patents and BMS Know-How shall revert to BMS, and Cadence shall cease all use of the BMS Rights, BMS Patents and BMS Know-How with respect to each terminated country, *provided* that, to the extent permitted by the Pharmatop License Agreement and unless this Agreement is terminated as a result of a breach or failure to comply by Cadence or any of its Affiliated Companies or their sublicensees, contractors or agents to comply with the terms and conditions of this Agreement or the Pharmatop License Agreement, Cadence shall have the right for [***] ([***]) days after such termination to sell off any Products already manufactured or ordered pursuant to non-cancelable purchase orders. All Net Sales of such sold off Products shall be subject to the Royalty payments provided for in Article IV.

(b) Cadence shall assign to BMS or BMS's designee [***] all INDs, NDAs and other Regulatory Filings, Product Data, Other Product Data and Approvals owned or Controlled by Cadence relating to the Products (and all of Cadence's right, title and interest therein and thereto) in each terminated country, and Cadence shall provide to BMS or BMS's designee [***]([***])[***] of all documents and filings contained in or referenced in any such filings, together with the raw and summarized data for any preclinical and clinical studies of the

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Products. Cadence shall take such actions with the applicable Drug Regulatory Authorities in each terminated country to transfer ownership and control of such Regulatory Filings to BMS not later than [***]([***])[***] after such termination.

(c) Cadence shall transfer to BMS or BMS's designee [***] all Product Data, Other Product Data and other data generated in connection with any preclinical studies, clinical trials and other studies conducted by or on behalf of Cadence and its Affiliated Companies relating to the Products and within [***] ([***])[***] after such termination shall transfer to BMS or BMS's designee copies of all Regulatory Filings with Drug Regulatory Authorities in the terminated countries with respect to Products, rendered PDF copies of the applicable clinical study reports (and the appendices, tables, listings and graphs therein), the SAS data sets containing the raw data from the applicable clinical studies. If Cadence maintains such Product Data, Other Product Data and other data in electronic form, Cadence shall provide it to BMS or BMS's designee in electronic form, but Cadence shall have no obligation to reformat or otherwise alter or modify any materials or to create or recreate any such materials in electronic form in order to provide them to BMS.

(d) Cadence shall disclose to BMS in writing its manufacturing patents, processes, techniques and trade secrets for making the Products and BMS shall automatically have a fully paid up, exclusive, perpetual, worldwide, transferable, sublicensable right and license under know-how and patents Controlled by Cadence and its Affiliated Companies relating to any composition, formulation, method of use or manufacture of any Product solely for using, importing, making, having made, selling and offering for sale Products outside the Territory and in each terminated country.

(e) Cadence shall assign (or, if applicable, cause its Affiliated Company to assign) to BMS or BMS's designee [***] all of Cadence's (and such Affiliated Companies') right, title and interest in and to any registered or unregistered trademark, trademark application, trade name or internet domain name that is specific to a Product in each terminated country (it being understood that the foregoing shall not include any trademarks or trade names that contain the name "Cadence").

(f) Cadence shall assign to BMS or BMS's designee [***] all of Cadence's right, title and interest in any inventions owned by it pursuant to Section 2.7 (and any patent applications filed thereon and patents issued thereon) pertaining to the composition of matter or method of use or utility of any Product in each terminated country.

(g) BMS shall be entitled to retain all amounts previously paid to BMS by Cadence under this Agreement.

(h) Neither Party shall be relieved of any obligation that accrued prior to the effective date of such termination or expiration, including any obligation of Cadence with respect to any amount due or payable to BMS that accrued or that arises out of acts or events occurring prior to the effective date of termination.

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(i) Unless such termination was as a result of a breach of this Agreement by Cadence or any of its Affiliated Companies, sublicensees, agents or contractors or a failure of Cadence or any of its Affiliated Companies, sublicensees, agents or contractors to comply with or observe the terms of the Pharmatop License Agreement or a termination by Cadence pursuant to Section 8.5, Cadence shall have, unless the License has been terminated pursuant to Section 2.17(b), a [***] perpetual, noncancelable and non-exclusive license (A) under the BMS Know-How, with the right to sublicense as provided in Section 2.4, to make and have made the Products anywhere in the world solely for use and sale within the Territory, (B) under the BMS Patents, with the right to sublicense as provided in Section 2.4, to import, use, sell and offer for sale Products in the Territory and (C) under the BMS Patents, with the right to sublicense as provided in Section 2.4, to make and have made the Products in the Territory solely for use and sale within the Territory; *provided*, *however*, that the licenses granted in clauses (B) and (C) of this paragraph shall not grant any right to the composition of matter of any Other Chemical Entity, or the right to make or have made any Other Chemical Entity or to any use not claimed by the BMS Patents.

(j) Notwithstanding the foregoing, in the event this Agreement terminates as the result of the termination of the Pharmatop License Agreement as the result of a material breach of that agreement by BMS (that is not the result of a breach of this Agreement by Cadence or any of its Affiliated Companies, sublicensees, agents or contractors or a failure of Cadence or any of its Affiliated Companies, sublicensees, agents or contractors to comply with or observe the terms of the Pharmatop License Agreement), the assets to be transferred and information to be disclosed to BMS or its designee pursuant to Sections 8.7(b), (c), (d), (e) and (f) shall not be transferred or disclosed to BMS or its designee but shall, at on the written request of BMS, be transferred to Pharmatop; provided, however, that (1) BMS shall have the right upon its request to have such assets transferred, and such information disclosed, to it or its designee on terms to be agreed by BMS and Cadence and (2) if Cadence obtains any damages or other remedy in respect of its cost of producing or obtaining such assets and information, such assets shall be transferred, and such information shall be disclosed, to BMS or its designee.

(k) The Parties hereto recognize that the assets to be assigned and transferred to BMS or its designee (or to Pharmatop or its designee) pursuant to this Section 8.7 are unique and are not available on the open market and that any breach of the terms of this Section 8.7 would give rise to irreparable harm for which money damages would not be an adequate remedy. Accordingly, the Parties agree that, in addition to all other remedies available to it, BMS shall be entitled to enforce the terms of this Section 8.7 by a decree of specific performance, without the necessity of proving the inadequacy as a remedy of money damages. In the event of failure to obtain such assignment, Cadence hereby consents and grants to BMS and its designee the right to access and reference (without any further action required on the part of Cadence, whose authorization to file this consent with any Regulatory Authority is hereby granted) any and all such Regulatory Filings, Product Data, Other Product Data, information and Approvals for any regulatory or other use or purpose in each terminated country.

8.8 Transition. Upon termination of this Agreement with respect to any country or all countries in the Territory, all actions then being controlled or undertaken by Cadence with

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respect to the applicable terminated countries in the Territory shall revert to the control of BMS or its designee, and Cadence and BMS (or BMS's designee) shall cooperate and use commercially reasonable efforts to effect an orderly transfer and transition of such activities to BMS or its designee, and Cadence shall take any reasonable action requested by BMS to facilitate such transition. BMS and Cadence shall endeavor to effect such transition as promptly as reasonably practicable.

8.9 Survival. The following provisions shall survive termination or expiration of this Agreement, as well as any other provisions which by their nature are intended to survive termination or expiration: Section 2.8(c), BMS's rights of use and reference set forth in Section 2.9, Section 2.15, Section 4.8, Section 5.1, Section 5.2, Section 5.3, Section 6.6, Article 7 (other than Section 7.5), Article 8 and Article 9.

8.10 Bankruptcy. The Parties agree that in the event a Party becomes a debtor under Title 11 of the U.S. Code ("**Title 11**"), this Agreement shall be deemed to be, for purposes of Section 365(n) of Title 11, a license to rights to "intellectual property" as defined therein. Each Party as a licensee hereunder shall have the rights and elections as specified in Title 11. Any agreements supplemental hereto shall be deemed to be "agreements supplementary to" this Agreement for purposes of Section 365(n) of Title 11.

ARTICLE IX — MISCELLANEOUS

9.1 Amendments. This Agreement may be amended only by a writing signed by each of the Parties, and any such amendment will be effective only to the extent specifically set forth in such writing.

9.2 Counterparts; Facsimile Execution. This Agreement may be executed in any number of counterparts, and by each of the Parties on separate counterparts, each of which, when so executed, will be deemed an original, but all of which will constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile will be equally as effective as delivery of a manually executed counterpart of this Agreement.

9.3 Cumulative Remedies. The rights and remedies of the Parties under this Agreement are cumulative and not exclusive of any rights or remedies which the Parties would otherwise have. No single or partial exercise of any such right or remedy by a Party, and no discontinuance of steps to enforce any such right or remedy, will preclude any further exercise thereof or of any other right or remedy of such Party.

9.4 Entire Agreement. This Agreement and the Clinical Supply Agreement contain the entire agreement of the Parties with respect to the transactions contemplated hereby and supersedes all prior written and oral agreements, and all contemporaneous oral agreements, relating to such transactions.

9.5 Schedules. The Schedules attached to in this Agreement are an integral part hereof and all references to this Agreement include such Schedules.

9.6 Force Majeure.

(a) *General*. No Party shall be liable for any failure to perform its obligations under this Agreement (other than obligations to make payments of money) to the extent such performance has been delayed, interfered with or prevented by an event of Force Majeure, except that Pharmatop shall not be excused from performance of any obligation under the Pharmatop License Agreement assumed by it unless such performance is excused under such agreement

(b) *Definition*. As used in this Section, "**Force Majeure**" means any circumstances whatsoever which are not within the reasonable control of the Party affected thereby, including an act of God, an act of any Governmental Entity (including any Drug Regulatory Authority), war, insurrection, riot, strike or labor dispute, shortage of materials, fire, explosion, flood, government requisition or allocation, breakdown of or damage to plant, equipment or facilities, interruption or delay in transportation, fuel supplies or electrical power, embargo, boycott, order or act of civil or military authority. The Party who declares an event of Force Majeure shall give prompt notice to the other Party of such declaration.

(c) *Duty to Mitigate*. If the performance of any obligation has been delayed, interfered with or prevented by an event of Force Majeure, then the Party affected by such event will take such actions as are reasonably available to remove the event of Force Majeure or to mitigate the effect of such occurrence, except that labor disputes will be settled at the sole discretion of the Party affected thereby.

(d) *Suspension of Certain Obligations*. If an event of Force Majeure occurs, the obligations of the Parties under this Agreement (other than obligations to make payments of money) will be suspended during, but not longer than, the continuance of the event of Force Majeure.

9.7 Assignment.

(a) BMS may, without Cadence's consent, assign or transfer all of its rights and obligations hereunder, in connection with any transfer of all of BMS's rights under the Pharmatop License Agreement with respect to the Territory to any Affiliated Company of BMS or to any Third Party (including a successor in interest); *provided*, that such assignee or transferee agrees in a writing provided to Cadence to be bound by the terms of this Agreement.

(b) Upon [***] ([***])[***] advance written notice to BMS and subject to BMS's (and, if required by the Pharmatop License Agreement, Pharmatop's) prior written approval, which approval may be withheld or granted by BMS in its sole discretion (and by Pharmatop in accordance with the Pharmatop License Agreement), Cadence may assign or transfer all of its rights and obligations hereunder to a Third Party [***]; *provided*, that such Third Party shall have agreed prior to such assignment or transfer to be bound by the terms of this Agreement in a writing provided to BMS and Pharmatop. Cadence may assign or transfer all of its rights and obligations hereunder without such consent to an Affiliated Company of Cadence (so long as such assignment or transfer includes all Approvals in the Territory, all

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manufacturing assets relating to this Agreement, and all rights and obligations under this Agreement); *provided*, that such Affiliated Company shall have agreed prior to such assignment or transfer to be bound by the terms of this Agreement in a writing provided to BMS; and *provided, further,* that all such rights and obligations automatically revert to Cadence free of any Liens in the event such company ceases to be an Affiliated Company of Cadence. For the purposes of clarification, transfers to a successor in interest by reason of merger, consolidation or sale of substantially all of the assets of Cadence shall be governed by Section 9.7(c).

(c) Cadence may assign or transfer all of its rights and obligations hereunder without such consent to a successor in interest by reason of merger, consolidation or sale of substantially all of the assets of Cadence (and so long as such assignment or transfer includes, without limitation, all Approvals in the Territory, all manufacturing assets relating to this Agreement, and all rights and obligations under this Agreement); *provided*, that such successor in interest shall have agreed prior to such assignment or transfer to be bound by the terms of this Agreement in a writing provided to BMS.

(d) Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the Parties' successors and permitted assigns.

(e) Any assignment or transfer in violation of the foregoing shall be null and void and wholly invalid, the assignee or transferee in any such assignment or transfer shall acquire no rights whatsoever, and the non-assigning non-transferring Party shall not be required to recognize, such assignment or transfer.

(f) No assignment by any Party of any of its rights or obligations under this Agreement shall relieve such Party from any of its obligations hereunder and the assignor shall remain jointly and severally liable with the assignee for the performance of the assigned obligations.

9.8 Governing Law. This Agreement is a contract under the laws of the State of New York and for all purposes will be governed by, and construed and enforced in accordance with, the laws of said State, without giving effect to any internal conflict of law rules.

9.9 Headings. All titles and headings in this Agreement are intended solely for convenience of reference and will in no way limit or otherwise affect the interpretation of any of the provisions hereof.

9.10 Notices. All notices, consents, requests, demands and other communications required or permitted under this Agreement: (a) will be in writing; (b) will be sent by messenger, certified or registered U.S. mail, a reliable express delivery service or facsimile (with a copy sent by one of the foregoing means), charges prepaid as applicable, to the appropriate address(es) or fax number(s) set forth below; and (c) will be deemed to have been given on the date of receipt by the addressee (or, if the date of receipt is not a Business Day, on the first Business Day after the date of receipt), as evidenced by (i) a receipt executed by the addressee (or a responsible person in his or her office), the records of the Person delivering such communication or a notice to the effect that such addressee refused to claim or accept such communication, if sent by messenger, U.S. mail or express delivery service, or (ii) a receipt generated by the sender's fax

machine showing that such communication was sent to the appropriate number on a specified date, if sent by facsimile. All such communications will be sent to the following addresses or numbers, or to such other addresses or numbers as any Party may inform the others by giving five (5) Business Days' prior notice:

If to Cadence:

Cadence Pharmaceuticals, Inc.
12730 High Bluff Drive, Suite 410
San Diego, CA 92130
Attn: President & CEO
Fax No.: (858) 436-1401

With copies to:

Cadence Pharmaceuticals, Inc.
12730 High Bluff Drive, Suite 410
San Diego, CA 92130
Attn: Vice President, Business Development
Fax No.: (858) 436-1401

If to BMS:

Bristol-Myers Squibb Company
Route 206 & Province Line Road
Princeton, NJ 08540
Attn: Senior Vice President -
Corporate Business Development
Fax No.: (609) 252-7128

With a copy to:

Bristol-Myers Squibb Company
Route 206 & Province Line Road
Princeton, NJ 08540
Attn: Vice President and Senior Counsel,
Licensing and Business Development
Fax No.: (609) 252-4232

9.11 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

9.12 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the Parties hereto and their successors and permitted assigns, and, except as specifically set forth in this Agreement, no other Person has, or is entitled to enforce, any rights, benefits or obligations under this Agreement. Nothing set forth in this Agreement shall diminish, affect or impair the rights of Pharmatop under the Pharmatop License Agreement.

9.13 Waivers. The due performance or observance by the Parties of their respective obligations under this Agreement will not be waived, and the rights and remedies of the Parties hereunder will not be affected, by any course of dealing or performance or by any delay or failure of any Party in exercising any such right or remedy. The due performance or observance by a Party of any of its obligations under this Agreement may be waived only by a writing signed by the Party against whom enforcement of such waiver is sought, and any such waiver will be effective only to the extent specifically set forth in such writing.

9.14 Documentary Conventions. As used in this Agreement, (a) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms; (b) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation;" (c) the terms "hereof," "herein," "hereby," "hereunder" and

derivative or similar words refer to this entire Agreement and (d) unless otherwise specified, the terms “Section” or “Exhibit” or “Schedule” refer to the specified Section, Exhibit or Schedule of or to this Agreement. All references to generally accepted accounting principles shall refer to United States generally accepted accounting principles, and all accounting terms not defined in any agreement or instrument shall have the meanings determined by United States generally accepted accounting principles as in effect from time to time. References to a Person are also to its permitted successors and permitted assigns. Unless otherwise expressly provided herein, any reference to a statute, instrument or other agreement in this Agreement means such statute, instrument or agreement as it may from time to time be amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes.

9.15. Consents and Approvals. All consents or approvals of the Parties contemplated hereunder shall not be unreasonably withheld, delayed or conditioned unless expressly stated as otherwise.

9.16. Absence of Presumption. Each of the Parties acknowledges and agrees that this Agreement has been diligently reviewed by and negotiated by and between them, that in such negotiations each of them has been represented by competent counsel and that the final agreement contained herein, including the language whereby it has been expressed, represents the joint efforts of the Parties hereto and their counsel. Accordingly, in interpreting this Agreement or any provision hereof, no presumption shall apply against any Party hereto as being responsible for the wording or drafting of this Agreement or any such provision, and 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.

9.17. Relationship of Parties. Nothing in this Agreement shall be construed to (i) create or imply a general partnership or joint venture between the Parties, (ii) make either Party the agent of the other for any purpose, (iii) give either Party the right to bind the other, (iv) create any duties or obligations between the Parties except as expressly set forth herein (other than the implied obligation of good faith), or (v) grant any direct or implied licenses or any other right other than as expressly set forth herein.

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SIGNATURE PAGE TO IV APAP AGREEMENT

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Execution Date.

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Tamar Howson
Name: Tamar Howson
Title: SVP, Corporate & Business Development

CADENCE PHARMACEUTICALS, INC.

By: /s/ Theodore R. Schroeder
Name: Theodore R. Schroeder
Title: President and CEO

SCHEDULE 1.1

BMS PATENTS

US Patent Nos. 6,593,331 and 6,511,982

Any US Patent that issues pursuant to [***]

and any continuations, continuations-in-part, divisions, reissues, re-examinations, extensions and renewals of any of the foregoing.

*** Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

SCHEDULE 6.3(a)

PHARMATOP PATENTS

U.S. Patent 6,992,218

Canadian Patent (application) 2 415 403

U.S. Patent 6,028,222

Canadian Patent (application) 2 233 924

Exhibit 10.12

CERTAIN MATERIAL (INDICATED BY AN ASTERISK) HAS BEEN OMITTED FROM THIS DOCUMENT PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT. THE OMITTED MATERIAL HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

PHARMATOP LICENSE AGREEMENT

License Agreement

This agreement (the "Agreement") is entered into as of the 23rd day of December, 2002 by and among SCR Pharmatop, a civil law partnership organized under the laws of France, having its head office's address at 10, Square St. Florentin, 78150 Le Chesnay, France, recorded with the Register of Commerce and Companies of Versailles under No. 407552702 ("PHARMATOP"), and Bristol-Myers Squibb Company, a corporation organized under the laws of the State of Delaware, USA, having its head office's address at 345 Park Avenue, New York, New York 10154 USA (referred to hereafter as "BMS").

WITNESSETH

WHEREAS, PHARMATOP is the owner of certain patents, patent applications, and know-how relating to parenteral paracetamol formulations;

WHEREAS, PHARMATOP has entered into a license agreement dated April 12, 1999 on these patents, patent applications and know-how covering a certain number of countries in Europe, Africa, the Middle East and Asia with UPSA S.A., a subsidiary of BMS; and

WHEREAS, BMS wishes to acquire an exclusive license under such patents, patent applications, and know-how of PHARMATOP in the Territory (as defined below), and PHARMATOP is willing to grant BMS such an exclusive license under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above premises and the covenants contained herein, the parties agree as follows:

Article 1—Definitions

The following definitions apply for the purposes of this Agreement:

1.1 The term "Affiliated Companies" shall mean any entity that directly or indirectly controls, is controlled by or is under common control with a Party to this Agreement, and

for such purpose “control” shall mean the power to direct or cause the direction of the management or the policies of the entity, whether through the ownership of voting securities, by contract or otherwise.

1.2 The term “Advertising and Promotion” means customary activities that are reasonably incident to the advertising and promotion of the Product in a country in the Territory (it being understood that Phase IV clinical studies are not part of Advertising and Promotion). The term “Advertising and Promotional Costs” means the out-of-pocket costs and expenses paid by BMS or its Affiliates to a Third Party (and a reasonable charge for internal copying expenses for promotional materials).

1.3 The term “Calendar Quarter” shall mean each of the periods of time from (a) January 1 through March 31; (b) April 1 through June 30; (c) July 1 through September 30; and (d) October 1 through December 31.

1.4 The term “Competing Product” means any one or more non-opiate analgesic parenterally-administered liquid solution products, in a stable and readily injectible form for the treatment of post-operative pain (but which can not be another Injectible APAP Product). For purposes of this Agreement, [***] shall be deemed an opiate product, the marketing of which shall not be restricted by this Agreement in any way.

1.5 The term “Derivative” of paracetamol means any compound whose chemical structure is derived from the chemical structure for paracetamol through structural modifications and/or chemical changes that retain those portions of paracetamol’s chemical structure that are known to contribute materially to the activity, specificity and selectivity of paracetamol.

1.6 The term “Diligent Efforts” means the carrying out of obligations or tasks in a sustained manner consistent with the efforts that BMS 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.

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1.7 The term “FDA” shall mean the U.S. FDA or corresponding administrative body in Canada, Mexico, or in any other country elsewhere in the Territory.

1.8 The term “Injectible APAP Product” means any parenterally administered dosage form of paracetamol or propacetamol, or any Derivative thereof, whether alone or in combination with one or more other drugs (as defined, as of the Effective Date, in Section 201 of the United States Federal Food, Drug and Cosmetic Act).

1.9 The term “Licensed Know-how” refers to precautions and procedures required to enable the manufacture of the liquid paracetamol solution, stable and ready for use by injection, that are owned by, controlled by, or licensed (with right to sublicense) to PHARMATOP at any time during the term of this Agreement, whether or not described in the Patent and in the Patent Applications, and that represent Confidential Information of PHARMATOP. The current said precautions and procedures are described in ***Appendix 5*** attached hereto, and made a part hereof.

1.10 The term “Licensed Patents” shall mean (a) the Patent, (b) the Patent Applications, (c) any other patents granted and patent applications applied for in the Territory relating to the manufacture, formulation, use or sale of the Products that are owned by, controlled by, or licensed to PHARMATOP during the term of this Agreement, and (d) any continuations, continuations-in-part, divisions, reissues, re-examinations, extensions, and renewals of any of the patent applications and patents listed in (a)-(c), and all patents which may be granted on any patent applications in (b)-(d) in the Territory.

1.11 The term “Licensed Rights” shall mean the Licensed Patents and the Licensed Know-How.

1.12 The term “Marketing Period” shall mean, for a given country in the Territory, the period running from the first day on which Products are sold in such country until the end of the Agreement with respect to such country.

1.13 The term “NDA” shall mean a new drug application submitted to the FDA seeking approval to manufacture, promote, market, distribute, or sell a Product in a country in the Territory.

1.14 The term “Net Sales” shall mean the total revenue invoiced by BMS, Affiliated Companies, or sub-licensees from the sale of a Product to independent Third Parties less the following amounts: (a) credits, allowances and rebates to, and chargebacks from the account of, such customers for spoiled, damaged, out-dated and returned Product; (b) trade discounts, cash discounts, quantity discounts, rebates and other price reduction programs, and other charge back payments; (c) sales, value-added and other similar taxes (including duties or other governmental charges levied on, absorbed or otherwise imposed on the sales of Products including, without limitation, governmental charges otherwise measured by the billing amount); (d) customs duties, surcharges and other governmental charges incurred in connection with the exportation or importation of the Product; and (e) bad debts on Product sales written off in accordance with generally accepted accounting principles, consistently applied. For the purposes of this definition, samples distributed by BMS, its Affiliates, or sub-licensees to their customers free of charge, and any Product used or provided for clinical or research purposes, shall not be included in Net Sales.

1.15 The term “Patent” shall mean US patent No. 6,028,222 issued on 22nd February 2000, a copy of which is attached hereto in ***Appendix 1*** as ***Exhibit A*** and made a part hereof, and any patent or supplementary protection certificate that PHARMATOP may obtain that depends on such patent or that is granted based on the Patent Applications.

1.16 The term “Patent Applications” shall mean (a) international patent application PCT/FR 97/01452, filed on 5th August 1997, a copy of which is attached hereto in ***Appendix 1*** as ***Exhibit B***, (b) international patent application PCT/FR01/01749, filed on 6th June 2001, a copy of which is attached hereto in ***Appendix 1*** as ***Exhibit C***, and (c) any other patent application that PHARMATOP may file that depends on a Patent or is based on claims contained in the patent applications specified above.

1.17 The term “Presentation” shall mean dosage and pharmaceutical form.

1.18 The term “Primary Detail Equivalent (PDE)” shall mean either [***] where

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

(b) a [***] means [***] ; and

(c) a [***] means [***].

All PDEs shall be [***] and shall be reported by BMS in accordance with [***].

1.19 The term “Product” shall mean any parenterally administered dosage form containing paracetamol (or any Derivative thereof) alone or in combination with one or more drugs (as defined, as of the execution of this Agreement, in Section 201 of the United States Federal Food, Drug and Cosmetic Act), and for which the manufacture, use or sale in a country in the Territory (x) would otherwise infringe the Licensed Patents but for the license rights granted to BMS in Article 2 hereof and/or (y) incorporates or uses to any material extent any Know-How licensed to BMS under Article 2 hereof.

1.20 The term “Royalty Term” means, with respect to a given country in the Territory, the date commencing with the date of first commercial sale of a Product in such country, and terminating upon the later of (a) the date that is ten (10) years after such first commercial sale of a Product in such country, or (b) the date that the manufacture, use or sale of a Product in such country is no longer covered by any Valid Claim of a Licensed Patent licensed to BMS hereunder in such country.

1.21 The term “Target Product Profile” means the target Product profile attached as *Appendix 2* hereto.

1.22 The term “Tax” shall mean any tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority.

1.23 The term “Territory” shall mean the United States (including Puerto Rico and all U.S. possessions and territories), Canada and Mexico.

*** Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

1.24 The term “Third Party” means any person or entity other than PHARMATOP, BMS, and their respective Affiliated Companies.

1.25 The term “U.S. FDA” shall mean the United States Food and Drug Administration and any successors thereto.

1.26 The term “Valid Claim” shall mean a claim in any unexpired issued patent that has not been held invalid or unenforceable by a non-appealed or unappealable decision by a court or other appropriate body of competent jurisdiction, and which is not admitted to be invalid through disclaimer, dedication to the public, and which has not been cancelled or abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written agreement.

1.27 The term “Year” means, as to a given country in the Territory, the period beginning on the date of first commercial sale of Product in such country and ending on the first March 31, June 30, September 30 or December 31 that is closest (before or after) to the date that is twelve months following such first commercial sale, and each twelve (12) month period thereafter during the Royalty Term.

Additional defined terms are as follows:

Defined Term	Section in Which Defined
Affected Country	6.2(a)
Combination Product	7.2(b)
Confidential Information	10.1
Grace Period	4.6(c)
Guaranteed Payments	7.3
ICC	13.1
Improvement	8.1
Inspection	7.5(b)
Inventors	6.1(a)
NewPharm	6.1(a)
Registrational Information	3.1

Defined Term	Section in Which Defined
Retained Sum	6.5(a)
Transaction	4.6(c)
Transaction Date	4.6(c)

ARTICLE 2—License

2.1 PHARMATOP hereby grants to BMS an exclusive, royalty-bearing license, with right to sublicense, under the Licensed Rights, to import, use, sell and offer for sale, make and have made, Products in the Territory. Furthermore, PHARMATOP also hereby grants to BMS the right to make and have made the Products outside the Territory for use within the Territory, subject to the consent of UPSA S.A. for the countries for which an exclusive manufacturing right has been granted by PHARMATOP to UPSA S.A. Except as may be otherwise agreed in writing by PHARMATOP in its sole discretion, the license granted to BMS shall only permit it to sell Products that are packaged, finished products ready for use, and the license shall not extend to any sales in bulk or of semi-finished products except to BMS sublicensee(s).

2.2 PHARMATOP does not promise or undertake to continue its research and development work in the field of the Licensed Rights. If, however, at its sole discretion, PHARMATOP does continue such work, it agrees to keep BMS fully informed on the results of its work, and if it makes any inventions or develops any Know-How relating to the Product, such inventions and know-how will be licensed to BMS pursuant to Section 2.1.

2.3 PHARMATOP shall not itself use the Licensed Rights in any way, directly or indirectly, including through licenses, for the manufacture, use, importation, and/or sale of Injectible APAP Products in the Territory. PHARMATOP covenants and warrants that it shall not develop, manufacture, or sell, or provide any assistance to any Third Party for the purpose of developing, manufacturing or selling, any Injectible APAP Products for use in a country in the Territory during the Marketing Period for such country. Notwithstanding the foregoing, PHARMATOP shall have the right to use, manufacture, sell and license the Licensed Rights in connection with other products other than Injectible APAP

Products in the Territory or any other country where PHARMATOP has granted to BMS or one of its Affiliated Companies exclusive rights under any of its patents and know- how to sell such products in such country, and any such use shall not violate the exclusivity provisions of this Agreement in respect of the Licensed Rights granted to BMS hereunder; provided, however, that PHARMATOP shall give to BMS a right of first refusal to license the right to use, manufacture and sell such other products in the Territory under terms and conditions proposed by PHARMATOP.

2.4 PHARMATOP shall not assign or sell its rights under the Licensed Rights in the Territory to a Third Party without (a) requiring the assignee or purchaser to assume all of PHARMATOP's obligations under this Agreement in its own name and (b) obtaining BMS' prior consent in writing, which may not be unreasonably withheld so long as PHARMATOP agrees to be jointly and severally liable with the proposed assignee/purchaser for all obligations owed BMS under the terms of this Agreement.

2.5 BMS may assign its rights under this Agreement to a Third Party, in whole or in part, provided that (i) the assignee entity expressly assumes all of BMS' obligations under this Agreement, unconditionally and in writing, so that it becomes directly obligated towards PHARMATOP, (ii) BMS remains jointly obligated with the assignee entity for all of its obligations under this Agreement; and (iii) PHARMATOP has given its prior written consent to such assignment, which consent shall not be unreasonably withheld or delayed. BMS may also assign or otherwise transfer this Agreement and the license granted hereby to an Affiliated Company or successor in connection with a merger, consolidation, reorganization, or sale or other transfer of its entire business, provided, in such case, that any such assignee or transferee has agreed in writing to be bound by the terms and provisions of this Agreement or is so bound by operation of law.

2.6 BMS may grant sub-licenses to Affiliated Companies and Third Parties provided that (a) BMS provides PHARMATOP with advance notice in writing of each sub-license, (b) no sub-license attempts to reduce or limit any of PHARMATOP's rights under this Agreement, (c) BMS agrees to be liable for the actions of any sub-licensee, and (d) PHARMATOP is given the same right to supervise the activities of the sub-licensee

as it has under the terms of this Agreement to supervise BMS' activities. BMS' right to grant sub-licenses in accordance with this Section shall include the right to delegate responsibility for marketing the Products in one or more countries in the Territory.

2.7 If the Products are manufactured by a company other than BMS, whether an Affiliated Company or not, BMS must provide PHARMATOP with the identity(ies) of the manufacturer(s), and provide proof to PHARMATOP that (a) the manufacturer(s) has been informed in writing that the products to be made are subject to the Licensed Patents held by PHARMATOP and (b) the manufacturer(s) has agreed to manufacture the products only pursuant to agreement with BMS and solely for the benefit of BMS and its sublicensees. The above restrictions do not apply to raw materials, packaging items or other incidental articles from outside suppliers, or to the performance of packing operations in accordance with customary practices in the pharmaceutical industry.

2.8 Any sub-licensee hereunder shall be required to assume all of the obligations of BMS under this Agreement with respect to the rights sublicensed. BMS will indemnify and hold PHARMATOP harmless from the failure of any sub-licensee to perform its obligations relating to Products in the same manner as BMS is obligated to indemnify and hold PHARMATOP harmless under this Agreement if BMS (rather than the sublicensee) had so failed to perform. PHARMATOP shall have the same rights to audit any sub-licensee's activities relevant to its sublicensing agreement, and to inspect any sub-licensee's facilities involved in the manufacture of Products, in the same manner as PHARMATOP has with respect to BMS' activities and facilities hereunder.

2.9 In the event that BMS makes sales of Products to an Affiliated Company or sub-licensee, then, notwithstanding anything to the contrary in Section 1.14 hereof, the calculation of Net Sales for purposes of determining royalties owed to PHARMATOP under Section 7.2 hereof shall be based on the greater of (x) [***] and (y) [***].

*** Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

2.10 Nothing in this Agreement shall be construed to grant a Party any rights in any intellectual property rights, information or data owned or controlled by any other Party or its Affiliates, except as expressly set forth in this Agreement.

2.11 Within [***] after the execution of this Agreement, BMS will inform PHARMATOP whether, and in what other countries of the world where BMS does not already possess such rights, BMS is interested in obtaining rights to develop and market the Product. If BMS notifies PHARMATOP that BMS is interested, then the Parties will use all reasonable efforts to conclude an agreement within [***] thereafter in which PHARMATOP grants BMS the exclusive right in such countries in which BMS indicated an interest; provided that the Parties can agree on mutually acceptable terms and conditions during such [***]. Should any such negotiations terminate without the grant of an exclusive license to BMS in a given country, PHARMATOP shall be free thereafter to conduct negotiations with any Third Party and grant licenses to the Product to any Third Party in such country; provided, however, that BMS shall be entitled to exercise a right of first refusal with respect to any such country as follows: Before PHARMATOP may accept an offer from, or make an offer to, a Third Party on financial terms more favorable to the Third Party, when taken as a whole, than those last offered by PHARMATOP to BMS to acquire such rights in such country, PHARMATOP will inform BMS of such offer and shall allow BMS a period of [***] in which to elect whether to acquire such rights under such terms as are offered to or by PHARMATOP with the Third Party.

Article 3—PHARMATOP's Rights to Information

3.1 Subject to Section 3.3, PHARMATOP shall be entitled, for the protection and advancement of its rights in the Licensed Rights outside the Territory, to either obtain from BMS, or have the right to reference, all information and conclusions relating to or resulting from any analytical, galenical, stability, toxicology or pharmacokinetic work and/or clinical studies and clinical trials conducted by BMS relating to the Products and

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all materials in the NDA submitted to the U.S. FDA for the Products (collectively, the "Registrational Information") for the purpose of developing, manufacturing, registering, seeking marketing approval for and selling an Injectible APAP Product in any country outside the Territory where BMS or any of its Affiliates have not been licensed rights under any PHARMATOP patent or know-how under a separate agreement with PHARMATOP; provided, however, that BMS has the reciprocal right (subject to payment by BMS in the same manner as PHARMATOP is obligated under Section 3.3) to obtain and use any such similar registrational information obtained by PHARMATOP's licensees with respect to the development and marketing of any such Injectible APAP Product in any such country. Subject to Section 3.3, BMS hereby expressly permits PHARMATOP to use the Registrational Information to attempt to secure a licensee for the sale and use of the Products outside the Territory in which BMS or any of its Affiliates does not have exclusive license rights under any separate agreement with PHARMATOP, provided, that the Registrational Information is treated as Confidential Information of BMS and is disclosed to a potential licensee only pursuant to an appropriate confidentiality agreement as set forth in Section 3.3 and that PHARMATOP remains responsible to BMS for any breach by such potential licensee of its confidentiality and non-use obligations.

3.2 Subject to Section 3.3, PHARMATOP or the licensee shall be entitled to use the Registrational Information as part of new drug applications out of the Territory and shall not owe any compensation to BMS for same. BMS shall have no liability or responsibility for any use made by PHARMATOP and its licensees of the Registrational Information, and, subject to sections 12.3 and 12.4, PHARMATOP shall indemnify, defend and hold BMS and its Affiliates harmless from any use made by PHARMATOP, its Affiliated Companies, or its or their licensees of the Registrational Information.

3.3 Before PHARMATOP shall have the right to access or use any of the Registrational Information as provided in this Article 3 for purposes of any regulatory filing, [***] shall reimburse [***] of the [***] to develop or obtain the Registrational Information. [***]

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shall not be required to reimburse [***] for the purpose of sharing such Registrational Information, under agreement of confidentiality, with a Third Party to the extent reasonably required for such Third Party to determine its interest in licensing the Product in any countries where BMS and its Affiliates do not have license rights; provided, that the Registrational Information to be made available to the Third Party shall not include the actual Investigational New Drug (IND) or NDA filing, any clinical trial or adverse event database, or any study results which have not been made publicly available or filed to the NDA. Such sharing may include such Third Party having reasonable access to such Registrational Information at BMS, at PHARMATOP's expense, in order to conduct reasonably necessary due diligence. Such Third Party shall not have access to the Registrational Information until it shall have executed a confidentiality agreement, in form and substance acceptable to PHARMATOP and BMS, in which BMS either is a party to the confidentiality agreement or is entitled to enforce such confidentiality as an express third party beneficiary thereof under the terms of the confidentiality agreement and applicable law.

ARTICLE 4—DEVELOPMENT AND USE OBLIGATIONS

4.1 BMS shall use its Diligent Efforts to obtain NDA approvals (and other regulatory authorizations) required to develop and market the Products in each country in the Territory.

4.2 Neither Party warrants, represents or guarantees that the Products will obtain NDA approvals in the Territory.

4.3 During the preparation and pendency of the various NDAs, BMS shall advise PHARMATOP in writing on a confidential basis at least [***] as to actions taken, or to be taken, the likely date of presentation of NDAs, any problems encountered, and the likely date of NDA approvals. Within [***] after the Effective Date and thereafter [***] until NDA Approval is received in a given country, BMS will provide an estimate of the Product development timelines in such country and for all studies that it is then

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undertaking or that it plans to undertake within the following [***] in such country and will update such timelines on a [***] basis thereafter; provided, that it is understood that, all forecasts are estimates for review by PHARMATOP only, are not guaranteed or warranted and may not be relied upon in any way, and, except as permitted by Article 10, may not be disclosed to Third Parties. PHARMATOP shall submit to BMS in writing any comments on studies or applications conducted or submitted by BMS. BMS must reply to any such comments in reasonable detail, so that PHARMATOP can make an assessment of BMS' performance of its obligations with respect to this Article 4; provided that BMS shall remain solely responsible for the development and regulatory strategy for the Product.

4.4 If any matter or issue (including, but not limited to, an unexpected safety issue, manufacturing problems or significant additional studies are required by U.S. FDA) arises which is likely to materially obstruct or significantly delay the issue of an NDA approval in a given country by more than [***], particularly the U.S. NDA approval, BMS must inform PHARMATOP immediately and the parties must then consult with each other to examine and determine whether any corrective measures should be undertaken to supplement or amend the NDA in such country. If the proposed corrective measures are not economically or technically viable to implement, then BMS may elect to terminate this Agreement as to such country (and if the affected country is the United States, then it may elect to do so either as to all countries or just the U.S.), in which case [***] all licenses and rights granted to BMS hereunder shall immediately terminate with respect to such country(ies), and PHARMATOP shall recover its entire freedom with respect to the Licensed Rights in such country(ies) [***] (and without BMS being liable to PHARMATOP in any manner on account of such termination) and the terms of Section 9.3(b) shall apply.

4.5 Once an NDA approval has been obtained, along with any other necessary approvals, BMS shall use Diligent Efforts to market the Products in the country in which approval has been obtained. BMS shall, at least [***], provide to PHARMATOP a written report

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on the means and operations used by it to promote the Products. Within [***] and thereafter [***] until the end of the Royalty Term for a given country, BMS will provide its sales forecast for the following [***] and will update such forecast (and provide actual sales performance results by Presentation) on a [***] basis thereafter; provided, that it is understood that all sales forecasts are estimates for review by PHARMATOP only, are not guaranteed or warranted and may not be relied upon in any way, and may not be disclosed to Third Parties. On receiving these reports, PHARMATOP may ask BMS in writing for reasonable further information and/or clarifications that directly concerns the Product and that BMS may lawfully provide so as to enable PHARMATOP to assess BMS' performance of its obligations under this Section.

4.6

(a) Except as provided in section 4.6(c), BMS agrees that, during the Marketing Period for a given country in the Territory, it will not sell and/or market any Injectible APAP Product other than the Product. BMS represents that it currently has no intention of developing and/or marketing other Injectible APAP Product for use in the Territory. For any country in the Territory where BMS is already marketing a propacetamol product on the Effective Date of this Agreement, BMS agrees that, subject to any legal commitments it may have to Third Parties as of the Effective Date and consistent with any requirements of applicable law, BMS will (1) upon launch of the Product in such country, cease active promotion and marketing of the propacetamol product in such country and transition customers of the propacetamol product over to the Product in a manner that does not unduly jeopardize BMS' customer relationships and allows for BMS' inventory of propacetamol products to be appropriately worked down; and (2) not sell or license its rights to the propacetamol product to any Third Party for sale or use in such country.

(b) Subject to Section 7.4, nothing in this Agreement shall restrict or affect BMS' ability to develop and market at any time during the term of this Agreement, in

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any country in the Territory, one or more parenterally-administered products containing an analgesic or an opiod (as long as such product is not another Injectible APAP Product). BMS shall inform PHARMATOP promptly of any decision to market any parenteral opiate or non-opiate product for the treatment of post-operative pain.

(c) Nothing in any provision of this Agreement shall, expressly or impliedly, preclude or restrict BMS (or any of its Affiliated Companies) in any way from (1) acquiring the voting stock or other securities, or the assets, of any Third Party, (2) selling voting stock or other securities, or any of their assets, to any Third Party, or (3) merging, amalgamating, taking over or consolidating (or engaging in any similar transaction) with any Third Party (any of the foregoing a "Transaction"), where such Third Party is developing or marketing its own Injectible APAP Product, subject to the following: If such Third Party becomes an Affiliated Company of BMS by reason of such Transaction and is then marketing its own Injectible APAP Product in a country in the Territory, then BMS shall inform PHARMATOP in writing, within [***] after the consummation of such Transaction has been publicly announced ("Transaction Date"), whether BMS will divest or cause the divestiture of the competing Injectible APAP Product in such country(ies). If BMS informs PHARMATOP that it plans to so divest, then BMS shall use commercially reasonable efforts to divest itself of such competing Injectible APAP Product in a manner consistent with its reasonable business judgement and to complete such divestiture of the competing Injectible APAP Product as promptly as practicable following notification by BMS to PHARMATOP of the decision to divest. BMS shall have until the date that is [***] after the applicable Transaction Date to complete such divestiture (the "Grace Period"); provided, that, so long as BMS demonstrates to PHARMATOP's reasonable satisfaction that BMS used commercially reasonable efforts to effect such divestiture within such [***] Grace Period, but was unable reasonably to effect such divestiture, then such [***] Grace Period shall be

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extended for such additional [***] periods thereafter as is necessary to enable such competing Injectible APAP Product to be in fact divested, so long as BMS continues to demonstrate to PHARMATOP's reasonable satisfaction that BMS is using commercially reasonable efforts to effect such divestiture within such period, and provided further that in no event shall the aggregate Grace Period exceed [***]. BMS shall keep PHARMATOP reasonably informed of its efforts and progress in effecting such divestiture until it is completed. The sale, promotion or marketing of any such competing Injectible APAP Product by BMS or any of its Affiliated Companies within the Territory during such Grace Period pursuant to this Section 4.6(c) shall not be grounds for termination of this Agreement under Section 4.6(a). Nothing in this Paragraph is intended to affect BMS' obligation to use Diligent Efforts to market the Product during the Grace Period.

If BMS notifies PHARMATOP that BMS does not plan to divest the competing Injectible APAP Product, then, BMS shall have [***] after the Transaction Date in which to sublicense or sell the rights to the Product to a Third Party, and if BMS is unable to do so within such [***], then PHARMATOP may terminate this Agreement with respect to the affected country(ies) at any time thereafter upon not less than [***] written notice to BMS and the terms of Section 9.3(b) shall apply.

4.7 All INDs and NDAs for any Product shall be owned solely by BMS, and BMS shall be responsible for all regulatory filings to be made thereto.

Article 5—Patent Application Examination

5.1 PHARMATOP shall use its best efforts to diligently prosecute the Patent Applications and to have the Patent Applications granted by the patent offices concerned, within the customary timeframes. PHARMATOP agrees to keep BMS informed on the progress of the examination of the applications; to reply diligently in consultation with BMS to comments made by the examiners (and Third Parties where appropriate); and, to take

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other reasonable and customary actions to avoid delays with the issuance of the patents or a reduction to the scope thereof.

(a) PHARMATOP will promptly notify BMS in writing after each Notice of Allowance and patent issuance in the Territory. The parties will cooperate to ensure a timely filing in the Orange Book with respect to an issued patent.

(b) PHARMATOP and BMS will cooperate to ensure timely filings for any available Patent Term Restoration on the Product (currently, filings must be made within 60 days after NDA Approval).

(c) With respect to any Patent Right filed, prosecuted or maintained by PHARMATOP, each patent application, office action, response to office action, request for terminal disclaimer, voluntary amendment, interference proceeding filing or action, and request for reissue or re-examination of any patent issuing from such application shall be provided by PHARMATOP to BMS sufficiently prior to any such application, filing or request to allow reasonable time for adequate review and comment by BMS. PHARMATOP will also provide BMS copies of all correspondence and other material documents received or prepared by PHARMATOP in the prosecution, maintenance, and enforcement of the Licensed Patent Rights.

(d) PHARMATOP shall provide to BMS, on a quarterly basis, a written patent report that includes the serial number, docket number and status of each Licensed Patent.

(e) Within 90 days after execution of this Agreement, PHARMATOP will also ensure that a signed and duly notarized Assignment Document, assigning the entire right, title and interest in US Patent No. 6,028,222 from Francois Dietlin and Daniele Fredj to SCR Pharmatop, is filed in the United States Patent and Trademark Office.

(f) PHARMATOP will ensure that Patent Applications filed in the Territory will include at least the same claims as filed in the PCT Applications as of the Effective Date.

5.2 PHARMATOP will, to the greatest extent practicable, prosecute the Patent Applications as currently filed (or that will be filed in the Territory pursuant to section 5.1(f)), and agrees not to alter the terms so as to materially narrow the scope thereof or abandon any material pending claims unless consented to by BMS, or as otherwise is reasonable in light of the prosecution of the Patent Applications. PHARMATOP does not guarantee to BMS that the patents will be issued in terms similar to those of the Patent Applications. PHARMATOP will not abandon any issued claims or admit that any such issued claims of the Patents are unenforceable by disclaimer or otherwise, without BMS' prior written consent.

5.3 During the entire period of examination of the Patent Applications, BMS will comply with all its obligations towards PHARMATOP, including, but not limited to its financial obligations, and shall not be entitled to suspend them on the ground that the examiners or Third Parties have commented on or challenged the filed Patent Applications. BMS will be entitled to terminate this Agreement with respect to a particular country, or obtain a reduction in the royalty rate for sales therein, in accordance with Sections 6.2 and 6.3 below, as a result of a final patent office decision that definitively rejects a Patent Application in such country(ies).

5.4

(a) PHARMATOP shall pay the annual fees due to the patent offices in a timely manner to maintain the Patents in force until their expiry. [***] will reimburse [***], commencing from and after the [***] of the Effective Date of this Agreement, for its payment of the annual maintenance fees in any country in the Territory where no Products have been sold as of the time of such payment, provided that [***] provides proof of such payment and requests such reimbursement. For budgeting purposes, [***] shall provide to [***], on February 1 and August 1 of each Year, a reasonably detailed estimate of the out-of-pocket expenses it expects to incur, in the next six (6) months, with respect to Licensed Patents.

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(b) If PHARMATOP files for and obtains new Patents in a country in the Territory based on Inventions made after the Effective Date of this Agreement that is likely to have the effect of extending BMS' period of marketing exclusivity, [***] will reimburse [***] for [***] of its costs of filing and prosecuting the corresponding patent applications in such country, including [***] reasonable out-of-pocket legal fees and expenses, on presentation of appropriate supporting documents; provided, however, that (a) [***] shall not be obligated to make any such reimbursement to [***] prior to the [***] of the Marketing Period in such country or in any year in which an Injectible APAP Product is marketed by a Third Party in such country, and (b) any such reimbursement paid by [***] for a given country will be returned to [***] if, prior to the [***] of the Marketing Period in such country, an Injectible APAP Product which does not infringe the Patents is marketed in such country.

Article 6—Additional Provisions Affecting the Patents

6.1

(a) PHARMATOP represents and warrants that Francois Dietlin and Daniele Fredj (the "Inventors") solely discovered or derived the inventions covered by the Patents, as well as the Know-How embodied in the formulation of the Product, through their own research and efforts and without misappropriating the trade secrets or confidential information of any Third Party, and that the Inventors have never been employed by or provided services to Fresenius. It further represents that the portion of the inventions covered by U.S. patent No. 6,028,222 was duly assigned by the Inventors to Newpharm, a company organized under the laws of France having its head office's address at 10, square St. Florentin, 78150 Le Chesnay, France ("Newpharm") which obtained French patent No. 2.751.875 and that Newpharm subsequently assigned the associated ongoing research and priority rights to PHARMATOP as set forth in the agreement attached as ***Exhibit***

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D and confirmed by Newpharm in the letter attached hereto as *Exhibit E*. PHARMATOP also represents that it is the sole owner of the Licensed Rights, and otherwise has the sole right to exclusively license and grant rights to them, and that, to the best of its knowledge, each invention is patentable.

(b) BMS represents that, to its knowledge as of the Effective Date, and having examined the Patent and the Patent Applications, it has not identified, and otherwise has no knowledge of, any reasons why the Patent might be invalid or why the Patent Applications could not be granted under conditions enabling the license herein to be effectively implemented.

(c) PHARMATOP represents and warrants to BMS that: (i) there is no action, suit or proceeding pending or threatened in writing as of the Effective Date by any Third Party against PHARMATOP, its Affiliated Companies, or any of the Inventors named in the Patents which, if adversely determined, would have a material adverse effect upon the issued claims of the Patents in the Territory as of the Effective Date or upon the issuance of any claims of the Patent Applications in the Territory as of the Effective Date; (ii) the issued claims of the Patent in the Territory which cover the manufacture, use, importation or sale of Product are not dominated by any issued patents of any Third Party in the Territory; and (iii) except as disclosed in *Appendix 3* (*re Fresenius*), it is not aware of any infringement by any Third Party as of the Effective Date of any of the Patents in the Territory.

6.2

(a) If PHARMATOP is:

(i) unable to obtain, without material alteration or restriction as to scope and content, issuance in the Territory of the claims being prosecuted as of the Effective Date on the PCT Patent Applications filed as of the Effective Date; or

(ii) unable to maintain, or a material alteration of the scope or content occurs with respect to, any of the claims under any of the Patents issued as of the

Effective Date or on any patents issued on Patent Applications filed as of the Effective Date;

then BMS may at its option terminate this Agreement for any of the countries so affected (an "Affected Country"), or, if the affected country is the United States, then either as to the United States or as to all countries in the Territory. Any such termination shall require (A) not less than [***] prior written notice, if after [***] in the [***] or (B) not less than [***] prior written notice, if [***] in the [***].

(b) If a Third Party should market in any country in the Territory a parenterally-administered liquid solution product, in a stable and readily injectible form, that (x) contains paracetamol and one or more other analgesic ingredients, (y) uses any of the technology contained within any issued claim of any Licensed Patent in such country or any Licensed Know-How, and (z) is not considered to infringe any Patent within the Licensed Rights in such country (whether by judicial determination or settlement, by joint agreement of PHARMATOP and BMS, or by both Parties failure to prosecute such Third Party for infringement under Section 6.5), then BMS may elect to terminate this Agreement pursuant to Section 9.3(a) for any such Affected Country, or, if the Affected Country is the United States, then as to all countries in the Territory.

(c) If BMS opts to terminate this Agreement pursuant to section 6.2(a) or section 6.2(b) with respect to one or more Affected Countries, it shall be under the terms and conditions of section 9.3(b). BMS shall not be entitled to obtain from PHARMATOP the return of any sums paid to PHARMATOP before the date of said termination unless BMS can establish that the refusal to issue the patent (or the withdrawal thereof) is due to a knowingly inaccurate representation made by PHARMATOP in Section 6.1 of this Agreement. BMS shall be permitted thereafter to sell Products already manufactured by such termination date, provided that it pays PHARMATOP the contractual royalties on such sales provided for in Article 7. BMS shall not be restricted in any way thereafter from

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manufacturing and selling another Injectible APAP Product in such terminated country(ies) for which the manufacture or sale in such country (x) does not infringe the Licensed Patents and (y) does not use to any material extent any Licensed Know-How.

(d) In the event that BMS opts to maintain the Agreement in effect in an Affected Country under section 6.2(a) or 6.2(b), then:

(i) if such Affected Country is [***], the Guaranteed Payment provision (section 7.3) shall be [***] thereafter effective as of the [***] in which BMS elected to maintain the Agreement and each [***] thereafter; and

(ii) the royalty rate on all Net Sales in such country for any quarter in a given Year will be reduced by [***] for each such quarter in which:

(x) [***]

(y) [***].

6.3

(a) Should the Patents (or their inventorship) be the subject of an administrative or judicial challenge by a Third Party, PHARMATOP will undertake at its expense, in consultation and liaison with BMS, to take all appropriate measures to oppose the challenge by the Third Party. Subject to Sections 12.3 and 12.4, PHARMATOP shall defend, indemnify and hold harmless BMS from any liabilities, losses, costs or damages, which shall include costs or judgements whether for money or equitable relief, and reasonable legal expenses and reasonable attorney's fees, arising out of any such claims, suits or challenges. PHARMATOP shall not enter into a settlement agreement with such Third Party without the written consent of BMS, which shall not be unreasonably withheld. PHARMATOP shall not enter into a settlement agreement with such Third Party without the written consent of BMS, which shall not be unreasonably withheld. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. The pendency of any administrative or judicial

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claim or action by a Third Party challenging the Patents will not permit BMS to cease or suspend its performance of its obligations under this Agreement, including its financial obligations. If the Third Party's claim or action succeeds so as to deprive PHARMATOP of any of its rights on Licensed Patents in a country in the Territory, then BMS may terminate this Agreement as to such country in the same manner as it would have been entitled to terminate pursuant to Section 6.2(a)(ii) and 6.2(c) (with BMS providing the same written notice of termination required thereby unless the outcome of such Third Party's claim or action would require BMS to cease marketing of the Product prior to the end of the notice period) or to continue to market the Product subject to Section 6.2(d).

(b) In the event that PHARMATOP fails or elects not to defend any such action, suit, or challenge, then BMS may defend such action, suit or proceeding at its own expense, in its own name and the name of PHARMATOP, and entirely under BMS' own direction and control. PHARMATOP will reasonably assist BMS (at BMS' expense) in any action or proceeding being prosecuted or defended by BMS, if so requested by BMS or required by law. PHARMATOP shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Licensed Patent may be entered into by BMS without the prior consent of PHARMATOP, which consent shall not be unreasonably withheld. If the Third Party's claim or action succeeds so as to deprive PHARMATOP of any of its rights on Licensed Patents in a country in the Territory, then BMS may terminate this Agreement as to such country in the same manner as it would have been entitled to terminate pursuant to Section 6.2(a)(ii) and 6.2(c) (with BMS providing the same written notice of termination required thereby unless the outcome of such Third Party's claim or action would require BMS to cease marketing of the Product prior to the end of the notice period) or to continue to market the Product subject to Section 6.2(d).

6.4 PHARMATOP represents that, to its knowledge, the manufacture and sale of the Products in Territory will not infringe any intellectual property right of any Third Parties

and, subject to sections 12.3 and 12.4, PHARMATOP will hold BMS harmless against any Third Party action or claim asserting an infringement of such rights. In the event such an action or claim is brought by a Third Party, then, subject to section 6.3, BMS will be obligated to continue to perform its obligations under this Agreement, including its financial obligations.

6.5

(a) In the event that a Third Party is manufacturing and/or marketing anywhere in the Territory an Injectible APAP Product for which the manufacture, use or sale thereof infringes a Valid Claim under the Licensed Patents, the Parties shall consult with each other in order to attempt to end such infringement, and shall take all appropriate action to do so. BMS shall have the right in the first instance, but not the obligation, to initiate legal action against an infringing party under its own direction and control. PHARMATOP will reasonably assist BMS ([***]) in any action or proceeding being prosecuted if so requested, and will lend its name to such actions or proceedings if requested by BMS or required by law. No settlement of any such action which restricts the scope, or adversely affects the enforceability, of a Licensed Patent may be entered into by BMS without the prior written consent of PHARMATOP, which consent shall not be unreasonably withheld.

(b) If BMS elects not to bring any action for infringement described in Section 6.5(a) and so notifies PHARMATOP in writing, then PHARMATOP may bring such action at its own expense, in its own name and entirely under its own direction and control. BMS will reasonably assist PHARMATOP ([***]) in any action or proceeding being prosecuted if so requested, and will lend its name to such actions or proceedings if requested by PHARMATOP or required by law. No settlement of any such action which restricts the scope, or adversely affects the enforceability, of any Licensed Patent may be entered into by PHARMATOP

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without the prior written consent of BMS, which consent shall not be unreasonably withheld.

(c) If either Party brings such an action or defends such a proceeding under this Section 6.5 and subsequently ceases to pursue or withdraws from such action or proceeding, it shall promptly notify the other Party and the other Party may substitute itself for the withdrawing Party under the terms of this Section 6.5.

(d) In the event either Party exercises the rights conferred in this Section 6.5 and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total of such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, such funds shall be retained by [***]; provided, [***].

(e) BMS will be obliged to continue performing its obligations towards PHARMATOP during the pendency of any legal action against a Third Party; provided, however, that, during such period of time [***] shall pay [***] of the royalties contractually due on Net Sales in the country where the infringing injectible APAP Product is being marketed, with the balance (the "Retained Sums") temporarily retained by [***]. If the outcome of the litigation is the invalidation of a Patent, the provisions of Section 6.2 will be applicable, and, if [***] elects to continue as provided in Section 6.2(c), [***] .

(f) Any infringement of the Patents by an Affiliated Company of BMS whom BMS has not sublicensed shall be deemed to be a breach of Agreement by BMS.

6.6 PHARMATOP does not make any representations of warranties with respect to the Patents other than those expressly stated in this Article 6.

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6.7 [***].

6.8 In the event that BMS reasonably believes after consultation with PHARMATOP that it is required to obtain a license from a Third Party in order to practice the Licensed Patents and Know-how, then any license fees or other royalties payable by BMS to such Third Party with respect to same shall be [***].

Article 7—License Fees and Royalties

7.1 BMS shall make the following lump sum, non-refundable (except as provided in section 12.3 or as may be otherwise expressly provided in this Agreement) payments to PHARMATOP:

(a) Within fifteen (15) business days following execution of this Agreement, the sum of

(b) Within ten (10) business days [***], the sum of [***]. This amount will be paid only [***].

7.2

(a) Subject to the Guaranteed Payments provided for in Section 7.3 and to sections 6.2, 6.5(e), 6.8, 7.2(b), 7.2(c) and 12.3 hereof, BMS shall make the following royalty payments to PHARMATOP:

(i) [***] percent ([***]%) of the Net Sales of Products during the [***] and [***] in a given country;

(ii) [***] percent ([***]%) of the Net Sales of Products during the [***] in a given country;

(iii) [***] percent ([***]%) of the Net Sales of Products during the [***] in a given country; and

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(iv) [***] percent ([***]%) of Net Sales of Products during the [***], and all subsequent [***] of the Royalty Term thereafter in a given country, unless this Agreement is sooner terminated in such country.

Upon payment of all royalties due PHARMATOP in a given country through the end of the Royalty Term for such country, BMS shall have a fully paid-up license under Section 2.1 to use the Licensed Rights in such country to develop, make, use and sell the Products.

(b) [***] then the effective royalty rate for sales of such Combination Products shall be [***] of the royalty rate paid by BMS to such Third Party for the Combination Product, subject to a [***] of the royalty payable to PHARMATOP of [***]. BMS will provide evidence, reasonably satisfactory to PHARMATOP, of any [***].

(c) [***].

7.3 Subject to Section 12.3 hereof, during each of the first [***] of the Marketing Period in the United States, BMS shall pay royalties to PHARMATOP equal to the greater of (i) [***] or (ii) the [***] do not conform in all respects [***]. Further, in any quarter in any Year in [***] be multiplied by a fraction the numerator of which is [***] and the denominator of which is the sum of the numerator plus [***] using a mutually agreed upon methodology for calculating [***] during such quarter. [***]. The Parties will review the procedures [***] from time to time to ensure that they are fair and equitable to both Parties.

7.4

(a) In the event that BMS markets a Competing Product in a country in the Territory during the Royalty Term for such country, BMS agrees that:

(i) During the [***] period following the launch of such Competing Product (commencing with the [***] of the [***] following such launch), BMS will continue to provide for the Product at least [***] of the Primary

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Detail Equivalents (PDEs) and will continue to spend on the Product at least [***] of the Advertising and Promotional Costs that it spent, as determined on an [***] for the Product during the [***] period preceding such Competing Product launch; and

(ii) During the [***] period following the launch of such Competing Product, BMS will continue to provide for the Product at least [***] of the Primary Detail Equivalents (PDEs) and will continue to spend on the Product at least [***] of the Advertising and Promotional Costs that it spent, as determined on an [***] for the Product during the [***] period preceding such Competing Product launch and the [***] period following such Competing Product launch; and

(iii) During the [***] period following the launch of such Competing Product, BMS will continue to provide for the Product at least [***] of the Primary Detail Equivalents (PDEs) and will continue to spend on the Product at least [***] of the Advertising and Promotional Costs that it spent, as determined on an [***] for the Product during the [***] period following such Competing Product launch.

Notwithstanding the foregoing, in the event that such Competing Product is launched during the period that Guaranteed Payments under Section 7.3 are payable, then subsections 7.4(a)(i)-(iii) shall not apply except with respect to those full [***] periods following such Competing Product launch that occur after the expiration of the payment of such Guaranteed Payments during such [***].

Further, this Section 7.4(a) shall only apply to the [***] Competing Product that BMS may launch within each country in the Territory

(b) BMS will provide PHARMATOP, within [***] after the end of each [***] period following such Competing Product launch with sufficient information regarding BMS' PDE detailing and Advertising and Promotional spending to enable PHARMATOP to make a reasonable, competent assessment as to whether BMS has fulfilled its obligations under Section 7.4(a) above.

(c) In the event that BMS fails to fulfill any of (i), (ii) or (iii) under section 7.4(a) above, then PHARMATOP may, upon ninety days written notice to BMS, terminate this Agreement at any time within thirty days after PHARMATOP

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receives the information from BMS required for PHARMATOP to determine that BMS has failed to fulfill such obligations, in which event [***], all licenses and rights granted to BMS hereunder shall immediately terminate, and PHARMATOP shall recover its entire freedom with respect to the Licensed Rights in such country [***] and the terms of Section 9.3(b) shall apply. If PHARMATOP elects to terminate BMS' rights, such termination shall be PHARMATOP's sole remedy and BMS shall not be liable for any additional damages to PHARMATOP with respect to such failure.

7.5

(a) The contractual royalties will be calculated and will be payable quarterly for sales made in each Calendar Quarter in the Royalty Term. A detailed statement, country by country and by Presentation, will be prepared and sent by BMS to PHARMATOP within [***] of the end of each Calendar Quarter ([***] after the last quarter in an Agreement Year to allow for additional time to determine any adjustments required to be made on an annual basis), accompanied by payment of the royalties due PHARMATOP. If the annual reconciliation shows an amount due by either Party to the other, the amount due shall be paid as follows: BMS shall pay any amount due by it at the same time as it provides the reconciliation to PHARMATOP. PHARMATOP shall repay any amount due by it to BMS within [***] after the receipt by it of such reconciliation report.

(b) PHARMATOP may, on reasonable (but not less than [***]) written notice to BMS, have a calculation statement audited at its own expense by an accounting firm selected by PHARMATOP that is reasonably acceptable to BMS and that is bound by a written agreement of confidentiality to BMS. The, auditor's assignment will be limited to reviewing the accuracy of a calculation statement sent by BMS (the "Inspection"), and to disclosing only if there are any errors in payment and, if an error exists, the amount of such error(s) and the calculation thereof, and no additional or any other information. If an audit discloses that the

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amount of royalties owed to PHARMATOP was understated by more than [***], then [***] must reimburse [***] for the cost of the audit, in addition to paying the additional royalties together with interest on the additional amounts, calculated from the date on which the additional amount should have been paid, as provided in section 7.7. Such audit rights may be exercised [***], and any such audit shall apply [***].

7.6 BMS shall make all payments to PHARMATOP in United States Dollars by electronic funds deposit, to a French bank and account number designated in writing by the *Gerant* of PHARMATOP. Each Party shall bear its own expenses with respect to any such electronic funds transfer. When products are sold for monies other than United States dollars, the monies due will first be determined in the foreign currency of the country in which such products were sold and then converted into equivalent United States currency, on a monthly basis, using the applicable U.S. Federal Reserve rate in effect on the last business day of each calendar month. Each quarterly Royalty Payment shall cover three (3) such monthly conversions. PHARMATOP agrees that it will be solely responsible for all payments owed to Newpharm or the Inventors.

7.7 Any amounts not paid on its due date by BMS to PHARMATOP will bear simple interest on the outstanding balance at the [***] the applicable period, calculated from the contractual due date until the date of payment, without the need for a formal notice to pay or any other notice.

7.8 Neither the payment of interest by BMS nor the acceptance of the same by PHARMATOP shall effect a waiver of any of PHARMATOP's rights or remedies under this Agreement.

7.9 BMS shall pay any and all excise, sales, use, value added, and other similar Taxes solely arising as a result of Product sales under this Agreement. Where required to withhold any tax in connection with any payment hereunder to PHARMATOP due to applicable law, treaty, rule or order of a governmental body, BMS shall deposit such taxes with the

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appropriate tax or revenue authorities as a deduction from such royalty or other payment, and shall notify PHARMATOP and, upon request of PHARMATOP, BMS shall furnish satisfactory evidence of such withholding and payment. [***] shall not be required to gross up or reimburse [***] for any such withholdings. BMS shall reasonably cooperate with PHARMATOP in obtaining exemption from withholding taxes where available under applicable law. PHARMATOP shall be solely responsible for all taxes levied on PHARMATOP's revenues, profits or income arising out of this Agreement.

7.10 BMS agrees that it will not engage in any fraudulent transactions relating to sales of the Products that are specifically designed to reduce or avoid royalty payments to PHARMATOP.

Article 8—Improvements made by BMS

BMS shall promptly inform PHARMATOP of any adaptation, improvement, enhancement or upgrade (collectively, an "Improvement") BMS makes with respect to the formulation and/or manufacture of the Products, whether such Improvement can be protected by patent or not. BMS will remain the owner of any such Improvement that it makes to the Products; provided, however, that BMS must grant to PHARMATOP, upon request, a non-exclusive, [***] license to practice and use the Improvement, including the right to grant sublicenses, outside of the Territory solely in connection with the manufacture, use or sale of the Products; provided, that any sub-licensee of such rights shall have granted reciprocal rights to PHARMATOP which can be sublicensed to BMS.

Article 9—Term / Termination

9.1 Unless terminated earlier pursuant to the terms of this Agreement, the term of this Agreement shall run on a country-by-country basis until the end of the Marketing Period. Upon the expiration of this Agreement in a country, BMS will have no further financial obligations towards PHARMATOP for sales made in such country after such expiration.

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9.2 Should either Party fail to perform any of material obligations of this Agreement, and fail to cure such breach or default within ninety (90) days alter receiving a written notice from the non-breaching Party specifying the breach and demanding that it be cured, then the non-breaching Party shall have the right to terminate this Agreement; provided, that if the material breach is restricted to a given country, termination shall be as to such country only.

9.3

(a) BMS may, in its sole discretion, terminate this Agreement at any time during the Marketing Period with respect to a given country at any time, provided that (i) it gives written notice at least [***] in advance, and (ii) BMS has paid all amounts due under this Agreement as of the date of such notice. If BMS terminates this Agreement pursuant this section 9.3(a), then BMS agrees not to market any other Injectible APAP Product in such country for a period of [***] following termination; provided, that this section 9.3(a) shall not apply to any Injectible APAP product marketed by BMS (x) that is thereafter acquired by BMS or any of its Affiliates as a result of a Transaction (as such term is defined in section 4.6(c)) that occurs following the giving of such notice of termination and which was a marketed product of the Third Party at the Transaction Date or (y) that is marketed by BMS in accordance with the last sentence of section 6.2(c) as a result of a termination by BMS pursuant to section 6.2(c) or 6.3(a).

(b) Upon the effective date of a termination by BMS pursuant to this Section 9.3, BMS will transfer to PHARMATOP, at PHARMATOP's expense, the NDA approvals, so that PHARMATOP may take over, in the affected country(ies) in the Territory, the marketing of the Products (directly or through any Third Parties of its choice). The Parties shall in good faith consult on the procedures for this transfer of the marketing information and contracts (covering stocks, current orders, official records, etc), endeavoring to ensure that the marketing is disturbed, as little as possible, by the transfer and that each Party continues to

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comply with its obligations under applicable law. BMS shall also license or assign to PHARMATOP without charge any trademark/tradename used by BMS that is specific to the Products; however, no rights will be assigned or licensed to PHARMATOP under any names, marks, or logos used by BMS and its Affiliates on the Product that are also used on their other products (e.g., the Bristol-Myers Squibb name). At its option, PHARMATOP may commence marketing the Products (directly or indirectly) at any time after its receipt of the termination notice. The Parties agree to negotiate in good faith a smooth transition of marketing for the Product as well as an orderly disposition of BMS' Product inventory during the [***] notice period referred to in section 9.3(a).

9.4 PHARMATOP shall have the right to terminate this Agreement on ninety (90) days' written notice if BMS either opposes any of the Patent Applications or challenges or contests the validity or enforceability of any of the Licensed Patents.

9.5 In the event that this Agreement is terminated or rejected by a Party or its receiver or trustee under applicable bankruptcy laws due to such Party's bankruptcy, then all rights and licenses granted under or pursuant to this Agreement by such Party to the other Party are, and shall otherwise be deemed to be, for purposes of Section 365(n) of Title 11 of the United States Bankruptcy Code and any similar law or regulation in any other country, licenses of rights to "intellectual property" as defined under Section 101(35A) of Title 11 of the Bankruptcy Code. The Parties agree that all intellectual property rights licensed hereunder, including without limitation any patents or patent applications in any country of a Party covered by the license grants under this Agreement, are part of the "intellectual property" as defined under Section 101(35A) of the Bankruptcy Code subject to the protections afforded the non-terminating Party under Section 365(n) of the U.S. Bankruptcy Code, and any similar law or regulation in any other country.

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Article 10—Confidentiality and Publicity

10.1 All information of a proprietary or confidential nature disclosed by one Party to the other or developed by the other Party under this Agreement ("Confidential Information") shall be maintained in confidence, not disclosed to any Third Party, and used only for the purposes of this Agreement. Each Party may disclose the other Party's Confidential Information to Affiliated Companies, agents, legal and financial representatives, or consultants under obligations of confidentiality, non-disclosure and non-use at least equivalent to the obligations set forth in this Article. The obligations of confidentiality, non-disclosure and non-use set forth in this Agreement shall expire five (5) years after the date of termination or expiration of this Agreement.

10.2 The obligations of confidentiality, non-disclosure and non-use set forth shall not apply to information: (a) that was previously known to the receiving Party or any of its Affiliated Companies free of restriction as evidenced by the records of such Party; (b) that is or becomes generally available to the public through no fault of the receiving Party; (c) that is acquired in good faith by the receiving Party or any of its Affiliated Companies from a Third Party not under an obligation of secrecy to the disclosing Party with respect to such information; or (d) that is independently developed by employees or agents of the receiving Party or any of the Affiliated Companies without reliance on Confidential Information disclosed under this Agreement.

10.3 Notwithstanding the obligations of confidentiality, non-disclosure, and non-use set forth herein, a Party may:

(a) disclose Confidential Information to a regulatory agency that is necessary to obtain regulatory approval in a particular jurisdiction or as otherwise required by law or judicial process;

(b) disclose Confidential Information to a government official or agency if the disclosure is necessary to protect the health and safety of a Party's workers or the public or as required by law or for defending, enforcing, or prosecuting patent applications and patents; and

(c) disclose Confidential Information reasonably required in connection with the development, manufacture, use, sale, external testing, or marketing of Products in the Territory in accordance with the terms of this Agreement.

10.4 Except as set forth in this section, neither Party shall disclose the nature or existence of this Agreement to any Third Party, or the relationship between the parties hereunder, without the prior written consent of the other Party, except that each Party shall be permitted, without the prior permission of the other Party, to disclose the existence of this Agreement and the nature of the licenses granted hereunder as required by law or judicial process and to its accountants and attorneys. PHARMATOP shall be permitted, without the prior permission of BMS, to disclose the existence of this Agreement and the nature of the licenses granted hereunder on a confidential basis to a) potential licensees pursuant the provisions of section 3.1, but not other terms and conditions; and b) as to the terms of this Agreement, its existing or potential investors and commercial bankers. BMS shall be permitted, without the prior permission of PHARMATOP, to disclose the existence and terms of this Agreement on a confidential basis to potential sublicensees, copromotion partners, merger and acquisition candidates and collaborators.

10.5 The provisions of this Article shall govern the exchange of Confidential Information between the parties on or after the execution of this Agreement. The rights and obligations of this Article shall survive termination of this Agreement.

Article 11—Warranties, Representations and Acknowledgements

11.1 PHARMATOP warrants and represents that it is a partnership duly organized and validly existing under the laws of France, and has all power and authority to carry on its business as now being conducted and to own its properties and is duly licensed or qualified in each jurisdiction in which its failure to qualify would have a material adverse effect on its business, financial condition or operations. PHARMATOP represents that, as of the Effective Date, the assets of PHARMATOP, excluding the Patents and Patent

Applications, are valued at less than [***] and that its revenues for calendar year 2002 will be less than [***].

11.2 PHARMATOP warrants and represents that it has full legal power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; that the execution, delivery and performance of this Agreement by it has been duly authorized by all requisite legal action; and that this Agreement has been duly executed and delivered by it and constitutes a valid and binding obligation enforceable in accordance with its terms, subject, as to enforcement, to applicable bankruptcy, reorganization, insolvency, moratorium, and other laws affecting creditors' rights generally from time to time in effect.

11.3 PHARMATOP represents and warrants that neither PHARMATOP nor any of its respective Affiliated Companies is a party to, subject to or bound by any agreement or any judgment, award, order, writ, injunction or decree of any court, governmental body or arbitrator that would conflict with or be breached by the execution, delivery or performance of this Agreement by it or that could prevent the carrying out of this Agreement.

11.4 PHARMATOP represents and warrants that to the best of its knowledge there is no (i) action, suit, dispute, or governmental, administrative, arbitration, or regulatory proceeding pending or threatened in writing or (ii) any investigation pending or threatened in writing against or relating to PHARMATOP, its Affiliated Companies, or their officers, general partners, and stockholders that, in either case could prevent the carrying out of this Agreement.

11.5 PHARMATOP warrants and represents that it exclusively owns or controls by agreement or license all right, title and interest in and to the Licensed Rights as defined herein and that it has the full right and authority to enter into this Agreement and to carry out the transactions contemplated herein.

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11.6 PHARMATOP warrants and represents that it has no outstanding encumbrances or agreements, either written or oral, relating to the use of the Licensed Rights in the Territory, and that it has not granted nor will grant during the term of this Agreement or any renewal hereof, any similar rights, license, consent, or privilege in the Territory to any Third Party with respect to the rights granted herein.

11.7 BMS represents and warrants that BMS is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

11.8 BMS represents and warrants that it has full corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; that the execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action; and that this Agreement has been duly executed and delivered by BMS and constitutes a valid and binding obligation of BMS, enforceable in accordance with its terms, subject, as to enforcement, to applicable bankruptcy, reorganization, insolvency, moratorium, and other laws affecting creditors' rights generally from time to time in effect.

11.9 BMS represents and warrants that neither it nor any of its Affiliated Companies, is a party to, subject to or bound by any agreement or any judgment, award, order, writ, injunction or decree of any court, governmental body or arbitrator, which would conflict with or be breached by the execution, delivery or performance of this Agreement by BMS or which could prevent the carrying out of this Agreement.

11.10 BMS represents and warrants that to the best of its knowledge there is no (i) action, suit, dispute, or governmental, administrative, arbitration, or regulatory proceeding pending or threatened in writing or (ii) any investigation pending or threatened in writing against or relating to BMS, its Affiliated Companies, or their officers and stockholders that, in either case could prevent the carrying out of this Agreement.

11.11 BMS represents and warrants that all consents of Third Parties, including, without limitation, governmental authorities and non-governmental self-regulatory agencies which regulate the business of BMS, necessary to the execution and delivery of this

Agreement by BMS or to its performance as of the Effective Date of the transactions contemplated hereby have been obtained and all filings with and notifications to such governmental authorities (including non-governmental self-regulatory agencies), regulatory agencies or other entities have been effected.

11.12 BMS covenants that it will use its commercially reasonable efforts such that all Products manufactured, labeled, advertised, and sold by or on behalf of BMS under this Agreement shall comply in all material respects with all applicable requirements of the U.S. Food, Drug and Cosmetic Act and all other laws and regulations applicable thereto.

11.13 Except as disclosed in *Appendix 3* (*re Fresenius*), PHARMATOP represents that, as of the date of full execution of this Agreement, there are, to the best of its knowledge, no Third Party patents that would materially affect BMS' ability to sell Products or PHARMATOP's ability to obtain patent protection for Licensed Rights.

11.14 The representations and warranties of the parties set forth in this Article and in Section 6.1 shall survive the termination, cancellation or expiration of this Agreement without limitation.

Article 12—Indemnification; Limitation on Liability

12.1 Subject to Sections 12.3 and 12.4, each Party hereby agrees to indemnify, defend and hold the other Party, its Affiliates, its licensees, and its and their officers, directors, employees, consultants, contractors, sublicensees and agents (collectively, the "Indemnitees") harmless from and against any and all damages or other amounts payable to a Third Party claimant (by enforceable judgement, settlement or otherwise), as well as any reasonable attorneys' fees and costs of litigation incurred by such Indemnitee as to any such Claim (as defined in this Section 12.1) until the indemnifying Party has acknowledged that it will provide indemnification hereunder with respect to such Claim as provided below, (collectively, "Damages") resulting from claims, suits, proceedings or causes of action ("Claims") brought by such Third Party against such Indemnitee based on: (a) a breach of a representation or warranty by the indemnifying Party contained in this Agreement; (b) breach of this Agreement or applicable law by such indemnifying

Party; (c) negligence or willful misconduct of a Party, its Affiliates or (sub)licensees, or their respective employees, contractors or agents in the performance of this Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by it to a Third Party (including without limitation misappropriation of trade secrets).

12.2 Subject to Section 12.4, BMS hereby agrees to indemnify, defend and hold harmless PHARMATOP and its directors, agents and employees from and against any and all damages and other amounts payable to a Third Party claimant (by enforceable judgement, settlement or otherwise), as well as any reasonable attorneys' fees and costs of litigation incurred by such PHARMATOP indemnitee as to any Claim (as defined below) until BMS has acknowledged that it will provide indemnification hereunder with respect to such Claim, as a result of any suits, claims, actions, and demands ("Claims") made by such Third Party against such PHARMATOP Indemnitee that are based, directly or indirectly, on the manufacture, use, or sale of any Products by BMS or its Affiliates, agents or sublicensees, except to the extent such Claims result from (a) a breach of a representation or warranty by PHARMATOP contained in this Agreement; (b) breach of this Agreement or applicable law by PHARMATOP; (c) negligence, fraud, or willful misconduct by PHARMATOP or its employees, contractors or agents; and/or (d) breach of a contractual or fiduciary obligation owed by PHARMATOP or an of its employees or shareholders to a Third Party (including without limitation misappropriation of trade secrets), or as provided in section 6.3(a).

12.3 In the event that PHARMATOP is obligated to indemnify BMS as to a given amount for a given Claim under this Agreement or is obligated to BMS for any damages of any character for any breach of this Agreement (such damages and Claims, together, a "PHARMATOP Payment Obligation"), BMS shall only be entitled to recover from PHARMATOP with respect to such PHARMATOP Payment Obligation as follows:

(a) If such PHARMATOP Payment Obligation relates to a breach by PHARMATOP of any of its representations or warranties under this Agreement, BMS may recover directly from PHARMATOP (or, if PHARMATOP fails to meet its obligations, from its general partners) damages with respect to such

PHARMATOP Payment Obligation up to an amount that does not exceed [***] of all amounts then paid to PHARMATOP by BMS pursuant to sections [***] and [***], less all amounts previously paid directly by PHARMATOP to BMS (i.e., other than by royalty offset) with respect to any other PHARMATOP Payment Obligations pursuant to this subsection (a) and pursuant to section 12.3(b). To the extent that such amount is not sufficient to cover the entire amount due BMS, BMS may recover any remaining amount due it only by offsetting and withholding the amount due against any future royalties due BMS under section 7.2 or 7.3 until such amount is paid.

(b) If such PHARMATOP Payment Obligation relates to a breach by PHARMATOP of any provisions of this Agreement other than its representations and warranties under this Agreement, BMS may recover directly from PHARMATOP (or, if PHARMATOP fails to meet its obligations, from its general partners) damages with respect to such PHARMATOP Payment Obligation up to an amount that does not exceed [***] of all amounts then paid to PHARMATOP by BMS pursuant to section [***] and [***], less all amounts previously paid directly by PHARMATOP to BMS (i.e., other than by royalty offset) with respect to any other PHARMATOP Payment Obligations pursuant to this subsection (b) and, to the extent relating to amounts previously paid by BMS pursuant to sections [***] and [***], with respect to any other PHARMATOP Payment Obligations previously paid directly by PHARMATOP to BMS pursuant to section [***]. To the extent that such amount is not sufficient to cover the entire amount due BMS, BMS may recover any remaining amount due it only by offsetting and withholding the amount due against any future royalties due BMS under section [***] or [***] until such amount is paid.

For the avoidance of doubt, it is expressly agreed between the Parties that these limitations are intended to be cumulative to cover all PHARMATOP Payment Obligations. In other words, if monies are paid or deducted under 12.3(a) (from amounts

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other than payments under section 7.1), such payments or deductions reduce monies available for payment or deduction under 12.3(b), and vice-a-versa.

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

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

(b) shall, if the indemnifying Party acknowledges that such Claim falls within the scope of its indemnification obligations hereunder, permit the indemnifying Party to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the Claim (including the right to settle the claim solely for monetary consideration); provided, that the indemnifying Party shall seek the prior written consent (not to be unreasonably withheld or delayed) of any such Indemnitee as to any settlement which would materially diminish or materially adversely affect the scope, exclusivity or duration of any Patents licensed under this Agreement, would require any payment by such Indemnitee, would require an admission of legal wrongdoing in any way on the part of an Indemnitee, or would amend this Agreement; and

(c) shall fully cooperate (including providing access to and copies of pertinent records and making available for testimony relevant individuals subject to its control) as reasonably requested by, and at the expense of, the indemnifying Party in the defense of the Claim.

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

consent of the indemnifying Party, or the indemnification provided under such Section 12.1 or 12.2 as to such Claim shall be null and void.

12.5 PHARMATOP represents and warrants that it is a general partnership under French law, that its general partners are Daniele Fredj and Francois Dietlin, and that under French law, each of the general partners are responsible for the liabilities of PHARMATOP.

12.6 The liability, limitation of liability, and indemnification provisions set forth in this Section 12 shall survive the termination, cancellation or expiration of this Agreement [***]

Article 13—Arbitration

13.1 Any controversy or claim arising out of or relating to this Agreement or the validity, inducement, or breach thereof, shall be settled by arbitration before a arbitration tribunal of three (3) arbitrators appointed and ruling in accordance with the Arbitration Rules of the International Chamber of Commerce Arbitration Association ("ICC") then pertaining, except where those rules conflict with this provision, in which case this provision controls. Any court with jurisdiction shall enforce this clause and enter judgment on any award. The arbitrators shall be attorneys who have at least fifteen (15) years of experience with a law firm or corporate law department of over twenty five (25) lawyers or who were a judge of a court of general jurisdiction. They shall not be a citizen of the United States, Mexico, Canada, or France and shall not have its usual professional office in one of these countries. They shall be selected within ten (10) days of commencement of the arbitration by common consent of Parties or if Parties fall to agree in the stated time, through selection procedures administered by the ICC. The arbitration shall be held in the city of Paris, France. Within forty-five (45) days of initiation of arbitration, the parties shall reach agreement upon and thereafter follow procedures assuring that the arbitration will be concluded and the award rendered within no more than six months from selection of the arbitrator. Failing such agreement, the ICC will design and the parties will follow procedures that meet such a time schedule.

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13.2 [***]. All proceedings shall be conducted, and all documents submitted, in the English language. [***].

13.3 Each Party has the right prior to the commencement of an arbitration and, if the arbitrators cannot hear the matter within an acceptable period or can not award effective relief, during the arbitration, to seek and obtain from an appropriate court provisional remedies such as attachment, preliminary injunction, or replevin, to avoid irreparable harm, maintain the status quo or preserve the subject matter of the arbitration.

Article 14—General provisions

14.1 Any delays in or failures of performance by a Party under this Agreement shall not be considered a breach of this Agreement if and to the extent caused by occurrences beyond the reasonable control of the Party affected, including but not limited to acts of God; acts, regulations or laws of any government; strikes or other concerted acts of workers; fires; floods; explosions; riots; wars; rebellions; and sabotage.

14.2 BMS shall obtain any and all governmental approvals required to authorize, implement or enforce this Agreement or any of the terms and conditions hereof.

14.3 No change in, addition to or waiver of any of the provisions of this Agreement shall be valid or binding unless in writing and duly executed by the Party against whom enforcement of the change, addition or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time.

14.4 Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.

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14.5 Headings herein are for the parties' convenience only, and shall not be used to interpret this Agreement.

14.6 Except to the extent otherwise provided herein, each Party, shall bear its own expenses and costs in connection with the transactions contemplated hereby, including the preparation, execution and delivery of this Agreement and compliance herewith.

14.7 All matters affecting the interpretation, validity, performance and enforcement of this Agreement shall be governed by the laws of the state of New York (USA), without regard or giving effect to its choice or conflict of law principles other than Section 5-1401 of the New York General Obligations Law.

14.8 If any provision of this Agreement is invalid or unenforceable in any jurisdiction, the remaining provisions hereof shall remain in effect and such invalidity or unenforceability shall not affect the validity or enforceability of such provision in any other jurisdiction. The parties shall replace such ineffective provision for such jurisdiction with a valid and enforceable provision which most closely approaches the purpose of this Agreement, and in particular, the provision to be replaced.

14.9 PHARMATOP and BMS are independent contractors and shall not be deemed to be partners, joint venturers or each other's agents, and neither shall have the right to act on behalf of the other except as expressly provided hereunder or otherwise expressly agreed to in writing.

14.10 The parties have incorporated in this Agreement all representations, warranties, covenants, commitments and understandings on which they have relied in entering into this Agreement and, except as provided for herein, neither Party has made any covenant or other commitment to the other concerning its future action. Accordingly, this Agreement, together with the appendixes and exhibits attached hereto, (i) constitute the entire agreement and understanding between the parties with respect to the matters contained herein, and there are no promises, representations, conditions, provisions or terms related thereto other than those set forth in this Agreement, and (ii) supersede all

previous understandings, agreements and representations between the parties, written or oral relating to the subject matter hereof.

14.11 All communications, reports, payments and notices required by this Agreement shall be made in writing and addressed to the parties at their respective addresses set forth below or to such other address as requested by a Party by notice in writing to the other parties:

If to PHARMATOP:

SCR Pharmatop
10, square St. Florentin
78150 Le Chesnay
FRANCE
Attention: Gerant
Phone: 33-1-39-545577

If to BMS:

Bristol-Myers Squibb Company
Route 206 and Province Line Road
Princeton, New Jersey 08540-4000
Attn: President for Consumer Medicines

with a copy to the Vice President and Senior Counsel, BMS Consumer Medicines, at the same address.

All such notices, reports, payments and communications shall be deemed given or made and effective (i) when delivered personally; or (ii) when received, if sent by recognized overnight courier or by registered or certified mail, return receipt requested and postage prepaid.

14.12 In order to insure that this license can be used validly against Third Parties, extracts of this Agreement will be registered on the patent offices' registers by BMS as deemed necessary by BMS, at its expense.

[The next page is the signature page]

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed in triplicates by their duly authorized representatives as of the 23rd day of December 2002.

SCR PHARMATOP

By: /s/ Daniele Fredj
Name: Daniele Fredj
Title: Gerant

By: /s/ Francois Dietlin
Name: Francois Dietlin
Title: Gerant

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ [Unintelligible]
Name:
Title:

Exhibit 10.13

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "Agreement") dated February 17, 2006 by and among OXFORD FINANCE CORPORATION ("Oxford"); SILICON VALLEY BANK, a California-chartered bank, with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 ("SVB") (SVB and Oxford each individually a "Lender", and collectively the "Lenders"), and CADENCE PHARMACEUTICALS, INC., a Delaware corporation, whose address is 12730 High Bluff Drive, Suite 410, San Diego, California 92130 ("Borrower") provides the terms on which Lenders shall lend to Borrower and Borrower shall repay Lenders. The parties agree as follows:

1 ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. The term "financial statements" includes the notes and schedules. The terms "including" and "includes" always mean "including (or includes) without limitation," in this or any Loan Document. Capitalized terms in this Agreement shall have the meanings as set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings provided by the Code, to the extent such terms are defined therein.

2 LOANS AND TERMS OF PAYMENT

2.1 Promise to Pay.

Borrower will pay Lenders the unpaid principal amount of all Credit Extensions hereunder with all interest, fees and finance charges due thereon as and when due in accordance with this Agreement.

2.1.1 Growth Capital Loan Facility.

(a) Availability. Subject to the terms and conditions of this Agreement, Lenders agree, severally and not jointly, to lend to Borrower from time to time prior to the Growth Capital Commitment Termination Date, two (2) advances (each a "Growth Capital Advance" and collectively the "Growth Capital Advances") in an aggregate amount not to exceed the Growth Capital Loan Commitment according to each Lender's pro rata share of the Growth Capital Loan Commitment (based upon the respective Growth Capital Commitment Percentage of each Lender). When repaid, the Growth Capital Advances may not be re-borrowed. Lenders' obligation to lend hereunder shall terminate on the earlier of (i) the occurrence and continuance of an Event of Default, or (ii) the Growth Capital Commitment Termination Date.

(b) Borrowing Procedure. To obtain a Growth Capital Advance, Borrower must notify Lenders by facsimile or telephone by 12:00 p.m. Pacific Time seven (7) Business Days prior to the date the Growth Capital Advance is to be made. If such notification is by telephone, Borrower must promptly confirm the notification by delivering to Lenders a completed Payment/Advance Form in the form attached as Exhibit B. In addition, a Note payable to each Lender in the form of Exhibit D must be signed by a Responsible Officer or designee. On the Growth Capital Funding Date, each Lender shall credit and/or transfer (as applicable) to Borrower's deposit account, an amount equal to its Growth Capital Commitment Percentage multiplied by the amount of the Growth Capital

Advance. Each Lender may make Growth Capital Advances under this Agreement based on instructions from a Responsible Officer or his or her designee or without instructions if the Growth Capital Advances are necessary to meet Obligations which have become due. Each Lender may rely on any telephone notice given by a person whom such Lender reasonably believes is a Responsible Officer or designee. Borrower shall indemnify each Lender for any loss Lender suffers due to such reliance.

2.2 Termination of Commitment to Lend.

Each Lender's obligation to lend the undisbursed portion of the Obligations shall terminate if, in such Lender's sole discretion made in good faith, there has been a Material Adverse Change.

2.3 Repayment of Credit Extensions on Growth Capital Advances.

(a) Principal and Interest Payments on Payment Dates.

(i) Growth Capital Advance. For each Growth Capital Advance, Borrower shall make monthly payments of interest only commencing on the first Business Day of the month following the month in which the Growth Capital Funding Date occurs with respect to such Growth Capital Advance and continuing thereafter on the first Business Day of each successive calendar month (each a "Growth Capital Interest Only Payment Date") during the Growth Capital Interest Only Period. Commencing on the Growth Capital Amortization Date, Borrower shall make thirty (30) equal monthly payments of principal and interest which would fully amortize the outstanding Growth Capital Advances as of the Growth Capital Amortization Date over the Growth Capital Repayment Period (individually, the "Growth Capital Scheduled Payment," and collectively, "Growth Capital Scheduled Payments") and on the first Business Day of each successive month and continuing thereafter during the Growth Capital Repayment Period on the first Business Day of each successive calendar month (each a "Growth Capital Scheduled Payment Date "). All unpaid principal and accrued interest is due and payable in full on the Growth Capital Maturity Date with respect to such Growth Capital Advance. A Growth Capital Advance may only be prepaid in accordance with Sections 2.3(c) and 2.3(d). Each Growth Capital Interest Only Payment Date and each Growth Capital Scheduled Payment Date are sometimes referred to as a "Growth Capital Payment Date."

(ii) Payments received as to a Growth Capital Advance after 12:00 noon Pacific time are considered received at the opening of business on the next Business Day.

(b) Interest Rate.

(i) Growth Capital Loans. Borrower shall pay interest on each Growth Capital Payment Date on the unpaid principal amount of each Growth Capital Advance until the Growth Capital Advance has been paid in full, at the fixed rate equal to the greater of (a) 10.83%, and (b) six and one-quarter percent (6.25%) per annum in excess of the Treasury Rate as of the date the Note for the Growth Capital Advance is prepared, determined by Lenders for each Growth Capital Advance. Interest is computed on the basis of a 360 day year of twelve 30-day months.

(ii) Default Rate. Any amounts outstanding under the Growth Capital Advances during the continuance of an Event of Default shall bear interest at a per annum rate equal to the Default Rate.

(c) Mandatory Prepayment Upon an Acceleration. If the Growth Capital Advances are accelerated following the occurrence of an Event of Default or otherwise, Borrower shall immediately pay to Lenders an amount equal to the sum of: (i) all outstanding principal plus accrued interest, plus (ii) the Prepayment Fee, plus (iii) all other sums, if any, that shall have become due and payable, including interest at the Default Rate with respect to any past due amounts.

(d) Permitted Prepayment of Loans. Borrower shall have the option to prepay all, but not less than all, of the Growth Capital Advances advanced by Lenders under this Agreement, provided Borrower (i) provides written notice to Lenders of its election to prepay the Growth Capital Advances at least thirty (30) days prior to such prepayment, and (ii) pays, on the date of such prepayment (A) all outstanding principal plus accrued interest, plus (B) the Prepayment Fee (except as provided in Section 7.3), plus (C) all other sums, if any, that shall have become due and payable, including interest at the Default Rate with respect to any past due amounts.

(e) Debit of Accounts. SVB may debit any of Borrower's deposit accounts including Account Number [___] for principal and interest payments or any other amounts Borrower owes SVB hereunder, when due and payable. These debits shall not constitute a set-off. Borrower shall separately set up an ACH payment structure in favor of Oxford, satisfactory to Oxford.

2.4 Fees.

Borrower will pay to Lenders:

(a) Loan Fee. A fully earned, non-refundable Loan Fee of $20,000 (to be shared between SVB ($10,000) and Oxford ($10,000)) on the Effective Date.

(b) Prepayment Fee. The Prepayment Fee, as defined herein, if and when applicable.

(c) Lenders Expenses. All Lenders Expenses (including reasonable attorneys' fees and reasonable expenses) incurred through and after the Effective Date, when due. Borrower has paid Lenders a good faith deposit of $20,000 (the "Good Faith Deposit"). Any portion of the Good Faith Deposit not utilized to pay Lenders Expenses in connection with the documentation, negotiation and closing of this Agreement and the Loan Documents shall be refunded to Borrower promptly after the determination of such Lenders Expenses.

3 CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension.

The Lenders' agreement to make the initial Credit Extension is subject to the condition precedent that Lenders shall have received, in form and substance satisfactory to Lenders, such documents and completion of such other matters, as Lenders may reasonably deem necessary or appropriate, including, without limitation, the following:

(a) this Agreement;

(b) a certificate of the Secretary of Borrower with respect to articles, by-laws, incumbency and resolutions authorizing the execution and delivery of this Agreement;

(c) Perfection Certificate by Borrower;

(d) Warrants to Purchase Stock;

(e) financing statements (Forms UCC-1);

(f) Account Control Agreement/Investment Account Control Agreements (SVB and other financial institutions);

(g) insurance certificate;

(h) payment of the fees and Lenders Expenses then due specified in Section 2.4 hereof;

(i) Certificate of Foreign Qualification (California);

(j) Certificate of Good Standing/Legal Existence; and

(k) such other documents, and completion of such other matters, as Lenders may reasonably deem necessary or appropriate.

3.2 Conditions Precedent to all Credit Extensions.

The obligations of Lenders to make each Credit Extension, including the initial Credit Extension, is subject to the following:

(a) timely receipt of any Payment/Advance Form.

(b) Borrower shall have duly executed and delivered to each Lender a Note in the amount of such Lender's Growth Capital Advance.

(c) the representations and warranties in Section 5 shall be true in all material respects on the date of the Payment/Advance Form and on the effective date of each Credit Extension and no Event of Default shall have occurred and be continuing, or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 remain true in all material respects.

4 CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants to each Lender, to secure the payment and performance in full of all of the Obligations and the performance of each of Borrower's duties under the Loan Documents, a continuing security interest in, and pledges and assigns to each Lender the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower warrants and represents that the security interest granted herein shall be a first priority security interest in the Collateral. SVB may place a "hold" on any certificates of deposit or deposit or investment accounts pledged as Collateral to secure cash management services, corporate business credit cards or letters of credit separately issued or supplied by SVB under separate agreements between SVB and Borrower.

Borrower agrees that any disposition of the Collateral in violation of this Agreement, by either the Borrower or any other Person, shall be deemed to violate the rights of the Lenders under the Code. If this Agreement is terminated, Lenders' lien and security interest in the Collateral shall continue until Borrower fully satisfies its Obligations. If Borrower shall at any time, assert or file a commercial tort claim, Borrower shall promptly notify Lenders in a writing signed by Borrower of

the brief details thereof and grant to Lenders in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Lenders.

Upon the indefeasible payment in full in cash of all Obligations under this Agreement and the termination of any obligation of any Lender to make Credit Extensions hereunder, Lenders shall execute and deliver to Borrower, at Borrower's sole cost and expense, all documents and instruments as shall be reasonably necessary to evidence termination of the security interest in the Collateral created hereunder, including a UCC-3 Termination Statement.

4.2 Authorization to File Financing Statements.

Borrower hereby authorizes Lenders to file financing statements, without notice to Borrower, with all appropriate jurisdictions, in order to perfect or protect Lenders' interest or rights hereunder. As of the date of this Agreement, Lenders are not currently contemplating recording any fixture filings with the applicable recording office, but reserve their right to do so. Lenders acknowledge that, to the extent Borrower has any fixtures, Lenders may need to file a real property related financing statement under section 9-502(b) of the Code for their security interests to have priority over certain conflicting interests in such fixtures.

4.3 Account Control.

Unless an Event of Default has occurred and is continuing, each Lender hereby agrees that: (i) it will not send a "notice of control" under any applicable account control agreements, and (ii) as to accounts maintained by it, it shall not place a "hold" on any such accounts, except SVB may place a "hold" on any certificates of deposit or deposit or investment accounts pledged as Collateral to secure cash management services, corporate business credit cards or letters of credit separately issued or supplied by SVB under separate agreements between SVB and Borrower.

5 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to each Lender as follows:

5.1 Due Organization and Authorization.

Borrower and each of its Subsidiaries is duly existing and in good standing in its state of formation and qualified and licensed to do business in, and in good standing in, any state in which the conduct of its business or its ownership of property requires that it be qualified, except where the failure to do so could not reasonably be expected to cause a Material Adverse Change. In connection with this Agreement, the Borrower delivered to Lenders a certificate signed by the Borrower and entitled "Perfection Certificate". The Borrower represents and warrants to each Lender that: (a) the Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) the Borrower is an organization of the type, and is organized in the jurisdiction, set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth the Borrower's organizational identification number or accurately states that the Borrower has none; (d) the Perfection Certificate accurately sets forth the Borrower 's place of business, or, if more than one, its chief executive office as well as the Borrower's mailing address if different, and (e) all other information set forth on the Perfection Certificate pertaining to the Borrower is accurate and complete. If the Borrower does not now have an organizational identification number, but later

obtains one, Borrower shall forthwith notify the Lenders of such organizational identification number.

The execution, delivery and performance of the Loan Documents have been duly authorized, and do not conflict with Borrower's certificate of incorporation or bylaws, nor constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which or by which it is bound in which the default would reasonably be expected to cause a Material Adverse Change.

5.2 Collateral.

Borrower has good title to the Collateral, free of Liens except Permitted Liens. Borrower has no deposit account, other than the deposit accounts with SVB and deposit accounts described in the Perfection Certificate delivered to Lenders in connection herewith. The Accounts are bona fide, existing obligations, and the service or property has been performed or delivered to the account debtor or its agent for immediate shipment to and unconditional acceptance by the account debtor. Except as described in the Perfection Certificate, the Collateral is not in the possession of any third party bailee (such as a warehouse). Except as hereafter disclosed to the Lenders in writing by Borrower, none of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate. In the event that Borrower, after the date hereof, intends to store or otherwise deliver any portion of the Collateral to a bailee, then Borrower will first receive the written consent of Lenders and such bailee must acknowledge in writing that the bailee is holding such Collateral for the benefit of Lenders. All Inventory is in all material respects of good and marketable quality, free from material defects, other than Inventory consisting of clinical trial material which is usable as contemplated. Borrower is the sole owner or exclusive licensee of the Intellectual Property. Each Patent is valid and enforceable and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property violates the rights of any third party, except to the extent such claim would not reasonably be expected to cause a Material Adverse Change.

5.3 Litigation.

Except as shown in the Perfection Certificate, there are no actions or proceedings pending or, to the knowledge of Borrower's Responsible Officers, threatened by or against Borrower or any of its Subsidiaries in which an adverse decision would reasonably be expected to cause a Material Adverse Change.

5.4 No Material Deterioration in Financial Statements.

All consolidated financial statements for Borrower, and any of its Subsidiaries, delivered to Lenders fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Lenders, although Borrower's cash may have declined to pay necessary and ordinary course business expenses.

5.5 Solvency.

The fair salable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; the Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.6 Regulatory Compliance.

Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Borrower has not violated any laws, ordinances or rules, the violation of which would reasonably be expected to cause a Material Adverse Change. None of Borrower's or any Subsidiary's properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally or the violation of which would not reasonably be expected to cause a Material Adverse Change. Borrower and each Subsidiary has timely filed (within any applicable extension period) all required tax returns and paid, or made adequate provision to pay, all material taxes, except those being contested in good faith with adequate reserves under GAAP. Borrower and each Subsidiary has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all government authorities that are necessary to continue its business as currently conducted, except where the failure to make such declarations, notices or filings would not reasonably be expected to cause a Material Adverse Change.

5.7 Subsidiaries.

Borrower does not own any stock, partnership interest or other equity securities except for Permitted Investments.

5.8 Full Disclosure.

No written representation, warranty or other statement of Borrower in any certificate or written statement given to any Lender (taken together with all such written certificates and written statements given to any Lender) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading, as of the date of such representation, warranty or other statement, it being recognized by Lenders that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results.

6 AFFIRMATIVE COVENANTS

Borrower shall do all of the following for so long as any Lender has an obligation to make any Credit Extension, or there are outstanding Obligations:

6.1 Government Compliance.

Borrower shall maintain its and all of its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to cause a Material Adverse Change. Borrower shall comply, and have each of its Subsidiaries comply, with all laws, ordinances and regulations to which it is subject, noncompliance with which would reasonably be expected to cause a Material Adverse Change.

6.2 Financial Statements, Reports, Certificates.

(a) So long as Borrower is not subject to the reporting requirements of Sections 12 or 15 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), Borrower shall deliver to Lenders: (i) as soon as available, but no later than thirty (30) days after the last day of each month (unless the month is a quarter-end month in which case no later than forty-five (45) days after the last day of such month), a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations during the period certified by a Responsible Officer and in a form acceptable to Lenders; (ii) copies of Borrower's quarterly financial statements including a balance sheet, income statement and statement of cash flows, each prepared by Borrower in accordance with GAAP consistently applied by Borrower (not including footnotes required under GAAP) and certified by Borrower's Chief Financial Officer within forty-five (45) days after the close of each of Borrower's first three fiscal quarters; (iii) as soon as available, but no later than one hundred eighty (180) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Lenders; and (iv) annual financial projections approved by Borrower's Board of Directors consistent in form and detail with those provided to Borrower's venture capital investors as soon as available, but no later than forty five (45) days after the last day of Borrower's fiscal year.

(b) In the event that Borrower becomes subject to the reporting requirements of Sections 12 or 15 of the Exchange Act, Borrower shall deliver to Lenders, within five (5) days of filing with the Securities and Exchange Commission, copies of, or electronic links to (in the case of electronic links being provided to Lenders, Borrower shall still be required to submit to Lenders the applicable compliance certificate in the form of Exhibit C), all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and all reports on Form 10-K, 10-Q and 8-K so filed.

(c) In addition, Borrower shall deliver to Lenders: (i) a prompt report of any legal actions pending or threatened in writing against Borrower or any Subsidiary that would reasonably be expected to result in damages or costs to Borrower or any Subsidiary of One Hundred Thousand Dollars ($100,000.00) or more; and (ii) such other financial information as Lenders may reasonably request from time to time.

(d) Within thirty (30) days after the last day of each month (unless the month is a quarter-end month in which case no later than forty-five (45) days after the last day of such month), Borrower shall deliver to Lenders with the monthly financial statements a Compliance Certificate signed by a Responsible Officer in the form of Exhibit C.

(e) Allow Lenders to audit or inspect Borrower's Collateral; provided that any such inspections shall be at Borrower's expense and shall be conducted no more often than every twelve

(12) months unless an Event of Default has occurred and is continuing; provided further that any such audits shall only be conducted if an Event of Default has occurred and is continuing and shall be at Borrower's expense.

6.3 Inventory; Returns.

Borrower shall keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its account debtors shall follow Borrower's customary practices as they exist at the Effective Date or as required by GAAP. Borrower must promptly notify Lenders of all returns, recoveries, disputes and claims, which involve more than $50,000.

6.4 Taxes.

Borrower shall make, and cause each Subsidiary to make, timely payment of all material federal, state, and local taxes or assessments (other than taxes and assessments which Borrower is contesting in good faith, with adequate reserves maintained in accordance with GAAP) and will deliver to Lenders, on demand, appropriate certificates attesting to such payments.

6.5 Insurance.

Borrower shall keep its business and the Collateral insured for risks in amounts, as reasonable and customary for a corporation with similar size and business as Borrower and as Lenders may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Lenders. All property policies covering Collateral shall have a lender's loss payable endorsement showing each Lender as an additional loss payee and waive subrogation against Lenders, and all liability policies shall show, or have endorsements showing, each Lender as an additional insured. All policies (or the loss payable and additional insured endorsements) shall provide that the insurer must give Lenders at least thirty (30) days notice before canceling, amending, or declining to renew its policy. At Lenders' request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Lenders' option, be payable to Lenders on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to $25,000, in the aggregate, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Lenders have been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Lenders, be payable to Lenders on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Lenders, Lenders may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Lenders deem prudent.

6.6 Accounts.

(a) On or before the earlier of (a) February 28, 2006 and (b) the first Growth Capital Funding Date and until all Obligations have been repaid, Borrower shall maintain Borrower's primary depository and operating accounts and securities accounts with SVB or administered

through SVB, which accounts shall represent at least 80% of the dollar value of the Borrower's accounts at all financial institutions.

(b) Borrower shall identify to Lenders, in writing, any bank or securities account opened by Borrower with any institution other than SVB. In addition, for each such account that the Borrower at any time opens or maintains, Borrower shall, at the Lenders' request and option, pursuant to an agreement in form and substance acceptable to the Lenders cause the depository bank or securities intermediary to agree that such account is the collateral of Lenders pursuant to the terms hereunder. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the Borrower's employees.

6.7 Intellectual Property.

Borrower shall: (i) use its commercially reasonable efforts to protect, defend and maintain the validity and enforceability of the Intellectual Property; (ii) promptly advise Lenders in writing of material infringements of the Intellectual Property; and (iii) not allow any Intellectual Property material to the Borrower's business to be abandoned, forfeited or dedicated to the public without Lenders' written consent.

6.8 Further Assurances.

Borrower shall execute any further instruments and take further action as Lenders reasonably request to perfect or continue Lenders' security interest in the Collateral or to effect the purposes of this Agreement.

7 NEGATIVE COVENANTS

Borrower shall not do any of the following without the Lenders' prior written consent for so long as any Lender has an obligation to make Credit Extensions or there are any outstanding Obligations:

7.1 Dispositions.

Convey, sell, lease, transfer or otherwise dispose of (collectively a "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (i) of Inventory in the ordinary course of business; (ii) of worn-out or obsolete Equipment; (iii) of non-exclusive licenses for the use of the Intellectual Property of Borrower or its Subsidiaries; (iv) exclusive licenses for the use of the Intellectual Property of Borrower or its Subsidiaries for a particular field of use or geographic area and approved by Borrower's Board of Directors; (v) contemplated pursuant to the Pharma Transaction (as defined below) which shall not in any event include the grant of a security interest in any Intellectual Property of Borrower or its Subsidiaries other than the Pharma Intellectual Property or Intellectual Property of Borrower or its Subsidiaries arising out of the development and/or commercialization of Pharma Intellectual Property (or the associated pharmaceutical product); or (vi) other Transfers in the ordinary course of business up to $100,000 per fiscal year. For the avoidance of doubt, the following shall not be considered a Transfer hereunder: payments of cash to vendors or other third parties for goods provided or to be provided or services rendered or to be rendered to or on behalf of Borrower or any of its Subsidiaries. The "Pharma Transaction" means the transaction which Borrower is negotiating [as of

January 26, 2006] with a third party ("Pharma") whereby Pharma would sell or license certain Intellectual Property (the "Pharma Intellectual Property") to Borrower.

7.2 Changes in Business, Ownership, Management or Locations of Collateral.

Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower or reasonably related thereto, or have a material change in its ownership (other than by the sale of Borrower's equity securities in a public offering or to venture capital investors so long as Borrower identifies to Lenders the venture capital investors prior to the closing of the investment), or a change in or a change in a Responsible Officer unless a replacement is approved by a majority of Borrower's Board of Directors, including a majority of those members of the Board of Directors who were members of the Board of Directors and not employees of Borrower (the "Outside Directors"), within 120 days of the date of termination of such Responsible Officer, provided that if a majority of the Outside Directors determine that such Responsible Officer shall not be replaced, then Borrower shall notify Lenders within 30 days of such determination. Borrower shall not, without at least thirty (30) days prior written notice to Lenders: (i) relocate its chief executive office, or add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Five Thousand Dollars ($5,000) in Borrower's assets or property), or (ii) change its jurisdiction of organization, or (iii) change its organizational structure or type, or (iv) change its legal name, or (v) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions.

Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person; provided, however, if Lenders do not consent to any such transaction, then Borrower shall be entitled to prepay all of the Obligations without payment of the Prepayment Fee (as more fully set forth in Section 2.3(d) of this Agreement). Notwithstanding the foregoing, (i) a Subsidiary may merge or consolidate into another Subsidiary or into Borrower, and (ii) Borrower may merge or consolidate so long as: (A) the entity that results from such merger or consolidation (the "Surviving Entity") shall have executed and delivered to Lenders an agreement in form and substance reasonably satisfactory to Lenders, containing an assumption by the Surviving Entity of the due and punctual payment and performance of all Obligations and performance and observance of each covenant and condition of Borrower in the Loan Documents; (B) all such obligations of the Surviving Entity to Lenders shall be guaranteed by any entity, if any, that directly or indirectly owns or controls more than 50% of the voting stock of the Surviving Entity; (C) immediately after giving effect to such merger or consolidation, no Default or Event of Default shall have occurred and be continuing; and (D) the credit risk to Lenders, in their sole discretion, of the Surviving Entity shall not be increased. In determining whether the proposed merger or consolidation would result in an increased credit risk, Lenders may consider, among other things, changes in Borrower's management team, employee base, access to equity markets, venture capital support, financial position and/or disposition of intellectual property rights which may reasonably be anticipated as a result of the transaction.

7.4 Indebtedness.

Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance.

Except as permitted under Section 7.1, create, incur, or allow any Lien on any of the Collateral, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein, except for Permitted Liens as to which the Collateral may be subject. Borrower shall not sell, transfer, assign, mortgage, pledge, lease, grant a security interest in, or encumber, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower from selling, transferring, assigning, mortgaging, pledging, leasing, granting a security interest in or upon, or encumbering any of Borrower's Intellectual Property, except for Transfers of (i) non-exclusive licenses for the use of the Intellectual Property of Borrower or its Subsidiaries, (ii) exclusive licenses for the use of the Intellectual Property of Borrower or its Subsidiaries for a particular field of use or geographic area and approved by Borrower's Board of Directors, and (iii) contemplated pursuant to the Pharma Transaction which shall not in any event include the grant of a security interest in any Intellectual Property of Borrower or its Subsidiaries other than the Pharma Intellectual Property or Intellectual Property of Borrower or its Subsidiaries arising out of the development and/or commercialization of Pharma Intellectual Property (or the associated pharmaceutical product).

7.6 Distributions; Investments.

(i) Directly or indirectly acquire or own any Person, or make any Investment in any Person, other than Permitted Investments or mergers or acquisitions permitted by Section 7.3 above, or permit any of its Subsidiaries to do so; or (ii) pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock except (a) dividends and distributions payable solely in capital stock of Borrower and (b) repurchases of stock from former employees, consultants or directors of Borrower under the terms of applicable repurchase agreements in an aggregate amount not to exceed $50,000 in the aggregate in any fiscal year provided that no Event of Default has occurred, is continuing or would exist after giving effect to any such repurchase.

7.7 Transactions with Affiliates.

Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for (i) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (ii) Borrower's sale of equity securities to venture capital investors, or (iii) compensation and benefit arrangements (including the granting of options or other equity compensation arrangements) and any indemnification arrangements with employees, officers, directors or consultants approved by or pursuant to any plan approved by the majority of the disinterested members of the board of directors of Borrower.

7.8 Subordinated Debt.

(i) Make or permit any payment on any Subordinated Debt, except under the terms of the Subordinated Debt, or (ii) amend any provision in any document relating to the Subordinated Debt that would breach any applicable subordination agreement entered into in favor of Lenders or that would reasonably be expected to cause a Material Adverse Change.

7.9 Compliance.

Become an "investment company" or a company controlled by an "investment company," under the Investment Company Act of 1940 or undertake as one of its important activities extending credit to purchase or carry margin stock, or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation would reasonably be expected to cause a Material Adverse Change, or permit any of its Subsidiaries to do so.

7.10 Indebtedness Payments.

(i) Prepay, redeem, purchase, defease or otherwise satisfy in any manner prior to the scheduled repayment thereof any Indebtedness for borrowed money (other than amounts due under this Agreement or due any Lender) or lease obligations, (ii) amend, modify or otherwise change the terms of any Indebtedness for borrowed money or lease obligations so as to accelerate the scheduled repayment thereof or (iii) repay any notes to officers, directors or shareholders.

8 EVENTS OF DEFAULT

Any one of the following is an Event of Default:

8.1 Payment Default.

Borrower fails to pay any of the Obligations within three (3) Business Days after their due date. During the additional three (3) Business Day period the failure to cure the default shall not constitute an Event of Default (but no Credit Extension shall be made during such cure period).

8.2 Covenant Default.

(a) If Borrower fails to perform any obligation under Sections 6.2 or 6.7 or violates any of the covenants contained in Section 7 of this Agreement, or

(b) If Borrower fails or neglects to perform, keep, or observe any other material term, provision, condition, covenant, or agreement contained in this Agreement, in any of the Loan Documents, or in any other present or future agreement between Borrower and any Lender and as to any default under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure such default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional reasonable period (which shall not in any case exceed thirty (30) days after the end of such 10 day period) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default (provided that no Credit Extensions will be made during such cure period).

8.3 Material Adverse Change. A Material Adverse Change occurs.

8.4 Attachment.

(i) Any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver and the attachment, seizure or levy is not removed in

ten (10) days; (ii) the service of process upon the Borrower seeking to attach, by trustee or similar process, any funds of the Borrower on deposit with the Lenders and/or Agent, or any entity under the control of Lenders and/or Agent (including a subsidiary) and the service of process is not rescinded or withdrawn within ten (10) days; (iii) Borrower is enjoined, restrained, or prevented by court order from conducting a material part of its business; (iv) a judgment or other claim becomes a Lien on a material portion of Borrower's assets; or (v) a notice of lien, levy, or assessment is filed against any of Borrower's assets by any government agency and not paid within ten (10) days after Borrower receives notice. These are not Events of Default if stayed or if a bond is posted pending contest by Borrower (but no Credit Extensions shall be made during the cure period).

8.5 Insolvency.

(i) Borrower is unable to pay its debts (including trade debts) as they mature; (ii) Borrower begins an Insolvency Proceeding; or (iii) an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made before any Insolvency Proceeding is dismissed).

8.6 Other Agreements.

If there is a default in any agreement to which Borrower is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of One Hundred Thousand Dollars ($100,000) or that could otherwise result in a Material Adverse Change.

8.7 Judgments.

If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars ($250,000) shall be rendered against Borrower and shall remain unsatisfied and unstayed for a period of ten (10) days (provided that no Credit Extensions will be made prior to the satisfaction or stay of such judgment).

8.8 Misrepresentations.

If Borrower or any authorized Person acting for Borrower makes any material misrepresentation or material misstatement now or later in any warranty or representation in this Agreement or in any writing delivered to Lenders or to induce Lenders to enter this Agreement or any Loan Document.

8.9 Guaranty.

(i) Any guaranty of any Obligations terminates or ceases for any reason to be in full force; or (ii) any Guarantor does not perform any obligation under any guaranty of the Obligations; or (iii) any material misrepresentation or material misstatement exists now or later in any warranty or representation in any guaranty of the Obligations or in any certificate delivered to Lenders in connection with the guaranty; or (iv) any circumstance described in Sections 8.3, 8.4, 8.5, or 8.8 occurs to any Guarantor, or (v) the liquidation, winding up, termination of existence, or insolvency of any Guarantor.

9 RIGHTS AND REMEDIES

9.1 Rights and Remedies.

When an Event of Default occurs and continues either Lender may, without notice or demand, do any or all of the following:

(a) Declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Lenders);

(b) Stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and any Lender;

(c) Settle or adjust disputes and claims directly with account debtors for amounts, on terms and in any order that Lenders consider advisable and notify any Person owing Borrower money of Lenders' security interest in such funds and verify the amount of such account. Borrower shall collect all payments in trust for Lenders and, if requested by Lenders, immediately deliver the payments to Lenders in the form received from the account debtor, with proper endorsements for deposit;

(d) Make any payments and do any acts it considers necessary or reasonable to protect their security interest in the Collateral. Borrower shall assemble the Collateral if Lenders request and make it available as Lenders designate. Lenders may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Lenders a license to enter and occupy any of its premises, without charge, to exercise any of Lenders' rights or remedies;

(e) Apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by any Lender owing to or for the credit or the account of Borrower;

(f) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Lenders are hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Lenders' exercise of their rights under this Section, Borrower's rights under all licenses and all franchise agreements inure to Lenders;

(g) Place a "hold" on any account maintained with any Lender (provided that, except with respect to any certificates of deposit or deposit or investment accounts pledged as Collateral to secure cash management services, corporate business credit cards or letters of credit separately issued or supplied by SVB under separate agreements between SVB and Borrower, Lenders agree not to take any of the actions described in this clause (g) unless an Event of Default has occurred and is continuing);

(h) Deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any control agreement or similar agreements providing control of any Collateral (provided that, Lenders agree not to take any of the actions described in this clause (h) unless an Event of Default has occurred and is continuing);

(i) Demand and receive possession of Borrower's Books; and

(j) Exercise all rights and remedies and dispose of the Collateral according to the Code.

9.2 Power of Attorney.

Borrower hereby irrevocably appoints each Lender as its lawful attorney-in-fact, to be effective upon the occurrence and during the continuance of an Event of Default, to: (i) endorse Borrower's name on any checks or other forms of payment or security; (ii) sign Borrower's name on any invoice or bill of lading for any Account or drafts against account debtors, (iii) settle and adjust disputes and claims about the Accounts directly with account debtors, for amounts and on terms such Lender determines reasonable; (iv) make, settle, and adjust all claims under Borrower's insurance policies; and (v) transfer the Collateral into the name of such Lender or a third party as the Code permits. Borrower hereby appoints each Lender as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of any security interest regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and Lenders are under no further obligation to make Credit Extensions hereunder. Each Lender's foregoing appointment as Borrower's attorney in fact, and all of such Lender's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Lenders' obligation to provide Credit Extensions terminates.

9.3 Accounts, Notification and Collection.

In the event that an Event of Default occurs and is continuing, Lenders may notify any Person owing Borrower money of Lenders' security interest in the funds and verify and/or collect the amount of the Account. After the occurrence of an Event of Default, any amounts received by Borrower shall be held in trust by Borrower for Lenders, and, if requested by Lenders, Borrower shall immediately deliver such receipts to Lenders in the form received from the account debtor, with proper endorsements for deposit.

9.4 Lenders Expenses

Any amounts paid by Lenders as provided herein are Lenders Expenses and are immediately due and payable and shall bear interest at the then applicable rate and be secured by the Collateral. No payments by Lenders shall be deemed an agreement to make similar payments in the future or Lenders' waiver of any Event of Default.

9.5 Lenders' Liability for Collateral.

So long as Lenders comply with their obligations, if any, under the Code, neither Lender shall in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 Remedies Cumulative.

Lenders' rights and remedies under this Agreement, the Loan Documents, and all other agreements are cumulative. Lenders have has all rights and remedies provided under the Code, by law, or in equity. Lenders' exercise of one right or remedy is not an election, and Lenders' waiver of

any Event of Default is not a continuing waiver. Lenders' delay is not a waiver, election, or acquiescence. No waiver hereunder shall be effective unless signed by each Lender and then is only effective for the specific instance and purpose for which it was given.

9.7 Demand Waiver.

Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Lenders on which Borrower is liable. In all cases, Lenders' recourse under this Agreement is limited to the amount of the Obligations and any other payments for which Borrower is responsible hereunder.

10 NOTICES

Notices or demands by any party about this Agreement must be in writing and personally delivered or sent by an overnight delivery service, or by certified mail, postage prepaid, return receipt requested, or by telefacsimile at the addresses listed below. A party may change its notice address by written notice to the other party.

If to Borrower:	Cadence Pharmaceuticals, Inc. 12730 High Bluff Drive, Suite 410 San Diego, CA 92130 Attn: Chief Executive Officer Fax: (858) 436-1401
If to SVB:	Silicon Valley Bank 4442 Eastgate Mall, Suite 110 San Diego, California 92121 Attn: Susan L. Worsham Fax: (858) 622-1424
If to Oxford:	Oxford Finance Corporation 133 N. Fairfax Street Alexandria, VA 22314 Attn: Michael J. Altenburger, Chief Financial Officer Telephone: (703) 519-4900 Facsimile: (703) 519-5225

11 CHOICE OF LAW , VENUE AND JURY TRIAL WAIVER

California law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Lenders each submit to the exclusive jurisdiction of the State and Federal courts in California and Borrower accepts jurisdiction of the courts and venue in Santa Clara County, California. NOTWITHSTANDING THE FOREGOING, THE LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST THE BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH THE LENDERS DEEM NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE THE LENDERS' RIGHTS AGAINST THE BORROWER OR ITS PROPERTY.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND EACH LENDER WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and order applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to the California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

12 GENERAL PROVISIONS

12.1 Successors and Assigns.

This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Except as permitted under Section 7.3, Borrower may not assign this Agreement or any rights or Obligations under it without Lenders' prior written consent which may be granted or withheld in Lenders' discretion. Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Lenders' obligations, rights and benefits under this Agreement, the Loan Documents or any related agreement, including, without limitation, an assignment to any Affiliate or related party.

12.2 Indemnification.

Borrower hereby indemnifies, defends and holds Lenders and their respective officers, employees, and agents harmless against: (a) all obligations, demands, claims, and liabilities asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or Lenders Expenses incurred, or paid by Lenders from, following, or consequential to transactions between Lenders and Borrower (including reasonable attorneys' fees and expenses), except, as to (a) and (b), for losses caused by a Lender's gross negligence or willful misconduct.

12.3 Attorneys' Fees, Costs and Expenses.

In any action or proceeding between Borrower and any Lender arising out of the Loan Documents the prevailing party will be entitled to recover its reasonable attorneys' fees and other reasonable costs and expenses incurred, in addition to any other relief to which it may be entitled.

12.4 Right of Set-Off.

Borrower hereby grants to each Lender, a lien, security interest and right of set-off as security for all Obligations to such Lender, hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of such Lender or any entity under the control of such Lender (including a subsidiary of Lender) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, a Lender may set-off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE ANY LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.5 Time of Essence.

Time is of the essence for the performance of all Obligations in this Agreement.

12.6 Severability of Provision.

Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.7 Amendments in Writing, Integration.

All amendments to this Agreement must be in writing and signed by both Lenders and Borrower. This Agreement and the Loan Documents represent the entire agreement about this subject matter, and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

12.8 Counterparts.

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, are an original, and all taken together, constitute one Agreement.

12.9 Survival.

All covenants, representations and warranties made in this Agreement continue in full force while any Obligations remain outstanding. The obligations of Borrower to indemnify any Lender, including without limitation Section 12.2, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.10 Confidentiality.

In handling any confidential information of Borrower or Borrower's Affiliates, each Lender shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (i) to a Lender's subsidiaries or affiliates in connection with their business with Borrower; (ii) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, such Lender shall use commercially reasonable efforts in obtaining such prospective transferee's or purchaser's agreement to the terms of this provision); (iii) as required by law, regulation, subpoena, or other order, (iv) as required in connection with a Lender's examination or audit; and (v) as Lenders consider appropriate in exercising remedies under this Agreement. Confidential information does not include information that either: (a) is in the public domain or in a Lender's possession when disclosed to Lenders, or becomes part of the public domain after disclosure to Lenders through no fault of Lenders; or (b) is disclosed to a Lender by a third party, if Lenders do not know that the third party is prohibited from disclosing the information.

12.11 Effective Date.

Notwithstanding anything set forth in this Agreement or any Loan Document to the contrary, this Agreement and all of the Loan Documents shall not be effective until the date on which each Lender executes this Agreement as indicated on the signature page to this Agreement.

13 DEFINITIONS

13.1 Definitions.

In this Agreement:

"Accounts" are all existing and later arising accounts, contract rights, and other obligations owed Borrower in connection with its sale or lease of goods (including licensing software and other technology) or provision of services, all credit insurance, guaranties, other security and all merchandise returned or reclaimed by Borrower and Borrower's Books relating to any of the foregoing, as such definition may be amended from time to time according to the Code.

"Affiliate" is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"Borrower's Books" are all Borrower's books and records including ledgers, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition and all computer programs or discs or any equipment containing the information.

"Business Day" is any day that is not a Saturday, Sunday or a day on which SVB is closed.

"Code" is the Uniform Commercial Code as adopted in California as amended and in effect from time to time.

"Collateral" is any and all properties, rights and assets of the Borrower granted by the Borrower to Lenders or arising under the Code, now, or in the future, described on Exhibit A.

"Contingent Obligation" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (i) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (ii) any obligations for undrawn letters of credit for the account of that Person; and (iii) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under the guarantee or other support arrangement.

"Copyrights" are all copyright rights, applications or registrations and like protections in each work or authorship or derivative work, whether published or not (whether or not it is a trade secret) now or later existing, created, acquired or held.

"Credit Extension" is each Growth Capital Advance or any other extension of credit by any Lender for Borrower's benefit made pursuant to this Agreement.

"**Default Rate**" means for each Growth Capital Advance, five percent (5%) above the highest rate otherwise applicable thereto.

"**Dollars**" and **"$"** each means the lawful currency of the United States

"**Effective Date**" is the date Lenders execute this Agreement and as indicated on the signature page hereof.

"**Equipment**" is all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which Borrower has any interest.

"**ERISA**" is the Employment Retirement Income Security Act of 1974, and its regulations.

"GAAP" is generally accepted accounting principles.

"Growth Capital Advance" or **"Growth Capital Advances"** is defined in Section 2.1.1.

"**Growth Capital Amortization Date**" means, for each Growth Capital Advance, the one hundred eightieth (180th) day after its Growth Capital Funding Date, or if such date is not the first day of the month, then the first day of the calendar month immediately following such date.

"Growth Capital Commitment Percentage" means fifty percent (50%) with respect to SVB, and fifty percent (50%) with respect to Oxford.

"Growth Capital Commitment Termination Date" is June 30, 2006.

"Growth Capital Funding Date" is any date on which a Growth Capital Advance is made to or on account of Borrower.

"**Growth Capital Interest Only Period"** means, for each Growth Capital Advance, the period of time commencing on its Growth Capital Funding Date through the day before the Growth Capital Amortization Date.

"Growth Capital Loan Commitment" is Seven Million Dollars ($7,000,000).

"**Growth Capital Maturity Date**" is, for each Growth Capital Advance, the earliest of (a) the thirtieth (30th) Growth Capital Scheduled Payment Date for each Growth Capital Advance, or (b) the occurrence of an Event of Default and acceleration of the Obligations as a consequence thereof.

"Growth Capital Payment Date" is defined in Section 2.3(a)(i).

"Growth Capital Scheduled Payment Date" is defined in Section 2.3(a)(i).

"Growth Capital Repayment Period" is a period of time equal to thirty (30) consecutive months commencing on the Growth Capital Amortization Date.

"Guarantor" is any present or future guarantor of the Obligations.

"Indebtedness" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations and (d) Contingent Obligations.

"Insolvency Proceeding" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Intellectual Property" is:

(a) Copyrights, Trademarks, Patents, Know-How and Mask Works including amendments, renewals, extensions;

(b) All licenses or other rights to use and all license fees and royalties from the use of the intellectual property rights in (a) above and (c) and (d) below;

(c) Any trade secrets and any intellectual property rights in methods, processes, technologies, computer software and computer software products now or later existing, created, acquired or held;

(d) All design rights which may be available to Borrower now or later created, acquired or held;

(e) Any claims for damages (past, present or future) for infringement of any of the rights above, with the right, but not the obligation, to sue and collect damages for use or infringement of the intellectual property rights in (a), (b), (c) and (d) above;

(f) All Proceeds and products of the foregoing, including all insurance, indemnity or warranty payments,

In the case of each of (a), (b), (c) and (d) to the extent such intellectual property rights are (A) owned by or exclusively licensed to Borrower (or any Subsidiary) or (B) material to the operation of Borrower's business (taken as a whole) as then conducted.

"Inventory" is present and future inventory in which Borrower has any interest, including merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or later owned by or in the custody or possession, actual or constructive, of Borrower, including inventory temporarily out of its custody or possession or in transit and including returns on any accounts or other proceeds (including insurance proceeds) from the sale or disposition of any of the foregoing and any documents of title.

"Investment" is any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

"**Know-How**" means all ideas, inventions, scientific information, procedures, instructions, techniques, designs, formulas, methods, data, technical information (including toxicological, pharmaceutical, non-clinical, clinical and medical data, health registration data and marketing data), processing specifications, pricing studies and market evaluation materials and all intellectual property rights therein owned, licensed or sublicensed by Borrower.

"Lenders Expenses" are all audit fees and expenses and reasonable costs or expenses (including reasonable attorneys' fees and expenses) for preparing, negotiating, administering, defending and enforcing the Loan Documents (including appeals or Insolvency Proceedings).

"**Letter-of-Credit Right**" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

"Lien" is a mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"Loan Documents" are, collectively, this Agreement, any note, or notes or guaranties executed by Borrower and any other present or future agreement between Borrower and/or Guarantor for the benefit of Lenders in connection with this Agreement, all as amended, extended or restated.

"Mask Works" are all mask works or similar rights available for the protection of semiconductor chips, now owned or later acquired.

"Material Adverse Change" is: (i) a material impairment in the perfection or priority of Lenders' security interest in the Collateral; or (ii) a material impairment of the prospect of repayment of any portion of the Obligations.

"**Note**" means for each Growth Capital Advance, one of the secured promissory notes of Borrower substantially in the form of Exhibit D.

"Obligations" are debts, principal, interest, Prepayment Fee, Lenders Expenses, and other amounts Borrower owes either of the Lenders now or later under or in connection with this Agreement, including cash management services, letters of credit and foreign exchange contracts, if any and including interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Lenders.

"Patents" are patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions and continuations in part of the same.

"Permitted Indebtedness" is:

(a) Borrower's indebtedness to Lenders under this Agreement or the Loan Documents;

(b) Indebtedness existing on the Effective Date and shown on the Perfection Certificate, including any existing Indebtedness to any Lender;

(c) Subordinated Debt;

(d) Indebtedness to trade creditors and with respect to surety bonds and similar obligations incurred in the ordinary course of business;

(e) Indebtedness secured by Permitted Liens;

(f) Indebtedness of Borrower to any Subsidiary and Contingent Obligations of any Subsidiary with respect to obligations of Borrower (provided that the primary obligations are not prohibited hereby), and Indebtedness of any Subsidiary to any other Subsidiary and Contingent Obligations of any Subsidiary with respect to obligations of any other Subsidiary (provided that the primary obligations are not prohibited hereby);

(g) Other Indebtedness not otherwise permitted by Section 7.4 not exceeding $50,000 in the aggregate outstanding at any time;

(h) Extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (g) above, provided that the then outstanding principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be;

(i) Purchase money Indebtedness incurred in connection with the acquisition of pharmaceutical products or the rights related thereto so long as Borrower has raised additional equity financing or Subordinated Debt from Borrower's existing or future equity investors specifically for the purpose, and in amount sufficient, to make: (1) all up-front and ongoing contractual payments

which would reasonably be expected to become due thereunder during the term of this Agreement as determined in good faith by Borrower, and (2) the cash needs required under clause (j) of the definition of Permitted Investments; and

(j) Any real property lease.

"Permitted Investments" are:

(a) Investments shown on the Perfection Certificate and existing on the Effective Date;

(b) (i) marketable direct obligations issued or unconditionally guaranteed by the United States or its agency or any state maturing within 1 year from its acquisition, (ii) commercial paper maturing no more than 1 year after its creation and having the highest rating from either Standard & Poor's Corporation or Moody's Investors Service, Inc., (iii) SVB's certificates of deposit issued maturing no more than 1 year after issue, (iv) any other investments administered through the Lenders and (v) any Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved by Lenders;

(c) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors; which do not exceed $100,000 in the aggregate in any year, provided that no cash loans under this clause (ii) may be made if an Event of Default is then occurring or would otherwise upon the making thereof;

(d) Investments (including debt obligations) received in connection with bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(e) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates of Borrower, in the ordinary course of business; provided that this paragraph (e) shall not apply to Investments of Borrower in any Subsidiary;

(f) Investments in joint ventures or strategic alliances (in the ordinary course of Borrower's business) consisting of the licensing of technology as permitted by Section 7.1, the development of technology or the providing of technical support, provided that any cash investments by Borrower do not exceed $50,000 in the aggregate in any fiscal year, provided that no such cash investment may be made if an Event of Default is then occurring or would otherwise upon the making thereof;

(g) Investments pursuant to or arising under currency agreements or interest rate agreements entered into in the ordinary course of business;

(h) Investments consisting of deposit accounts and securities accounts of Borrower, subject to the compliance by Borrower with the covenant set forth in Section 6.6 hereof;

(i) Investments of Subsidiaries in or to other Subsidiaries of Borrower and Investments by Borrower in Subsidiaries not to exceed $ 50,000 in the aggregate in any fiscal year, provided that no Investments by Borrower in Subsidiaries may be made if an Event of Default is then occurring or would otherwise upon the making thereof;

(j) To the extent it is deemed to be an Investment, up-front fees, license fees, milestone payments, royalty payments and other cash payments arising in connection with the acquisition of rights to intellectual property of a third party, including without limitation, rights to a pharmaceutical product, so long as Borrower has raised additional equity financing or Subordinated Debt from Borrower's existing or future equity investors specifically for the purpose, and in amount sufficient, to make: (1) all up-front and ongoing payments which would reasonably be expected to become due thereunder during the term of this Agreement as determined in good faith by Borrower, and (2) the cash needs required under clause (i) of the definition of Permitted Indebtedness; and

(k) Other Investments not otherwise permitted by Section 7.6 not exceeding $50,000 in the aggregate outstanding at any time.

"Permitted Liens" are:

(a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement or other Loan Documents, including Liens in favor of either Lender;

(b) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith and for which Borrower maintains adequate reserves on its Books, if they have no priority over any of Lenders' security interests;

(c) Purchase money Liens (and including for purposes of this clause Liens incurred in connection with capital leases) (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than $500,000 in the aggregate amount outstanding, or (ii) existing on equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the equipment;

(d) Leases or subleases and licenses or sublicenses granted in the ordinary course of Borrower's business, if the leases, subleases, licenses and sublicenses do not prohibit granting Lenders a security interest;

(e) Statutory Liens securing claims or demands of materialmen, mechanics, carriers, repairmen, or other like Liens imposed without the action of such parties arising in the ordinary course of business; provided they have no priority over any of Lenders' Liens and the aggregate amount of such Liens does not at any time exceed $50,000;

(f) Banker's liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business subject to Borrower's compliance with Section 6.6 hereof;

(g) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Sections 8.4 or 8.7;

(h) Liens in favor of other financial institutions arising in connection with Borrower's deposit accounts or securities accounts held at such institutions to secure payment of fees and similar costs and expenses subject to Borrower's compliance with Section 6.6 hereof;

(i) Liens to secure payment for workers' compensation, employment insurance, old age pensions, social security or other like obligations incurred in the ordinary course of business, provided they have no priority over any of Lenders' Liens and the aggregate amount of the Indebtedness secured by such Liens does not at any time exceed $50,000;

(j) Easements, reservations, rights-of-way, restrictions, minor defects or irregularities in title and similar charges or encumbrances affecting real property not constituting a material adverse effect on the business or condition (financial or otherwise) of Borrower or otherwise materially impairing the conduct of Borrower's business;

(k) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties in connection with the importation of goods;

(l) Transfers, licenses or sublicenses permitted under Section 7.1; and

(m) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described above, but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the then outstanding principal amount of the indebtedness may not increase.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company association, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Prepayment Fee" shall be, for each Growth Capital Advance, an amount equal to: (1) if the prepayment date is on or before one year after the Growth Capital Amortization Date, four percent (4.0%) of the outstanding principal balance as of the prepayment date, (2) if the prepayment date is more than one year after the Growth Capital Amortization Date, but on or before two years after the Growth Capital Amortization Date, three percent (3.0%) of the outstanding principal balance as of the prepayment date, and (3) if the prepayment date is more than two years after the Growth Capital Amortization Date, two percent (2.0%) of the outstanding principal balance as of the prepayment date. The "Prepayment Fee" for Growth Capital Advances shall be the sum of all of the "Prepayment Fees" for every Growth Capital Advance.

"Proceeds" has the meaning described in the Code as in effect from time to time.

"Registered Organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

"Responsible Officer" is each of the Chief Executive Officer, President and Chief Financial Officer of Borrower.

"Subordinated Debt" is debt incurred by Borrower subordinated to Borrower's debt to Lenders (pursuant to a subordination agreement entered into between the Lenders, the Borrower and the subordinated creditor), on terms acceptable to Lenders.

"Subsidiary" is any Person, corporation, partnership, limited liability company, joint venture, or any other business entity of which more than 50% of the voting stock or other equity

interests is owned or controlled, directly or indirectly, by the Person or one or more Affiliates of the Person.

"Supporting Obligation" means a Letter-of-Credit Right, secondary obligation or obligation of a secondary obligor or that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property.

"Trademarks" are trademark and service mark rights, registered or not, applications to register and registrations and like protections, and the entire goodwill of the business of the owner or licensee of such trademark and service mark rights connected with the trademarks and service mark rights.

"Treasury Rate" means the U.S. Treasury note yield to maturity for a 36-month term as quoted in the Wall Street Journal on the day the Note for the applicable Growth Capital Advance is prepared.

(Signatures are on the following page)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

BORROWER:

CADENCE PHARMACEUTICALS, INC.

By: /s/ Theodore R. Schroeder
Name: Theodore R. Schroeder
Title: President & CEO

LENDERS:

OXFORD FINANCE CORPORATION

By: /s/ Michael J. Altenburger
Name: Michael J. Altenburger
Title: Chief Financial Officer

SILICON VALLEY BANK

By: /s/ Edgar Arvizu
Name: Edgar Arvizu
Title: Relationship Manager

Effective as of February 17, 2006

EXHIBIT A

The Collateral consists of all right, title and interest of Borrower in and to the following:

All goods, equipment, inventory, contract rights or rights to payment of money, license agreements, franchise agreements, general intangibles (including payment intangibles), Accounts (including health-care receivables), documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities, and all other investment property, financial assets, whether now owned or hereafter acquired, wherever located; all Supporting Obligations and any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and Proceeds thereof.

All Letter-Of-Credit Rights (whether or not the letter of credit is evidenced by a writing); and

All Borrower's Books relating to the foregoing and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

The Collateral does not include:

(a) Any Intellectual Property. Notwithstanding the foregoing, the Collateral shall include all Accounts, license and royalty fees and other revenues, proceeds, or income arising out of or relating to any of the foregoing Intellectual Property.

(b) any contract, instrument or chattel paper in which the Borrower has any right, title or interest if and to the extent any such contract, instrument or chattel paper includes a provision containing a restriction on assignment such that the creation of a security interest in the right, title or interest of Borrower therein would be prohibited and would, in and of itself, cause or result in a default thereunder enabling another person party to such contract, instrument or chattel paper to enforce any remedy with respect thereto (provided that the foregoing exclusion shall not apply if (i) such prohibition has been waived or such person has otherwise consented to the creation hereunder of a security interest in such contract, instrument or chattel paper or (ii) such prohibition would be rendered ineffective pursuant to Sections 9-407(a) or 9-408(a) of the Code, as applicable and as then in effect in any relevant jurisdiction, or any other applicable law (including the federal bankruptcy code) or principles of equity; provided further that immediately upon the ineffectiveness, lapse or termination of any such provision, the Collateral shall include, and Borrower shall be deemed to have granted a security interest in, all its rights, title and interest in and to such contract, instrument or chattel paper as if such provision had never been in effect; and provided further that the foregoing exclusion shall in no way be construed so as to limit, impair or otherwise affect Lenders' unconditional continuing security interest in and to all rights, title and interests of Borrower in or to any payment obligations or other rights to receive monies due or to become due under any such contract, instrument or chattel paper and in any such monies and other proceeds of such contract, instrument or chattel paper).

Negative Pledge on Intellectual Property:

Except as expressly permitted under the Loan Agreement, Borrower covenants and agrees that until the full and complete payment of the obligations to Lenders, Borrower will not do any of the following: sell, transfer, assign, mortgage, pledge, lease, grant a security interest in, or encumber, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower from selling, transferring, assigning, mortgaging, pledging, leasing, granting a security interest in or upon, or encumbering any of Borrower's Intellectual Property, except for (i) non-exclusive licenses for the use of the Intellectual Property of Borrower or its Subsidiaries, (ii) exclusive licenses for the use of the Intellectual Property of Borrower or its Subsidiaries for a particular field of use or geographic area and approved by Borrower's Board of Directors, and (iii) contemplated pursuant to the Pharma Transaction which shall not in any event include the grant of a security interest in any Intellectual Property of Borrower or its Subsidiaries other than the Pharma Intellectual Property or Intellectual Property of Borrower or its Subsidiaries arising out of the development and/or commercialization of Pharma Intellectual Property (or the associated pharmaceutical product).

Definitions:

Capitalized terms, not otherwise defined herein, shall have the meanings given such capitalized terms in the Loan and Security Agreement among Lenders and Borrower dated as of February 17, 2006 (the "Loan Agreement").

EXHIBIT B

Loan Payment/Advance Request Form

Fax To: _____ Date:

LOAN PAYMENT:

_____ **(Borrower)**

From Account # (Deposit Account #) To Account # (Loan Account #)

Principal $ and/or Interest $

All Borrower's representation and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the telephone transfer request for an advance, but those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date:

Authorized Signature: Phone Number:

LOAN ADVANCE:

Complete Outgoing Wire Request section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # (Loan Account #) To Account # (Deposit Account #)

Amount of Advance $

All Borrower's representation and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the telephone transfer request for an advance, but those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date:

Authorized Signature: Phone Number:

OUTGOING WIRE REQUEST
Complete only if all or a portion of funds from the loan advance above are to be wired.

Deadline for same day processing is 12:00pm, P.S.T.

Beneficiary Name: Amount of Wire: $

Beneficiary Bank: Account Number:

City and State:

Beneficiary Bank Transit (ABA) #: _ _ _ _ _ _ _ _ _ _ _ _ _ Beneficiary Bank Code (Swift, Sort, Chip, etc.):

(For International Wire Only)

Intermediary Bank: Transit (ABA) #:

For Further Credit to:

Special Instruction:

By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).

Authorized Signature: _____ 2nd Signature (If Required): _____

Print Name/Title: Print Name/Title:

Telephone # _____ Telephone # _____

EXHIBIT C

COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK and OXFORD FINANCE CORPORATION
FROM: CADENCE PHARMACEUTICALS, INC.

The undersigned authorized officer of CADENCE PHARMACEUTICALS, INC. certifies that under the terms and conditions of the Loan and Security Agreement among Borrower and Lenders (the "Agreement"), (i) Borrower is in complete compliance for the period ended ___ with all required covenants except as noted below and (ii) all representations and warranties in the Agreement are true and correct in all material respects on this date. Attached are the required documents supporting the certification. In addition, the undersigned certifies that (1) Borrower and each Subsidiary have timely filed all required tax returns and paid, or made adequate provision to pay, all material taxes, except those being contested in good faith with adequate reserves under GAAP and (ii) no liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits which Borrower has not previously notified in writing to Lenders. The Officer certifies that any financial statements accompanying this Compliance Certificate are based on books and records maintained in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The Officer certifies that any quarterly or annual financial statements accompanying this Compliance Certificate are prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except as to the quarterly financial statements as to which there are no footnotes. The Officer acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered.

Please indicate compliance status by circling Yes/No under "Complies" column.

Reporting Covenant	Required	Complies	
Monthly financial statements with CC	Monthly within 30 days*	Yes	No
*(unless the month is a quarter-end month in which case within 45 days)			
Annual (CPA Audited)	FYE within 180 days	Yes	No
Quarterly	Quarterly within 45 days	Yes	No
Annual projections	FYE within 45 days	Yes	No
10-Q, 10-K and 8-K	Within 5 days after filing with SEC	Yes	No

Comments Regarding Exceptions: See Attached.	LENDER USE ONLY
Sincerely,	Received by: _____ AUTHORIZED SIGNER
	Date: _____
_____ Signature	Verified: _____ AUTHORIZED SIGNER
_____ Title	Date: _____
_____ Date	Compliance Status: Yes No

EXHIBIT D

FORM OF GROWTH CAPITAL ADVANCE NOTE
SECURED PROMISSORY NOTE

$ _____ Dated: [Date]

FOR VALUE RECEIVED, the undersigned, CADENCE PHARMACEUTICALS, INC., a Delaware corporation ("Borrower"), HEREBY PROMISES TO PAY to the order of [LENDER] ("Lender") the principal amount of _____ Dollars ($_____) or such lesser amount as shall equal the outstanding principal balance of the Growth Capital Advance made to Borrower by Lender pursuant to the Loan Agreement (defined below), and to pay all other amounts due with respect to the Growth Capital Advance on the dates and in the amounts set forth in the Loan Agreement. (Capitalized terms, unless defined in this Note, shall have the meaning given such capitalized term in the Loan Agreement.)

Interest on the principal amount of this Note from the date of this Note shall accrue at _____% per annum based on a 360-day year of twelve 30-day months or, if applicable, the Default Rate. Borrower shall make payments of accrued interest only on the outstanding principal amount of the Growth Capital Advance on the first Business Day of each month ("Payment Date"), commencing _____, 200_, through and including _____ 1, 200_. Commencing on _____ 1, 2006, and continuing on consecutive Payment Dates thereafter, Borrower shall make to Lender thirty (30) equal payments of principal and accrued interest on the then outstanding principal amount in the amount of _____ Dollars ($_____).

Principal, interest and all other amounts due with respect to the Growth Capital Advance, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement. The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

This Note is one of the Notes referred to in, and is entitled to the benefits of, the Loan and Security Agreement, dated as of [Date], to which Borrower and Lender are parties (the "Loan Agreement"). The Loan Agreement, among other things, (a) provides for the making of this secured Growth Capital Advance to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Sections 2.3 and 7.3 of the Loan Agreement. This Note and the obligation of Borrower to repay the unpaid principal amount of the Growth Capital Advance, interest on the Growth Capital Advance and all other amounts due Lenders under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lenders in the enforcement or attempt to enforce

any of Borrower's obligations hereunder not performed when due. This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

CADENCE PHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption “Experts” and to the use of our report dated April 21, 2006, in the Registration Statement (Form S-1) and related Prospectus of Cadence Pharmaceuticals, Inc. for the registration of its shares of common stock to be filed with the Securities and Exchange Commission on or about July 17, 2006.

/s/ Ernst & Young LLP

San Diego, California
July 14, 2006

12636 High Bluff Drive, Suite 400
San Diego, California 92130-2071
Tel: (858) 523-5400 Fax: (858) 523-5450
www.lw.com

LATHAM & WATKINS LLP

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July 17, 2006

VIA EDGAR

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Cadence Pharmaceuticals, Inc.
Registration Statement on Form S-1

Ladies and Gentlemen:

On behalf of Cadence Pharmaceuticals, Inc. (the "Company"), we transmit for filing with the Securities and Exchange Commission (the "Commission") the Company's Registration Statement on Form S-1 (the "Registration Statement").

The Company has filed with the Commission a request for confidential treatment dated July 17, 2006 pursuant to Rule 406 under the Securities Act of 1933, as amended, with respect to certain of the exhibits filed with the Registration Statement.

In connection with this Registration Statement, the Company has paid by wire transfer to the Commission a filing fee in the amount of $9,229.

If you have any questions regarding this filing, please contact the undersigned at (858) 523-5400.

Very truly yours,

/s/ Cheston J. Larson
Cheston J. Larson

cc: Faye H. Russell, Esq.
Ali D. Fawaz, Esq.