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

FORM 10-Q

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

For the quarterly period ended September 30, 2007

or,

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

For the transition period from _____to _____

Commission File Number: 0-24006

NEKTAR THERAPEUTICS

(Exact name of registrant as specified in its charter)

Delaware	**94-3134940**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**

201 Industrial Road
San Carlos, California 94070
(Address of principal executive offices)

650-631-3100
(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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

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

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

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

The number of outstanding shares of the registrant's Common Stock, $0.0001 par value 92,185,927 on October 31, 2007.

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Forward-Looking Statements

This report includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "1933 Act") and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All statements other than statements of historical fact are "forward-looking statements" for purposes of this quarterly report, including any projections of earnings, revenues or other financial items, any statements of the plans and objectives of management for future operations, any statements concerning proposed new products or services, any statements regarding future economic conditions or performance and any statement of assumptions underlying any of the foregoing. In some cases, forward-looking statements can be identified by the use of terminology such as "may," "will," "expects," "plans," "anticipates," "estimates," "potential," or "continue," or the negative thereof or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements contained herein are reasonable, there can be no assurance that such expectations or any of the forward-looking statements will prove to be correct and actual results could differ materially from those projected or assumed in the forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to inherent risks and uncertainties, including but not limited to the risk factors set forth in Part II – Item 1A below and for the reasons described elsewhere in this quarterly report. All forward-looking statements and reasons why results may differ included in this report are made as of the date hereof and we do not intend to update any forward-looking statements except as required by law or applicable regulations.

Trademarks

All Nektar brand and product names contained in this document are trademarks or registered trademarks of Nektar Therapeutics in the United States (U.S.) and other countries. The following, which appear in this document, are registered or other trademarks owned by the following companies: Exubera and Somavert (Pfizer Inc); PEGASYS (Hoffmann-La Roche Ltd.); Neulasta (Amgen Inc.); PEG-INTRON (Schering-Plough Corporation); Macugen ((OSI)-Eyetech); MIRCERA® (Hoffman-La Roche Ltd.); Ostabolin-C (Zelos Therapeutics, Inc.); Hematide (Affymax, Inc.) and Cimzia (UCB Group).

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PART I: FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements – Unaudited:

NEKTAR THERAPEUTICS
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except per share information)

	September 30, 2007 Unaudited	December 31, 2006 (1)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 174,713	$ 63,760
Short-term investments	277,931	394,880
Accounts receivable, net of allowance of $574 and $357 at September 30, 2007 and December 31, 2006, respectively.	36,805	47,148
Inventory	17,175	14,656
Other current assets	8,147	14,595
Total current assets	$ 514,771	$ 535,039
Long-term investments	—	8,337
Property and equipment, net	135,317	133,812
Goodwill	78,431	78,431
Other intangible assets, net	2,917	3,626
Other assets	6,849	8,932
Total assets	$ 738,285	$ 768,177
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 4,421	$ 7,205
Accrued compensation	11,796	12,994
Accrued expenses	24,564	17,942
Interest payable	1,130	3,814
Capital lease obligations, current portion	1,134	711
Deferred revenue, current portion	43,636	16,409
Convertible subordinated notes, current portion	66,627	102,653
Other current liabilities	3,371	3,586
Total current liabilities	$ 156,679	$ 165,314
Convertible subordinated notes	315,000	315,000
Capital lease obligations	21,987	19,759
Deferred revenue	58,247	23,697
Other long-term liabilities	15,469	17,347
Total liabilities	$ 567,382	$ 541,117
Commitments and contingencies		
Stockholders' equity:		
Preferred stock	—	—
Common stock, $0.0001 par value; 300,000 authorized; 92,128 shares and 91,280 shares issued and outstanding at September 30, 2007 and December 31, 2006, respectively	9	9
Capital in excess of par value	1,299,173	1,283,982
Accumulated other comprehensive income	518	62
Accumulated deficit	(1,128,797)	(1,056,993)
Total stockholders' equity	170,903	227,060
Total liabilities and stockholders' equity	$ 738,285	$ 768,177

(1) Derived from audited consolidated financial statements as of this date.

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

NEKTAR THERAPEUTICS
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share information)
(Unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2007	2006	2007	2006
Revenue:				
Product sales and royalties	$ 37,497	$ 43,521	$159,818	$ 103,564
Contract research	18,824	15,111	47,436	44,250
Total revenue	56,321	58,632	207,254	147,814
Operating costs and expenses:				
Cost of goods sold	27,457	31,179	123,469	76,947
Research and development	35,773	36,005	114,265	106,860
General and administrative	12,426	13,422	42,339	60,878
Impairment of long lived assets	—	—	—	1,156
Litigation settlement	—	—	—	17,710
Amortization of other intangible assets	237	708	710	3,331
Total operating costs and expenses	75,893	81,314	280,783	266,882
Loss from operations	(19,572)	(22,682)	(73,529)	(119,068)
Interest income	5,519	6,060	16,444	17,316
Interest expense	(4,773)	(5,255)	(14,408)	(15,335)
Other income	206	2,273	189	1,181
Loss before provision for income taxes	(18,620)	(19,604)	(71,304)	(115,906)
Provision for income taxes	—	—	500	—
Net loss	$(18,620)	$(19,604)	$ (71,804)	$(115,906)
Basic and diluted net loss per share	$ (0.20)	$ (0.22)	$ (0.78)	$ (1.29)
Shares used in computing basic and diluted net loss per share	92,028	90,017	91,764	89,550

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

NEKTAR THERAPEUTICS
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Nine months ended September 30,	
	2007	2006
Cash flows used in operating activities:		
Net loss	$ (71,804)	$(115,906)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	11,712	26,542
Depreciation and amortization	22,964	25,699
Impairment of long-lived assets	—	1,156
Amortization of gain related to sale of building	(656)	(655)
Loss on disposal of assets	1,776	436
Changes in assets and liabilities:		
Decrease (increase) in trade accounts receivable	10,343	(24,422)
Decrease (increase) in inventories	(2,519)	2,832
Decrease in prepaid and other assets	6,846	2,505
Decrease in accounts payable	(2,784)	(16,714)
Increase (decrease) in accrued compensation	(2,170)	1,845
Increase in accrued expenses	6,622	10,408
Decrease in interest payable	(2,684)	(2,404)
Increase in deferred revenue	61,777	17,483
Increase in other liabilities	152	4,447
Net cash provided by (used in) operating activities	$ 39,575	$ (66,748)
Cash flows from investing activities:		
Purchases of investments	(342,807)	(296,806)
Maturities of investments	468,245	270,962
Purchases of property and equipment	(20,726)	(16,023)
Net cash provided by (used in) investing activities	$ 104,712	$ (41,867)
Cash flows from financing activities:		
Repayments of convertible subordinated notes	(36,026)	—
Payments of loan and capital lease obligations	(787)	(7,817)
Proceeds from issuance of common stock related to employee stock option exercises and employee stock purchase plan	3,479	12,058
Net cash provided by (used in) financing activities	$ (33,334)	$ 4,241
Effect of exchange rates on cash and cash equivalents	—	769
Net increase (decrease) in cash and cash equivalents	$ 110,953	$(103,605)
Cash and cash equivalents at beginning of period	63,760	261,273
Cash and cash equivalents at end of period	$ 174,713	$ 157,668
Supplemental schedule of non-cash investing and financing activities (in thousands):		
Property acquired through capital lease	$ 2,821	$ —

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

NEKTAR THERAPEUTICS
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2007
(Unaudited)

Note 1—Organization and Summary of Significant Accounting Policies

Organization and Basis of Presentation

We are a biopharmaceutical company headquartered in San Carlos, California and incorporated in Delaware. Our mission is to develop breakthrough products that make a difference in patients' lives. We create differentiated, innovative products by applying our platform technologies to established or novel medicines. Our two leading technology platforms are Pulmonary Technology and PEGylation Technology. Ten products using these technology platforms have received regulatory approval in the U.S. or the European Union (EU), or both.

We prepared the Condensed Consolidated Financial Statements following the requirements of the Securities and Exchange Commission ("SEC") for interim reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by U.S. generally accepted accounting principles ("GAAP") can be condensed or omitted. In the opinion of management, these financial statements include all normal and recurring adjustments that we consider necessary for the fair presentation of our financial position and operating results.

Revenues, expenses, assets, and liabilities can vary during each quarter of the year. Therefore, the results and trends in these interim financial statements may not be the same as those for the full year. The information included in this quarterly report on Form 10-Q should be read in conjunction with the consolidated financial statements and the accompanying notes to these financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2006.

Principles of Consolidation

Our condensed consolidated financial statements include the financial position, results of operations and cash flows of our wholly-owned subsidiaries: Nektar Therapeutics AL, Corporation ("Nektar AL"); Nektar Therapeutics UK, Ltd. ("Nektar UK"), Nektar Therapeutics (India) Private Limited, and Aerogen, Inc. All intercompany accounts and transactions have been eliminated in consolidation.

Our Condensed Consolidated Financial Statements are denominated in U.S. dollars. Accordingly, changes in exchange rates between the applicable foreign currency and the U.S. dollar will affect the translation of each foreign subsidiary's financial results into U.S. dollars for purposes of reporting our consolidated financial results. Translation gains and losses are included in Accumulated other comprehensive income in the Stockholders' equity section of the Condensed Consolidated Balance Sheet. To date, such cumulative translation adjustments have not been material to our consolidated financial position.

Segment Information

We operate in one business segment which focuses on applying our technology platforms to improve the performance of established and novel medicines. We operate in one segment because our business offerings have similar economics and other characteristics, including the nature of products and production processes, types of customers, distribution methods and regulatory environment. We are comprehensively managed as one business segment by our Chief Executive Officer and his management team. Within our one business segment we have two components, Pulmonary Technology and PEGylation Technology.

Reclassifications

Certain items previously reported in specific financial statement captions have been reclassified to conform to the current period presentation. Such reclassifications do not impact previously reported revenues, operating loss or net loss or total assets, liabilities or stockholders' equity.

Significant Concentrations

Our customers are primarily pharmaceutical and biotechnology companies that are located in the U.S. and EU. Our accounts receivable balance contains billed and unbilled trade receivables from product sales and royalties, collaborative research agreements, and commercialization readiness revenue. We provide for an allowance for doubtful accounts by reserving for specifically identified doubtful accounts. We have not experienced significant credit losses from our accounts receivable or collaborative research agreements and none are expected. We perform a regular review of our customers' payment histories and associated credit risk. We

generally do not require collateral from our customers. At September 30, 2007, accounts receivable from Pfizer totaled $28.0 million, or 76% of our total accounts receivable; no other customer individually represented 10% or more of our accounts receivable at September 30, 2007. Subsequent to September 30, 2007, we collected $16.0 million of our Accounts receivable balance from Pfizer. At December 31, 2006, Pfizer represented 56% of our accounts receivable and two different customers represented 15% and 14%, respectively, of our accounts receivable.

We are dependent on our partners, vendors and contract manufacturers to provide raw materials, drugs and devices of appropriate quality and reliability and to meet applicable regulatory requirements. Consequently, in the event that supplies are delayed or interrupted for any reason, our ability to develop and produce our products could be impaired, which could have a material adverse effect on our business, financial condition and results of operation

Revenue Recognition

We began commercial sales of Exubera to Pfizer in January 2006; because we did not have sufficient historical returns data to reasonably estimate product warranty returns, we deferred Exubera revenue until the expiration of Pfizer's 60-day contractual right of return period lapsed. With over 12 months of product shipment history, we began recognizing Exubera revenue upon shipment of product and estimating product warranty returns as of January 1, 2007. During the nine-month period ended September 30, 2007, we recognized an incremental gross margin of $9.7 million, which would have previously been deferred for 60 days, resulting in a decrease to net loss per share of $0.11.

Income Taxes

We account for income taxes under the liability method in accordance with FASB Statement No. 109, *Accounting for Income Taxes*, and FASB Interpretation No. 48 ("FIN 48"), *Accounting for Uncertainty in Income Taxes—An Interpretation of FASB Statement No. 109*. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax reporting bases of assets and liabilities and are measured using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Realization of deferred tax assets is dependent upon future earnings, the timing and amount of which are uncertain.

FIN 48 contains a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained upon tax authority examination, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon ultimate settlement.

We adopted FIN 48 on January 1, 2007. Upon adoption, we did not recognize an increase or a decrease in the liability for net unrecognized tax benefits, which would be accounted for through retained earnings. Further, we did not have any significant unrecognized tax benefits on the date of adoption.

We have incurred net operating losses since inception and we do not have any significant unrecognized tax benefits. Our policy is to include interest and penalties related to unrecognized tax benefits, if any, within the provision for taxes in the consolidated condensed statements of operations. If we are eventually able to recognize our uncertain positions, our effective tax rate would be reduced. We currently have a full valuation allowance against our net deferred tax asset which would impact the timing of the effective tax rate benefit should any of these uncertain tax positions be favorably settled in the future. Any adjustments to our uncertain tax positions would result in an adjustment of our net operating loss or tax credit carry forwards rather than resulting in a cash outlay.

We file income tax returns in the U.S., California and other states, and various foreign jurisdictions. We are currently not the subject of any income tax examinations. In general, the earliest open year subject to examination is 2002, although depending upon jurisdiction, tax years may remain open, subject to certain limitations.

Note 2—Cash and Cash Equivalents, Short-Term Investments, and Investments in Marketable Securities

Cash, cash equivalents and investments in marketable securities are as follows (in thousands):

	Estimated Fair Value at	
	September 30, 2007	December 31, 2006
Cash and cash equivalents	$ 174,713	$ 63,760
Short-term investments (less than one year to maturity)	277,931	394,880
Long-term investments (one to two years to maturity)	—	8,337
Total Cash and available-for-sale securities	$ 452,644	$ 466,977

Our portfolio of cash and available-for-sale debt securities consists of the following (in thousands):

	Estimated Fair Value at	
	September 30, 2007	December 31, 2006
U.S. corporate commercial paper	$ 197,835	$ 234,512
Cash and other debt securities	125,328	19,857
Obligations of U.S. corporations	105,483	151,288
Obligations of U.S. government agencies	23,998	27,372
Repurchase agreements	—	33,948
Total Cash and available-for-sale securities	$ 452,644	$ 466,977

At September 30, 2007, the average portfolio duration was approximately two months and the contractual maturity of any single investment did not exceed twelve months. At December 31, 2006, the average portfolio duration was approximately four months and the contractual maturity of any single investment did not exceed twenty-four months.

Gross unrealized gains on the portfolio were nil and nil as of September 30, 2007 and December 31, 2006, respectively. Gross unrealized losses on the portfolio were $0.4 million and $ 0.5 million as of September 30, 2007 and December 31, 2006, respectively. We have a history of holding our investments to maturity. Additionally, we have the ability and intent to hold our debt securities to maturity at which time they will be redeemed at full par value. Accordingly, management considers these unrealized losses to be temporary and has not recorded a provision for impairment.

At September 30, 2007 and December 31, 2006, we had letter of credit arrangements with certain financial institutions and vendors including our landlord totaling $2.8 million and $2.6 million, respectively, which are secured by investments of similar amounts.

Note 3—Inventory

Inventory consists of the following (in thousands):

	September 30, 2007	December 31, 2006
Raw materials	$ 11,989	$ 8,609
Work-in-process	4,138	4,736
Finished goods	1,048	1,311
Inventory	$ 17,175	$ 14,656

Inventory consists of raw materials, work-in-process and finished goods for our PEGylation business. At September 30, 2007, total inventory includes approximately $0.3 million of Exubera inhalation powder within raw materials. We did not have any Exubera work-in-process or finished goods at September 30, 2007. We do not hold any significant inventory related to clinical or commercial manufacturing of products based on our Pulmonary Technology.

Reserves are determined using specific identification plus an estimated reserve for potential defective or excess inventory based on historical experience or projected usage. Inventories are reflected net of reserves of $6.0 million and $4.7 million as of September 30, 2007 and December 31, 2006, respectively.

Note 4—Property and Equipment

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

	September 30, 2007	December 31, 2006
Building and leasehold improvements	$ 122,558	$ 118,574
Laboratory equipment	45,175	43,066
Assets at contract manufacturer locations .	28,483	25,886
Manufacturing equipment	22,726	23,406
Furniture, fixtures and other equipment	20,129	20,970
Construction-in-progress	16,845	8,508
Property and equipment at cost	$ 255,916	$ 240,410
Less: Accumulated depreciation	(120,599)	(106,598)
Property and equipment, net	$ 135,317	$ 133,812

Building and leasehold improvements include our commercial manufacturing, clinical manufacturing, research and development and administrative facilities and the related improvements to these facilities. Laboratory and manufacturing equipment includes assets that support both our manufacturing and research and development efforts. Assets at contract manufacturer locations are automated assembly line equipment used in the manufacture of the Exubera inhaler device. Construction-in-progress includes assets being built to enhance our manufacturing capabilities and to support our research and development programs.

On October 18, 2007, Pfizer delivered a notice of termination of our Collaborative Development and License Agreement and certain related agreements related to Exubera and the next-generation inhaled insulin development program (the “Pfizer Agreements”). We are currently engaged in discussions with Pfizer regarding the parties’ relative rights and liabilities arising from termination of the Pfizer Agreements. We are also exploring our options related to securing additional rights from Pfizer related to Exubera and identifying another collaboration partner to continue the commercialization of Exubera and development of the next-generation inhaled insulin program.

If we are unable to secure another partner over the next few months, we will re-assess the useful lives of our Exubera specific assets to be approximately nine months from the date of the Pfizer termination. Accordingly, our deprecation expense would increase over the next nine months.

Note 5—Workforce Reduction

As part of an overall effort to reduce ongoing operating costs and improve the organizational structure, efficiency and productivity of Nektar, on May 18, 2007, the Board of Directors approved a plan (the “Plan”) to reduce our workforce by approximately 180 employees, or approximately 25 percent of our regular full-time staff. The total cost of implementing the Plan is approximately $8.4 million, comprised of cash payments for severance, medical insurance and outplacement services.

We notified the affected employees impacted by the Plan on May 23, 2007. The majority of the affected employees were terminated in May 2007, but certain employees were given termination dates longer than two months from the date of notification. During the three-month period ended September 30, 2007, we recorded expense for employees impacted by the Plan but who had not yet been terminated. We expect to record an additional $0.2 million in the last quarter of 2007 as we complete the Plan.

For the three-month and nine-month periods ended September 30, 2007, workforce reduction charges were recorded in our Condensed Consolidated Financial Statements as follows (in thousands):

	Three months ended September 30, 2007	Nine months ended September 30, 2007
Cost of goods sold, net of change in inventory	$ 36	$ 974
Research and development expense [(1)]	115	5,335
General and administrative expense	342	1,888
Total workforce reduction charges	$ 493	$ 8,197

(1) During the three-month and nine-month periods ended September 30, 2007, workforce reduction charges recorded to Research and development expense include nil and $1.6 million, respectively, of non-commercial operations, manufacturing, and quality and $0.1 million and $3.7 million, respectively, of research and development infrastructure support. No research and development programs based on our Pulmonary Technology or PEGylation Technology were curtailed due to the workforce reduction.

The following table summarizes the liabilities included in Accrued compensation in our Condensed Consolidated Balance Sheet in connection with the Plan during the three-month periods ended June 30, 2007 and September 30, 2007 (in thousands):

	(in thousands)
Balance at March 31, 2007	$ —
Workforce reduction charges recorded	7,704
Workforce reduction payments	(5,229)
Balance at June 30, 2007	$ 2,475
Workforce reduction charges recorded	493
Workforce reduction payments	(2,181)
Balance at September 30, 2007	$ 787

Note 6—Convertible Subordinated Notes

The outstanding balance of our convertible subordinated notes is as follows (in thousands):

	Semi-Annual Interest Payment Dates	September 30, 2007	December 31, 2006
5% Notes due February 2007	August 8, February 8	$ —	$ 36,026
3.5% Notes due October 2007	April 17, October 17	66,627	66,627
3.25% Notes due September 2012	March 28, September 28	315,000	315,000
Total outstanding convertible subordinated notes		$ 381,627	$ 417,653
Less: current portion		(66,627)	(102,653)
Convertible subordinated notes		$ 315,000	$ 315,000

Our convertible subordinated notes are unsecured and subordinated in right of payment to any future senior debt. The carrying value approximates fair value for both periods presented. Costs related to the issuance of these convertible notes are recorded in Other assets in our Condensed Consolidated Balance Sheets and are generally amortized to interest expense on a straight-line basis over the contractual life of the notes. The unamortized deferred financing costs were $6.2 million and $7.3 million as of September 30, 2007 and December 31, 2006, respectively.

Our 5% convertible subordinated notes were repaid on February 7, 2007; our 3.5% convertible subordinated notes were repaid on October 16, 2007. As of September 30, 2007, there are no remaining deferred financing costs related to the 5% convertible subordinated notes.

Note 7—Significant Collaborative Research and Development Agreements

We perform research and development for our biotechnology and pharmaceutical partners pursuant to collaboration research and development agreements. Revenues generated from our collaboration efforts are recorded as Contract research revenue and our costs of performing these services are included in Research and development expense in our Condensed Consolidated Statement of Operations. In accordance with these agreements, we recorded Contract research revenue as follows (in thousands):

Partner	Molecule	Three months ended September 30,		Nine months ended September 30,	
		2007	2006	2007	2006
Pfizer Inc	**Exubera**® inhalation powder, next-generation inhaled insulin, Somavert® (pegvisomant)	$ 7,850	$ 6,273	$17,287	$21,071
Novartis Pharma AG	Tobramycin inhalation powder (TIP)	4,234	3,229	11,964	6,687
Bayer Healthcare LLC	Ciprofloxacin inhalation powder (CIP), NKTR-061 (inhaled amikacin)	2,594	1,264	6,330	3,380
Zelos Therapeutics Inc.	Pulmonary ostabolin-C	228	1,374	1,675	5,291
Baxter Healthcare SA	Poly(ethylene) glycol reagent	1,102	1,236	2,338	2,501
Solvay Pharmaceuticals, Inc.	Pulmonary dronabinol (Dronabinol metered dose inhaler)	875	202	2,354	693
Other		1,941	1,533	5,488	4,627
Contract research revenue		$18,824	$15,111	$47,436	$44,250

Under these collaborative research and development agreements, we are reimbursed for the cost of work performed on a revenue per annual full-time employee equivalent (FTE) basis, plus out of pocket third party costs. The initial annual FTE rate is established when the contract is executed and generally increases each year based on the consumer price index. Revenue recognized approximates the costs associated with these billable services.

We also are typically entitled to milestone payments when and if certain development or regulatory milestones are achieved. Generally, our research and development agreements are cancelable by our partners without significant financial penalty to the partner.

Pfizer Inc.

On October 18, 2007, Pfizer delivered a notice of termination of our Collaborative Development and License Agreement and certain related agreements related to Exubera and the next-generation inhaled insulin development program (the “Pfizer Agreements”). We are currently engaged in discussions with Pfizer regarding the parties’ relative rights and liabilities arising from termination of the Pfizer Agreements.

We are also exploring our options related to securing additional rights from Pfizer related to Exubera and identifying another collaboration partner to continue the commercialization of Exubera and development of the next-generation inhaled insulin program. If we are unable to secure another partner over the next few months, we would be required to exit or put on hold the Exubera product and may be required to cease development activities with respect to the next-generation inhaled insulin development program. If we decide to exit these programs, we may incur costs and charges including, but not limited to, termination of our agreements with our contract manufacturers and accelerated depreciation of our Exubera-specific capital assets. We may also incur restructuring charges related to the reduction of our personnel and infrastructure.

In 2007, we received $24.7 million in non-refundable payments from Pfizer in connection with our next-generation inhaled insulin development program, which was accounted for as deferred up-front fees and began amortization over 8 years, the expected life of the agreement. The unamortized balance of the deferred up-front fees as of September 30, 2007, approximately $23.2 million, will be recognized as revenue during the fourth quarter of 2007, as a result of the termination of the Pfizer Agreements.

Bayer Healthcare LLC

On August 1, 2007, we entered into a Co-Development, License and Co-Promotion Agreement (the “Bayer Agreement”) with Bayer Healthcare LLC, with regard to further development and commercialization of NKTR-061 (inhaled amikacin). Under the terms of the Bayer Agreement, we have the right to co-promote the amikacin product candidate in the United States with Bayer and we have granted Bayer an exclusive, royalty-bearing license for the amikacin product candidate in all other countries of the world. As part of the Bayer Agreement, we will receive milestone payments of up to $175.0 million associated with the successful development and commercialization of NKTR-061, $50.0 million of which has already been paid to Nektar following the signing of the Bayer Agreement.

Bayer will fund all clinical development of the amikacin product candidate following the completion of the ongoing Phase II clinical studies that we are currently conducting (other than $10.0 million of Phase III clinical trial costs to be reimbursed by Nektar following the payment by Bayer of a $10.0 million development milestone), all world-wide regulatory filings, approvals and related activities, further development of formulated amikacin, and final product packaging. We will fund the ongoing clinical development of the amikacin product candidate through the completion of current ongoing Phase II clinical studies and the further development of the nebulizer device through the completion of the Phase III clinical trials.

We received an initial milestone payment of $50.0 million during the three-month period ended September 30, 2007 and recorded this amount as Deferred revenue in our Condensed Consolidated Balance Sheets. We accounted for $40.0 million as upfront fees and are amortizing the upfront fees over 14 years, the expected life of the collaboration with Bayer. We accounted for $10.0 million as a substantive milestone; the milestone payment must be repaid to Bayer if Bayer terminates the Bayer Agreement within 30 days following delivery of a clinical study report which we expect to be completed no later than June 30, 2008.

Note 8—Commitments and Contingencies

Contract Manufacturers

Nektar has in place a Manufacturing and Supply Agreement dated August 16, 2000 with Bespak Europe Ltd. and Tech Group North America Inc., a subsidiary of West Pharmaceutical Services Inc., (or the “Contract Manufacturer Agreement”) relating to the manufacture and supply of Exubera inhalers. As of September 30, 2007, we had a minimum commitment to Bespak and Tech Group to purchase approximately $20.9 million of Exubera inhalers subject to certain mitigation obligations and other limitations. Pfizer has a similar minimum purchase obligation for Exubera inhalers under Nektar’s Manufacturing and Supply Agreement with Pfizer for the Exubera devices subject to certain mitigation obligations and other limitations. Nektar intends to work closely with these contract manufacturing partners to evaluate the future manufacturing, if any, of Exubera inhalers. In the event we were to terminate the Contract Manufacturer Agreement prior to its stated 10-year term, the early termination would result in a termination liability to the contract manufacturers for certain capital investments, severance obligations, unused inventory and other costs associated with the potential wind-down of manufacturing operations.

Legal Matters

On August 1, 2006, Novo Nordisk filed a lawsuit against Pfizer in federal court claiming that Pfizer willfully infringes on Novo Nordisk’s patents covering inhaled insulin with Exubera. The case is currently proceeding with discovery and other pre-trial activities. Although we are not currently a named party in this litigation, we have incurred litigation costs as a result of such litigation and may incur substantial future costs and potential indemnity claims from Pfizer associated with the litigation. These and other disputes may have a material impact on our business, results of operation and financial condition.

From time to time, we may be involved in lawsuits, claims, investigations and proceedings, consisting of intellectual property, commercial, employment and other matters, which arise in the ordinary course of business. In accordance with the SFAS No. 5, *Accounting for Contingencies*, we make a provision for a liability when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. These provisions are reviewed at least quarterly and adjusted to reflect the impact of negotiations, settlements, ruling, advice of legal counsel, and other information and events pertaining to a particular case. Litigation is inherently unpredictable. If any unfavorable ruling were to occur in any specific period, there exists the possibility of a material adverse impact on the results of operations of that period or on our cash flows and liquidity.

Collaboration Agreements for Pulmonary Products

As part of our collaboration agreements with our partners for the development, manufacture and supply of products based on our Pulmonary Technology, we generally agree to defend, indemnify and hold harmless our partners from and against third party liabilities arising out of the agreements, including product liability and infringement of intellectual property. The term of these indemnification obligations is generally perpetual any time after execution of the agreement. There is no limitation on the potential amount of future payments we could be required to make under these indemnification obligations.

To date we have not incurred costs to defend lawsuits or settle claims related to these indemnification obligations. If any of our indemnification obligations is triggered, we may incur substantial liabilities. Because the obligated amount under these agreements is not explicitly stated, the overall maximum amount of the obligations cannot be reasonably estimated. No liabilities have been recorded for these obligations on our Condensed Consolidated Balance Sheets as of September 30, 2007 or December 31, 2006.

License, Manufacturing and Supply Agreements for Products Based on our PEGylation Technology

As part of our license, manufacturing and supply agreements with our partners for the development or manufacture and supply of PEG reagents or intellectual property licenses based on our PEGylation Technology, we generally agree to defend, indemnify and hold harmless our partners from and against third party liabilities arising out of the agreements, including product liability and infringement of intellectual property. The term of these indemnification obligations is generally perpetual any time after execution of the agreements. There is no limitation on the potential amount of future payments we could be required to make under these indemnification obligations. We have never incurred costs to defend lawsuits or settle claims related to these indemnification obligations. If any of our indemnification obligations is triggered, we may incur substantial liabilities. Because the obligated amount in these agreements is not explicitly stated, the overall maximum amount of the obligations cannot be reasonably estimated. Historically, we have not been obligated to make significant payments for these obligations, and no liabilities have been recorded for these obligations in our Condensed Consolidated Balance Sheets as of September 30, 2007 or December 31, 2006.

Note 9—Stock-Based Compensation

Total stock-based compensation costs were recorded in our Condensed Consolidated Financial Statements as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2007	2006	2007	2006
Cost of goods sold, net of inventory change	$ (388)	$ 734	$ 679	$ 1,845
Research and development expense	(636)	1,507	4,663	7,176
General and administrative expense	726	1,274	5,140	16,093
Total stock-based compensation costs	$ (298)	$ 3,515	$10,482	$25,114

During 2006, we issued performance based Restricted Stock Unit (RSU) awards totaling approximately 1,010,000 shares of our common stock to certain employees. These awards vest based upon achieving three pre-determined performance milestones. One of the three milestones was achieved during the three-month period ended June 30, 2007 and approximately 174,000 shares were fully vested and released. During the three-month period ended September 30, 2007, we determined that it is not probable that future Exubera sales will be sufficient to achieve the second milestone. As a result, we reversed all previously recorded compensation expense related to this performance milestone, or approximately $2.8 million. If we had determined that this milestone was probable, total stock-based compensation expense would have been $2.6 million during the three-month periods ended September 30, 2007.

In 2006, we had previously determined that the achievement of third performance milestone was not probable and reversed all previously recorded compensation expense. Based on our current product pipeline development efforts, we determined that the achievement of the third performance milestone is probable by the end of the first quarter in 2010. As a result, we recorded approximately inception-to-date compensation expense related to the third milestone of $2.2 million during the nine-month period ended September 30, 2007. If our actual experience in future periods differs from these current estimates, we may change our determination of the probability of achieving the performance milestone or the estimate of the period in which the milestone will be achieved.

The total unrecognized expense related to unvested stock-based compensation under our stock-based compensation plans is expected to be recognized as follows:

Fiscal Year	(in thousands)
2007 (remaining 3 months)	$ 2,695
2008	9,936
2009	9,096
2010	6,409
2011 and thereafter	2,497
Total unrecognized compensation expense	$ 30,633

Note 10—Net Loss Per Share

Basic net loss per share is calculated based on the weighted-average number of common shares outstanding during the periods presented. For all periods presented in the Condensed Consolidated Statements of Operations, the net loss available to common stockholders is equal to the reported net loss. Basic and diluted net loss per share are the same due to our historical net losses and the requirement to exclude potentially dilutive securities which would have an anti-dilutive effect on net loss per share. The weighted average of these potentially dilutive securities has been excluded from the diluted net loss per share calculation and is as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2007	2006	2007	2006
Convertible subordinated notes	15,958	16,897	16,089	16,897
Stock options and restricted stock units	11,908	10,019	11,952	10,022
Warrants	—	13	—	18
Total	27,866	26,929	28,041	26,937

Note 11—Comprehensive Loss

Comprehensive loss is comprised of net loss and other comprehensive income (loss) and includes the following components (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2007	2006	2007	2006
Net loss, as reported	$(18,620)	$(19,604)	$(71,804)	$(115,906)
Change in net unrealized gains on available-for-sale securities	(195)	987	152	1,239
Currency translation adjustment	246	893	304	939
Total comprehensive loss	$(18,569)	$(17,724)	$(71,348)	$(113,728)

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

	September 30, 2007	December 31, 2006
Unrealized losses on available-for-sale securities	$ (347)	$ (499)
Translation adjustment	865	561
Accumulated other comprehensive income	$ 518	$ 62

Note 12—Subsequent Events

Collaborative Development and License Agreement with Pfizer Inc.

On October 18, 2007, Pfizer delivered a notice of termination of our Collaborative Development and License Agreement and certain related agreements related to Exubera and the next-generation inhaled insulin development program (the "Pfizer Agreements"). We are currently engaged in discussions with Pfizer regarding the parties' relative rights and liabilities arising from termination of the Pfizer Agreements.

We are also exploring our options related to securing additional rights from Pfizer related to Exubera and identifying another collaboration partner to continue the commercialization of Exubera and development of the next-generation inhaled insulin program. If we are unable to secure another partner over the next few months, we would be required to exit or put on hold the Exubera product and may be required to cease development activities with respect to the next-generation inhaled insulin development program. If we decide to exit these programs, we may incur costs and charges including, but not limited to, termination of our agreements with our contract manufacturers and accelerated depreciation of our Exubera-specific capital assets. We may also incur restructuring charges related to the reduction of our personnel and infrastructure.

We performed a test of recoverability of our long-lived assets related to the manufacture and supply of Exubera and the next-generation inhaled insulin development program in accordance with *SFAS No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets.* We considered the material terms related to the termination of the Pfizer Agreements, including Pfizer's obligation to reimburse us for capital depreciation of our spray dried insulin powder manufacturing facilities, including any accelerated depreciation required under GAAP, and Pfizer's obligations related to the binding commitment period related to the manufacture and supply of dry powder insulin and pulmonary inhalers for Exubera, which concludes on June 30, 2008. Based on our analysis, we believe the sum of the undiscounted cash flows that we are contractually entitled to receive as a result of the termination of the Pfizer Agreements exceeds the net book value of our long-lived assets related to Exubera and the next-generation inhaled insulin program. Accordingly, we have not recorded an impairment of our long-lived assets as of September 30, 2007.

In 2007, we received $24.7 million in non-refundable payments from Pfizer in connection with our next-generation inhaled insulin development program, which was accounted for as deferred up-front fees and began amortization over 8 years, the expected life of the agreement. The unamortized balance of the deferred up-front fees as of September 30, 2007, approximately $23.2 million, will be recognized as revenue during the fourth quarter of 2007.

Convertible Subordinated Notes

On October 16, 2007, we repaid our 3.5% convertible subordinated notes of $66.6 million plus accrued interest of $1.2 million.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed here. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in this section as well as factors "described in Part II, Item 1-A—Risk Factors."

Overview

We are a biopharmaceutical company with a mission to develop breakthrough products that make a difference in patients' lives. We create differentiated, innovative products by applying our platform technologies to established or novel medicines. Our two leading technology platforms are Pulmonary Technology and PEGylation Technology. Ten products using these technology platforms have received regulatory approval in either or both the U.S. and EU.

We create or enable potential breakthrough products in two ways. First, we develop products in collaboration with pharmaceutical and biotechnology companies that seek to improve and differentiate their products. Second, we apply our technologies to already approved drugs to create and develop our own differentiated, proprietary programs. Our proprietary programs are designed to target serious diseases in novel ways. We believe our proprietary product candidates and development programs have the potential to raise the standards of current patient care by improving one or more performance parameters including efficacy, safety and ease-of-use.

Our technology platforms enable improved performance of a variety of new and existing molecules. Our Pulmonary Technology makes drugs inhalable to deliver them to and through the lungs for both systemic and local lung applications. Our PEGylation Technology is a chemical process designed to enhance the performance of most drug classes with the potential to improve solubility and stability, increase drug half-life, reduce immune responses to an active drug, and improve the efficacy or safety of a molecule in certain instances.

We are focusing our business on our proprietary products that have important potential as breakthrough medicines and we also are continuing to support our high value partnered products. Our strategy is to develop a portfolio of proprietary product candidates to address critical unmet medical-needs by exploiting our know-how and technology in combination with established medicines that have demonstrated substantial commercial potential. We are making significant investments in our proprietary product development programs that comprise a substantial portion of our research and development spending. For example, NKTR-102 (PEGylated irinotecan) and NKTR-118 (PEGylated naloxol), are currently scheduled to enter Phase II clinical trials in the fourth quarter of 2007 with such trials planned to continue throughout 2008. We intend to develop and

commercialize certain of our proprietary product development programs in partnership with pharmaceutical and biotechnology companies in various stages of their development in an effort to help fund further clinical development and commercialization of these products. Our decision as to when to seek partners for our proprietary product development programs will be made on an individual program basis, depending on such factors as clinical development funding requirements, market potential, therapeutic expertise, and the size and type of sales and marketing organization required to successfully commercialize a product candidate. Our decisions if and when to partner our proprietary product development programs will have an important impact on our future revenues, research and development spending and overall financial position.

We will continue to seek collaborative arrangements with pharmaceutical and biotechnology companies that leverage our technology platforms. We believe our partnering strategy enables us to develop a large and diversified pipeline of products and development programs using our technologies. To date, the revenues we have received from the sales of our partner products have been insufficient to meet our operating and other expenses. We do not anticipate receiving sufficient amounts of revenue from other partner product sales or royalties in the near future to meet our operating expenses.

Historically, we have depended on Pfizer for a significant portion of our revenues primarily derived from the manufacture and sale of Exubera inhalers and inhalation powder. Total revenue from Pfizer, including Exubera related revenue and contract research revenue, was approximately $35.4 million and $143.8 million, representing 63% and 69% of total revenue, during the three-month and nine-month periods ended September 30, 2007, respectively. Sales of Exubera were slower than expected following its January 2006 regulatory approval and sales continued on a slow pace in the first half of 2007.

On October 18, 2007, Pfizer announced it was exiting its Exubera business and our collaborative development program for next-generation inhaled insulin and delivered a notice of termination of the Collaborative Development and License Agreement between Pfizer and us and all other agreements related to Exubera and the inhaled insulin franchise (the “Pfizer Agreements”). We are currently engaged in discussions with Pfizer regarding the parties’ relative rights and liabilities arising from termination of the Pfizer Agreements.

We are evaluating our options with respect to the inhaled insulin franchise, including the potential for finding another partner for the commercialization of Exubera and the development of the next-generation inhaled insulin program. We do not have an internal sales and marketing organization or distribution operation, and any future marketing, selling and distribution of Exubera would require a commercialization partner for Exubera and a development partner for next-generation insulin. To generate ongoing revenue from Exubera, we would need to identify a collaboration partner who can fulfill the role Pfizer previously played. In addition to sales and marketing, Pfizer was also responsible for manufacturing and delivering bulk insulin for powder processing, filling the insulin powder into blister packs for the Exubera inhaler and all packaging required for the final Exubera product. Accordingly, we cannot manufacture or package the final Exubera product absent a partner.

Although we have begun to seek potential new partners, there is substantial uncertainty regarding our ability to identify such a partner or the timing, if at all, of entering into a collaboration agreement or the terms of any such agreement. There are challenges to establishing a new Exubera collaboration including, among others, supply chain continuity for the portions of the Exubera supply chain owned and operated by Pfizer, including raw insulin supply, blister filling, packaging, warehousing and distribution, and the ability of a potential new partner to obtain regulatory approval to market and sell Exubera and required regulatory qualification of certain segments of the Exubera supply chain.

If we are unable to secure another partner over the next few months, we would be required to exit or put on hold the Exubera product and may be required to cease development activities with respect to the next-generation inhaled insulin program. If we decide to exit these programs, we may incur costs and charges including, but not limited to, termination of our agreements with our contract manufacturers and write-off of our Exubera-specific capital assets. We may also incur restructuring charges related to the reduction of our personnel and infrastructure.

To fund the expense related to our research and development activities, we have raised significant amounts of capital through the sale of our equity and convertible debt securities. As of September 30, 2007, we had approximately $413.2 million in indebtedness. Our ability to meet the repayment obligations of this debt is dependent upon our and our partners’ ability to develop, obtain regulatory approvals for, and successfully commercialize products. Even if we are successful in this regard, we may require additional capital to repay our debt obligations as they become due.

Since the second quarter of 2007, as part of an overall effort to reduce ongoing operating costs and improve the organizational structure, efficiency and productivity of Nektar, we reduced our work force by approximately 25%. The total cost of these efforts is expected to be approximately $8.4 million, comprised of cash payments for severance, medical insurance and outplacement services. For additional information, please refer to Note 5 of the Notes to Condensed Consolidated Financial Statements. We will continue to evaluate our ongoing spending levels and explore ways to reduce operating costs.

Recent Developments

Pfizer Inc.

On October 18, 2007, Pfizer delivered a notice of termination of our Collaborative Development and License Agreement and certain related agreements related to Exubera and the next-generation inhaled insulin development program (the "Pfizer Agreements"). We are currently engaged in discussions with Pfizer regarding the parties' relative rights and liabilities arising from termination of the Pfizer Agreements.

We are also exploring our options related to securing additional rights from Pfizer related to Exubera and identifying another collaboration partner to continue the commercialization of Exubera and development of the next-generation inhaled insulin program. If we are unable to secure another partner over the next few months, we would be required to exit or put on hold the Exubera product and may be required to cease development activities with respect to the next-generation inhaled insulin development program. If we decide to exit these programs, we may incur costs and charges including, but not limited to, termination of our agreements with our contract manufacturers and accelerated depreciation of our Exubera-specific capital assets. We may also incur restructuring charges related to the reduction of our personnel and infrastructure.

In 2007, we received $24.7 million in non-refundable payments from Pfizer in connection with our next-generation inhaled insulin development program, which was accounted for as deferred up-front fees and began amortization over 8 years, the expected life of the agreement. The unamortized balance of the deferred up-front fees as of September 30, 2007, approximately $23.2 million, will be recognized as revenue during the fourth quarter of 2007.

Bayer Healthcare LLC

On August 1, 2007, we entered into an agreement with Bayer Healthcare LLC to develop and commercialize NKTR-061 (inhaled amikacin). NKTR-061 is under development for adjunctive treatment of Gram-negative pneumonias that often lead to significant morbidity and mortality. This therapy utilizes our proprietary Pulmonary Technology to deliver a specially-formulated amikacin, an aminoglycoside antibiotic, for inhalation deep into the lung.

Bayer will fund all clinical development of the amikacin product candidate following the completion of the ongoing Phase II clinical studies that we are currently conducting (other than $10.0 million of Phase III clinical trial costs to be reimbursed by Nektar following the payment by Bayer of a $10.0 million development milestone), all world-wide regulatory filings, approvals and related activities, further development of formulated amikacin, and final product packaging. We will fund the ongoing clinical development of the amikacin product candidate through the completion of current ongoing Phase II clinical studies and the further development of the nebulizer device through the completion of the Phase III clinical trials.

As part of this agreement, we will receive milestone payments of up to $175.0 million associated with the successful development and commercialization of NKTR-061. Of the total amount of $175.0 million in development and sales milestones, we received an upfront milestone payment of $50.0 million during the three-month period ended September 30, 2007 and recorded this amount as Deferred revenue in our Condensed Consolidated Balance Sheet. We accounted for $40.0 million as up-front fees and are amortizing the upfront fees over 14 years, the expected life of the collaboration with Bayer. We accounted for $10.0 million as a substantive milestone; the milestone payment must be repaid to Bayer if Bayer terminates the Agreement within 30 days following delivery of a clinical study report which we expect to be completed no later than June 30, 2008. Subsequent to the successful clinical and regulatory development of the product, we have the right to co-promote the product with Bayer in the U.S. and to share profits. For sales outside the U.S., we will receive tiered performance royalties up to a maximum of 30%.

Research and Development Activities

Our product pipeline includes both partnered and proprietary development programs. We have ongoing collaborations or licensing arrangements with more than thirty biotechnology and pharmaceutical companies to provide our technologies and development expertise. Our technologies are currently being used in ten approved products in the US or EU or both, in two partner programs that have been filed with the Food and Drug Administration ("FDA") and twelve development programs in human clinical trials.

The length of time that a development program is in a given phase varies substantially according to factors relating to the development program, such as the type and intended use of the product candidate, the clinical trial design, and the ability to enroll suitable patients. Generally, for partnered programs, advancement from one phase to the next and the related costs to do so is dependent upon factors that are primarily controlled by our partners.

Our portfolio of development programs is based on our Pulmonary Technology and PEGylation Technology platforms. Within each major category, we have both partnered and proprietary development programs. The estimated completion dates and costs for our programs are not reasonably certain. Please refer to the Risk Factors for discussion of the risks associated with our partnered and proprietary development programs.

In connection with our research and development activities for partner products and development programs, we earned $18.8 million and $47.4 million in contract research revenue for the three-month and nine-month periods ended September 30, 2007, respectively, and $15.1 million and $44.3 million in contract research revenue for the three-month and nine-month periods ended September 30, 2006, respectively.

The costs incurred in connection with these programs, including allocations of facilities, current Good Manufacturing Practices quality programs and other shared costs, is as follows (in millions):

Molecule	Status as of September 30, 2007 [1]	Three months ended September 30, 2007	Three months ended September 30, 2006	Nine months ended September 30, 2007	Nine months ended September 30, 2006
Pulmonary					
Partnered Products and Development Programs					
Next-generation inhaled insulin (NGI)[2]	Pre-Clinical	$ 7.2	$ 4.8	$ 23.7	$ 10.8
Exubera® inhalation powder [2]	Approved	2.0	5.7	8.4	18.5
Tobramycin inhalation powder (TIP) [3]	Phase 3	3.3	3.8	11.5	11.7
NKTR-061 (inhaled amikacin)[4]	Phase 2	3.7	3.0	10.5	9.5
Other partnered product candidates	Various	2.5	2.6	9.5	10.9
Proprietary Development Programs					
NKTR-024 (amphotericin B inhalation powder)[5]	Phase 1	0.1	5.4	4.3	15.7
Other proprietary product candidates	Various	3.7	3.0	7.5	9.4
Technology platform	Various	1.4	1.0	7.3	1.8
Total Pulmonary		$23.9	$29.3	$ 82.7	$ 88.3
PEGylation					
Partnered Products and Development Programs	Various	$ 1.2	$ 1.8	$ 4.6	$ 4.3
Proprietary Development Programs					
NKTR-118 (oral PEG-naloxol)	Phase 1	3.3	1.4	7.1	3.0
NKTR-102 (PEG-irinotecan)	Phase 1	4.3	0.4	6.8	1.9
Other proprietary product candidates	Various	3.0	1.8	7.8	4.7
Total PEGylation		$11.8	$ 5.4	$ 26.3	$ 13.9
Other	Various	—	1.3	—	4.7
Workforce Reduction Charges [6]	n/a	0.1	—	5.3	—
Research and Development Expense		$35.8	$36.0	$114.3	$106.9

(1) Status definitions are:
Approved—regulatory approval to market and sell product obtained in the U.S., EU or other countries.
Phase 3 or Pivotal—Product in large-scale clinical trials conducted to obtain regulatory approval to market and sell a drug.
Phase 2—Product in clinical trials to establish dosing and efficacy in patients.
Phase 1—Product in clinical trials typically in healthy subjects to test safety.
Pre-clinical—Group of studies that test a drug on animals and other nonhuman test systems. This testing is conducted to gain more data about the pharmaceutical's efficacy and safety before tests on humans can begin.

(2) On October 18, 2007, Pfizer Inc., our partner in the NGI and Exubera programs, delivered a notice of termination of our Collaborative Development and License Agreement and certain related agreements as part of its announcement that Pfizer would exit the Exubera product area and our collaboration to develop the next generation inhaled insulin product.

(3) Novartis Pharma AG is our partner for the TIP program.

(4) On August 1, 2007, we executed an agreement with Bayer Healthcare LLC for the co-development, license and co-promotion of in NKTR-061 (inhaled amikacin).

(5) Future expenditures curtailed pending partner deal for the product.

(6) Workforce reduction charge includes severance for personnel that support our research & development activities, including nil and $1.6 million, respectively, related to non-commercial operations, manufacturing and quality and $0.1 million and $3.7 million, respectively, related to research and development infrastructure support during the three-month and nine-month periods ended September 30, 2007

Results of Operations

Three-months and Nine-months ended September 30, 2007 and 2006

Revenue (in thousands except percentages)

	Three months ended September 30,		Increase / (Decrease) 2007 vs 2006	Percentage Increase / (Decrease) 2007 vs 2006
	2007	2006		
Product sales and royalties	$ 37,497	$ 43,521	$ (6,024)	(14)%
Contract research	18,824	15,111	3,713	25%
Total revenue	$ 56,321	$ 58,632	$ (2,311)	(4)%

	Nine months ended September 30,		Increase/ (Decrease) 2007 vs 2006	Percentage Increase / (Decrease) 2007 vs 2006
	2007	2006		
Product sales and royalties	$159,818	$103,564	$ 56,254	54%
Contract research	47,436	44,250	3,186	7%
Total revenue	$207,254	$147,814	$ 59,440	40%

Total revenue from Pfizer includes Exubera commercial product sales and contract research revenue for Exubera and the next generation inhaled insulin development program. We recorded revenue from Pfizer of $35.4 million, or 63% of total revenue, during the three-month period ended September 30, 2007 and $143.8 million, or 69% of total revenue, during the nine-month period ended September 30, 2007. In 2006, we recorded revenue from Pfizer of $36.1 million, or 62% of total revenue, during the three-month period ended September 30, 2006 and $90.8 million, or 61% of total revenue, during the nine-month period ended September 30, 2006. The October 18, 2007 termination of the Pfizer Agreements will result in a substantial decline in our revenue in 2008. Although there is a minimum order and forecast commitment that we believe extends through June 30, 2008, we are subject to mitigation obligations that could limit our revenue potential in 2008.

The decrease in total revenue for the three-month period ended September 30, 2007 as compared to the three-month period ended September 30, 2006 is primarily due to decreased Exubera and PEGylation product sales and decreased PEGylation royalties. These decreases are partially offset by increased contract research revenue.

The increase in total revenue for the nine-month period ended September 30, 2007 as compared to the same period in 2006 was primarily due to an increase in Exubera product sales revenue of $55.1 million and an increase in contract research revenue of $3.2 million. In 2006, we began Exubera commercial sales to Pfizer and we did not have sufficient historical returns data to reasonably estimate product returns; therefore, we deferred recognition of Exubera product sale revenue over the 60-day contractual right of return. On January 1, 2007, we began estimating Exubera product returns and recognizing Exubera product sales revenue upon shipment. As a result, the nine-month period ended September 30, 2006 includes seven months of Exubera product revenue, while the nine-month period ended September 30, 2007 includes eleven months of Exubera product revenue. The four month difference represents approximately $45.5 million of the increase in total revenue for the nine-month period ended September 30, 2007 as compared to the same period in 2006.

Product sales and royalties

The decrease in product sales and royalties for the three month-period ended September 30, 2007 as compared to the same period in 2006 is due to a decrease of Exubera product sales of $2.2 million, a decrease in manufacturing activities related to partner products based on our PEGylation Technology of $2.7 million, and a decrease of PEGylation royalties of $1.1 million.

The increase in product sales and royalties during the nine-month period ended September 30, 2007 compared to the same period in 2006 is primarily attributable to our ability to estimate Exubera product returns in 2007, which increased revenue by approximately $45.5 million as discussed above. Exubera product revenue increased an additional $9.6 million due to increased sales volumes to Pfizer and PEGylation product revenue increased by approximately $5.8 million during the nine-month period ended September 30, 2007. These increases were partially offset by a decrease in PEGylation royalties of $4.9 million.

Contract research

Contract research revenue includes reimbursed research and development expenses as well as the amortization of deferred up-front and milestone payments received from our collaboration partners, including Pfizer Inc., Novartis Pharma AG and Bayer Healthcare LLC.

We expect contract research revenue to fluctuate from year to year, which makes it difficult to accurately estimate future contract research revenue. The level of contract research revenues depends in part upon continuing existing collaborations, establishing new collaborations, and achieving milestones under current and future agreements.

During the three–month period ended September 30, 2007, Contract research revenue from Pfizer increased by approximately $1.7 million compared to the three-month period ended September 30, 2006. The net increase is comprised of an increase of $6.3 million related to next-generation inhaled insulin, offset by a and a decrease of $4.6 million related to Exubera. Additionally, Contract research revenue from Novartis Pharma AG and from Bayer Healthcare LLC increased by approximately $1.0 million and $0.9 million, respectively, under our collaboration agreements to develop Tobramycin inhalation powder (TIP) and Ciprofloxacin inhalation powder (CIP).

During the nine-month period ended September 30, 2007, Contract research revenue from Pfizer related to Exubera decreased by approximately $14.6 million. The decrease in contract research revenue related to the Exubera program was partially offset by increases of $11.0 million from Pfizer related to the next-generation inhaled insulin program and $5.3 million from Novartis Pharma AG related to the TIP program.

Cost of Goods Sold and Gross Margin (in thousands except percentages)

	Three months ended September 30,		Increase / (Decrease) 2007 vs 2006	Percentage Increase / (Decrease) 2007 vs 2006
	2007	2006		
Cost of goods sold	$ 27,457	$31,179	$ (3,722)	(12)%
Product gross margin	$ 10,040	$12,342	$ (2,302)	(19)%
Product gross margin %	27%	28%		

	Nine months ended September 30,		Increase / (Decrease) 2007 vs 2006	Percentage Increase / (Decrease) 2007 vs 2006
	2007	2006		
Cost of goods sold	$123,469	$76,947	$ 46,522	60%
Product gross margin	$ 36,349	$26,617	$ 9,732	37%
Product gross margin %	23%	26%		

During the three-month period ended September 30, 2007 compared to the three-month period ended September 30, 2006, the product gross margin percentage decreased due to lower margins on Exubera product sales. The decrease in cost of goods sold for the three-month period ended September 30, 2007 as compared to the three-month period ended September 30, 2006 is consistent with decreased Exubera and PEGylation product sales.

During the nine-month period ended September 30, 2007, Exubera margin represented 68% of our product gross margin compared to 58% in the nine-month period ended September 30, 2006. The shift in product mix as a result of

increased Exubera sales results in a lower overall gross margin percentage; Exubera gross margin averages 20%, whereas the gross margin on PEGylation and other product sales averages from 27% to 30%. The increase in cost of goods sold for the nine-month period ended September 30, 2007 as compared to the nine-month periods ended September 30, 2006, is proportionate with the increase in Exubera product sales revenue.

Research and Development Expenses (in thousands except percentages)

	Three months ended September 30,		Increase / (Decrease) 2007 vs 2006	Percentage Increase / (Decrease) 2007 vs 2006
	2007	2006		
Research and development	$ 35,773	$ 36,005	$ (232)	(1)%

	Nine months ended September 30,		Increase / (Decrease) 2007 vs 2006	Percentage Increase / (Decrease) 2007 vs 2006
	2007	2006		
Research and development	$114,265	$106,860	$ 7,405	7%

We expense all research and development expenses as they are incurred.

During the three-month and nine-month periods ended September 30, 2007, Research and development expense includes workforce reduction charges totaling $0.1 million and $5.3 million, respectively, recorded in connection with our plan to reduce ongoing operating costs. This charge primarily includes severance of $3.7 million for research and development infrastructure and support personnel and $1.6 million for non-commercial operations, manufacturing and quality control personnel. For additional information, please refer to Note 5 of the Notes to Condensed Consolidated Financial Statements.

There was not a significant change in total Research and development expense during the three-month period ended September 30, 2007 compared to the same period in 2006; we reduced our infrastructure costs as part of the May 2007 workforce reduction and utilized these funds to further our proprietary product development programs. In 2007, we increased our spending on PEGylation product candidates as we continued our Phase 1 clinical trials of NKTR-118 (oral PEG-naloxol) and NKTR-102 (PEG-irinotecan); these clinical trials resulted in an increase of $5.8 million. These increases were offset by decreased spending on our Pulmonary Technology product candidates of $5.4 million, including the curtailment of the clinical development of NKTR-024 (the amphotericin B inhalation powder, or ABIP, program) until such time as we find a collaboration partner.

Research and development expense, excluding workforce reduction charges, increased by approximately $2.1 million during the nine-month period ended September 30, 2007, compared to the nine-month period ended September 30, 2006. Research and development expense related to our PEGylation Technology product candidates increased by approximately $9.0 million as a result of the Phase 1 clinical trials for NKTR-118 and NKTR-102. Additionally, Research and development expense increased by $5.5 million related to our Pulmonary Technology platform, $2.8 million related to our programs partnered with Pfizer Inc, Exubera and NGI, and $1.0 million related to NKTR-061. These increases were partially offset by decreased spending on NKTR-024 of $11.4 million, decreased spending on other Pulmonary Technology development programs of $3.3 million, and decreased spending on non-Pulmonary and non-PEGylation programs of $4.7 million in connection with the winding down of our Bradford, UK operations.

General and Administrative Expenses (in thousands except percentages)

	Three months ended September 30,		Increase / (Decrease) 2007 vs 2006	Percentage Increase / (Decrease) 2007 vs 2006
	2007	2006		
General and administrative	$12,426	$13,422	$ (996)	(7)%

	Nine months ended September 30,		Increase / (Decrease) 2007 vs 2006	Percentage Increase / (Decrease) 2007 vs 2006
	2007	2006		
General and administrative	$42,339	$60,878	$ (18,539)	(30)%

General and administrative expenses are associated with administrative staffing, business development and marketing.

During the three-month and nine-month periods ended September 30, 2007, General and administrative expense includes $0.3 million and $1.9 million, respectively, in workforce reduction charges in connection with our plan to reduce ongoing operating costs. For additional information, please refer to Note 5 of the Notes to Condensed Consolidated Financial Statements.

The decrease in General and administrative expenses for the three-month period ended September 30, 2007, as compared to the same period in 2006 is primarily attributable to reduced headcount within our general and administrative functions, resulting in a decrease of salaries and benefits expenses. Additionally, stock-based compensation expense decreased by $0.5 million primarily as a result of our determination that future Exubera sales volume will not be sufficient to meet the second RSU performance milestone.

General and administrative expenses decreased by approximately $18.5 million for the nine-month period ended September 30, 2007 as compared to 2006. The decrease is primarily attributable to $11.8 million in stock-based compensation expense related to executive severance and $1.9 million in Nektar UK general and administrative expenses recorded during the nine-month period ended September 30, 2006. Additionally, professional and outside services decreased by approximately $2.7 million in the nine-month period ended September 30, 2007 compared to the nine-month period ended September 30, 2006.

Impairment of Long-Lived Assets (in thousands except percentages)

	Three months ended September 30,		Increase / (Decrease)	Percentage Increase / (Decrease)
	2007	2006	2007 vs 2006	2007 vs 2006
Impairment of long-lived assets	$ —	$ —	$ —	n/a

	Nine months ended September 30,		Increase / (Decrease)	Percentage Increase / (Decrease)
	2007	2006	2007 vs 2006	2007 vs 2006
Impairment of long-lived assets	$ —	$ 1,156	$ (1,156)	(100) %

During the nine-month period ended September 30, 2006, we recorded an impairment charge of $1.2 million relating to the remaining laboratory and office equipment as a result of the winding down of our Bradford UK operations.

Litigation Settlement (in thousands except percentages)

	Three-months ended September 30,		Increase / (Decrease)	Percentage Increase / (Decrease)
	2007	2006	2007 vs 2006	2007 vs 2006
Litigation Settlement	$—	$ —	$ —	n/a

	Nine–months ended September 30,		Increase / (Decrease)	Percentage Increase / (Decrease)
	2007	2006	2007 vs 2006	2007 vs 2006
Litigation Settlement	$—	$17,710	$ (17,710)	(100)%

On September 30, 2006, we, our subsidiary Nektar Therapeutics AL (Nektar AL), and a former officer, Milton Harris, entered into a Settlement Agreement and General Release (the “Settlement Agreement”) with the University of Alabama Huntsville (“UAH”) related to an intellectual property dispute. Under the terms of the Settlement Agreement, the Company, Nektar AL, Mr. Harris and UAH agreed to full and complete satisfaction of all claims asserted in the litigation in exchange for $25.0 million in cash payments. We recorded a litigation settlement charge of $17.7 million during the nine-month period ended September 30, 2006 which reflects the net present value of the settlement payments.

Liquidity and Capital Resources

We had cash, cash equivalents and investments in marketable securities of $452.6 million and indebtedness of $413.2 million, including $381.6 million of convertible subordinated notes, $23.1 million in capital lease obligations and $8.5 million in other liabilities as of September 30, 2007.

We have financed our operations primarily through revenue from product sales and contract research and development, public and private placements of debt and equity securities and financing of equipment acquisitions and certain tenant leasehold improvements. We do not utilize off-balance sheet financing arrangements as a source of liquidity or financing.

Cashflow Activities

During the nine-month period ended September 30, 2007, net cash provided by operating activities was $39.6 million. During the nine-month period ended September 30, 2007, net cash provided by operating activities increased by $106.3 million compared to the nine-month period ended September 30, 2006, in which we used $66.7 million in operating activities. The increase in cash provided by operations is primarily attributable to the up-front and milestone payments received from Bayer of $50.0 million and from Pfizer of $24.7 million and decreased University of Alabama settlement payments of $10.0 million.

During the nine-month period ended September 30, 2007, we purchased $20.7 million of property and equipment and repaid $36.0 million of our convertible subordinated notes and other debt obligations. These uses of cash were partially offset by $3.5 million in cash collected from employees for the purchase of common stock.

During the nine-month period ended September 30, 2006, net cash used in operating activities was $66.7 million. We purchased $16.0 million of property and equipment. These uses of cash were offset by $12.1 million in proceeds from the issuance of common stock to employees.

We expect to use a substantial portion of our cash to fund our on-going operations and capital investments over the next few years and to repay our $413.2 million of indebtedness outstanding as of September 30, 2007. In October 2007, we repaid our 3.5% convertible subordinated notes balance of $66.6 million with our operating cash.

Contractual Obligations

During the nine-month period ended September 30, 2007, other than the repayment of our 5% convertible subordinated notes balance of $36.0 million, there has not been a material change to the summary of contractual obligations in our Annual Report on Form 10-K for the year ended December 31, 2006. Subsequent to September 30, 2007, we repaid our 3.5% convertible subordinated notes balance of $66.6 million.

Critical Accounting Policies and Management's Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported revenues and expenses during the period. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the result of which form our basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources, and evaluate our estimates on an ongoing basis. Actual results may differ from those estimates under different assumptions or conditions. Accounting policies and estimates are described in "Management's Discussion and Analysis of Financial Condition and Results of Operations" and in Note 1, Organization and Summary of Significant Accounting Policies, to our consolidated audited financial statements in our December 31, 2006 Form 10-K.

Impairment of Long-Lived Assets

In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, we perform a test for recoverability of our intangible and other long-lived assets whenever events or changes in circumstances indicate that the carrying value of the assets may not be recoverable. An impairment loss would be recognized only if the carrying amount of an intangible or long-lived asset exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposal of the asset.

We performed a test of recoverability of our long-lived assets related to the manufacture and supply of Exubera and the next-generation inhaled insulin development program. We considered the material terms related to the termination of the Pfizer Agreements, including Pfizer's obligation to reimburse us for capital depreciation of our spray dried insulin powder manufacturing facilities, including any accelerated depreciation required under GAAP, and Pfizer's obligations related to the binding commitment period related to the manufacture and supply of dry powder insulin and pulmonary inhalers for Exubera, which concludes on June 30, 2008.

Based on our analysis, we believe the sum of the undiscounted cash flows that we are contractually entitled to receive as a result of the termination of the Pfizer Agreements exceeds the net book value of our long-lived assets related to Exubera and the next-generation inhaled insulin program. Accordingly, we have not recorded an impairment of our long-lived assets as of September 30, 2007.

Revenue Recognition

In 2006, we deferred Exubera revenue until the expiration of Pfizer's 60-day contractual right of return for non-conformity with product quality specifications because we did not have sufficient historical returns data to reasonably estimate product returns. As of January 1, 2007, we had over 12 months of product shipment history and did not have any warranty returns from Pfizer, therefore we began estimating Exubera product warranty returns and recognizing Exubera revenue upon shipment of product. During the nine-month period ended September 30, 2007, we recognized gross margin of $9.7 million related to the August and September 2007 Exubera shipments which would have previously been deferred for 60 days, resulting in a decrease to our net loss per share of $0.11.

Income Taxes

We account for income taxes under the liability method in accordance with FASB Statement No. 109, *Accounting for Income Taxes*, and FASB Interpretation No. 48 ("FIN 48"), *Accounting for Uncertainty in Income Taxes – An Interpretation of FASB Statement No. 109*. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax reporting bases of assets and liabilities and are measured using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Realization of deferred tax assets is dependent upon future earnings, the timing and amount of which are uncertain. FIN 48 contains a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained upon tax authority examination, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon ultimate settlement.

Adoption of FIN 48, which occurred on January 1, 2007, had no impact on our consolidated financial position, results of operations, cash flows or our effective tax rate. However, revisions to the estimated net realizable value of the deferred tax asset in the future could cause our provision for income taxes to vary significantly from period to period.

At September 30, 2007, we had significant federal and state net operating loss and research credit carry forwards which were offset by a full valuation allowance, due to our inability to estimate long-term future taxable income with a high level of certainty. Upon adoption of FIN 48, we did not recognize an increase or a decrease in the liability for net unrecognized tax benefits, which would be accounted for through retained earnings. Further, we did not have any significant unrecognized tax benefits on the date of adoption. We historically accrued for uncertain tax positions in deferred tax assets as we have been in a net operating loss position since inception and any adjustments to our tax positions would result in an adjustment of our net operating loss or tax credit carry forwards rather than resulting in a cash outlay. If we are eventually able to recognize these uncertain positions, our effective tax rate would be reduced. We currently have a full valuation allowance against our net deferred tax asset which would impact the timing of the effective tax rate benefit should any of these uncertain tax positions be favorably settled in the future.

On a periodic basis, we will continue to evaluate the realizability of our deferred tax assets and liabilities and adjust such amounts in light of changing facts and circumstances, including but not limited to the level of past and future taxable income, the utilization of the carry forwards, tax legislation, rulings by relevant tax authorities, tax planning strategies and if applicable, the progress of ongoing tax audits. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the period in which those temporary differences become deductible or the net operating loss and research credit carry forwards can be utilized.

Stock-Based Compensation

We use the Black-Scholes option valuation model adjusted for the estimated historical forfeiture rate for the respective grant to determine the estimated fair value of our stock-based compensation arrangements on the date of grant ("grant date fair value") and expense this value ratably over the estimated life of the option or performance period of the RSU award. The Black-Scholes option pricing model requires the input of highly subjective assumptions. Because our employee stock options have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models may not provide a reliable single measure of the fair value of our employee stock options or common stock purchased under our employee stock purchase plan. In addition, management continually assesses these assumptions and methodologies used to calculate the estimated fair value of stock-based compensation. Circumstances may change and additional data may become available over time, which could result in changes to these assumptions and methodologies, and which could materially impact our fair value determination.

Further, we have issued performance based RSU awards totaling approximately 1,010,000 shares of our common stock to certain employees. These awards vest based upon achieving three pre-determined performance milestones. We are expensing the grant date fair value of the awards ratably over the expected performance period for the RSU awards in which the performance milestones are probable of achievement under a Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* definition. The total grant date fair value of the RSU awards was $19.8 million, including $4.0 million for the first milestone, $7.9 million for the second milestone, and $7.9 million for the third milestone.

During the nine-month period ended September 30, 2007, the first performance milestone was achieved and approximately 174,000 shares were fully vested and released. Evaluating and estimating the probability of achieving the two remaining performance milestones and the appropriate timing related to the achievement is highly subjective and requires periodic reassessment. The second performance milestone shall vest when upon achievement of $30.0 million of Exubera royalty revenue in one quarter. The third performance milestone shall vest based on the first filing (whether by Nektar or a third party licensee or partner of ours) and acceptance of a New Drug Application ("NDA") or Biologics License Application ("BLA") by the FDA or an equivalent filing and acceptance with the European Medicines Agency for a proprietary product. Actual achievement of these performance milestones or changes in facts and circumstances may cause significant fluctuations in expense recognition between reporting periods and would result in changes in the timing and amount of expense recognition related to these RSU's.

During the three-month period ended September 30, 2007, we determined that is not probable that future Exubera product sales will be sufficient to meet the second performance milestone. We reversed $2.8 million of previously recognized expense on the second milestone, which results in a decrease of approximately $3.4 million and $4.3 million in stock-based compensation expense during the three-month and nine-month periods ended September 30, 2007, respectively, compared to the same period in 2006.

Based on our current product pipeline development efforts, we determined that the third performance milestone is probable of achievement by the end of the first quarter in 2010. If our actual experience in future periods differs from these current estimates, we may change our determination of the probability of achieving the performance milestone or the estimate of the period in which the milestone will be achieved.

Issuer Purchases of Equity Securities

There were no purchases of any class of our equity securities by us or any affiliate pursuant to any publicly announced repurchase plan in the nine-month period ended September 30, 2007.

Approval of Non-Audit Services

During the nine-month period ended September 30, 2007, the Audit Committee of the Board of Directors approved no non-audit related services to be provided by Ernst & Young LLP, our independent registered public accounting firm.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

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

Item 4. Controls and Procedures

Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Securities Exchange Act reports is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required financial disclosure.

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including the Chief Executive Officer and the Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Exchange Act Rule 13a-15. Based upon, and as of the date of, this evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that our disclosure controls and procedures were effective.

Changes in Internal Control Over Financial Reporting

We continuously seek to improve the efficiency and effectiveness of our internal controls. This results in refinements to processes throughout the company. However, there was no change in our internal control over financial reporting that occurred during the three month period ended September 30, 2007 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the Effectiveness of Controls

Our management, including the Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple errors or mistakes. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II: OTHER INFORMATION

Item 1. Legal Proceedings

Reference is hereby made to our disclosures in “Legal Matters” under Note 8 of the Notes to Condensed Consolidated Financial Statements and the information under the heading “Legal Matters” is incorporated by reference herein.

Item 1A. Risk Factors

Investors in Nektar Therapeutics should carefully consider the risks described below before making an investment decision. The risks described below may not be the only ones relating to our company. This description includes any material changes to and supersedes the description of the risk factors associated with our business previously disclosed in Item 1A of our Quarterly Report on Form 10-Q for the three months ended June 30, 2007. Additional risks that we currently believe are immaterial may also impair our business operations. Our business, results of operation, financial condition, cash flow and future prospects and the trading price of our common stock and our abilities to repay our convertible notes could be harmed as a result of any of these risks, and investors may lose all or part of their investment. In assessing these risks, investors should also refer to the other information contained or incorporated by reference in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the year ended December 31, 2006, including our consolidated financial statements and related notes, and our other filings from time to time with the Securities and Exchange Commission (“SEC”).

Risks Related to Our Business

The termination of the Pfizer Agreements will significantly reduce our future revenue.

On October 18, 2007, Pfizer delivered a notice of termination of our Collaborative Development and License Agreement and certain related agreements as part of its public announcement that Pfizer would exit the Exubera product area and our collaboration to develop a next-generation inhaled insulin product. Since the inception of the Company, we have historically depended on revenue from Pfizer related to Exubera. Our total revenue from the Pfizer agreements for the three-month and nine-month periods ended September 30, 2007, was 63% and 69%, respectively, of our total revenue for such periods. As a result of the termination of the Pfizer agreements, we anticipate that we will not continue to receive significant future revenue from the commercial manufacture and sale of Exubera inhalers and inhalation powder to Pfizer. Accordingly, our revenue will decline significantly in the first half of 2008 with no revenue from Pfizer expected at all in the second half of 2008. We cannot currently estimate the timing or amounts of any revenue to be received from Pfizer in 2008 which will depend on such uncertainties as interpretations of post-termination contractual commitments and certain mitigation obligations.

Any future value from Exubera and our next-generation inhaled insulin development program depends on successfully securing a new collaboration partnership.

Pfizer had sole responsibility for the distribution, sales, and marketing of Exubera and Pfizer was also responsible for manufacturing and delivering bulk insulin for powder processing, filling the insulin powder into blister packs for the Exubera inhaler and providing the packaging for the final Exubera product. We do not have a sales and marketing organization or distribution operation, nor can we manufacture the final Exubera product as currently packaged on our own. To generate ongoing revenue from Exubera, we need to complete a collaboration partnership with another pharmaceutical company who can continue the role played by Pfizer. We may not be able to secure such a partner. Even if we are able to enter into a collaboration agreement with a suitable commercialization partner, we anticipate any commercialization partner would require substantial time and incur substantial costs to commercialize Exubera successfully and a certain level of cooperation by Pfizer would likely be required and Pfizer has no obligation to do so under our agreements. In addition, a new commercialization partner would be required to obtain or secure the transfer of regulatory approval from the FDA and equivalent foreign regulatory authorities prior to marketing Exubera. Although the regulatory approval process could be shorter if Pfizer assisted us in obtaining transfer of regulatory approvals, such assistance is not required under the termination provisions of our agreements with Pfizer. Any failure, delay or inability to address manufacturing, packaging or regulatory challenges could impede commercialization of Exubera with a new partner when or if a new collaboration is completed.

In addition to our collaboration with Pfizer on Exubera, we had been collaborating with Pfizer on the development of a next-generation inhaled insulin device with the goal to maintain a long-term competitive advantage in the inhaled insulin market. The objective of these development efforts has been to improve the device portability, convenience, reliability and ease of use. There are significant development and marketing risks associated with this program, including developing the insulin formulation for the next-generation inhaler device, design engineering challenges, design for manufacturability and cost effectiveness and clinical development and regulatory considerations. With the termination of our Pfizer collaboration, further clinical development will be delayed until we find a development and commercialization partner for this program. Our ability to successfully complete a partnership will also likely depend on a potential partner's interest in Exubera. Even if we do find a partner, any delay could result in lost potential market share. The next-generation inhaled insulin product candidate will require regulatory approval which could be a very costly and time consuming process and which might not be obtained. Competitors with products under development could develop, obtain regulatory approval, and commercialize a more convenient, easier to use, smaller pulmonary insulin inhaler device for insulin or be quicker to market with a new inhaler device. Either event could reduce future market share for Exubera or our next generation inhaled insulin program. The inhaled insulin market competes against other, more well known and established methods of delivering insulin such as injection. While we believe inhaled insulin has significant delivery advantages over such methods, the market remains small and we will not be able to establish a large market unless diabetics and their doctors perceive a need to switch from traditional methods of delivery to inhaled insulin.

The termination of the Pfizer Agreements could result in significant expenses and charges.

As a result of the termination of the Pfizer agreements, if we are not successful in finding a new collaboration partner in the near-term, we will incur significant cash and non-cash expenses and charges related to manufacturing capacity wind-down expenses, facility closures, severance and other costs relating to reduction in personnel, supplier contract liabilities and potential termination of our contract with two contract manufacturers for the Exubera inhalers that will require us to reimburse those manufacturers for un-recaptured prior capital expenditures, severance costs and other wind-down costs. These expenses and charges may be significant and may result in cash expenditures by us for our own restructuring activities and other third party liabilities. We are assessing the timing and amount of any such charges and the recoverability of such expenses from Pfizer, and we may not be able to recover the amount of our liabilities to the contract manufacturers.

Our revenue historically depends on revenue from collaboration agreements and therefore fluctuates significantly from quarter to quarter.

Historically, our revenue is principally derived from collaboration agreements with third parties. Such revenue includes milestone payments and a portion of our research and development expenses that was charged to our partners pursuant to collaborative arrangements with them. The amount of our revenue derived from collaboration agreements in any given period will depend on a number of unpredictable factors, including our ability to find suitable partners, the timing of the negotiation and conclusion of agreements with such partners, whether and when we achieve milestones agreed upon with our partners, whether the partnership is exclusive or whether we can seek other partners, the timing of regulatory approvals and the market introduction of new products, and other factors. As a result, our revenue tends to fluctuate materially on a quarterly basis. We believe that our revenue will continue to fluctuate as a result of the factors described above.

We expect to continue to incur substantial losses and negative cash flow from operations and may not achieve or sustain profitability in the future.

In the nine-month period ended September 30, 2007, we reported net losses of $71.8 million If and when we achieve profitability depends upon a number of factors, including the timing and recognition of milestone payments and license fees received, the timing of revenue under collaboration agreements, the amount of investments we make in our proprietary product candidates, and the regulatory approval and market success of our product candidates. We may not be able to achieve and sustain profitability.

Other factors that will affect whether we achieve and sustain profitability include our ability, alone or together with our partners, to:

- develop products utilizing our technologies, either independently or in collaboration with other pharmaceutical companies;
- receive necessary regulatory and marketing approvals;
- maintain or expand manufacturing at necessary levels;
- achieve market acceptance for our products;
- receive royalties on products that have been approved, marketed or submitted for marketing approval with regulatory authorities in line with our current forecasts; and
- maintain sufficient funds to finance our activities.

If we do not generate sufficient cash flow through increased revenue or raising additional capital, then we may not be able to meet our substantial debt obligations.

As of September 30, 2007, we had cash, cash equivalents, short-term investments, and investments in marketable securities valued at approximately $452.6 million and approximately $413.2 million of indebtedness, including approximately $381.6 million in convertible subordinated notes, $23.1 million in capital lease obligations, and $8.5 million of other long-term liabilities. We expect to use a substantial portion of our cash to fund our ongoing operations over the next few years. In addition, we repaid $66.6 million of convertible subordinated notes due in October 2007. The remaining $315.0 million of convertible subordinated notes will mature in 2012.

Our substantial indebtedness has and will continue to impact us by:

- making it more difficult to obtain additional financing;
- constraining our ability to react quickly in an unfavorable economic climate;
- constraining our stock price; and
- constraining our ability to invest in our proprietary product development programs.

Currently we are not generating positive cash flow. The termination of the Pfizer Agreements may further reduce our ability to meet our debt obligations. In addition, since the market price of our common stock is significantly below the related conversion price, the holders of the related outstanding convertible subordinated notes will not likely convert such securities to equity in accordance with their existing terms. If we are unable to satisfy our debt service requirements, substantial liquidity problems could result.

In the future, we may not generate sufficient cash from operations to repay our remaining convertible subordinated notes or satisfy any other of these obligations when they become due and may have to raise additional funds from the sale of equity or debt securities or otherwise restructure our obligations in order to do so. Any such financing or restructuring may not be available to us on commercially acceptable terms, if at all.

If we cannot raise additional capital, our financial condition will suffer.

We have no material credit facility or other material committed sources of capital. To the extent operating and capital resources are insufficient to meet our future capital needs, we will have to raise additional funds from partners or the capital markets to continue the development and commercialization of our technologies and proprietary products. Such funds may not be available on favorable terms, if at all. We may be unable to obtain suitable partners on attractive terms and our substantial indebtedness may limit our ability to obtain additional capital markets financing. If adequate funds are not available on reasonable terms, we may be required to curtail operations significantly or obtain funds by entering into

financing, supply or collaboration agreements on unattractive terms. Our inability to raise capital could harm our business and our stock price. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities would result in dilution to our stockholders.

Our future depends on the proper management of our current and future business operations and their associated expenses.

Our business strategy requires us to manage our business to provide for the continued development and potential commercialization of our proprietary product candidates. Our strategy also calls for us to undertake increased research and development activities, and to manage an increasing number of relationships with collaborators and other third parties, while simultaneously managing the expenses generated by these activities. As a result of the Pfizer termination, we will be required either to find a new partner to take on the commercialization of Exubera and development of next-generation inhaled insulin, or we will need to restructure our business to eliminate the costs and infrastructure associated with these programs in order to direct our resources towards other proprietary product development programs and partnered products. If we are unable to manage effectively our current operations and any growth we may experience, our financial condition and results of operations may be adversely affected. If we are unable to effectively manage our expenses, we may find it necessary to reduce our personnel-related costs through further reductions in our workforce, which could harm our operations, employee morale, and could impair our ability to retain and recruit talent. Furthermore, if adequate funds are not available, we may be required to obtain funds through arrangements with collaborators or other sources that may require us to relinquish rights to certain of our technologies or products that we would not otherwise relinquish.

Because our proprietary product candidates are in the early stages of development, there is a high risk of failure, and we may never succeed in developing marketable products or generating revenue from our proprietary product candidates.

Our efforts to apply our Pulmonary Technology and PEGylation Technology to our proprietary product development programs may fail. None of our product candidates have received regulatory approval and our development efforts may never result in another commercialized product. Development of our proprietary products will require extensive additional time, effort and cost in preclinical testing and clinical trials. Our proprietary product candidates also require lengthy regulatory reviews before they can be marketed by us or our partners. Drug development is an uncertain process that involves trial and error, and we may fail at numerous stages along the way. In addition, it can also be very difficult to estimate the commercial potential of early stage product candidates due to such factors such as safety and efficacy when compared to other available treatments, changing standards of care, patient and physician preferences and the availability of competitive alternatives that may emerge either during the long development process or after commercial introduction.

Our investment in the development and commercialization of our proprietary product candidates prior to seeking partnering arrangements may be unsuccessful and adversely impact our results of operations and financial condition.

Our strategy is to fund our proprietary product development programs, including some or all of the clinical trials, prior to partnering with pharmaceutical and biotechnology companies. While we believe this strategy may result in improved economics for our proprietary product candidates, it will require significant investment by us without reimbursement. As a result, we bear an increased economic risk in the event one or more of our proprietary product candidates is not successful. Even if the product development is ultimately successful, our increased investment could adversely impact our results of operations and financial condition prior to commercialization.

If we fail to establish future successful collaborative relationships, then our results of operation and financial condition will be adversely impacted.

In addition to our new efforts to find a partner for Exubera and the next-generation inhaled insulin development program, we intend to seek future collaborative relationships with pharmaceutical and biotechnology partners to fund some of our research and development expenses and develop and commercialize product candidates. In 2007, we accomplished our goal of completing a partnership based on our Pulmonary Technology with the execution of the Bayer partnership for NKTR-061 on August 1, 2007. In addition, we are also working to achieve a successful partnership based on our PEGylation Technology. The success, timing and terms and conditions of these partnering efforts will affect our revenue and financial results in 2007 and beyond. If we are ultimately not able to negotiate acceptable collaborative arrangements with respect to our existing and future product candidates, or if any arrangements we do negotiate do not include sufficiently favorable commercial terms, we may not receive an adequate return on these investments and our results of operations and financial condition would suffer.

We depend on collaborative partners to obtain regulatory approvals for and commercialize our partner products, and if they are not successful, or if such collaborations fail, then the product development or commercialization of our partner products may be delayed or unsuccessful.

When we sign a collaborative development agreement or license agreement to develop a product candidate with a pharmaceutical or biotechnology company, the pharmaceutical or biotechnology company is generally expected to:

- synthesize active pharmaceutical ingredients to be used in the product candidate;
- design and conduct large scale clinical studies;
- prepare and file documents necessary to obtain government approvals to sell a given product candidate; or
- market and sell our products when and if they are approved.

Reliance on collaborative relationships poses a number of risks, including:

- we may be unable to control whether and the extent to which our collaborative partners will devote sufficient resources to the development programs or commercial efforts;
- disputes may arise in the future with respect to the ownership of rights to technology or intellectual property developed with collaborative partners;
- disagreements with collaborative partners could lead to delays in or termination of the research, development or commercialization of product candidates, or result in litigation or arbitration;
- contracts with our collaborative partners may fail to provide significant protection or be effectively enforced if one of these partners fails to perform. Collaborative partners have considerable discretion in electing whether to pursue the development of any additional product candidates and may pursue alternative technologies or products either on their own or in collaboration with our competitors;
- collaborative partners with marketing rights may choose to devote fewer resources to the marketing of our products than they do to products of their own development;
- the timing and level of resources that our collaborative partners' dedicate to the development program will affect the timing and amount of revenue we receive;
- our collaborative partners may be unable to pay us as expected; and
- collaborative partners may terminate their agreements with us unilaterally for any or no reason.

Given these risks, there is a great deal of uncertainty regarding the success of our current and future collaborative partner arrangements.

We have entered into collaborations in the past that have been subsequently terminated. If other collaborations are suspended or terminated, our ability to commercialize certain other proposed product candidates could also be negatively impacted. If our collaborations fail, our product development or commercialization of product candidates could be delayed or cancelled, which would negatively impact our revenue and results of operations.

If our preclinical testing or clinical trials or those of our collaborative partners are delayed or unsuccessful, our business could be significantly harmed.

All of our partner product candidates and proprietary product candidates are in research and development, including preclinical testing and clinical trials. Preclinical testing and clinical trials are long, expensive and uncertain processes. It may take us, or our collaborative partners, several years to complete clinical trials, and failure can occur at any stage and at any time. Typically, there is a high rate of attrition for product candidates in preclinical and clinical trials. Success in preclinical testing and early clinical trials does not necessarily predict success in later clinical trials. Two of our important proprietary product candidates, NKTR-102 (PEGylated irinotecan) and NKTR-118 (PEGylated naloxol), are currently scheduled to enter Phase II clinical trials in the fourth quarter of 2007 with such trials planned to continue throughout 2008. A number of companies in the pharmaceutical and biotechnology industries have suffered significant setbacks in later stage clinical trials due to such factors as inconclusive results and adverse medical events, even after achieving positive results in earlier trials that were satisfactory both to them and to the reviewing regulatory agencies. If our partner product candidates or proprietary product candidates fail during any clinical trial stage, it could have a significant and adverse impact on our business prospects.

We depend on third parties to conduct our proprietary product candidate clinical trials and any failure of those parties to fulfill their obligations could harm our development and commercialization plans.

We depend on independent clinical investigators, contract research organizations and other third party service providers and our collaborators to conduct clinical trials for our proprietary product candidates. We rely heavily on these parties for successful execution of our clinical trials and do not control many aspects of their activities. For example, the investigators are not our employees. However, we are responsible for ensuring that each of our clinical trials is conducted in accordance with the general investigational plan and protocols for the trial. Third parties may not complete activities on schedule or may not conduct our clinical trials in accordance with regulatory requirements or our stated protocols. The early termination of any of these clinical trial arrangements, the failure of these collaborators to comply with the regulations and requirements governing clinical trials, or the reliance upon results of trials that we have not directly conducted or monitored could hinder or delay the development, approval and commercialization of our product candidates.

If we or our partners do not obtain regulatory approval for our product candidates on a timely basis or at all, or if the terms of any approval impose significant restrictions or limitations on use, then our revenue and results of operations will be affected negatively.

There is a risk that we, or our partners, will not obtain regulatory approval (which in some countries includes pricing approval) for product candidates on a timely basis, or at all, or that the terms of any approval will impose significant restrictions or limitations on use. Product candidates must undergo rigorous animal and human testing and an extensive Food and Drug Administration (FDA) mandated or equivalent foreign authorities' review process for safety and efficacy. This process generally takes a number of years and requires the expenditure of substantial resources. The time required for completing such testing and obtaining such approvals is uncertain. The FDA and other U.S. and foreign regulatory agencies also have substantial discretion to terminate clinical trials, require additional testing, delay or withhold registration and marketing approval and mandate product withdrawals, including recalls. Even though our partners have obtained regulatory approval for some of our products, these products and our manufacturing processes are subject to continued review by the FDA and other regulatory authorities. Even if we or our partners receive regulatory approval of a product, the approval may limit the indicated uses for which the product may be marketed. In addition, any marketed products and manufacturing facilities used in the manufacture of such products will be subject to continual review and periodic inspections. Later discovery from such review and inspection of previously unknown problems may result in restrictions on marketed products or on us, including withdrawal of such products from the market, recall, or suspension of our manufacturing operations. The failure to obtain timely regulatory approval of product candidates, any product marketing limitations or a product withdrawal would negatively impact our revenue and results of operations.

Our collaboration agreements with our partners contain complex commercial terms that could result in disputes or litigation that could materially and adversely affect our revenue, results of operations or financial condition.

We currently derive, and expect to derive in the foreseeable future, all of our revenue from collaboration agreements with biotechnology and pharmaceutical companies. These collaboration agreements contain complex commercial terms including:

- research and development performance and reimbursement obligations for our personnel and other resources allocated to partner product development programs;
- clinical and commercial manufacturing agreements, some of which are priced on an actual cost basis for products supplied to partners by us with complicated cost calculation and allocation formulas and methodologies;
- intellectual property ownership allocation between us and our partners for improvements and new inventions developed during the course of the collaborative partnership;
- royalties on end product sales based on a number of complex variables including net sales calculations, cost of goods, geography, patent life and other financial metrics; and
- indemnity obligations for third-party intellectual property, infringement, product liability and certain other claims.

From time to time, we have informal dispute resolution discussions with our partners regarding the appropriate interpretation of the complex commercial terms contained in our collaboration agreements. One or more disputes may arise in the future regarding our collaborative contracts that may ultimately result in costly litigation and unfavorable interpretation of contract terms, which would have a material adverse impact on our revenue, results of operations or financial condition.

If earthquakes and other catastrophic events strike, our business may be harmed.

Our corporate headquarters, including a substantial portion of our research and development and manufacturing operations, are located in the San Francisco Peninsula, a region known for seismic activity. A significant natural disaster such as an earthquake would harm our business, results of operations, and financial condition. There are no backup facilities for our manufacturing operations located in the San Francisco Peninsula and in the event of any earthquake or other natural disaster or terrorist event, we would not be able to manufacture and supply bulk powder drugs without significant disruption. Certain of our collaborative partners located elsewhere may also be subject to catastrophic events such as hurricanes and tornadoes, any of which could have harm our business, results of operations, and financial condition. We have not undertaken a systematic analysis of the potential consequences to our business and financial results from a major earthquake or other catastrophic events such as fires, power loss, terrorist activity or other disasters and do not have a recovery plan for such disasters. In addition, our insurance coverage may not be sufficient to compensate us for actual losses from interruption of our business that may occur.

Risks Related to Our Industry

Our manufacturing operations and those of our contract manufacturers are subject to governmental regulatory requirements that if not met would have a material negative impact on our revenue, results of operations and financial position.

We and our contract manufacturers are required to maintain compliance with current Good Manufacturing Practices, or cGMP, including any additional cGMP guidelines applicable to active pharmaceutical ingredients, and are subject to inspections by the FDA or comparable agencies in other jurisdictions to confirm such compliance. We anticipate periodic regulatory inspections of our drug manufacturing facilities and the device manufacturing facilities of our contract manufacturers for compliance with applicable regulatory requirements. Any failure to follow and document our or our contract manufacturers' adherence to such cGMP regulations or satisfy other manufacturing and product release regulatory requirements may lead to significant delays in the availability of products for commercial use or clinical study, may result in the termination or hold on a clinical study, or may delay or prevent filing or approval of marketing applications for our products. Failure to comply with applicable regulations may also result in sanctions being imposed on us, including fines, injunctions, civil penalties, failure of regulatory authorities to grant marketing approval of our products, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of products, operating restrictions and criminal prosecutions, any of which could harm our business. The results of these inspections could also result in costly manufacturing changes or facility or capital equipment upgrades such that the FDA is satisfied that the manufacturing and quality control procedures are in substantial compliance with cGMP. Manufacturing delays for us or our contract manufacturers pending resolution of regulatory deficiencies or suspensions would have a significant adverse impact on our revenue and results of operations.

If we are not able to manufacture products in commercially feasible quantities or at commercially feasible costs, then our proprietary product candidates or those of our partners will not be successfully commercialized.

If we are not able to scale-up manufacturing to meet the drug quantities required to support large clinical trials or commercial manufacturing in a timely manner or at a commercially reasonable cost, we risk not meeting our collaborative partners' supply requirements, our contractual obligations or supply requirements for our proprietary product candidates. Building and validating commercial-scale manufacturing facilities and processes, recruiting and training qualified personnel and obtaining the necessary regulatory approvals is complex, expensive and time-consuming. In addition, we also sometimes face very limited supply for certain critical raw materials from single or a limited number of suppliers that could constrain our manufacturing output. Failure to manufacture products in commercially feasible quantities or at commercially feasible costs, would negatively impact our revenue and results of operations and cause us not to meet our customers' supply requirements, contractual obligations or requirements for our proprietary product candidates.

We are currently involved in legal proceedings and may incur substantial litigation costs and liabilities, which may adversely affect our business, results of operations and financial position.

Third parties from time to time have asserted or may assert that we or our commercial partners are infringing their proprietary rights based upon their patents that they believe cover our technology. In addition, future patents may issue to third parties that may give rise to similar assertions of infringement. We agree, in certain circumstances, to indemnify and hold harmless our collaborative partners from intellectual property infringement, product liability and certain other claims. We could incur substantial costs in defending ourselves and our commercial partners against any such claims. Furthermore, parties making such claims may be able to obtain injunctive or other equitable relief, which could effectively block our ability or the ability of our partners to develop or commercialize some or all of our products or product candidates in the

U.S. and abroad, and could result in the award of substantial damages. We cannot predict with certainty the eventual outcome of any pending litigation or future litigation. Costs associated with such litigation, substantial damage claims, indemnification claims, or royalties paid for licenses from third parties could have a material adverse effect on our business, results of operations and financial condition.

On August 1, 2006, Novo Nordisk filed a lawsuit against Pfizer in federal court claiming that Pfizer willfully infringes on Novo's patents covering inhaled insulin with Exubera. The case is currently proceeding with discovery and other pre-trial activities. Although we are not currently a named party in this litigation, we have incurred litigation costs as a result of such litigation and may incur substantial future costs and potential indemnity claims from Pfizer associated with the litigation. These and other disputes may have a material impact on our business, results of operation and financial condition.

If product liability lawsuits are brought against us, we may incur substantial liabilities.

The manufacture, testing, marketing and sale of medical products involves an inherent risk of product liability. If product liability costs exceed our product liability insurance coverage, we may incur substantial liabilities that could have a severe negative impact on our financial position. Whether or not we were ultimately successful in product liability litigation, such litigation would consume substantial amounts of our financial and managerial resources, and might result in adverse publicity, all of which would impair our business. Additionally, we may not be able to maintain our clinical trial insurance or product liability insurance at an acceptable cost, if at all, and this insurance may not provide adequate coverage against potential claims or losses.

If any of our pending patent applications do not issue or following issuance are deemed invalid, we may lose valuable intellectual property protection. We rely on trade secret protection for important proprietary technologies.

We have filed patent applications (and we plan to file additional patent applications) covering, among other things, aspects of our Pulmonary Technology (in general and as it relates to specific molecules) including, without limitation, our powder processing technology, our powder formulation technology, and our inhalation device technology; our PEGylation Technology; and certain other early stage technologies. We own over 1,000 U.S. and foreign patents and a number of patent applications that cover various aspects of our technologies.

The patent positions of pharmaceutical, medical device and biotechnology companies, including ours, are uncertain and involve complex legal and factual issues. There can be no assurance that patents we apply for will issue, or that patents that have issued will be valid and enforceable. Even if such patents are enforceable, we anticipate that any attempt to enforce our patents could be time consuming and costly. Additionally, the coverage claimed in a patent application can be significantly reduced before the patent is issued. As a consequence, we do not know whether any of our patent applications will result in patents with broad coverage, or if any issued patents will be subjected to further proceedings to limit their scope so as not to provide meaningful protection or whether the claims that eventually issue or that have issued will be circumvented or otherwise invalidated. In addition, unpatented proprietary rights, including trade secrets and know-how, can be difficult to protect and may lose their value if they are independently developed by a third party or if their secrecy is lost. Since publication of discoveries in scientific or patent literature often lag behind the date such discoveries, we cannot be certain that we were the first inventor of inventions covered by our patents or patent applications. Moreover, we may have to participate in interference proceedings declared by the U.S. Patent and Trademark Office, which could result in substantial cost to us, even if the eventual outcome is favorable. An adverse outcome could subject us to significant liabilities to third parties, require disputed rights to be licensed from or to third parties or require us to cease using the technology in dispute. Further, because development and commercialization of pharmaceutical products can be subject to substantial delays, patents may expire early and provide only a short period of protection, if any, following commercialization of products.

There are many laws, regulations and judicial decisions that dictate and otherwise influence the manner in which patent applications are filed and prosecuted and in which patents are granted and enforced. Changes to these laws, regulations and judicial decisions are subject to influences outside of our control and may negatively affect our business, including, but not limited to, our ability to obtain meaningful patent coverage or enforcement rights of any of our issued patents. Further, new laws, regulations and judicial decisions may be retroactive in effect, thereby potentially reducing or eliminating our ability to implement our patent-related strategies. The changes to the laws, regulations and judicial decisions that affect our business are often difficult or impossible to foresee, thereby potentially limiting our ability to adequately adapt our patent strategies these changes.

We also rely upon trade secret protection for our confidential and proprietary information. No assurance can be given that others will not independently develop substantially equivalent confidential and proprietary information or otherwise gain access to our trade secrets or disclose such technology, or that we can meaningfully protect our trade secrets.

We may be required to obtain intellectual property licenses from third parties and there is a risk we may not be able to obtain such licenses on a commercially reasonable basis, if at all.

Numerous pending and issued U.S. and foreign patent rights and other proprietary rights owned by third parties relate to pharmaceutical compositions, medical devices, and equipment and methods for preparation, packaging, and delivery of pharmaceutical compositions. We cannot predict with any certainty which, if any, patent references will be considered relevant to our or our collaborative partners' technology by authorities in the various jurisdictions where such rights exist, nor can we predict with certainty which, if any, of these rights will or may be asserted against us by third parties. There can be no assurance that we can obtain a license to any technology that we determine we need on reasonable terms, if at all, or that we could develop or otherwise obtain alternate technology. The failure to obtain licenses on commercially reasonable terms, or at all, if needed, would have a material adverse effect on us.

Significant competition for our technology platforms, our partnered and proprietary products and product candidates could make our technologies, products or product candidates obsolete or uncompetitive, which would negatively impact our revenue and results of operations.

There are competitors to our platform technologies and partnered and proprietary products and product candidates. Some of our competitors with regard to our Pulmonary Technology include Alexza Pharmaceuticals, Alkermes, Inc., Aradigm Corporation, 3M, MannKind Corporation, Microdose Technologies Inc., Skyepharma and Vectura. Some of our competitors with regard to our PEGylation Technology include Dow Chemical Company, Enzon Pharmaceuticals, Inc., SunBio Corporation, Mountain View Pharmaceuticals, Inc., Neose, NOF Corporation and Valentis, Inc., and there may be several chemical, biotechnology, and pharmaceutical companies also developing PEGylation technologies. Some of these companies license or provide the technology to other companies, while others are developing the technology for internal use.

There are several direct competitors with development programs underway for inhaled insulin products. If these products are approved, they could be competitive to Exubera or our next-generation inhaled insulin product candidate. These companies include Novo Nordisk, Alkermes, Inc. in collaboration with Eli Lilly Company, MannKind Corporation, and Kos Pharmaceuticals, all of which are working on various versions of inhaled insulin products in either a liquid or dry powder form. Some products are in late stage clinical testing including Alkermes's inhalable insulin product (AIR Insulin System™) in Phase 3 clinical development and Mannkind's Technosphere® Insulin System also in Phase 3 clinical development. There are other smaller companies that we believe are developing oral or buccal products for insulin delivery, such as Biocon, Emisphere Technologies, Inc., Coremed Corporation, and Generex Biotechnology Corporation. Inhaled insulin products also compete with approved injectable insulins, including both fast-acting and longer-acting basal insulins, as well as other treatment modalities for diabetes including oral agents and other injectable products approved for patients with Type 2 diabetes, such as Amilyn Pharmaceutical's Byetta.

Many of our competitors have greater research and development capabilities, experience, manufacturing, marketing, financial and managerial resources than we do and represent significant competition for us. Acquisitions of or collaborations with competing drug delivery companies by large pharmaceutical or biotechnology companies could enhance our competitors' financial, marketing and other resources. Accordingly, our competitors may succeed in developing competing technologies, obtaining regulatory approval for products, or gaining market acceptance before us. Developments by others could make our products or technologies uncompetitive or obsolete. There can be no assurance that we or our partners will successfully develop, obtain regulatory approvals, and commercialize next-generation products or new products that will successfully compete with those of certain of our competitors.

If government and private insurance programs do not provide reimbursement for our partnered products or proprietary products, those products will not be widely accepted, which would have a negative impact on our revenue and results of operations.

In both domestic and foreign markets, sales of our partners' products and any of our proprietary products that have received approval will depend in part upon our ability to gain market acceptance among physicians and patients, pricing approvals by government authorities and the availability of reimbursement from third-party payors, such as government health administration authorities, managed care providers, private health insurers and other organizations. Such third-party payors are increasingly challenging the price and cost effectiveness of medical products and services. Therefore, significant uncertainty exists as to the pricing approvals for, and the reimbursement status of, newly approved health care products. For example, since Type 1 and Type 2 diabetes patients have current insulin therapies available to them (primarily injectable and oral insulin therapies), an important factor in the commercial success of our next-generation inhaled insulin program would be the timing and availability of reimbursement from third-party payors, in addition to patients' overall willingness to adopt a new form of insulin therapy. Moreover, legislation and regulations affecting the pricing of pharmaceuticals may change before regulatory agencies approve our proposed products for marketing. Adoption of such legislation and regulations could further limit pricing approvals for, and reimbursement of, medical products. A government or third-party payor decision not to approve pricing for, or provide adequate coverage and reimbursements of, our products would limit market acceptance of such products.

We depend on our key technical and management personnel to advance our technology, and the loss of these personnel could impair the development of our products.

We rely and will continue to rely on our key management and scientific staff. Because all employees are employed at-will, they can leave at any time. The loss of key personnel or the failure in our industry to recruit necessary additional qualified personnel could harm our business and results of operations. There is intense competition from other biopharmaceutical companies, research and academic institutions and other organizations for qualified personnel. We may not be able to continue to attract and retain the qualified personnel necessary for the development of our business. We will need to continue to recruit experts in the areas of clinical testing, manufacturing, regulatory, finance, marketing and distribution and to develop additional expertise in our existing personnel. If we do not succeed in hiring or retaining necessary personnel or developing this expertise, our business could suffer significantly.

Risks Related to Our Securities

We have implemented certain anti-takeover measures, which make it more difficult to acquire us, even though such acquisitions may be beneficial to our stockholders.

Provisions of our certificate of incorporation and bylaws, as well as provisions of Delaware law, could make it more difficult for a third party to acquire us, even though such acquisitions may be beneficial to our stockholders. These anti-takeover provisions include:

- establishment of a classified board of directors such that not all members of the board may be elected at one time;
- lack of a provision for cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;
- the ability of our board to authorize the issuance of “blank check” preferred stock to increase the number of outstanding shares and thwart a takeover attempt;
- prohibition on stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of stockholders;
- establishment of advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings; and
- limitations on who may call a special meeting of stockholders.

Further, we have in place a preferred share purchase rights plan, commonly known as a “poison pill.” The provisions described above, our “poison pill” and provisions of Delaware law relating to business combinations with interested stockholders may discourage, delay or prevent a third party from acquiring us. These provisions may also discourage, delay or prevent a third party from acquiring a large portion of our securities, or initiating a tender offer or proxy contest, even if our stockholders might receive a premium for their shares in the acquisition over the then current market prices. We also have a change of control severance benefits plan which provides for certain cash severance, stock award acceleration and other benefits in the event our employees are terminated (or, in some cases, resign for specified reasons) following an acquisition. This severance plan could discourage a third party from acquiring us.

The prices of our common stock and senior convertible debt are expected to remain volatile.

Our stock price is volatile. During the twelve-month period ended September 30, 2007, based on closing bid prices on the NASDAQ Stock Market, our stock price ranged from $7.63 to $17.20. We expect our stock price to remain volatile. In addition, as our convertible senior notes are convertible into shares of our common stock, volatility or depressed prices of our common stock could have a similar effect on the trading price of the notes. Also, interest rate fluctuations can affect the price of our convertible senior notes. A variety of factors may have a significant effect on the market price of our common stock or notes, including:

- announcements of data from, or material developments in, our clinical trial or those of our competitors, including delays in product development, approval or launch;
- announcements by collaboration partners as to their plans or expectations related to products using our technologies;

- announcements or terminations of collaborative relationships by us or our competitors;
- fluctuations in our results of operations;
- developments in patent or other proprietary rights;
- announcements of technological innovations or new therapeutic products that may compete with our approved products or products under development;
- announcements of changes in governmental regulation affecting us or our competitors;
- hedging activities by purchasers of our convertible senior notes;
- litigation brought against us or third parties to whom we have indemnification obligations;
- public concern as to the safety of drug formulations developed by us or others; and
- general market conditions.

Our securityholders may be diluted, and the prices of our securities may decrease, by the exercise of outstanding stock options and warrants or by future issuances of securities.

We may issue additional common stock, preferred stock, restricted stock units, or securities convertible into or exchangeable for our common stock. Furthermore, substantially all shares of common stock for which our outstanding stock options or warrants are exercisable are, once they have been purchased, eligible for immediate sale in the public market. The issuance of additional common stock, preferred stock, restricted stock units, or securities convertible into or exchangeable for our common stock or the exercise of stock options or warrants would dilute existing investors and could adversely affect the price of our securities.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Submission of Matters to a Vote of Security Holders

None.

Item 5. Other Information

On October 18, 2007, Pfizer delivered a notice of termination of our Collaborative Development and License Agreement and certain related agreements related to Exubera and the next-generation inhaled insulin development program (the “Pfizer Agreements”). We are currently engaged in discussions with Pfizer regarding the parties’ relative rights and liabilities arising from termination of the Pfizer Agreements.

We are also exploring our options related to securing additional rights from Pfizer related to Exubera and identifying another collaboration partner to continue the commercialization of Exubera and development of the next-generation inhaled insulin program. If we are unable to secure another partner over the next few months, we would be required to exit or put on hold the Exubera product and may be required to cease development activities with respect to the next-generation inhaled insulin development program. If we decide to exit these programs, we may incur costs and charges including, but not limited to, termination of our agreements with our contract manufacturers and accelerated depreciation of our Exubera-specific capital assets. We may also incur restructuring charges related to the reduction of our personnel and infrastructure.

We file electronically with the Securities and Exchange Commission (“SEC”) our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, and amendments to those reports, pursuant to Section 13(a) or 15(d) of the Change Act. The public may read or copy any materials we file with the SEC at the SEC’s Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information statements, and other information regarding issuers that file electronically with the SEC. The address of that site is http://www.sec.gov.

You may obtain a free copy of our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K and amendments to those reports on the day of filing with the SEC on our website at http://www.nektar.com, by contacting the Investor Relations Department at our corporate offices by calling (650) 631-3100 or by sending an e-mail message to investors@nektar.com.

Disclosure regarding the operations of our board of director nominating committees and the means by which security holders may communicate with directors can be found in the definitive proxy statement for our 2007 Annual Meeting of Stockholders filed with the SEC on April 25, 2007 (the “Proxy Statement”) under the heading Nominating and Corporate Governance Committee.

As permitted by SEC Rule 10b5-1, certain of our executive officers, directors and other employees have set up a predefined, structured stock trading program with his/her broker to sell our stock. The stock trading program allows a broker acting on behalf of the executive officer, director or other employee to trade our stock during blackout periods or while such executive officer, director or other employee may be aware of material, nonpublic information, if the trade is performed according to a pre-existing contract, instruction or plan that was established with the broker during a non-blackout period and when such executive officer, director or employee was not aware of any material, nonpublic information. Our executive officers, directors and other employees may also trade our stock outside of the stock trading programs set up under Rule 10b5-1 subject to our blackout periods and insider trading rules.

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Item 6. Exhibits

Except as so indicated in Exhibit 32.1, the following exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q.

Exhibit Number	Description of Documents
10.1(1)	Nektar Therapeutics, Aerogen, Inc. and Bayer Healthcare LLC Co-Development, License and Co-promotion Agreement dated August 1, 2007.+
10.2(1)	Form of Non-employee Director Restricted Stock Unit Agreement under the 2000 Equity Incentive Plan.
10.3(1)	Form of Non-employee Director Stock Option Agreement under the 2000 Equity Incentive Plan.
10.4(1)	Form of Severance Letter for the following executive officers: Hoyoung Huh, John Patton, Nevan C. Elam and Gil M. Labrucherie.
10.5(2)	Employment Letter Agreement with Timothy A. Harkness dated August 10, 2007.
10.6(1)	Employment Transition and Separation Agreement entered into with Louis Drapeau on September 4, 2007.
10.7(1)	Employment Transition and Separation Agreement entered into with David Johnston on October 5, 2007.
10.8(1)	Amended and Restated Built-to-Suite Lease between Nektar Therapeutics and BMR-201 Industrial Road LLC, dated August 17, 2004, as amended on January 11, 2005 and July 19, 2007
10.9(1)	Amended and Restated Change of Control Severance Benefit Plan.
31.1(1)	Certification of Nektar Therapeutics' principal executive officer required by Rule 13a-14(a) or Rule 15d-14(a).
31.2(1)	Certification of Nektar Therapeutics' principal financial officer required by Rule 13a-14(a) or Rule 15d-14(a).
32.1(1)	Section 1350 Certifications.

(1) Filed herewith.

(2) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K, filed on August 23, 2007.

+ Confidential treatment with respect to specific portions are omitted and filed separately with the SEC.

SIGNATURES

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

By: /s/ Howard W. Robin
Howard W. Robin
Chief Executive Officer, President and Director

Date: November 8, 2007

By: /s/ Timothy A. Harkness
Timothy A. Harkness
Senior Vice President and Chief Financial Officer

Date: November 8, 2007

EXHIBIT INDEX

Except as so indicated in Exhibit 32.1, the following exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q.

Exhibit Number	Description of Documents
10.1(1)	Nektar Therapeutics, Aerogen, Inc. and Bayer Healthcare LLC Co-Development, License and Co-promotion Agreement dated August 1, 2007.+
10.2(1)	Form of Non-employee Director Restricted Stock Unit Agreement under the 2000 Equity Incentive Plan.
10.3(1)	Form of Non-employee Director Stock Option Agreement under the 2000 Equity Incentive Plan.
10.4(1)	Form of Severance Letter for the following executive officers: Hoyoung Huh, John Patton, Nevan C. Elam and Gil M. Labrucherie.
10.5(2)	Employment Letter Agreement with Timothy A. Harkness dated August 10, 2007.
10.6(1)	Employment Transition and Separation Agreement entered into with Louis Drapeau on September 4, 2007.
10.7(1)	Employment Transition and Separation Agreement entered into with David Johnston on October 5, 2007.
10.8(1)	Amended and Restated Built-to-Suite Lease between Nektar Therapeutics and BMR-201 Industrial Road LLC, dated August 17, 2004, as amended on January 11, 2005 and July 19, 2007.
10.9(1)	Amended and Restated Change of Control Severance Benefit Plan.
31.1(1)	Certification of Nektar Therapeutics' principal executive officer required by Rule 13a-14(a) or Rule 15d-14(a).
31.2(1)	Certification of Nektar Therapeutics' principal financial officer required by Rule 13a-14(a) or Rule 15d-14(a).
32.1(1)	Section 1350 Certifications.

(1) Filed herewith.

(2) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K, filed on August 23, 2007.

\+ Confidential treatment with respect to specific portions are omitted and filed separately with the SEC.

EXHIBIT 10.1

FOIA CONFIDENTIAL TREATMENT REQUESTED

EXECUTION COPY

NEKTAR THERAPEUTICS,

AEROGEN, INC.,

AND

BAYER HEALTHCARE LLC

CO-DEVELOPMENT, LICENSE AND CO-PROMOTION AGREEMENT

AUGUST 1, 2007

[***] indicates that certain information contained herein has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

TABLE OF CONTENTS

[***] indicates that certain information contained herein has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

CO-DEVELOPMENT, LICENSE AND CO-PROMOTION AGREEMENT

THIS CO-DEVELOPMENT, LICENSE AND CO-PROMOTION AGREEMENT (the **"Agreement"**) is made and entered into as of the 1st day of August, 2007 (the **"Effective Date"**) among **NEKTAR THERAPEUTICS**, a Delaware corporation with a principal place of business at 150 Industrial Road, San Carlos, California 94070 U.S.A. (**"Nektar"**), **AEROGEN, INC.**, a Delaware corporation with a principal place of business at 150 Industrial Road, San Carlos, California 94070 U.S.A. (**"Aerogen"**), a wholly-owned subsidiary of Nektar, and **BAYER HEALTHCARE LLC,** a Delaware corporation with a principal place of business at 555 White Plains Road, Tarrytown, New York 01591 U.S.A. (**"Bayer"**). Nektar and Bayer are sometimes referred to herein individually as a "Party" and collectively as the "Parties" (which terms shall not include Aerogen). Except as otherwise provided in Section 20.14 hereof, references to **"Nektar," "Aerogen,"** and **"Bayer"** shall not include their respective Affiliates.

RECITALS

WHEREAS, Nektar is a biotechnology company engaged in the research, development, and commercialization of pharmaceutical compounds and devices for delivering such compounds;

WHEREAS, Bayer is a pharmaceutical company engaged in the research, development and commercialization of products useful in the amelioration, treatment and/or prevention of human diseases and conditions;

WHEREAS, Nektar has developed and is conducting clinical trials of a pharmaceutical product consisting of a liquid formulation of the antibiotic known as Amikacin delivered using a nebulizer device based on Nektar's proprietary pulmonary drug delivery system;

WHEREAS, Bayer and Nektar desire to collaborate in certain activities to develop such product in both "**[***]**" and "**[***]**" configurations for the treatment of [***] infections;

WHEREAS, Bayer and Nektar desire to collaborate in the promotion and commercialization of such product to expand the availability of, and access by patients to, such product worldwide; and

WHEREAS, Bayer desires to obtain, and Nektar and Aerogen are willing to grant to Bayer, a license under Nektar's and Aerogen's proprietary technology to import, develop, commercialize, make, promote, market, use, offer for sale and sell a product based upon such pulmonary delivery of liquid Amikacin, on the terms and conditions provided in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement and intending to be legally bound, the Parties agree as follows:

1. DEFINITIONS. As used herein, the following terms shall have the following meanings:

1.1 "[***]" has the meaning set forth in the **[***]**.

1.2 "[***]" has the meaning set forth in the **[***]**.

1.3 "ACCME Standards" means the standards set forth by the Accreditation Council for Continuing Medical Education relating to educating the medical community in the United States.

1.4 "Aerogen" has the meaning set forth in the Preamble.

1.5 "Affiliate" means a corporation, partnership, trust or other entity that directly, or indirectly through one or more intermediates, controls, is controlled by or is under common control with a specified Party. For such purposes, "control," "controlled by" and "under common control with" shall mean the possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting equity, voting member or partnership interests, control of a majority of the board of directors or other similar body, by contract or otherwise. In the case of a corporation, the direct or indirect ownership of more than fifty percent (50%) of its outstanding voting shares or the ability otherwise to elect a majority of the board of directors or other managing authority of the entity shall in any event be presumptively deemed to confer control, it being understood that the direct or indirect ownership of a lesser percentage of such shares shall not necessarily preclude the existence of control.

1.6 "Agent" means any Third Party that is hired by, licensed by, sublicensed by or otherwise contractually associated with a Party during the term of this Agreement to the extent useful or necessary for the Party to fulfill its obligations under this Agreement.

1.7 "Agreement" means this Co-Development, License and Co-Promotion Agreement, all amendments and supplements to this Co-Development, License and Co-Promotion Agreement and all schedules and exhibits to this Co-Development, License and Co-Promotion Agreement.

1.8 "Allowable Expenses" means those expenses incurred in connection with Commercialization of Product in the Shared Territory (excluding Pre-Launch Costs) that are consistent with the approved Commercialization Plan and Commercialization Budget for the Shared Territory and are specifically attributable to Product in the Shared Territory, and shall consist of (a) Cost of Goods Sold, (b) Marketing Expenses, (c) Distribution Expenses, (d) Post-Launch Product R&D Expenses, and (e) Regulatory Expenses (as such terms are defined in Exhibit 1.8). Allowable Expenses also includes all GSM Expenses (as defined in Exhibit 1.8), whether incurred with respect to the Shared Territory or the Royalty Territory, as more fully described in Exhibit 1.8.

1.9 "Amikacin" means the **[***]**.

1.10 "Applicable Law" means all applicable laws, rules, and regulations, including, without limitation, any rules, regulations, guidelines or other requirements of the Regulatory Authorities or other governmental authorities, that may be in effect from time to time in any relevant legal jurisdiction in the Territory.

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

1.12 "Change of Control" means that a Third Party shall have become the beneficial owner of securities representing fifty-one percent (51%) or more of the aggregate voting power of the then-outstanding voting securities of a Party, or any sale by a Party of all or substantially all of its business or assets pertaining to the Product.

1.13 "CIA" means the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and Bayer Corporation dated January 23, 2001.

1.14 "Clinical Trials" means Phase I Clinical Trials, Phase II Clinical Trials, Phase III Clinical Trials, Phase IV Clinical Trials, and/or variations of such trials (e.g., Phase II/III) as those terms are defined by the FDA.

1.15 "CMC Data" means any and all Information contained in, as well as data supporting, the Chemistry, Manufacturing and Control sections (or sections corresponding thereto) of an NDA, or other equivalent regulatory filing, relating to the Product.

1.16 "Commencement" or "Commence" means, when used with respect to Clinical Trials (or the local equivalent), the date of enrollment of the first patient or subject in such Clinical Trials (or the local equivalent).

1.17 "Commercialization" means all activities undertaken relating to the manufacture for commercial use, marketing, and/or sale of the Product, including without limitation Pre-Launch Activities, advertising, education, planning, marketing, promotion, distribution, market and product support, and shall include post-launch medical activities such as Phase IV Clinical Trials anywhere in the world but shall exclude Development activities. **"Commercialize"** shall have a corresponding meaning.

1.18 "Commercialization Budget" has the meaning set forth in Section 7.1(b).

1.19 "Commercialization FTE" means the equivalent of an employee working **[***]** labor hours per year on Commercialization of Product.

1.20 "Commercialization FTE Rate" means the overall rate, as determined by the JFC pursuant to Section 3.3(b), to be applied to each Commercialization FTE employed by Bayer or Nektar providing support for or involved in Commercialization of Product in the Shared Territory, including without limitation **[***]** and **[***]**, in each year.

1.21 "Commercialization Plan" has the meaning set forth in Section 7.1(b).

1.22 "Commercial Launch" means the first arm's length commercial sale of the Product by Bayer, an Affiliate of Bayer or a Sublicensee of Bayer to a Third Party (including without limitation any final sale to a distributor or wholesaler under any non-conditional sale arrangement) in a country where Regulatory Approval of such Product has been obtained by or on behalf of Bayer; provided, however, that in no event shall any sale or distribution of the Product for Pre-Launch Activities or use in a Clinical Trial be deemed a Commercial Launch.

1.23 "Commercially Reasonable Efforts" means, with respect to the Exploitation of the Product, the level of efforts and resources (including without limitation the promptness with which such efforts and resources would be applied) commonly used in the pharmaceutical industry with respect to a product of similar commercial potential at a similar stage in its development or product life, taking into consideration its safety and efficacy, its cost to develop, manufacture and bring to market, the prevalence of the indication, the competitiveness of alternative products of Third Parties, the Patent and other proprietary position of such product, the likelihood of Regulatory Approval, its profitability and all other relevant factors. Commercially Reasonable Efforts shall be determined on a market-by-market basis for the Product.

1.24 "Competitive Product" means a product containing an **[***]** that is labeled for amelioration, treatment or prevention of **[***]** and that includes technology that, **[***]**.

1.25 "Completion" means, when used with respect to a Clinical Trial (or the local equivalent), the date on which the Party conducting the Clinical Trial completes the final report for such Clinical Trial (or the local equivalent).

1.26 "Confidential Information" has the meaning set forth in Section 15.1.

1.27 "Control" means, with respect to any item of Information, Patent, Patent Application, know-how or other intellectual property right, the right to grant a license or sublicense with respect thereto as provided for in this Agreement, without violating the terms of any agreement or other arrangement with, or any legal rights of, or without requiring the consent of, any Third Party.

1.28 "Damages" has the meaning set forth in Section 14.1.

1.29 "Develop" or "Development" means all activities relating to obtaining Regulatory Approval of the Product and all manufacturing activities undertaken prior to Commercialization (including without limitation those activities reasonably required for the scale up of Manufacturing processes or equipment in preparation for commercial supply of Product). This includes, for example, (a) preclinical testing, toxicology, formulation, clinical studies, including without limitation Clinical Trials, and regulatory affairs and (b) manufacturing process development for bulk and finished forms of the Device or the Product, as applicable, production of clinical supply of Product, and manufacturing and quality assurance technical support activities prior to the commencement of Pre-Launch Activities, but excludes Manufacturing for Commercialization purposes.

1.30 "Development Budget" has the meaning set forth in Section 4.2(a).

1.31 "Development Costs" means the expenses incurred by a Party or for its account after the Effective Date that are consistent with the approved Development Plan and are specifically attributable to the Development of the Product.

1.32 "Development Plan" has the meaning set forth in Section 4.2(a).

1.33 "Device" means a nebulizer device comprising at least an **[***]**. The current embodiment of the Device is set forth in Exhibit 1.33.

1.34 "Device Budget" has the meaning set forth in Section 4.2(a).

1.35 "DMF" means, as the case may be, either a drug master file or a device master file maintained with the FDA and the equivalent thereof, if any, in jurisdictions outside the Shared Territory.

1.36 "Dollar" means a U.S. dollar, and **"$"** shall be interpreted accordingly.

1.37 "Drug Budget" has the meaning set forth in Section 4.2(a).

1.38 "EMEA" means the European Medicines Agency, or any successor thereto, which coordinates the scientific review of human pharmaceutical products under the centralized licensing procedure in the European Union.

1.39 "European Union" means the countries that are members of the European Union as of the Effective Date of this Agreement or that become members of the European Union thereafter.

1.40 "Exploitation" means the making, having made, using, having used, selling, having sold, offering for sale and/or otherwise disposing of, the Product, including, without limitation, all discovery, research, development (including without limitation the conduct of Clinical Trials), registration, modification, enhancement, improvement, manufacturing, labeling, storage, formulation, exportation, importation, optimization, transportation, distribution, promotion and marketing activities related thereto.

1.41 "FDA" means the United States Food and Drug Administration, or any successor thereto, having the administrative authority to regulate the marketing of human pharmaceutical products or biological therapeutic products, delivery systems and devices in the United States.

1.42 "Field" means the amelioration, treatment and/or prevention in humans of **[***]**.

1.43 "Force Majeure Event" has the meaning set forth in Section 20.4.

1.44 "Formulated Amikacin" means Amikacin in a liquid formulation existing as of the Effective Date or developed pursuant to this Agreement for use in Pulmonary Delivery by means of the Device.

1.45 "Fully Burdened Manufacturing Costs" means, as applicable to Device, Formulated Amikacin, or Product manufactured by Nektar or its Third Party supplier, Nektar's or its Affiliate's cost of manufacturing such Device, Formulated Amikacin, or Product for Development or Commercial purposes, which is equal to the sum of (a) for the Device, Formulated Amikacin or Product (or components thereof) made by Nektar, the costs of all direct material, direct labor, and allocable manufacturing overhead consumed, provided or procured by Nektar, in each case for the manufacture of the Device, Formulated Amikacin, or Product, and (b) for Device, Formulated Amikacin, or Product (or components thereof) made by Nektar's Third Party supplier, the out-of-pocket costs paid to such Third Party supplier by Nektar, to the extent such costs in (a) and (b) are incurred by Nektar or its Affiliates and to the extent they are reasonably allocable to the manufacture of such Device, Formulated Amikacin, or Product. For clarity, Fully Burdened Manufacturing Cost shall not include any costs of scaling up Manufacturing for the Device or Formulated Amikacin, Development Costs, or capital expenses (but shall include depreciation on capital expenses incurred for the Manufacture of Device, Formulated Amikacin, or Product). Fully Burdened Manufacturing Cost shall be calculated in a manner consistent with GAAP, consistently applied.

1.46 "GAAP" means United States generally accepted accounting principles consistently applied.

1.47 "Global Brand Team" or "GBT" has the meaning set forth in Section 3.1.

1.48 "Global Phase IV Costs" means the expenses incurred in the conduct of Global Phase IV Trials.

1.49 "Global Phase IV Trial" means any Phase IV Clinical Trial that is conducted in order to benefit the Product in multiple countries, which countries include, but are not limited to, the Shared Territory, regardless of the country in which it is conducted.

1.50 "Global Project Team" or "GPT" has the meaning set forth in Section 3.1.

1.51 "Global Strategic Marketing Team" or "GSM" means the internal Bayer marketing group that will oversee the global marketing, strategy and planning for the Product, in which **[***]** will participate with respect to Product-related matters.

1.52 "Good Clinical Practices" or "GCP" means the standards, practices and procedures set forth in the guidelines entitled in "Good Clinical Practice: Consolidated Guideline," including related regulatory requirements imposed by the FDA and (as applicable) any equivalent or similar standards in jurisdictions outside the Shared Territory.

1.53 "Good Laboratory Practices" or "GLP" means the regulations set forth in 21 C.F.R. Part 58 and the requirements expressed or implied thereunder imposed by the FDA and (as applicable) any equivalent or similar standards in jurisdictions outside the Shared Territory.

1.54 "Good Manufacturing Practices" or "GMP" means the regulations set forth in 21 C.F.R. Parts 210–211, 820 and 21 C.F.R. Subchapter C (Drugs), Quality System Regulations and the requirements thereunder imposed by the FDA, and, as applicable, any similar or equivalent regulations and requirements in jurisdictions outside the Shared Territory.

1.55 "IAS" means International Accounting Standards consistently applied.

1.56 "IFRS" means International Financial Reporting Standards consistently applied.

1.57 "IND" means an Investigational New Drug application for the Product, which must be approved by the FDA (or foreign equivalent) before shipment of such Product intended for administration to humans.

1.58 "Indemnified Party" has the meaning set forth in Section 14.3(a).

1.59 "Indemnifying Party" has the meaning set forth in Section 14.3(a).

1.60 "Information" means ideas, inventions, discoveries, concepts, formulas, practices, procedures, processes, methods, knowledge, know-how, trade secrets, technology, designs, drawings, computer programs, skill, experience, documents, apparatus, results, clinical and regulatory strategies, test data, including without limitation pharmacological, toxicological and clinical data, analytical and quality control data, manufacturing data and descriptions, Patent and legal data, market data, financial data or descriptions, devices, assays, chemical formulations, specifications, compositions of matter, product samples and other samples, physical, chemical and biological materials and compounds, and the like, in written, electronic or other form, now known or hereafter developed, whether or not patentable.

1.61 "Initial Public Disclosure" has the meaning set forth in Section 16.1.

1.62 "Inventions" has the meaning set forth in Section 11.2(a).

1.63 "Joint Finance Committee" or "JFC" has the meaning set forth in Section 3.1.

1.64 "Joint Inventions" has the meaning set forth in Section 11.2(a).

1.65 "Joint Patent Rights" has the meaning set forth in Section 11.3(a)(iii).

1.66 "Joint Steering Committee" or "JSC" has the meaning set forth in Section 3.1.

1.67 "Launch Budget" has the meaning set forth in Section 7.2(a).

1.68 "Launch Plan" has the meaning set forth in Section 7.2(a).

1.69 "Local Phase IV Costs" means the expenses incurred in the conduct of Local Phase IV Trials.

1.70 "Local Phase IV Trial" means any Phase IV Clinical Trial that is conducted in order to benefit the Product only in the country in which it is conducted.

1.71 "MAA" means a marketing authorization application filed with the EMEA for Regulatory Approval to import, market and sell the Product in the European Union.

1.72 "Manufacture" or **"Manufacturing"** means the activities to be performed by Nektar and Bayer in connection with the manufacture, testing (including without limitation quality control, quality assurance and lot release testing), bulk packaging and/or storage of Formulated Amikacin, the Device, and/or the Product, as applicable.

1.73 "Manufacturing and Supply Agreement" has the meaning set forth in Section 9.1(a).

1.74 "Milestone Payments" has the meaning set forth in Section 8.3.

1.75 "Minimum Acceptable Commercialization Profile" or "MACP" means the characteristics of Product that must be satisfied in order to enable Commercialization of the Product, as set forth in Exhibit 1.75.

1.76 "[***]" has the meaning set forth in Section 7.4.

1.77 "Nektar" has the meaning set forth in the Preamble.

1.78 "Nektar Know-How" means all Information that is (a) Controlled by Nektar or Aerogen as of the Effective Date or at any time during the term of this Agreement that is not publicly known, even though parts thereof may be known, and (b) useful or necessary to develop, make, use, sell, offer for sale, import or export Product for use in the Field. Nektar Know-How includes without limitation the **[***]**. Nektar Know-How includes Nektar's or Aerogen's interest in unpublished Inventions and unpublished Joint Inventions. Nektar Know-How does not include Nektar Patent Rights.

1.79 "Nektar Patent Rights" means (a) the Patents listed in Exhibit 1.79, (b) any Patents that issue from the Patent Applications listed in Exhibit 1.79, (c) any Patents and/or Patent Applications that claim priority to a Patent or Patent Application listed in Exhibit 1.79, including without limitation any continuation, continued prosecution application, divisional, reissue or re-examination, (d) any other Patent and/or Patent Application Controlled by Nektar or Aerogen as of the Effective Date or at any time during the term of this Agreement that claims a product, method, apparatus, material, manufacturing process or other technology necessary to develop, make, use, sell, offer for sale, import or export Formulated Amikacin, the Device, or Product, and (e) any foreign equivalents of 1.79(a), (b), (c) or (d). Nektar Patent Rights include, without limitation, the Patents and Patent Applications **[***]**. Nektar Patent Rights includes Nektar's or Aerogen's interest in Joint Patent Rights. Nektar Patent Rights do not include Nektar Know-How.

1.80 "Nektar Trademarks" means the trademarks set forth in Exhibit 1.80 and any Trademarks of Nektar or Aerogen that are developed during the term of this Agreement for use with the Product.

1.81 "Net Sales" means the gross amount billed by Bayer, its Affiliates or Sublicensees to Third Parties throughout the Territory for sales of the Product, less (a) sales returns and allowances, including trade, quantity and cash discounts and any other adjustments, including those granted on account of price adjustments, billing errors, rejected goods, damaged goods, returns, rebates, chargeback rebates, fees, reimbursements or similar payments granted or given to wholesalers or other distributors, buying groups, healthcare insurance carriers or other institutions, (b) accrued allowances for normal and customary trade, quantity and cash discounts, (c) an aggregate flat percentage of **[***]** (regardless of actual cost) for all of the following actually invoiced to the Third Party: freight, transportation, insurance, handling, packing and distribution charges, (d) the lower of **[***]** or the actual loss experience of the global Bayer-Schering Pharmaceuticals group in respect of bad debts written off, provided, however, that such amount shall not exceed **[***]** on an annual basis, (e) customs or excise taxes including import duties and other duties relating to sales, (f) any payment in respect to sales to any governmental authority in respect of any government subsidized program, including without limitation Medicare and Medicaid rebates and (g) any item substantially similar in character and/or substance to the above, all as determined in accordance with IFRS or IAS on a basis consistent with Bayer's annual audited financial statements. In addition, Net Sales by Bayer hereunder are subject to the following:

(1) Any transfer, sale or other disposal of the Product by Bayer to an Affiliate of Bayer will not be included in Net Sales; in such case, Net Sales shall be calculated as above on the value charged or invoiced on the first arm's length sale to a Third Party;

(2) If Bayer or its Affiliates or Sublicensees make a sale or other disposition of the Product to a customer in a particular country (i) other than on normal commercial terms or (ii) as part of a package of products and services, the Net Sales of the Product shall be deemed to be "the fair market value" of such Product (i.e., the value that would have been derived had said Product been sold as a separate product to a similar customer in the country concerned on normal commercial terms); and

(3) Use of the Product in clinical or pre-clinical trials or other research or development activities or disposal of the Product for non-profit purposes of a commercially reasonable program shall not give rise to any deemed sale for purposes of this definition.

For clarity, Net Sales excludes Net Sublicense Revenues.

1.82 "Net Sublicense Revenues" means all revenues or other consideration received by a Party from Third Parties as consideration for the grant of a sublicense or license under this Agreement in the Shared Territory, other than royalties received from such Third Parties on Net Sales.

1.83 "New Drug Application" or "NDA" means (a) the single application or set of applications for the Product and/or pre-market approval to make and sell commercially the Product, filed by Bayer with the FDA, and (b) any related registrations with or notifications to the FDA.

1.84 "Non-Publishing Party" has the meaning set forth in Section 16.1.

1.85 "OIG" means the Office of the Inspector General.

1.86 "Party" or "Parties" has the meaning set forth in the Preamble.

1.87 "Patent" means (a) letters patent (or other equivalent legal instrument), including without limitation utility and design patents, and including without limitation any extension, substitution, registration, confirmation, reissue, re-examination or renewal thereof and (b) all foreign or international equivalents of any of the foregoing in any country in the Territory.

1.88 "Patent Application" means (a) an application for letters patent, including without limitation a reissue application, a re-examination application, a continuation application, a continued prosecution application, a continuation-in-part application, a divisional application or any equivalent thereof that is pending at any time during the term of this Agreement before a government Patent agency and (b) all foreign or international equivalents of any of the foregoing in any country in the Territory.

1.89 "PDDS Platform Technology" means any technology, article of manufacture, component, system, discovery, or invention that relates to the **[***]** and methods of making or using the **[***]**. For the avoidance of doubt, **[***]**.

1.90 "Phase I Clinical Trial" means any clinical study conducted on sufficient numbers of human subjects to establish that the Product is reasonably safe for continued testing and to support its continued testing in Phase II Clinical Trials. "Phase I Clinical Trial" shall include without limitation any clinical trial that would satisfy requirements of 21 C.F.R. § 312.21(a).

1.91 "Phase II Clinical Trial" means any clinical study conducted on sufficient numbers of human subjects that have the targeted disease or condition of interest to investigate the safety and efficacy of the Product for its intended use and to define warnings, precautions, and adverse reactions that may be associated with such pharmaceutical product in the dosage range to be prescribed. "Phase II Clinical Trial" shall include without limitation any clinical trial that would satisfy requirements of 21 C.F.R. § 312.21(b).

1.92 "Phase III Clinical Trial" means any clinical study intended as a pivotal study for purposes of seeking Regulatory Approval that is conducted on sufficient numbers of human subjects to establish that the Product is safe and efficacious for its intended use, to define warnings, precautions, and adverse reactions that are associated with the Product in the dosage range to be prescribed, and to support Regulatory Approval of the Product or label expansion of such pharmaceutical product. "Phase III Clinical Trial" shall include without limitation any clinical trial that would or does satisfy requirements of 21 C.F.R. § 312.21(c), whether or not it is designated a Phase III Clinical Trial.

1.93 "Phase IV Clinical Trial" means clinical study of the Product on human subjects commenced after receipt of Regulatory Approval of the Product for the purpose of satisfying a condition imposed by a Regulatory Authority to obtain Regulatory Approval, or to support the marketing of such pharmaceutical product, and not for the purpose of obtaining initial Regulatory Approval of the Product.

1.94 "PhRMA Code" means the Pharmaceutical Research and Manufacturers of America Code on Interactions with Healthcare Professionals, as hereafter amended from time to time.

1.95 "Plan" means Development Plan, Commercialization Plan, or Launch Plan, as applicable.

1.96 "Pre-Launch Activities" means all Commercialization activities undertaken with respect to the Product in the Shared Territory prior to Commercial Launch and in preparation for the launch of the Product in the Shared Territory. Pre-Launch Activities shall include without limitation advertising, education, product-related public relations, health care economic studies, governmental affairs activities for reimbursement and formulary acceptance, sales force training, and other activities included within the Launch Plan or the Commercialization Plan that are to be conducted in the Shared Territory prior to the Commercial Launch of the Product and shall exclude all Development activities and the **[***]**.

1.97 "Pre-Launch Costs" means the costs, excluding Development Costs, specifically attributable to the Pre-Launch Activities in the Shared Territory that are generally consistent with the approved Launch Plan and the Commercialization Plan.

1.98 "Product" means the combination of (a) Formulated Amikacin and (b) the Device for use in the Pulmonary Delivery of Formulated Amikacin, which Product is developed in accordance with and pursuant to this Agreement. Product shall not include any products including nebulizer devices based upon the PDDS Platform Technology for use or sale with any active ingredients other than Amikacin, or any products including devices that are not based upon the PDDS Platform Technology.

1.99 "Product Profit and Loss" means the revenues and expenses resulting from the Commercialization activities (other than Pre-Launch Costs) for Product in the Shared Territory, and shall be equal to (a) Net Sales less Allowable Expenses plus (b) Net Sublicense Revenues.

1.100 "Project" means the collaborative Development and Commercialization of the Product to be conducted by or on behalf of Nektar and Bayer under this Agreement.

1.101 "Pulmonary Delivery" means the **[***]**.

1.102 "Regional Business Unit" or "RBU" has the meaning set forth in Section 3.1.

1.103 "Regulatory Approval" means (a) in the Shared Territory, approval by the FDA of an NDA or other applicable filing and satisfaction of related applicable FDA registration and notification requirements, if any, and (b) in any country other than the Shared Territory, approval by Regulatory Authorities having jurisdiction in such country of a single application or set of applications comparable to an NDA or other applicable filing and satisfaction of related applicable regulatory and notification requirements, if any, together with any other approval necessary to make and sell the Product commercially in such country, including without limitation any pricing approvals.

1.104 "Regulatory Authority" means any applicable supra-national, federal, national, regional, state, provincial or local regulatory agencies, departments, bureaus, commissions, councils or other government entities, including, without limitation, the FDA and the EMEA, regulating or otherwise exercising authority with respect to the Exploitation of the Product in the Territory.

1.105 "[***]" means the **[***]**.

1.106 "Royalty Territory" means the world, excluding the Shared Territory.

1.107 "Shared Territory" means the United States, its territories and possessions.

1.108 "Sublicensee" means any person or entity, including without limitation Affiliates of a Party, to which either (a) Bayer grants a sublicense to the extent useful or necessary as set forth under this Agreement (other than Nektar or its Affiliates), or (b) Nektar grants a sublicense to the extent useful or necessary for Nektar to fulfill its obligations under this Agreement (other than Bayer or its Affiliates).

1.109 "[***]" means that **[***]**.

1.110 "Territory" means the Royalty Territory and the Shared Territory.

1.111 "Third Party" means any person or entity other than Bayer, Nektar, or an Affiliate of either of them.

1.112 "Trademark" means any word, name, symbol, color, designation or device or any combination thereof, whether registered or unregistered, including, without limitation, any trademark, trade dress, service mark, service name, brand mark, trade name, brand name, logo or business symbol.

1.113 "[***]" has the meaning set forth in Section 7.3.

1.114 "Valid Claim" means, for a country, a claim of an unexpired issued Patent or a pending Patent Application filed and kept pending in good faith, where either or both (a) such Patent or Patent Application is included in either the Patents or Patent Applications licensed to Bayer under this Agreement, or (b) such claim directed to an Invention made solely or jointly by Nektar (whether or not assigned to Bayer pursuant to Article 11) that in the absence of ownership thereof or a license thereto, would be infringed by the Exploitation of the Product and that has not been (i) cancelled with prejudice, (ii) withdrawn from consideration without the ability to submit or refile, (iii) finally determined to be unallowable by the applicable governmental authority (and from which no appeal is or can be taken), (iv) finally determined to be invalid or unenforceable by a court of competent jurisdiction, (v) disclaimed, or (vi) abandoned. For purposes hereof, a claim in a Patent Application that has not been granted before the later to occur of (A) the date that is **[***]**, or (B) the date of **[***]**, shall not be considered to be a Valid Claim unless and until it is granted.

2. LICENSE GRANTS

2.1 License Grants to Bayer.

(a) Royalty Territory License. Subject to the terms and conditions of this Agreement, Nektar and Aerogen hereby grant to Bayer:

(i) an exclusive (even as to Nektar, Aerogen and their Affiliates), royalty-bearing license, with the right to grant sublicenses in accordance with Section 2.3, under the Nektar Know-How and Nektar Patent Rights, to make, have made, use, have used, promote, develop, offer to sell, sell, have sold, import, have imported, export, have exported, and market Formulated Amikacin and Product in the Field throughout the Royalty Territory solely in connection with Exploitation of the Product in the Field throughout the Royalty Territory, provided that the foregoing license is subject to Nektar's right to Manufacture as set forth in Article 9;

(ii) a non-exclusive, royalty-free license, under the Nektar Trademarks, with the right to grant sublicenses in accordance with Section 2.3, throughout the Royalty Territory, to use and display the Nektar Trademarks in connection with the Commercialization of the Product in the Field throughout the Royalty Territory, as provided under and in accordance with Section 7.7 and Article 17; and

(iii) a non-exclusive, royalty-bearing license, under the Nektar Know-How and Nektar Patent Rights, with the right to grant sublicenses in accordance with Section 2.3, in the Field throughout the Royalty Territory, to use, have used, promote, offer to sell, sell, have sold, import, have imported, export, have exported, and market the Device solely in connection with Exploitation of the Product in the Field throughout the Royalty Territory.

(b) Shared Territory License. Subject to the terms and conditions of this Agreement, Nektar and Aerogen hereby grant to Bayer:

(i) a co-exclusive (with Nektar and its Affiliates), license, subject to the payment of a share of profits as provided in this Agreement, with the right to grant sublicenses in accordance with Section 2.3, under the Nektar Know-How and Nektar Patent Rights, to make, have made, use, have used, promote, offer to sell, sell, have sold, import, have imported, export, have exported, and market Formulated Amikacin and the Product in the Field throughout the Shared Territory solely in connection with Exploitation of the Product in the Field throughout the Shared Territory, provided that the foregoing license is subject to Nektar's right to Manufacture as set forth in Article 9;

(ii) a non-exclusive, royalty-free license, under the Nektar Trademarks, with the right to grant sublicenses in accordance with Section 2.3, throughout the Shared Territory, to use and display the Nektar Trademarks in connection with the Commercialization of the Product in the Field throughout the Shared Territory, as provided under and in accordance with Section 7.7 and Article 17; and

(iii) a non-exclusive license, under the Nektar Know-How and Nektar Patent Rights, subject to the payment of a share of profits as provided in this Agreement,

with the right to grant sublicenses in accordance with Section 2.3, in the Field throughout the Shared Territory, to use, have used, promote, offer to sell, sell, have sold, import, have imported, export, have exported, and market the Device solely in connection with Exploitation of the Product in the Field throughout the Shared Territory.

(c) The exclusive and co-exclusive licenses granted in Section 2.1(a)(i) and Section 2.1(b)(i), respectively, are subject to any pre-existing rights granted to a Third Party by Aerogen under the agreement attached in Exhibit 1.24.

2.2 Certain Covenants. Each Party covenants and agrees that (a) it shall not, and it shall cause its Affiliates and Sublicensees not to, use or practice the intellectual property rights licensed under this Agreement except as expressly permitted by this Agreement and (b) any use or practice of the intellectual property rights licensed under this Agreement except as expressly permitted by this Agreement that results in material harm to the other Party shall constitute a material breach of a material obligation of this Agreement.

2.3 Sublicense Rights. Bayer's right to grant sublicenses under the licenses granted to it under Section 2.1, and Nektar's right to grant sublicenses under the licenses granted to it under Section 11.2(a)(ii) shall be subject to the following: (a) each Sublicensee shall agree to be bound by all of the applicable terms and conditions of this Agreement; (b) the terms of each sublicense granted by a Party shall provide that the Sublicensee shall be subject to the terms and conditions of this Agreement; (c) a Party's grant of any sublicense shall not relieve the Party from any of its obligations under this Agreement; (d) the granting Party shall remain jointly and severally liable for any breach of a sublicense by a Sublicensee to the extent that such breach would constitute a breach of this Agreement, and any breach of the sublicense by the Sublicensee shall be deemed a breach of this Agreement by the Party to the extent that such breach would constitute a breach of this Agreement; (e) each Party will notify the other Party of the identity of any Sublicensee, and the territory in which it has granted such sublicense, promptly after entering into any sublicense; (f) Bayer will not have the right to grant sublicenses, under any rights granted to Bayer by Nektar in Sections 2.1(a)(i), to a Third Party during the term of this Agreement for the promotion or marketing of Product in **[***]** without Nektar's prior written consent, which consent shall not be unreasonably withheld or delayed; (g) Bayer will not have the right to grant sublicenses under any rights granted to Bayer by Nektar in Section 2.1(b) to a Third Party during the term of this Agreement for the promotion or marketing of the Product in the Shared Territory without Nektar's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, that Bayer may grant sublicenses under any rights granted to Bayer by Nektar in Section 2.1(b) without Nektar's prior written consent in the event that Nektar opts out pursuant to Section 8.2(b)(ii), this Agreement is terminated by Bayer pursuant to Section 18.4 for breach of this Agreement by Nektar, or Bayer elects a Royalty Conversion in accordance with Section 20.2(b); and (h) Nektar will not have the right to grant sublicenses, under any rights granted to Nektar by Bayer in Section 11.2(a)(ii), to a Third Party during the term of this Agreement for the promotion or marketing of Product in the Field in the Territory without Bayer's prior written consent, which consent shall not be unreasonably withheld or delayed.

2.4 No Implied Rights or Licenses. Neither Party grants to the other Party any rights or licenses in or to any Patent or other intellectual property right, whether by implication, estoppel or otherwise, except to the extent expressly provided for under this Agreement.

2.5 Exclusivity. Notwithstanding any other provision of this Agreement, during the term of this Agreement, neither Party shall develop (including without limitation conducting or sponsoring Clinical Trials), market, sell, manufacture, or commercialize, directly or indirectly, any product containing any **[***]** amelioration, treatment or prevention of **[***]**, other than the Product under this Agreement. For clarity, the foregoing shall not limit either Party's ability to develop, market, sell, manufacture or commercialize, directly or indirectly, any product containing an **[***]** amelioration, treatment or prevention of **[***]**.

2.6 Covenant Not to Sue. During the term of this Agreement, Bayer agrees that neither it nor its Sublicensees will, and Bayer shall cause its Affiliates not to, assert against Nektar, its subsidiaries, Affiliates or Sublicensees, any claim, or institute any action or proceeding, whether at law or equity, under any intellectual property rights, including without limitation Patents or Patent Applications, based on Nektar's, its Affiliates' or Sublicensees' development, manufacture, use, practice, importation or sale of the Device, Formulated Amikacin or the Product in the Field and in the Territory pursuant to this Agreement. This covenant shall be binding upon, and inure to the benefit of, the Parties, their successors, and assigns.

2.7 Reserved Rights. This Agreement is subject to the rights reserved by **[***]** or by the U.S. government under Title 35 of the United States Code Sections 200 through 204.

3. GOVERNANCE

3.1 General. Promptly after the Effective Date, the Parties shall establish a joint steering committee (the **"Joint Steering Committee" or "JSC"**) in accordance with Section 3.2(a) to oversee the Parties' performance under this Agreement, and a joint finance committee (the **"Joint Finance Committee" or "JFC"**) in accordance with Section 3.3(a) to oversee financial and budgetary aspects of the Parties' activities under this Agreement. Additionally, Nektar shall have the right to appoint **[***]** to Bayer's internal Global Project Team for the Product (the **"Global Project Team" or "GPT"**) in accordance with Section 3.4(a), which will oversee the clinical Development of the Product pursuant to this Agreement, **[***]** to Bayer's internal Global Brand Team for the Product (the **"Global Brand Team" or "GBT"**) in accordance with Section 3.5(a), which will oversee the Commercialization of the Product pursuant to this Agreement, and **[***]** to Bayer's internal U.S. Regional Business Unit for the Product (the **"Regional Business Unit" or "RBU"**) in accordance with Section 3.6(a), which will implement strategies for Commercial Launch of the Product in the Shared Territory, and oversee such launch activities, subject to oversight of the GBT. Each of these committees and teams shall have the responsibilities and authority allocated to it in this Article 3 and elsewhere in this Agreement. Each of these committees and teams shall make decisions consistent with the goal of implementing the Plans and conducting other activities under this Agreement in a manner consistent with the optimization of Product Development and Commercialization. The representatives of each Party on any committee shall be responsible for ensuring that their decisions and actions are consistent with the views of, and have been approved by, the Party that appointed them. The following procedures shall apply to each of the committees established under this Agreement and to the GPT, RBU and GBT, as applicable.

3.2 Joint Steering Committee.

(a) Composition. Each Party shall appoint **[***]** to serve on the JSC. Bayer's initial JSC representatives shall be **[***]**. Nektar's initial JSC representatives shall be **[***]**. The initial JSC chairperson shall be **[***]**, who shall serve in such capacity for a period of twelve (12) months. Thereafter, the member of the JSC who shall serve as the JSC chairperson shall be designated alternately by each Party, with each chairperson serving for a period of twelve (12) months. Each Party may replace its JSC representatives by written notice to the other Party.

(b) Responsibilities. The JSC shall oversee and monitor the direction and course of the activities to be conducted hereunder. Without limiting the generality of the foregoing, the JSC shall: (i) review, provide comment on, and approve Plans and related budgets; (ii) review the activities and obligations of the Parties and the JFC under this Agreement; (iii) resolve any disputes or disagreements submitted to it by the JFC, the GPT, or the GBT, and, if applicable, submit disputes or disagreements that it does not resolve within the time provided in Section 3.2(c) to designated Executives of the Parties, as further described in Section 3.2(d); (iv) review all material data arising in the course of activities conducted pursuant to this Agreement by either Party; (i) appoint subcommittees as it deems appropriate for carrying out the Project; and (vi) perform such other functions as appropriate to further the purposes of this Agreement as determined by the Parties, including without limitation the periodic evaluation of performance against goals.

(c) Meetings and Voting. The JSC shall meet at least once a calendar quarter at times mutually agreed upon by the Parties. At least two (2) such meetings per calendar year must be held in person, and all other such meetings may be held by teleconference or videoconference. The location of the meetings of the JSC to be held in person shall alternate between sites designated by each Party, with the first such meeting to be held in San Carlos, California, U.S.A., and the second such meeting to be held in Berlin, Germany. Each Party shall bear all the expenses of its representatives on the JSC, and such expenses shall not be included in Allowable Expenses. The JSC chairperson shall issue an agenda reasonably in advance of each meeting and shall appoint one (1) member to keep accurate minutes of each meeting, which appointment shall be effective upon approval of the other Party, such approval not to be unreasonably withheld or delayed. Each of Bayer and Nektar shall have one (1) collective vote on the JSC regardless of how many representatives such Party has on the JSC, and any matter voted on shall require the unanimous vote of both Parties. If a disagreement among members of the JSC remains unresolved for more than thirty (30) days after the JSC first addresses such matter (or such longer period as the Parties may mutually agree upon), such disagreement shall be resolved in accordance with Section 3.2(d). The JSC shall have no power to amend or waive compliance with this Agreement.

(d) Dispute Resolution. If the JSC is unable to resolve any dispute, controversy, or claim arising under this Agreement within thirty (30) days after it first addresses such matter (or such longer period as the Parties may mutually agree upon), then the dispute

shall be referred to senior executive officers of each Party having authority to make decisions in such matters (**"Executives"**) of each Party. In the event the Executives of each Party are unable to resolve the dispute within thirty (30) days after receiving notice of the dispute (or such longer period as the Parties may mutually agree upon), then the following shall apply: Matters submitted to the JSC and the Executives pursuant to this Section 3.2(d) that remain unresolved by the JSC or the Executives (i) that relate to matters set forth in Exhibit 3.2 in the column titled "Bayer Lead" shall be finally decided by Bayer, (ii) that relate to matters set forth in Exhibit 3.2 in the column titled "Nektar Lead" shall be finally decided by Nektar, (iii) that relate to matters set forth in Exhibit 3.2 in the column titled "Co-Lead" shall continue to be discussed by the Executives until such Executives agree upon a resolution of such matter, and (iv) that relate to matters not set forth in Exhibit 3.2 shall be submitted upon the initiative of either Party after expiration of the thirty (30) day Executive discussion period for resolution by a court of competent jurisdiction as set forth in Section 20.10. For clarity, matters relating to a Party's alleged breach of its obligations under this Agreement shall not be finally decided by either Party but may be submitted for resolution by either Party after such matter has been discussed by the Executives for the foregoing thirty (30) day period to a court of competent jurisdiction as set forth in Section 20.10.

3.3 Joint Finance Committee.

(a) Composition. Each Party shall appoint **[***]** to serve on the JFC prior to the first meeting of the JFC. The initial JFC chairperson shall be appointed by Bayer and shall serve in such capacity for a period of twelve (12) months. Thereafter, the member of the JFC who shall serve as the JFC chairperson shall be designated alternately by each Party, with each chairperson serving for a period of twelve (12) months. Each Party may replace its JFC representatives by written notice to the other Party.

(b) Responsibilities. The JFC shall oversee the preparation and implementation of all Development Budgets, Launch Budgets, and Commercialization Budgets, establish a policy (no more than ninety (90) days after the Effective Date) for the appropriate level of detail to be reported in calculating Allowable Expenses and Product Profit and Loss, designate policies for the Parties' reporting and recording of Allowable Expenses and calculation of Product Profit and Loss and other financial terms set forth in this Agreement, approve all variances from the applicable budgets, establish the Commercialization FTE Rate at least six (6) months prior to commencement of Commercialization activities in the Shared Territory (including without limitation Pre-Launch Activities), as well as determine appropriate annual adjustments to the Commercialization FTE Rate to reflect relevant price indices, and, as directed by the JSC, perform other activities as appropriate to effect the intent of this Agreement.

(c) Meetings and Voting. The JFC shall meet at least once per month, unless otherwise specified by the JSC, at times mutually agreed upon by the Parties. At least four (4) such meetings per calendar year must be held in person, and all other such meetings may be held by teleconference or videoconference. Each Party shall bear all the expenses of its representatives on the JFC. Such expenses shall not be included in Allowable Expenses. The location of the JFC meetings shall alternate between sites designated by each Party, with the first

such meeting of the JFC to be held in person to be in Berlin, Germany, and the second such meeting to be held in San Carlos, California, U.S.A. The JFC chairperson shall issue an agenda reasonably in advance of each meeting and shall appoint one (1) member to keep accurate minutes of each meeting, which appointment shall be effective upon approval of the other Party, such approval not to be unreasonably withheld or delayed. Each of Bayer and Nektar shall have one (1) collective vote on the JFC regardless of how many representatives such Party has on the JFC, and any matter voted on shall require the unanimous vote of both Parties. If a disagreement among members of the JFC remains unresolved for more than thirty (30) days after the JFC first addresses such matter (or such longer period as the Parties may mutually agree upon), such disagreement shall be submitted to the JSC for resolution. The JFC shall have no power to amend or waive compliance with this Agreement.

(d) All committees and teams identified in this Agreement shall prepare the budgets and plans for which they are responsible as provided for herein within ninety (90) days after the Effective Date.

3.4 Global Project Team.

(a) Composition. Nektar shall appoint [***] to serve on the GPT prior to the first meeting of the GPT. Bayer may appoint to the GPT [***]. The GPT chairperson shall be appointed by Bayer. Each Party may replace GPT representatives by written notice to the other Party.

(b) Responsibilities. Within ninety (90) days after the Effective Date, the GPT may propose updates to the Development Plan and Development Budget for approval by the GBT and then by the JSC, coordinate the supply of the Product for use in non-clinical and clinical trials of the Product, oversee the Parties' implementation of the Development Plan and Development Budget as directed by the JSC, and perform other activities as appropriate to effect the intent of this Agreement.

(c) Meetings. The GPT shall meet at least once per calendar quarter. At least two (2) such meetings per calendar year must be held in person, and all other such meetings may be held by teleconference or videoconference. Each Party shall bear all the expenses of its representatives on the GPT. Such expenses shall not be included in Allowable Expenses. The location of the meetings of the GPT to be held in person shall be determined by Bayer. The GPT chairperson shall issue an agenda reasonably in advance of each meeting and shall appoint one (1) member to keep accurate minutes of each meeting, which appointment shall be effective upon approval of the other Party, such approval not to be unreasonably withheld or delayed. The GPT shall have no power to amend or waive compliance with this Agreement.

3.5 Global Brand Team.

(a) Composition. Prior to the first meeting of the GBT, Nektar shall appoint [***] to serve both on the GSM and [***] on the GBT. Bayer may appoint to the GBT [***], at least one of whom shall be a representative from the GSM. The GBT chairperson shall be such GSM representative. Each Party may replace GBT representatives by written notice to the other Party.

(b) Responsibilities. The GBT shall be responsible for preparation of launch, Commercialization and life cycle management strategies in the form of Launch Plans, Launch Budgets, Commercialization Plans and Commercialization Budgets for approval by the JSC, and shall oversee the Commercial supply of Formulated Amikacin, the Device and the Product, prepare materials for supporting Commercialization of the Product, plan training activities for [***] and sales representatives, determine if any Global Phase IV Trials are to be conducted, and perform other activities as appropriate to effect the intent of this Agreement. At least one (1) of each Party's representatives shall also present to and gain approval from the representative's own Party for the Launch Plans, Launch Budgets, Commercialization Plans and Commercialization Budgets, and any subsequent revisions thereto, before the GBT proposes such Launch Plans, Launch Budgets, Commercialization Plans, and Commercialization Budgets to the JSC.

(c) Meetings. The GBT shall meet at least once per calendar quarter. At least two (2) such meetings per calendar year must be held in person, and all other such meetings may be held by teleconference or videoconference. Each Party shall bear all the expenses of its representatives on the GBT. Such expenses shall not be included in Allowable Expenses, except that expenses of GBT members who are also members of the GSM shall be included in Allowable Expenses. The location of the meetings of the GBT to be held in person shall be determined by Bayer. The GBT chairperson shall issue an agenda reasonably in advance of each meeting and shall appoint one (1) member to keep accurate minutes of each meeting, which appointment shall be effective upon approval of the other Party, such approval not to be unreasonably withheld or delayed. The GBT shall have no power to amend or waive compliance with this Agreement.

3.6 U.S. Regional Business Unit.

(a) Composition. Nektar shall appoint [***] to serve on the RBU for the Shared Territory prior to the first meeting of the RBU for the Product. Bayer may appoint to the RBU for the Product [***]. The RBU chairperson shall be appointed by Bayer. Each Party may replace RBU representatives by written notice to the other Party.

(b) Responsibilities. The RBU shall oversee the implementation of the Launch Plan and the Commercialization Plan approved by the JSC for Commercial Launch in the Shared Territory and oversee the conduct of Local Phase IV Trials in the Shared Territory, subject to the oversight of the GBT.

(c) Meetings. The RBU shall meet at least once per calendar quarter. At least two (2) such meetings per calendar year must be held in person, and all other such meetings may be held by teleconference or videoconference. The location of the meetings of the RBU to be held in person shall be determined by Bayer. The expenses of RBU members shall be included in Allowable Expenses. The RBU chairperson shall issue an agenda reasonably in advance of each meeting and shall appoint one (1) member to keep accurate minutes of each meeting, which appointment shall be effective upon approval of the other Party, such approval not to be unreasonably withheld or delayed. The RBU shall have no power to amend or waive compliance with this Agreement.

3.7 Nektar Participation in Committees and Teams. Nektar's membership in each of the JSC and JFC, and participation in each of Bayer's internal GPT, GBT and RBU, shall be at its sole discretion, as a matter of right and not obligation, for the sole purpose of participation in governance, decision making and information exchange with respect to activities within the jurisdiction of such committee, team, or unit. At any time prior to the disbanding of, or withdrawing Nektar's membership or participation in, such committee or internal team or unit pursuant to Section 3.8, Nektar shall have the right to withdraw from membership or participation in any or all of the committees, teams, or units upon thirty (30) days' prior written notice to Bayer, which notice shall be effective as to the relevant committee, team, or unit specified in such notice upon the expiration of such thirty (30) day period (**"Withdrawal Notice"**). Following the issuance of a Withdrawal Notice for a given committee, team, or unit, (a) the applicable committee, team, or unit shall be disbanded or, if it is an internal Bayer team or unit, Nektar's participation therein shall be withdrawn and Bayer may elect to continue such internal team or unit in its discretion, subject to this Section 3.7, (b) the decisions formerly made by the team or unit from which Nektar has elected to withdraw shall be made as set forth in Section 3.9, and (c) Nektar shall have the right to continue to receive the information it would otherwise be entitled to receive under the Agreement.

3.8 Disbanding of Committees and Withdrawal from Teams or Units. The Parties shall have the right to disband either or both of the JSC or JFC, and/or withdraw Nektar's participation in each of Bayer's internal GPT, GBT and RBU, upon mutual agreement. Additionally, to the extent the applicable committee is not disbanded or Nektar's participation in the applicable team or unit is not withdrawn pursuant to Section 3.7, such committees, teams, or units shall be automatically disbanded or Nektar's participation therein shall be withdrawn, as applicable, as set forth below:

(a) The JSC shall be automatically disbanded upon the later of (i) expiration or termination of the obligation to pay royalties in the Royalty Territory, or (ii) discontinuation of Commercialization activities in the Shared Territory.

(b) The JFC shall be automatically disbanded upon the later of (i) expiration or termination of the obligation to pay royalties in the Royalty Territory, or (ii) discontinuation of Commercialization activities in the Shared Territory.

(c) Nektar's participation in the GPT shall be automatically withdrawn [***] years after the last to occur Regulatory Approval of the Product in the United States, Japan or Europe.

(d) Nektar's participation in the GBT shall be automatically withdrawn upon the later of (i) expiration or termination of the obligation to pay royalties in the Royalty Territory, or (ii) discontinuation of Commercialization activities in the Shared Territory.

(e) Nektar's participation in the RBU shall be automatically withdrawn upon the later of (i) expiration or termination of the obligation to pay royalties in the Royalty Territory, or (ii) discontinuation of Commercialization activities in the Shared Territory.

3.9 Decision Making After Withdrawal from or Disbanding of Committees. If Nektar elects to withdraw from the JSC and/or the JFC under Section 3.7, or if either such committee is disbanded pursuant to Section 3.8, then after such withdrawal or disbanding, the following shall apply to decisions formerly within the jurisdiction of the committee(s) from which Nektar has withdrawn or that has been disbanded:

(a) Decisions formerly within the jurisdiction of the JSC shall be submitted for resolution by senior officers of each Party, subject to the decision making processes and principles set forth in Sections 3.2(c) and 3.2(d) as if Sections 3.2(c) and 3.2(d) applied to decisions to be made by such senior officers rather than to decisions to be made by the JSC.

(b) Decisions formerly within the jurisdiction of the JFC shall be submitted for resolution by the JSC, if it then exists, or otherwise by senior officers appointed by each Party as described in Section 3.9(a).

4. DEVELOPMENT PROGRAM

4.1 Project. Bayer and Nektar shall collaborate to Develop the Product. Nektar shall use Commercially Reasonable Efforts, and shall have primary control and direction in the Project for developing and Manufacturing Formulated Amikacin through the completion of Phase III Clinical Trials, developing and Manufacturing the Device, the conduct of the **[***]**, and the completion of Phase II Clinical Trials that are ongoing as of the Effective Date. Bayer shall use Commercially Reasonable Efforts, and shall have primary control and direction in the Project, for the clinical Development of the Product except for such **[***]** and Phase II Clinical Trials, the preparation and submission of regulatory filings for the Product, on a worldwide basis, and further CMC development of Formulated Amikacin and the final packaging of the Product, obtaining and maintaining all Regulatory Approvals for the Product in the Shared Territory and in the Royalty Territory, and generally for the Commercialization of the Product.

4.2 Development Plan and Development Budget.

(a) The Development of the Product shall be governed by a global Development plan (**"Development Plan"**), and the costs and expenses relating to the Development of the Product shall be governed by a Development budget (**"Development Budget"**), the initial forms of which are attached as Exhibits 4.2(a)(i) and 4.2(a)(ii), respectively. Updates thereto made pursuant to Section 4.2(b) shall be prepared by the GPT, for approval by the JSC. Each Development Plan shall include without limitation details of all Clinical Trials to be conducted by the Parties to support Regulatory Approval in the Territory, and related time lines, as well as other material activities necessary for Development of the Product in the Territory, and shall describe the proposed overall program of Development for the Product in each applicable country, including without limitation all preclinical studies, toxicology, pharmacology studies, formulation, process development, clinical studies, and regulatory plans and other elements of obtaining Regulatory Approval in each applicable country. The Development Plan and the Development Budget shall be updated at least once (1) per year and shall cover the following three (3) year period. The Parties have prepared a portion of the initial Development Plan specifically relating to the Device and a portion of the initial Development

Budget relating to the Device (**"Device Budget"**) as well as a portion of the initial Development Plan specifically relating to Formulated Amikacin and a portion of the initial Development Budget relating to Formulated Amikacin (**"Drug Budget"**), respectively, as of the Effective Date, which initial budgets are attached as Exhibits 4.2(a)(iii) and 4.2(a)(iv), respectively.

(b) The GPT shall, on an annual basis, propose updates to the Development Plans and Development Budgets (including, for clarity, the Device Budget and the Drug Budget) for the following calendar year. The GPT shall submit such updated Development Plans and Development Budgets to the JSC (with such Development Budgets first being submitted to the JFC for review and endorsement), for review and approval by September 30 of each calendar year for the following calendar year. The JSC shall provide comments on each such updated Development Plan or Development Budget, as applicable, within fifteen (15) days following their submission. Within thirty (30) days following such original submission, the JSC shall either approve the Development Plan and Development Budget or approve a modified Development Plan and Development Budget prepared by the GPT and endorsed by the JFC, consistent with the objectives for the Product and the aims of the Project.

(c) If the actual costs incurred by Bayer under the Drug Budget in meeting Bayer's obligations as set forth on Exhibit 4.2(a)(iv) exceed the approved amount set forth in the Drug Budget, Bayer may spend such additional amounts without reimbursement from Nektar; provided that, if aggregate actual costs incurred by Bayer exceed **[***]** of the aggregate approved amount set forth in the Drug Budget, the Parties agree to discuss whether the economic terms between the Parties should be restructured to reflect the investment of the additional funds. If the actual costs incurred by Nektar under the Device Budget in meeting Nektar's obligations as set forth on Exhibit 4.2(a)(iii) exceed the approved amount set forth in the Device Budget, Nektar may spend such additional amounts without reimbursement from Bayer; provided that, if aggregate actual costs incurred by Nektar exceed **[***]** of the aggregate approved amount set forth in the Device Budget, the Parties agree to discuss whether the economic terms between the Parties should be restructured to reflect the investment of the additional funds.

4.3 Standard of Performance. Each Party, in performing its activities in connection with the Project, shall comply with all Applicable Laws, including without limitation where applicable, then-current GCP, GLP, and GMP.

4.4 Subcontracting Permitted.

(a) Bayer acknowledges and agrees that portions of the work to be performed by Nektar under the Project (including, without limitation, manufacture of the Device) may be performed on behalf of Nektar by Third Parties, provided that (i) Nektar shall first have obtained written confidentiality agreements with any such subcontractors and written assignments of, or equivalent rights under, all Patent rights and know-how that such subcontractors may develop by reason of work performed under this Agreement, (ii) Nektar may not subcontract obligations to co-promote in the Shared Territory without Bayer's prior written consent (which consent may not be unreasonably withheld or delayed), unless the GBT has previously approved such subcontracting, and (iii) Nektar shall be and remain responsible to Bayer for the performance of its subcontractors.

(b) Nektar acknowledges and agrees that portions of the work to be performed by Bayer under the Project (including, without limitation, manufacture of Formulated Amikacin for commercial use) may be performed on behalf of Bayer by Third Parties, provided that (i) Bayer shall first have obtained written confidentiality agreements with any such subcontractors and written assignments of, or equivalent rights under, all Patent rights and know-how that such subcontractors may develop by reason of work performed under this Agreement, (ii) Bayer may not subcontract obligations to co-promote in the Shared Territory, without Nektar's prior written consent (which consent may not be unreasonably withheld or delayed), and (iii) Bayer shall be and remain responsible to Nektar for the performance of its subcontractors.

5. REGULATORY MATTERS

5.1 Pharmacovigilance Agreement. The Parties shall, within sixty (60) days after written request by the JSC, convene a meeting to negotiate in good faith the terms and conditions of a pharmacovigilance agreement (**"Pharmacovigilance Agreement"**), which shall establish all material economic, regulatory, business and technical terms under which the Parties shall collect, monitor, research, assess and evaluate information from healthcare providers and patients on the adverse effects, if any, of Formulated Amikacin, the Device and the Product, with a view to identifying new information about hazards associated with Formulated Amikacin, the Device and the Product and preventing harm to patients. Within ninety (90) days after the commencement of those negotiations, the Parties shall exercise Commercially Reasonable Efforts to execute a mutually satisfactory Pharmacovigilance Agreement.

5.2 Preparation of Regulatory Filings. Each Party, at such Party's sole cost and expense unless otherwise provided for herein, shall be responsible for preparing, filing, and maintaining, and shall own, the regulatory filings relating to the Product as set forth below:

(a) At its expense, Nektar shall use Commercially Reasonable Efforts to prepare and maintain DMFs covering the Device, and Nektar shall own any such DMFs. Nektar shall also use Commercially Reasonable Efforts to prepare and maintain DMFs covering Formulated Amikacin and the Product; provided, however, that the Party conducting Manufacturing for Commercialization of the Formulated Amikacin and Product shall own and maintain any such DMFs, it being understood and agreed that during the term hereof, such

Manufacture of Formulated Amikacin and Product may be conducted by Bayer. During the term of this Agreement, Nektar grants to Bayer and its Sublicensees a right of reference to the DMFs for the Device owned by Nektar to the extent necessary for, and for the purposes of, preparing, filing or maintaining INDs, NDAs, MAAs and other regulatory filings relating to the Product in the Shared Territory or the Royalty Territory, including without limitation CMC Data. Nektar shall share with Bayer relevant CMC Data (redacted, if deemed necessary in Nektar's reasonable opinion) portions of such DMFs, with the right to inspect, upon Bayer's request. The Party that owns a DMF shall be responsible for all interactions with Regulatory Authorities relating to such DMF. The foregoing notwithstanding, all Information required by Bayer for regulatory filings will be provided to Bayer by Nektar for all countries where such filings are required.

(b) At its expense, Bayer, its Affiliates and its Sublicensees shall use Commercially Reasonable Efforts to prepare, obtain and maintain all regulatory dossiers and Regulatory Approvals covering the Product in the Territory, and shall provide Nektar, **[***]**, with a copy of all documents included in such regulatory dossiers and Regulatory Approvals. Except as provided in Section 5.2(a), Bayer or its designee shall be the owner of all such filings and shall be responsible for all interactions with Regulatory Authorities relating thereto; provided, however, that at all times during the term hereof, Nektar shall have the opportunity to participate in all meetings and other communications with Regulatory Authorities relating to the Product, **[***]**. In addition to Bayer's other obligations under this Section 5.2(b), Bayer shall keep Nektar informed, on a regular basis (but no less frequently than quarterly) of regulatory filings related to the Product.

(c) During the term of this Agreement, Bayer grants to Nektar a right of reference (including, without limitation, the right to inspect) to the CMC Data pertaining to the Product or for Nektar's use in applications within the Field that do not conflict with Nektar's covenants set forth in Section 2.5.

5.3 Notice of Communication with Regulatory Authorities. Bayer shall be responsible for reporting all adverse events and handling all complaints and communications (including without limitation with Regulatory Authorities) relating to the Product, except in those countries where the CE Mark owner for the Device is required to communicate Device pharmacovigilance directly to Regulatory Authorities (in which case Nektar shall report all adverse events and handle all complaints and communications, including without limitation with Regulatory Authorities, relating to the Device). Except as otherwise provided for in this Section 5.3, each Party shall provide quarterly summaries to the other Party of any oral or written communications to or from Regulatory Authorities on matters related to the Product or which may reasonably be deemed to impact Product Development, manufacture, Commercialization or Regulatory Approval. Notwithstanding the foregoing, if Nektar Manufactures Device or Formulated Amikacin at any time during the term of this Agreement, then Bayer shall notify Nektar of any oral communications, and provide Nektar with copies of any written communications, to or from Regulatory Authorities on matters related to the Device or Formulated Amikacin, as applicable, or which may reasonably be deemed to impact Device or Formulated Amikacin, as applicable, within three (3) business days of receipt of such communication, or such earlier date as required by Applicable Law or Regulatory Authority. Moreover, in each such case, Bayer shall give Nektar reasonable opportunity to review and comment on any proposed response to any such oral or written communications to or from Regulatory Authorities prior to submitting any response thereto, and provide Nektar with a copy of the final response as specified herein.

5.4 Regulatory Compliance.

(a) Each of Nektar and Bayer shall reasonably cooperate with the other Party in its efforts toward ensuring that all government price and gift reporting, sales, marketing and promotional practices with respect to the Product meet the standards required by Applicable Laws, including without limitation state and federal laws and regulations, as well as applicable guidelines concerning the advertising of prescription drug products, the OIG Compliance Guidance Program, the American Medical Association (the **"AMA"**) Guidelines on Gifts to Physicians, the PhRMA Code, and the ACCME Standards.

(b) Each of Nektar and Bayer shall provide its employees and its contract sales force, if any, involved in sales, marketing, promotion, or price or gift reporting for the Product appropriate training on proper marketing and sales techniques. Such training will include, among other topics, FDA requirements and other state and federal regulations and guidelines concerning the advertising of prescription drug products, the OIG Compliance Guidance Program, the AMA Guidelines on Gifts to Physicians, the PhRMA Code, and the ACCME Standards. If requested by the other Party, each of Nektar and Bayer shall provide a written description of the training to the other Party no less frequently than on an annual basis.

(c) Nektar shall provide to Bayer upon request copies of all Nektar documents that are related to the pricing issues addressed in the CIA and other price reporting obligations of Bayer under Applicable Laws. This will include, but is not necessarily limited to, a list of all research and continuing medical education grants, the date of the grant, the amount of the grant, and, if requested by Bayer, the rationale for the grant.

(d) Each of Nektar and Bayer shall reasonably cooperate with the other Party to provide the other Party access to any and all information, data and reports required by the other Party in order to comply with the relevant provisions of the Medicare Modernization Act and any other Applicable Laws, including without limitation reporting requirements, in a timely and appropriate manner. Bayer shall ensure that its reporting to the Centers for Medicare and Medicaid Services and other federal and state healthcare programs related to the Product is true, complete and correct in all respects; provided, however, that Bayer shall not be held responsible for submitting erroneous reports if such deficiencies result from information provided by Nektar which itself was not true, complete and correct.

(e) Nektar shall endeavor to prepare and provide to Bayer any data or other information covered by this Section 5.4 in accordance with methodologies specified by Bayer, and shall advise Bayer if there is any respect in which it has been unable to do so. If Nektar has a question about whether a specific transaction or other event needs to be reported to Bayer pursuant to this Section 5.4, Nektar's obligation shall be satisfied by delivery of a true, complete and correct report of such transaction or other event, without a determination as to the proper reporting or legal characterization of such matter.

(f) Bayer shall notify Nektar in advance of submission of any material information provided by Nektar pursuant to this Section 5.4 that Bayer proposes to submit to any governmental entity. Bayer further agrees to seek confidential treatment of any such information relating to Nektar that it submits to any governmental entity to the extent permitted under the CIA and any Applicable Laws.

(g) Nektar and Bayer shall confer with each other on a regular basis to discuss and compare their respective procedures and methodologies relating to each Party's compliance with any Applicable Laws or fulfillment of any other obligation contained in this Section 5.4. In the event that the Parties have different understandings or interpretations of this Section 5.4 or of the applicability of or standards required by any Applicable Law, then the Parties shall confer and seek to reach common agreement on such matters.

5.5 Regulatory Documentation. Bayer shall own and retain all right, title and interest in and to all Regulatory Approvals and all regulatory documentation with respect to the Product, excluding the DMF for the Device and CE Mark therefor (and equivalents of the foregoing).

5.6 Transfer of IND. Within ninety (90) days after the Effective Date, Nektar shall transfer the existing IND for the Product to Bayer; provided, however, that any DMFs for the Device shall remain with Nektar as provided for in Section 5.2(a).

5.7 Product Recall. The Manufacturing and Supply Agreement shall contain standard provisions acceptable to both Parties regarding (a) a Regulatory Authority's issuance or request of a recall or similar action in connection with the Product and (b) either Party's determination that an event, incident or circumstance has occurred which may result in the need for a recall or market withdrawal.

5.8 Conformité Europeen Mark. Subject to Applicable Law, Nektar shall apply for, maintain and be responsible for all obligations associated with the Conformité Europeen Mark for the use of the Device with the Product.

5.9 Cooperation. Nektar shall reasonably cooperate with Bayer in providing data and other information generated in connection with Clinical Trials conducted by or on behalf of Nektar for the Product prior to or after the Effective Date.

6. DILIGENCE

6.1 Bayer shall use Commercially Reasonable Efforts to Develop and Commercialize the Product in the Territory in accordance with the terms of this Agreement. Nektar shall use Commercially Reasonable Efforts to perform its obligations set forth in the Development Plan and Commercialization Plan or as otherwise set forth in this Agreement.

7. COMMERCIALIZATION

7.1 Commercialization Plan and Commercialization Budget in the Shared Territory.

(a) The GBT shall submit the first draft Commercialization Plan and first draft Commercialization Budget to the JSC for review and approval by a date to be established by the JSC. It is understood that such drafts may contain open issues and identify areas wherein more information is needed to complete the drafts and to prepare a more complete Commercialization Plan and Commercialization Budget. Within a time frame necessary to meet the Parties' respective internal budget submission deadlines, the GBT, after taking into consideration the comments of the JSC, will prepare a more complete Commercialization Plan and Commercialization Budget for submission to the JSC for its review and approval.

(b) By or before September 30, 2007, the GBT shall develop, and the JSC shall review and approve, in accordance with Section 3.2(b) a three (3) year commercialization plan (the **"Commercialization Plan"**) for the Product for the Shared Territory, which shall include but not be limited to (i) details regarding demographics, market dynamics, and market strategies in the Shared Territory for the Product and patient population, estimated launch dates in the Shared Territory, and sales and expense forecasts in the Shared Territory, and (ii) a marketing plan (including without limitation pricing strategies pertaining to discounts and samples) for the Shared Territory, health economics studies to be performed or other payor related and studies required to determine or evaluate the impact of health economic studies, and other payor related studies on potential prices for the Product. By or before September 30, 2007, the GBT shall develop and submit to the JFC for review and endorsement, and the JSC shall review and approve, in accordance with Section 3.2(b), a three (3) year commercialization budget (**"Commercialization Budget"**) for Commercialization of the Product, including without limitation the Third Parties to be utilized in such activities and the arrangements with them that have been or are proposed to be agreed upon. Each Commercialization Budget for the Shared Territory shall include without limitation a budget of the expenses expected to be incurred in connection with performing the Commercialization Plan, including without limitation Pre-Launch Costs and Allowable Expenses in the Shared Territory. The Commercialization Plan and the Commercialization Budget shall be updated at least once (1) per year and shall cover the following three (3) year period.

(c) Any significant proposed change in any Commercialization Plan during the course of the year will be communicated promptly to the JSC for its approval, and any significant proposed change in any Commercialization Budget during the course of the year will be communicated promptly to the JFC for its endorsement. In addition, the GBT shall provide an update on each Commercialization Plan and Commercialization Budget to the JSC and JFC, respectively, in a manner consistent (with respect to timing and content) with such updates as are reported internally by Bayer on its existing products at such time.

(d) Budgetary Disputes. For Commercialization activities in the Shared Territory for which a Party is designated "Lead" in Exhibit 3.2, such Party may determine that costs for such activities under the Commercialization Plan may be incurred that exceed the amount specified in the Commercialization Budget for such activities (excluding the

[***]) by up to **[***]**. In such case, such excess costs will be included in Allowable Expenses. For Commercialization activities in the Shared Territory for which a Party is designated "Lead" in Exhibit 3.2, if such Party desires to propose that costs for such activities under the Commercialization Plan should be incurred that exceed the amount specified in the Commercialization Budget for such activities (excluding the **[***]**) by more than **[***]**, such excess costs will not be included in Allowable Expenses, but the Parties shall discuss the basis for such proposal and whether the economic terms between the Parties should be restructured to reflect the potential investment of such additional funds.

7.2 Launch Plan and Launch Budget for the Shared Territory.

(a) Each Commercialization Plan and Commercialization Budget shall be updated by the GBT, in advance of the Commercial Launch of the Product in the Shared Territory, to include without limitation a launch plan (the **"Launch Plan"**) and launch budget (the **"Launch Budget"**) for launch and the three (3) year period following the Commercial Launch date. Each such Launch Plan and Launch Budget shall be developed by the GBT, submitted to the JFC for review and endorsement, and presented to the JSC for review and approval.

(b) The GPT shall estimate for each country a realistic date for Regulatory Approval of the Product by the relevant Regulatory Authority, and the GBT will use this estimated date to submit its Launch Plan at least six (6) months prior to the estimated Regulatory Approval date to the JSC. By September 30 of each calendar year thereafter, if not yet executed, each Launch Plan and Launch Budget for the Product shall be updated by the GBT, submitted to the JFC for review and endorsement, and presented to the JSC for review and approval.

(c) Each Launch Plan shall include without limitation (i) updated market and sales forecasts in units and estimated revenues of the Product for the three (3) year period following Commercial Launch of the Product in the Shared Territory, (ii) estimated resource requirements for the Product in the Shared Territory, and (iii) such other matters deemed appropriate by the GBT.

(d) Each Launch Budget shall include without limitation a breakdown of individual Allowable Expense items expected to be incurred in connection with performing the applicable Launch Plan, detailed sufficiently to meet the requirements of the Parties' respective management and auditors for reporting and controlling, and shall include without limitation all related Pre-Launch Costs.

7.3 [***]. Nektar shall provide **[***]** (**"[***]"**) to support the use of the Product in hospitals and other centers of care in the Shared Territory, with approximately **[***]** Bayer sales representatives, or the ratio set forth in the Commercialization Plan. Bayer shall be responsible for performing all other marketing, sales, and promotion activities in the Shared Territory, including without limitation providing a promotional sales force. The Parties will mutually agree upon the size and scope of responsibilities of Nektar's **[***]**. The activities of Bayer's promotional sales force and Nektar's and Bayer's **[***]** shall be conducted in accordance with Bayer's policies and the Launch Plan and the Commercialization Plan. The expenses of Nektar's **[***]** shall be included in Allowable Expenses.

7.4 [***]. Bayer and Nektar shall each provide **[***]** (**"[***]"**), who will be responsible for medical education and supporting physicians and scientists for the Product in the Shared Territory, all in accordance with the Commercialization Plan. The expenses of Bayer's and Nektar's **[***]** shall be included in Allowable Expenses.

7.5 Sales Representative Compliance. Each of Bayer and Nektar agrees to provide regular healthcare compliance training to its employees involved in the sales, marketing, promotion of, or price reporting for, the Product as appropriate and necessary that meets the training requirements and standards established by the GBT, and that will, at a minimum, cover the content and frequency of the training required by the CIA, Applicable Laws and all industry standards (including without limitation PhRMA Code and OIG guidance). Each of Bayer and Nektar agrees that any employees involved in the sales, marketing, promotion of, or price reporting for, the Product shall not have any legal or regulatory disqualifications, bars or sanctions in contravention of the CIA or any other requirement of Applicable Laws.

7.6 Commitment in the Shared Territory. Bayer sales representatives in the Shared Territory will spend at least **[***]** of their overall working time promoting the Product in the Shared Territory (for a total effort by Bayer of at least **[***]** full-time equivalents (**"FTEs"**) per year) over each of the first **[***]** years after Commercial Launch in the Shared Territory. Nektar's **[***]** in the Shared Territory will spend at least **[***]** of their overall working time promoting the Product in the Shared Territory (for a total effort by Nektar of at least **[***]** FTEs per year) over each of the first **[***]** years after Commercial Launch in the Shared Territory. For clarity, any portion of their overall working time that the foregoing FTEs spend on promotion of products other than the Product shall not be included in Allowable Expenses. The JFC shall designate an appropriate methodology for effecting an allocation of promotional efforts made by any of the foregoing FTEs between the Product and other products.

7.7 Packaging; Bayer and Nektar Marks. Bayer shall be responsible for all packaging (non-commercial and commercial) and labeling of the Product. To the extent allowed by Applicable Law and consistent with Bayer's internal Trademark policy as to size, location and prominence, all Product labeling and packaging, including without limitation Device packaging and package inserts and any promotional materials associated with the Product shall carry, in a conspicuous location, the Trademark of Nektar, subject to Bayer's reasonable approval of the size, position, and location thereof on the Product or its components; provided such Trademark of Nektar shall be displayed in equal size and prominence as Bayer's Trademarks. Such Trademark shall be in addition to the Trademarks of Bayer. Further, such labeling and packaging and any promotional materials associated with the Product or the Device shall carry, in a conspicuous location, a Patent notice in accordance with and when required by the Applicable Laws of the country in which (a) the Product is sold, and (b) a claim in a Patent included in the Nektar Patent Rights or a Patent Controlled by Bayer covering the Product exists (including without limitation, in each case, Joint Patent Rights). Nektar and Bayer authorize the use of their respective Trademarks pursuant to this Section 7.7.

7.8 Promotion in [***].

(a) If Nektar develops reasonable promotional and selling capabilities within [***] within [***] years following Commercial Launch in [***], then Nektar shall have the first right to discuss with Bayer the terms under which Nektar would provide [***] or other promotional and sales support for the Product in [***].

(b) Prior to entering into any agreement with a Third Party relating to promotion or sale of the Product in [***], Bayer shall first notify Nektar in writing, and Nektar shall have the exclusive right (if it has reasonable promotional and selling capabilities), for a period of [***] days, to negotiate in good faith the terms of an agreement whereunder Nektar would obtain the right to provide [***] and/or other promotional sales and support for the Product in [***]. After such period, if the Parties do not execute a definitive agreement governing such promotion or sales rights, Bayer shall be free to negotiate with Third Parties the terms under which such Third Parties would obtain such rights in [***], and Bayer may enter into a binding agreement with any such Third Party regarding promotion or sale of the Product in [***]; provided that the material terms of any such agreement, taken as a whole, are more favorable to Bayer than the terms last proposed by Nektar.

8. PAYMENT OBLIGATIONS

8.1 Research and Development Funding. The Parties shall perform Development activities to develop and support Regulatory Approval of the Product pursuant to the Development Plan and Development Budget. Subject to the oversight of the GPT and endorsement by the JFC and compliance with the Development Plan:

(a) Bayer shall be solely responsible for, **[***]**, all costs and expenses incurred in connection with the clinical Development of the Product (other than the **[***]** and Phase II Clinical Trials that are ongoing as of the Effective Date), the preparation and submission of regulatory filings for the Product, on a worldwide basis, further CMC development of Formulated Amikacin and the final packaging of the Product, obtaining and maintaining all Regulatory Approvals for the Product in the Shared Territory and in the Royalty Territory, and generally for the Commercialization of the Product. If Bayer does not take over clinical supply manufacturing of the Product, it will reimburse Nektar for costs of the Product formulation development activities as set forth in Exhibit 4.2(a)(iv).

(b) Nektar shall be solely responsible for, **[***]**, all costs and expenses incurred in connection with all further Development of the Device conducted through completion of Phase III Clinical Trials.

(c) Each Party shall provide reasonable assistance and technical expertise as necessary to transfer appropriate technology to support Development of the Product under the Agreement. Such assistance may include the grant of appropriate rights of access and reference to regulatory filings to enable the Parties to assume responsibility for Development of the Product, and participation in meetings with regulatory agencies with respect to the Product. The costs and expenses of all such assistance and transfer of technical expertise by Nektar to Bayer shall be borne solely by Bayer.

(d) [***] Costs that are included in the Commercialization Plan and Commercialization Budget shall be included in Allowable Expenses; provided, however, that, if the portion of any **[***]** Costs for which Nektar is responsible according to its share of Product Profit and Loss pursuant to Section 8.2(b) that are included in the Commercialization Plan and Commercialization Budget exceeds **[***]**, any additional **[***]** Costs shall not be included in Allowable Expenses and shall be borne solely by Bayer. Bayer shall solely bear any **[***]** Costs in the Royalty Territory, and any **[***]** Costs in the Shared Territory shall be included in Allowable Expenses.

8.2 Shared Territory Pre-Launch Costs; Profit-Sharing.

(a) Pre-Launch Costs. The Parties shall share all Pre-Launch Costs in the Shared Territory pursuant to a methodology and time line set forth in the Commercialization Plan and Commercialization Budget. Such methodology and time line will be established within ninety (90) days after the Effective Date. The ratio of such sharing shall be as follows: Bayer shall bear [***] of such costs, and Nektar shall bear [***] of such costs.

(b) Product Profit and Loss.

(i) Subject to Section 8.2(b)(ii) and Section 8.2(b)(iii)(x), commencing upon Regulatory Approval of the Product in the Shared Territory, the Parties shall share all Product Profit and Loss on sales of the Product in the Shared Territory for as long as the Product is being sold in the Shared Territory as follows: Bayer shall receive or bear, as applicable, fifty-two percent (52%) of Product Profit and Loss, and Nektar shall receive or bear, as applicable, forty-eight percent (48%) of Product Profit and Loss. Exhibit 8.2(b)(i) contains an example of the Product Profit and Loss calculation methodology applicable to Net Sales of the Product under this Section 8.2(b)(i).

(ii) Nektar may elect to opt out of sharing Product Profit and Loss upon written notice to Bayer no later than **[***]** months prior to the anticipated first Commercial Launch in the Shared Territory, in which case Nektar shall thereafter have no responsibility to bear any Pre-Launch Costs or Allowable Expenses, and shall not be entitled to share Product Profit and Loss. Bayer shall thereafter treat the Shared Territory as the Royalty Territory for purposes of the payments to be made under Section 8.4(a), (b), (c), (e) and (f) and Sections 8.5-8.10 (but not for purposes of Section 8.4(d)), provided that the Net Sales in the Shared Territory shall not be aggregated with Net Sales in the Royalty Territory for purposes of payments to be made under Section 8.4(a), and further provided that the royalty rate applicable to the Shared Territory under Section 8.4(a) shall be fixed at thirty percent (30%) of annual Net Sales in the Shared Territory (subject to any applicable **[***]** under Sections 8.2(b)(iii)(y), 8.2(c)(ii) or 8.4(b)). The royalties due under this Section 8.2(b)(ii) shall continue from the date of Commercial Launch in the Shared Territory until the later of: (A) ten (10) years thereafter; or (B) the expiration date (or the effective date of any lapse, abandonment or dedication to the public use) of the last Valid Claim covering the Product, or covering the importation, Manufacture, use, offer for sale or sale of the Product, in the Shared Territory. If Nektar opts out of sharing Product Profit and Loss pursuant to this Section 8.2(b)(ii), (1) Nektar shall thereafter be solely responsible for the payment of all amounts **[***]**, and (2) all of the Parties' payment obligations, other than those relating to Product Profit and Loss and Allowable Expenses, as set

forth in this Agreement will continue to apply. For clarity, milestone payments payable by Bayer to Nektar pursuant to Section 8.4(d) shall not accrue based on sales of the Product in the Shared Territory.

(iii) In the event that:

A. [***]; and

B. [***];

then thereafter for so long as there is **[***]**: (x) the Parties shall not share Product Profit and Loss in accordance with the percentages set forth in Section 8.2(b)(i), but instead shall share all Product Profit and Loss in the Shared Territory as follows: Bayer shall receive **[***]** of Net Sales and Net Sublicense Revenues and bear **[***]** of Allowable Expenses, and Nektar shall receive **[***]** of Net Sales and Net Sublicense Revenues and bear **[***]** of Allowable Expenses, or (y) in the event that Nektar opts out of sharing Product Profit and Loss under Section 8.2(b)(i), then after such time as Nektar has opted out of sharing Product Profit and Loss pursuant to Section 8.2(b)(ii), the royalty rate on royalties due under Section 8.2(b)(ii) shall be **[***]**. Notwithstanding the foregoing, **[***]**, then this Section 8.2(b)(iii) shall apply again. Exhibit 8.2(b)(iii) contains an example of the Product Profit and Loss calculation methodology under Section 8.2(b)(iii)(x).

(c) [***] Expenses.

(i) The expenses Nektar shall be entitled to include in Allowable Expenses in the calculation of Product Profit and Loss for payments **[***]** with respect to the Shared Territory shall not exceed **[***]** of Net Sales of the Product in the Shared Territory for **[***]** and shall not exceed **[***]** of Net Sales of the Product in the Shared Territory for **[***]**. Other than with respect to the foregoing, as between the Parties, Nektar shall be solely responsible for the payment of all other amounts **[***]** with respect to the Shared Territory, including, without limitation, payments resulting from "**[***]**, and such amounts shall not be included in Allowable Expenses.

(ii) [***].

(d) Method and Timing of Payments. Within **[***]** days after the end of each of the **[***]** calendar quarters, and **[***]** days after the end of the **[***]** calendar quarter, of each calendar year following Commercial Launch in the Shared Territory: (i) Bayer shall report to Nektar and the JSC as outlined in Exhibit 1.8 Bayer's gross revenues and individual Allowable Expense items (each with appropriate supporting information) necessary for the computation of Product Profit and Loss for such quarter, and (ii) Nektar shall report to Bayer and the JSC as outlined in Exhibit 1.8 Nektar's individual Allowable Expense items (with appropriate supporting information) necessary for the computation of Product Profit and Loss for such quarter. The reports and payments due pursuant to this Section 8.2(d) for each calendar quarter shall include any reconciliations and adjustments with respect to previous quarters necessary to effect the sharing of Product Profit and Loss set forth in Section 8.2(b). In the event that the Allowable Expenses are greater than the sum of Net Sales and Net Sublicense Revenues for a particular quarter, the difference shall be deemed a loss, which shall be allocated to each

Party in accordance with Section 8.2(b)(i) or 8.2(b)(iii)(x). Payments (including any reconciling payments for previous quarters) shall be made for each calendar quarter within [***] days after the reports are due and received from the Parties by Bayer or Nektar as applicable to effect the Parties' sharing of Product Profit and Loss as set forth in this Section 8.2.

8.3 Milestone Payments. Bayer shall make the following non-refundable, non-creditable Milestone Payments (the **"Milestone Payments"**) to Nektar, with respect to the Product, within **[***]** days after achievement of the relevant milestone for the Product. The milestones in this Section 8.3 are cumulative, such that under no circumstances is any single Milestone Payment to be deemed in lieu of, or to be substituted for, another Milestone Payment. For clarity, each milestone in this Section 8.3 is payable by Bayer to Nektar only once with respect to the achievement of any milestone under this Agreement.

Milestone Event	Payment (millions of Dollars)
(i) Effective Date (reimbursement by Bayer **[***]**)	$ 50*
(ii) **[***]**	$ 10**
(iii) [***]	$ [***]
(iv) **[***]**	$ [***]
(v) [***]	$ [***]
(vi) **[***]**	$ [***]
(vii) **[***]**	$ [***]
(viii) [***]	$ [***]

* $10 million of this payment shall be repaid to Bayer if Bayer terminates this Agreement within thirty (30) days following delivery by Nektar to Bayer of the final report for the [***].

** This milestone payment shall be used by Nektar to reimburse Bayer's Development Costs of conducting any Phase III Clinical Trial in the Territory. Bayer shall invoice Nektar quarterly for such Development Costs as such costs are incurred pursuant to the Development Budget commencing with the calendar quarter immediately following the calendar quarter in which the first Phase III Clinical Trial Commences. Bayer shall provide to Nektar with such invoice documentation reasonably acceptable to Nektar evidencing such Development Costs, and Nektar shall have the right to verify any such Development Costs. Nektar shall pay such invoiced amounts within [***] days after its receipt of an invoice. If Bayer terminates this Agreement before such milestone payment is fully applied to reimburse such costs, Nektar shall have the right to retain any remaining portion of such milestone payment not applied to reimburse such costs as of the effective date of such termination.

8.4 Royalties in the Royalty Territory.

(a) In addition to any amounts due to Nektar under Sections 8.1, 8.2 and 8.3, and subject to the other provisions of this Section 8.4 and the terms and conditions of this Agreement, in consideration for the grant of the license under the Nektar Patent Rights and Nektar Know-How to Bayer under Section 2.1(a), Bayer shall pay Nektar non-refundable and non-creditable incremental royalties in the Royalty Territory based on the aggregate annual Net Sales of all Product sold in all countries in the Royalty Territory in a calendar quarter to Third Parties by or on behalf of Bayer, its Affiliates or Sublicensees, in which, and for so long as, the Product or the manufacture, use, sale, offer for sale, or importation of the Product would infringe a Valid Claim or constitute a misappropriation of the Nektar Know-How in such country in the absence of such license, according to the following royalty rates (for the purposes hereof, "annual" means any complete calendar year period beginning on January 1 and ending on December 31):

Annual Royalty Rate	Annual Net Sales in the Royalty Territory (millions of Dollars)
14% of the amount between	**$[***]**
[***]% of the amount between	>**$[***]**
[***]% of the amount between	>**$[***]**
[***]% of the amount between	>**$[***]**
30% of the amount	>**$[***]**

Exhibit 8.4(a) contains an example of the royalty calculation methodology applicable to Net Sales of the Product under Section 8.4(a).

(b) In the event that there is no Valid Claim covering the Product, or covering the importation, Manufacture, use, offer for sale or sale of the Product in a given country in the Royalty Territory, then the applicable royalty rates under Section 8.4(a), subject to any **[***]** under Sections 8.4(e) and/or 8.4(f), in such country shall be **[***]**.

Exhibit 8.4(a) contains an example of the royalty calculation methodology applicable to Net Sales of the Product under Section 8.4(b).

(c) The royalties due under Sections 8.4(a) and 8.4(b) shall continue on a country-by-country basis, from the date of Commercial Launch of the Product in such country until the later of: (i) ten (10) years thereafter; or (ii) the expiration date (or the effective date of any lapse, abandonment or dedication to the public use) of the last Valid Claim covering the Product, or covering the importation, Manufacture, use, offer for sale or sale of the Product, in such country. The royalty rates at which Bayer is obligated to pay royalties under this Section 8.4(c) are determined by the percentages set forth in Sections 8.4(a) and 8.4(b), such that at any

point in time during which Bayer has a royalty payment obligation under Sections 8.4(a) or 8.4(b), the royalty rate shall be determined on a country-by-country basis by whether or not there is Valid Claim covering the Product, or the importation, Manufacture, use, offer for sale or sale of the Product, in such country.

(d) Additional Royalty Payments. The following one-time additional royalty payments will also be paid by Bayer to Nektar within **[***]** days after the delivery of the report under Section 8.5 demonstrating the first occurrence of each of the following events:

Event	Payment (millions of Dollars)
First time that Net Sales in the Royalty Territory in a calendar year **[***]**	$ **[***]**
First time that Net Sales in the Royalty Territory in a calendar year **[***]**	$ **[***]**
First time that Net Sales in the Royalty Territory in a calendar year **[***]**	$ **[***]**
First time that Net Sales in the Royalty Territory in a calendar year **[***]**	$ **[***]**
First time that Net Sales in the Royalty Territory in a calendar year **[***]**	$ **[***]**

All of the additional royalty payments made under this Section 8.4(d) are non-refundable and non-creditable, and each such payment is payable only once.

(e) Nektar shall be solely responsible for the payment of all amounts **[***]** with respect to the Royalty Territory. **[***]**.

(f) On a country-by-country basis, in the event that:

(i) [***]; and

(ii) [***];

then thereafter for so long as there is **[***]**, the royalty rate in such country as calculated in accordance with Section 8.4(a) shall be **[***]** for annual Net Sales in the Royalty Territory less than or equal to [***], and (2) **[***]** for annual Nets Sales in the Royalty Territory greater than **[***]**. Notwithstanding the foregoing, if at any point **[***]**, then this Section 8.4(f) shall apply again.

8.5 Payments. Payments due under Section 8.4(a) shall be paid not later than **[***]** calendar days following the end of each calendar quarter with respect to Net Sales in such quarter. Each payment under this Section 8.5 shall be accompanied by a written report showing, on a country-by-country basis, (a) the calendar quarter for which such payment applies, (b) the amount billed to Third Parties for the Product during such quarter, (c) the total deductions from the amount billed to arrive at Net Sales, (d) the quantities of all Product sold, and (e) the amount of royalties due. Any late payments under this Agreement shall bear interest at the prime rate of interest as reported on the first business day following the date payment is due in the "Money Rates" section of *The Wall Street Journal* (Eastern United States Edition).

8.6 Currency of Payment. All payments to be made under this Agreement shall be made in Dollars. Net Sales made in foreign currencies shall be converted into Dollars using the average of the month end daily currency exchange rates set forth in *The Wall Street Journal* (Eastern United States Edition) for each of the three calendar months included in the calendar quarter in which such Net Sales were made. All such converted Net Sales and cost items shall be consolidated with U.S. Net Sales for each calendar quarter and the applicable payments determined therefrom.

8.7 Single Royalty. Royalties payable under Section 8.4(a) or (d) will be payable only once with respect to a particular unit of the Product and will be paid only once regardless of the number of Patents applicable to such Product. If royalties are payable for the Product under Section 8.4(a), no royalties will be payable for the Product under Section 8.4(b). For clarity, all royalties due under the royalty-bearing licenses in Sections 2.1(a)(i), 2.1(a)(iii) and 18.7(b) are accounted for under the terms of this Agreement and no additional royalties are payable with respect to Sections 2.1(a)(i), 2.1(a)(iii) and 18.7(b).

8.8 Sublicensing. In the event Bayer grants a sublicense under Section 2.1 to a Sublicensee to make, use, import, offer to sell or sell the Product, such sublicenses shall require the Sublicensee to account for and report its Net Sales of the Product on the same basis as if such sales were Net Sales of the Product by Bayer, and Bayer shall pay royalties on such sales as if the Net Sales of the Sublicensees were Net Sales of Bayer.

8.9 Accounting.

(a) For the purposes of determining all costs and expenses hereunder, any cost or expense allocated by either Party to a particular category for the Product shall not also be allocated to another category for such Product, and any cost or expense allocated to the Product in a particular country shall not be allocated or allocable to another product of such Party in such country or the same Product in a different country.

(b) Each Party agrees to determine Net Sales, Allowable Expenses, Patent costs, Trademark Expenses and Pre-Launch Costs with respect to the Product using its standard accounting procedures, consistent with GAAP or IFRS or IAS to the extent practical as if the Product was a solely owned product of each Party, except as specifically provided in this Agreement. In the case of amounts to be determined by Third Parties (for example, Net Sales by Sublicensees), such amounts shall be determined in accordance with GAAP or IFRS or IAS in effect in the country in which such Third Party is engaged. The Parties also recognize that such

procedures may change from time to time and that any such changes may affect the definition of Net Sales, Allowable Expenses, or Pre-Launch Costs. The Parties agree that, where such changes are economically material to either Party, adjustments shall be made to compensate the affected Party in order to preserve the same economics as are reflected under this Agreement under such Party's accounting procedures in effect prior to such change (for example, Development or Commercialization). Where the change is or would be material to one Party, the other Party shall provide an explanation of the proposed change and an accounting of the effect of the change on the relevant revenue, cost, or expense category.

(c) In the event of the payment or receipt of non-cash consideration in connection with the performance of activities under this Agreement, the Party engaging in such non-cash transaction shall advise the JFC of such transaction, including without limitation such Party's assessment of the fair market value of such non-cash consideration and the basis therefor. Such transaction shall be accounted for on a cash equivalent basis, as mutually agreed by the Parties in good faith.

8.10 Withholding Tax. Any Party required to make a payment to any Party under this Agreement shall be entitled to deduct and withhold from the amount otherwise payable such amounts to the extent it is required to deduct and withhold with respect to such payment under any provision of federal, state, local or foreign tax law. Such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Party on whose behalf it was withheld. No deduction shall be made to the extent the paying Party is timely furnished with necessary documents certifying that the payment is exempt from tax or subject to a reduced tax rate.

9. MANUFACTURE AND SUPPLY OF AMIKACIN AND THE DEVICE

9.1 Manufacturing and Supply Agreement.

(a) Negotiation. The Parties shall, within sixty (60) days after written request by the JSC, convene a meeting to negotiate in good faith the terms and conditions of a manufacturing and supply agreement (**"Manufacturing and Supply Agreement"**) which shall establish all material economic, quality, safety, business and technical terms under which Nektar shall supply to Bayer all of Bayer's forecasted requirements of the Device. Within ninety (90) days after the commencement of those negotiations, the Parties shall exercise Commercially Reasonable Efforts to execute a mutually satisfactory Manufacturing and Supply Agreement.

(b) Commercial Manufacturing and Supply. In connection with any Manufacturing and Supply Agreement entered into pursuant to this Agreement, Bayer shall provide Formulated Amikacin for commercial supply of the Product and shall be responsible for final packaging of Formulated Amikacin with the Device. Bayer's cost for the Device, Formulated Amikacin, and final Product packaging for commercial supply for the Shared Territory shall be included in Allowable Expenses. Nektar shall supply the Device for use in the Manufacture of commercial supplies of the Product to Bayer, at a price for the Shared Territory equal to Nektar's Fully Burdened Manufacturing Cost therefor, and at a price for the Royalty Territory equal to one hundred thirty (130%) of Nektar's Fully Burdened Manufacturing Cost therefor. In the event that the amount Bayer pays to Nektar for the Device in the Royalty

Territory **[***]** in accordance with the dollar amounts and time schedule to be set forth in the Manufacturing and Supply Agreement, such agreement would specify that Bayer would have the right to **[***]** for commercial supply of the Device to provide reasonable accommodation for the **[***]**, provided that in no event would the purchase price for the Device be less than **[***]** of Nektar's Fully Burdened Manufacturing Cost therefor. All amounts paid by Bayer to Nektar for commercial supply of the Device for the Shared Territory, and Bayer's Cost of Goods Sold (as defined in Exhibit 1.8) for manufacturing Formulated Amikacin, and performing final packaging and labeling of the Product, for commercial supply in the Shared Territory, will be included in Allowable Expenses.

9.2 Clinical Manufacturing and Supply. Bayer shall pay Nektar, on an ongoing basis, for the supply of the Device and Formulated Amikacin for use in Clinical Trials of the Product at a price equal to Nektar's Fully Burdened Manufacturing Cost thereof. Payments due under this Section 9.2 shall be paid not later than **[***]** days after the date of invoice by Nektar therefor. Within ninety (90) days after the Effective Date, the Parties will enter into an agreement governing the detailed terms of Nektar's supply obligation under this Section 9.2. For clarity, these payments shall not be included in Allowable Expenses for purposes of the Product Profit and Loss calculations.

9.3 Manufacturing Expenditures. Bayer shall be responsible for all capital costs incurred in connection with the Manufacture of Formulated Amikacin and Product (excluding the Device), including without limitation building out manufacturing capacity for Formulated Amikacin and Product and final packaging of the Product, and the depreciation on such capital expenditures will be included in Allowable Expenses to the extent allocable to the Shared Territory, in the manner established by the JFC. Nektar shall be responsible for all capital costs incurred in connection with the Manufacture of the Device, including without limitation building out manufacturing capacity for the Device, and the depreciation on such capital expenditures will similarly be included in Allowable Expenses to the extent allocable to the Shared Territory, in the manner established by the JFC.

10. RECORD KEEPING, RECORD RETENTION AND AUDITS

10.1 Record Keeping. Each Party shall record, to the extent practical, all research and development Information relating to the Project in standard laboratory notebooks, which shall be signed, dated and witnessed, or if kept electronically, suitably validated. To the extent practical, the notebooks of each Party for the Project shall be kept separately from notebooks documenting other research and development of such Party. Each Party shall require its employees, consultants and contractors (and in the case of Bayer, shall cause its Affiliates and Sublicensees) to disclose any Inventions relating to the Project in writing promptly after conception.

10.2 Record Retention. Nektar shall keep complete and accurate records pertaining to the research, Development and Manufacture of the Device and Patent costs and Trademark Expenses in sufficient detail to permit Bayer to verify the costs related to the research, Development and Manufacturing efforts of Nektar under this Agreement for which Bayer is responsible for paying, reimbursing or sharing. Bayer shall keep complete and accurate records pertaining to the research, Development, manufacture, regulatory activities, and

Commercialization related to the Product and Patent costs and Trademark Expenses, which documents would enable Nektar to confirm Bayer's costs of performing its obligations under this Agreement and to confirm the accuracy of calculations of all payments made under this Agreement The records to be maintained by each Party under this Section 10.2 shall be maintained for a minimum of **[***]** years following the year in which the corresponding efforts or payments, as the case may be, were made under this Agreement or longer if required by Applicable Law.

10.3 Audit Request. Each Party shall, at its expense (except as provided below), have the right to audit, not more than once during each calendar year and during regular business hours, the records maintained by the other Party under Section 10.2, to determine with respect to any calendar year, the accuracy of any report or payment made under this Agreement in the **[***]** preceding years. If a Party desires to audit such records, it shall engage an independent, certified public accountant reasonably acceptable to the other Party, to examine such records under conditions of confidentiality. Such accountant shall be instructed to provide to the auditing Party a report verifying any report made or payment submitted by the audited Party during such period, but shall not disclose to the auditing Party any confidential Information of the audited Party not necessary therefor. The expense of such audit shall be borne by the auditing Party; provided, however, that, if an error of more than ten percent (10%) is discovered, then such expenses shall be paid by the audited Party. If such accountant concludes that additional payment amounts were owed to a Party during any period, the debtor Party shall pay such payment amount (including without limitation interest thereon from the date such amounts were payable) within thirty (30) days after the date the creditor Party delivers to the debtor Party such accountant's written report so concluding, unless the debtor Party notifies the creditor Party of any dispute regarding the audit and commences proceedings under Section 20.10 within thirty (30) days after delivery of the accountant's report (in which case the payment shall be delayed until conclusion of the proceeding). Such auditors shall not be paid on a contingency basis. Any Information received by an auditing Party pursuant to this Section 10.3 shall be deemed to be Confidential Information of the audited Party.

10.4 Survival. This Article 10 shall survive any termination or expiration of this Agreement for a period of **[***]** years following the final payment made by Bayer or Nektar hereunder, or longer if required by Applicable Law.

11. INVENTIONS, KNOW-HOW AND PATENTS

11.1 Existing Intellectual Property. Other than as expressly provided in this Agreement, neither Party grants any right, title, or interest in any Patent rights, Information, or other intellectual property right Controlled by such Party to the other Party. Within ninety (90) days after the Effective Date, Nektar shall file a continuation Patent Application consistent with applicable patent laws and procedure based upon [***], such continuation to contain only claims encompassing [***]. Within [***] days after such continuation Patent Application is filed, Nektar shall transfer ownership and control of such application to Bayer in a manner agreed to by the Parties, including to effectuate Bayer's ability to control prosecution of all inventions disclosed therein and generically or specifically covering [***].

11.2 Ownership of Inventions.

(a) Ownership of inventions arising during and in the course of the Parties' performance under the Agreement, and related intellectual property rights (**"Inventions"**) shall be determined in accordance with U.S. rules of inventorship, except as otherwise set forth in this Section 11.2(a), below. For clarity, except as set forth in this Section 11.2(a), below, each Party shall have an undivided interest in and to any Inventions made by employees or independent contractors of both Parties (**"Joint Inventions"**), without a duty of accounting to the other Party and without an obligation to obtain consent of the other Party to grant licenses thereunder in countries in which such duty or obligation would otherwise apply. Each Party shall promptly disclose, and shall cause its Sublicensees and Affiliates to disclose, to the other Party any Inventions that it or its employees, Sublicensees, Affiliates, independent contractors or agents solely or jointly make, conceive, reduce to practice, author, or otherwise discover. Notwithstanding the foregoing:

(i) Subject to Section 11.3(a)(i), Nektar shall solely own all Inventions relating to the Device, to methods of using or manufacturing the Device, and/or to the PDDS Platform Technology, whether made by employees, independent contractors or agents of either Party or jointly by employees, independent contractors or agents of both Parties. Such Inventions and Patents and Patent Applications claiming such Inventions are included in the Nektar Patent Rights and Nektar Know-How, as applicable, and licensed to Bayer pursuant to Section 2.1.

(ii) Subject to Section 11.3(a)(ii), Bayer shall solely own all Inventions relating to Formulated Amikacin or to methods of using or manufacturing the Formulated Amikacin, including without limitation methods of treatment using Formulated Amikacin, whether made by employees, independent contractors or agents of either Party or jointly by employees, independent contractors or agents of both Parties. Bayer hereby grants to Nektar a non-exclusive, royalty-free, license with the right to grant sublicenses in accordance with Section 2.3 (the portion of which license described in subsection (B), below, shall be irrevocable and perpetual), under Bayer's interest in such Inventions, to make, have made, use, have used, sell, have sold, offer for sale, import, have imported, exported and have exported (A) the Product in the Shared Territory and (B) other products that are based on or incorporate a combination of such Inventions and the PDDS Platform Technology in the Territory.

(b) Assignment and Perfection of Interests. Without additional consideration except as otherwise provided for in this Section 11.2(b), each Party hereby assigns to the other Party such of its right, title and interest in and to any Inventions, Patent rights claiming them, and all other intellectual property rights therein, including without limitation enforcement rights, and shall require its Sublicensees, Affiliates, independent contractors, employees or agents to so assign to the other Party such of their right, title and interest in and to the foregoing, as is necessary to effectuate the allocation of right, title and interest in and to Inventions as set forth in Section 11.2(a). Each Party shall, and shall cause its Sublicensees, Affiliates, independent contractors, employees and agents to, cooperate with the other Party and take all reasonable additional actions and execute such agreements, instruments and documents as may be reasonably required to perfect the other Party's right, title and interest in and to Inventions, Patent rights and other intellectual property rights as such other Party has pursuant to

Section 11.2(a). Each Party shall also include without limitation provisions in its relevant agreements with Third Parties that effect the intent of this Section 11.2(b). If any independent contractor, employee or agent of a Party, its Sublicensees, or Affiliates makes an Invention that the Party is obligated to assign or cause to be assigned to the other Party hereunder, then, in such case, the assignee Party agrees to pay the assignor Party **[***]** per Invention.

11.3 Patent Prosecution and Maintenance.

(a) Each Party shall file and prosecute Patent Applications and maintain Patents in a manner consistent with optimizing Patent protection on Inventions and other inventions Controlled by Nektar or Aerogen that are disclosed and/or claimed in the Nektar Patent Rights. Each Party shall cause its patent counsel to confer no less frequently than once each calendar quarter regarding the status of all such Patent Applications and Patents for which it is responsible under this Section 11.3, and whether and in which countries foreign counterparts of such Patent Applications and Patents shall be filed. The Parties shall set the location, date, time and type of meeting (either in person, by teleconference, or by videoconference) so as to be mutually agreeable to the patent counsel of each Party.

(i) [***] of and be responsible for filing, prosecuting and maintaining Patents and Patent Applications claiming inventions it Controls as of the Effective Date and those it Controls that arise outside the Parties' performance pursuant to this Agreement, and Patents and Patent Applications on Inventions it solely owns under the Agreement. If Nektar does not wish to file, prosecute or maintain any such Patent Applications or Patents that relate to **[***]** in any country, Nektar shall give Bayer reasonable written notice to such effect and shall grant Bayer any necessary authority to file, prosecute and maintain such Patent Applications or maintain such a Patent in Bayer's own name and at Bayer's sole expense. In such event, Nektar shall assign its entire right, title and interest in and to such Patent Applications or Patents in that country to Bayer. Notwithstanding the foregoing, after the Effective Date, Nektar shall file Patent Applications included within the Nektar Patent Rights in at least the countries and regions listed in Exhibit 11.3(a)(i). Nektar shall give Bayer reasonable written notice of the countries and regions in which it will file such Patent Applications in order to permit Bayer reasonable time to file such Patent Applications in any country in which Nektar will not be filing. If Bayer wishes to file such Patent Applications in any additional countries, Nektar shall provide Bayer with copies of any documents necessary to conduct such filings and shall grant Bayer any necessary authority to file, prosecute and maintain such Patent Applications in Bayer's own name and at Bayer's sole expense. In such event, Nektar shall assign its entire right, title and interest in and to such Patent Applications in that country to Bayer. **[***]** and be solely responsible for prosecuting, maintaining, enforcing and defending any Patent or Patent Application assigned to Bayer under this Section 11.3(a)(i). In the event that Bayer chooses not to prosecute, maintain, enforce or defend any such Patents or Patent Applications, Nektar will have the option to do so **[***]**.

(ii) [***] and be responsible for filing, prosecuting and maintaining Patents and Patent Applications on Inventions it solely owns under the Agreement. If Bayer does not wish to file, prosecute or maintain any such Patent Applications or Patents in any country, Bayer shall give Nektar reasonable written notice to such effect and shall grant Nektar any necessary authority to file, prosecute and maintain such Patent Applications or

maintain or defend such a Patent in Nektar's own name and **[***]**. In such event, Bayer shall assign its entire right, title and interest in and to such Patent Applications or Patents in that country to Nektar.

(iii) For jointly owned Inventions, the Parties shall select a mutually acceptable Third Party patent counsel to file, prosecute and maintain Patents and Patent Applications thereon on behalf of both Parties (**"Joint Patent Rights"**). All costs and expenses for Joint Patent Rights shall be shared by the Parties as follows: Bayer shall bear **[***]** of such costs and expenses and Nektar shall bear **[***]** of such costs and expenses. If either Party does not wish to file, prosecute or maintain any Joint Patent Rights in any country or pay its portion of any shared costs for Joint Patent Rights in any country, that Party shall give the other Party reasonable written notice to such effect and shall grant the other Party any necessary authority to file, prosecute, maintain or defend such Joint Patent Rights in the other Party's own name and at the other Party's sole expense. In such event, the Party shall assign its entire right, title and interest in and to such Joint Patent Rights in that country to the other Party.

(b) Each Party shall promptly disclose, and shall cause its Sublicensees and Affiliates to disclose, to the other in writing all Inventions and intellectual property rights arising from the joint or separate activities of the Parties or their respective agents, contractors, Affiliates and sublicensees during and in connection with the performance of the activities conducted pursuant to this Agreement. Each Party shall ensure that, to the extent permitted by Applicable Law, its employees, agents, contractors, and sublicensees performing work pursuant to this Agreement are, and shall cause its Affiliates performing work pursuant to this Agreement to be, under an obligation to assign to it all Inventions therein and intellectual property rights made or arising during and in the course of and as a result of the performance of such work or, where such obligation is not permitted in a particular country, to exclusively license to it all such Inventions and intellectual property rights, with the right to authorize or grant sublicenses in such country, or where neither of the foregoing obligations is permitted in a particular country then, to non-exclusively license to it all such Inventions and intellectual property rights, with the right to authorize or grant sublicenses in such country.

11.4 Third Party Licenses.

(a) If either Party reasonably determines that certain Third Party intellectual property rights are necessary for the Development or Commercialization of the Product, where such Third Party intellectual property rights are necessary solely due to the inclusion of **[***]** in the Product, Bayer shall at its expense obtain a license to such Third Party intellectual property, with the right to sublicense, in order to permit both Parties to conduct their obligations under the Agreement. Subject to the foregoing, the terms and conditions involved in obtaining such rights shall be determined at Bayer's sole discretion. If Bayer elects not to obtain rights to such Third Party intellectual property, or is unsuccessful in obtaining such rights, then Nektar shall have the right (but not the obligation) to negotiate and obtain rights from such Third Party at its sole discretion and expense. If either Party reasonably determines that certain Third Party intellectual property rights are necessary for the Development or Commercialization of the Product, where such Third Party intellectual property rights are necessary solely due to the inclusion of the **[***]** in the Product, Nektar shall at its expense obtain a license to such Third Party intellectual property, with the right to sublicense, in order to permit both Parties to conduct

their obligations under the Agreement. Subject to the foregoing, the terms and conditions involved in obtaining such rights shall be determined at Nektar's sole discretion. If Nektar elects not to obtain rights to such Third Party intellectual property, or is unsuccessful in obtaining such rights, then Bayer shall have the right (but not the obligation) to negotiate and obtain rights from such Third Party at its sole discretion and expense. If either Party reasonably determines that certain Third Party intellectual property rights are necessary for the Development or Commercialization of the Product, where such Third Party intellectual property rights are required for reasons not solely based on the inclusion of **[***]** in the Product, the Parties shall jointly obtain the requisite rights to such Third Party intellectual property and share the costs associated therewith as follows: Bayer shall bear **[***]** of such costs and Nektar shall bear **[***]** of such costs. The terms and conditions involved in obtaining such rights shall be mutually agreed upon by both Parties.

(b) If the Parties disagree on whether rights in Third Party intellectual property are reasonably necessary for the Development or Commercialization of the Product, the JSC will be responsible for determining whether rights in such Third Party intellectual property should be obtained. If the JSC determines that rights in such Third Party intellectual property are reasonably necessary, the responsibility and costs for obtaining such rights shall be borne by the Parties as follows: (i) Bayer shall bear all costs and expenses incurred in connection with any such license, under Third Party intellectual property rights that are necessary solely due to the inclusion of **[***]** in the Product; (ii) Nektar shall bear all costs and expenses incurred in connection with any such license, under Third Party intellectual property rights that are necessary solely due to the inclusion of the **[***]** in the Product; and (iii) for any such licenses under Third Party intellectual property rights that are required for reasons not solely due either to the inclusion of **[***]**, in the Product, the Parties shall jointly obtain the requisite license to such Third Party intellectual property rights and share the costs associated therewith as follows: Bayer shall bear **[***]** of such costs, and Nektar shall bear **[***]** of such costs. If the JSC determines that rights in such Third Party intellectual property are not required, either Party may obtain a license under such Third Party intellectual property at its sole discretion and expense.

11.5 Infringement by Third Parties. Subject to Section 11.3(a)(ii), **[***]** enforcing, and shall have the first right to enforce, Patents throughout the Territory that claim the composition of matter of, methods of making, or methods of using **[***]**, which right includes the right to control and settle the litigation (subject to the last sentence of this Section 11.5). Subject to Section 11.3(a)(i), **[***]** enforcing, and shall have the first right to enforce, Patents throughout the Territory that claim the **[***]**, which right includes the right to control and settle the litigation (subject to the last sentence of this Section 11.5). If the Party having such first right does not initiate an enforcement action within ninety (90) days after the Parties first learn of such infringement, the other Party shall have the right to enforce such Patents against infringers to the extent such infringement relates to products competitive with the Product in the Field. All of the costs and expenses of both Parties incurred in connection with such proceedings shall be borne by the Party bringing such action, and any recoveries shall be awarded to the enforcing Party. For Nektar Patent Rights and Patents Controlled by Bayer and/or its Affiliates relating to a **[***]** (in each case, including without limitation Joint Patent Rights), the Parties shall jointly enforce such Patents throughout the Territory and share the costs associated with such enforcement and any recoveries associated therewith as follows: Bayer shall bear or receive **[***]** of such costs or recovery, as applicable, and Nektar shall bear or receive **[***]** of such costs or recovery, as

applicable. If one Party chooses not to participate in enforcement of Patents relating to a **[***]**, the other Party shall have the right to enforce such Patents (provided all of the costs and expenses of both Parties incurred in connection with such enforcement shall be borne by the enforcing Party), including without limitation the right to settle such litigation (subject to the last sentence of this Section 11.5) at its sole expense and to keep all recoveries associated therewith. If, in any enforcement action taken pursuant to this Section 11.5, the enforcing Party determines that the other Party is an indispensable party to such action, the other Party hereby consents to be joined in such action and, in such event, the other Party shall have the right to be represented in such action using counsel of its own choice at the enforcing Party's expense. Notwithstanding the foregoing, each Party's enforcement rights under this Section 11.5 shall be subject to limitations imposed in any license agreement with a Third Party existing as of the Effective Date relating to the Patent to be enforced. The joint consent of Bayer and Nektar (which consent shall not be unreasonably withheld or delayed) shall be required of any settlement, consent judgment or other voluntary final disposition of a suit under this Section 11.5 that could adversely affect the other Party's interest.

11.6 Infringement Outside the Field. Nektar shall retain any and all rights to pursue an action against, and control all proceedings relating to, an infringement by a Third Party of the Nektar Patent Rights or Nektar Know-How that is not related to the Product and/or is exclusively outside the Field. Bayer shall retain any and all rights to pursue an action against, and control all proceedings relating to, an infringement by a Third Party of a Patent relating to an Invention solely owned by Bayer under the Agreement that is not related to the Product and/or is exclusively outside the Field.

11.7 Further Actions. Each Party shall cooperate with the other Party to execute all documents and take all reasonable actions to effect the intent of this Article 11.

11.8 [***] Patents*. [***] retains certain rights to prosecute and enforce certain Patents and Patent Applications **[***]**.

12. REPRESENTATIONS AND WARRANTIES

12.1 The Parties' Representations and Warranties. Nektar, Aerogen and Bayer (each a "Representing Party") each hereby represents and warrants to each other, as of the Effective Date, as set forth below:

(a) To the best of such Representing Party's knowledge, all of its employees, officers, contractors and consultants have executed agreements requiring assignment to such Representing Party of all inventions made during the course of and as a result of their association with such Representing Party and obligating each such employee, officer, contractor and consultant to maintain as confidential the Confidential Information of such Representing Party.

(b) It has the power, authority and legal right, and is free, to enter into this Agreement and, in so doing, will not violate any other agreement to which it is a party as of the Effective Date. Moreover, during the term of this Agreement, it shall not enter into any agreement with any Third Party that will conflict with the rights granted to another Representing

Party under this Agreement. This Agreement has been duly executed and delivered on behalf of such Representing Party and constitutes a legal, valid and binding obligation of such Representing Party and is enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency or other laws of general application affecting the enforcement of creditor rights and judicial principles affecting the availability of specific performance and general principles of equity, whether enforceability is considered a proceeding at law or equity.

(c) It has taken all corporate action necessary to authorize the execution and delivery of this Agreement.

(d) Neither it, nor any of its employees, officers, subcontractors or consultants who have rendered or will render services relating to the Project or the Product: (i) has ever been debarred or is subject or debarment or convicted of a crime for which an entity or person could be debarred under 21 U.S.C. Section 335a, or (ii) has ever been under indictment for a crime for which a person or entity could be debarred under said Section 335a. If during the term of this Agreement, a Representing Party has reason to believe that it or any of its employees, officers, subcontractors or consultants rendering services relating to the Project or the Product: (x) is or will be debarred or convicted of a crime under 21 U.S.C. Section 335a, or (y) is or will be under indictment under said Section 335a, then such Representing Party shall immediately notify the other Representing Parties of same in writing.

(e) All necessary consents, approvals and authorizations of all Regulatory Authorities and other Third Parties required to be obtained by such Representing Party in connection with the execution and delivery of this Agreement and the performance of its obligations hereunder have been obtained.

(f) The execution and delivery of this Agreement and the performance of such Representing Party's obligations hereunder (i) do not conflict with or violate any requirement of Applicable Law or any provision of the articles of incorporation, bylaws, limited partnership agreement or any similar instrument of such Representing Party, as applicable, in any material way, and (ii) do not conflict with, violate, or breach or constitute a default or require any consent under, any Applicable Law or any contractual obligation or court or administrative order by which such Representing Party is bound.

12.2 Additional Representations and Warranties of Bayer. Bayer hereby represents and warrants to Nektar, as of the Effective Date, that Bayer (a) is a corporation duly organized and subsisting under the laws of its jurisdiction of organization, and (b) has full power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as it is contemplated to be conducted by this Agreement.

12.3 Additional Representations and Warranties of Nektar and Aerogen. Nektar and Aerogen hereby represents and warrants to Bayer, as of the Effective Date, as set forth below:

(a) Nektar is a corporation duly organized, validly existing and subsisting under the laws of the State of Delaware. Aerogen is a wholly owned subsidiary of Nektar, and is a corporation duly organized, validly existing and subsisting under the laws of the State of Delaware.

(b) Each of Nektar and Aerogen has full power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as is contemplated to be conducted by this Agreement.

(c) Nektar has title to Patents and Patent Applications solely owned by Nektar and included within the Nektar Patent Rights. The Nektar Patent Rights solely owned by Nektar are free and clear of any liens, charges, encumbrances, or judgments in the Field. Aerogen has title to Patents and Patent Applications solely owned by Aerogen and included within the Nektar Patent Rights. The Nektar Patent Rights solely owned by Aerogen are free and clear of any liens, charges, encumbrances, or judgments in the Field, except to the extent **[***]**.

(d) Except for the license grants in Section 2.1, and except as to any rights previously granted by **[***]**, neither Nektar, Aerogen nor any of their Affiliates have assigned, transferred, conveyed or otherwise encumbered in the Field, any right, title or interest in or to the Nektar Patent Rights or the Nektar Know-How.

(e) There are no judgments or settlements against Nektar or Aerogen or amounts owed by Nektar or Aerogen (other than amounts owed in the ordinary course of business) with respect to the Nektar Patent Rights or the Nektar Know-How, except with respect to the **[***]**.

(f) Nektar has provided Bayer with a copy of all validity, infringement or freedom-to-operate opinions that were prepared on behalf of Nektar or Aerogen by outside counsel pertaining to the **[***]**.

(g) Nektar and Aerogen, to their actual knowledge, are in compliance in all material respects with any agreement between Nektar or Aerogen and a Third Party relating to the practice of the Nektar Patent Rights in the Field.

(h) All Patents and Patent Applications owned by Nektar or Aerogen as of the Effective Date that claim a product, method, apparatus, material, manufacturing process or other technology necessary to develop, make, use, sell, offer for sale, import or export **[***]** are Controlled by Nektar or Aerogen as of the Effective Date.

(i) Nektar and Aerogen have sufficient legal and/or beneficial title under their intellectual property rights necessary for the purposes contemplated under this Agreement and to grant the licenses contained in this Agreement.

(j) Neither Nektar nor Aerogen are aware of any pending or threatened litigation nor have they received any written communications alleging that they have violated or would violate, through the manufacture, import and/or sale of the Product hereunder, or by conducting their obligations under the Project as currently proposed under this Agreement, any rights including intellectual property rights of any Third Party.

13. NON-SOLICITATION OF EMPLOYEES

13.1 Non-Solicitation. While the Parties are performing research, Development and Commercialization activities in connection with the Project under this Agreement and for a period of **[***]** years thereafter, neither Party shall, without the express written consent of the other Party, recruit, solicit or induce any employee of the other Party to terminate his or her employment with such other Party. The foregoing provision shall not, however, restrict either Party or its Affiliates from advertising employment opportunities in any manner that does not directly target the other Party or its Affiliates or from hiring any persons who respond to such generalized public advertisements.

14. MUTUAL INDEMNIFICATION AND INSURANCE

14.1 Nektar's Right to Indemnification. Bayer shall indemnify, defend and hold harmless each of Nektar and its Affiliates and their respective successors, assigns, directors, officers, employees and agents, from and against any and all liabilities, damages, losses, settlements, penalties, fines, costs and expenses, including without limitation reasonable attorneys' fees and litigation costs (any of the foregoing to be referred to herein as "Damages") of whatever kind or nature (but not including taxes) arising from any Third Party demand, investigation, claim, action or suit in the Territory to the extent based on (i) any act, whether of omission or commission, by Bayer (or its Affiliates, Sublicensees or any of their respective directors, officers, agents, employees or contractors) with respect to its failure to properly discharge or perform its areas of responsibility under this Agreement, including, without limitation, the supply of Formulated Amikacin for Commercial purposes (including without limitation any defect or alleged defect in Formulated Amikacin provided pursuant to this Agreement or any injury or death of any person arising out of or related to Formulated Amikacin provided pursuant to this Agreement), packaging and distribution of the Product for Commercial purposes, the conduct of any Clinical Trial by Bayer, and the Exploitation of the Product, except in each case for those types of Damages for which Nektar has an obligation to indemnify Bayer and its Affiliates pursuant to Section 14.2; (ii) the gross negligence or willful or intentional misconduct of Bayer, its Affiliates or any of its Sublicensees or their respective directors, officers, agents, employees or contractors under this Agreement; (iii) a material breach by Bayer of any term of this Agreement, (iv) a material breach by Bayer of any obligation, representation, warranty or covenant hereunder; or (v) a violation of Applicable Law in the performance of its duties under this Agreement by Bayer, its Affiliates or any of its Sublicensees or their respective directors, officers, agents, employees or contractors, in each case except to the extent caused by (a) the gross negligence or willful intentional misconduct of Nektar, its Affiliates, or Sublicensees, or any of their respective directors, officers, agents, contractors or employees under this Agreement; (b) material breach by Nektar of any term of this Agreement; (c) the material breach by Nektar of any obligation, representation, covenant or warranty hereunder; or (d) any violation of Applicable Law in the performance of its duties under this Agreement by Nektar, its Affiliates, or Sublicensees, or any of their respective directors, officers, agents, contractors or employees.

14.2 Bayer's Right to Indemnification. Nektar shall indemnify, defend and hold harmless each of Bayer and its Affiliates and their respective successors, assigns, directors, officers, employees and agents, from and against any and all Damages of whatever kind or

nature (but not including taxes) arising from any Third Party demand, investigation, claim, action or suit in the Territory to the extent based on (i) any act, whether of omission or commission, by Nektar (or its Affiliates or any of their respective directors, officers, agents, employees or contractors) with respect to its failure to properly discharge or perform its areas of responsibility under this Agreement, including, without limitation, the supply of the Device (including without limitation any defect or alleged defect in the Device provided pursuant to this Agreement or any injury or death of any person arising out of or related to any Device provided pursuant to this Agreement), the supply of Formulated Amikacin for Clinical Trials, and the conduct of Phase I Clinical Trials, **[***]**, and Phase II Clinical Trials by Nektar, except in each case for those types of Damages for which Bayer has an obligation to indemnify Nektar and its Affiliates pursuant to Section 14.1; (ii) the gross negligence or willful or intentional misconduct of Nektar, its Affiliates or any of its Sublicensees or any of their respective directors, officers, agents, employees or contractors under this Agreement; (iii) a material breach by Nektar of any term of this Agreement; or (iv) a material breach by Nektar of any obligation, representation, warranty or covenant hereunder; or (v) a violation of Applicable Law in the performance of its duties under this Agreement by Nektar, its Affiliates or any of its Sublicensees or their respective directors, officers, agents, employees or contractors, in each case except to the extent caused by (a) the gross negligence or willful intentional misconduct of Bayer, its Affiliates, or Sublicensees, or any of their respective directors, officers, agents, contractors or employees under this Agreement; (b) material breach by Bayer of any term of this Agreement; (c) the material breach by Bayer of any obligation, representation, covenant or warranty hereunder; or (d) any violation of Applicable Law in the performance of its duties under this Agreement by Bayer, its Affiliates, or Sublicensees, or any of their respective directors, officers, agents, contractors or employees.

14.3 Process for Indemnification. A Party's obligation to defend, indemnify and hold harmless the other Party under this Article 14 shall be conditioned upon the following:

(a) A Party seeking indemnification under this Article 14 (the **"Indemnified Party"**) shall give prompt written notice of the claim to the other Party (the **"Indemnifying Party"**).

(b) Each Party shall furnish promptly to the other, copies of all papers and official documents received in respect of any Damages. The Indemnified Party shall cooperate as requested by the Indemnifying Party in the defense against any Damages.

(c) With respect to any Damages relating solely to the payment of money damages and which will not result in the Indemnified Party's becoming subject to injunctive or other relief or otherwise adversely affecting the business of the Indemnified Party in any manner, and as to which the Indemnifying Party shall have acknowledged in writing the obligation to indemnify the Indemnified Party under this Article 14, the Indemnifying Party shall have the sole right to defend, settle or otherwise dispose of such Damages, on such terms as the Indemnifying Party, in its sole discretion, shall deem appropriate.

(d) With respect to Damages relating to all other matters, the Indemnifying Party shall have the sole right to control the defense of such matter, provided that the Indemnifying Party shall obtain the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed, prior to ceasing to defend, settling or otherwise

disposing of any Damages if as a result thereof (i) the Indemnified Party would become subject to injunctive or other equitable relief or any remedy other than the payment of money by the Indemnifying Party or (ii) the business of the Indemnified Party would be adversely affected.

(e) The Indemnifying Party shall not be liable for any settlement or other disposition of Damages by the Indemnified Party which is reached without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed, it being understood that if such consent is withheld, the Indemnifying Party will be responsible for the amount of damages or increased costs and expenses attributable to such failure to give consent.

14.4 Insurance.

(a) During the term of this Agreement and for **[***]** years thereafter, Bayer shall either (i) maintain, at its sole expense, clinical trial and product liability insurance relating to the Product that is comparable in type and amount to the insurance customarily maintained by Bayer with respect to similar prescription pharmaceutical products that are marketed, distributed and sold in the Territory, or (ii) self insure for such risks.

(b) During the term of this Agreement and for [***] years thereafter, Nektar shall maintain, at its sole expense, such types and amounts of insurance coverage as is appropriate and customary in the pharmaceutical industry in light of the nature of the activities to be performed by Nektar hereunder.

15. CONFIDENTIALITY

15.1 Confidentiality; Exceptions. For the term of this Agreement and for a period of **[***]** years thereafter, each Party shall maintain in confidence all Information and materials of the other Party disclosed or provided to it by the other Party (either pursuant to this Agreement, or the Confidential Disclosure Agreement entered into by Nektar and Bayer Pharmaceuticals Corporation dated **[***]** (the **"Confidential Disclosure Agreement"**)), to the extent related to Amikacin, and identified as confidential, either in writing or verbally (provided any verbally disclosed Information is reduced to writing and submitted to the other Party within thirty (30) days of such verbal disclosure) (together with all embodiments thereof, the **"Confidential Information"**). Confidential Information also includes, but is not limited to, Information generated hereunder, and Information regarding intellectual property and confidential or proprietary Information of Third Parties. In addition, and notwithstanding the foregoing, if under Article 11 Information constituting inventions and discoveries are to be owned by one Party, such Information shall be deemed to be Confidential Information of such Party, even if such Information is initially generated and disclosed by the other Party. The terms and conditions of this Agreement and the Confidential Disclosure Agreement also shall be deemed Confidential Information of both Parties. Notwithstanding the foregoing, Confidential Information shall not include that portion of Information or materials that the receiving Party can demonstrate by contemporaneous written records was (i) known to the general public at the time of its disclosure to the receiving Party, or thereafter became generally known to the general public, other than as a result of actions or omissions of the receiving Party or anyone to whom the receiving Party disclosed such Information; (ii) known by the receiving Party prior to the

date of disclosure by the disclosing Party; (iii) disclosed to the receiving Party on an unrestricted basis from a source unrelated to the disclosing Party and not under a duty of confidentiality to the disclosing Party; or (iv) independently developed by the receiving Party by personnel that did not have access to or use of Confidential Information of the disclosing Party.

Any combination of features or disclosures shall not be deemed to fall within the foregoing exclusions merely because individual features are published or known to the general public or in the rightful possession of the receiving Party unless the combination itself and principle of operation thereof are published or known to the general public or are in the rightful possession of the receiving Party.

15.2 Degree of Care; Permitted Use. Each Party shall take reasonable steps to maintain the confidentiality of the Confidential Information of the other Party, which steps shall be no less protective than those steps that such Party takes to protect its own Information and materials of a similar nature, but in no event less than a reasonable degree of care. Neither Party shall use or permit the use of any Confidential Information of the other Party except for the purposes of carrying out its obligations or exercising its rights under this Agreement or the Confidential Disclosure Agreement, and neither Party shall copy any Confidential Information of the other Party except as may be reasonably useful or necessary for such purposes. All Confidential Information of a Party, including without limitation all copies and derivations thereof, is and shall remain the sole and exclusive property of the disclosing Party and subject to the restrictions provided for herein. Neither Party shall disclose any Confidential Information of the other Party other than to those of its directors, officers, Affiliates, employees, licensors, independent contractors, Sublicensees, assignees, agents and external advisors directly concerned with the carrying out of this Agreement, on a strictly applied "need to know" basis; provided, however, that such directors, officers, Affiliates, employees, licensors, independent contractors, Sublicensees, assignees, agents and external advisors are subject to confidentiality and non-use obligations at least as stringent as the confidentiality and non-use obligations provided for in this Article 15. Except to the extent expressly permitted under this Agreement, the receiving Party may not use Confidential Information of the other Party in applying for Patents or securing other intellectual property rights without first consulting with, and obtaining the written approval of, the other Party (which approval shall not be unreasonably withheld or delayed).

15.3 Permitted Disclosures. The obligations of Sections 15.1, 15.2, and 16.1 shall not apply to the extent that the receiving Party is required to disclose Information pursuant to (a) an order of a court of competent jurisdiction, (b) Applicable Laws, (c) regulations or rules of a securities exchange, (d) requirement of a governmental agency for purposes of obtaining approval to test or market the Product, (e) disclosure of Information to a Patent office for the purposes of filing a Patent Application as permitted in this Agreement, or (f) the exercise by each Party of its rights granted to it under this Agreement or its retained rights, including, without limitation, the Exploitation of the Product, and such Third Party agrees to confidentiality and non-use obligations at least as stringent as those specified for in this Article 15; provided that the receiving Party shall provide prior written notice thereof to the disclosing Party and sufficient opportunity for the disclosing Party to review and comment on such required disclosure and request confidential treatment thereof or a protective order therefor.

15.4 Irreparable Injury. The Parties acknowledge that either Party's breach of this Article 15 would cause the other Party irreparable injury for which it would not have an adequate remedy at law. In the event of a breach, the nonbreaching Party may seek injunctive relief, whether preliminary or permanent, in addition to any other remedies it may have at law or in equity, without necessity of posting a bond.

15.5 Return of Confidential Information. Each Party shall return or destroy, at the other Party's instruction, all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement, except any Confidential Information that is necessary to allow such Party to perform or enjoy any of its rights or obligations that expressly survive the termination or expiration of this Agreement.

16. PUBLICITY

16.1 Public Disclosure. The Parties agree that the initial public announcement of the execution of this Agreement shall be in the form of a mutually agreed upon press release that describes the nature and scope of the collaboration including its aggregate value (the **"Initial Public Disclosure"**). In connection with the issuance of such press release, Nektar shall also be permitted to make any filings required under Applicable Law, including without limitation filings with the U.S. Securities and Exchange Commission to report the execution of this Agreement. During the term of this Agreement, in all cases other than the announcement set forth in the Initial Public Disclosure, each Party shall submit to the other Party (the **"Non-Publishing Party"**) for review and approval all proposed press releases, academic, scientific and medical publications and public presentations relating to the Product that have not been previously disclosed. Such review and approval shall be conducted for the purposes of preserving intellectual property protection and determining whether any portion of the proposed publication or presentation containing the Confidential Information of the Non-Publishing Party should be modified or deleted, and (in the case of a disclosure that Nektar wishes to make) to determine whether such disclosure is in the best interests of the Parties in connection with the Development of the Product (such determination to be made in Bayer's reasonable discretion). Written copies of such proposed publications and presentations (other than press releases) shall be submitted to the Non-Publishing Party no later than **[***]** days before submission for publication or presentation; provided that, for general disclosure of program status to investors or analysts, or in public conference or earnings calls (**"General Disclosure"**) such **[***]** day period shall be shortened to **[***]** business days. Subject to Applicable Law, written copies of proposed press releases shall be submitted to the Non-Publishing Party no later than **[***]** hours before release. The Non-Publishing Party shall provide its comments, if any, and (if it so chooses) its approval within (a) **[***]** business days, in the case of a press release, and (b) **[***]** business days of its receipt of any other written copy. With respect to matters other than press releases, the review period may be extended for an additional **[***]** days, or for General Disclosures **[***]** business days, in the event the Non-Publishing Party can demonstrate reasonable need for such extension, including, without limitation, the preparation and filing of Patent Applications. This period may be further extended by mutual written agreement of the Parties. Nektar and Bayer will each comply with standard academic practice regarding authorship of scientific publications and recognition of contribution of other parties in any publications.

16.2 Statement Regarding Collaboration. Subject to Applicable Law, any Information publicly disclosed by Bayer relating to the Project for widespread public dissemination or release, whether in the form of press releases, technical publications or other public statements regarding the Project, shall include a prominent statement that the Project involves development and commercialization of products for Pulmonary Delivery of Formulated Amikacin using Nektar's proprietary pulmonary delivery technology. Nektar shall not use any Bayer Trademark or any derivation of the Bayer name without the advance express written consent of Bayer, which consent may be granted or withheld in Bayer's sole discretion.

17. TRADEMARKS

17.1 Product Trademark; Use of Nektar Trademark. Subject to Section 7.7, the Product, the Device, Product packaging (including, without limitation, ampoules and vials), promotional materials, package inserts, and labeling shall bear one or more Trademark(s) chosen and owned by Bayer. The Product, the Device, Product packaging (including, without limitation, ampoules and vials), promotional materials, package inserts, and labeling shall also bear the Nektar Trademark as provided in Section 7.7. Nektar grants to Bayer the right to use Nektar's Trademarks solely to the extent necessary for Bayer to exercise its rights and fulfill its obligations set forth in this Agreement. Bayer shall not use any Nektar Trademark outside the scope of this Agreement, and shall not knowingly take any action that would materially adversely affect the value of any Nektar Trademark. Nektar shall retain the right to monitor the quality of the goods on or with which the Nektar Trademark is used solely to the extent necessary to maintain Nektar's Trademark rights.

17.2 Trademark Prosecution and Maintenance. Bayer shall bear the full costs and expense of and be responsible for filing, prosecuting and maintaining any Trademarks owned by Bayer. Nektar shall bear the full costs and expense of and be responsible for filing, prosecuting and maintaining any Trademarks owned by Nektar. The Parties shall jointly select a Product-specific Trademark and shall jointly own such Trademark in the Shared Territory. For jointly filed, Product-specific Trademark(s) in the Shared Territory, all of the cost and expenses incurred by the Parties under this Agreement, including without limitation those incurred in connection with the selection, preparation, filing, prosecution, and maintenance of Trademark(s) used in Commercialization of the Product, filing and maintenance fees paid to governmental authorities, and the costs of litigation (enforcement or defense) or other proceedings, under such Trademark(s), including without limitation fees and expenses paid to outside counsel (**"Trademark Expenses"**), shall be shared by the Parties as follows: Bayer shall bear **[***]** of such costs and expenses, and Nektar shall bear **[***]** of such costs and expenses. Bayer shall solely own and shall be responsible for filing, prosecuting and maintaining any Product-specific Trademarks in the Royalty Territory and conducting litigation with respect thereto. Bayer shall solely bear all costs and expenses associated with such activities for any Product-specific Trademark in the Royalty Territory.

18. TERM AND TERMINATION

18.1 Term. The term of this Agreement shall commence as of the Effective Date and, unless sooner terminated as specifically provided in this Agreement, shall continue in effect on a country-by-country basis until the expiration of all royalty and payment obligations in

each country in the Territory. Upon expiration of all royalty and payment obligations in each country in the Territory, Bayer shall have a royalty-free, paid-up, non-exclusive license in such country.

18.2 Termination by Bayer.

(a) Bayer shall have the right to terminate the Agreement **[***]** days' prior written notice. If Bayer terminates the Agreement pursuant to this Section 18.2(a), Bayer shall pay to Nektar a termination fee equal to:

(i) [***], if such termination occurs **[***]**; or

(ii) [***], if such termination occurs **[***]**; or

(iii) [***], if such termination occurs **[***]**.

Bayer shall pay such amount to Nektar in immediately available funds within **[***]** days after the effective date of such termination. The foregoing termination payment shall be in lieu of, and in substitution for, any reimbursement of costs, expenses or fees otherwise reimbursable (other than any Milestone Payments accrued but not yet paid) by Bayer to Nektar pursuant to this Agreement or any other payments with respect to activities relating to the Product under this Agreement (but only to the extent the obligation to make such payments has not accrued prior to the effective date of such termination).

(b) Bayer shall have the right to terminate the Agreement, at any time, upon **[***]** days' prior written notice to Nektar in the event (i) of any development that causes the Product to fail to meet or to no longer meet the MACP that is outside of Bayer's reasonable control, or (ii) that Bayer's Global Pharmacovigilance Team (or any successor thereto within Bayer) determines that Development or Commercialization of the Product must be terminated because of safety issues outside of Bayer's reasonable control (either of (i) or (ii), an **"Unanticipated Development"**). If Bayer terminates the Agreement for an Unanticipated Development, then Bayer and Nektar shall continue to bear their respective share of noncancellable costs and expenses becoming due after the effective date of such termination, to the extent such costs and expenses were set forth in a relevant Plan; provided that the Parties shall use reasonable efforts to minimize expenditures after the effective date of such termination. Upon request by Nektar, Bayer shall provide documentation to support its determination of the occurrence of an Unanticipated Development and meet with Nektar upon request to explain the basis for such determination.

18.3 Termination by Nektar. Nektar shall have the right to terminate the Agreement, at any time, upon **[***]** days' prior written notice to Bayer in the event that Nektar determines that Development or Commercialization of the Product must be terminated **[***]**. If Nektar terminates the Agreement in accordance with the foregoing, then Nektar and Bayer shall continue to bear their respective share of noncancellable costs and expenses becoming due after the effective date of such termination, to the extent such costs and expenses were set forth in a relevant Plan; provided that the Parties shall use reasonable efforts to minimize expenditures after the effective date of such termination. Upon request by Bayer, Nektar shall provide documentation to support its determination and meet with Bayer upon request to explain the basis for such determination.

18.4 Termination for Material Breach. If either Party believes the other is in material breach of a material obligation under this Agreement, it may give notice of such breach to the other Party, which other Party shall have **[***]** days in which to remedy such breach, or **[***]** days in the case of breach (whether material or not) of any payment obligation hereunder. Such **[***]** day period shall be extended in the case of a breach not capable of being remedied in such **[***]** day period so long as the breaching Party uses diligent efforts to remedy such breach and is pursuing a course of action that, if successful, will effect such a remedy. If such alleged breach is not remedied in the time period set forth above, the nonbreaching Party shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, and in addition to any other remedies available to it by law or in equity, to terminate this Agreement upon written notice to the other Party. In the event of a dispute regarding any payments due and owing hereunder, all undisputed amounts shall be paid when due, and the balance, if any, shall be paid promptly after settlement of the dispute, including without limitation any accrued interest thereon.

18.5 Termination upon Insolvency. Either Party may terminate this Agreement if, at any time, the other Party shall file in any court or agency pursuant to any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of that Party or of its assets, or if the other Party proposes a written agreement of composition or extension of its debts, or if the other Party shall be served with an involuntary petition against it, filed in any insolvency proceeding, and such petition shall not be dismissed within **[***]** days after the filing thereof, or if the other Party shall propose or be a Party to any dissolution or liquidation, or if the other Party shall make an assignment for the benefit of its creditors.

18.6 Termination by Bayer Pursuant to Section 18.2 or by Nektar Pursuant to Section 18.3 or 18.4. In the event that Bayer terminates this Agreement under Sections 18.2(a) or 18.2(b), or if Nektar terminates this Agreement under Sections 18.3 or 18.4, then, as of the effective date of such termination, the following terms and conditions shall apply:

(a) The license grants in Section 2.1 shall terminate and all rights with respect thereto shall revert in their entirety to Nektar.

(b) Unless such termination was by Bayer under Section 18.2(b)(ii) or by Nektar under Section 18.3, subject to any Third Party (excluding Agents of Bayer) rights existing at the time of termination and to the extent that technology covered by a Patent Controlled by Bayer or its Affiliates or an Agent of Bayer is incorporated into or is otherwise used in connection with the Product by Bayer during the Development or Commercialization of the Product pursuant to this Agreement, Bayer agrees that neither it nor its Agents will, and Bayer shall cause its Affiliates not to, assert against Nektar, its subsidiaries, Affiliates or sublicensees, any claim, or institute any action or proceeding, whether at law or equity, under any intellectual property rights, including without limitation Patents or Patent Applications, that may prevent Nektar, its Affiliates or sublicensees from making, having made, using, having used, promoting, developing, offering for sale, selling, having sold, importing, having imported,

exporting, having exported or marketing the Product as it exists as of the termination date. This covenant shall be binding upon, and inure to the benefit of, the Parties, their successors, and assigns. Nektar's sublicensees for the Product shall be Third Party beneficiaries of this Section 18.6(b).

(c) Bayer shall, without additional consideration, assign to Nektar all of Bayer's right, title and interest in and to (i) the continuation Patent Application **[***]**, and (ii) any Patents or Patent Applications assigned to Bayer under Section 11.3(a)(i). Nektar shall bear, in its sole discretion, the full costs and expense of and be solely responsible for prosecuting, maintaining, enforcing and defending the Nektar Patent Rights and any Patents or Patent Applications assigned to Nektar pursuant to this Section 18.6(c).

(d) Unless such termination was by Bayer under Section 18.2(b)(ii) or by Nektar under Section 18.3, Bayer shall, without additional consideration, assign to Nektar all of Bayer's right, title and interest in and to any Patent Applications or Patents developed pursuant to and during the course of the Agreement relating solely to **[***]**. Nektar shall bear, in its sole discretion, the full costs and expense of and be solely responsible for prosecuting, maintaining, enforcing and defending the Nektar Patent Rights and any Patents or Patent Applications assigned to Nektar pursuant to this Section 18.6(d).

(e) For prosecution and maintenance of Joint Patent Rights, Section 11.3(a)(iii) shall survive and apply. If neither Party wishes to pursue or maintain any Patents or Patent Applications associated with Joint Patent Rights, then such Patents or Patent Applications shall be allowed to go abandoned.

(f) For Joint Patent Rights (other than those assigned to Nektar pursuant to this Section 18.6), the Parties shall jointly enforce such Patents throughout the Territory and share the costs associated with such enforcement and any recoveries associated therewith as follows: Bayer shall bear or receive **[***]** of such costs or recovery, as applicable, and Nektar shall bear or receive **[***]** of such costs or recovery, as applicable. If one Party chooses not to participate in enforcement of the Joint Patent Rights, the other Party shall have the right to enforce such Patents (provided all of the costs and expenses of both Parties incurred in connection with such enforcement shall be borne by the enforcing Party), including without limitation the right to settle such litigation (subject to the next sentence of this Section 18.6(f)) at its sole expense and to keep all recoveries associated therewith. The joint consent of Bayer and Nektar (which consent shall not be unreasonably withheld or delayed) shall be required of any settlement, consent judgment or other voluntary final disposition of a suit under this Section 18.6(f) that could adversely affect the other Party's interest. If, in any enforcement action taken pursuant to this Section 18.6(f), the enforcing Party determines that the other Party is an indispensable party to such action, the other Party hereby consents to be joined in such action and, in such event, the other Party shall have the right to be represented in such action using counsel of its own choice at the enforcing Party's expense. Notwithstanding the foregoing, each Party's enforcement rights under this Section 18.6(f) shall be subject to limitations imposed in any license agreement with a Third Party existing as of the Effective Date relating to the Patent to be enforced.

(g) Unless such termination was by Bayer under Section 18.2(b)(ii) or by Nektar under Section 18.3, to the extent they are assignable, Bayer shall execute any documents necessary to transfer Bayer's rights under any Third Party licenses obtained solely or jointly by Bayer pursuant to and during the course of the Agreement under Section 11.4 to Nektar, and Nektar shall thereafter be responsible for all costs, expenses and obligations associated with such Third Party licenses.

(h) Unless such termination was by Bayer under Section 18.2(b)(ii) or by Nektar under Section 18.3, Bayer shall, without additional consideration, assign to Nektar all of its right, title and interest in and to any Product-specific Trademark filed during the course of and pursuant to the Agreement. Nektar shall bear, in its sole discretion, the full costs and expense of and be solely responsible for prosecuting, maintaining, enforcing and defending any Product-specific Trademark in the Territory after the effective date of termination.

(i) Unless such termination was by Bayer under Section 18.2(b)(ii) or by Nektar under Section 18.3, upon Nektar's request, Bayer shall transfer to Nektar, and Nektar shall have the right to use, all materials, results, analyses, reports, websites, marketing materials, technology, know-how, regulatory filings and other Information, reasonably required by Nektar, in whatever form developed, controlled or generated as of the effective date of such termination by or on behalf of Bayer, its Affiliates or Sublicensees with respect to the Product. Bayer agrees to submit to the FDA and other Regulatory Authorities in jurisdictions in which any regulatory filings have been made with respect to the Product, within **[***]** days after the effective date of such termination, a letter (with a copy to Nektar) notifying the FDA and such other Regulatory Authorities of the transfer of any regulatory filings for the Product in such jurisdictions from Bayer to Nektar. Additionally, Bayer will grant to Nektar any rights of reference or access to regulatory filings necessary to practice the rights granted to it under this Section 18.6. All transfers described in this Section 18.6(i) shall be at Bayer's expense.

(j) Unless such termination was by Bayer under Section 18.2(b)(ii) or by Nektar under Section 18.3, if Bayer at the time was supplying Formulated Amikacin, Bayer shall supply Nektar's or its designee's requirements of Formulated Amikacin and, using such Amikacin and the Device supplied by Nektar, Product in final packaged form at commercially reasonable prices until the earlier of Nektar's qualification of alternate supply sources, or **[***]** months after termination.

(k) For any Patents or Patent Applications covering Inventions owned by Bayer under Section 11.2(a)(ii) that are not assigned to Nektar upon termination of this Agreement in accordance with Section 18.6(d), the license granted to Nektar in Section 11.2(a)(ii)(A) shall be expanded to include the entire Territory.

(l) Surviving Rights. Except where expressly provided for otherwise in this Agreement, termination of this Agreement by Nektar pursuant to Section 18.3 or 18.4 or termination of this Agreement by Bayer pursuant to Section 18.2(a) or Section 18.2(b), shall not relieve the Parties of any liability, including without limitation any obligation to make payments hereunder, which accrued hereunder prior to the effective date of such termination, nor preclude any Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement, nor prejudice any Party's right to obtain performance of

any obligation. In the event of such termination, the following provisions shall survive in addition to others specified in this Agreement to survive in such event: Sections 8.5–8.10 (solely to the extent applicable to the amounts due and owing to Nektar as of the effective date of such termination).

18.7 Termination by Bayer for Material Breach by Nektar. In the event that Bayer terminates this Agreement under Section 18.4, then as of the effective date of such termination, the following terms and conditions shall apply:

(a) The license grant in Section 11.2(a)(ii)(A) shall terminate and all rights with respect thereto shall revert in their entirety to Bayer, provided that the license set forth in Section 11.2(a)(ii)(B) shall continue in full force and effect.

(b) The license grants in Section 2.1 shall continue. In addition, Bayer shall have a royalty-bearing license pursuant to the terms set forth in Section 18.7(i), under the Nektar Know-How and Nektar Patent Rights, to make and have made the Device solely in connection with Exploitation of the Product in the Field throughout the Territory.

(c) The co-exclusive license in Section 2.1(b)(i) shall become exclusive as of the effective date of such termination.

(d) Nektar shall grant a sublicense to Bayer under any Third Party licenses obtained by Nektar pursuant to and during the course of this Agreement under Section 11.4.

(e) Nektar shall, without additional consideration, assign to Bayer all of Nektar's right, title and interest in and to any Patents or Patent Applications assigned to Nektar under Section 11.3(a)(ii). Bayer shall bear, in its sole discretion, the full costs and expense of and be solely responsible for prosecuting, maintaining, enforcing and defending any Patents or Patent Applications assigned to Bayer pursuant to this Section 18.7(e).

(f) Nektar shall, without additional consideration, assign to Bayer all of its right, title and interest in and to any Product-specific Trademark filed during the course of and pursuant to the Agreement. Bayer shall bear, in its sole discretion, the full costs and expense of and be solely responsible for prosecuting, maintaining, enforcing and defending any Product-specific Trademark in the Territory after the effective date of termination.

(g) Upon Bayer's request, Nektar shall transfer to Bayer, and Bayer shall have the right to use, all materials, results, analyses, reports, websites, marketing materials, technology, know-how, regulatory filings and other Information, reasonably required by Bayer, in whatever form developed, controlled or generated as of the effective date of such termination by or on behalf of Nektar, its Affiliates or Sublicensees with respect to the Product. Additionally, Nektar will grant to Bayer any rights of reference or access to regulatory filings necessary to practice the rights granted to it under this Section 18.7. All transfers described in this Section 18.7(g) shall be at Nektar's expense.

(h) Nektar shall supply Bayer's or its designee's requirements of the Device at commercially reasonable prices until the earlier of Bayer's qualification of alternate supply sources, or **[***]** months after termination.

(i) Bayer shall continue to pay royalties in the Royalty Territory in accordance with Section 8.4(a), (b), (c), (e) and (f) and Sections 8.5-8.10 provided that Bayer shall not be required to make any additional royalty payments under Section 8.4(d). However, Bayer shall continue to pay Milestone Payments under Section 8.3. In addition, Bayer may either:

(x) treat the Shared Territory as the Royalty Territory for purposes of the payments to be made under Section 8.4(a), (b), (c), (e) and (f) and Sections 8.5-8.10 (but not for purposes of Section 8.4(d)), provided that the Net Sales in the Shared Territory shall not be aggregated with Net Sales in the Royalty Territory for purposes of payments to be made under Section 8.4(a), in which case Bayer shall be deemed to have elected its remedy for such breach by Nektar and shall not have the right to pursue other remedies available to it under law or in equity in connection with such breach, or

(y) treat the Shared Territory as the Royalty Territory for purposes of the payments to be made under Section 8.4(a), (b), (c), (e) and (f) and Sections 8.5-8.10 (but not for purposes of Section 8.4(d)), provided that the Net Sales in the Shared Territory shall not be aggregated with Net Sales in the Royalty Territory for purposes of payments to be made under Section 8.4(a), and further provided that the royalty rate applicable to the Shared Territory under Section 8.4(a) shall be fixed at **[***]** of annual Net Sales in the Shared Territory **[***]**, in which case Bayer shall retain the right to pursue other remedies available to it under law or in equity in connection with such breach.

In the case that either clause (x) or (y) of this Section 18.7(i) applies: (A) Nektar would thereafter no longer be obligated to bear any portion of Allowable Expenses and would not be entitled to participate in Product Profit and Loss under Section 8.2(b)(i), (B) Nektar, after the effective date of such termination, shall be solely responsible for the payment of all amounts **[***]** with respect to the Territory, and (C) all of the Parties' payment obligations, other than those relating to Product Profit and Loss and Allowable Expenses, as set forth in this Agreement will continue to apply. For clarity, milestone payments payable by Bayer to Nektar pursuant to Section 8.4(d) shall not accrue based on sales of the Product in the Shared Territory.

(j) To the extent that technology covered by a Patent Controlled by an Agent of Nektar is incorporated into or is otherwise used in connection with the Product by Nektar during the Development or Commercialization of the Product pursuant to this Agreement, Nektar agrees that its Agents will not assert against Bayer, its subsidiaries, Affiliates or sublicensees, any claim, or institute any action or proceeding, whether at law or equity, under any intellectual property rights, including without limitation Patents or Patent Applications, that may prevent Bayer, its Affiliates or sublicensees from making, having made, using, having used, promoting, developing, offering for sale, selling, having sold, importing, having imported, exporting, having exported or marketing the Product as it exists as of the termination date. This covenant shall be binding upon, and inure to the benefit of, the Parties, their successors, and assigns. Bayer's sublicensees for the Product shall be Third Party beneficiaries of this Section 18.7(j).

(k) Surviving Rights. Except where expressly provided for otherwise in this Agreement, termination of this Agreement pursuant to Section 18.4 for Nektar's breach shall not relieve the Parties of any liability, including without limitation any obligation to make payments hereunder, which accrued hereunder prior to the effective date of such termination, nor preclude any Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement, nor prejudice any Party's right to obtain performance of any obligation. In the event of such termination, the following provisions shall survive in addition to others specified in this Agreement to survive in such event: Sections 2.1–2.5 (subject to Sections 18.7(b) and (c)), 5.2(c), 5.8, 8.3, 8.4(a)–(c) and 8.4(e) and (f), 8.5-8.10, 11.3(a) (subject to Section 18.7(e)), 11.5, and 17.1 (first two sentences only).

18.8 General Surviving Obligations. The rights and obligations set forth in this Agreement shall extend beyond the expiration or termination of the Agreement only to the extent expressly provided for herein, or to the extent that the survival of such rights or obligations are necessary to permit their complete fulfillment or discharge. Without limiting the foregoing, the Parties have identified various rights and obligations which are understood to survive, as follows. In the event of expiration or termination of this Agreement for any reason, the following provisions shall survive in addition to others specified in this Agreement to survive in such event. Termination of this Agreement shall not terminate Bayer's obligation to pay all Milestone Payments, royalties and other payments which shall have accrued hereunder (including without limitation any Milestone Payments then accrued because the event has occurred but the Milestone Payment is not yet due). Additionally, the rights and obligations of the Parties under Sections 10.2–10.3 (for the period set forth in Section 10.4), 11.1 (first sentence only), 11.2 (subject to Sections 18.6 and 18.7), 13.1 (for the period set forth therein), 14.1–14.3, 14.4 (for the period set forth therein), and Articles 1, 15 (for the period set forth therein), 18 (as applicable), 19, and 20, and payment obligations for rights accrued under Article 11 (subject to Sections 18.6(c)-18.6(h)) as of the effective date of expiration or termination date shall survive the termination or expiration of this Agreement.

18.9 Challenge.

(a) Nektar shall have the right to terminate this Agreement immediately upon written notice if Bayer or its Affiliate challenges in a court of competent jurisdiction, the validity, scope or enforceability of, or otherwise opposes, any Patent included in the Nektar Patent Rights, [***]. If a Sublicensee of Bayer or its Affiliate challenges the validity, scope or enforceability of or otherwise opposes any Patent included in the Nektar Patent Rights under which such Sublicensee is sublicensed, then Bayer or its Affiliate, as applicable, shall, upon written notice from Nektar, terminate such sublicense. Bayer and its Affiliates shall include provisions in all agreements under which a Third Party obtains a license under any Patent included in the Nektar Patent Rights providing that, if the Sublicensee challenges the validity or enforceability of or otherwise opposes any such Patent under which the Sublicensee is sublicensed, then Bayer may terminate such sublicense agreement with such Sublicensee, and Bayer shall, upon request by Nektar, enforce such right if such Sublicensee breaches such restriction.

(b) Bayer shall have the right to terminate this Agreement immediately upon written notice if Nektar or its Affiliate challenges in a court of competent jurisdiction, the validity, scope or enforceability of or otherwise opposes any Patent licensed to Nektar under Section 11.2(a)(ii). If a Sublicensee of Nektar or its Affiliate challenges the validity, scope or enforceability of, or otherwise opposes, any Patent licensed to Nektar under Section 11.2(a)(ii) under which such Sublicensee is sublicensed, then Nektar or its Affiliate, as applicable, shall, upon written notice from Bayer, terminate such sublicense. Nektar and its Affiliates shall include provisions in all agreements under which a Third Party obtains a license under any Patent licensed to Nektar under Section 11.2(a)(ii) providing that if the sublicensee challenges the validity or enforceability of or otherwise oppose any such Patent under which the sublicensee is sublicensed, Nektar or its Affiliate, as applicable, may terminate its sublicense agreement with such sublicensee, and Nektar shall, upon request by Bayer, enforce such right if such sublicensee breaches such restriction.

18.10 Accrued Rights, Surviving Obligations. Termination or expiration of this Agreement shall not relieve either Party from obligations that are expressly indicated to survive termination or expiration of the Agreement. Except as otherwise provided for in this Agreement, termination by a Party shall not be an exclusive remedy, and all other remedies will be available to the terminating Party, in equity and at law.

18.11 Rights in Bankruptcy. All rights and licenses granted under or pursuant to this Agreement by Nektar or Bayer are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, licenses of right to "intellectual property" as defined under Section 101 of the United States Bankruptcy Code. The Parties agree that the Parties, as licensees of such rights under this Agreement, shall retain and may fully exercise all of their rights and elections under the United States Bankruptcy Code. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against either Party under the United States Bankruptcy Code, the Party that is not a party to such proceeding shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property, which, if not already in the non-subject Party's possession, shall be promptly delivered to it (a) upon any such commencement of a bankruptcy proceeding upon the non-subject Party's written request therefor, unless the Party subject to such proceeding elects to continue to perform all of its obligations under this Agreement or (b) if not delivered under clause (a) above, following the rejection of this Agreement by or on behalf of the Party subject to such proceeding upon written request therefor by the non-subject Party.

19. LIMITATION OF LIABILITY AND EXCLUSION OF DAMAGES; DISCLAIMER OF WARRANTY

19.1 EXCEPT IN THE CASE OF A BREACH OF ARTICLE 15, AND WITHOUT LIMITING THE PARTIES' OBLIGATIONS UNDER ARTICLE 14, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROFITS, INTERRUPTION OR LOSS OF BUSINESS OR OTHER ECONOMIC LOSS) ARISING OUT OF THIS AGREEMENT OR WITH RESPECT TO A PARTY'S PERFORMANCE OR NON-PERFORMANCE HEREUNDER.

19.2 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY PROVIDES ANY WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, REGARDING THE PRODUCT, FORMULATED AMIKACIN OR THE DEVICE USED IN PRECLINICAL STUDIES OR CLINICAL TRIALS OR FOR COMMERCIAL USE, AND EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FREEDOM FROM INFRINGEMENT OF THIRD PARTY RIGHTS.

20. MISCELLANEOUS

20.1 Agency. Neither Party is, nor shall be deemed to be, an employee, agent, co-venturer or legal representative of the other Party for any purpose. Neither Party shall be entitled to enter into any contracts in the name of, or on behalf of the other Party, nor shall either Party be entitled to pledge the credit of the other Party in any way or hold itself out as having the authority to do so.

20.2 Assignment; Change of Control.

(a) Except as otherwise provided in this Agreement, neither this Agreement nor any interest hereunder shall be assignable by any Party without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed following the conclusion of the Project); provided, however, (i) the assignment of this Agreement by operation of law pursuant to a merger or consolidation of either Party with or into any Third Party shall, regardless of the identity of the surviving entity to such merger or consolidation, not be deemed an assignment in violation of this Section 20.2, (ii) either Party, without such consent, may assign its rights and delegate its duties hereunder to an Affiliate thereof without obtaining such consent, provided that the assigning Party agrees to remain primarily (and not secondarily or derivatively) liable for the full and timely performance by such Affiliate of all its obligations hereunder, and (iii) either Party, without such consent, may assign its rights and delegate its duties hereunder to a successor entity or acquirer, provided that the assigning Party agrees to remain primarily (and not secondarily or derivatively) liable for the full and timely performance by such assignee of all its obligations hereunder.

(b) If Nektar undergoes a Change of Control, Bayer shall have the right, exercisable within **[***]** days of its receipt of notice from Nektar of such Change of Control to do any or all of the following, (i) to terminate Nektar's co-promotion rights under Section 7.3, 7.4 and 7.8, (ii) to treat the Shared Territory as the Royalty Territory for purposes of the payments to be made under Section 8.4(a), (b), (c), (e) and (f) and Sections 8.5-8.10 (but not for purposes of Section 8.4(d)) under this Agreement, provided that the Net Sales in the Shared Territory shall not be aggregated with Net Sales in the Royalty Territory for purposes of payments to made under Section 8.4(a)), and further provided that the royalty rate applicable to the Shared Territory under Section 8.4(a) shall be fixed at **[***]** of annual Net Sales in the

Shared Territory **[***]** (a **"Royalty Conversion"**), and/or (iii) to terminate Nektar's participation in the GPT, GBT, and RBU in which case the Parties shall form new committees to govern the Commercialization and Development, respectively, of the Product, each of which committees has equal representation by each of Bayer and Nektar and which shall operate as set forth in Sections 3.4(c), 3.5(c), and 3.6(c), respectively, with such newly formed committees having the responsibilities formerly held by the GPT, GBT, and RBU, respectively. If Bayer elects a Royalty Conversion, Nektar would thereafter no longer be obligated to bear any portion of Allowable Expenses and would not be entitled to participate in Product Profit and Loss under Section 8.2(b)(i). In such event, (A) Nektar shall thereafter be solely responsible for the payment of all amounts **[***]** with respect to the Territory, and (B) all of the Parties' payment obligations, other than those relating to Product Profit and Loss and Allowable Expenses, as set forth in this Agreement will continue to apply. For clarity, milestone payments payable to Nektar pursuant to Section 8.4(d) shall not accrue based on sales in the Shared Territory.

(c) This Agreement shall be binding upon and inure to the successors and permitted assignees of the Parties and the name of a Party appearing herein shall be deemed to include the names of such Party's successor's and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment not in accordance with this Section 20.2 shall be void.

20.3 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

20.4 Force Majeure. Neither Party shall be liable or responsible to the other Party for loss or damages, nor shall it have any right to terminate this Agreement for any default or delay attributable to any event beyond its reasonable control and without its fault or negligence, including but not limited to acts of God, acts of government (including injunctions), fire, flood, earthquake, strike, lockout, labor dispute, breakdown of plant, shortage of critical equipment, loss or unavailability of manufacturing facilities or material, casualty or accident, civil commotion, acts of public enemies, acts or terrorism or threat of terrorist acts, blockage or embargo and the like (a **"Force Majeure Event"**); provided, however, that in each such case the Party affected shall use reasonable efforts to avoid such occurrence and to remedy it promptly. The Party affected shall give prompt notice of any such cause to the other Party. The Party giving such notice shall thereupon be excused from such of its obligations hereunder as it is thereby disabled from performing for so long as it is so disabled and for **[***]** days thereafter and the Party receiving notice shall be similarly excused from its respective obligations which it is thereby disabled from performing; provided, however, that such affected Party commences and continues to take reasonable and diligent actions to cure such cause. Notwithstanding the foregoing, nothing in this Section 20.4 shall excuse or suspend the obligation to make any payment due hereunder in the manner and at the time provided.

20.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), telexed, mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof):

If to Bayer, addressed to:

Bayer Healthcare LLC
555 White Plains Road
Tarrytown, New York 01591
Attn: [***]
[***]
Facsimile: [***]

With copy to:

Bayer Healthcare AG
D-51368
Leverkusen, Germany
Attn: [***]
Facsimile: [***]

If to Aerogen, addressed to:

Aerogen, Inc.
150 Industrial Road
San Carlos, CA U.S.A. 94070
Attention: Chief Executive Officer

With copy to:

Aerogen, Inc.
150 Industrial Road
San Carlos, CA U.S.A. 94070
Attention: Vice President, Corporate Legal

If to Nektar, addressed to:

Nektar Therapeutics
150 Industrial Road
San Carlos, CA U.S.A. 94070
Attention: Chief Executive Officer

With copy to:

Nektar Therapeutics
150 Industrial Road
San Carlos, CA U.S.A. 94070
Attention: Vice President, Corporate Legal

20.6 Amendment. No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

20.7 Waiver. No provision of this Agreement shall be waived by any act, omission or knowledge of a Party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

20.8 Counterparts. This Agreement may be executed simultaneously in two counterparts, either one of which need not contain the signature of more than one Party but both such counterparts taken together shall constitute one and the same agreement.

20.9 Construction. The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement. Except where the context otherwise requires, wherever used the singular shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders. The terms “including” and “inclusive of” shall mean “including without limitation.” The language of this Agreement shall be deemed to be the language mutually chosen by the Parties and no rule of strict construction shall be applied against either Party hereto.

20.10 Governing Law. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of New York, U.S.A. without regard to its or any other jurisdiction’s choice of law rules. Any disputes under this Agreement shall be brought in the state or federal courts located in the State of New York, U.S.A. The Parties irrevocably accept the exclusive jurisdiction of such courts solely and specifically for the purpose of adjudicating disputes arising out of or in connection with this Agreement and any other agreement entered into pursuant hereto or in connection herewith (including without limitation matters regarding the construction, interpretation and enforceability of such agreements), and in no event shall any Party be deemed to have consented to such jurisdiction for any other purpose. Each Party further agrees that such courts provide a convenient forum for any such action, and waives any objections or challenges to venue with respect to such courts.

20.11 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. In the event of such invalidity, the Parties shall seek to agree on an alternative enforceable provision that preserves the original purpose of this Agreement.

20.12 Compliance with Applicable Law. Each Party will comply with all Applicable Law in performing its obligations and exercising its rights hereunder. Nothing in this Agreement shall be deemed to permit Bayer to export, re-export or otherwise transfer any Information transferred hereunder or Product manufactured therefrom without complying with Applicable Law.

20.13 Entire Agreement of the Parties. This Agreement and the Exhibits attached hereto, and any other agreements between the Parties effective as of the Effective Date relating to the subject matter hereof, constitute and contain the complete, final and exclusive understanding and agreement of the Parties hereto, and cancel and supersede any and all prior negotiations, correspondence, understandings and agreements, whether oral or written, between the Parties respecting the subject matter hereof (including the Confidential Disclosure Agreement to the extent it relates to Amikacin but not to the extent it relates to any other subject matter disclosed thereunder), and neither Party shall be liable or bound to any other Party in any manner by any representations, warranties, covenants, or agreements except as specifically set forth herein or therein. Nothing in this Agreement, express or implied, is intended to confer upon any Party, other than the Parties hereto and their respective successors and assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided herein. To the extent that anything set forth in an exhibit attached hereto conflicts with the terms of this Agreement, the terms of this Agreement shall control.

20.14 Performance by Affiliates.

(a) Nektar recognizes that Bayer may perform some or all of its obligations under this Agreement through Affiliates, including the performance by Bayer-Schering Pharma AG or Bayer Healthcare AG of Bayer's obligations arising in or to be performed in the Shared Territory, provided, however, that Bayer shall remain responsible for the performance by its Affiliates and shall use Commercially Reasonable Efforts to cause its Affiliates to comply with the provisions of this Agreement in connection with such performance.

(b) Bayer recognizes that Nektar may perform some or all of its obligations under this Agreement through Affiliates, provided, however, that Nektar shall remain responsible for the performance of its Affiliates and shall use Commercially Reasonable Efforts to cause its Affiliates to comply with the provisions of this Agreement in connection with such performance.

20.15 Certain Additional Obligations. Any capitalized terms not defined in this Agreement and used in this Section 20.15 shall have the meaning ascribed to them in the **[***]**.

(a) Subject to **[***]**, Bayer acknowledges **[***]** as that interest appears.

(b) Bayer acknowledges **[***]**'s disclaimer of warranty in **[***]** and the limitation on **[***]**'s liability in **[***]**.

(c) Bayer agrees not to make any statements, representations or warranties whatsoever to any person or entity, or accept any liabilities or responsibilities whatsoever from any person or entity that are inconsistent with the disclaimers or limitations in **[***]**.

(d) Bayer shall also indemnify, defend and hold harmless **[***]**.

(e) For purposes of **[***]**, Bayer self-insures.

(f) Bayer agrees to refrain from using the name of **[***]** or any adaptation thereof in publicity or advertising without the **[***]**'s prior written approval.

(g) Nektar shall have the right to assign its rights, solely with respect to the license granted by **[***]** to Nektar under **[***]**, to **[***]** in the event **[***]**.

(h) Nektar agrees not to amend the **[***]** in any manner that would materially adversely affect the rights of Bayer under the **[***]**.

(i) Nektar represents that the **[***]** has been achieved.

(j) Nektar agrees not to materially breach its obligations to **[***]**.

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[***] indicates that certain information contained herein has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives as set forth below:

BAYER HEALTHCARE LLC

By: _____
Name: [***]

NEKTAR THERAPEUTICS

By: _____
Name: [***]

AEROGEN, INC.

By: _____
Name: [***]

NEKTAR THERAPEUTICS
2000 EQUITY INCENTIVE PLAN

RESTRICTED STOCK UNIT AGREEMENT

Pursuant to your Restricted Stock Unit Grant Notice (***"Grant Notice"***) and this Restricted Stock Unit Agreement (***"Agreement"***) (collectively, the ***"Award"***), Nektar Therapeutics (the ***"Company"***) has awarded you, pursuant to its 2000 Equity Incentive Plan (the ***"Plan"***), the number of Restricted Stock Units as indicated in the Grant Notice. Defined terms not explicitly defined in this Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your Award are as follows.

1. VESTING. Subject to the limitations contained herein, your Award shall vest as provided in the Grant Notice, provided that vesting shall cease upon the termination of your Continuous Service. Any Restricted Stock Units that have not vested shall be forfeited upon the termination of your Continuous Service. Notwithstanding the foregoing, (i) in the event your Continuous Service is terminated as a result of your death, your Award shall become fully vested as of the date of your death, or (ii) upon the closing of a Corporate Transaction, your Award shall become fully vested.

2. DIVIDENDS. You shall not receive any payment or other adjustment in the number of your Restricted Stock Units for dividends or other distributions that may be made in respect of the shares of Common Stock to which your Restricted Stock Units relate.

3. DISTRIBUTION OF SHARES OF COMMON STOCK. The Company will deliver to you a number of shares of Common Stock equal to the number of vested shares of Common Stock subject to your Award as soon as practicable following the vesting date or dates provided in your Grant Notice; *provided, however*, that the shares of Common Stock subject to your Award that vest on or prior to the execution of your Grant Notice shall be delivered as soon as practicable following the date of execution of your Grant Notice; and *provided further, however*, that in the event that the Company determines that you are subject to its policy regarding insider trading of the Company's stock and any shares of Common Stock subject to your Award are scheduled to be delivered on a day (the "***Original Distribution Date***") that does not occur during a "window period" applicable to you, as determined by the Company in accordance with such policy, then such shares shall not be delivered on such Original Distribution Date and shall instead be delivered as soon as practicable within the next "window period" applicable to you pursuant to such policy; and *provided further, however*, in the event of the termination of your Continuous Service, the shares of Common Stock subject to your Award that have vest on or prior to the date of termination of your Continuous Service that have not been previously distributed to you shall be delivered as soon as practicable following the date of termination of your Continuous Service.

4. NUMBER OF SHARES. The number of Restricted Stock Units subject to your Award may be adjusted from time to time for capitalization adjustments, as provided in Section 11(a) of the Plan.

5. SECURITIES LAW COMPLIANCE. You may not be issued any shares of Common Stock under your Award unless the shares of Common Stock are either (i) then registered under the Securities Act or (ii) the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. Your Award must also comply with other applicable laws and regulations governing the Award, and you shall not receive such shares if the Company determines that such receipt would not be in material compliance with such laws and regulations.

6. EXECUTION OF DOCUMENTS. You hereby acknowledge and agree that the manner selected by the Company by which you indicate your consent to your Grant Notice is also deemed to be your execution of your Grant Notice and of this Agreement. You further agree that such manner of indicating consent may be relied upon as your signature for establishing your execution of any documents to be executed in the future in connection with your Award. This Agreement shall be deemed to be signed by the Company and you upon the respective signing by the Company and you of the Grant Notice to which it is attached.

7. RESTRICTIVE LEGENDS. The shares of Common Stock issued under your Award shall be endorsed with appropriate legends, if any, determined by the Company.

8. TRANSFERABILITY. Your Award is not transferable, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, by delivering written notice to the Company, in a form satisfactory to the Company, you may designate a third party who, in the event of your death, shall thereafter be entitled to receive any distribution of shares of Common Stock pursuant to Section 3 of this Agreement.

9. AWARD NOT A SERVICE CONTRACT. Your Award is not an employment or service contract, and nothing in your Award shall be deemed to create in any way whatsoever any obligation on your part to continue in the service of the Company or an Affiliate, or on the part of the Company or an Affiliate to continue such service. In addition, nothing in your Award shall obligate the Company or an Affiliate, their respective stockholders, boards of directors, Officers or Employees to continue any relationship that you might have as an Employee, Director or Consultant for the Company or an Affiliate.

10. UNSECURED OBLIGATION. Your Award is unfunded, and as a holder of vested Restricted Stock Units subject to your Award, you shall be considered an unsecured creditor of the Company with respect to the Company's obligation, if any, to issue shares of Common Stock pursuant to Section 3 of this Agreement.

11. WITHHOLDING OBLIGATIONS. You shall be required to deposit with the Company an amount of cash equal to the amount determined by the Company to be required with respect to any federal, state, local or foreign withholding obligations of the Company in connection with the Award or conversion of Restricted Stock Units into shares of Common Stock. Alternatively, the Company, in its sole discretion, may withhold the required amounts from your pay during the pay periods immediately preceding and/or next following the date on which any such applicable tax liability arises or may permit you, subject to such conditions as the Company may require, to elect to have the Company withhold a number of shares of Common Stock otherwise deliverable having a Fair Market Value sufficient to satisfy such

withholding obligations. The Company shall not deliver any shares of Common Stock unless you have made provision for withholding that is satisfactory to the Company, in its sole discretion.

12. NOTICES. Any notices provided for in your Award or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

13. HEADINGS. The headings of the Sections in this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or to affect the meaning of this Agreement.

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

15. AMENDMENT. Nothing in this Agreement shall restrict the Company's ability to exercise its discretionary authority pursuant to Section 3 of the Plan; *provided*, *however*, that no such action may, without your consent, adversely affect your rights under your Award and this Agreement.

16. MISCELLANEOUS.

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

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

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

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

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

NEKTAR THERAPEUTICS
2000 EQUITY INCENTIVE PLAN

STOCK OPTION AGREEMENT

Pursuant to the Stock Option Grant Notice (***"Option Notice"***) and this Stock Option Agreement, Nektar Therapeutics (the ***"Company"***) has granted you an option under its 2000 Equity Incentive Plan (the ***"Plan"***) to purchase the number of shares of the Company's Common Stock indicated in the Option Notice at the exercise price indicated in the Option Notice. Defined terms not explicitly defined in this Stock Option Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your option are as follows:

1. VESTING. Subject to the limitations contained herein, your option will vest as provided in the Option Notice, provided that vesting will cease upon the termination of your Continuous Service. Notwithstanding the foregoing, (i) in the event your Continuous Service is terminated as a result of your death, your option shall become fully vested and exercisable as of the date of your death, or (ii) upon the closing of a Corporate Transaction, your option shall become fully vested and exercisable.

2. NUMBER OF SHARES AND EXERCISE PRICE. The number of shares subject to your option and your exercise price per share referenced in the Option Notice may be adjusted from time to time for capitalization adjustments, as provided in the Plan.

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

4. METHOD OF PAYMENT. Payment of the exercise price is due in full upon exercise of all or any part of your option. You may elect to make payment of the exercise price in one or more of the following forms:

(a) In cash or by check;

(b) In the Company's sole discretion at the time your option is exercised and provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal*, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board which, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds; or

(c) In the Company's sole discretion at the time your option is granted (or subsequently, if your option is a nonstatutory stock option) and provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal*, by delivery of already-owned shares of Common Stock either that you have held for the period required to avoid a charge to the Company's reported earnings (generally six months) or that you did not acquire, directly or indirectly from the Company, that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. "Delivery" for these purposes, in the sole discretion of the Company at the time your option is exercised, shall include delivery to the Company of your attestation of ownership of such shares of Common Stock in a form approved by the Company. Notwithstanding the foregoing, your option may not be exercised by tender to the Company of Common Stock to the extent such tender would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

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

6. TERM. The term of your option commences on the Date of Grant and expires upon the ***earliest*** of the following:

(a) three (3) months after the termination of your Continuous Service for any reason other than death or Disability, provided that (i) if during any part of such three (3)-month period the option is not exercisable solely because of the condition set forth in Section 5, the option shall not expire until the earlier of the Expiration Date indicated on the Option Notice or until it shall have been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service, and (ii) if (x) you are a Non-Exempt Employee, (y) you terminate your Continuous Service within six (6) months after the Date of Grant specified in your Option Notice, and (z) you have vested in a portion of your option at the time of your termination of Continuous Service, your option shall not expire until the earlier of (A) the later of the date that is seven (7) months after the Date of Grant specified in your Option Notice or the date that is three (3) months after the termination of your Continuous Service or (B) the Expiration Date;

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

(c) eighteen (18) months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates for a reason other than death;

(d) the Expiration Date indicated in the Option Notice; or

(e) the eighth (8th) anniversary of the Date of Grant.

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

7. EXERCISE.

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

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (1) the exercise of your option, (2) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (3) the disposition of shares of Common Stock acquired upon such exercise.

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

8. TRANSFERABILITY. Your option is not transferable, except by will or by the laws of descent and distribution, and is exercisable during your life only by you. Notwithstanding the foregoing, by delivering written notice to the Company, in a form satisfactory to the Company, you may designate a third party who, in the event of your death, shall thereafter be entitled to exercise your option.

9. OPTION NOT A SERVICE CONTRACT. Your option is not an employment or service contract, and nothing in your option shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option shall

obligate the Company or an Affiliate, their respective shareholders, Boards of Directors, Officers or Employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

10. WITHHOLDING OBLIGATIONS.

(a) At the time your option is exercised, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "cashless exercise" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with your option.

(b) Upon your request and subject to approval by the Company, in its sole discretion, and compliance with any applicable conditions or restrictions of law, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid variable award accounting). Shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

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

11. NOTICES. Any notices provided for in your option or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

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

[DATE]

[NAME]
[ADDRESS]

Dear [NAME]:

In connection with your continued leadership as [TITLE] of Nektar Therapeutics ("***Nektar***" or the "***Company***"), I present you with this letter agreement setting forth certain severance benefits to be afforded to you under certain circumstances (the "***Letter Agreement***"). Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Company's Amended and Restated Change of Control Severance Benefit Plan, as it may be further amended from time to time (the "***COC Plan***").

In the event your employment is terminated for reasons not related to a Change of Control (a) by the Company without Cause, or (b) by you for a Good Reason Resignation, then the Company will enter into a severance arrangement with you which will include the following: (i) a fully effective waiver and release in such form as the Company may require, (ii) a cash severance payment equal to your total annual cash compensation target (defined as your then current monthly base salary annualized for 12 months, plus your then current annual performance bonus target, multiplied by the expected pay-out percentage used by the Company for its GAAP financial statements in the previous calendar quarter, but in any case not to exceed 100% of such target), payable in accordance with the severance payment schedule described in the COC Plan, (iii) the exercise period for the vested and unexercised portion of your stock options shall be twelve (12) months following the termination date, unless earlier terminated as provided by the Company's 2000 Equity Incentive Plan, as amended, or the agreement granting such options, and (iv) the Company shall pay all applicable COBRA payments for you and your family until the earlier of the first anniversary of the termination date and the date on which you become eligible for comparable benefits with another employer. The Company will use commercially reasonable efforts to make adjustments to the terms of this Letter Agreement, as necessary and to the extent practicable, so that the terms will not be deemed deferred compensation taxable under Section 409A of the Internal Revenue Code of 1086, as amended.

The terms, compensation and benefits set forth in this Letter Agreement shall be governed by California law without reference to principles of conflicts of laws, may not be reduced without your prior written consent and shall be binding upon and inure to the benefit of (a) your heirs, executors, and legal representatives upon your death and (b) any person or entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or a majority of the assets, business, capital stock, or voting stock of Nektar. Any such person or entity shall be deemed substituted for Nektar under this Letter Agreement for all purposes. This letter agreement supersedes and replaces in its entirety all other agreements that may exist between you and the Company providing severance benefits in the event of a termination of your employment not related to a Change of Control.

[FIRST NAME], I am delighted at the prospect of your continued leadership at Nektar as [TITLE].

Sincerely,

Howard W. Robin
President and Chief Executive Officer

ACKNOWLEDGED AND ACCEPTED:

[NAME]	Date

EMPLOYMENT TRANSITION AND SEPARATION RELEASE AGREEMENT

Nektar Therapeutics ("Nektar" or "Company") hereby offers you a severance package in connection with your future termination of employment from the Company. This Severance Package Release Agreement ("Agreement") describes the severance package and other terms of your separation transition.

1. Separation Date and Transition Period.

(a) You will remain employed as an at-will employee of the Company until the earliest of: (a) the date the Company terminates your employment for any reason; or (b) September 7, 2007 (the earlier of which being referred to herein as the "Separation Date").

(b) Title and Duties. From the date of this letter through the Separation Date (the "Transition Period"), you will remain employed by the Company in your current position and you will continue to report to your current manager. Your duties and responsibilities during the Transition Period will include, but are not limited to, providing transition assistance and other support within your areas of expertise. During the Transition Period, you will have no authority to represent the Company to third parties or to bind the Company to any contractual obligations, whether written, oral or implied, or represent that you have such authority, unless authorized to do so in writing by an officer of the Company. During the Transition Period, you shall continue to abide by all of the Company's general policies and procedures in effect from time to time, and perform your job duties in good faith to the best of your abilities.

(c) Salary and Benefits; Equity Award Vesting. During the Transition Period: (i) you will continue to be paid your current base salary subject to required withholdings and deductions; (ii) your salary will be paid on the Company's customary payroll dates; (iii) you will continue to be eligible to participate in all benefit plans the Company makes generally available to its employees, and any other benefit plans in which you are enrolled as of the date of this letter, to the extent permitted by the terms and conditions governing those plans; and (iv) subject to the terms of the stock option grants and restricted stock unit grants, if any, provided to you in connection with your employment, and the terms of the applicable equity incentive plans, your stock options and restricted stock unites, if any, will continue to vest.

2. Accrued Salary and Paid Time Off.

(a) Accrued Salary. The Company will pay you on the Separation Date all accrued and unpaid salary through the Separation Date, subject to applicable payroll deduction and withholding.

(b) Accrued Paid Time Off. The Company will pay you any accrued and unused paid time off earned by you through the Separation Date, subject to applicable payroll deduction and withholding. In the event you have negative paid time off balance, such amount will be deducted from your Severance (as defined below) as provided in Section 5(a).

3. Incentive Compensation. You will not be eligible to receive any incentive compensation based under the Company's Discretionary Performance-Based Incentive Compensation Policy for the performance period ending December 31, 2007.

4. Stock Options and Restricted Stock Units.

(a) Stock Options. Pursuant to the applicable Equity Incentive Plan ("Plan") and the stock option notices and agreements issued to you thereunder if any (collectively, the "Option Agreements"), vesting of your stock options will cease on the Separation Date. Notwithstanding anything in the Option Agreements to the contrary, your right to exercise your stock options as to any vested shares shall end on the later of (i) the date three (3) months following your Separation Date, or (ii) December 31st following the Separation Date; *provided, however,* in no event shall your exercise period extend beyond the term of your Equity Awards. The stock options also continue to remain subject to all other terms and conditions of the Option Agreements.

(b) Restricted Stock Units. Any vested shares under your restricted stock unit awards ("RSUs"), if any, are owned by you and may be retained or sold by you subject to the terms and conditions of the Plan and the notice and agreements issued to you thereunder as applicable (the "RSU Agreements"). Any unvested RSU's as of the Separation Date will be forfeited as per the RSU Agreements.

5. Severance Benefits. Although the Company is not otherwise obligated to do so, provided that (i) you sign this Agreement, return it to the Company, and allow it to become effective as provided in Section 13; (ii) you do not resign from the Company prior to the Separation Date, (iii) you abide by the terms set forth herein, and (iv) on or promptly after the Separation Date, you sign the Separation Date Release attached hereto as **Exhibit A**, return it to the Company and allow it to become effective, the Company will afford you the following benefits:

(a) Lump Sum Severance. The Company will pay you, as severance, the aggregate sum of $370,125 payable in installments of (i) $92,531 within fifteen (15) days after the effective date of the Separation Date Release and (ii) $277,594 on our about January 15, 2008, in each case subject to applicable deductions and withholding and any applicable deductions under Section 2(b) ("Severance").

(b) Health Insurance. You will remain on the Company's current health insurance policy through the month in which your Separation Date occurs. Additionally, to the extent provided by the federal COBRA law, and by the Company's current group health insurance policies, you will be eligible to continue your and your covered dependents' group health insurance benefits. If you elect continuation coverage under COBRA and upon confirmation of your COBRA election by the Company to its satisfaction, Company will pay you a lump sum amount on a grossed-up basis to cover your first three (3) months of COBRA continuation coverage. The Company will reimburse you for COBRA premiums following such three (3) month period for nine (9) months upon receipt of satisfactory substantiation of your payment of such premiums; *provided however,* that the Company's payment of COBRA premiums may cease at any time you are deemed eligible for group medical and dental

coverage from another employer. After the Company's payment of COBRA premiums ceases, you may continue COBRA coverage at your own expense for as long as you remain eligible for COBRA under federal law.

(c) Flexible Benefits. Your flexible benefits plan pre-tax contribution plan will terminate on your Separation Date. You will be able to continue to submit reimbursements to the plan administrator for eligible expenses for a period of ninety (90) days following the Separation Date.

(d) Employee Stock Purchase Plan. If you are an Employee Stock Purchase Program participant you will also receive a payout of your account balance.

(e) Other Compensation or Benefits. Except as expressly described in this Agreement, you will not receive any additional compensation, severance or benefits after the Separation Date.

6. Non-Disparagement. Both you and the Company (through its officers and directors) agree not to disparage the other party, and the other party's officers, directors, employees, shareholders and agents, in any manner likely to be harmful to them or their business, business reputation or personal reputation; provided that both you and the Company shall respond accurately and fully to any question, inquiry or request for information when required by legal process.

7. Confidentiality. The provisions of this Agreement shall be held in strictest confidence by you and the Company and shall not be publicized or disclosed in any manner whatsoever; provided, however, that: (a) you may disclose this Agreement to your immediate family; (b) the parties may disclose this Agreement in confidence to their respective attorneys, accountants, auditors, tax preparers, and financial advisors; (c) the Company may disclose this Agreement as necessary to fulfill standard or legally required corporate reporting or disclosure requirements; and (d) the parties may disclose this Agreement insofar as such disclosure may be necessary to enforce its terms or as otherwise required by law.

8. Expense Reimbursements. You agree that, within ten (10) business days following the Separation Date, you will submit your final documented expense reimbursement statement reflecting all business expenses you incurred through the Separation Date, if any, for which you seek reimbursement. The Company will reimburse you for these expenses pursuant to its regular business practice.

9. Return of Company Property. You agree that, on the Separation Date, you shall return to the Company all Company documents (and all copies thereof) and other Company property in your possession or control, including, but not limited to: Company files, email, notes, memoranda, correspondence, agreements, draft documents, notebooks, logs, drawings, records, plans, proposals, reports, forecasts, financial information, sales and marketing information, research and development information, personnel information, specifications, computer-recorded information, tangible property and equipment, credit cards, entry cards, identification badges and keys; and any materials of any kind that contain or embody any proprietary or confidential information of the Company (and all reproductions thereof in whole

or in part). If you have used any personal computer, server, or e-mail system to receive, store, review, prepare or transmit any Company confidential or proprietary data, materials or information, you agree to provide the Company with a computer-useable copy of such information and then permanently delete and expunge such Company confidential or proprietary information from those systems; and you agree to provide the Company access to your system as requested to verify that the necessary copying and/or deletion is done, YOU AGREE NOT TO RETAIN ANY PAPER OR ELECTRONIC COPIES OF ANY COMPANY DOCUMENTS OR DATA (INCLUDING BUT NOT LIMITED TO EMAIL) OTHER THAN THIS AGREEMENT AND OTHER DOCUMENTS EVIDENCING YOUR EMPLOYMENT RELATIONSHIP WITH THE COMPANY. **YOU WILL NOT BE ENTITLED TO ANY SEVERANCE BENEFITS UNLESS AND UNTIL YOU COMPLY FULLY WITH THE TERMS SET FORTH IN THIS PARAGRAPH.**

10. Employment Agreement Continues. Following the Separation Date, you have continuing obligations under your Employee Agreement with the Company which include, among other obligations, not to use or disclose any confidential or proprietary information of the Company.

11. Non-Solicitation. You agree that, for twelve (12) months following the Separation Date, you shall not, directly or indirectly (e.g. through directing a recruiting firm to target Company employees), without prior written consent of the Company, solicit or induce any employee of the Company to leave the employ of the Company.

12. General Release. Except as otherwise stated in this Agreement, you hereby generally and completely release the Company and its subsidiaries, successors, predecessors and affiliates, and its and their respective partners, members, directors, officers, employees, stockholders, shareholders, agents, attorneys, predecessors, insurers, affiliates and assigns, from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring at any time prior to and including the date you sign this Agreement. This general release includes, but is not limited to:

(a) all claims arising out of or in any way related to your employment with the Company or the termination of that employment;

(b) all claims related to your compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, restricted stock units, or any other ownership interests in the Company;

(c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing;

(d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and

(e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990 (as amended), the federal Age Discrimination in Employment Act (as amended) ("ADEA"), the

federal Employee Retirement Income Security Act of 1974 (as amended), and the California Fair Employment and Housing Act (as amended), and Labor Code Sections 132a 4553 and 4553.1 of the Workers' Compensation Act, except that this release does not apply to any claim for regular workers' compensation benefits, including indemnity, medical or vocational rehabilitation benefits under the California Workers' Compensation Act.

You represent that you have no lawsuits, claims or actions pending in your name, or on behalf of any other person or entity, against the Company or any other person or entity subject to the release granted in this paragraph.

13. ADEA Waiver. You acknowledge that your waiver and release of any rights you may have under ADEA is knowing and voluntary, and that the consideration given under this Agreement (severance, COBRA payments, outplacement), in exchange for your general waiver and release, is in addition to anything of value to which you were already entitled. You are hereby advised that:

(a) your waiver and release do not apply to any rights or claims that may arise after the date you sign this Agreement;

(b) prior to signing this Agreement you should consult with an attorney (although you may choose voluntarily not to do so);

(c) you have forty-five (45) days to consider this Agreement (although you may choose voluntarily to sign it earlier);

(d) you have seven (7) days following the date you sign this Agreement to revoke it by providing written notice to the Company's Vice President, Human Resources;

(e) this Agreement shall not be effective until the revocation period expires which will be the eighth day after you sign this Agreement.

14. Waiver of Unknown Claims. You hereby expressly waive and relinquish all rights and benefits under Section 1542 of the California Civil Code which reads as follows:

> **A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

You also hereby waive any statutory claims of similar effect.

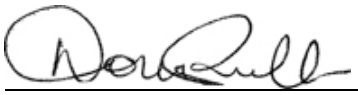
15. Entire Agreement; Modification. This Agreement and your Employee Agreement constitute the complete and only agreement between you and the Company on these subjects. You are agreeing to it without reliance on any promise or representation, written or oral, other than those expressly contained in this Agreement, and it supersedes any other such promises, warranties or representations. This Agreement may not be modified except in a writing signed by both you and the Company's Vice President, Human Resources. This Agreement shall bind the heirs, personal representatives, successors and assigns of both you and Nektar, and inure to

the benefit of both you and Nektar, their heirs, successors and assigns. Any determination that a provision of this Agreement is invalid or unenforceable, in whole or in part, will not affect any other provision of this Agreement, and the provision in question shall be modified by the court so as to be rendered enforceable in accordance with the intent of the parties to the extent possible.

[Remainder of this page is intentionally blank—signature page follows]

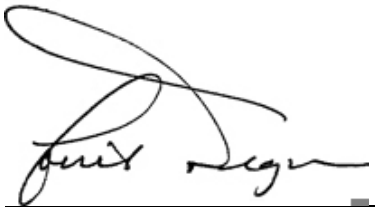
If this Agreement is acceptable to you, please sign below and return the original to Human Resources on or before Oct 12, 2007. The offer of severance benefits contained in this Agreement will automatically expire if we do not receive the fully executed Agreement from you by the aforementioned date.

NEKTAR THERAPEUTICS

By:  Dated: 8/28/07

DORIAN RINELLA
VICE PRESIDENT, HUMAN RESOURCES

LOUIS DRAPEAU

 Dated: 9/4/07

EMPLOYMENT TRANSITION AND SEPARATION RELEASE AGREEMENT

Nektar Therapeutics ("Nektar" or "Company") hereby offers you a severance package in connection with the future termination of your employment with the Company. This Employee Transition and Separation Release Agreement ("Agreement") describes the severance benefits and other terms of your separation transition.

1. Separation Date and Transition Period.

(a) You will remain employed as an at-will employee of the Company until the earliest of: (a) the date the Company terminates your employment for any reason; or (b) November 2, 2007 (the earlier of which being referred to herein as the "Separation Date").

(b) Title and Duties. From the date of this letter through the Separation Date (the "Transition Period"), you will remain employed by the Company in your current position and you will continue to report to your current manager. Your duties and responsibilities during the Transition Period will include, but are not limited to, providing transition assistance and other support within your area of expertise. During the Transition Period, you will have the same authority to represent the Company to third parties as you did prior to the Transition Period; *provided however,* that you may not executive binding contracts on behalf of the Company. During the Transition Period, you shall continue to abide by all of the Company's general policies and procedures in effect from time to time, and perform your job duties in good faith to the best of your abilities.

(c) Salary and Benefits; Equity Award Vesting. During the Transition Period: (i) you will continue to be paid your current base salary subject to required withholdings and deductions; (ii) your salary will be paid on the Company's customary payroll dates; (iii) you will be eligible to receive incentive compensation based on your current incentive compensation target under the Company's Discretionary Performance-Based Incentive Compensation Policy ("Bonus Plan") as provided in Section 3 below; (iv) you will continue to be eligible to participate in all benefit plans the Company makes generally available to its employees, and any other benefit plans in which you are enrolled as of the date of this letter, to the extent permitted by the terms and conditions governing those plans; and (v) subject to the terms of the stock option grants and restricted stock unit grants, if any, provided to you in connection with your employment, and the terms of the applicable equity incentive plans, your stock options and restricted stock unites, if any, will continue to vest.

2. Accrued Salary and Paid Time Off.

(a) Accrued Salary. The Company will pay you on the Separation Date all accrued and unpaid salary through the Separation Date, subject to applicable payroll deduction and withholding.

(b) Accrued Paid Time Off. The Company will pay you any accrued and unused paid time off earned by you through the Separation Date, subject to applicable payroll deduction and withholding. In the event you have negative paid time off balance, such amount will be deducted from your Severance (as defined below) as provided in Section 5(a).

3. Incentive Compensation. You will not be eligible for payments under the Bonus Plan for the performance period commencing July 1 and ending December 31, 2007.

4. Stock Options and Restricted Stock Units.

(a) Stock Options. Pursuant to the applicable Equity Incentive Plan ("Plan") and the stock option notices and agreements issued to you thereunder if any (collectively, the "Option Agreements"), vesting of your stock options will cease on the Separation Date.

(b) Exercise Period. Notwithstanding anything in the Option Agreements to the contrary, your right to exercise your stock options as to any vested shares shall end on November 2, 2008; *provided*, *however*, in no event shall your exercise period extend beyond the term of your Equity Awards or as otherwise provided in the Plan, The stock options also continue to remain subject to all other terms and conditions of the Option Agreements.

(c) Restricted Stock Units. Any vested shares under your restricted stock unit awards ("RSUs"), if any, are owned by you and may be retained or sold by you subject to the terms and conditions of the Plan and the notice and agreements issued to you thereunder as applicable (the "RSU Agreements"). Any unvested RSU's as of the Separation Date will be forfeited as per the RSU Agreements.

5. Severance Benefits. Although the Company is not otherwise obligated to do so, provided that (i) you sign this Agreement, return it to the Company, and allow it to become effective as provided in Section 13; (ii) you do not resign from the Company prior to the Separation Date, (iii) you abide by the terms set forth herein, and (iv) after the Separation Date, you sign the Separation Date Release attached hereto as **Exhibit A** within the time period specified therein, return it to the Company and allow it to become effective, the Company will afford you the following benefits:

(a) Lump Sum Severance. The Company will pay you, as severance, the aggregate sum of $513,381.27 payable within fifteen (15) days after the effective date of the Separation Date Release subject to applicable deductions and withholding and any applicable deductions under Section 2(b) ("Severance").

(b) Health Insurance. You will remain on the Company's current health insurance policy through the month in which your Separation Date occurs. Additionally, to the extent provided by the federal COBRA law, and by the Company's current group health insurance policies, you will be eligible to continue your and your covered dependents' group health insurance benefits. If you elect continuation coverage under COBRA and upon confirmation of your COBRA election by the Company to its satisfaction, the Company will reimburse you for COBRA premiums for up to twelve (12) months upon receipt of satisfactory substantiation of your payment of such premiums; *provided however*, that the Company's payment of COBRA premiums may cease at any time you are deemed eligible for comparable group medical and dental coverage from another employer. After the Company's payment of COBRA premiums ceases, you may continue COBRA coverage at your own expense for as long as you remain eligible for COBRA under federal law.

(c) Flexible Benefits. Your flexible benefits plan pre-tax contribution plan will terminate on your Separation Date. You will be able to continue to submit reimbursements to the plan administrator for eligible expenses for a period of ninety (90) days following the Separation Date.

(d) Employee Stock Purchase Plan. If you are an Employee Stock Purchase Program participant you will also receive a payout of your account balance.

(e) Attorney's Fees. The Company will reimburse you up to $7,500 for the attorney's fees of Dorsey & Whitney LLP actually incurred by you in providing you assistance in negotiating your separation from the Company. You will provide the Company with invoices from Dorsey & Whitney to support the foregoing reimbursement obligation.

(f) Other Compensation or Benefits. Except as expressly described in this Agreement, you will not receive any additional compensation, severance or benefits after the Separation Date.

6. Non-Disparagement. Both you and the Company (through its officers and directors) agree not to disparage the other party, and the other party's officers, directors, employees, shareholders and agents, in any manner likely to be harmful to them or their business, business reputation or personal reputation; provided that both you and the Company shall respond accurately and fully to any question, inquiry or request for information when required by legal process.

7. Confidentiality. The provisions of this Agreement shall be held in strictest confidence by you and the Company and shall not be publicized or disclosed in any manner whatsoever; provided, however, that: (a) you may disclose this Agreement to your immediate family; (b) the parties may disclose this Agreement in confidence to their respective attorneys, accountants, auditors, tax preparers, and financial advisors; (c) the Company may disclose this Agreement as necessary to fulfill standard or legally required corporate reporting or disclosure requirements; and (d) the parties may disclose this Agreement insofar as such disclosure may be necessary to enforce its terms or as otherwise required by law.

8. Expense Reimbursements. You agree that, within ten (10) business days following the Separation Date, you will submit your final documented expense reimbursement statement reflecting all business expenses you incurred through the Separation Date, if any, for which you seek reimbursement. The Company will reimburse you for these expenses pursuant to its regular business practice.

9. Return of Company Property. You agree that, on the Separation Date, you shall return to the Company all Company documents (and all copies thereof) and other Company property in your possession or control, including, but not limited to: Company files, email, notes, memoranda, correspondence, agreements, draft documents, notebooks, logs, drawings, records, plans, proposals, reports, forecasts, financial information, sales and marketing information, research and development information, personnel information, specifications,

computer-recorded information, tangible property and equipment, credit cards, entry cards, identification badges and keys; and any materials of any kind that contain or embody any proprietary or confidential information of the Company (and all reproductions thereof in whole or in part). If you have used any personal computer, server, or e-mail system to receive, store, review, prepare or transmit any Company confidential or proprietary data, materials or information, you agree to provide the Company with a computer-useable copy of such information and then permanently delete and expunge such Company confidential or proprietary information from those systems; and you agree to provide the Company access to your system as requested to verify that the necessary copying and/or deletion is done. YOU AGREE NOT TO RETAIN ANY PAPER OR ELECTRONIC COPIES OF ANY COMPANY DOCUMENTS OR DATA (INCLUDING BUT NOT LIMITED TO EMAIL) OTHER THAN THIS AGREEMENT AND OTHER DOCUMENTS EVIDENCING YOUR EMPLOYMENT RELATIONSHIP WITH THE COMPANY. **YOU WILL NOT BE ENTITLED TO ANY SEVERANCE BENEFITS UNLESS AND UNTIL YOU COMPLY FULLY WITH THE TERMS SET FORTH IN THIS PARAGRAPH.**

10. Employment Agreement Continues. Following the Separation Date, you have continuing obligations under your Employee Agreement with the Company which include, among other obligations, not to use or disclose any confidential or proprietary information of the Company.

11. Non-Solicitation. You agree that, for twelve (12) months following the Separation Date, you shall not, directly or indirectly (e.g. through directing a recruiting firm to target Company employees), without prior written consent of the Company, solicit or induce any employee of the Company to leave the employ of the Company.

12. Continuation of Indemnification. Nektar shall, to the maximum extent permitted by law, continue to indemnify and hold you harmless for any acts or decisions made in good faith while performing services for the Company. To the same extent, Nektar will pay all expenses, including reasonable attorney fees and costs of court-approved settlements, actually and necessarily incurred by you in connection with the defense of any action, suit or proceeding, and in connection with any appeal, that has been brought against you by reason of your service as an employee of the Company, including, without limitation, the matter of *Leznik v. Nektar Therapeutics, Inc. et al*, United States Department of Labor Case Number 2006-SOX-00093.

13. General Release. Except as otherwise stated in this Agreement, you hereby generally and completely release the Company and its subsidiaries, successors, predecessors and affiliates, and its and their respective partners, members, directors, officers, employees, stockholders, shareholders, agents, attorneys, predecessors, insurers, affiliates and assigns, from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring at any time prior to and including the date you sign this Agreement. This general release includes, but is not limited to:

(a) all claims arising out of or in any way related to your employment with the Company or the termination of that employment;

(b) all claims related to your compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, restricted stock units, or any other ownership interests in the Company;

(c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing;

(d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and

(e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990 (as amended), the federal Age Discrimination in Employment Act (as amended) ("ADEA"), the federal Employee Retirement Income Security Act of 1974 (as amended), and the California Fair Employment and Housing Act (as amended), and Labor Code Sections 132a 4553 and 4553.1 of the Workers' Compensation Act, except that this release does not apply to any claim for regular workers' compensation benefits, including indemnity, medical or vocational rehabilitation benefits under the California Workers' Compensation Act.

You represent that you have no lawsuits, claims or actions pending in your name, or on behalf of any other person or entity, against the Company or any other person or entity subject to the release granted in this paragraph.

14. ADEA Waiver. You acknowledge that your waiver and release of any rights you may have under ADEA is knowing and voluntary, and that the consideration given under this Agreement (severance, COBRA payments, outplacement), in exchange for your general waiver and release, is in addition to anything of value to which you were already entitled. You are hereby advised that:

(a) your waiver and release do not apply to any rights or claims that may arise after the date you sign this Agreement;

(b) prior to signing this Agreement you should consult with an attorney (although you may choose voluntarily not to do so);

(c) you have twenty-one (21) days to consider this Agreement (although you may choose voluntarily to sign it earlier);

(d) you have seven (7) days following the date you sign this Agreement to revoke it by providing written notice to the Company's Vice President, Human Resources;

(e) this Agreement shall not be effective until the revocation period expires which will be the eighth day after you sign this Agreement.

15. Waiver of Unknown Claims. You hereby expressly waive and relinquish all rights and benefits under Section 1542 of the California Civil Code which reads as follows:

> **A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

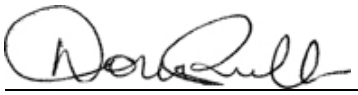
You also hereby waive any statutory claims of similar effect.

16. Entire Agreement; Modification. This Agreement and your Employee Agreement constitute the complete and only agreement between you and the Company on these subjects. You are agreeing to it without reliance on any promise or representation, written or oral, other than those expressly contained in this Agreement, and it supersedes any other such promises, warranties or representations. This Agreement may not be modified except in a writing signed by both you and the Company's Vice President, Human Resources. This Agreement shall bind the heirs, personal representatives, successors and assigns of both you and Nektar, and inure to the benefit of both you and Nektar, their heirs, successors and assigns. Any determination that a provision of this Agreement is invalid or unenforceable, in whole or in part, will not affect any other provision of this Agreement, and the provision in question shall be modified by the court so as to be rendered enforceable in accordance with the intent of the parties to the extent possible.

[Remainder of this page is intentionally blank—signature page follows]

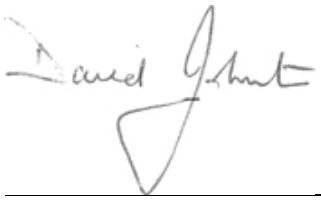
If this Agreement is acceptable to you, please sign below and return the original to Human Resources on or before October 29, 2007. The offer of severance benefits contained in this Agreement will automatically expire if we do not receive the fully executed Agreement from you by the aforementioned date.

NEKTAR THERAPEUTICS

By:  Dated: 10-5-07

DORIAN RINELLA
VICE PRESIDENT, HUMAN RESOURCES

DAVID JOHNSTON



Dated: 10-05-07

Exhibit A

Separation Date Release

In exchange for the severance benefits and other consideration provided to me by Nektar Therapeutics (the "Company"), and as required by the Employment Transition and Separation Release Agreement between the Company and me dated October __, 2007 (the "Agreement"), I hereby provide the following Separation Date Release (the "Release").

1. Except as otherwise stated in this Release, I hereby generally and completely release the Company and its subsidiaries, successors, predecessors and affiliates, and its and their respective partners, members, directors, officers, employees, stockholders, shareholders, agents, attorneys, predecessors, insurers, affiliates and assigns, from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring at any time prior to and including the date you sign this Release. This Release includes, but is not limited to:

(a) all claims arising out of or in any way related to my employment with the Company or the termination of that employment;

(b) all claims related to my compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, restricted stock units, or any other ownership interests in the Company;

(c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing;

(d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and

(e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990 (as amended), the federal Age Discrimination in Employment Act (as amended) ("ADEA"), the federal Employee Retirement Income Security Act of 1974 (as amended), and the California Fair Employment and Housing Act (as amended), and Labor Code Sections 132a 4553 and 4553.1 of the Workers' Compensation Act, except that this release does not apply to any claim for regular workers' compensation benefits, including indemnity, medical or vocational rehabilitation benefits under the California Workers' Compensation Act.

I represent that I have no lawsuits, claims or actions pending in my name, or on behalf of any other person or entity, against the Company or any other person or entity subject to the release granted in this paragraph.

2. ADEA Waiver. I acknowledge that my waiver and release of any rights I may have under ADEA is knowing and voluntary, and that the consideration given under this Agreement (severance, COBRA payments, outplacement), in exchange for my general waiver and release, is in addition to anything of value to which I was already entitled. I understand and acknowledge that the Company has advised me that:

(f) my waiver and release do not apply to any rights or claims that may arise after the date I sign this Release;

(g) prior to signing this Release I should consult with an attorney (although I may choose voluntarily not to do so);

(h) I have twenty-one (21) days to consider this Release (although I may choose voluntarily to sign it earlier);

(i) 1 have seven (7) days following the date I sign this Release to revoke it by providing written notice to the Company's Vice President, Human Resources;

(j) this Release shall not be effective until the revocation period expires which will be the eighth day after I sign this Release.

3. Waiver of Unknown Claims. I hereby expressly waive and relinquish all rights and benefits under Section 1542 of the California Civil Code which reads as follows:

> **A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

I also hereby waive any statutory claims of similar effect.

DAVID JOHNSTON

Dated: 10-05-07

EXHIBIT 10.8

AMENDED AND RESTATED
BUILT-TO-SUIT LEASE

By and Between

Inhale 201 Industrial Road, L.P.

a California Limited Partnership, as

LANDLORD

And

Nektar Therapeutics (fka Inhale Therapeutic Systems, Inc.),

a Delaware Corporation, as

TENANT

201 Industrial Road
San Carlos, CA 94070

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AMENDED AND RESTATED

BUILD-TO-SUIT LEASE

THIS AMENDED AND RESTATED BUILD-TO-SUIT LEASE (**"Lease"**) is made and entered into as of August 17, 2004 by and between **INHALE 201 INDUSTRIAL ROAD, L.P.,** a California limited partnership (**"Landlord"**), and **NEKTAR THERAPEUTICS (FKA INHALE THERAPEUTIC SYSTEMS, INC.)**, a Delaware corporation (**"Tenant"**).

RECITALS

A. Contribution Agreement. Tenant and Landlord entered into that certain Contribution Agreement dated as of September 14 2000 (the **"Contribution Agreement"**) pursuant to which, among other things: (i) Tenant agreed to contribute, and Landlord agreed to accept, inter alia, that certain real property situated at 201 Industrial Road, San Carlos, California, as partially improved by Tenant (the **"Real Property"**); and (ii) the parties agreed to enter into a lease (the **"Original Lease"**) as of the date of closing under the Contribution Agreement. The Real Property is more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference.

B. Build-to-Suit. Pursuant to the lease and the plans, specifications, and other documents required hereby, Landlord constructed and/or completed certain improvements on the Real Property, including (i) two connected four-story buildings containing an aggregate of approximately 390,000 square feet, consisting of approximately 171,965 square feet of rentable area and two lower stories primarily of parking for the foregoing buildings as well as for adjacent property currently leased and occupied by Tenant located at 150 Industrial Road; (ii) site improvements; and (iii) certain other improvements.

C. Amendment and Restatement. The Landlord and Tenant now desire to amend and restate the Original Lease as set forth in this Lease to provide for certain modifications, including the deletion of Tenant's rights respecting Phase 2B and certain other modifications, in complete replacement of the Original Lease entered into in connection with the Contribution Agreement.

D. Definitions. Unless the context otherwise specifies or requires for the purpose of this Lease, all words and phrases having their initial letters capitalized herein shall have the meanings set forth below:

Affiliate of Tenant: shall have the meaning assigned in Section 13.1(b).

Building Cost: shall have the meaning assigned in Section 18.2.

Building 1: shall have the meaning assigned in Section 1.1(a)(ii).

Building 1 Termination Date: shall have the meaning assigned in Section 2.1.

Building 2: shall have the meaning assigned in Section 1.1(a)(ii).

Building 2 Termination Date: shall have the meaning assigned in Section 2.1.

Buildings: shall have the meaning assigned in Section 1.1(a).

Common Areas: shall mean the Interior and Exterior Common Areas, collectively, as indicated in Section 1.1(a)(x).

Cosmetic Alterations: shall have the meaning assigned in Section 9.1.

Effective Date: shall have the meaning assigned in Section 2.1.

Exterior Common Areas: shall have the meaning assigned in Section 1.1(a)(viii).

Fair Market Rental: shall have the meaning assigned in Section 3.1(d).

Hazardous Materials: shall have the meaning assigned in Section 11.4(a).

HVAC: shall have the meaning assigned in Section 7.2(a).

Improvements: shall have the meaning assigned in Section 1.1(a)(vii).

Interior Common Areas: shall have the meaning assigned in Section 1.1(a)(ix).

Landlord: shall have the meaning assigned in the Introduction.

Lease Year: shall have the meaning assigned in Section 7.3.

Lease: shall have the meaning assigned in the Introduction.

Minimum Rental: shall have the meaning assigned in Section 3.1(c).

Operating Expenses: shall have the meaning assigned in Section 7.2(a).

Parking Lease: shall have the meaning assigned in Section 1.1(a).

Permitted Transfer: shall have the meaning assigned in Section 13.1(b).

Phase 1A: shall have the meaning assigned in Section 1.1(a)(iii).

Phase 1B: shall have the meaning assigned in Section 1.1(a)(iv).

Phase 2A: shall have the meaning assigned in Section 1.1(a)(v).

Phase 2B: shall have the meaning assigned in Section 1.1(a)(vi).

Phase 1 Rent Commencement Date: shall have the meaning assigned in Section 2.4.

Phase 2A Rent Commencement Date: shall have the meaning assigned in Section 2.4.

Premises: shall have the meaning assigned in Section 1.1(a).

Prevailing Party: shall have the meaning assigned in Section 19.5.

Project: shall have the meaning assigned in Section 1.1(a)(vii).

Real Property: shall have the meaning assigned in Recital A.

Rent Commencement Date: shall mean the Phase 1 Rent Commencement Date, or Phase 2A Rent Commencement Date, as defined in Section 2.4.

Requesting Party: shall have the meaning assigned in Section 17.3.

Requirements: shall have the meaning assigned in Section 11.3.

Responding Party: shall have the meaning assigned in Section 17.3.

Security Deposit: shall have the meaning assigned in Section 18.1.

Site Plan: shall have the meaning assigned in Section 1.1(a)(ii).

Tenant: shall have the meaning assigned in the Introduction.

Tenant Improvements: shall mean improvements to or within the Premises, other than improvements constructed by Landlord as part of the Building, constructed from time to time by Tenant.

Tenant's Operating Cost Share: shall have the meaning assigned in Section 7.1(a).

Tenant's Exterior Common Area Operating Cost Share: shall have the meaning assigned in Section 7.1(a).

Term: shall have the meaning assigned in Section 2.1.

Usable Square Feet: shall mean, with respect to each Phase shall mean the square feet indicated in Section 1.1(a) below.

THE PARTIES AGREE AS FOLLOWS:

1. PROPERTY.

1.1 Lease of Premises.

(a) Buildings, Real Property, Improvements.

Subject to the Parking Lease dated as of September 14, 2000 (the **"Parking Lease"**) by and between Landlord and Tenant, Landlord leases to Tenant and Tenant leases from Landlord, on the terms, covenants and conditions hereinafter set forth, Phase 1A, Phase 1B, and Phase 2A (all as defined below and referred to collectively herein as the **"Premises"**). Upon the Building 2 Termination Date, the Premises shall consist of Phase 1A and Phase 1B only. The Premises, together with Phase 2B, were constructed by Landlord; and are located in two connected four-story buildings containing an aggregate of approximately 390,000 square feet, consisting of approximately 171,965 square feet of rentable area for office and laboratory research and development and two lower stories primarily of parking (collectively, the **"Buildings"** and each a **"Building"**). The Buildings were constructed on the Real Property in connection with the Project.

(i) The Real Property is located at 201 Industrial Road in the City of San Carlos, County of San Mateo, State of California.

(ii) The location of the Buildings on the Real Property is substantially as shown on the site plans attached hereto as **Exhibit B** (the **"Site Plan"**); the first **Building** to be constructed (**"Building 1"**) was constructed on the Real Property in the location depicted on the Site Plan, and the second **Building** was constructed (**"Building 2"**) on the Real Property in the location depicted on the Site Plan.

(iii) The term **"Phase 1A"** shall refer to that portion of Building 1 consisting of approximately 39,077 rentable square feet (37,703 usable square feet) located on the fourth floor and the approximately 964 rentable square feet (930 usable square feet) located on the second floor and shown on the Site Plan.

(iv) The term **"Phase 1B"** shall refer to that portion of Building 1 consisting of approximately 39,876 rentable square feet (38,474 usable square feet) located on the third floor and shown on the Site Plan.

(v) The term **"Phase 2A"** shall refer to that portion of Building 2 consisting of approximately 45,574 rentable square feet (43,972 usable square feet) located on the third floor and shown on the Site Plan.

(vi) The term **"Phase 2B"** shall refer to that portion of Building 2 consisting of approximately 46,474 rentable square feet (44,840 usable square feet) located on the fourth floor and shown on the Site Plan.

(vii) The Buildings and the other improvements to be constructed on the Real Property in connection with the Project, including the Common Areas (defined below), are sometimes referred to collectively herein as the **"Improvements."** The **"Project,"** when completed, will consist of the Real Property and the Improvements.

(viii) The parking areas (whether inside or outside the Buildings), courtyard, driveways, sidewalks, landscaped areas and other portions of the Project, including any areas leased under the Parking Lease, that lie outside the exterior walls of the Buildings to be constructed on the Real Property, as depicted in the Site Plan and as hereafter modified by Landlord from time to time in accordance with the provisions of this Lease, are sometimes referred to herein as the **"Exterior Common Areas."**

(ix) The term **"Interior Common Areas"** shall refer to the interior lobby, elevators, stairwells, utility risers, and any mechanical rooms located outside any tenant's premises in the Buildings.

(x) The term **"Common Areas"** shall refer collectively to the Exterior Common Areas and the Interior Common Areas

(b) Use of Common Areas.

As an appurtenance to Tenant's leasing of the Premises pursuant to Section 1.1(a), Landlord hereby grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, customers and invitees, during the Term of this Lease, the non-exclusive right to use, in common with others entitled to such use, (i) those portions of the Common Areas improved from time to time for use as parking areas, driveways, courtyard, sidewalks, landscaped areas, lobbies, elevators, stairwells, utility risers, any mechanical rooms located outside any tenant's premises, or for other common purposes, and (ii) all access easements and similar rights and privileges relating to or appurtenant to the Real Property and created or existing from time to time under any access easement agreements, declarations of covenants, conditions and restrictions, or other written agreements now or hereafter of record with respect to the Real Property, subject however to the rights granted under the Parking Lease and any limitations applicable to such rights and privileges under applicable law, under this Lease and/or under the written agreements creating such rights and privileges.

1.2 [Deleted].

1.3

2. TERM.

2.1 Term.

The term of this Lease (as it may be extended from time to time, the **"Term"**) shall commence upon mutual execution of this Lease by Landlord and Tenant (the **"Effective Date"**) and shall terminate on October 5, 2016 as to Phase 1A and Phase 1B (as it may be extended pursuant to Section 2.6, below, the **"Building 1 Termination Date"**), and August 16, 2007 as to Phase 2A (the **"Building 2 Termination Date"**).

2.2 [Deleted].

2.3 [Deleted].

2.4 Acknowledgement of Rent Commencement.

The Landlord and the Tenant agree that the following dates are the Phase 1 Rent Commencement Date and the Phase 2A Rent Commencement Date:

Phase 1 Rent Commencement Date: October 6, 2000 (under Original Lease).

Phase 2A Rent Commencement Date: October 6, 2001 (under Original Lease).

2.5 Holding Over.

If Tenant holds possession of the Premises or any portion thereof after the Term of this Lease with Landlord's written consent, then except as otherwise specified in such consent, Tenant shall become a tenant from month to month at one hundred and two percent (102%) of the rental and otherwise upon the terms herein specified for the period immediately prior to such holding over and shall continue in such status until the tenancy is terminated by either party upon not less than one hundred twenty (120) days prior written notice. If Tenant holds possession of the Premises or any portion thereof after the Term of this Lease without Landlord's written consent, then Landlord in its sole discretion may elect (by written notice to Tenant) to have Tenant become a tenant either from month to month or at will, at one hundred fifty percent (150%) of the rental (prorated on a daily basis for an at-will tenancy, if applicable) and otherwise upon the terms herein specified for the period immediately prior to such holding over, or may elect to pursue any and all legal remedies available to Landlord under applicable law with respect to such holding over by Tenant. Tenant shall indemnify and hold Landlord harmless from any loss, damage, claim, liability, cost or expense (including reasonable attorneys' fees) resulting from any delay by Tenant in surrendering the Premises or any portion thereof (except to the extent such delay is with Landlord's prior written consent), including, but not limited to, any claims made by a succeeding tenant by reason of such delay. Acceptance of rent by Landlord following expiration or termination of this Lease shall not constitute a renewal of this Lease.

2.6 Options To Extend Term.

Tenant shall have the option to extend the Term of this Lease for Phase 1A and Phase 1B only (but not Phase 2A), at the Minimum Rental set forth in Section 3.1(b) and (c), below, and otherwise upon all the terms and provisions set forth herein with respect to the initial term of this Lease, for up to two (2) additional periods of ten (10) years each, the first commencing upon the expiration of the initial term hereof and the second commencing upon the expiration of the first extended term, if any. Exercise of such option with respect to the first such extended term shall be by written notice to Landlord at least eighteen (18) months prior to the expiration of the initial term hereof, exercise of such option with respect to the second extended term, if the first extension option has been duly exercised, shall be by written notice to Landlord at least eighteen (18) months prior to the expiration of the first extended term hereof. If Tenant is in material default hereunder, beyond any applicable notice and cure periods, on the date of such notice or on the date any extended term is to commence, then the exercise of the option shall be of no force or effect, the extended term shall not commence and this Lease shall expire at the end of the then current term hereof (or at such earlier time as Landlord may elect pursuant to the default

provisions of this Lease). If Tenant properly exercises one or more extension options under this Section, then all references in this Lease (other than in this Section 2.6) to the "term" of this Lease shall be construed to include the extension term(s) thus elected by Tenant. Except as expressly set forth in this Section 2.6, Tenant shall have no right to extend the Term of this Lease beyond its prescribed term.

3. RENTAL.

Tenant shall cause payment of Minimum Rental and other rent or charges to be received by Landlord on the first calendar day of each month of the Term of this Lease in lawful money of the United States, without offset or deduction, except as specifically provided herein. All amounts payable by Tenant hereunder shall be deemed "Rent."

3.1 Minimum Rental.

(a) Commencement of Rental Obligations for Phase 1.

Tenant's Minimum Rental obligations with respect to Phase 1A and Phase 1B shall commence on the Phase 1 Rent Commencement Date and Tenant's Operating Expense Obligations with respect to Phase 1A and Phase 1B shall commence as of the Effective Date, and both shall end on the Building 1 Termination Date, unless sooner terminated or extended as hereinafter provided.

(b) Commencement of Rental Obligations for Phase 2A.

Tenant's Minimum Rental obligations with respect to Phase 2A shall commence on the Effective Date and Tenant's Operating Expense obligations with respect to Phase 2A shall commence as of the Effective Date and both shall end on the Building 2 Termination Date, unless sooner terminated as hereinafter provided.

(c) Rental Amounts for Phase 1A, Phase 1B; and Phase 2A: Annual Increases.

Tenant shall pay to Landlord as minimum rental for the following Phases, in advance, without deduction, offset, notice or demand, on or before the respective Rent Commencement Date and on or before the first day of each subsequent calendar month of the Term of this Lease, the following amounts per month, subject to adjustment in accordance with the terms of this Section 3.1 (**"Minimum Rental"**):

(i) Phase 1A and 1B. Beginning on the Phase 1 Rent Commencement Date, Tenant shall pay Minimum Rental for Phase 1 in an amount equal to $287,701.20 ($3.60 per sq. ft. multiplied by 79,917).

(ii) Phase 2A. Beginning on the Phase 2A Rent Commencement Date, Tenant shall pay Minimum Rental for Phase 2A in an amount equal to $164,066.40 ($3.60 per sq. ft. multiplied by 45,574).

(iii) [Deleted].

(iv) Annual Increases. On the anniversary of each of October 6 of each year (as to the Phase 1 Rent) and October 6 of each year (as to the Phase 2A Rent), the then current Minimum Rental for the relevant Phase shall be increased by two percent (2%).

(v) Partial Months. If the obligation to pay Minimum Rental hereunder commences on other than the first day of a calendar month or if the Term of this Lease terminates on other than the last day of a calendar month, the Minimum Rental for such first or last month of the Term of this Lease, as the case may be, shall be prorated based on the number of days the Term of this Lease is in effect during such month. If an increase in Minimum Rental becomes effective on a day other than the first day of a calendar month; the Minimum Rental for that month shall be the sum of the two applicable rates, each prorated for the portion of the month during which such rate is in effect.

(d) Rental Amounts During First Extended Term.

If Tenant properly exercises its right to extend the Term of this Lease pursuant to Section 2.6 hereof, the Minimum Rental during the first year of the first extended term shall be equal to one hundred percent (100%) of the fair market rental value (as defined below), determined as of the commencement of such extended term in accordance with this paragraph. Upon Landlord's receipt of a proper notice of Tenant's exercise of its option to extend the Term of this Lease, the parties shall have thirty (30) days in which to agree on the Fair Market Rental at the commencement of the first extended term for the uses permitted hereunder. If the parties agree on such Fair Market Rental, they shall execute an amendment to this Lease stating the amount of the applicable minimum monthly rental (including the indexed amounts applicable during subsequent years of the first extended term as described above in Section 3.l(c)(iv)). If the parties are unable to agree on such rental within such thirty (30) day period, then within thirty (30) days after the expiration of such period each party, at its cost and by giving notice to the other party, shall appoint a real estate appraiser with at least five (5) years experience appraising similar commercial properties in the County in which the Real Property is located to appraise and set the Fair Market Rental for the Premises at the commencement of the first extended term in accordance with the provisions of this Section 3. l(d). If either party fails to appoint an appraiser within the allotted time, the single appraiser appointed by the other party shall be the sole appraiser. If an appraiser is appointed by each party and the two appraisers so appointed are unable to agree upon a Fair Market Rental within thirty (30) days after the appointment of the second, the two appraisers shall appoint a third similarly qualified appraiser within ten (10) days after expiration of such 30-day period; if they are unable to agree upon a third appraiser, then either party may, upon not less than five (5) days notice to the other party, apply to the Presiding Judge of the Superior Court of the County in which the Real Property is located for the appointment of a third qualified appraiser. Each party shall bear its own legal fees in connection with appointment of the third appraiser and shall bear one-half of any other costs of appointment of the third appraiser and of such third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted for either party in any capacity. Within thirty (30) days after the appointment of the third appraiser, the third appraiser shall set the Fair Market Rental for the first extended term by selecting the appraised value determined by the first two appraisers which is closest to his own determination, and shall so notify the parties, which determination shall be binding on the parties and shall be enforceable in any further proceedings relating to this Lease. For purposes of this Section 3.1(d), the **"Fair Market Rental"** of the

Premises shall be determined with reference to the then prevailing market rental rates for properties in the City of San Carlos with improvements and common area improvements comparable to those then existing in the Premises and paid for by Landlord.

(e) Rental Amounts During Second Extended Term.

If Tenant properly exercises its right to a second extended Term of this Lease pursuant to Section 2.6 hereof, the Minimum Rental during such second extended term shall be determined in the same manner provided in the preceding paragraph for the first extended term (including the rental increase provision for years after the first year of such second extended term), except that the determination shall be made as of the commencement of the second extended term.

3.2 Late Charge.

If Tenant shall fail to pay, when the same is due and payable (after giving effect to any applicable notice and cure period), any rent or other amounts due Landlord hereunder, such unpaid amounts shall bear interest for the benefit of the Landlord at a rate equal to the lesser of ten percent (10%) per annum or the maximum rate permitted by law, from the date due to the date of payment. Tenant further acknowledges that late payment of rent will cause Landlord to incur certain costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to determine with certainty. For this reason, in addition to interest, if Tenant shall fail to pay (which for purposes of this paragraph, "pay" shall mean actual receipt of the payment by Landlord) any installment of rent by the fifth (5th) day of the calendar month for which such installment is due, a late charge equal to five percent (5%) of the overdue installment of rent automatically shall be due without further notice, and shall be in addition to all other sums due. The parties agree that this additional late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant

4. PARKING.

Landlord and Tenant agree that the Common Areas of the Real Property shall include not less than 690 parking spaces. Commencing on the Effective Date and ending on the Building 2 Termination Date, Tenant shall be entitled to 361 spaces, and commencing on the Building 2 Termination Date and ending on the Building 1 Termination Date, Tenant shall be entitled to 224 spaces, all in addition to those spaces provided in and subject to the Parking Lease.

5. CONSTRUCTION.

5.1 Construction of Improvements.

(a) Base Building Work: Performance and Payment.

Landlord has constructed Building 1 and Building 2 pursuant to its obligations under the Original Lease and Landlord and Tenant agree, subject to Section 5.1(c) below, that Landlord's obligations in connection with such construction have been fully and satisfactorily performed.

(b) Tenant's Work; Phase 2A Improvements.

Tenant has constructed Tenant Improvements within Phase 1A Phase 1B of the Premises in accordance with the prior lease, and may make such future improvements and modifications to the same as set forth herein. Tenant and Landlord agreed under the Original Lease to provide Tenant with a Tenant improvement Allowance for tenant improvements within each Phase of the Premises equal to $100 per Usable Square Foot. Tenant and Landlord agree that this obligation has been satisfied as to Phase 1, and further agree Landlord shall construct improvements to Phase 2A pursuant to that Work Letter attached hereto as **Exhibit C,** and that such improvements constructed pursuant to the Work Letter shall meet Landlord's obligations as to $70 per Usable Square Foot of Phase 2A, or such higher amount per Usable Square Foot actually expended by Landlord in constructing improvements within Phase 2A.

(c) Compliance with Law.

Landlord warrants to Tenant that the Base Building Work and any other improvements constructed by Landlord from time to time shall not violate any applicable law, building code, regulation or ordinance in effect on the applicable Rent Commencement Date or at the time such improvements are placed in service. If it is determined that any of these warranties have been violated, then it shall be the obligation of the Landlord, after written notice from Tenant, to correct the conditions(s) constituting such violation promptly, at Landlord's sole cost and expense.

6. TAXES.

6.1 Personal Property.

Tenant shall be responsible for and shall pay prior to delinquency all taxes and assessments levied against or by reason of (a) any and all alterations, additions and items installed or placed on or in the Premises and taxed as personal property rather than as real property, and/or (b) all personal property, trade fixtures and other property placed by Tenant on or about the Premises. Upon request by Landlord, Tenant shall furnish Landlord with satisfactory evidence of Tenant's payment thereof. If at any time during the Term of this Lease any of said alterations, additions or personal property, whether or not belonging to Tenant, shall be taxed or assessed as part of the Real Property, then such tax or assessment shall be paid by Tenant to Landlord within thirty (30) days after presentation by Landlord of copies of the tax bills in which such taxes and assessments are included and shall, for the purposes of this Lease, be deemed to be personal property taxes or assessments under this Section 6.1.

6.2 Real Property Taxes.

(a) Real Property Taxes.

Commencing with the Effective Date and continuing for each calendar year, or tax year at Landlord's option (such "tax year" being a period of twelve (12) consecutive calendar months for which the applicable taxing authority levies or assesses real property taxes), for the balance of the Lease Term, Tenant shall pay to Landlord the Tenant's Operating Cost Share of all real property taxes, pursuant to Section 7.2(a) below. Such sum for any partial year of the Lease Term shall be prorated on the basis of the number of days of such partial year. Landlord also shall provide Tenant with a copy of the applicable tax bill or tax statement from the taxing

authority. In addition to any other amounts due from Tenant to Landlord, if Tenant fails to pay the real property taxes to Landlord as herein required, Tenant shall pay to Landlord the amount of any interest, penalties or late charges caused by Tenant's late payment.

(b) Protests.

If the Premises are separately assessed, Tenant shall have the right, by appropriate proceedings, to protest or contest in good faith any assessment or reassessment of real property taxes, any special assessment, or the validity of any real property taxes or of any change in assessment or tax rate; *provided, however,* that prior to any such challenge Tenant must either (a) pay the taxes alleged to be due in their entirety and seek a refund from the appropriate authority, or (b) post bond in an amount sufficient to insure full payment of the real property taxes. In any event, upon a final determination with respect to such contest or protest, Tenant shall promptly pay all sums found to be due with respect thereto. In any such protest or contest, Tenant may act in its own name, and at the request of Tenant, Landlord shall cooperate with Tenant in any way Tenant may reasonably require in connection with such contest or protest, including signing such documents as Tenant reasonably shall request, provided that such cooperation shall be at no expense to Landlord and shall not require Landlord to attend any appeal or other hearing. Any such contest or protest shall be at Tenant's sole expense, and if any penalties, interest or late charges become payable with respect to the real property taxes as a result of such contest or protest, Tenant shall pay the same.

(c) Refunds.

If Tenant obtains a refund as the result of Tenant's protest or contest and subject to Tenant's obligation to pay Landlord's costs (if any) associated therewith, Tenant shall be entitled to such refund to the extent it relates to Phase 1 or Phase 2A (to the extent occupied by Tenant) of the Premises during the Lease Term.

(d) Other Taxes.

If at any time during the Lease Term under the laws of the United States Government, state, county or city, or any political subdivision thereof in which the Premises are situated, a tax or excise on rent or any other tax however described is levied or assessed by any such political body against Landlord on account of rentals payable to Landlord hereunder, such tax or excise shall be considered "real property taxes" for the purposes of this Section 6.2, excluding, however, from such tax or excise any amount assessed against Landlord as state or federal income tax.

(e) Tax and Insurance Escrows.

To the extent required by any lender of Landlord, Tenant shall timely pay all tax and insurance impound payments due on the Premises.

7. OPERATING EXPENSES.

7.1 Payment of Operating Expenses.

(a) Tenant's Operating Cost Share.

(i) Commencing on the Effective Date through the Building 1 Termination Date or the Building 2 Termination Date, as applicable, Tenant shall pay to Landlord, at the time and in the manner hereinafter set forth, as additional rental: (i) an amount equal to Tenant's Operating Cost Share multiplied by the Operating Expenses defined in Section 7.2, and (ii) an amount equal to Tenant's Operating Cost Share multiplied by the Exterior Common Area Cost.

(ii) [Deleted]

(iii) [Deleted].

(iv) The term **"Tenant's Operating Cost Share"** means 72.98% through and until the Building 2 Termination Date and thereafter means 46.47% through and until the Building 1 Termination Date. **"Tenant's Exterior Common Area Cost Share"** shall be equal to the Tenant's Operating Cost Share as established from time to time.

(b) Adjustment of Tenant's Operating Cost Share.

If at any time the percentage the gross square footage of the Premises as a part of the combined gross square footage of Buildings 1 and 2 should change, then Tenant's Operating Cost Share shall be adjusted to be equal to the new percentage determined by dividing the new gross square footage of the Premises by the new gross square footage of Buildings 1 and/or 2 (as applicable).

7.2 Definition of Operating Expenses.

(a) Inclusions.

Subject to the exclusions and provisions hereinafter contained, the term **"Operating Expenses"** shall mean the total costs and expenses incurred by Landlord or Tenant for operation and maintenance of the Buildings and the Real Property, including, without limitation, costs and expenses of:

(i) insurance premiums for insurance carried by Landlord pursuant to Section 12.1 (which may include, at Landlord's option, flood, earthquake or environmental remediation insurance), insurance deductibles, provided that any increase in premiums for flood, earthquake or environmental remediation coverage which is in excess of twenty five percent of the previous years' premium shall not be included in Operating Expenses;

(ii) the operation, repair and maintenance of the Building and Common Areas in a first class condition including but not limited to sidewalks, parking areas, curbs, roads, driveways, lighting standards, landscaping, sewers, water, gas and electrical distribution systems and facilities, drainage facilities, and all signs, both illuminated and non-illuminated that are now or hereafter in the Buildings and on the Real Property;

(iii) all Common Area utilities and services not separately metered to Tenant;

(iv) real and personal property taxes and assessments or substitutes therefor levied or assessed against the Real Property or any part thereof, including (but not limited to any possessory interest, use, business, license or other taxes or fees, any taxes imposed directly on rents or services, any assessments or charges for police or fire protection, housing, transit, open space, street or sidewalk construction or maintenance or other similar services from time to time by any governmental or quasi-governmental entity, and any other new taxes on landlords in addition to taxes now in effect;

(v) supplies, equipment, utilities and tools used in the operation and maintenance of the Real Property;

(vi) capital improvements to the Real Property, the Improvements or the Buildings including, without limitation, all structural, roof, HVAC (defined as heating, ventilation, and air conditioning equipment and fixtures related thereto) serving the Common Areas, plumbing and electrical systems costing Seventy-Five Thousand Dollars ($75,000) or less, provided that the cost of all other capital improvements shall be amortized over the useful life of any such capital improvement (calculated in accordance with GAAP) and included in Operating Expenses;

(vii) [Deleted]

(viii) market rate lease costs for equipment; and

(ix) any other costs (including, but not limited to, any parking or utilities fees or surcharges) allocable to or paid by Landlord, as owner of the Real Property, Buildings or Improvements, pursuant to any applicable laws, ordinances, regulations or orders of any governmental or quasi-governmental authority or pursuant to the terms of any declaration of covenants, conditions and restrictions now or hereafter affecting the Real Property or any other property over which Tenant has non-exclusive use rights as contemplated in Section 1.1(b) hereof.

(b) Exclusions.

Notwithstanding anything to the contrary contained in this Lease, the following shall not be included within Operating Expenses:

(i) Leasing commissions, attorneys' fees, costs, disbursements, and other expenses incurred in connection with negotiations or disputes with tenants, or in connection with leasing, renovating or improving space for tenants or other occupants or prospective tenants or other occupants of the Real Property;

(ii) The cost of any service sold to any tenant (including Tenant) or other occupant for which Landlord is entitled to be reimbursed as an additional charge or rental over and above the basic rent and operating expenses payable under the lease with that tenant;

(iii) Any depreciation on the Buildings or on any other improvements on the Real Property;

(iv) Expenses in connection with services or other benefits of a type that are not offered or made available to Tenant but that are provided to another tenant of the Real Property or of any other property owned by Landlord;

(v) Costs incurred due to Landlord's violation of any terms or conditions of this Lease or of any other lease relating to the Buildings or to any other portion of the Real Property;

(vi) Overhead profit increments paid to any subsidiary or affiliate of Landlord for services other than management on or to the Real Property, or for supplies or other materials to the extent that the cost of the services, supplies or materials exceeds the cost that would have been paid had the services, supplies or materials been provided by unaffiliated parties on a competitive basis;

(vii) All interest, loan fees and other carrying costs related to any mortgage or deed of trust, and all rental and other amounts payable under any ground or underlying lease, or above market lease payments under any lease for any equipment ordinarily considered to be of a capital nature (except janitorial equipment which is not affixed to the Buildings and/or equipment the costs of which, if purchased, would be considered an amortizable Operating Expense under the provisions above, notwithstanding the capital nature of such equipment);

(viii) Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord;

(ix) Advertising and promotional expenditures;

(x) Any costs, fines or penalties incurred due to violations by Landlord of any governmental rule or authority or of this Lease or any other lease of any portion of the Real Property or any other property owned by Landlord, or due to Landlord's gross negligence or willful misconduct;

(xi) Property management fees;

(xii) Costs for sculpture, paintings or other objects of art, and for any insurance thereon or extraordinary security in connection therewith other than that provided in connection with the initial construction of the Buildings or the Common Area improvements on the Real Property;

(xiii) Wages, salaries or other compensation paid to any executive employees above the grade of building manager;

(xiv) The cost of containing, removing or otherwise remediating any contamination of the Real Property (including the underlying land and groundwater) by any toxic or Hazardous Materials (as defined in Section 11.4(a), below) for which Landlord is responsible under Section 11.4, below; and

(xv) Premiums for earthquake, environmental remediation or flood insurance coverage other than as permitted under Section 7.2(a), above.

(xvi) Operating Expenses shall not include any costs attributable to the work for which Landlord is required to pay under Article 5 or **Exhibit C**, nor any costs attributable to the initial construction of the Buildings or of Common Area improvements on the Real Property.

7.3 Determination of Operating Expenses.

During the last month of each calendar year of the Term of this Lease (**"Lease Year"**), or as soon thereafter as practical, Landlord shall provide Tenant notice of Landlord's estimate of the Operating Expenses for the ensuing Lease Year or applicable portion thereof. On or before the first day of each month during the ensuing Lease Year or applicable portion thereof, beginning on the Phase 1 Rent Commencement Date, Tenant shall pay to Landlord Tenant's Operating Cost Share of the portion of such estimated Operating Expenses allocable (on a pro rata basis) to such month; *provided, however,* that if such notice is not given in the last month of a Lease Year, Tenant shall continue to pay on the basis of the prior year's estimate, if any, until the month after such notice is given. If at any time or times it appears to Landlord that the actual Operating Expenses will vary from Landlord's estimate by more than four percent (4%), Landlord may, by notice to Tenant, revise its estimate for such year and subsequent payments by Tenant for such year shall be based upon such revised estimate.

7.4 Final Accounting For Lease Year.

(a) Annual Statement.

Within ninety (90) days after the close of each Lease Year, or as soon after such 90-day period as practicable, Landlord shall deliver to Tenant a statement of Tenant's Operating Cost Share of the Operating Expenses for such Lease Year prepared by Landlord from Landlord's books and records, which statement shall be final and binding on Landlord and Tenant (except as provided in Section 7.4(b)). If on the basis of such statement Tenant owes an amount that is more or less than the estimated payments for such Lease Year previously made by Tenant, Tenant or Landlord, as the case may be, shall pay the deficiency to the other party within thirty (30) days after delivery of the statement. Failure or inability of Landlord to deliver the annual statement within such ninety (90) day period shall not impair or constitute a waiver of Tenant's obligation to pay Operating Expenses, or cause Landlord to incur any liability for damages.

(b) Audit Rights.

At any time within one hundred twenty (120) days after receipt of Landlord's annual statement of Operating Expenses as contemplated in Section 7.4(a), Tenant shall be entitled, upon reasonable written notice to Landlord and during normal business hours at Landlord's office or such other places as Landlord shall designate, to inspect and examine those books and records of Landlord relating to the determination of Operating Expenses for the immediately

preceding Lease Year covered by such annual statement or, if Tenant so elects by written notice to Landlord, to request an independent audit of such books and records. The independent audit of the books and records shall be conducted by a certified public accountant acceptable to both Landlord and Tenant or, if the parties are unable to agree, by a certified public accountant appointed by the Presiding Judge of the County Superior Court in which the Real Property is located upon the application of either Landlord or Tenant (with notice to the other party). In either event, such certified public accountant shall be one who is not then employed in any capacity by Landlord or Tenant. The audit shall be limited to the determination of the amount of Operating Expenses for the subject Lease Year, and shall be based on generally accepted accounting principles and tax accounting principles, consistently applied. If it is determined, by mutual agreement of Landlord and Tenant or by independent audit, that the amount of Operating Expenses billed to or paid by Tenant for the applicable Lease Year was incorrect, then the appropriate party shall pay to the other party the deficiency or overpayment, as applicable, within thirty (30) days after the final determination of such deficiency or overpayment. All costs and expenses of the audit shall be paid by Tenant unless the audit shows that Landlord overstated Operating Expenses for the subject Lease Year by more than five percent (5%), in which case Landlord shall pay all costs and expenses of the audit. Each party agrees to maintain the confidentiality of the findings of any such audit.

7.5 Proration.

If the Rent Commencement Date for Phase 1 or Phase 2A falls on a day other than the first day of a Lease Year and/or if the Building 1 Termination Date or the Building 2 Termination Date falls on a day other than the last day of a Lease Year, then the amount of Operating Expenses payable by Tenant with respect to such first or last partial Lease Year shall be prorated on the basis which the number of days during such Lease Year in which this Lease is in effect bears to 365. The termination of this Lease shall not affect the obligations of Landlord and Tenant pursuant to Section 7.4 to be performed after such termination.

7.6 Reserve Account.

Tenant shall each month, commencing on the Phase 1 Rent Commencement Date and on the first day of each calendar month thereafter of the Lease term, deposit into a segregated, interest bearing bank account in a federally insured bank or savings institute an amount equal to one percent (1%) of the monthly rent due for that month, to provide for future replacements to improvements and fixtures within the Premises (the **"Reserve Account"**); provided that if at any time the amount held in the Reserve Account is equal to the product of thirty six months times the amount of the monthly contribution, Tenant's obligation to make additional deposits shall be temporarily suspended. Tenant's obligation to make such deposits shall resume at such time as the amount in the Reserve Account drops below such amount. The Reserve Account shall remain the property of Tenant, but disbursements from the Reserve Account shall be made only by joint check executed by Landlord and Tenant upon the mutual consent of Landlord and Tenant, which consent shall not be unreasonably withheld, delayed or conditioned. Landlord shall, within ten (10) days after receipt of a written request, either sign any such check or convey in writing to Tenant any objections to signing the check, and shall thereafter diligently work with Tenant to resolve any differences with regard to the disbursement. Notwithstanding the foregoing, if Tenant, pursuant to the Lease, is required to make certain repairs, improvements, or

replacements to the Premises or Common Area but fails to do so within the time allowed hereunder (subject to any applicable cure period), then Landlord, as provided under the Lease, may make such repairs, improvements, or replacements, and may disburse funds from the Reserve Account, without Tenant's consent or signature on the disbursement check(s), to pay for the cost of the repairs, improvements, or replacements. Any amount in the Reserve Account remaining at the expiration of the Lease shall remain the property of Tenant.

7.7 Property Management Fee.

Commencing with the execution of this Lease, Tenant shall pay to Landlord a monthly fee (**"Management Fee"**) to cover costs of property management services in an amount not to exceed one percent (1.00%) of the Minimum Rental for the Premises whether or not Landlord incurs fees payable to any third party to provide such services and without regard to the actual costs incurred by Landlord for such services.

8. UTILITIES.

8.1 Payment.

Commencing with the Phase 1 Rent Commencement Date and thereafter throughout the Term of this Lease, Tenant shall pay, before delinquency, all charges for water, trash collection, gas, heat, light, electricity, power, sewer, telephone, alarm system, janitorial and other services or utilities supplied to or consumed in or with respect to the Premises, including any taxes on such services and utilities, and Tenant's Operating Cost Share of all charges for water, gas, heat, light, electricity, power, sewer, telephone, alarm system, janitorial and other services or utilities supplied to or consumed in or with respect to the Common Areas. It is the intention of the parties that to the extent feasible, all services provided to the Premises (as opposed to the Common Areas and as the same shall exist from time to time) shall be separately metered to the Premises.

8.2 Interruption.

There shall be no abatement of rent or other charges required to be paid hereunder and Landlord shall not be liable in damages or otherwise for interruption or failure of any service or utility furnished to or used with respect to the Premises because of accident, making of repairs, alterations or improvements, severe weather, difficulty or inability in obtaining services or supplies, labor difficulties or any other cause, except the gross negligence or willful misconduct of Landlord, its employees and/or agents.

9. ALTERATIONS.

9.1 Right To Make Alterations.

Tenant shall make no alterations, additions or improvements to the Premises, other than interior non-structural alterations (**"Cosmetic Alterations"**) costing less than One Hundred Thousand Dollars ($100,000) in the aggregate during any twelve (12) month period, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned, and if Tenant so requests, Landlord shall specify whether Landlord intends to

require that Tenant remove such Cosmetic Alterations (or any specified portions thereof) upon expiration or termination of this Lease. Landlord's failure to respond within fifteen (15) days of Tenant's request or notice to Landlord shall be deemed Landlord's consent to allow the Cosmetic Alterations to remain with the Premises at the end of the Lease Term. Tenant shall provide to Landlord copies of any plans submitted to any governmental agency in connection with the construction of any Cosmetic Alterations, within thirty (30) days of such submittal. All alterations, additions and improvements shall be completed with due diligence in a first-class, workmanlike manner, in compliance with plans and specifications approved in writing by Landlord and in compliance with all applicable laws, ordinances, rules and regulations, and to the extent Landlord's consent is not otherwise required hereunder for such alterations, additions or improvements, Tenant shall give prompt written notice thereof to Landlord. With respect to all proposed alterations (other than Cosmetic Alterations or otherwise), Tenant shall provide Landlord with a cost estimate to perform the alterations, a set of plans and specifications for the proposed work, and a set of final "as built" plans of the work actually performed. Tenant shall cause any contractors engaged by Tenant for work in the Buildings or on the Real Property to maintain public liability and property damage insurance, and other customary insurance, with such terms and in such amounts as Landlord may reasonably require, naming as additional insureds Landlord and any of its partners, shareholders, property managers and lenders designated by Landlord for this purpose, and shall furnish Landlord with certificates of insurance or other evidence that such coverage is in effect. Notwithstanding any other provisions of this Section 9.1, under no circumstances shall Tenant make any structural alterations or improvements, or any changes to the roof or equipment installations on the roof, or any substantial changes or alterations to the building systems, except Cosmetic Alterations, without Landlord's prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned). Landlord's failure to respond within fifteen (15) days following Tenant's request shall be deemed approval. Landlord shall receive no fee for supervision, profit, overhead or general conditions, but shall be entitled to be reimbursed by Tenant for any reasonable costs incurred by Landlord in connection with its retention of third parties to assist in its review of Tenant's request for consent in connection with any alterations, additions or improvements constructed or installed by Tenant under this Lease after the date hereof.

9.2 Title To Alterations.

All alterations, additions and improvements installed in, on or about the Premises at Tenant's expense shall belong to Tenant during the Lease Term and upon expiration or earlier termination shall become part of the Real Property and shall become the property of Landlord, unless Landlord elects (at the time it grants consent to installation) to require Tenant to remove the same upon the termination of this Lease; *provided*, *however*, that the foregoing shall not apply to Tenant's movable furniture and equipment and trade fixtures. Tenant shall promptly repair any damage caused by its removal of any such alterations, additions and improvements, furniture, equipment or trade fixtures. Landlord shall not be entitled to require removal unless Landlord specified its intention to do so at the time of granting of Landlord's consent to the requested alterations, additions or improvements. Notwithstanding any other provisions of this Article 9, however, under no circumstances shall Tenant have any obligation to remove from the Buildings or the Real Property, at the expiration or termination of this Lease, any of the Tenant Improvements constructed by Landlord.

9.3 Tenant Fixtures and Personal Property.

Subject to Section 9.2 and to Section 9.5, Tenant may install, remove and reinstall trade fixtures without Landlord's prior written consent, except that installation and removal of any fixtures which are affixed to the Buildings or the Real Property or which affect the exterior or structural portions of the Buildings or the building systems shall require Landlord's written approval, which approval shall not be unreasonably withheld, delayed or conditioned.

9.4 No Liens.

Tenant shall at all times keep the Premises free from all liens and claims of any contractors, subcontractors, materialmen, suppliers or any other parties employed either directly or indirectly by Tenant in construction work on the Buildings or the Real Property. Tenant may contest any claim of lien, but only if, prior to such contest, Tenant either (i) posts security in the amount of the claim, plus estimated costs and interest, or (ii) records a bond of a responsible corporate surety in such amount as may be required to release the lien from the Buildings and the Real Property no later than the thirtieth day following recordation of such lien. Tenant shall indemnify, defend and hold Landlord harmless against any and all liability, loss, damage, cost and other expenses, including, without limitation, reasonable attorneys' fees, arising out of claims of any lien for work performed or materials or supplies furnished at the request of Tenant or persons claiming under Tenant. Tenant shall at no time voluntarily place any fixture filing or otherwise grant a security interest in any alterations, additions or improvements installed in, on or about the Premises.

9.5 Signs.

Tenant shall have the right to a proportionate share of external and monument signage, in proportion to the ratio between the Useable Square Footage in Tenant's Premises and the total Useable Square Footage on the Real Property, provided however, Tenant shall have the right to continue to display its corporate name and logo on the exterior of the Buildings in the size and manner it is displayed as of the Effective Date (subject to changes in applicable laws or regulations requiring a modification to such signage).

10. MAINTENANCE AND REPAIRS.

10.1 Tenant's Obligation for Maintenance.

(a) Good Order, Condition and Repair.

(i) In addition to Tenant's obligation to pay Tenant's Operating Cost Share as required by Section 7, Tenant's repair and maintenance obligation shall be limited to the repair and maintenance of the interior of the Premises, as the same shall exist from time to time (being defined as the floor surfaces, ceiling, interior wall surfaces, electrical, plumbing, HVAC equipment exclusively serving the Premises and telephone and communications systems within such interior).

(b) [Deleted].

(c) Landlord's Remedy.

If Tenant, after notice from Landlord, fails to make or perform promptly any repairs or maintenance which are the obligation of Tenant hereunder, Landlord shall have the right, but shall not be required, to enter the Buildings and make the repairs or perform the maintenance necessary to restore the Buildings to good and sanitary order, in a first class condition and repair. In such case, immediately on demand from Landlord, the cost of such repairs shall be due and payable by Tenant to Landlord.

(d) Condition Upon Surrender.

At the expiration or sooner termination of this Lease, Tenant shall surrender the Premises, including any additions, alterations and improvements thereto, broom clean, in good and sanitary order, in a first class condition and repair, free from Hazardous Materials caused to be present by Tenant, its agents or invitees (it being understood and agreed that Tenant shall have no responsibility for Hazardous Materials that have migrated onto the Real Property through the air, water or soils), ordinary wear and tear excepted, and delivered free of radioactive licenses or other restrictions on use, first, however, removing all goods and effects of Tenant and all fixtures and items required to be removed or specified to be removed at Landlord's election pursuant to this Lease, and repairing any damage caused by such removal. Tenant expressly waives any and all interest in any personal property and trade fixtures not removed from the Premises by Tenant at the expiration or termination of this Lease, agrees that any such personal property and trade fixtures may, at Landlord's election, be deemed to have been abandoned by Tenant, and authorizes Landlord (at its election and without prejudice to any other remedies under this Lease or under applicable law) to remove and either retain, store or dispose of such property at Tenant's cost and expense, and Tenant waives all claims against Landlord for any damages resulting from any such removal, storage, retention or disposal.

10.2 Landlord's Obligation for Maintenance.

(a) Good Order, Condition and Repair.

Landlord, at its cost and expense, but subject to Tenant's obligation to pay the Tenant's Operating Cost Share as required by Section 7.1, shall keep and maintain in good and sanitary order, in a first class condition and repair, all Common Areas and each such Building and every part thereof, wherever located, including, but not limited to the structural components of the Buildings, the roof, signs, exterior, interior, walls, ceiling, electrical system, plumbing system, telephone and communications systems of each such Building, all the HVAC equipment and related mechanical systems serving each such Building, all doors, door checks, windows, plate glass, door fronts, plumbing and sewage and other utility facilities, fixtures, lighting, wall surfaces, floor surfaces and ceiling surfaces of each such Building and all other interior repairs, foreseen and unforeseen, (except the interior of the Premises and the systems designated for Tenant's exclusive use required to be repaired and maintained by Tenant as required by Section 10.1(a) above).

(b) No Abatement.

There shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises or Common Areas, or in or to improvements, fixtures, equipment and personal property therein.

(c) Landlords' Right of Entry for Repairs.

Landlord and Landlord's agents shall have the right to enter upon the Premises, or any part thereof, for the purpose of performing any repairs or maintenance Landlord is permitted to make pursuant to this Lease, and of ascertaining the condition of the Premises or whether Tenant is observing and performing Tenant's obligations hereunder, all without unreasonable interference from Tenant or Tenant's agents. Except for emergency maintenance or repairs, the right of entry contained in this Section shall be exercisable at reasonable times, at reasonable hours and on reasonable notice (which shall not be less than twenty-four (24) hours).

11. USE OF PROPERTY.

11.1 Permitted Use.

Subject to Sections 11.3, and 11.4 hereof, Tenant shall use the Premises solely for an office and laboratory research and development facility, including (but not limited to) storage and use of small laboratory animals, and other lawful purposes reasonably related to or incidental to such specified uses (subject in each case to receipt of all necessary approvals from the City and County in which the Real Property is located and other governmental agencies having jurisdiction over the Buildings and uses therein), and for no other purpose.

11.2 No Nuisance.

Tenant shall not use the Premises for or carry on or permit upon the Premises or any part thereof any offensive, noisy or dangerous trade, business, manufacture, occupation, odor or fumes, or any nuisance or anything against public policy, nor commit or allow to be committed any waste in, on or about the Premises. Tenant shall not do or permit anything to be done in or about the Premises, nor bring nor keep anything therein, which will in any way cause the Premises to be uninsurable with respect to the insurance required by this Lease or with respect to standard fire and extended coverage insurance with vandalism, malicious mischief and riot endorsements.

11.3 Compliance With Laws.

Tenant shall not use the Premises or permit the Premises to be used in whole or in part for any purpose or use that is in violation of any applicable laws, ordinances, regulations or rules of any governmental agency or public authority. Tenant shall keep the Premises equipped with all safety appliances required by law, ordinance or insurance on the Premises, or any order or regulation of any public authority, because of Tenant's particular use of the Premises. Tenant shall procure at its costs all licenses and permits required for Tenant's use of the Premises. Tenant shall use the Premises in strict accordance with all applicable ordinances, rules, laws and regulations and shall comply, at its expense, with all requirements of all governmental authorities now in force or which may hereafter be in force pertaining to the use of the Premises by Tenant,

including, without limitation, regulations applicable to noise, water, soil and air pollution, and making such structural and nonstructural alterations and additions thereto as may be required from time to time by such laws, ordinances, rules, regulations and requirements of governmental authorities or insurers of the Premises (collectively, **"Requirements"**) because of Tenant's construction of improvements in or other particular use of the Premises. The judgment of any court, or the admission by Tenant in any proceeding against Tenant, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement shall be conclusive of such violation as between Landlord and Tenant.

11.4 Environmental Matters.

(a) Definition of Hazardous Materials.

For purposes of this Lease, **"Hazardous Materials"** shall mean the substances included within the definitions of the term "hazardous substance" under (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq., and the regulations promulgated thereunder, as amended, (ii) the California Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code §§ 25300 et seq., and regulations promulgated thereunder, as amended, (iii) the Hazardous Materials Release Response Plans and Inventory Act, California Heath & Safety Code §§ 2-5500 et seq., and regulations, promulgated thereunder, as amended, and (iv) petroleum; **"hazardous waste"** shall mean (i) any waste listed as or meeting the identified characteristics of a "hazardous waste" under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq., and regulations promulgated pursuant thereto, as amended, (ii) any waste meeting the identified characteristics of "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under the California Hazardous Waste Control Law, California Health & Safety Code §§ 25 100 et seq., and regulations promulgated pursuant thereto, as amended (collectively, the **"CHWCL"**), and/or (iii) any waste meeting the identified characteristics of "medical waste" under California Health & Safety Code §§ 25015-25027.8, and regulations promulgated thereunder, as amended; and **"hazardous waste facility"** shall mean a hazardous waste facility as defined under the CHWCL.

(b) Tenant's Obligations Re: Hazardous Substances.

(i) Tenant shall not cause or permit any Hazardous Material or hazardous waste to be brought upon, kept, stored or used in or about the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned, except that Tenant, in connection with its permitted use of the Premises as provided in Section 11.1, may keep, store and use materials that constitute Hazardous Materials which are customary for such permitted use, *provided* such Hazardous Materials are kept, stored and used in quantities which are customary for such permitted use and are kept, stored and used in full compliance with clauses (ii) and (iii) immediately below.

(ii) Tenant shall comply with all applicable laws, rules, regulations, orders, permits, licenses and operating plans of any governmental authority with respect to the receipt, use, handling, generation, transportation, storage, treatment and/or disposal of Hazardous Materials or wastes by Tenant or its agents or employees.

(iii) Tenant shall not (A) operate on or about the Premises any facility required to be permitted or licensed as a hazardous waste facility or for which interim status as such is required, nor (B) store any hazardous wastes on or about the Premises for ninety (90) days or more, nor (C) conduct any other activities on or about the Premises that could result in the Premises being deemed to be a "hazardous waste facility" (including, but not limited to, any storage or treatment of Hazardous Materials or hazardous wastes which could have such a result).

(iv) Tenant shall comply with all applicable laws, rules, regulations, orders and permits relating to underground storage tanks installed by Tenant or its agents or employees or at the request of Tenant (including any installation, monitoring, maintenance, closure and/or removal of such tanks) as such tanks are defined in California Health & Safety Code § 25281(x), including, without limitation, complying with California Health & Safety Code §§ 25280-25299.7 and the regulations promulgated thereunder, as amended. Upon request by Landlord, Tenant shall furnish to Landlord copies of all registrations and permits issued to or held by Tenant from time to time for any and all underground storage tanks located on or under the Real Property. Notwithstanding the foregoing, Tenant shall not install any underground storage tanks at the Real Property without Landlord's prior written consent, which Landlord may withhold in its reasonable discretion.

(v) Tenant shall not keep any trash, garbage, waste or other refuse on the Premises except in sanitary containers and shall regularly and frequently remove the same from the Premises. Tenant shall keep all incinerators, containers or other equipment used for the storage or disposal of such matter in a clean and sanitary condition. Tenant shall properly dispose of all sanitary sewage and shall not use the sewage disposal system of the Buildings for the disposal of anything except as permitted by any governmental entity.

(vi) At reasonable times and upon reasonable prior notice, prior to the expiration or earlier termination of the Lease Term, Landlord shall have the right to conduct (a) an annual hazardous waste investigation of the Premises and (b) if Landlord has reasonable cause to believe that any contamination exists on, in, under, or around the Buildings or the Premises, such other tests of the Premises and the Buildings as Landlord may deem necessary or desirable to demonstrate whether contamination has occurred as a result of Tenant's use of the Premises. Tenant shall be solely responsible for and shall defend, indemnify and hold the Landlord, its agents and contractors harmless from and against any and all claims, demands or actions, arising out of or in connection with any removal, clean up, restoration and materials required hereunder to return the Premises and any other property of whatever nature to their condition existing prior to the time of any such contamination caused by Tenant, its employees or agents. Landlord shall pay for the cost of the annual investigation and other tests of the Premises, unless it has been determined that Tenant, its employees or agents have caused contamination of the Premises with Hazardous Materials, in which case Tenant shall bear such costs. Tenant shall pay the reasonable costs required to perform or conduct any closure study, exit audit or similar investigation required by then applicable laws.

(vii) Tenant shall surrender the Premises at the expiration or earlier termination of this Lease free of any Hazardous Materials caused to be present by Tenant, its employees or agents and free and clear of all judgments, liens or encumbrances relating thereto

and at its own cost and expense, shall repair all damage and clean up or perform any remedial action necessary relating to any Hazardous Materials caused to be present by Tenant, its employees or agents. Tenant, at its sole cost and expense, shall, following Landlord's request, remove any alterations or improvements that may be contaminated or contain Hazardous Materials caused to be present by Tenant, its employees or agents.

(c) Tenant's Indemnity.

Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, losses (including, but not limited to, loss of rental income and diminution in value), damages, liabilities, costs, legal fees and expenses of any sort arising out of or relating to (A) any failure by Tenant to comply with any provisions of this Section 11.4, or (B) any receipt, use handling, generation, transportation, storage, treatment, release and/or disposal of any Hazardous Material or waste or any radioactive material or radiation on or about the Premises as a proximate result of Tenant's use of the Premises or as a result of any intentional or negligent acts or omissions of Tenant or of any agent, employee, vendor or invitee of Tenant.

(d) Survival.

The provisions of this Section 11.4 shall survive the termination of this Lease.

12. INSURANCE AND INDEMNITY.

12.1 Landlord's Insurance.

During the Lease Term, Landlord shall keep and maintain, or cause to be kept and maintained, as part of Operating Expenses, a policy or policies of insurance on the Buildings insuring the same against loss or damage by the following risks: fire and extended coverage, vandalism, malicious mischief, sprinkler leakage (if sprinklers are required in the Buildings under applicable building code provisions, or are installed by Tenant in the absence of such requirement) in amounts not less than ninety percent (90%) of Full Replacement Value of the Buildings, (including both the Buildings and any tenant improvements), or the amount of such insurance Landlord's lender requires Landlord to maintain. The term "Full Replacement Value" shall mean actual replacement cost, including changes required by new building codes or ordinances (exclusive of the cost of excavation, foundations and footings). Such insurance shall show, as a loss payee in respect of the Premises, Landlord, Tenant and any ground lessor or mortgagee of Landlord required to be named pursuant to its mortgage documents, as their interests may appear. Landlord, subject to availability thereof and, as part of Operating Expenses, shall further insure as Landlord deems appropriate coverage against flood, earthquake, environmental remediation, loss or failure of building equipment, rental loss for a period of eighteen (18) months for periods of repair or rebuild, workmen's compensation insurance and fidelity bonds for employees employed to perform services. Notwithstanding the foregoing, Landlord may, but shall not be deemed required to, provide insurance as to any improvements installed by Tenant, provided that such coverage does not duplicate coverages maintained by Tenant. Landlord, as part of the Operating Expenses, shall further carry General Liability with General Aggregate Amount & Per Occurrence Limit insurance with a single loss limit of not less than Five Million Dollars ($5,000,000) for death or bodily injury, or property damage with respect to the Real Property.

12.2 Tenant's Insurance.

(a) Commercial General Liability Insurance.

During the Lease Term, Tenant shall keep and maintain, or cause to be kept and maintained, at Tenant's sole cost and expense, a policy or policies of Commercial General Liability insurance, showing, as an additional insured in respect of the Premises, Landlord, Tenant, any management company retained by Landlord to manage the Premises, any ground lessor and any lender of Landlord required to be named pursuant to its loan documents. Such policy shall insure against any and all claims, demands or actions for injuries to persons, loss of life and damage to property occurring upon, in or about the Premises (including coverage for liability caused by independent contractors of Tenant or subtenants of Tenant working in or about the Premises), with minimum coverage in an amount not less than a Five Million Dollars ($5,000,000) combined single limit with respect to all bodily injury, death or property damage in any one accident or occurrence. In the event of a claim, action or demand relating to the Premises, the amount of any deductible or self-insured retention and/or any award in excess of the policy limits shall be the sole responsibility of Tenant.

(b) Tenant's Risk.

Tenant assumes the risk of damage to any fixtures, goods, inventory, merchandise and equipment, and Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom relative to such damage except as more particularly heretofore set forth within this Lease. Tenant at Tenant's cost may carry such insurance as Tenant desires for Tenant's protection with respect to personal property of Tenant, business interruption or other coverages.

(c) Other Insurance.

In addition to all other insurance required to be carried by Tenant hereunder, Tenant, throughout the Lease Term, shall provide and keep in force at Tenant's sole cost and expense the following:

(i) Workman's Compensation insurance to the full extent required under the laws of the State of California;

(ii) Insurance on Tenant's equipment, personal property and other contents in, on or about the Premises insuring against loss or damage by all risks covered by "special form" coverage, in amounts equal to ninety percent (90%) of their full replacement value;

(iii) [Deleted]; and

(iv) Other nonduplicative insurance required by Landlord, in types and amounts consistent with commercially reasonable practice.

12.3 Insurers; Primary Insurance.

All policies of insurance provided for herein shall be on an occurrence basis and shall be issued by insurance companies with a general policy holder's rating of not less than A- and a financial rating of not less than Class XV as rated in the most current available "Best's" Insurance Reports. Such insurance companies shall be qualified to do business in the State of California. All such policies carried by Tenant shall name Landlord, any ground lessor and any lender (or its successors and assigns) as additional insureds, and shall be for the mutual and joint benefit and protection of Landlord, Tenant, any ground lessor and Landlord's first mortgagee or beneficiary. All public liability and property damage policies carried by Tenant shall contain a provision that Landlord, although named as an insured, nevertheless shall be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All policies of insurance must contain a provision that the company writing said policy will give to Landlord thirty (30) days notice in writing in advance of any cancellation or lapse. All public liability, property damage and other casualty policies carried by Tenant shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Tenant shall, upon request from Landlord from time to time, immediately deliver to Landlord copies of all insurance policies (including the declarations pages) in effect with respect to the Premises. All liability policies shall contain endorsements for cross-liability, fire, legal liability, broad form contractual liability, employer's automobile non-ownership, products completed operation coverage and dram shop liability, as applicable.

12.4 Blanket Policy.

Notwithstanding anything to the contrary contained within this Section 12, Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; *provided, however,* that Landlord, any ground lessor and any lender shall be named as an additional insured thereunder as their interests appear, the coverage afforded Landlord will not be reduced or diminished by reason of the use of such blanket policy of insurance, and the requirements set forth herein are otherwise satisfied.

12.5 Deductibles.

The deductible amounts, if any, with respect to all insurance, which Tenant is required to maintain hereunder, shall not exceed Twenty Thousand Dollars, ($20,000) per claim or occurrence. The amount of the deductibles, if any, within this limitation shall be a business decision by Tenant; under no circumstances shall Landlord be required to reimburse Tenant for the amount of any deductible incurred by Tenant in connection with any insured event, except to the extent the event resulting in the claim was caused by Landlord's or Landlord's agents' gross negligence or willful misconduct.

12.6 Certificates.

Upon the execution and delivery of this Lease and thereafter not less than thirty (30) days prior to the expiration dates of the expiring policies theretofore maintained, Tenant shall deliver to Landlord certificates of insurance with respect to the policies of insurance required by this Lease or duplicate originals of all such policies. Landlord, upon reasonable notice, may inspect and copy any policies of insurance, and any records relating thereto kept and maintained by Tenant.

12.7 Adjustment in the Event of Loss.

Except as otherwise provided herein, all insurance proceeds payable with respect to any damage or destruction to the Premises (but not with respect to Tenant's personal property, it being understood that insurance proceeds allocable to Tenant's personal property shall be payable directly to Tenant) shall be payable to Landlord and Tenant, jointly, to be held in an interest bearing account. If Tenant and Landlord undertake to repair said damage in accordance with Article 15 below, the proceeds shall be made available to Tenant as to the tenant improvements and to Landlord as to the Building and Common Area used to fund the reconstruction. In all other events, the proceeds shall be the sole property of Landlord except otherwise expressly provided herein. Landlord shall be entitled to compromise, adjust or settle any and all claims with respect to insurance carried by it covering the Premises. Each party agrees to execute and deliver to the other party such releases, endorsements and other instruments as the other party reasonably may require in order to compromise, adjust or settle any insurance claim which such other party shall be entitled to compromise, adjust or settle pursuant to this paragraph and to enable the other party or its designee to collect such insurance proceeds as are payable in respect of such claim.

12.8 Proration Upon Termination.

If any of the insurance required to be carried by Tenant hereunder is still in effect at the termination of this Lease, Landlord may elect to terminate such insurance, or Landlord shall reimburse Tenant for the pro rata portion of the premium paid by Tenant for such insurance based upon the number of days remaining unexpired in such insurance.

12.9 Waiver of Subrogation.

To the extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other with respect to (i) damage to property, (ii) damage to the Premises or any part thereof, or (iii) claims arising by reason of any of the foregoing, but only to the extent that any of the foregoing damages and claims under clauses (i)-(iii) hereof are covered, and only to the extent of such coverage, by casualty insurance actually carried by either Landlord or Tenant. This provision is intended to waive fully, and for the benefit of each party, any rights and claims which might give rise to a right of subrogation in any insurance carrier. Each party shall procure a clause or endorsement on any casualty insurance policy denying to the insurer rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or loss. Coverage provided by insurance maintained by Tenant shall not be limited, reduced or diminished by virtue of the subrogation waiver herein contained.

12.10 Indemnification.

(a) Tenant's Indemnification Obligations.

Tenant shall indemnify, defend, and hold Landlord and its lenders, agents, employees, directors, officers, managers, members, partners, affiliates, independent contractors, and property managers (collectively, **"Landlord's Agents"** or **"Agents"**) harmless from and against any and all claims, demands, liability, loss or damage, whether for injury to or death of persons or damage to real or personal property, arising out of or in connection with the Premises, Tenant's use of the Premises, any activity, work, or other thing done, permitted, or suffered by Tenant in or about the Buildings, or arising from any reason or cause whatsoever in connection with the use or occupancy of the Premises by any party during the Term of this Lease, except to the extent that the event giving rise to the claim, demand, liability, loss or damage was caused by the gross negligence or willful misconduct of Landlord or Landlord's Agents. Tenant shall further indemnify, defend, and hold Landlord and Landlord's Agents harmless against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of Tenant or any officer, agent, employee, guest, or invitee of Tenant, and from and against all costs, attorneys' fees, expenses, and liabilities incurred as a result of any such claim or any action or proceeding brought thereon. In any case, action, or proceeding brought against Landlord or Landlord's Agents by reason of any such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon, or about the Premises from any cause arising prior to the later of the termination of this Lease or the date Tenant has performed all obligations under Section 10.1(d) and is no longer in possession of the Premises (except for such damage or injury caused by Landlord's or Landlord's Agents' willful misconduct or gross negligence), and Tenant hereby waives all claims in respect thereof against Landlord and Landlord's Agents. Tenant's obligation to indemnify under this paragraph shall include attorneys' fees, investigation costs, and other reasonable costs, expenses, and liabilities incurred by Landlord and Landlord's Agents. If the ability of Tenant to use the Premises or the Buildings is interrupted for any reason, Landlord and Landlord's Agents shall not be liable to Tenant for any loss or damages occasioned by such loss of use, except to the extent such loss or damages is caused by Landlord's or its Agents' willful misconduct or gross negligence.

(b) Landlord's Indemnification Obligations.

Landlord shall indemnify, defend and hold Tenant and its members, partners, shareholders, officers, directors, agents and employees harmless from any and all liability for injury to or death of any person, or loss of or damage to the property of any person, and all actions, claims, demands, costs (including, without limitation, reasonable attorneys' fees), damages or expenses of any kind arising therefrom which may be brought or made against Tenant or which Tenant may pay or incur, to the extent such liabilities or other matters arise in, on or about the Premises by reason of the gross negligence or willful misconduct or omission by Landlord or Landlord's Agents. Landlord shall further indemnify, defend, and hold Tenant and its members, partners, shareholders, officers, directors, agents and employees harmless against and from any and all claims arising from any breach or default in the performance of any

obligation on Landlord's part to be performed under the terms of this Lease, and from and against all costs, attorneys' fees, expenses, and liabilities incurred as a result of any such claim or any action or proceeding brought thereon. In any case, action, or proceeding brought against Tenant or its members, partners, shareholders, officers, directors, agents and employees by reason of any such claim, Landlord, upon notice from Tenant, shall defend the same at Landlord's expense by counsel reasonably satisfactory to Tenant.

12.11 Limitation on Landlord Liability.

Neither Landlord nor Landlord's Agents shall be liable for loss or damage to any property by theft or otherwise, or for any injury to or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, or rain which may leak from any part of the Buildings or from the pipes, appliances, or plumbing works therein or from the roof, street, or subsurface or from any other place resulting from dampness or any other cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord's Agents. Neither Landlord nor Landlord's Agents, shall be liable for interference with or loss of business by Tenant. Tenant shall give prompt written notice to Landlord in case of fire or accidents in the Premises or in the Buildings or of defects therein or in the fixtures or equipment belonging to Landlord. If Landlord is in default of this Lease, and as a consequence, Tenant recovers a money judgment against Landlord, the judgment shall be satisfied only out of the proceeds of sale received on execution of the judgment and levy against the right, title, and interest of Landlord in the Premises, and out of rent or other income from the Premises receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title, and interest in the Premises. Landlord's Agents shall not be personally liable for any deficiency except to the extent liability is based upon willful misconduct. If Landlord is a partnership, joint venture, or limited liability company, the partners or members of such partnership or limited liability company, as the case may be, shall not be personally liable and no partner or member of Landlord (or of any affiliated entity) shall be sued or named as a party in any suit or action, or service of process be made against any partner or member of Landlord (or of any affiliated entity), except as may be necessary to secure jurisdiction of the partnership, joint venture, or limited liability company or to the extent liability is caused by willful misconduct. If Landlord is a corporation, the shareholders, directors, officers, employees, and/or agents of such corporation shall not be personally liable and no shareholder, director, officer, employee, or agent of Landlord shall be sued or named as a party in any suit or action, or service of process be made against any shareholder, director, officer, employee or agent of Landlord, except as may be necessary to secure jurisdiction of the corporation. No partner, member, shareholder, director, employee, or agent of Landlord (or of any affiliated entity) shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any partner, shareholder, director, employee, or agent of Landlord.

13. SUBLEASE AND ASSIGNMENT.

13.1 Assignment and Sublease of Building.

(a) Consent Required.

Except in connection with a Permitted Transfer, Tenant shall neither voluntarily nor by operation of law assign, sell, encumber, pledge or otherwise transfer all or any part of Tenant's leasehold estate hereunder, or permit any other person (excepting Tenant's agents and employees) to occupy the Premises or any portion thereof, without Landlord's prior written consent, which consent shall be not be unreasonably withheld, delayed or conditioned Consent by Landlord to one or more assignments of this Lease or to one or more sublettings of the Premises shall not constitute a waiver of Landlord's right to require consent to any subsequent assignment, subletting or other transfer. If Tenant is a corporation, unincorporated association or partnership, the transfer, assignment or hypothecation of any stock or interest in such corporation, association or partnership in the aggregate in excess of twenty-five percent (25%) of all outstanding stock or interests, or liquidation thereof, shall be deemed an assignment within the meaning and provisions of this section and the sale of all or substantially all of the assets of Tenant shall be deemed an assignment within the meanings and provisions of this section. The foregoing sentence shall not apply to: (i) any corporation or partnership which is a reporting company under the Securities Exchange Act of 1934, or (ii) a sale to an entity with a net worth, as designated in its most recent financial statement (no older than 3 months), equal to or greater than Tenant's net worth on the Effective Date. Tenant shall reimburse Landlord for all of Landlord's reasonable costs and attorneys' fees incurred in conjunction with the processing and documentation of any required consent to assignment, subletting, transfer, change of ownership or hypothecation of this Lease or Tenant's interest in and to the Premises, not to exceed One Thousand Dollars ($1,000) per request plus reasonable out-of-pocket expenses payable to third parties. Any purported sublease or assignment of Tenant's interest in this Lease requiring but not having received Landlord's consent thereto (to the extent such consent is required hereunder) shall be void.

(b) Permitted Transfers.

Notwithstanding the foregoing, (i) any bona fide financing or capitalization, including a public offering of the common stock of Tenant, shall not be deemed to be an assignment hereunder; and (ii) Tenant shall have the right to assign this Lease or sublet the Buildings, or any portion thereof, without Landlord's consent, to any Affiliate of Tenant, or to any entity which results from a merger, reorganization or consolidation with Tenant, or to any entity which acquires substantially all of the stock or assets of Tenant as a going concern (hereinafter each a **"Permitted Transfer"**). For purposes of the preceding sentence, an **"Affiliate"** of Tenant shall mean any entity in which Tenant owns at least a twenty five percent (25%) equity interest, any entity which owns at least a twenty five percent (25%) equity interest in Tenant and/or any entity which is related to Tenant by a chain of ownership interests involving at least twenty five percent (25%) equity interest at each level in the chain. Landlord shall have no right to terminate this Lease in connection with, and shall have no right to any sums or other economic consideration resulting from, any Permitted Transfer. The transferee under such Permitted Transfer shall be and remain subject to all of the terms and provisions of this Lease.

(c) Consent Required.

Landlord's consent may be based upon a determination that the same type, class, nature and quality of business, services, management and financial soundness of ownership shall exist after the proposed assignment or subletting and, *provided further,* that each and every covenant,

condition and obligation imposed upon Tenant by this Lease and each and every right, remedy and benefit afforded Landlord by this Lease and the underlying purpose of this Lease is not thereby impaired or diminished. The determination by Landlord as to whether consent will be granted in any specific instance may be based on, without limitation, the following factors, which shall be in Landlord's reasonable discretion: (a) whether the transferee's use of the Premises will be compatible with the provisions of this Lease; (b) the financial capacity of the transferee; (c) the business reputation of the transferee; (d) the quality and type of the business operations of the transferee; and (e) the business experience of the proposed transferee. This list of factors is not intended to be exclusive, and Landlord may rely on such other basis for judgment as may apply from time to time.

(d) Procedure to Obtain Consent.

If Tenant desires at any time to assign this Lease or to sublet the Premises or any portions thereof, it first shall notify Landlord of its desire to do so and shall submit in writing to Landlord (i) the name and legal composition of the proposed subtenant or assignee; (ii) the nature of the proposed subtenant's or assignee's business to be carried on in the Premises; (iii) the terms and provisions of the proposed sublease or assignment and all transfer documents relating to the proposed transfer; and (iv) such reasonable business and financial information as Landlord may request concerning the proposed subtenant or assignee. Any request for Landlord's approval of a sublease or assignment shall be accompanied with a check in such reasonable amount as Landlord shall advise for the cost of review and preparation, including reasonable attorneys' fees, of any documents relating to such proposed transfer, not to exceed One Thousand Dollars ($1,000) for each transfer plus reasonable out-of-pocket expenses payable to third parties. The provisions and conditions of any proposed sublease or assignment must not be inconsistent with any provision of this Lease, and must address all matters contained in this Lease. In addition, the transferee must expressly assume all of the obligations of Tenant under this Lease. Notwithstanding the assumption of the obligations of this Lease by the transferee, no subletting or assignment, even with the consent of Landlord, shall relieve Tenant of its continuing obligation to pay the rent and perform all the other obligations to be performed by Tenant hereunder. The obligations and liability of Tenant hereunder shall continue notwithstanding the fact that Landlord may accept rent and other performance from the transferee. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any assignment or subletting.

(e) Sublease of Phase 2A.

In the event of any sublease of Phase 2A, in addition to any other payment obligation of Tenant hereunder, Tenant shall remit to Landlord, as additional rent, as and when received by Tenant, all net subrents received from a subtenant in excess of $2.00 per rentable square foot per month. For purposes of this section "net subrents" are defined as all rents received from a subtenant however designated, net of any out-of-pocket costs incurred by Tenant to sublease the space and net of any payments received from a subtenant as reimbursement of operating expenses, taxes, utilities or service fees.

13.2 Rights of Landlord: Effect of Landlord's Consent.

Consent by Landlord to one or more assignments of this Lease, or to one or more sublettings of the Buildings or any portion thereof, or collection of rent by Landlord from any assignee or sublessee, shall not operate to exhaust Landlord's rights under this Article 13, nor constitute consent to any subsequent assignment or subletting. No assignment of Tenant's interest in this Lease and no sublease shall relieve Tenant of its obligations hereunder, notwithstanding any waiver or extension of time granted by Landlord to any assignee or sublessee, or the failure of Landlord to assert its rights against any assignee or sublessee, and regardless of whether Landlord's consent thereto is given or required to be given hereunder. In the event of a default by any assignee, sublessee or other successor of Tenant in the performance of any of the terms or obligations of Tenant under this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against any such assignee, sublessee or other successor.

13.3 Advertising.

In no event shall Tenant display on or about the Premises any signs for the purpose of advertising the Premises for assignment, subletting or other transfer of rights, without the Landlord's prior consent, which shall not be unreasonably withheld or delayed. Landlord shall not display on or about the Premises any signs for the purpose of advertising any of the Real Property for lease, subletting, assignment or rent except with the consent of Tenant, which consent shall not be unreasonably withheld or delayed.

13.4 Writing Required.

Each Permitted Transfer, permitted assignment or sublease shall be consummated by an instrument in writing executed by the transferor and transferee in form satisfactory to Landlord. Each assignee and subtenant shall agree in writing for the benefit of the Landlord herein to assume all obligations of Tenant hereunder which are applicable to the space subject to the assignment or sublease and any associated common areas, including the payment of all amounts due or to become due under this Lease directly to the Landlord. At least one executed copy of such written instrument shall be delivered to the Landlord.

13.5 Transfer Premiums.

If Tenant assigns or sublets its rights under this Lease, Tenant shall pay to Landlord as additional rent, after Tenant has recovered any relevant leasing commissions, costs of tenant improvements and other expenses of the assignment or sublease, the unamortized (over the Term of the Lease) costs of any tenant improvements consented to by Landlord paid for by Tenant prior to such Transfer, one-half (1/2) of all such excess consideration due and payable to Tenant from said assignment or sublease to the extent said consideration exceeds the rent or a pro rata portion of the rent, in the event only a portion of the Premises is sublet or assigned.

14. RIGHT OF ENTRY AND QUIET ENJOYMENT.

14.1 Right of Entry.

Landlord and its authorized representatives shall have the right to enter the Buildings at any time during the Term of this Lease during normal business hours when accompanied by a

representative of Tenant and upon not less than twenty-four (24) hours prior notice, except in the case of emergency (in which event no notice and no accompaniment shall be required and entry may be made at any time), for the purpose of inspecting and determining the condition of the Buildings or for any other proper purpose including, without limitation, to make repairs, replacements or improvements which Landlord may be entitled to make hereunder, to show the Buildings to prospective purchasers, lenders and investors, to show the Buildings to prospective tenants (but only during the final eighteen (18) months of the Term of this Lease), and to post notices of nonresponsibility. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business, quiet enjoyment or other damage or loss to Tenant by reason of making any repairs or performing any work upon the Premises or by reason of erecting or maintaining any protective barricades in connection with any such work, and the obligations of Tenant under this Lease shall not thereby be affected in any manner whatsoever, *provided, however,* Landlord shall use its best reasonable efforts to minimize the inconvenience to Tenant's normal business operations caused thereby.

14.2 Quiet Enjoyment.

Landlord covenants that Tenant, upon paying the rent and performing its obligations hereunder and subject to all the terms and conditions of this Lease, shall peacefully and quietly have, hold and enjoy the Premises throughout the Term of this Lease, or until this Lease is terminated as provided by this Lease.

15. CASUALTY AND TAKING.

15.1 Damage or Destruction.

(a) Termination Rights.

If the Buildings, or the Common Areas necessary for Tenant's use and occupancy of the Premises, are damaged or destroyed in whole or in part under circumstances in which (i) repair and restoration is permitted under applicable governmental laws, regulations and building codes then in effect and (ii) repair and restoration reasonably can be completed within a period of one (1) year (or, in the case of an occurrence during the last year of the Term of this Lease, within a period of sixty (60) days) following the date of the occurrence, then Landlord, as to the Buildings and Common Areas and the tenant improvements, shall commence and complete, with all due diligence and as promptly as is reasonably practicable under the conditions then existing, all such repair and restoration as may be required to return the affected portions of the Real Property to a condition comparable to that existing immediately prior to the occurrence. In the event of damage or destruction the repair of which is not permitted under applicable governmental laws, regulations and building codes then in effect, or if such damage or destruction (despite being repaired to the extent then permitted under applicable governmental laws, regulations and building codes) would materially impair Tenant's ability to conduct its business in the Premises, then either party may terminate this Lease as of the date of the occurrence by giving written notice to the other within sixty (60) days after the date of the occurrence; if neither party timely elects such termination, or if such damage or destruction after being repaired would not materially impair Tenant's ability to conduct its business in the Premises, then this Lease shall continue in full force and effect, except that there shall be an equitable adjustment in monthly

Minimum Rental and of Tenant's Operating Cost Share, based upon the extent to which Tenant's ability to conduct its business in the Premises is impaired, and Landlord shall restore the Common Areas and Building and tenant improvements to a complete architectural whole and to a functional condition. In the event of damage or destruction which cannot reasonably be repaired within one (1) year (or, in the case of an occurrence during the last twenty-four (24) months of the Term of this Lease, within a period of sixty (60) days) following the date of the occurrence, then either Landlord or Tenant, at its election, may terminate this Lease as of the date of the occurrence by giving written notice to the other within thirty (30) days after the date of the occurrence; if neither party timely elects such termination, then this Lease shall continue in full force and effect and Landlord shall repair and restore applicable portions of the Real Property in accordance with the first sentence of this Section 15. Landlord and Tenant agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Project with respect to termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

(b) Limitations on Parties' Obligations.

The obligations of Landlord pursuant to Section 15.1(a) are subject to the following limitations:

(i) If the occurrence results from a peril which is required to be insured pursuant to Section 12.1(c) above, the obligations of Landlord shall not exceed the amount of insurance proceeds received from insurers (or, in the case of any failure to maintain required insurance, proceeds that reasonably would have been available if the required insurance had been maintained) by reason of such occurrence, plus the amount of the permitted deductible (provided that Landlord shall be obligated to use its best efforts to recover any available proceeds from the insurance which it is required to maintain pursuant to the provisions of Article 12, and, if such proceeds (including, in the case of a failure to maintain required insurance, any proceeds that reasonably would have been available) are insufficient, either party may terminate the Lease unless the other party promptly elects and agrees, in writing, to contribute the amount of the shortfall; and

(ii) If the occurrence results from a peril which is not required to be insured pursuant to Article 12 above and is not actually insured, Landlord shall be required to repair and restore the Building and Common Areas and tenant improvements to the extent necessary for Tenant's continued use and occupancy of the Buildings, provided that Landlord's obligation to repair and restore shall not exceed an amount equal to ten percent (10%) of the replacement cost of the Building and Common Area improvements and ten percent (10%) of the replacement cost of the tenant improvements; if the cost to repair and restore exceeds such amount, then Landlord may terminate this Lease unless the Tenant promptly elects and agrees, in writing, to contribute the amount of the shortfall.

(c) Entitlement to Insurance Proceeds.

If this Lease is terminated pursuant to the foregoing provisions of this Section 15.1 following an occurrence which is a peril actually insured or required to be insured against pursuant to Article 12, Landlord and Tenant agree (and any Lender shall be asked to agree) that

such insurance proceeds, after repayment of the loan, shall be allocated between Landlord and Tenant in a manner which fairly and reasonably reflects their respective ownership rights under this Lease, as of the termination or expiration of the Term of this Lease, with respect to the improvements, fixtures, equipment and other items to which such insurance proceeds are attributable.

(d) Abatement of Rent.

From and after the date of an occurrence resulting in damage to or destruction of the Buildings or of the Common Areas necessary for Tenants use and occupancy of the Buildings, and continuing until the earlier of the date repair and restoration thereof are completed or the date on which rental loss insurance payments cease, there shall be an equitable abatement of Minimum Rental and of Tenant's Operating Cost Share of Operating Expenses based upon the degree to which Tenant's ability to conduct its business in the Buildings is impaired.

15.2 Condemnation.

(a) Termination Rights.

If during the Term of this Lease the Real Property or Improvements or any substantial part of either, is taken by eminent domain or by reason of any public improvement or condemnation proceeding, or in any manner by exercise of the right of eminent domain (including any transfer in avoidance of an exercise of the power of eminent domain), then (i) this Lease shall terminate as to the entire affected Premises at Landlord's election by written notice given to Tenant within sixty (60) days after the taking has occurred, and (ii) this Lease shall terminate as to the entire affected Premises at Tenant's election, by written notice given to Landlord within thirty (30) days after the nature and extent of the taking have been finally determined, if the portion of the Premises taken is of such extent and nature as substantially to handicap, impede or permanently impair Tenant's use of the balance of the Premises, and (iii) this Lease shall remain in full force and effect as to the remaining portion of the Premises. If Tenant elects to terminate this Lease, as to the affected Premises, Tenant shall also notify Landlord of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of Tenant's election to terminate, except that this Lease shall terminate on the date of taking if such date falls on any date before the date of termination designated by Tenant. If neither party elects to terminate this Lease as hereinabove provided, this Lease shall continue in full force and effect (except that there shall be an equitable abatement of Minimum Rental and of Tenant's Operating Cost Share of Operating Expenses based upon the degree to which Tenant's ability to conduct its business in the Premises is impaired), Landlord shall restore the Building and Common Area and tenant improvements to a complete architectural whole and a functional condition and as nearly as reasonably possible to the condition existing before the taking. In connection with any such restoration, Landlord shall use its best efforts (including, without limitation, any necessary negotiation or intercession with its lender, if any) to ensure that any severance damages or other condemnation awards intended to provide compensation for rebuilding or restoration costs are promptly collected and made available to Tenant and Landlord subject only, to such payment controls as either party or its lender may reasonably require in order to ensure the proper application of such proceeds toward the restoration of the Improvements. Each party waives the provisions of Code of Civil Procedure Section 1265.130, allowing either party to petition the Superior Court to terminate this Lease in the event of a partial condemnation of the Buildings or Real Property.

(b) Limitations on Parties' Obligations.

The obligations of Landlord pursuant to Section 15.2(a) are subject to the following limitations:

(i) Landlord's obligation to repair and restore shall not exceed, net of any condemnation awards or other proceeds available for and allocable to such restoration as contemplated in Section 15.2(a), an amount equal to ten percent (10%) of the replacement cost of the Building and Common Area improvements and an amount equal to ten percent (10%) of the replacement cost of the tenant improvements; if the replacement cost exceeds such amount, then Landlord may terminate this Lease unless Tenant promptly elects and agrees, in writing, to contribute the amount of the shortfall; and

(ii) If this Lease is terminated pursuant to the foregoing provisions of this Section 15.2, or if this Lease remains in effect but any condemnation awards or other proceeds become available as compensation for the loss or destruction of any of the Improvements, then Landlord and Tenant agree (and any Real Property lender shall be asked to agree) that such proceeds shall be allocated between Landlord and Tenant, respectively, in the respective proportions in which Landlord and Tenant would have shared, under Section 15.1(c), the proceeds of any insurance proceeds following loss or destruction of the applicable Improvements by an insured casualty.

15.3 Reservation of Compensation.

Landlord reserves, and Tenant waives and assigns to Landlord, all rights to any award or compensation for damage to the Improvements and the Real Property, but not the leasehold estate created hereby, accruing by reason of any taking in any public improvement, condemnation or eminent domain proceeding or in any other manner by exercise of the right of eminent domain or of anything lawfully done by public authority, except that (a) Tenant shall be entitled to any and all compensation or damages expressly awarded to Tenant on account of Tenant's loss of the leasehold estate and Tenant's moving expenses, trade fixtures and equipment and any leasehold improvements installed by Tenant in the Buildings at its own sole expense, but only to the extent Tenant would have been entitled to remove such items at the expiration of the Term of this Lease and then only to the extent of the then remaining unamortized value of such improvements computed on a straight-line basis over the Term of this Lease, and (b) any condemnation awards or proceeds described in Section 15.2(b)(ii) shall be allocated and disbursed in accordance with the provisions of Section 15.2(b)(ii), notwithstanding any contrary provisions of this Section 15.3.

15.4 Restoration of Improvements.

In connection with any repair or restoration of Improvements following a casualty or taking as hereinabove set forth, the party responsible for such repair or restoration shall, to the extent possible, return such Improvements to a condition substantially equal to that which existed immediately prior to the casualty or taking. To the extent such party wishes to make material

modifications to such Improvements, such modifications shall be subject to the prior written approval of the other party (not to be unreasonably withheld, delayed or conditioned), except that no such approval shall be required for modifications that are required by applicable governmental authorities as a condition of the repair or restoration, unless such required modifications would substantially impair or impede Tenant's conduct of its business in the Buildings (in which case any such modifications in the Building shall require Tenant's consent, not unreasonably withheld, delayed or conditioned) or would materially affect the exterior appearance, the structural integrity or the mechanical or other operating systems of the Buildings (in which case any such modifications shall require Tenant's consent, not to be unreasonably withheld, delayed or conditioned).

16. DEFAULT.

16.1 Events of Default.

The occurrence of any of the following shall constitute an event of default on the part of Tenant:

(a) Nonpayment.

Failure to pay, when due, any amount payable to Landlord hereunder, such failure continuing for a period of five (5) business days after written notice of such failure;

(b) Other Obligations.

Failure to perform any obligation, agreement or covenant under this Lease other than those matters specified in subsection (a) hereof, such failure continuing for thirty (30) days after written notice of such failure; *provided, however,* that if such failure is curable in nature but cannot reasonably be cured within such 30-day period, then Tenant shall not be in default if, and so long as, Tenant promptly (and in all events within such 30-day period) commences such cure and thereafter diligently pursues such cure to completion; and *provided further, however,* that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 et seq., as amended from time to time. Notwithstanding the foregoing, if any such failure on the part of Tenant affects or threatens to affect the health or safety of others, or would result in the destruction of property, Tenant shall immediately begin to cure and shall use its diligent and best efforts in pursuing said cure to completion (it being understood and agreed that Landlord shall not be entitled to exercise any remedy to terminate this Lease unless and until such failure shall have continued for thirty (30) days after written notice of such failure);

(c) General Assignment.

A general assignment by Tenant for the benefit of creditors;

(d) Bankruptcy.

The filing of any voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a

period of sixty (60) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant shall, in such time period as may be permitted by the bankruptcy court having jurisdiction, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease and provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations under this Lease. Specifically, but without limiting the generality of the foregoing, such adequate assurances must include assurances that the Buildings continue to be operated only for the use permitted hereunder. The provisions hereof are to assure that the basic understandings between Landlord and Tenant with respect to Tenant's use of the Premises and the benefits to Landlord therefrom are preserved, consistent with the purpose and intent of applicable bankruptcy laws;

(e) Receivership.

The employment of a receiver appointed by court order to take possession of substantially all of Tenants assets or its interest in the Buildings, if such receivership remains undissolved for a period of sixty (60) days;

(f) Attachment.

The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets or its interest in the Buildings, if such attachment or other seizure remains undismissed or undischarged for a period of sixty (60) days after the levy thereof; or

(g) Insolvency.

The admission by Tenant in writing of its inability to pay its debts as they become due, the filing by Tenant of a petition seeking any reorganization or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding or, if within sixty (60) days after the commencement of any proceeding against Tenant seeking any reorganization or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed.

16.2 Remedies Upon Tenant's Default.

(a) Re-entry; Termination.

Upon the occurrence of any event of default described in Section 16.1 hereof, Landlord, in addition to and without prejudice to any other rights or remedies it may have, shall have the immediate right to re-enter the Buildings or any part thereof and repossess the same, expelling and removing therefrom all persons and property (which property may be stored in a public warehouse or elsewhere at the cost and risk of and for the account of Tenant). In addition to or in lieu of such re-entry, and without prejudice to any other rights or remedies it may have, Landlord shall have the right either (i) to terminate this Lease and recover from Tenant all damages incurred by Landlord as a result of Tenant's default, as hereinafter provided, or (ii) to continue this Lease in effect and recover rent and other charges and amounts as they become due.

(b) Continuation of Lease.

Even if Tenant has breached this Lease and abandoned the Buildings, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession and Landlord may enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due, and Landlord, without terminating this Lease, may exercise all of the rights and remedies of a lessor under 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 right to sublet or assign, subject only to reasonable limitations), or any successor Code section. Acts of maintenance, preservation or efforts to relet the Buildings or the appointment of a receiver upon application of Landlord to protect Landlord's interests under this Lease shall not constitute a termination of Tenant's right to possession.

(c) Remedies.

If Landlord terminates this Lease pursuant to this Section 16.2, Landlord shall have all of the rights and remedies of a landlord provided by Section 1951.2 of the Civil Code of the State of California, or any successor Code section, which remedies include Landlord's right to recover from Tenant (i) the worth at the time of award of the unpaid rent and additional rent and Tenant's Operating Cost Share of Operating Expense which had been earned at the time of termination, (ii) the worth at the time of award of the amount by which the unpaid rent and additional rent and Tenant's Operating Cost Share of Operating Expense 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, (iii) the worth at the time of award of the amount by which the unpaid rent and additional rent and Tenant's Operating Cost Share of Operating Expense 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, and (iv) any other amount reasonably 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, the cost of recovering possession of the Buildings, expenses of reletting, including necessary repair, renovation and alteration of the Buildings, reasonable attorneys' fees, and other reasonable costs. The "worth at the time of award" of the amounts referred to in clauses (i) and (ii) above shall be computed by allowing interest at twelve percent (12%) per annum from the date such amounts accrued to Landlord. The "worth at the time of award" of the amounts referred to in clause (iii) above shall be computed by discounting such amount at one percentage point above the discount rate of the Federal Reserve Bank of San Francisco at the time of award.

16.3 Remedies Cumulative.

All rights, privileges and elections or remedies of Landlord contained in this Article 16 are cumulative and not alternative to the extent permitted by law and except as otherwise provided herein.

16.4 Landlord's Default.

Landlord shall not be deemed to be in default of this Lease unless Landlord fails within a reasonable time (or the time specified herein, if applicable) to perform an obligation required to be performed by it. Tenant agrees to give Landlord and any lender designated by Landlord notice of any Landlord default, and a reasonable opportunity to cure such default.

17. SUBORDINATION, ATTORNMENT AND SALE.

17.1 Subordination to Mortgage.

This Lease, and any sublease entered into by Tenant under the provisions of this Lease, shall be subject and subordinate to any ground lease, mortgage, deed of trust, sale/leaseback transaction or any other hypothecation for security now or hereafter placed upon the Buildings, the Real Property, or any of them, and the rights of any assignee of Landlord or of any ground lessor, mortgagee, trustee, beneficiary or leaseback lessor under any of the foregoing, and to any and all advances made on the security thereof and to ail renewals, modifications, consolidations, replacements and extensions thereof; *provided, however,* that such subordination in the case of any future ground lease, mortgage, deed of trust, sale/leaseback transaction or any other hypothecation for security placed upon the Buildings, the Real Property, or any of them shall be conditioned on Tenant's receipt from the ground lessor, mortgagee, trustee, beneficiary or leaseback lessor of a Non-Disturbance Agreement in a form reasonably acceptable to Tenant (i) confirming that so long as Tenant is not in material default hereunder beyond any applicable cure period (for which purpose the occurrence of any event of default under Section 16.1 hereof shall be deemed to be "material"), Tenant's rights hereunder shall not be disturbed by such person or entity and (ii) agreeing that the benefit of such Non-Disturbance Agreement shall be transferable to any transferee under a Permitted Transfer and to any other assignee or subtenant that is acceptable to the ground lessor, mortgagee, trustee, beneficiary or leaseback lessor at the time of transfer. Tenant agrees to execute such other commercially reasonable documentation as may be required by an institutional lender to evidence such subordination and to attorn to any such ground lessor, mortgagee, trustee, beneficiary or leaseback lessor in the event such party succeeds to Landlord's interest hereunder and agrees to recognize this Lease. Moreover, Tenant's obligations under this Lease shall be conditioned on Tenant's receipt within thirty (30) days after mutual execution of this Lease, from any existing ground lessor, mortgagee, trustee, beneficiary or leaseback lessor currently owning or holding a security interest in the Real Property, of a Non-Disturbance Agreement in a form reasonably acceptable to Tenant confirming (i) that so long as Tenant is not in material default hereunder beyond any applicable cure period, Tenant's rights hereunder shall not be disturbed by such person or entity and (ii) agreeing that the benefit of such Non-Disturbance Agreement shall be transferable to any transferee under a Permitted Transfer and to any other assignee or subtenant that is acceptable to the ground lessor, mortgagee, trustee, beneficiary or leaseback lessor at the time of transfer. If any mortgagee, trustee, beneficiary, ground lessor, sale/leaseback lessor or assignee elects in writing to have this Lease be an encumbrance upon the Real Property prior to the lien of its mortgage, deed of trust, ground lease or leaseback lease or other security arrangement and gives notice thereof to Tenant, this Lease shall be deemed prior thereto, whether this Lease is dated prior or subsequent to the date thereof or the date of recording thereof. Tenant, and any sublessee, shall execute such documents as may reasonably be requested by any mortgagee,

trustee, beneficiary, ground lessor, sale/leaseback lessor or assignee to evidence the subordination herein set forth, subject to the conditions set forth above, or to make this Lease prior to the lien of any mortgage, deed of trust, ground lease, leaseback lease or other security arrangement, as the case may be. Upon any default by Landlord in the performance of its obligations under any mortgage, deed of trust, ground lease, leaseback lease or assignment, Tenant (and any sublessee) shall, notwithstanding any subordination hereunder, attorn to the mortgagee, trustee, beneficiary, ground lessor, leaseback lessor or assignee thereunder upon demand and become the tenant of the successor in interest to Landlord, at the option of such successor in interest, and shall execute and deliver any instrument or instruments confirming the attornment herein provided for.

17.2 Sale of Landlord's Interest.

Upon sale, transfer or assignment of Landlord's entire interest in the Buildings and the Real Property, Landlord shall be relieved of its obligations hereunder with respect to liabilities accruing from and after the date of such sale, transfer or assignment.

17.3 Estoppel Certificates.

Tenant or Landlord (the **"Responding Party"**) as applicable, shall at any time and from time to time, within ten (10) days after written request by the other party (the **"Requesting Party"**), execute, acknowledge and deliver to the Requesting Party a certificate in writing stating: (i) that this Lease is unmodified and in full force and effect, or if there have been any modifications, that this Lease is in full force and effect as modified and stating the date and the nature of each modification; (ii) the date to which rental and all other sums payable hereunder have been paid; (iii) that the Requesting Party is not in default in the performance of any of its obligations under this Lease, that the certifying party has given no notice of default to the Requesting Party and that no event has occurred which, but for the expiration of the applicable time period, would constitute an event of default hereunder, or if the responding party alleges that any such default, notice or event has occurred, specifying the same in reasonable detail; and (iv) such other matters as may reasonably be requested by the Requesting Party or by any institutional lender, mortgagee, trustee, beneficiary, ground lessor, sale/leaseback lessor or prospective purchaser of the Real Property, or prospective sublessee or assignee of this Lease. Any such certificate provided under this Section 17.3 may be relied upon by any lender, mortgagee, trustee, beneficiary, assignee or successor in interest to the Requesting Party, by any prospective purchaser, by any purchaser on foreclosure or sale, by any grantee under a deed in lieu of foreclosure of any mortgage or deed of trust on the Real Property, by any subtenant or assignee, or by any other third party. Failure to execute and return within the required time any estoppel certificate requested hereunder, if such failure continues for five (5) days after a second written request by the Requesting Party for such estoppel certificate, shall be deemed to be an admission of the truth of the matters set forth in the form of certificate submitted to the Responding Party for execution.

18. SECURITY.

18.1 Deposit.

Upon execution of the original Lease, Tenant deposited with Landlord the sum of $5,500,000. In lieu of a cash security deposit, Tenant elected to provide one or more irrevocable letters of credit, payable to Landlord, as a security deposit. Upon the execution of this Lease, the amount of such deposit shall be reduced to $1,375,000. At Tenant's election, in lieu of a cash security deposit, Tenant may continue to provide one or more irrevocable letters of credit in amounts described above, payable to Landlord, and issued by an institution and in form reasonably satisfactory to Landlord. Such sums or the Letter of Credit (individually and collectively, the **"Security Deposit"**) shall be held by Landlord as security for the faithful performance of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term hereof; provided that if at any time Tenant shall have maintained an investment grade credit rating of BBB or better by Standard and Poors for a consecutive twelve month period, Landlord shall return the Security Deposit to Tenant. Upon the execution of this Lease, Landlord shall promptly obtain the release of any Letters of Credit pledged as permitted in Section 18.2 below which exceed the amounts indicated above and shall return such Letters of Credit to Tenant. Upon such release and return, Tenant shall cause to be issued and delivered a substitute letter of credit in the amount of the required security deposit. If Tenant defaults with respect to any provision of this Lease, including, without limitation, the provisions relating to the payment of rental and other sums due hereunder, Landlord shall have the right, but shall not be required, to use, apply or retain all or any part of the Security Deposit for the payment of rental, unreimbursed Operating Expenses or any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. Landlord may also apply the Security Deposit toward costs incurred to repair damages to the Premises or to clean and bring the Premises to good order, condition and repair during its Lease Term and upon expiration or sooner termination of this Lease. If any portion of the Security Deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall be required to keep any deposit under this Section separate from Landlord's general funds in an interest bearing account reasonably acceptable to Tenant, and Tenant shall be entitled to the interest thereon, to be paid to Tenant when and if the Security Deposit is refundable to Tenant. If Tenant fully and faithfully performs every provision of this Lease to be performed by it, the Security Deposit, or any balance thereof, together with all accrued interest, shall be returned to Tenant or, at Landlord's option, to the last assignee of Tenant's interest hereunder, at the expiration of the Term of this Lease and after Tenant has vacated the Premises. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer all deposits then held by Landlord under this Section to Landlord's successor in interest, whereupon Tenant agrees to release Landlord from all liability for the return of such deposit or the accounting thereof.

18.2 Pledge of Security Deposit.

The Security Deposit may be pledged by Landlord as additional collateral to any lender having a security interest in the Real Property. The lender may use, apply or retain all or any part of the Security Deposit for the payment of Building Costs, but only in the event that lender shall have notified Landlord and Tenant that such Building Costs remain unpaid and the parties shall have failed within thirty (30) days following receipt of such notice to cure such nonpayment. For purposes of this Section, **"Building Cost(s)"** shall mean any and all costs

actually incurred in constructing the Building, Common Area and the related site improvements including, but not limited to, costs for demolition, grading, utility fees, architectural and engineering fees, permits, surveys, appraisals, insurance, legal and accounting fees, development overhead, construction management, blueprinting, equity fees, construction lender, permanent lender and mortgage banker fees, interest carry, site improvements, off-site improvements and tenant improvements. If any portion of the Security Deposit is so applied, upon the Phase 1 Rent Commencement Date, Tenant shall deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall constitute a material breach of this Lease.

19. MISCELLANEOUS.

19.1 Notices.

All notices, consents, waivers and other communications which this Lease requires or permits either party to give to the other shall be in writing and shall be deemed given when delivered personally (including delivery by private courier or express delivery service) or three (3) days after deposit in the United States mail, registered or certified mail, postage prepaid, assessed to the parties at their respective addresses as follows:

To Tenant:	150 Industrial Road San Carlos, CA 94070 Attn: Ajay Bansal, Chief Financial Officer
with a copy to:	ISO Industrial Road San Carlos, CA 94070 Attn: Paula Kasler, Esq.
and with a copy to:	Greenberg Traurig LLP Attn: Toni Wise, Esq. 2000 University Avenue East Palo Alto, CA 94303 Attn: Toni P. Wise, Esq.
To Landlord:	Inhale 201 Industrial Road L.P. c/o Bernardo Property Advisors, Inc. 17140 Bernardo Center Dr., Suite 195 San Diego, C A 92128 Attn: Alan D. Gold
with a copy to:	Seltzer Caplan McMahon Vitek 2100 Symphony Towers 750 B Street San Diego, CA 92101 Attn: David J. Dome, Esq.

or to such other address as may be contained in a notice at least fifteen (15) days prior to the address change from either party to the other given pursuant to this Section. Rental payments and other sums required by this Lease to be paid by Tenant shall be delivered to Landlord at Landlord's address provided in this Section, or to such other address as Landlord may from time to time specify in writing to Tenant, and shall be deemed to be paid only upon actual receipt.

19.2 Successors and Assigns.

The obligations of this Lease shall run with the land, and this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the original Landlord named herein and each successive Landlord under this Lease shall be liable only for obligations accruing during the period of its ownership of the Real Property, and any liability for obligations accruing after termination of such ownership shall terminate as of the date of such termination of ownership and shall pass to the successor lessor.

19.3 No Waiver.

The failure of Landlord to seek redress for violation, or to insist upon the strict performance, of any covenant or condition of this Lease shall not be deemed a waiver of such violation, or prevent a subsequent act which would originally have constituted a violation from having all the force and effect of an original violation.

19.4 Severability.

If any provision of this Lease or the application thereof is held to be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each of the provisions of this Lease shall be valid and enforceable, unless enforcement of this Lease as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would materially frustrate the purposes of this Lease.

19.5 Litigation Between Parties.

In the event of any litigation or other dispute resolution proceedings between the parties hereto arising out of or in connection with this Lease, the prevailing party shall be reimbursed for all reasonable costs, including, but not limited to, reasonable accountants' fees and attorneys' fees, incurred in connection with such proceedings (including, but not limited to, any appellate proceedings relating thereto) or in connection with the enforcement of any judgment or award rendered in such proceedings. **"Prevailing Party"** within the meaning of this Section shall include, without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

19.6 Surrender.

A voluntary or other surrender of this Lease by Tenant, or a mutual termination thereof between Landlord and Tenant, shall not result in a merger but shall, at the option of Landlord, operate either as an assignment to Landlord of any and all existing subleases and subtenancies, or a termination of all or any existing subleases and subtenancies. This provision shall be contained in any and all assignments or subleases made pursuant to this Lease.

19.7 Interpretation.

The provisions of this Lease shall be construed as a whole, according to their common meaning, and not strictly for or against Landlord or Tenant. The captions preceding the text of each Section and subsection hereof are included only for convenience of reference and shall be disregarded in the construction or interpretation of this Lease.

19.8 Entire Agreement.

This written Lease, together with the exhibits hereto, and that certain Redemption Agreement dated as of June 22, 2004, contains all the representations and the entire understanding between the parties hereto with respect to the subject matter hereof and replaces any prior agreements, including the prior lease, and any prior correspondence, memoranda or agreements. This Lease may be modified only by an agreement in writing signed by each of the parties.

19.9 Governing Law.

This Lease and all exhibits hereto shall be construed and interpreted in accordance with and be governed by all the provisions of the laws of the State of California.

19.10 No Partnership.

The relationship created by this lease between Landlord and Tenant is solely that of a lessor and lessee. Nothing contained in this Lease shall be construed as creating any type or manner of partnership, joint venture or joint enterprise with or between Landlord and Tenant. Neither party is the agent or representative of the other.

19.11 Financial Information.

From time to time Tenant shall promptly provide directly to prospective lenders and purchasers of the Real Property designated by Landlord such financial information pertaining to the financial status of Tenant as Landlord may reasonably request; *provided*, Tenant shall be permitted to provide such financial information in a manner which Tenant deems reasonably necessary to protect the confidentiality of such information. In addition, from time to time, Tenant shall provide Landlord with such financial information pertaining to the financial status of Tenant as Landlord may reasonably request. Landlord agrees that all financial information supplied to Landlord by Tenant shall be treated as confidential material, and shall not be disseminated to any party or entity (including any entity affiliated, with Landlord) without Tenant's prior written consent, except that Landlord shall be entitled to provide such information, subject to reasonable precautions to protect the confidential nature thereof, (i) to Landlord's partners and professional advisors, solely to use in connection with Landlord's execution and enforcement of this Lease, and (ii) to prospective lenders and/or purchasers of the Real Property, solely for use in connection with their bona fide consideration of a proposed financing or purchase of the Real Property, provided that such prospective lenders and/or

purchasers are not then engaged in businesses directly competitive with the business then being conducted by Tenant. For purposes of this Section, without limiting the generality of the obligations provided herein, it shall be deemed reasonable for Landlord to request copies of Tenant's most recent audited annual financial statements, or, if audited statements have not been prepared, unaudited financial statements for Tenant's most recent fiscal year, accompanied by a certificate of Tenant's chief financial officer that such financial statements fairly present Tenant's financial condition as of the date(s) indicated. Notwithstanding any other provisions of this Section 19.11, during any period in which Tenant has outstanding a class of publicly traded securities and is filing with the Securities and Exchange Commission, on a regular basis, Forms 10Q and 10K and any other periodic filings required under the Securities Exchange Act of 1934, as amended, it shall constitute sufficient compliance under this Section 19.11 for Tenant to furnish Landlord with copies of such periodic filings substantially concurrently with the filing thereof with the Securities and Exchange Commission.

Landlord and Tenant recognize the need of Tenant to maintain the confidentiality of information regarding its financial status and the need of Landlord to be informed of, and to provide to prospective lenders and purchasers of the Real Property financial information pertaining to, Tenant's financial status. Landlord and Tenant agree to cooperate with each other in achieving these needs within the context of the obligations set forth in this Section.

19.12 Costs.

Notwithstanding anything to the contrary contained in this Lease, if Tenant requests the consent of Landlord under any provision of this Lease for any act that Tenant proposes to do hereunder, including, without limitation, assignment or subletting of the Buildings or any portion thereof, Tenant shall, as a condition to doing any such act and the receipt of such consent, reimburse Landlord promptly for any and all reasonable costs and expenses incurred by Landlord in connection therewith (including, without limitation, reasonable attorneys' fees) up to a maximum of $1,000 per request.

19.13 Time.

Time is of the essence of this Lease, and of every term and condition hereof

19.14 Brokers.

Each party represents and warrants that no other broker participated in the consummation of this Amended and Restated Lease and agrees to indemnify, defend and hold the other party harmless against any liability, cost or expense, including, without limitation, reasonable attorneys' fees, arising out of any claims for brokerage commissions or other similar compensation in connection with any conversations, prior negotiations or other dealings by the indemnifying party with any other person making such claim.

19.15 Memorandum of Lease.

At any time during the Term of this Lease, either party, at its sole expense, shall be entitled to record a memorandum of this Lease and, if either party so elects, both parties agree to cooperate in the preparation, execution, acknowledgement and recordation of such document in reasonable form.

19.16 Corporate Authority.

Each person signing this Lease on behalf of Tenant or Landlord warrants that he or she is fully authorized to do so and, by so doing, to bind the entity on whose behalf he or she is signing.

19.17 Execution and Delivery.

This Lease may be executed in one or more counterparts and by separate parties on separate counterparts, but each such counterpart shall constitute an original and all such counterparts together shall constitute one and the same instrument.

19.18 Survival.

Without limiting survival, provisions which would otherwise be implied or construed under applicable law, the provisions of Sections 2.5, 7.4, 9.2, 9.3, 9.4, 11.4, 12.10, 12.11, 19.5 and 19.11 hereof shall survive the termination of this Lease with respect to matters occurring prior to the expiration of this Lease.

19.19 Waiver of Jury Trial.

The parties hereto shall, and they hereby do, waive trial by jury in any action or proceeding or counterclaim brought by either of the parties hereto against the other on any matters arising out of or in any way connected with this Lease.

19.20 Exclusivity.

Landlord agrees that it shall not, during the Term of this Lease or any period during which Tenant occupies all or any portion of the Premises, lease or allow the use or occupancy of any portion of the Premises or the Buildings to or by any party which is a competitor of Tenant.

19.21 Tenant's Remedies.

Except to the extent expressly provided herein, no event or occurrence during the Lease Term is intended to allow Tenant the right to surrender or terminate this Lease or to relieve Tenant from any of its obligations hereunder, and Tenant waives any rights now or hereafter conferred upon it by statute or otherwise (except for rights conferred herein) to surrender or terminate this Lease or to claim any abatement or suspension of Rent or other sums payable hereunder.

19.22 Security Measures.

Tenant acknowledges that the Rent payable to Landlord hereunder does not and will not include the cost of guard service or other security services and that Landlord shall have no obligation whatsoever to provide same. Tenant agrees that Landlord shall have no responsibility for the protection of the Premises, Tenant, its agents and invitees or their property from the acts of third parties.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first set forth above.

"Landlord"

Inhale 201 Industrial Road, L.P.,
a California limited partnership

By SciMedProp III, a California corporation,
its General Partner

By: _____

Name: _____
Its: _____

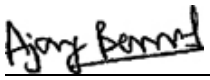
By: _____

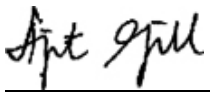
Name: _____
Its: _____

"Tenant"

Nektar Therapeutics (fka Inhale Therapeutic Systems, Inc.),
a Delaware corporation

By: _____
Name: _____
Its: _____

By: 
Name: Ajay Bansal
Its: CFO

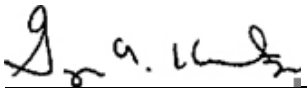
By: 
Name: Ajit Gill
Its: CEO

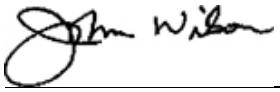
IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first set forth above.

"Landlord"

Inhale 201 Industrial Road, L.P.,
a California limited partnership

By SciMed Prop III, a California corporation,
its General Partner

By: 
Name: GARY A. KREITZER
Its: E.V.P.

By: 
Name: John Wilson
Its: CFO

"Tenant"

Nektar Therapeutics (fka Inhale Therapeutic Systems, Inc.),
a Delaware corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBITS

Exhibit A	Real Property Description
Exhibit B	Site Plan
Exhibit C	Work Letter

EXHIBIT A

REAL PROPERTY LEGAL DESCRIPTION

All that certain real property in the State of California, County of San Mateo, City of San Carlos more particularly described as follows:

ALL LANDS LYING WITHIN THE EXTERIOR BOUNDARIES OF THAT MAP ENTITLED “REVERSION TO ACREAGE OF THE LANDS OF ARNDT ELECTRONICS LYING WITHIN THE COUNTY OF SAN MATEO, BEING PARCELS 1,2,3 AND 4 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN VOLUME 51 OF PARCEL MAPS AT PAGE 71 RECORDS OF SAN MATEO,” FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON OCTOBER 6,1986 IN VOLUME 58 OF PARCEL MAPS AT PAGE 13.

ASSESSOR’S PARCEL NOS. 046-020-370
046-020-380

JOINT PLANT NOS. 046-002-020-22A
046-002-020-22-01A
046-002-020-22-02A
046-002-020-22-03A
046-002-020-23A
046-002-020-23-01A

EXHIBIT B

SHE PLAN

(attached)

EXHIBIT C

Work Letter

WORK LETTER

This Work Letter (**"Work Letter"**) constitutes part of the Amended and Restated Build-to-Suit Lease dated as of August 17, 2004 (the **"Lease"**) between Inhale 201 Industrial Road L.P., a California Limited Partnership (**"Landlord"**) and Nektar Therapeutics (fka Inhale Therapeutic Systems, Inc.), a Delaware corporation (**"Tenant"**). The terms of this Work Letter are incorporated in the Lease for all purposes.

RECITALS

WHEREAS Landlord and Tenant have agreed in the Lease that Landlord shall provide a $100 per Usable Square Foot allowance for the construction of Tenant Improvements to Phase 2A (the **"Phase 2A Allowance"**); and

WHEREAS Landlord and Tenant agree that it would be in their respective best interests for the Landlord now to construct improvements to Phase 2A which would facilitate the subleasing of Phase 2A;

WHEREAS Landlord and Tenant agree that a portion of the Phase 2A Allowance should be used to construct the Initial Phase 2A Improvements (defined below) and the balance of the Phase 2A Allowance be reserved for future improvements to Phase 2A.

AGREEMENT

NOW THEREFORE, the parties have entered into this Work Letter to augment and supplement the Lease as follows:

1. Defined Terms.

(a) Approved Plans. Plans and specifications to be prepared by the Architect for improvements within Phase 2A as approved by both Landlord and Tenant pursuant to Section 2(a) below, as modified to obtain Building Permits.

(b) Architect. [To be determined]

(c) Building Permits. The permits and approvals required to construct the Initial Phase 2A Improvements substantially in compliance with the Approved Plans, obtained pursuant to Section 2(b) below.

(d) Completion. Construction of the Initial Phase 2A Improvements shall be deemed completed for purposes of this Work Letter upon the issuance of a written certificate signed by the Architect certifying that the Initial Phase 2A Improvements have been constructed (except for Punch List Work) in good and workman like condition, in compliance with the Approved Plans and Building Permits, and all required governmental inspections thereof have been passed.

(e) Initial Phase 2A Improvements. The tenant improvements and other improvements within Phase 2A, shown on the Approved Plans, to be constructed within Phase 2A pursuant to the Lease and this Work Letter, to facilitate the subleasing of Phase 2A.

(f) Phase 2A. That portion of the Property defined as Phase 2A in the Lease.

(g) Punch List Work. Minor corrections of construction and minor mechanical adjustments required to cause any applicable portion of the Initial Phase 2A Improvements as constructed to conform to the Approved Plans and Building Permits in all material respects. Landlord shall develop the Punch List following inspection of the Initial Phase 2A Improvements in consultation with the Architect.

2. Plans and Construction.

Landlord and Tenant shall comply with the procedures set forth in this Section 2 in preparing, delivering and approving matters relating to the Initial Phase 2A Improvements.

(a) Architect shall develop the scope, plans and specifications for the Initial Phase 2A Improvements, subject to the supervision of Landlord and the approval of the Tenant, which shall not be unreasonably withheld or delayed.

(b) The Approved Plans shall be submitted to the City of San Carlos for approval and issuance of Building Permits.

(c) Landlord shall diligently construct and complete the Initial Phase 2A Improvements substantially in accordance with the Approved Plans and Building Permits. Such construction shall occur in a neat and workmanlike manner and shall materially conform to all applicable governmental codes, laws and regulations in force at the time such work is completed,

(d) Landlord shall spend out of the Phase 2 Allowance not less than $70.00 per Usable Square Foot within Phase 2A, for the Initial Phase 2A Improvements.

3. Deadlines: Completion.

(a) Landlord shall use reasonable commercial efforts to cause construction of the Improvements to be Complete within twelve (12) months of the date of execution of the Lease.

(b) The deadline in Section 3 (a) above shall be extended:

(i) One (1) day for each one (1) day beyond ninety (90) days from the date of submission of Approved Plans to the City of San Carlos, until the issuance of Building Permits;

(ii) One (1) day for each one (1) day delay resulting from acts of God, acts of public agencies, labor disputes, fires, freight embargoes, inability to obtain supplies, materials, fuels or permits, or other causes or contingencies beyond the reasonable control of Landlord, without duplication for delays in Section 3(b)(i).

(c) Landlord shall pay Tenant the sum of One Thousand Dollars ($1,000) per day as liquidated damages for each day beyond the date specified in Section 3(a) above (subject to adjustment as provided in Section 3(b) above) until the Improvements are Complete. THE PARTIES TO THIS AGREEMENT HAVE, PRIOR TO THE EXECUTION HEREOF, CONTEMPLATED THE DAMAGES WHICH WILL BE SUFFERED IN THE EVENT OF A FAILURE BY LANDLORD TO PERFORM ITS OBLIGATIONS UNDER SECTION 3(a) ABOVE (SUBJECT TO ADJUSTMENT AS PROVIDED IN SECTION 3(b) ABOVE). BECAUSE OF THE UNPREDICTABLE STATE OF THE ECONOMY, AND THE DIFFICULTY IN PREDICTING THE ACTUAL DAMAGES RESULTING FROM A DELAY IN THE COMPLETION OF THE CONSTRUCTION OF THE IMPROVEMENTS, THE POTENTIAL SHIFTS IN THE MONEY MARKET FOR REAL ESTATE LOANS OF ALL TYPES, AND A VARIETY OF OTHER FACTORS WHICH AFFECT THE VALUE AND MARKETABILITY OF PHASE 2A, THE PARTIES RECOGNIZE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN PRIOR TO THE EXECUTION OF THIS AGREEMENT WITHIN ANY DEGREE OF CERTAINTY THE AMOUNT OF DAMAGES WHICH WOULD BE SUFFERED IN THE EVENT OF SUCH A DELAY. ACCORDINGLY, BY INITIALLING BELOW THE PARTIES AGREE THAT TENANT SHALL BE ENTITLED TO LIQUIDATED DAMAGES AS SPECIFIED IN THIS SECTION 3(c). THE PARTIES ACKNOWLEDGE AND AGREE THAT (i) THIS PROVISION SHALL BE VALID AND ENFORCEABLE PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671; (ii) THIS PROVISION IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING AT THE TIME OF EXECUTION OF THIS AGREEMENT; AND (iii) HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO DISPUTE THE REASONABLENESS OF THIS PROVISION.

LANDLORD

TENANT

4. Costs of Construction.

Except as otherwise agreed between Landlord and Tenant, the cost of construction of the Improvements shall be borne by the Landlord as its sole cost and expense, including any costs or cost increases incurred as a result of delays, governmental requirements or unanticipated conditions.

5. No Agency.

Nothing in this Work Letter shall make or constitute either Landlord or Tenant as the agent of the other.

6. Merger.

All understandings and agreements, oral and written, theretofore made between the parties hereto and relating to the matters covered herein are merged in this Work Letter, which,

along with the Lease and its exhibits, the Redemption Agreement and the documents referenced therein and contemplated thereby, fully and completely expresses the agreement between the Landlord and Tenant with regard to the matters set forth in this Work Letter.

7. Subject to Lease.

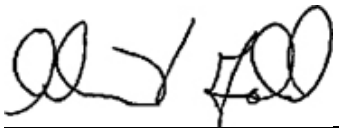
This Work Letter is subject in all respects to the terms and conditions of the Lease.

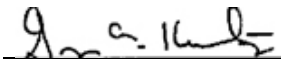
In witness whereof, the parties have executed this Work Letter concurrently with and as of the date of the Lease.

Landlord

INHALE 201 INDUSTRIAL ROAD, L.P., a California limited partnership

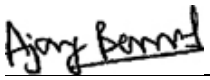
By: SciMed Prop III, Inc., a California corporation

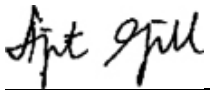
By: 
Name: ALAN D. GOLD
Title: PRES.

By: 
Name: GARY A. KREITZER
Title: E.V.P

Tenant

NEKTAR THERAPEUTICS, a Delaware corporation

By: 
Name: AJAY BANSAL
Title: CFO

By: 
Name:
Title:

CONSENT OF PARTNERS

THIS CONSENT OF PARTNERS (this **"Consent"**) of **INHALE 201 INDUSTRIAL ROAD, L.P.**, a California limited partnership (the **"Partnership"**) is entered into by and between **NEKTAR THERAPEUTICS (FORMERLY KNOWN AS INHALE THERAPEUTIC SYSTEMS, INC.)**, a Delaware corporation (**"Nektar"**), **SCIMED PROP III, INC.**, a California corporation (**"General Partner"**), **201 INDUSTRIAL PARTNERSHIP,** a California general partnership (**"201 Limited Partner"**) with reference to the following facts:

RECITALS

A. Nektar, Partnership and Bernardo Property Advisors, Inc., a California corporation, entered into an Agreement for the Contribution of 201 Industrial Road Project as of September 14, 2000, which provided for, among other things, (i) the contribution of certain real property, commonly known as 201 Industrial Road, San Carlos, California, by Nektar to the Partnership in return for Nektar receiving a 49.0% limited partnership interest in the Partnership, and (ii) Partnership, as "Landlord," and Nektar, as "Tenant," entering into a Build-to-Suit Lease Agreement for the Real Property

B. General Partner is currently the sole general partner of the Partnership and 201 Limited Partner and Nektar are the sole limited partners of the Partnership.

C. Pursuant to separate documents, General Partner intends to assign its general partnership interest in the Partnership to BioMed Realty, L.P., a Maryland limited partnership.

D. Pursuant to the Redemption Agreement dated effective June 23, 2004 by and among Partnership, Nektar, General Partner and 201 Limited Partner, the parties have agreed to the redemption of all of Nektar's limited partnership interest in the Partnership.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Consent of Nektar to General Partner Transfer. Nektar hereby consents to the transfer of the General Partner's interest in the Partnership as set forth in Recital C above, and Nektar hereby waives any rights it may have, including rights of first refusal, arising from such transfer, notwithstanding any contrary provisions contained in the partnership agreement of the Partnership, or otherwise.

2. Consent of General Partner to Nektar Transfer. General Partner hereby consents to the redemption and transfer of Nektar's interest in the Partnership as set forth in Recital D above, and General Partner hereby waives any rights it may have, including rights of first refusal, arising from such transfer, notwithstanding any contrary provisions contained in the partnership agreement of the Partnership, or otherwise.

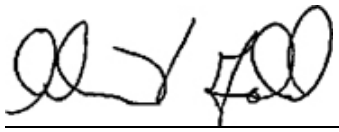
3. Consent of 201 Limited Partner to Nektar Transfer. 201 Limited Partner hereby consents to the redemption and transfer of Nektar's interest in the Partnership as set forth in Recital D above, and 201 Limited Partner hereby waives any rights it may have, including rights of first refusal, arising from such transfer, notwithstanding any contrary provisions contained in the partnership agreement of the Partnership, or otherwise.

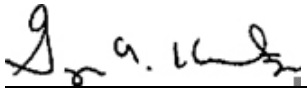
4. Consent of 201 Limited Partner of General Partner Transfer. 201 Limited Partner hereby consents to the redemption and transfer of General Partner's interest in the Partnership as set forth in Recital C above, and 201 Limited Partner hereby waives any rights it may have, including rights of first refusal, arising from such transfer, notwithstanding any contrary provisions contained in the partnership agreement of the Partnership, or otherwise.

5. Effective Date. This Consent shall be effective as of August 17, 2004.

GENERAL PARTNER:

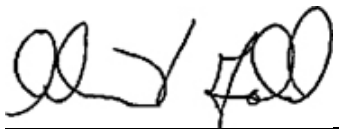
SCIMED PROP III, Inc., a California corporation

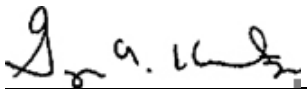
By: 
Name: ALAN D. GOLD
Title: PRES.

By: 
Name: GARY A. KREITZER
Title: E.V.P.

201 LIMITED PARTNER

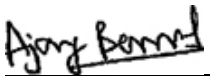
201 INDUSTRIAL PARTNERSHIP, a California general partnership

By: 
Name: ALAN D. GOLD
Title: PARTNER

By: 
Name: GARY A. KREITZER
Title: PARTNER

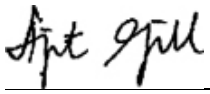
NEKTAR:

NEKTAR THERAPEUTICS (formerly known as Inhale Therapeutic Systems, Inc.), a Delaware corporation

By: 

Name: AJAY BANSAL

Title: CFO

By: 

Name:

Title:

AMENDMENT TO
AMENDED AND RESTATED BUILT-TO-SUIT LEASE

THIS AMENDMENT TO AMENDED AND RESTATED BUILT-TO-SUIT LEASE (the **"Amendment"**) is made effective as of January 11, 2005 by and between BMR-201 Industrial Road LLC, a Delaware limited liability company (formerly known as Inhale 201 Industrial Road, L.P. the "Landlord") and Nektar Therapeutics, a Delaware corporation (formerly known as Inhale Therapeutic Systems, Inc., the "Tenant").

RECITALS

A. Landlord and Tenant have entered in that certain Amended and Restated Built-To-Suit Lease dated August 17, 2004 (the **"Lease"**), of that certain real property located at 201 Industrial Road, San Carlos, California, including: (i) the second floor, the third floor and the fourth floor of Building 1 (collectively, "Phase 1"), and (ii) 45,574 rentable square feet located on the third floor of Building 2 (**"Phase 2A"** and, together with the Phase 1, the **"Leased Premises"**), Capitalized terms used herein and not otherwise defined herein shall have the meaning assigned thereto in the Lease.

B. Tenant no longer wishes to occupy Phase 2A. Landlord is willing to enter into a Lease with Nuvelo, Inc., a Delaware corporation (**"Nuvelo"**) (the **"Nuvelo Lease"**) to lease Phase 2A to Nuvelo.

C. Landlord and Tenant now wish to amend this Lease to, among other things, terminate Tenant's lease of Phase 2A to allow Landlord to enter into a new lease with Nuvelo, all as and to the extent more particularly set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, Landlord and Tenant hereby agree as follows:

1. **Recital D.** The following defined terms are added to Recital D of the Lease:

"Nuvelo: shall mean Nuvelo, Inc., a Delaware corporation."

"Nuvelo Rent Commencement Date: shall mean the date the Nuvelo is required to commence paying rent under the Nuvelo Lease or October 1, 2005, whichever is sooner."

"Nuvelo Effective Date: shall mean the date that the Nuvelo Lease is executed and is in full force and effect, which the parties agree shall be January 2005."

"Nuvelo Lease: shall mean that certain Lease dated as of January 2005 between Nuvelo and Landlord, pursuant to which Nuvelo is leasing Phase 2A."

2. **Amendment to Section 1.1(a).** Section 1.1 (a), excluding Section 1.l(a)(i)-1.1(a)(x) of the Lease is hereby amended and restated in its entirety as follows:

"(a) Subject to the Parking Lease dated as of September 14, 2000 (the **"Parking Lease"**) by and between Landlord and Tenant, Landlord leases to Tenant and Tenant leases from Landlord, on the terms, covenants and conditions hereinafter set forth, Phase 1A. Phase 1B, and Phase 2A (all as defined below and referred to collectively herein as the **"Premises"**). As of the effective date of this Amendment, all of Tenant's rights and obligations to Phase 2A shall expire and the Premises shall consist of Phase 1A and Phase 1B only. The Premises, together with Phase 2B, were constructed by Landlord; and are located in two connected four-story buildings containing an aggregate of approximately 390,000 square feet, consisting of approximately 171,965 square feet of rentable area for office and laboratory research and development and two lower stories primarily of parking (collectively, the **"Buildings"** and each a **"Building"**). The Buildings were constructed on the Real Property in connection with the Project."

3. **Amendment to Section 3.1(c)(ii).** Section 3.1(c)(ii) of the Lease is hereby amended and restated in its entirety as follows:

"(ii) Phase 2A. Beginning on the Phase 2A Rent Commencement Date and terminating on January 31, 2005, Tenant shall pay Minimum Rental for Phase 2A in an amount equal to $164,066.40 ($3.60 per sq. ft. multiplied by 45,574)".

4. **Amendment to Section 4.** Section 4 of the Lease is hereby amended and restated in its entirety as follows:

"PARKING. Landlord and Tenant agree that the Common Areas of the Real Property shall include not less than 690 parking spaces. Commencing on the Effective Date and ending on the Building 1 Termination Date, Tenant shall be entitled to 224 spaces, all in addition to those spaces provided in and subject to the Parking Lease."

5. **Amendment to Section 5.1(b).** Section 5.l(b) of the Lease is hereby amended and restated in its entirety as follows:

"(b) Tenant Work; Phase 2A; Improvements. (i) Tenant has constructed Tenant Improvements within Phase 1A and Phase 1B of the Premises in accordance with the prior lease, and may make such future improvements and modifications to the same as set forth herein. Tenant and Landlord agreed under the Original Lease to provide Tenant with a Tenant Improvement Allowance for tenant improvements within each Phase of the Premises equal to $100 per Usable Square Foot. Landlord and Tenant agree that Landlord shall have satisfied its obligation to provide a Tenant Improvement Allowance for Phase 2A once Landlord has satisfied its obligations under the following Section 5.l(b)(ii).

(ii) Landlord shall provide a tenant improvement allowance to Nuvelo in the amount of not less than $100 per Usable Square Foot for improvements to Phase 2A, in accordance with the Nuvelo Lease. Tenant shall reimburse Landlord for a portion of such allowance ('Tenant's TI Reimbursement"), calculated as follows: (i) the difference

between (a) the amount actually funded by Landlord as a tenant improvement allowance to Nuvelo under the Nuvelo Lease (including any amounts provided to Novelo as rent credits), but in no event more than $6,380,360 [45,574 sf x $l40/sf] and (b) $4,397,200 [43,972 sf x $100/sf]; (ii) times 28.57%. Tenant's TI Reimbursement shall be paid in two installments, the first installment of $283,294.40 shall be paid upon execution of this Amendment and the balance shall be paid on December 31, 2005."

6. **Amendment to Section 7.1 (a) (iv).** Section 7.1 (a)(iv) of the Lease is hereby amended and restated in its entirety as follows:

"(iv) The term **'Tenant's Operating Cost Share'** means 72.98% through and until the Nuvelo Rent Commencement Date and thereafter means 46.47%. 'Tenant's Exterior **Common Area Cost Share**' shall be equal to the Tenant's Operating Cost Share as established from time to time."

7. **Amendment to Section 13.1(e).** Section 13.1(e) of the Lease is hereby deleted in its entirety and replaced with "[Intentionally Deleted]."

8. **Condition Precedent.** This Amendment shall be conditioned upon execution and delivery of the Nuvelo Lease by Nuvelo and Landlord,

9. **Lease Termination.** For and in consideration of Landlord's agreement to terminate Tenant's interest in Phase 2A as provided herein, Tenant agrees to pay Landlord the following sums:

(a) **Termination Fee.** Tenant shall pay Landlord the sum of $50,000 upon execution of this Amendment.

(b) **Continuing Payments.** Tenant shall pay Landlord the sum of $3,216,816.40 in accordance with the schedule attached hereto as Exhibit "A."

(c) **Reimbursement of Brokers' Fees.** Tenant agrees to reimburse Landlord for a portion of the brokerage fees and commissions payable by Landlord in connection with the Nuvelo Lease, as follows: Tenant shall pay Landlord the sum of $102,536.37 upon execution of this Amendment and the sum of $102,536.37 on August 13, 2005, Subject to Tenant's reimbursement obligations herein, Landlord agrees that it shall be responsible for, and shall indemnify Tenant from and against, any and all brokerage fees and commissions payable in connection with the Nuvelo Lease.

10. **Condition Upon Surrender.** Upon the Nuvelo Effective Date, Tenant shall surrender Phase 2A, including any additions, alterations and improvements thereto, broom clean, in the same condition received, free from Hazardous Materials caused to be present by Tenant, its agents or invitees, ordinary wear and tear excepted, and delivered free of radioactive licenses or other restrictions on use, first, however, removing all goods and effects of Tenant.

11. **Hazardous Materials.** As of the date of this Amendment, Tenant represents and warrants that Phase 2A is free from Hazardous Materials caused to be present by Tenant and that Tenant's use of Phase 2A has not been and Phase 2A is not in violation of any laws with respect to the disposal or storage of Hazardous Substances, human health or the environment as the result of any actions of Tenant.

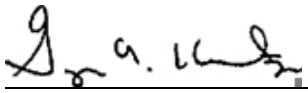
12. **No Further Amendment.** Except as expressly amended or modified by this Amendment, each and every term and provision of the Lease remains in full force and effect, without modification or amendment. This Amendment shall be construed together with and as a part of the Lease.

13. **Counterparts.** This Amendment may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment. Except as amended hereby, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year first above written.

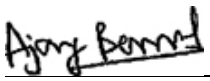
LANDLORD

BMR-201 INDUSTRIAL ROAD LLC,
a Delaware limited liability company

By: 
Name: GARY A. KREITZER
Title: E.V.P.

TENANT

NEKTAR THERAPEUTICS,
a Delaware corporation

By: 
Name: AJAY BANSAL
Title: CFO

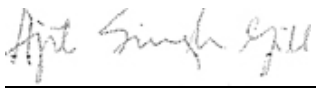
By: 
Name: AJIT SINGH GILL
Title: PRESIDENT AND CEO

Exhibit "A"
Payment Schedule

Payment Date	Amount
02/01/05	174,108.58
03/01/05	174,108.58
04/01/05	174,108.58
05/01/05	174,108.58
06/01/05	174,108.58
07/01/05	174,108.58
08/01/05	118,243.67
09/01/05	82,960.58
10/01/05	85,881.11
11/01/05	86,442.75
12/01/05	86,442.75
01/01/06	86,442.75
02/01/06	86,442.75
03/01/06	86,442.75
04/01/06	86,442.75
05/01/06	86,442.75
06/01/06	86,442,75
07/01/06	86,442.75
08/01/06	86,442.75
09/01/06	86,442.75
10/01/06	89,421.69
11/01/06	89,994.56
12/01/06	89,994.56
01/01/07	89,994.56
02/01/07	89,994.56
03/01/07	89,994.56
04/01/07	89,994.56
05/01/07	89,994.56
06/01/07	89,994.56
07/01/07	89,994.56
08/01/07	34,836.60
Total	$3,216,816.40

SECOND AMENDMENT TO AMENDED AND RESTATED BUILT-TO-SUIT LEASE

THIS SECOND AMENDMENT TO AMENDED AND RESTATED BUILT-TO-SUIT LEASE (this "Amendment") is entered into as of this 19th day of July, 2007 (the "Effective Date"), by and between BMR-201 INDUSTRIAL ROAD LLC, a Delaware limited liability company ("Landlord," as successor-in-interest to Inhale 201 Industrial Road, L.P. ("Original Landlord")), and NEKTAR THERAPEUTICS, a Delaware corporation ("Tenant").

RECITALS

A. WHEREAS, Original Landlord and Tenant entered into that certain Amended and Restated Built-To-Suit Lease dated as of August 17, 2004, as supplemented by that certain Work Letter dated as of August 17, 2004, and as amended by that certain Amendment to Amended and Restated Built-To-Suit Lease dated as of January 11, 2005 (collectively, the "Lease"), whereby Tenant leases certain premises (the "Original Premises") from Landlord in Building 1 at 201 Industrial Road in San Carlos, California;

B. WHEREAS, Tenant desires to lease additional premises in Building 1; and

C. WHEREAS, Landlord and Tenant desire to modify and amend the Lease only in the respects and on the conditions hereinafter stated.

AGREEMENT

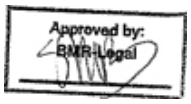
NOW, THEREFORE, Landlord and Tenant, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, agree as follows:

1. Definitions. For purposes of this Amendment, capitalized terms shall have the meanings ascribed to them in the Lease unless otherwise defined herein. The Lease, as amended by this Amendment, shall be referred to herein as the "Amended Lease."

2. Additional Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, Suite 420 in Building 1, consisting of approximately twenty thousand one hundred twenty-three (20,123) rentable square feet of additional premises, as depicted on Exhibit A attached hereto (the "Additional Premises"). The Additional Premises are comprised of (a) approximately twelve thousand four hundred twenty (12,420) rentable square feet of partially improved space, as depicted on Exhibit B attached hereto (the "Partially Improved Premises"), and (b) approximately seven thousand seven hundred three (7,703) rentable square feet of shell space, as depicted on Exhibit C attached hereto (the "Shell Premises"). From and after the Additional Premises Commencement Date (as defined below), the term "Premises," when used in the Lease, shall mean the Original Premises plus the Additional Premises.

3. Additional Premises Term. The Term with respect to the Additional Premises shall commence on July 19,2007 (the "Additional Premises Commencement Date"), and shall expire on the Building 1 Termination Date. The parties hereto acknowledge that the Building 1 Termination Date is October 5, 2016. Landlord shall tender possession of the Additional Premises to Tenant on or before the Additional Premises Commencement Date.

4. Extension Options. Tenant shall have the right, with respect to the Additional Premises, to exercise the extension options described in Section 2.6 of the Lease, except that the reference to Section 3. 1(b) and (c) in the first sentence of Section 2.6 shall be deleted and the phrase "Section 3. l(d)" shall be substituted therefor. For the sake of clarity, Tenant shall be permitted to exercise an extension option with respect to the Additional Premises without exercising such option with respect to Phase 1A and Phase IB, and shall be permitted to exercise an extension option with respect to Phase 1A and Phase IB without exercising such option with respect to the Additional Premises.



5. Minimum Rental.

a. Tenant shall pay, as Minimum Rental with respect to the Additional Premises during the first twelve (12) months following the Minimum Rental Commencement Date (as defined below), (i) Two and 60/100 Dollars ($2.60) per rentable square foot per month for the Partially Improved Premises and (ii) One and 95/100 Dollars ($ 1.95) per rentable square foot per month for the Shell Premises. The following rental schedule is for the convenience of the parties:

Lease Month	***Monthly Minimum Rental***
1 - 12	$ 47,312.85
13 - 24	$ 48,732.24
25 - 36	$ 50,194.20
37 - 48	$ 51,700.03
49 - 60	$ 53,251.03
61 - 72	$ 54,848.56
73 - 84	$ 56,494.01
85 - 96	$ 58,188.83
97 – 10/5/2016	$ 59,934.50

b. Tenant's obligation to pay Minimum Rental with respect to the Additional Premises shall commence on the date that is one hundred twenty (120) days after the Additional Premises Commencement Date (the "Minimum Rental Commencement Date").

c. Tenant shall have the right to occupy any completed offices in the Partially Improved Premises as of the Effective Date without incurring any obligation to pay Minimum Rental prior to the Minimum Rental Commencement Date.

d. Minimum Rental with respect to the Additional Premises shall increase by three percent (3%) on each annual anniversary of the Minimum Rental Commencement Date, as shown in the chart in Section 5(a).

6. Tenant's Operating Cost Share. From and after the Additional Premises Commencement Date, Tenant's Operating Cost Share shall equal fifty-nine and 02/100ths percent (59.02%).

7. Tenant Improvements.

a. Tenant shall cause to be constructed certain tenant improvements (including those listed in Sections 7(e), 7(f) and 7(g) below) in the Additional Premises ("Tenant's Work") pursuant to the Work Letter attached as Exhibit E hereto (the "Work Letter"). Landlord shall provide Tenant with an improvement allowance in an amount not to exceed Nine Hundred Five Thousand Five Hundred Thirty-Five Dollars ($905,535) (based upon Forty-Five Dollars ($45) per rentable square foot) (the "TI Allowance"). The TI Allowance may be used to pay for the following costs related to Tenant's Work: (i) construction, (ii) project oversight by Landlord (which fee shall equal three percent (3%) of the TI Allowance), (iii) space planning, architect, engineering and other related services performed by third parties unaffiliated with Tenant and (iv) building permits and other taxes, fees, charges and levies by Governmental Authorities for permits or for inspections of Tenant's Work. In no event shall the TI Allowance be used for: (v) payments to Tenant or any affiliates of Tenant, (w) the purchase of any furniture, personal property or other non-building system equipment, (x) the cost of work that is not authorized by the Approved Plans or otherwise approved in writing by Landlord, (y) costs resulting from any default by Tenant of its obligations under the Amended Lease or (z) costs that are recoverable or reasonably recoverable by Tenant from a third party (e.g., insurers, warrantors, or tortfeasors). If the total cost of Tenant's Work exceeds Forty-Five Dollars ($45) per rentable square foot of the Additional Premises, then Tenant shall pay the overage as and when due. Tenant shall have until December 31, 2008, to expend any unused portion of the TI Allowance, after which date Landlord's obligation to fund such costs shall expire. Tenant shall deliver to Landlord (Y) a certificate of occupancy for the Additional Premises suitable for the permitted use and (Z) a Certificate of Substantial Completion in the form of the American Institute of Architects document G704, executed by the project architect with respect to Tenant's Work in the Additional Premises.

b. Prior to entering upon the Additional Premises, Tenant shall furnish to Landlord evidence satisfactory to Landlord that insurance coverages required of Tenant under the provisions of the Amended Lease are in effect, and such entry shall be subject to all the terms and conditions of the Amended Lease other than the payment of Minimum Rental.

c. Possession of areas of the Additional Premises necessary for utilities, services, safety and operation of Building 1 is reserved to Landlord, subject to Tenant's right to access same from time to time as necessary for the construction of Tenant's Work or the operation of Tenant's business in the Additional Premises.

d. In accordance with the terms of the Work Letter, Tenant shall obtain Landlord's approval of Tenant's architect, engineer, general contractor and major subcontractors, such approval not to be unreasonably withheld, conditioned or delayed.

e. Subject to Section 7(a) and the Work Letter, Tenant shall have the right to convert the laboratory space in the Partially Improved Premises into office space in accordance with the plans referenced in Exhibit D attached hereto; provided, however, that Landlord shall have the right, upon written notice to Tenant delivered no later than one hundred eighty (180) days prior to the expiration of the Lease, to require Tenant to restore such areas to their condition as laboratory facilities as of the date of this Amendment, ordinary wear and tear excepted.

f. Subject to Section 7(a) and the Work Letter, Tenant shall have the right to perform certain upgrades to the ground floor lobby, subject to the consent of Nuvelo and Landlord's reasonable consent.

g. Subject to Section 7(a) and the Work Letter, Tenant shall have the right to (i) change the order of the existing monument signage on the North side of the Real Property so that Tenant's name appears first, (ii) change or upgrade the white letter signage on the glass facade at Building 1's lobby entrance, and (iii) subject to applicable laws and approval by the City of San Carlos, add additional signage on the North facade of Building 1.

8. Parking.

a. Notwithstanding anything in Section 4 of the Lease to the contrary, from and after the Effective Date, Tenant shall have the non-exclusive right to use a total of two hundred eighty-four (284) parking spaces for the Original Premises and Additional Premises ("Tenant's Parking").

b. As a portion of, but not in addition to, Tenant's Parking, Tenant shall have (subject to (i) the consent of Nuvelo and Landlord's reasonable consent and (ii) Tenant's payment of any costs associated therewith, including maintenance), the exclusive right to use the following on the Northwest and North sides of Building 1 near the Original Premises or Additional Premises, with appropriate signage indicating its availability:

- Twenty-four (24) spaces designated via asphalt striping as "Visitor" parking;
- Four (4) spaces designated as handicapped parking;
- Two (2) spaces for motorcycle parking; and
- Two (2) spaces for a loading zone.

9. Condition of Premises. Tenant acknowledges that (a) it is in possession of the Original Premises and is fully familiar with the condition of the Original Premises and Additional Premises and, notwithstanding anything contained in the Amended Lease to the contrary, Tenant agrees to take the same in their condition "as is" as of the Additional Premises Commencement Date, and (b) Landlord shall have no obligation to alter, repair or otherwise prepare the Original Premises or Additional Premises for Tenant's occupancy or to pay for any improvements to the Original Premises or Additional Premises, except for Landlord's payment of the TI Allowance or as may be otherwise expressly provided in the Amended Lease.

10. Security Deposit. The Security Deposit is hereby increased by Two Hundred Twenty-Five Thousand Dollars ($225,000) (the "Additional Security Deposit") to a total of One Million Six Hundred Thousand Dollars ($1,600,000). Tenant shall either (a) have deposited with Landlord in cash the Additional Security Deposit on or before the Effective Date, or (b) provide to Landlord within one (1) week of the Effective Date, an amendment to the existing letter of credit presently provided by Tenant as the Security Deposit increasing such letter of credit by the amount of the Additional Security Deposit.

11. Right of First Offer. Tenant shall have a right of first offer ("ROFO") as to any additional premises that are available for lease in Building 1 and Building 2 (collectively, the "Option Premises"). In the event Landlord intends to lease all or a portion of the Option Premises (the "Subject Premises"), Landlord shall provide written notice thereof to Tenant (the "Notice of Offer").

a. Within twenty-one (21) days following its receipt of a Notice of Offer, Tenant shall advise Landlord in writing whether Tenant elects to lease the Subject Premises, and on what terms and conditions (the "Reply"). If Tenant fails to notify Landlord of Tenant's election within such twenty-one (21) day period, then Tenant shall be deemed to have elected not to lease the Subject Premises.

b. If Tenant timely notifies Landlord that Tenant elects to lease the Subject Premises, then Landlord and Tenant shall enter into good faith negotiations regarding the terms of a lease of the Subject Premises in accordance with a Reply. If Landlord and Tenant reach an agreement on the terms of the lease of the Subject Premises, Landlord and Tenant shall work in good faith to execute a lease amendment with respect to such Subject Premises (the "First Offer Space Amendment") within thirty (30) days after Landlord's receipt of the Reply (the "Signing Period").

c. If (i) Tenant notifies Landlord that Tenant elects not to lease the Subject Premises, (ii) Tenant fails to notify Landlord of Tenant's election within the twenty-one (21) day period described above or (iii) if, despite good faith efforts to reach an agreement regarding the leasing of the Subject Premises to Tenant, Landlord and Tenant are unable to reach such agreement within the applicable Signing Period, then Landlord shall have the right to consummate a lease of the Subject Premises with a third party for a period of one (1) year thereafter (a "Leasing Period"), and the ROFO shall no longer apply to such Subject Premises during such Leasing Period; provided that the net effective rent to be received by Landlord over the term of the lease of the Subject Premises to such third party (the "Third Party Offer") is at least ninety percent (90%) of the net effective rent that would have been received by Landlord as set forth in the applicable Reply. If the Third Party Offer is less than ninety percent (90%) of the net effective rent that would have been received by Landlord as set forth in the applicable Reply, Landlord shall re-offer the Subject Premises to Tenant on the same terms as set forth in the Third Party Offer (a "Re-Offer Notice") and if (a) Tenant does not deliver a notice electing to lease such Subject Premises on such terms (the "Election Notice") within ten (10) days following Tenant's receipt of the Re-Offer Notice or (b) Tenant delivers such Election Notice, and a First Offer Space Amendment is not executed during the Signing Period applicable to such re-offer, then Landlord shall be free thereafter for a new Leasing Period to enter into a lease for the Subject Premises on the terms of the Third Party Offer or any new third party offer satisfying the terms and conditions of this Section 11, and continuing as described above. If Landlord does not lease such Subject Premises within a Leasing Period, then the ROFO with respect to such Subject Premises shall be fully reinstated, and Landlord shall not thereafter lease such Subject Premises without first complying with the procedures set forth in this Section 11.

d. Notwithstanding anything in this Section 11 to the contrary, Tenant shall not exercise the ROFO during such period of time that Tenant is in default under any provision of the Amended Lease, beyond any applicable notice or cure period. Any attempted exercise of the ROFO during a period of time in which Tenant is so in default beyond any applicable notice or cure period shall be void and of no effect. In addition, Tenant shall not be entitled to exercise the ROFO if Landlord has given Tenant two (2) or more notices of default under the Amended Lease, whether or not the defaults are cured, during the twelve (12) month period prior to the date on which Tenant seeks to exercise the ROFO.

e. Notwithstanding anything in the Amended Lease to the contrary, Tenant shall not assign or transfer the ROFO, either separately or in conjunction with an assignment or transfer of

Tenant's interest in the Lease other than in connection with a Permitted Transfer or to an Affiliate of Tenant in each case in accordance with the terms of Section 13.1(b) of the Lease, without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion.

12. Broker. Tenant represents and warrants that it has not dealt with any broker or agent in the negotiation for or the obtaining of this Amendment, other than GVA Kidder Mathews ("Tenant's Broker"), and agrees to indemnify, defend and hold Landlord harmless from any and all cost or liability for compensation claimed by any such broker or agent, other than Tenant's Broker, employed or engaged by it or claiming to have been employed or engaged by it. Landlord represents and warrants that it has not dealt with any broker or agent in the negotiation for or the obtaining of this Amendment, other than NAIBT Commercial ("Landlord's Broker"), and agrees to indemnify, defend and hold Tenant harmless from any and all cost or liability for compensation claimed by any such broker or agent, other than Landlord's Broker, employed or engaged by it or claiming to have been employed or engaged by it. Each of Landlord's Broker and Tenant's Broker is entitled to a leasing commission in connection with the making of this Amendment, and Landlord shall pay such commission to Landlord's Broker and Tenant's Broker pursuant to a separate agreement between Landlord, Landlord's Broker and Tenant's Broker.

13. No Default. Tenant represents, warrants and covenants that, to the best of Tenant's knowledge, Landlord and Tenant are not in default of any of their respective obligations under the Lease and no event has occurred that, with the passage of time or the giving of notice (or both) would constitute a default by either Landlord or Tenant thereunder. Landlord represents, warrants and covenants that, to the best of Landlord's knowledge, Landlord and Tenant are not in default of any of their respective obligations under the Lease and no event has occurred that, with the passage of time or the giving of notice (or both) would constitute a default by either Landlord or Tenant thereunder.

14. Effect of Amendment. Except as modified by this Amendment, the Lease and all the covenants, agreements, terms, provisions and conditions thereof shall remain in full force and effect and are hereby ratified and affirmed. The covenants, agreements, terms, provisions and conditions contained in this Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and, except as otherwise provided in the Lease, their respective assigns. In the event of any conflict between the terms contained in this Amendment and the Lease, the terms herein contained shall supersede and control the obligations and liabilities of the parties. From and after the Effective Date, the term "Lease" as used in the Lease shall mean the Lease, as modified by this Amendment.

15. Miscellaneous. This Amendment becomes effective only upon execution and delivery hereof by Landlord and Tenant. The captions of the paragraphs and subparagraphs in this Amendment are inserted and included solely for convenience and shall not be considered or given any effect in construing the provisions hereof. All exhibits hereto are incorporated herein by reference.

16. Counterparts. This Amendment may be executed in one or more counterparts that, when taken together, shall constitute one original.

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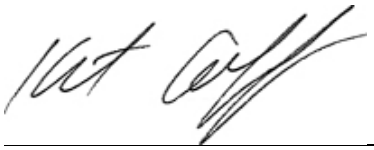
IN WITNESS WHEREOF, Landlord and Tenant have hereunto set their hands as of the date and year first above written, and acknowledge that they possess the requisite authority to enter into this transaction and to execute this Amendment.

LANDLORD:

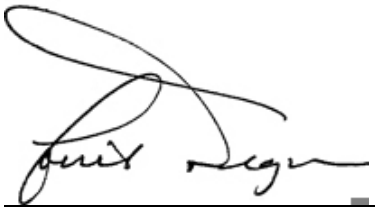
BMR-201 INDUSTRIAL ROAD LLC,
a Delaware limited liability company



By: _____
Name: Kent Griffin
Title: C.F.O.

TENANT:

NEKTAR THERAPEUTICS,
a Delaware corporation

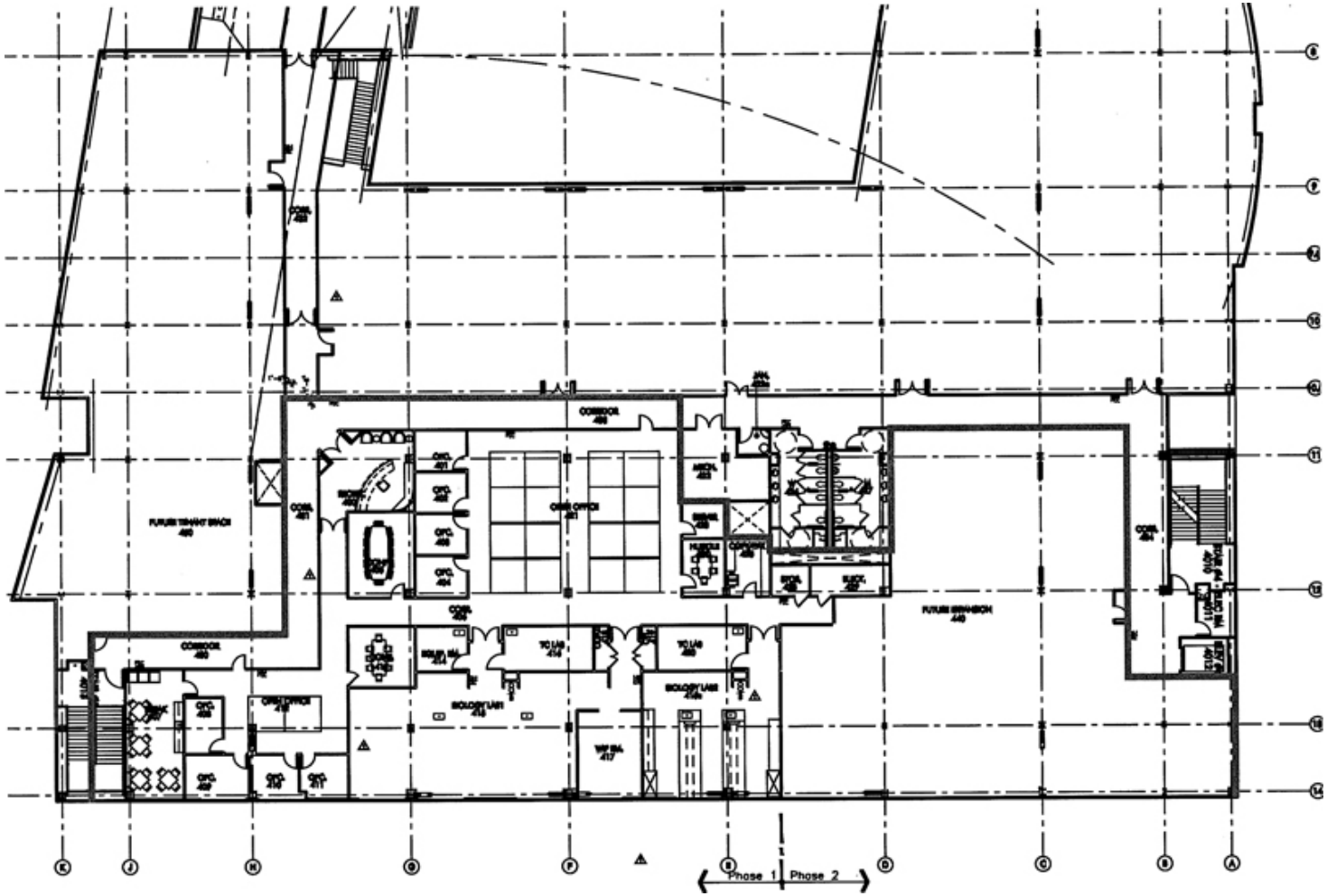


By: _____
Name: Louis [ILLEGIBLE]
Title: SVP, CFO

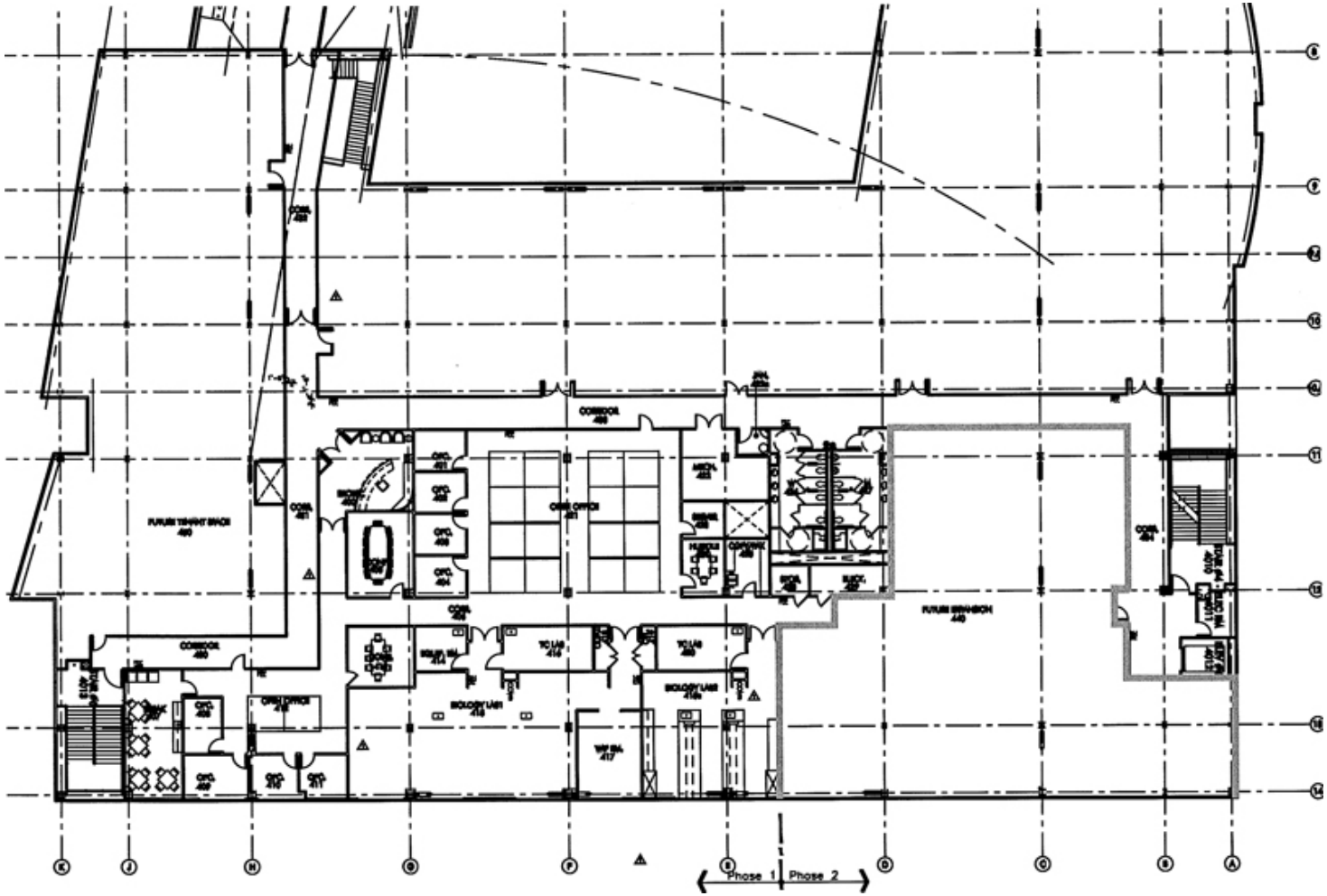
EXHIBIT A

ADDITIONAL PREMISES

[See attached]


Phase 1
Phase 2

Phase 2
Phase 1


Phase 1
Phase 2

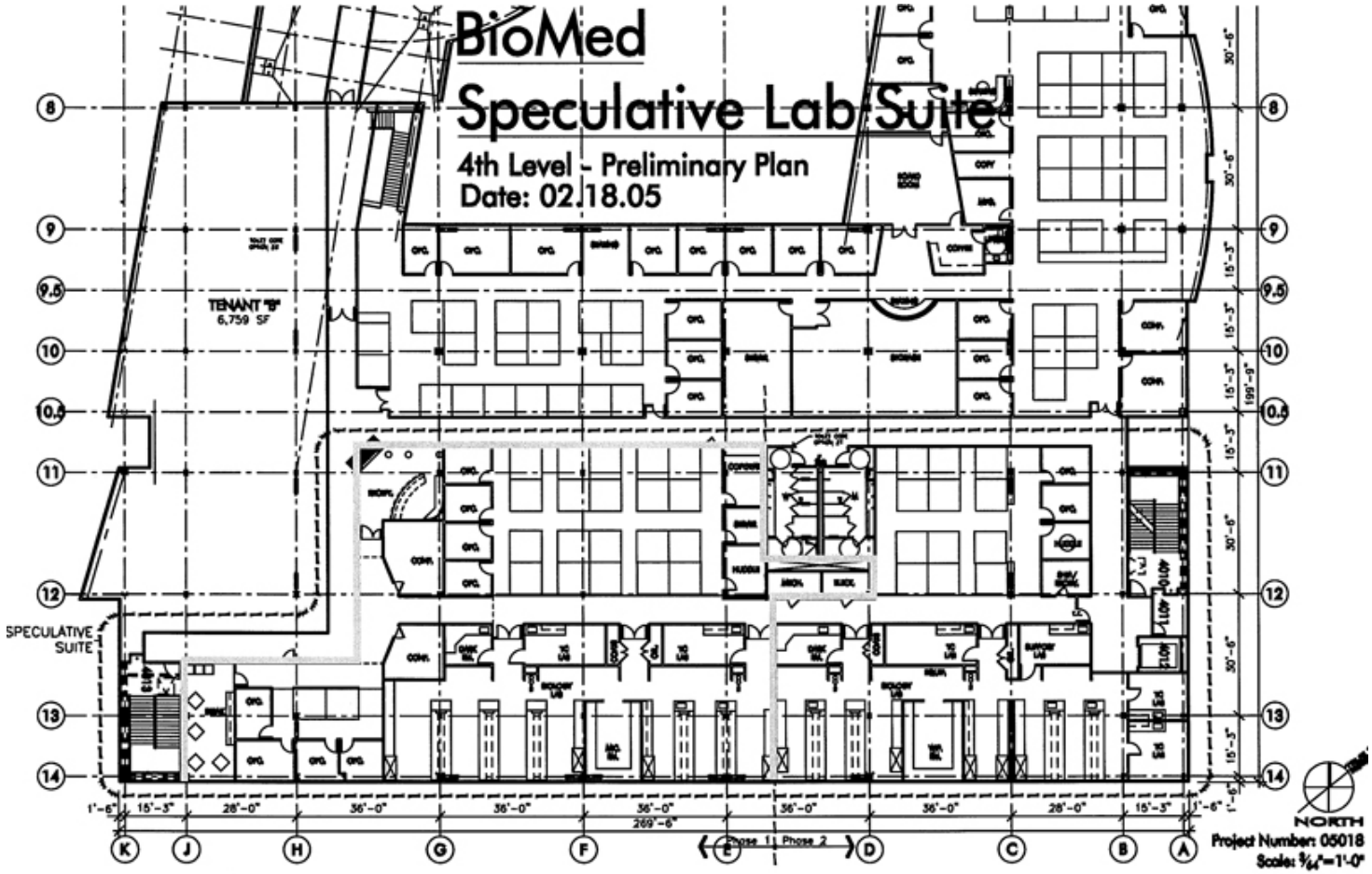

BioMed
Speculative Lab Suite
4th Level - Preliminary Plan
Date: 02.18.05
TENANT "B"
6,759 SF
SPECULATIVE SUITE
Phase 1
Phase 2
NORTH
Project Number: 05018
Scale: 3/64"=1'-0"

EXHIBIT E

WORK LETTER

This Work Letter (the "Work Letter") is made and entered into as of the 19th day of July, 2007, by and between BMR-201 INDUSTRIAL ROAD LLC, a Delaware limited liability company ("Landlord," as successor-in-interest to Inhale 201 Industrial Road, L.P. ("Original Landlord")), and NEKTAR THERAPEUTICS, a Delaware corporation ("Tenant"), and is attached to and made a part of that certain SECOND AMENDMENT TO AMENDED AND RESTATED BUILT-TO-SUIT LEASE dated as of July 19, 2007 (the "Amendment"), by and between Landlord and Tenant for the Premises located at 201 Industrial Road in San Carlos, California. All capitalized terms used but not otherwise defined herein shall have the meanings given them in the Amendment.

1. General Requirements.

1.1. Tenant's Authorized Representative. Tenant designates Todd Hancock ("Tenant's Authorized Representative") as the person authorized to initial all plans, drawings, changes orders and approvals pursuant to this Work Letter. Landlord shall not be obligated to respond to or act upon any such item until such item has been initialed by Tenant's Authorized Representative.

1.2. Schedule. The schedule for design and development of Tenant's Work (as hereinafter defined), including, without limitation, the time periods for preparation and review of construction documents, approvals and performance, shall be in accordance with that certain schedule to be prepared by Landlord and Tenant within sixty (60) days following the execution of this Work Letter (the "Schedule"). The Schedule shall be subject to adjustment as mutually agreed upon in writing by the parties, or as provided in this Work Letter.

1.3. Architects and Consultants. The architect, engineering consultants, design team, general contractor and subcontractors responsible for the construction of Tenant's Work shall be selected by Tenant and approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. Landlord's approval of the same shall not be unreasonably withheld. Landlord hereby approves of DGA Architects as Tenant's architect.

2. Tenant's Work.

2.1. Tenant Work Plans. All work to be performed on the Premises or Additional Premises (collectively, the "Premises") shall be performed by Tenant ("Tenant's Work") at Tenant's sole cost and expense and without cost to Landlord (except for the TI Allowance) and in accordance with the Approved Plans (as defined below). The quality of Tenant's Work shall be of a nature and character not less than the quality of the tenant improvements in place at the Building and the Project as of the date of the Amendment. The design drawings, plans and specifications listed on Schedule 2.1 to this Work Letter (the "Tenant Work Plans") are the initial list of plans that Tenant shall develop and submit to Landlord for approval. Tenant shall prepare and submit to Landlord for approval schematics covering Tenant's Work prepared in conformity with the applicable provisions of this Work Letter (the "Draft Plans"). The Draft Plans shall contain sufficient information and detail to accurately describe Tenant's proposed design to Landlord and such other information as Landlord may reasonably request. Tenant shall be solely responsible for ensuring that the Tenant Work Plans and the Draft Plans satisfy Tenant's obligations for Tenant's Work.

2.2. Landlord Approval of Plans. Landlord shall notify Tenant in writing within ten (10) business days after receipt of the Draft Plans whether Landlord approves or objects to the Draft Plans and of the manner, if any, in which the Draft Plans are unacceptable. Landlord shall not object to any Draft Plans that satisfy the requirements set forth in Section 2.1. If Landlord objects to the Draft Plans, then Tenant shall revise the Draft Plans and cause Landlord's objections to be remedied in the revised Draft Plans. Tenant shall then resubmit the revised Draft Plans to Landlord for approval. Landlord's approval of or objection to revised Draft Plans and Tenant's correction of the same shall be in accordance with this Section 2.2, until Landlord has approved the Draft Plans in writing. The iteration of the Draft Plans that is approved by Landlord and Tenant without objection shall be referred to herein as the "Approved Plans."

2.3. Completion of Tenant's Work. Tenant shall perform and complete Tenant's Work (a) in strict conformance with the Approved Plans, (b) otherwise in compliance with the Amended Lease and (c) in accordance with applicable laws, Landlord's insurance carriers and the board of fire underwriters having jurisdiction over the Real Property, Building 1 and the Premises.

2.4. Conditions to Performance of Tenant's Work. Prior to the commencement of Tenant's Work, Tenant shall submit to Landlord for Landlord's approval (which approval Landlord shall not unreasonably withhold, condition or delay) a list (the "Contractor List") of project managers, contractors and subcontractors that will perform Tenant's Work. Landlord shall give Tenant notice in writing of its approval or disapproval of the Contractor List with ten (10) business days after Landlord's receipt of the same. If Landlord reasonably disapproves of one or more parties on the Contractor List, Tenant shall revise the Contractor List and resubmit the same to Landlord for Landlord's approval in accordance with the preceding two sentences. For all subcontracts in excess of One Hundred Thousand Dollars ($100,000), Tenant shall require its general contractor to provide Tenant with at least three (3) competitive bids.

2.5. Requests for Consent. Landlord shall respond to all requests for consents, approvals or directions made by Tenant pursuant to this Work Letter within (10) business days following Landlord's receipt of such request. Landlord's failure to respond within such ten (10) business day period shall be deemed approval by Landlord.

3. Tenant's Construction Obligations Shall Not Delay Commencement of the Term. Notwithstanding any Tenant Work to be performed by Tenant, the Additional Premises Commencement Date and Tenant's obligation to pay rent shall not, under any circumstance, be extended or delayed. Tenant shall perform promptly such of its obligations contained in this Work Letter as are to be performed by it. Tenant shall also observe and perform all of its obligations under the Amended Lease from the Additional Premises Commencement Date.

4. Completion of Tenant's Construction Obligations. Tenant, at its sole cost and expense (except for the TI Allowance), shall complete Tenant's Work described in this Work Letter in all respects in accordance with the provisions of the Amended Lease and this Work Letter. Tenant's Work shall be deemed completed at such time as Tenant, at its sole cost and expense (except for the TI Allowance) shall furnish to Landlord (a) evidence satisfactory to Landlord that (i) all Tenant's Work has been completed and paid for in full (which shall be evidenced by the architect's certificate of completion referenced in Subsection (c) of this paragraph and the general contractor's and each subcontractor's and material supplier's final unconditional waivers and releases of liens, each in a form reasonably acceptable to Landlord and complying with applicable laws), (ii) all Tenant's Work has been accepted by Landlord, (iii) any and all liens related to Tenant's Work have either been discharged of record (by payment, bond, order of a court of competent jurisdiction or otherwise) or waived by the party filing such lien and (iv) no security interests relating to Tenant's Work are outstanding, (b) all certifications and approvals with respect to Tenant's Work that maybe required from any governmental authority and any board of fire underwriters or similar body for the use and occupancy of the Additional Premises, (c) an affidavit from Tenant's architect certifying that all work performed in, on or about the Premises is in accordance with the Approved Plans and (d) complete drawing print sets and electronic CADD files on disc of Tenant's Work.

5. Insurance. Prior to commencing Tenant's Work, Tenant shall provide, or shall cause Tenant's contractors and subcontractors to provide, to Landlord, in addition to the insurance required of Tenant pursuant to the Lease, at all times during the period of construction of Tenant's Work, statutory workers' compensation insurance as required by applicable laws.

6. Liability. Except to the extent caused by Landlord's gross negligence or willful misconduct, Tenant assumes sole responsibility and liability for any and all injuries or the death of any persons, including Tenant's contractors and subcontractors and their respective employees, and for any and all damages to property caused by, resulting from or arising out of any act or omission on the part of Tenant, Tenant's contractors or subcontractors, or their respective employees in the prosecution of Tenant's Work. Tenant agrees to indemnify, defend, protect and save free and harmless Landlord and Landlord's affiliates, agents and employees from and against all losses and expenses, including reasonable attorneys' fees and expenses, that Landlord may incur as the result of claims or lawsuits due to, because of, or arising out of any and all such injuries, death or damage, whether real or alleged, and Tenant and Tenant's contractors and subcontractors shall assume and defend at their sole cost and expense all such claims or lawsuits; provided, however, that nothing contained in this Work Letter shall be deemed to indemnify or otherwise hold Landlord harmless from or against

liability caused by Landlord's gross negligence or willful misconduct. Any deficiency in design or construction of Tenant's Work shall be solely the responsibility of Tenant, notwithstanding the fact that Landlord may have approved of the same in writing. All material and equipment furnished by Tenant as Tenant's Work shall be new or "like new" and Tenant's Work shall be performed in a first-class, workmanlike manner.

7. TI Allowance.

7.1. Contribution of TI Allowance. Landlord shall contribute the TI Allowance toward the costs and expenses incurred in connection with the performance of Tenant's Work, in accordance with the terms and provisions of the Amended Lease and this Work Letter. If the entire TI Allowance is not applied toward or reserved for the costs of Tenant's Work, Tenant shall not be entitled to a credit of such unused portion of the TI Allowance.

7.2. Approval of Budget for Tenant's Work. Notwithstanding anything to the contrary set forth elsewhere in this Work Letter or the Amended Lease, Landlord shall not have any obligation to advance to Tenant any portion of the TI Allowance until Landlord shall have approved in writing the budget for the Tenant's Work (the "Approved Budget"), such approval not to be unreasonably withheld, conditioned or delayed. Upon written notice to Landlord and subject to Landlord's review and approval, Tenant shall be permitted to revise the Approved Budget during the course of construction of the Tenant's Work. Tenant shall submit such revisions to the Approved Budget to Landlord for its review and approval, such approval not to be unreasonably withheld, conditioned or delayed. The Approved Budget, as revised by Tenant and approved by Landlord is hereinafter referred to as the "Revised Budget". Prior to Landlord's approval of the Approved Budget, Tenant shall pay all of the costs and expenses incurred in connection with Tenant's Work as they become due. Landlord shall not be obligated to reimburse Tenant for costs or expenses relating to Tenant's Work that exceed either (a) the amount of the TI Allowance (other than pursuant to Section 8.2) or (b) the Approved Budget or the Revised Budget, as the case may be, either on a line item or overall basis.)

7.3. Advance Requests. Upon submission by Tenant to Landlord of (a) a statement (an "Advance Request") setting forth the total amount requested, (b) a detailed summary of the Tenant's Work performed using AIA standard form Application for Payment (G 702) executed by the general contractor and by the architect, (c) lien releases from the general contractor and each subcontractor and material supplier with respect to the portion of Tenant's Work corresponding to the Advance Request, then Landlord shall, within thirty (30) days following receipt by Landlord of an Advance Request and the accompanying materials required by this Section 7.3, pay to Tenant the amount set forth in such Advance Request; provided, however, that, with respect to any Advance Requests subject to the limits set forth in Section 7.2, Landlord shall advance to Tenant the requested amount as limited by Section 7.2.

7.4. Application of TI Allowance. Tenant may apply the TI Allowance for the payment of construction and other costs (including, without limitation, standard laboratory improvements; finishes; building fixtures; building permits; and architectural, engineering, design and consulting fees), in each case as reflected in the Approved Budget or the Revised Budget, as the case may be, and the Approved Plans, In no event shall the TI Allowance be applied to: (a) payments to Tenant or any affiliates of Tenant, (b) the purchase of any furniture, personal property or other non-building system equipment, (c) the cost of work that is not authorized by the Approved Plans or otherwise approved in writing by Landlord, (d) costs resulting from any default by Tenant of its obligations under the Amended Lease or (e) costs that are recoverable or reasonably recoverable by Tenant from a third party (e.g., insurers, warrantors, or tortfeasors).

8. Changes. Any changes to Tenant's Work (each, a "Change") requested by Landlord or Tenant after Landlord approves the Approved Plans in writing shall be requested and instituted in accordance with the provisions of this Article 8 and shall be subject to the reasonable written approval of the other party.

8.1. Changes Requested by Tenant.

(a) Tenant may request Changes after Landlord approves the Approved Plans by notifying Landlord thereof in writing in substantially the same form as the AIA standard change order form (a "Tenant Change Order Request"), which Tenant Change Order Request shall detail the

nature and extent of any requested Changes. If the nature of a Change requires revisions to the Approved Plans, then Tenant shall be solely responsible for the cost and expense of such revisions. Tenant Change Order Requests shall be signed by Tenant's Authorized Representative.

(b) Landlord shall approve or reject any Tenant Change Order Requests in accordance with the procedures established pursuant to Article 2. If Landlord does not approve in writing a Tenant Change Order Request, then such Tenant Change Order Request shall be deemed rejected by Landlord, and Tenant shall not be permitted to alter Tenant's Work as contemplated by such Tenant Change Order Request.

8.2. Changes Requested by Landlord. Landlord may request Changes after Landlord approves the Approved Plans by notifying Tenant thereof in writing in substantially the same form as the AIA standard change order form (a "Landlord Change Order Request"), which Landlord Change Order Request shall detail the nature and extent of any requested Changes. If the nature of a Change requires revisions to the Approved Plans, then Landlord shall be solely responsible for the cost and expense of such revisions. Landlord shall reimburse Tenant for all additional costs and expenses payable by Tenant to complete Tenant's Work due to a Landlord-requested Change in accordance with the payment provisions of this Work Letter.

8.3. Preparation of Estimates. Tenant shall, before proceeding with any Change, using its best efforts, prepare as soon as is reasonably practicable (but in no event more than five (5) business days after delivering a Tenant Change Order Request to Landlord or receipt of a Landlord Change Order Request) an estimate of the increased costs or savings that would result from such Change, as well as an estimate on such Change's effects on the Schedule. Landlord shall have ten (10) business days after receipt of such information from Tenant to (a) in the case of a Tenant Change Order Request, approve or reject such Tenant Change Order Request in writing, or (b) in the case of a Landlord Change Order Request, notify Tenant in writing of Landlord's decision either to proceed with or abandon the Landlord-requested Change.

9. Miscellaneous.

9.1. Headings, Etc. Where applicable in this Work Letter, the singular includes the plural and the masculine or neuter includes the masculine, feminine and neuter. The section headings of this Work Letter are not a part of this Work Letter and shall have no effect upon the construction or interpretation of any part hereof.

9.2. Time of the Essence. Time is of the essence with respect to the performance of every provision of this Work Letter in which time of performance is a factor.

9.3. Covenants. Each provision of this Work Letter performable by Tenant shall be deemed both a covenant and a condition.

9.4. Consent. Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval, except as may be expressly set forth to the contrary.

9.5. Entire Agreement. The terms of this Work Letter are intended by the parties as a final expression of their agreement with respect to the terms as are included herein, and may not be contradicted by evidence of any prior or contemporaneous agreement, other than the Amended Lease.

9.6. Invalid Provisions. Any provision of this Work Letter that shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and all other provisions of this Work Letter shall remain in full force and effect and shall be interpreted as if the invalid, void or illegal provision did not exist.

9.7. Construction. The language in all parts of this Work Letter shall be in all cases construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant.

9.8. Assigns. Each of the covenants, conditions and agreements herein contained shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective

heirs; legatees; devisees; executors; administrators; and permitted successors, assigns, sublessees. Nothing in this Section 9.8 shall in any way alter the provisions of the Amended Lease restricting assignment or subletting.

9.9. Authority. Tenant covenants and warrants that the individual signing this Work Letter on Tenant's behalf has the power, authority and legal capacity to sign this Work Letter on behalf of Tenant and to bind Tenant to the terms hereof. Landlord covenants and warrants that the individual signing this Work Letter on Landlord's behalf has the power, authority and legal capacity to sign this Work Letter on behalf of Landlord and to bind Landlord to the terms hereof

9.10. Counterparts. This Work Letter may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same document.

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Work Letter to be effective on the date first above written.

LANDLORD:

BMR-201 INDUSTRIAL ROAD LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

TENANT:

NEKTAR THERAPEUTICS,
a Delaware corporation

By: _____
Name: _____
Title: _____

SCHEDULE 2.1 TO EXHIBIT E

TENANT WORK PLANS

Architectural Drawings

1. Site plan
2. Floor and reflected ceiling plans
3. Elevations (exterior and interior)
4. Sections (building and wall)
5. Details (exterior and interior)
6. Schedules (doors, windows, finishes, etc.)

Engineering Drawings

1. Mechanical
2. Plumbing
3. Electrical
4. Fire protection
5. Civil engineering
6. Landscape architecture

Specifications – Required for all disciplines listed above

NEKTAR THERAPEUTICS

AMENDED AND RESTATED CHANGE OF CONTROL SEVERANCE BENEFIT PLAN

PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION

TABLE OF CONTENTS

NEKTAR THERAPEUTICS
AMENDED AND RESTATED
CHANGE OF CONTROL SEVERANCE BENEFIT PLAN

PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION

Section 1. Introduction

The Nektar Therapeutics Amended and Restated Change of Control Severance Benefit Plan (the "Plan") is designed to provide severance benefits to eligible employees of Nektar Therapeutics (the "Company" or "Nektar") whose employment is involuntarily terminated by the Company following a Change of Control (as defined below). The Plan was initially approved by the Board of Directors on December 6, 2006 and subsequently amended and restated and approved by the Board of Directors on February 14, 2007. The Plan supersedes any prior plan, policy or practice involving the payment of severance benefits by Nektar in the event of an involuntary termination that occurs following a Change of Control. While the Plan is in effect, any severance benefits provided to an employee by the Company with respect to an employee's involuntary termination following a Change of Control must be paid pursuant to the Plan or pursuant to an express written agreement between Nektar and the individual employee.

The Plan is designed to be an "employee welfare benefit plan," as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and, accordingly, this Plan is governed by ERISA. This document constitutes both the official plan document and the required summary plan description under ERISA.

Section 2. Eligibility For Participation in the Plan

Each employee of the Company is eligible to participate in the Plan; provided, however, that an employee who has an individual agreement with the Company providing for severance benefits with respect to termination of employment with the Company in connection with or following a Change of Control that would otherwise be covered by this Plan shall not be eligible to participate in this Plan (i.e. an eligible employee cannot receive severance benefits both under their individual agreement and this Plan), and an individual who is not treated as an employee of the Company for payroll and income tax withholding purposes or who is treated as a consultant or independent contractor, regardless of a court or agency's determination of employee status of such person during any period for any purpose, shall not be eligible to participate in this Plan.

Section 3. Eligibility For Severance Benefits

3.1 Conditions for Eligibility. To be eligible to receive severance benefits under the Plan, in addition to meeting the requirements for eligibility to participate in the Plan, the participant must terminate employment with the Company under circumstances that the Plan Administrator determines constitute a Covered Termination, and the participant must meet the following conditions:

- The participant must execute a Separation and General Release Agreement satisfactory to the Plan Administrator and within the time period established by the Plan Administrator, which includes any or all of the following provisions: (i) the participant's agreement to cooperate with the orderly transfer of his or her duties as requested by the Company or a Successor Company; (ii) the participant's agreement to return all Company and Successor Company property by a date specified by the Plan Administrator; (iii) the participant's agreement to continue to maintain the confidentiality of Company and Successor Company proprietary and confidential information; (iv) the participant's agreement to adhere to a non-solicitation restriction; and (v) the participant's waiver and general release of all claims with respect to the Company and Successor Company and related parties, including the right to pursue any type of legal, equitable, or administrative claim, except for claims that by law are unwaivable. All separation benefits payable under the Plan are conditioned on any waiver of claims included in the Separation and General Release Agreement becoming effective and irrevocable and the participant's satisfaction of his or her obligations under such agreement.
- If the participant is notified by the Company or Successor Company that his or her employment will be terminated following a Change of Control in advance of his or her termination date, the participant must not voluntarily terminate his or her employment or fail to perform his or her assigned duties prior to the termination date established by the Company or Successor Company.
- The participant must not at any time have engaged in conduct that would be Cause for termination, as defined in Section 3.3 below, as determined by the Plan Administrator in its sole discretion. The Plan Administrator shall have the discretion to terminate any and all severance benefits provided under this Plan to a participant who is discovered to have engaged in such conduct, regardless of when such discovery occurs.

3.2 Covered Termination. For purposes of this Plan, a Covered Termination is an involuntary termination of the participant's employment with the Company or Successor Company in conjunction with a Change of Control under the circumstances described below applicable to the participant, as follows:

- For a participant who is an officer holding a position of Executive Chairman, Chief Executive Officer, President, Chief Operating Officer, Business Unit Head, Chief Scientific Officer, Chief Technical Officer, Chief Financial Officer, Senior Vice President, Vice President or Principal Fellow (an "Officer Participant"), a Covered Termination is the involuntary termination of the participant's employment by the Company or Successor Company without Cause, other than on account of the participant's death or disability, or the participant's Good Reason Resignation, which (i) termination occurs at the request of a third party in the context of discussions regarding a Change of Control or (ii) termination or resignation occurs within the period beginning with the execution of an agreement providing for a Change of Control (and such Change of Control is consummated) and ending 12 months following the Change of Control.

- For any other participant (a “Non-Officer Participant”), a Covered Termination is the involuntary termination of the participant’s employment by the Company or Successor Company without Cause, other than on account of the participant’s death or disability, which termination or resignation occurs within the period beginning on the date of the Change of Control and ending 12 months following the Change of Control.

Notwithstanding the foregoing, a termination of the participant’s employment shall not be considered a Covered Termination in the event the participant is offered and declines a Comparable Position (as defined below) with the Company or Successor Company unless the failure to provide such participant at the Successor Company with the officer or director position he or she held in the Company prior to the Change of Control constitutes a Good Reason Resignation pursuant to the terms hereof. A participant who is offered a Comparable Position who does not accept such position within 30 days (or such greater time for acceptance specified in a written offer) will be deemed to have declined such Comparable Position. For purposes of this Section 3.2, a “Comparable Position” means a position with the following attributes: (i) monthly base salary equal to the employee’s monthly base salary immediately prior to termination, or combination of monthly base salary plus annual target incentive pay equal to the employee’s monthly base salary plus annual target incentive pay for the employee’s immediately previous position provided that the monthly base salary is not lower than 10% of that received by the employee in his or her immediately previous position; (ii) assignment to a work location no more than 50 miles from the participant’s immediately previous work location; and (iii) assignment of duties or responsibilities that do not constitute a material diminution in the participant’s immediately previous function with respect to the business of the Company.

3.3 Cause. For purposes of this Plan, Cause shall mean, as determined by the Plan Administrator:

- An employee’s conviction of any felony or any crime involving fraud, dishonesty or moral turpitude;
- An employee’s commission of, or participation in, a fraud or act of dishonesty against the Company or Successor Company that materially benefits the employee;
- An employee’s intentional, material violation of any contract or agreement between the employee and the Company or Successor Company or of any statutory or fiduciary duty owed to the Company or Successor Company;
- An employee’s intentional unauthorized use of Company or Successor Company property that materially benefits the employee or intentional unauthorized use or disclosure of Company or Successor Company confidential information or trade secrets;
- An employee’s intentional gross misconduct or intentional material failure to comply with the Company’s or Successor Company’s written policies; or
- An employee’s intentional material failure or refusal to perform his or her position responsibilities, other than on account of a mental or physical disability.

No act or failure to act on the part of an individual shall be considered "intentional" unless done, or omitted to be done, by that individual not in good faith and without reasonable belief that such individual's action or omission was in the best interest of the Company. In no event shall mere failure to achieve desired strategic, operational, financial or other results constitute Cause.

3.4 Good Reason Resignation. For purposes of this Plan, an Officer Participant's Good Reason Resignation shall mean a voluntary resignation by the Officer Participant within 60 days following one or more of the following events with respect to the Officer Participant:

- Assignment of any duties or responsibilities that results in a material diminution in the participant's function as in effect immediately prior to the Change of Control.
- Assignment to a work location more than 50 miles from the participant's immediately previous work location, unless such reassignment of work location decreases the participant's commuting distance from his or her residence to his or her assigned work location.
- More than a 10% decrease in the participant's monthly base salary as in effect on the date of the Change of Control or as increased thereafter.
- Notice to the participant by the Company or Successor Company that the participant's employment will be terminated under circumstances that would be a Covered Termination but for the designation of a date for termination that is greater than 12 months following the Change of Control.
- In the case of the Chief Executive Officer and President, such individual does not serve in that position in the Successor Company (as defined below) and/or is not appointed to the board of directors of the Successor Company.

3.5 Change of Control. A Change of Control with respect to the Company shall mean any of the following events or circumstances:

- The sale, lease or other disposition of all or substantially all of the Company's assets;
- The acquisition of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities, other than by virtue of a merger, consolidation or similar transaction;
- The merger, consolidation or similar transaction involving the Company, immediately after which the stockholders of the Company immediately prior thereto do not own either (i) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction or (ii) more than 50% of the combined outstanding voting power of the parent of the surviving entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their ownership of the outstanding voting securities of the Company immediately prior to such transaction; or

- Individuals who, on the date the Plan is adopted by the Board, are members of the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the members of the Board, provided, however, that if the appointment or election of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member will, for purposes of the Plan, be considered as a member of the Incumbent Board.

In the event of a Change of Control following which Nektar is not the surviving entity, the surviving entity for purposes of this Plan is the "Successor Company."

Section 4. Severance Benefits

4.1 Cash Severance Pay; Amount. The amount of a participant's Cash Severance Pay benefit under this Plan shall be determined based on position title as follows, and then reduced as specified below:

- Executive Chairman: Cash Severance Pay shall equal 24 months of monthly base salary plus annual target incentive pay as in effect immediately prior to the Covered Termination or for the immediately preceding calendar year, whichever is greater.
- Chief Executive Officer and President: Cash Severance Pay shall equal 24 months of monthly base salary plus annual target incentive pay as in effect immediately prior to the Covered Termination or for the immediately preceding calendar year, whichever is greater.
- Chief Scientific Officer, Chief Financial Officer, Chief Technical Officer, Chief Operating Officer and Business Unit Head: Cash Severance Pay shall equal 12 months of monthly base salary plus annual target incentive pay as in effect immediately prior to the Covered Termination or for the immediately preceding calendar year, whichever is greater.
- Senior Vice Presidents, Vice Presidents and Principal Fellows: Cash Severance Pay shall equal 12 months of monthly base salary plus annual target incentive pay as in effect immediately prior to the Covered Termination or for the immediately preceding calendar year, whichever is greater.
- All Other Participants: Cash Severance Pay shall equal 6 months of monthly base salary plus annual target incentive pay as in effect immediately prior to the Covered Termination or for the immediately preceding calendar year, whichever is greater.

Cash Severance Pay shall be reduced by each of the following:

- any wages or wage replacement benefits paid or payable to the participant with respect to any applicable notice period (including any pay in lieu of notice) in connection with the participant's termination of employment, whether such notice period is required under the

Worker Adjustment and Retraining Notification Act or any state law with respect to notice, if applicable, or any Company policy, or any written agreement between the participant and the Company;

- the amount of any wages or other compensation the participant has received during a leave of absence in excess of his or her accrued paid time off (other than disability plan income replacement benefits); and
- to the extent permitted by law, by any debt that the participant owes the Company at the time the severance pay benefit becomes payable.

4.2 Cash Severance Pay: Time of Payment. The Severance Pay for which a participant is eligible under this Plan will be paid to the participant in a lump sum cash payment no later than the next regular Company or Successor Company payroll date for the payroll period commencing immediately after the effective date of the participant's Separation and General Release Agreement described above, as specified in such Separation and General Release Agreement, and the participant's satisfaction of all conditions for payment set forth in the Separation and General Release Agreement. Notwithstanding the foregoing, (i) the payment to an Officer Participant (and any other participant if the participant is a "specified employee" within the meaning of Code Section 409A) shall automatically be delayed to the next payroll date following the 181st day after the termination of the Officer Participant's employment with the Company or Successor Company; and (ii) the payment to an Officer Participant will be delayed in the event the Company reasonably anticipates that the Company's deduction with respect to such payment otherwise would be limited or eliminated by application of Code Section 162(m) and such payment shall be made, subject to clause (i), at the earliest date that the Company reasonably anticipates that the deduction of the payment will not be limited or eliminated by application of Code Section 162(m).

4.3 COBRA Premiums. For an eligible participant who is covered by one or more of the Company's group health plans on the date of termination of employment and who makes a timely election to continue such coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), the Company will pay the portion of such participant's COBRA premium equal to the portion of such group health plan premium cost the Company pays for active employees for the number of months base salary represented by the participant's Cash Severance Pay determined under Section 4.1; provided that such payment of a portion of the COBRA premium by the Company shall cease earlier on the date the participant becomes eligible for group medical, dental or vision coverage through a subsequent employer.

4.4 Outplacement Program. An eligible participant shall receive reimbursement for reasonable outplacement services up to a maximum of $5,000 for services received within 12 months following termination.

4.5 Withholding. All cash and reimbursement severance benefits provided under the Plan will be subject to all applicable withholding deductions as required by law.

4.6 Equity Acceleration. An eligible participant will become fully vested in any outstanding stock awards held by such participant as of the date of termination, including restricted stock and stock options.

4.7 Limitation on Benefits Subject to Parachute Rules. Notwithstanding Section 4.1 and 4.6, in the event the severance benefits payable to a participant who is a "disqualified individual" within the meaning of Code Section 280G, together with all other payments to which such participant is entitled in connection with a Change of Control, would cause any portion of the payments to be nondeductible under Code Section 280G and subject to the excise tax imposed under Code Section 4999, then: (i) the participant's severance benefits will be reduced up to 10%, first with respect to the amount of the severance pay described in Section 4.1 and then with respect to all other severance benefits for which such participant is eligible under this Plan, so as to reduce the payment to an amount not subject to the excise tax under Code Section 4999, to the extent such reduction will result in such participant's receipt of a greater after-tax payment than the participant would receive in the absence of such reduction and with the application of the excise tax under Code Section 4999, or (ii) if after reducing severance payments by up to 10%, the excise tax under Code Section 4999 is still applicable to participant's severance benefits, the Company will then cover all of the excise tax amounts imposed by Code Section 4999 on a grossed-up basis; provided however, the Company will not pay for any other taxes imposed on participant's severance benefits.

Section 5. Notices

Any notice or other communication under the Plan must be in writing and will be deemed given when delivered personally or when sent by certified or registered mail, return receipt requested, or by overnight courier, addressed as follows or to such other address as any party may hereafter designate in accordance with this provision:

If to Nektar or the Plan Administrator:

Nektar Therapeutics
150 Industrial Road
San Carlos, CA 94070
Attn: Vice President, Human Resources

If to the participant: to the address appearing in the payroll records of the Company.

Section 6. Claims

6.1 Initial Claims Procedure. Any employee who does not receive a benefit under the Plan that he or she feels he or she is entitled to receive may make a written claim to the Plan Administrator within 90 days after his or her termination, in accordance with the Notice provisions described above, and which explains the reasons for such claim. The claimant will be informed of the Plan Administrator's decision with respect to the claim within 90 days after it is filed. Under special circumstances, the Plan Administrator may require an additional period of not more than 90 days to review the claim. If that happens, the claimant will receive a written

notice of that fact, which will also indicate the special circumstances requiring the extension of time and the date by which the Plan Administrator expects to make a determination with respect to the claim. If the extension is required due to the claimant's failure to submit information necessary to decide the claim, the period for making the determination will be tolled from the date on which the extension notice is sent until the date on which the claimant responds to the Plan Administrator's request for information.

6.2 Notice of Claim Determination. If a claim is denied in whole or in part, or any adverse benefit determination is made with respect to the claim, the claimant will be provided with a written notice setting forth the reason for the determination, along with specific references to Plan provisions on which the determination is based. This notice will also provide an explanation of what additional information is needed to evaluate the claim (and why such information is necessary), together with an explanation of the Plan's claims review procedure and the time limits applicable to such procedure, as well as a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review. If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the determination, the notice will either provide that rule, guideline, protocol or other similar criterion or will contain a statement that it will be provided upon request.

6.3 Claims Appeal Procedure. If the claim has been denied, and the claimant wishes to pursue the claim further, the claimant must request that the Plan Administrator review the denial. The request must be in writing and must be made within 60 days after written notification of denial. In connection with this request, the claimant may review documents pertinent to the claim (other than those that are legally privileged) and may submit to the Plan Administrator written comments, documents, records, and other information related to the claim.

The review by the Plan Administrator will take into account all comments, documents, records, and other information that the claimant submits relating to the claim. The Plan Administrator will make a final written decision on a claim review, in most cases within 60 days after receipt of a request for a review. In some cases, the claim may take more time to review, and an additional processing period of up to 60 days may be required. If that happens, the claimant will receive a written notice of that fact, which will also indicate the special circumstances requiring the extension of time and the date by which the Plan Administrator expects to make a determination with respect to the claim. If the extension is required due to the claimant's failure to submit information necessary to decide the claim, the period for making the determination will be tolled from the date on which the extension notice is sent to the claimant until the date on which the claimant responds to the Plan's request for information.

6.4 Notice of Appeal Determination. The Plan Administrator's decision on the claim for review will be communicated to the claimant in writing. If an adverse benefit determination is made with respect to the claim, the notice will include (i) the specific reason(s) for any adverse benefit determination, with references to the specific Plan provisions on which the determination is based; (ii) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to (and copies of) all documents, records and other information relevant to the claim (other than those that are legally privileged); and (iii) a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA. If an internal rule, guideline, protocol, or

other similar criterion was relied upon in making the determination, the notice will either provide that rule, guideline, protocol or other similar criterion or will contain a statement that it will be provided upon request. The decision of Plan Administrator is final and binding on all parties.

6.5 Requirement to Follow Claims Procedures. If a claimant does not file his or her claim in accordance with the Plan's claim procedures described above, including applicable time limits, the claimant will not be entitled to benefits under this Plan.

6.6 Limitation on Legal Action. No legal action with respect to this Plan may be brought until a claimant has exhausted the claims procedures described above, including the claims appeal procedure. No legal action for coverage or benefits under the Plan may be commenced or maintained more than 2 years after the circumstances giving rise to the claim arose or, if earlier, 1 year after the claims procedures, including the claims appeal procedure, is exhausted.

Section 7. Plan Amendment and Termination

The Company reserves the right to amend or modify the Plan at any time, and in any respect, by action of its duly authorized officer, with or without prior notice to, and effective with respect to, employees who may become eligible to participate in the Plan or become eligible for benefits under the Plan in the case of a reduction in benefits payable under the Plan, or who may otherwise have become eligible to participate in the Plan in the case of an amendment that excludes such employees from eligibility to participate under the Plan. However, no such amendment or termination will be effective to: (i) decrease benefits under the Plan for which an employee has already met all of the eligibility criteria and payment conditions set forth herein or (ii) negatively or adversely impact the rights of the Chief Executive Officer and President hereunder without the written consent of the Chief Executive Officer and President.

Section 8. Legal Rights Under ERISA

An employee covered under the Plan is entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). ERISA provides that you are entitled to:

Receive Information About Your Plan and Benefits

Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites, all documents governing the Plan, including a copy of the latest annual report (Form 5500 Series), if any, filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.

Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including copies of the latest annual report (Form 5500 Series), if any, and updated summary plan description. The Plan Administrator may make a reasonable charge for the copies.

Receive a summary of the Plan's annual financial report (if any). The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

Prudent Actions by Plan Fiduciaries

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of the Plan participants and beneficiaries. No one, including the employer or any other person, may fire an employee or otherwise discriminate against an employee in any way to prevent such employee from obtaining a welfare benefit or exercising such employee's rights under ERISA.

Enforce Rights

If a claim for a welfare benefit is denied or ignored, in whole or in part, the claimant has a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps an employee can take to enforce the above rights. For instance, if an employee makes a written request for a copy of Plan documents or the latest annual report from the Plan Administrator and does not receive them within 30 days, the employee may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide materials and pay the employee up to $110 a day until the employee receives the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

If an employee has a claim for benefits that is denied or ignored, in whole or in part, the employee may file suit in a state or Federal court. If it should happen that Plan fiduciaries misuse the Plan's money or if an employee is discriminated against for asserting his or her rights, such employee may seek assistance from the U.S. Department of Labor, or such employee may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If the employee is successful, the court may order the person sued to pay these costs and fees. If the employee loses, the court may order the employee to pay these costs and fees, for example, if it finds the employee's claim is frivolous.

An employee who has any questions about the Plan should contact the Plan Administrator. An employee who has any questions about this statement or his or her rights under ERISA should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in the telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Section 9. Other Important Information

9.1 No Additional Rights Created. Neither the establishment of this Plan, nor any modification thereof, nor the payment of any benefits hereunder, shall be construed as giving to any individual (or any beneficiary of either), or other person any legal or equitable right against the Company, or any of its affiliates, or any officer, director or employee thereof; and in no event shall the terms and conditions of employment by the Company (or any affiliate) of any individual be modified or in any way affected by this Plan.

9.2 Records. The records of the Company with respect to the determination of Eligible Years of Service, employment history, Base Pay, absences, and all other relevant matters shall be conclusive for all purposes of this Plan.

9.3 Construction. The Plan is intended to be governed by ERISA. The respective terms and provisions of the Plan shall be construed, whenever possible and for all purposes, to be in conformity with the requirements of ERISA, or any subsequent laws or amendments thereto. To the extent not in conflict with ERISA or the terms of the Plan, the construction and administration of the Plan shall be in accordance with applicable federal law and the laws of the State of California applicable to contracts made and to be performed within the State of California (without application of California conflict of laws provisions).

9.4 Nontransferability of Benefits Rights. In no event shall the Company make any payment under this Plan to any assignee or creditor of an employee, except as otherwise required by law. Prior to the time of a payment hereunder, an employee shall have no rights by way of anticipation or otherwise to assign or otherwise dispose of any interest under this Plan, nor shall rights be assigned or transferred by operation of law.

9.5 Plan Interpretation and Benefit Determination. The Plan is administered and operated by the Plan Administrator, which has complete authority, in such person or entity's sole and absolute discretion, to construe and interpret the terms of the Plan (and any related or underlying documents or policies), and to determine the eligibility for, and amount of, benefits due under the Plan. All such interpretations and determinations of the Plan Administrator shall be final and binding upon all parties and persons affected thereby. The Plan Administrator may appoint one or more individuals and delegate such of its powers and duties with respect to this Plan as it deems desirable to any such individual(s), in which case every reference herein made to the Plan Administrator shall be deemed to mean or include the appointed individual(s) as to matters within their jurisdiction as delegated by the Plan Administrator. The discretion and authority of the Plan Administrator under this Section 9.5 is subject to the notice, claims and appeals procedures set forth in Section 6.

Section 10. Important Plan Information

Sponsor's Name and Address:	Nektar Therapeutics 150 Industrial Road San Carlos, CA 94070
Plan Number:	503
Employer Identification Number:	94-3134940
Plan Administrator:	Nektar Therapeutics 150 Industrial Road San Carlos, CA 94070 Tel: 650-631-3100 The Plan Administrator has delegated day-to-day administration of the Plan to the following person: Vice President, Human Resources
Agent to Receive Process:	Nektar Therapeutics 150 Industrial Road San Carlos, CA 94070 Attn: General Counsel
Type of Plan:	The Plan is an unfunded employee welfare benefit plan. Benefits under the Plan are paid from the general assets of Nektar Therapeutics. Benefits under the Plan are not insured by the Pension Benefit Guaranty Corporation.
Effective Date:	January 1, 2007
Plan Year:	The calendar year, from January 1 to December 31.

Exhibit 31.1

CERTIFICATIONS

I, Howard W. Robin, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Nektar Therapeutics;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)), for the registrant and have:
    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2007

/s/ Howard W. Robin
Howard W. Robin
Chief Executive Officer, President and Director

Exhibit 31.2

CERTIFICATIONS

I, Timothy A. Harkness, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Nektar Therapeutics;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)), for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2007

/s/ Timothy A. Harkness
Timothy A. Harkness
Senior Vice President and
Chief Financial Officer

Exhibit 32.1

SECTION 1350 CERTIFICATIONS*

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Howard W. Robin, Chief Executive Officer, President, and Director of Nektar Therapeutics (the "Company"), and Timothy A. Harkness, Senior Vice President and Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Quarterly Report on Form 10-Q for the three-month period ended September 30, 2007, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company

Dated: November 8, 2007

/s/ Howard W. Robin	/s/ Timothy A. Harkness
Howard W. Robin	Timothy A. Harkness
Chief Executive Officer, President and Director	*Senior Vice President and Chief Financial Officer*

* This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.