UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-K

FOR ANNUAL AND TRANSITION REPORTS PURSUANT TO SECTIONS 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

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

For the fiscal year ended December 31, 2008

or

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

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 and zip code)

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

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	**Name of Each Exchange on Which Registered**
Common Stock, $0.0001 par value	**NASDAQ Global Select Market**

Securities registered pursuant to Section 12(g) of the Act: **None**

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

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☑

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

Large accelerated filer o	Accelerated filer ☑	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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

The approximate aggregate market value of voting stock held by non-affiliates of the registrant, based upon the last sale price of the registrant's common stock on the last business day of the registrant's most recently completed second fiscal quarter, June 30, 2008 (based upon the closing sale price of the registrant's common stock listed as reported on the NASDAQ Global Select Market), was approximately $300,233,348. This calculation excludes approximately 2,792,787 shares held by directors and executive officers of the registrant. Exclusion of these shares does not constitute a determination that each such person is an affiliate of the registrant.

As of February 27, 2009, the number of outstanding shares of the registrant's common stock was 92,506,054.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of registrant's definitive Proxy Statement to be filed for its 2009 Annual Meeting of Stockholders are incorporated by reference into Part III hereof. Such Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the end of the fiscal year covered by this Annual Report on Form 10-K.

NEKTAR THERAPEUTICS

2008 ANNUAL REPORT ON FORM 10-K
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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 "Securities 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 annual report on Form 10-K, including any projections of earnings, revenue or other financial items, any statements of the plans and objectives of management for future operations (including, but not limited to, pre-clinical development, clinical trials and manufacturing), any statements concerning proposed drug candidates or other new products or services, any statements regarding future economic conditions or performance and any statements 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, such expectations or any of the forward-looking statements may prove to be incorrect 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 I, Item 1A "Risk Factors" below and for the reasons described elsewhere in this annual report on Form 10-K. 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. Except where the context otherwise requires, in this annual report of Form 10-K, the "Company," "Nektar," "we," "us," and "our" refer to Nektar Therapeutics, a Delaware corporation, and, where appropriate, its subsidiaries.

Trademarks

The Nektar brand and product names, including but not limited to Nektar®, contained in this document are trademarks, registered trademarks or service marks of Nektar Therapeutics in the United States (U.S.) and certain other countries. This document also contains references to trademarks and service marks of other companies that are the property of their respective owners.

PART I

Item 1. Business

We are a clinical-stage biopharmaceutical company developing a pipeline of drug candidates that utilize our PEGylation and advanced polymer conjugate technology platforms, which are designed to improve the benefits of drugs for patients. Our current proprietary product pipeline is comprised of drug candidates across a number of therapeutic areas including oncology, pain, anti-infectives, anti-viral and immunology. Our research and development activities involve small molecule drugs, peptides and other potential biologic drug candidates. We create our innovative drug candidates by using our proprietary chemistry platform to modify the chemical structure of drugs using unique polymer conjugates. Polymer chemistry is a science focused on the synthesis or bonding of polymer architectures with drug molecules to alter the properties of the molecule when it is bonded with our proprietary polymers. Additionally, we may utilize established pharmacologic targets to engineer a new drug candidate relying on a combination of the known properties of these targets and our polymer chemistry technology and expertise. Our drug candidates are designed to improve the pharmacokinetics, pharmacodynamics, half-life, bioavailability, metabolism or distribution of drugs and improve the overall benefits and use of a drug for the patient. Our objective is to apply our advanced polymer conjugate technology platform to create new drugs in multiple therapeutic areas.

Each of our drug candidates which we are currently developing internally is a proprietary new chemical or biological entity that addresses large potential markets. We are developing drug candidates that can be delivered by oral or subcutaneous administration. Our most advanced proprietary product candidate, Oral NKTR-118, is a peripheral opioid antagonist that is currently being evaluated for the treatment of opioid-induced constipation (OIC) and we recently announced that we were terminating our Phase 2 clinical trial for this program due to positive preliminary results. Our other lead product candidate, NKTR-102, is a cytotoxic topoisomerase I inhibitor that is being evaluated or will be evaluated in four separate Phase 2 clinical trials for the treatment of multiple cancers, including ovarian, breast, cervical and colorectal.

In addition to our internal pipeline, we have a number of collaborations and license agreements for our technology with leading biotechnology and pharmaceutical companies, including Amgen, Schering-Plough, Baxter, UCB and Roche. A total of nine products using our PEGylation technology platform have received regulatory approval in the U.S. or Europe, and are currently marketed by our partners. There are also a number of other products in clinical development that use our technology platform. These licensing collaborations will represent the majority of our revenue stream in 2009 which will be comprised of a combination of upfront and contract research fees, milestones, manufacturing product sales and product royalties.

We also have a significant collaboration with Bayer Healthcare LLC to develop BAY41-6551 (NKTR-061, Amikacin Inhale), which is an inhaled solution of amikacin, an aminoglycoside antibiotic. We originally developed the liquid aerosol inhalation platform and product and entered into a collaboration with Bayer Healthcare LLC in 2007 for its development. We have another proprietary product candidate, NKTR-063 (Inhaled Vancomycin), which uses the same aerosol platform as BAY41-6551. A Phase 1 clinical trial has been completed for NKTR-063 to treat patients with Gram-positive pneumonias.

On December 31, 2008, we completed the sale and transfer of certain pulmonary technology rights, certain pulmonary collaboration agreements and approximately 140 of our dedicated pulmonary personnel and operations to Novartis Pharma AG. We retained all of our rights to BAY41-6551 and NKTR-063, certain rights to receive royalties on net sales of the Cipro Inhale (also known as Ciprofloxacin Inhaled Powder or CIP) program with Bayer Schering Pharma AG that we transferred to Novartis as part of the transaction, and we also retained certain intellectual property rights to patents specific to inhaled insulin. In connection with the closing of the transaction, we also terminated the Tobramycin Inhalation Powder (TIP) collaboration agreement with Novartis.

We were incorporated in California in 1990 and reincorporated in Delaware in 1998. We maintain our executive offices at 201 Industrial Road, San Carlos, California 94070, and our main telephone number is (650) 631-3100.

Our Technology Platform

With our expertise as a leader in the field of PEGylation, we have advanced our technology platform to include first-generation PEGylation and new advanced polymer conjugate chemistries that can be tailored in very specific and customized ways to optimize and significantly improve the profile of a wide range of molecules and many classes of drugs and disease areas.

PEGylation has been a highly effective technology platform for the development of therapeutics with significant commercial success, such as Roche's PEGASYS® (PEG-interferon alfa-2a) and Amgen's Neulasta® (pegfilgrastim). All of the PEGylated drugs approved over the last fourteen years were enabled with our PEGylation technology through our collaborations and licensing partnerships with pharmaceutical companies. PEG (polyethylene glycol) is a versatile technology and is a water soluble, amphiphilic, non-toxic, non-immunogenic compound that is safely cleared from the body. Its primary use to date has been in currently approved biologic drugs to favorably alter their pharmacokinetic or pharmacodynamic properties. However, in spite of its widespread success in commercial drugs, there are limitations with the first-generation PEGylation approaches used with biologics. These limitations include the inability of the earlier approaches of PEGylation technology to be used successfully with small molecule drugs, antibody fragments and peptides, all of which could potentially benefit from the application of the technology. Other limitations of the early approaches of PEGylation technology include resulting sub-optimal bioavailability and bioactivity, and its limited ability to be used to fine-tune properties of the drug, as well as its inability to be used to create oral drugs.

With our expertise and proprietary technology in PEGylation, we have created the next-generation of PEGylation technology. Our advanced polymer conjugate technology platform is designed to overcome the limitations of the first generation of the technology platform and allow the platform to be utilized with a broader range of molecules across many therapeutic areas.

Both our PEGylation and advanced polymer conjugate technology platforms have the potential to offer one or more of the following benefits:

- improve efficacy or safety in certain instances as a result of better pharmacokinetics, pharmacodynamics, longer half-life and sustained exposure of the drug;
- improve targeting or binding affinity of a drug to its target receptors with the potential to improve efficacy and reduce toxicity or drug resistance;
- enable oral administration of parenterally-administered drugs, or drugs that must be administered intravenously or subcutaneously, and increase oral bioavailability of small molecules;
- prevent drugs from crossing the blood-brain barrier and limiting undesirable central nervous system effects;
- reduce first-pass metabolism effects of certain drug classes with the potential to improve efficacy, which could reduce the need for other medicines and reduce toxicity;
- reduce rate of drug absorption and of elimination or metabolism by improving stability of the drug in the body and providing it with more sufficient time to act on its target; and
- reduce immune response to certain macromolecules with the potential to prolong their effectiveness with repeated doses.

We have a broad range of approaches that we may use when designing our own drug candidates, some of which are outlined below:

Small Molecule Polymer Conjugates

Our customized approaches with small molecule polymer conjugates allows for the fine-tuning of the physicochemical and pharmacological properties of small molecule oral drugs to potentially increase their therapeutic benefit. In addition, this approach can enable oral administration of subcutaneously-delivered small molecule drugs that have shown low bioavailability when delivered orally. Benefits of this approach can also include: improved potency, increased oral bioavailability, modified biodistribution with enhanced pharmacodynamics, and reduced transport across specific membrane barriers in the body, such as the blood-brain barrier. A primary example of the application of membrane transport inhibition, specifically reducing transport across the blood-brain barrier is Oral NKTR-118, a novel peripheral opioid antagonist that is in the final stages of Phase 2 clinical development. An example of a drug candidate that uses this approach to avoid first-pass metabolism is NKTR-140, a novel protease inhibitor in preclinical development.

Small Molecule Pro-Drug Conjugates

The pro-drug polymer conjugation approach can be used to optimize the pharmacokinetics and pharmacodynamics of a small molecule drug to substantially increase both its efficacy and side effect profile. We are currently using this platform with oncolytics, which typically have sub-optimal half-lives that can limit their therapeutic efficacy. With our technology platform, we believe that these drugs can be modulated for programmed release within the body, optimized bioactivity and increased sustained exposure of active drug to tumor cells in the body. We are using this approach with the two oncolytic candidates in our pipeline, NKTR-102, a novel PEGylated form of irinotecan in Phase 2 clinical development, and NKTR-105, a novel PEGylated form of docetaxel in Phase 1 clinical development.

Peptide Large Molecule Polymer Conjugates

Our customized approaches with large molecule polymer conjugates have enabled numerous successful PEGylated biologics on the market today. We are using our advanced polymer conjugation technology-based approach to enable peptides, which are much smaller in size than other biologics, such as proteins and antibody fragments. We are in the early stages of research with a number of peptides that utilize this proprietary approach. Peptides are important in modulating many physiological processes in the body. Some of the benefits of working with peptides are: they are small, more easily optimized, and can be rapidly investigated for therapeutic potential. However, peptide drug discovery has been slowed by the extremely short half-life and limited bioavailability of these molecules.

Based on our knowledge of the technology and biologics, our scientists have designed a novel hydrolyzable linker that can be used to optimize the bioactivity of a peptide. Through rational drug design and the use of our approach, a peptide's pharmacokinetics and pharmacodynamics can be substantially improved and its half-life can be significantly extended. The approach can also be used with proteins and larger molecules, as well.

Antibody Fragment Conjugates

This approach uses a large molecular weight polyethylene glycol (PEG) conjugated to antibody fragments in order to potentially improve their toxicity profile, extend their half-life and allow for ease of synthesis with the antibody. The specially designed PEG then becomes part of the antibody fragment Fc. Since the antibody fragment is more like a biologic, this conjugation has a branched architecture with either stable or degradable linkage. This approach can be used to reduce antigenicity, reduce glomerular filtration rate, and retain antigen-binding affinity and recognition. There is currently one approved product on the market that utilizes our technology with an antibody fragment, CIMZIA™ (certoluzimab pegol), which was developed by our partner UCB Pharma and is approved for the treatment of Crohn's Disease in the U.S.

Our Strategy

The key elements of our business strategy are outlined below:

Advance Our Internal Clinical Pipeline of Drug Candidates that Leverage Our PEGylation and Advanced Polymer Conjugate Chemistry Platform

Our objective is to create value by advancing our lead drug candidates through early to mid-stage clinical development. To support this strategy, in 2008, we significantly expanded our strong internal expertise in our clinical development and regulatory departments. We intend to decide on a product-by-product basis whether we wish to continue development into Phase 3 pivotal clinical trials and commercialize products on our own, or seek a partner, or pursue a combination of these approaches.

A key component of our development strategy is to potentially reduce the risks and time associated with drug development by capitalizing on the known safety and efficacy of approved drugs as well as established pharmacologic targets and drugs directed to those targets. For many of our novel drug candidates, we may seek approval in indications for which the parent drugs have not been studied or approved. We believe that the improved characteristics of our drug candidates will provide meaningful benefit to patients compared to the existing therapies, and allow for approval to provide new treatments for patients for which the parent drugs are not currently approved.

Ensure Future Growth of our Pipeline through Internal Research Efforts and Advancement of our Preclinical Drug Candidates into Clinical Trials

We believe it is important to maintain a diverse pipeline of new drug candidates to continue to build on the value of our business. Our early research organization is identifying new drug candidates by applying our technology platform to a wide range of molecule classes, including small molecules and large proteins, peptides and antibodies, across multiple therapeutic areas. We continue to advance our most promising early research drug candidates into preclinical development with the objective to advance these early stage research programs to human clinical studies over the next several years.

Enter into Strategic and High-Value Partnerships to Bring Our Drugs to Market

Our partnering strategy is to enter into collaborations with larger pharmaceutical and biotechnology companies at appropriate stages in our drug development process to fund further clinical development, manage the global regulatory filing process, and market and sell the approved drugs. The options for future collaboration arrangements range from comprehensive licensing arrangements to co-promotion and co-development agreements with the structure of the collaboration depending on factors such as the cost and complexity of development, marketing and commercialization needs and therapeutic area focus.

Continue to Build a Leading Intellectual Property Estate in the Field of PEGylation and Polymer Conjugate Chemistry across Therapeutic Modalities

We are committed to continuing to build on our intellectual property position in the field of PEGylation and polymer conjugate chemistry. To that end, we have a comprehensive patent strategy providing us with ownership of patents and patent applications covering a wide range of approaches, including, among others, polymer materials, conjugates, formulations, synthesis, therapeutic areas and methods of treatment.

Approved Drugs and Drug Candidates Enabled By Our Technology through Licensing Collaborations

The following table outlines our collaborations with a number of pharmaceutical companies that license our technology, including Amgen, Schering-Plough, Baxter, UCB and F. Hoffmann-La Roche. A total of nine products using our PEGylation technology have received regulatory approval in the U.S. or Europe. There are also a number of other candidates that have been filed for approval or are in various stages of clinical development. These collaborations generally contain several elements including license rights to our proprietary technology, manufacturing and supply agreements under which we may receive manufacturing revenue, milestone payments, and/or product royalties on commercial sales.

Drug	Primary or Target Indications	Licensing Partner and Drug Marketer	Status(1)
Neulasta® (pegfilgrastim)	Neutropenia	Amgen Inc.	Approved
PEGASYS® (peginterferon alfa-2a)	Hepatitis-C	F. Hoffmann-La Roche Ltd	Approved
Somavert® (pegvisomant)	Acromegaly	Pfizer Inc.	Approved
PEG-INTRON® (peginterferon alfa-2b)	Hepatitis-C	Schering-Plough Corporation	Approved
Macugen® (pegaptanib sodium injection)	Age-related macular degeneration	OSI Pharmaceuticals (formerly Eyetech)	Approved
CIMZIA™ (certolizumab pegol)	Crohn's disease	UCB Pharma	Approved in U.S. and Switzerland
MIRCERA® (C.E.R.A.) (Continuous Erythropoietin Receptor Activator)	Anemia associated with chronic kidney disease in patients on dialysis and patients not on dialysis	F. Hoffmann-La Roche Ltd	Approved in U.S. and EU (Launched only in the EU)*
CIMZIA™ (certolizumab pegol)	Rheumatoid arthritis	UCB Pharma	Filed in the U.S. and EU
Hematide™(synthetic peptide-based, erythropoiesis- stimulating agent)	Anemia	Affymax, Inc.	Phase 3
MAP0004™	Migraine	MAP Pharmaceuticals	Phase 3
Cipro Inhale	Cystic fibrosis lung infections	Bayer Schering Pharma AG	Phase 2**
CIMZIA ™ (certoluzimab pegol)	Psoriasis	UCB Pharma	Phase 2
CDP-791 (PEG-antibody fragment angiogenesis inhibitor)	Non-small cell lung cancer	UCB Pharma	Phase 2
Longer-acting Factor VIII and other blood clotting proteins	Hemophilia	Baxter	Preclinical

(1) Status definitions are:

Approved—regulatory approval to market and sell product obtained in the U.S., EU and other countries.

*Filed —P*roducts for which a New Drug Application (NDA) or Biologics License Application (BLA) has been filed

Phase 3 or Pivotal—product in large-scale clinical trials conducted to obtain regulatory approval to market and sell the drug (these trials are typically initiated following encouraging Phase 2 trial results).

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. In the case of oncology drug candidates, Phase 1 clinical trials are typically conducted in cancer patients.

Research/preclinical— product is being studied in research by way of vitro studies and/or animal studies

* Amgen Inc. prevailed in a patent lawsuit against F. Hoffmann-La Roche Ltd and as a result of this legal ruling Roche is currently prevented from marketing MIRCERA® in the U.S.

** This product candidate was developed using our proprietary pulmonary delivery technology that was transferred to Novartis in an asset sale transaction that closed on December 31, 2008. As part of the transaction, Novartis assumed our rights and obligations for our Cipro Inhale agreements with Bayer Schering PharmaAG; however, we maintained the rights to receive certain royalties on commercial sales of Cipro Inhale if the product candidate is approved.

Nektar Proprietary Internal Drug Candidates in Clinical Development

The following table summarizes our proprietary product development pipeline and significant partnerships. The table includes the type of molecule or drug, the primary indication for the product or product candidate, and the clinical trial status of the program.

Drug Candidate	Target Indications	Status (1)
BAY41-6551 (NKTR-061, Amikacin Inhale)	Gram-negative pneumonias	Phase 2 (Partnered with Bayer Healthcare LLC)*
NKTR-102 (PEGylated irinotecan)	Second-line colorectal cancer in patients with the KRAS gene mutation	Phase 2
NKTR-102 (PEGylated irinotecan)	Metastatic breast cancer	Phase 2
NKTR-102 (PEGylated irinotecan)	Metastatic ovarian cancer	Phase 2
NKTR-102 (PEGylated irinotecan)	Metastatic cervical cancer	Phase 2
Oral NKTR-118 (PEGylated naloxol)	Opioid-induced constipation (OIC)	Phase 2
NKTR-105 (PEGylated docetaxel)	Solid tumors	Phase 1
NKTR-063 (Inhaled Vancomycin)	Gram-positive pneumonias	Phase 1*
NKTR-140 (protease inhibitor candidate)	HIV	Research/Preclinical
NKTR-171 (undisclosed pain candidate)	Neuropathic pain	Research/Preclinical
NKTR-125 (PEGylated antihistamine candidate)	Allergic rhinitis	Research/Preclinical

(1) Status definitions are:

Phase 3 or Pivotal—product in large-scale clinical trials conducted to obtain regulatory approval to market and sell the drug (these trials are typically initiated following encouraging Phase 2 trial results).

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. In the case of oncology drug candidates, Phase 1 clinical trials are typically conducted in cancer patients.

Research/preclinical— product is being studied in research by way of vitro studies and/or animal studies

* This product candidate uses a liquid aerosol technology platform that was transferred to Novartis in the pulmonary asset sale transaction that was completed on December 31, 2008. As part of that transaction, we retained an exclusive license to this technology for the development and commercialization of this drug candidate originally developed by Nektar.

Overview of Selected Proprietary Product Development Programs

NKTR-102 (PEGylated irinotecan)

We are developing NKTR-102, a novel PEGylated form of irinotecan that was designed using our advanced polymer conjugate technology platform. The product candidate is currently in Phase 2 clinical development. Irinotecan, also known as Camptosar®, is a topoisomerase I inhibitor used for the treatment of solid tumors, including colorectal and lung cancers. By applying our proprietary pro-drug conjugate technology to irinotecan, NKTR-102 has the potential to be a more effective and tolerable anti-tumor agent. Using a proprietary approach that directly conjugates the drug to a multi-arm polymer architecture, we are the first company to have created a PEGylated small molecule with a unique pharmacokinetic profile that has demonstrated therapeutic activity in patients.

NKTR-102 is currently in Phase 2 clinical development for the treatment of multiple cancers, including colorectal, ovarian, and breast. In addition, we also plan to commence a Phase 2 trial for NKTR-102 in patients with cervical cancer. A Phase 2 randomized trial of NKTR-102 was initiated in early 2009 that will evaluate the efficacy and safety of NKTR-102 monotherapy versus irinotecan in second-line colorectal cancer patients with the KRAS mutant gene. According to the National Comprehensive Clinical Network, colorectal cancer is the most frequently diagnosed cancer in men and women in the United States. In 2008, it is estimated that over 108,000 new cases of colon cancer and approximately 40,780 cases of rectal cancer occurred. During the same year, it is estimated that 49,960 people died from colon and rectal cancer. The primary endpoint of the Phase 2 placebo-controlled trial of NKTR-102 in colorectal cancer will be a clinically meaningful improvement in progression-free survival as compared to standard irinotecan monotherapy. According to recent data presented at the American Society of Clinical Oncology in 2008, it is estimated that up to 45% of colorectal cancer cases have this mutation in the KRAS gene and do not respond to EGFR-inhibitors, such as cetuximab. A Phase 2a study of NKTR-102 is also ongoing to evaluate NKTR-102 in combination with cetuximab in 18 patients with refractory solid tumors, primarily gastrointestinal-related cancers.

Two separate NKTR-102 Phase 2 studies are also ongoing in ovarian and breast cancers. These studies are open label, single arm studies encompassing two treatment regimens (every 14 days or every 21 days). Patients include those with metastatic breast cancer with prior taxane treatment, those with metastatic and platinum-resistant ovarian cancer. The Phase 2 study for cervical cancer that we plan to initiate in 2009 is for patients with metastatic cervical cancer. The trials will evaluate the overall response rate (ORR) of NKTR-102 monotherapy in each tumor setting, with secondary endpoints including progression-free survival, safety and six and 12-month overall survival.

Ovarian, breast, and cervical cancers remain significant health problems for women worldwide. In 2008, there were an estimated 21,650 new diagnoses and an estimated 15,520 deaths from ovarian cancer in the United States and, historically, less than 40% of women with ovarian cancer are cured. The American Cancer Society estimated that over 184,000 new cases of invasive breast cancer were diagnosed and nearly 41,000 women died of breast cancer in the United States in 2008. Cervical cancer is a major world health problem for women. The global annual incidence of cervical cancer in 2002 was over 490,000 with an annual death rate of over 270,000. It is currently the third most common cancer in women worldwide.

Oral NKTR-118 (PEGylated naloxol)

Oral NKTR-118 is a novel oral drug candidate that is in the final stages of Phase 2 clinical development, combines our stable conjugate polymer technology with naloxol, a derivative of the opioid-antagonist drug naloxone. On March 2, 2009, we announced that we were terminating the Phase 2 trial for Oral NKTR-118 as a result of positive preliminary results. The peripheral opioid antagonist Oral NKTR-118 targets opioid receptors within the enteric nervous system, which mediate opioid-induced bowel dysfunction (OBD), a symptom resulting from opioid use that encompasses constipation, bloating, abdominal cramping and gastroesophageal reflux. Opioid-induced constipation (OIC) is the hallmark of this syndrome and is generally its most prominent component. According to the American Pain Society, over 200 million opioid prescriptions are filled in the U.S. annually with worldwide sales of opioids reaching $7.5 billion in 2007. Depending on the population studied and the definitions used, constipation occurs in up to 90% of patients taking opioids. Currently, there are no specific oral drugs approved or specifically indicated to treat OBD or OIC.

We are also conducting early discovery research on a new drug candidate, NKTR-119, which we intend to develop as a co-formulation of NKTR-118 and a long-acting opioid analgesic. Our research plan for NKTR-119 program is to create a long-acting opioid without the related gastrointestinal side effects, such as OBD including OIC.

NKTR-105 (PEGylated docetaxel)

NKTR-105 is a novel PEGylated conjugate form of docetaxel, an anti-neoplastic agent belonging to the taxoid family that acts by disrupting the microtubular network in cells. Docetaxel is a major chemotherapy agent approved for use in five different cancer indications: breast, non-small cell lung, prostate, gastric, and head and neck. Annual sales of docetaxel in 2007 exceeded $2 billion. Oncolytics, such as docetaxel, typically have sub-optimal half-lives which can limit their therapeutic efficacy. Our advanced polymer conjugation technology can be used to optimize the bioactivity of these drugs and increase the sustained exposure of active drug to tumor cells in the body.

NKTR-105 is currently being evaluated in a Phase 1 clinical trial in cancer patients that began in February 2009. The study will assess the safety, pharmacokinetics, and anti-tumor activity of NKTR-105 in approximately 30 patients with refractory solid tumors who have failed all prior available therapies.

NKTR-140 (protease inhibitor)

NKTR-140 is a novel protease inhibitor product candidate to treat human immunodeficiency virus (HIV), which can lead to acquired immunodeficiency syndrome or AIDS. The product was developed using Nektar's advanced small molecule polymer conjugate technology. The drug candidate is designed to have improved potency as compared to leading protease inhibitors used in clinical practice today, and also to eliminate the need for a co-administered protease inhibitor booster, such as ritonavir. NKTR-140 is currently being studied in a number of preclinical trials.

Overview of Select Licensing Partnerships for Approved Products

All of the approved products today that use our technology platforms are a result of licensing collaborations with partners. We also have a number of product candidates in clinical development by our partners that use our technology or involve rights over which we have patents or other proprietary intellectual property. In a typical collaboration involving our PEGylation technology, we license our proprietary intellectual property related to our PEGylation technology or proprietary conjugated drug molecules in consideration for upfront payments, development milestone payments and royalties from sales of the resulting commercial product as well as sales milestones. We also manufacture and supply our proprietary PEGylation materials to our partners.

Neulasta®, Agreement with Amgen, Inc.

In July 1995, we entered into a non-exclusive supply and license agreement with Amgen, Inc. (Amgen), pursuant to which we license our proprietary PEGylation technology to be used in the development and manufacture of Neulasta. Neulasta selectively stimulates the production of neutrophils that are depleted by cytotoxic chemotherapy, a condition called neutropenia that makes it more difficult for the body to fight infections. We manufacture and supply our proprietary PEGylation materials for Amgen on a fixed price basis. The term of the agreement is for a fixed duration with a limited number of renewal options. This agreement is scheduled to expire in 2010.

PEGASYS®, Agreement with F. Hoffmann-La Roche Ltd

In February 1997, we entered into a license, manufacturing and supply agreement with F. Hoffmann-La Roche Ltd and Hoffmann-La Roche Inc. (Roche), under which we granted Roche a worldwide, exclusive license to use certain PEGylation materials to manufacture and commercialize a certain class of products, of which PEGASYS is the only product currently commercialized. PEGASYS is approved in the U.S., E.U. and other countries for the treatment of Hepatitis C and is designed to help the patient's immune system fight the Hepatitis C virus. We currently manufacture our proprietary PEGylation materials for Roche on a price per gram basis. Roche has an option for a license extension related to the agreement. The agreement expires on the later of January 10, 2015 or the expiration of our last relevant patent containing a valid claim.

Somavert®, Agreement with Pfizer, Inc.

In January 2000, we entered into a license, manufacturing and supply agreement with Sensus Drug Development Corporation (subsequently acquired by Pharmacia Corp. in 2001 and then acquired by Pfizer, Inc. in 2003), for the PEGylation of Somavert (pegvisomant), a human growth hormone receptor antagonist for the treatment of acromegaly. We currently manufacture our proprietary PEGylation reagent for Pfizer on a price per gram basis. The agreement expires on the later of ten years from the grant of first marketing authorization in the designated territory, which occurred in March 2003, or the expiration of our last relevant patent containing a valid claim. In addition, Pfizer may terminate the agreement if marketing authorization is withdrawn or marketing is no longer feasible due to certain circumstances, and either party may terminate for cause if certain conditions are met.

PEG-Intron®, Agreement with Schering-Plough Corporation

In February 2000, we entered into a manufacturing and supply agreement with Schering-Plough Corporation (Schering) for the manufacture and supply of our proprietary PEGylation materials to be used by Schering in production of a pegylated recombinant human interferon-alpha (PEG-Intron). PEG-Intron is a treatment for patients with Hepatitis C. We currently manufacture our proprietary PEGylation materials for Schering on a price per gram basis. The agreement is for a fixed duration with renewal terms conditioned upon mutual agreement.

Macugen®, Agreement with OSI Pharmaceuticals (formerly Eyetech)

In 2002, we entered into a license, manufacturing and supply agreement with Eyetech Pharmaceuticals, Inc., subsequently acquired by OSI Pharmaceuticals, Inc. (OSI) in 2005, pursuant to which we license our proprietary PEGylation technology for the development and commercialization of Macugen®, a PEGylated anti-vascular endothelial growth factor aptamer currently approved in the U.S. and E.U. for use in treating age-related macular degeneration. We currently manufacture our proprietary PEGylation materials for OSI on a price per gram basis. Under the terms of the agreement, we will receive royalties on net product sales in any particular country covered by a valid patent claim for the longer of ten years from the date of the first commercial sale of the product in that country or the manufacture, use or sale of such product in that country. The agreement expires upon the expiration of our last relevant patent containing a valid claim. In addition, OSI may terminate the agreement if marketing authorization is withdrawn or marketing is no longer feasible due to certain circumstances, and either party may terminate for cause if certain conditions are met.

CIMZIA™, Agreement with UCB Pharma

In December 2000, we entered into a license, manufacturing and supply agreement for CIMZIA™ (certolizumab pegol, CDP870) with Celltech Chiroscience Ltd., which was acquired by UCB Pharma (UCB) in 2004. Under the terms of the agreement, UCB is responsible for all clinical development, regulatory, and commercialization expenses. We have the right to receive manufacturing revenue on a cost-plus basis and royalties on net product sales. We are entitled to receive royalties on net sales of the CIMZIA™ product in any particular country for the longer of ten years from the first commercial sale of the product in that country or the expiration of patent rights in that particular country. CIMZIA™ is currently approved in the treatment of Crohn's Disease in the U.S. The agreement expires upon the expiration of all of UCB's royalty obligations, provided that the agreement can be extended for successive two year renewal periods upon mutual agreement of the parties. In addition, UCB may terminate the agreement should it cease the development and marketing of CIMZIA™ and either party may terminate for cause under certain conditions.

In April 2008, UCB received FDA approval for CIMZIA™ in the U.S. in the treatment of moderate to severe Crohn's disease. Crohn's disease is a chronic digestive disorder of the intestines commonly referred to as inflammatory bowel disease that affects an estimated 400,000 to 600,000 individuals in the U.S. In March 2008, the European Medicines Agency (EMEA) rejected the appeal following CHMP refusal of the MAA for CIMZIA™ in the treatment of patients with Crohn's disease, a chronic and debilitating inflammatory disease.

In December 2007, UCB submitted a Biologics License Application (BLA) to the FDA for CIMZIA™ for the treatment of rheumatoid arthritis. Rheumatoid arthritis is an autoimmune disease that causes chronic inflammation of the joints. The submission was accepted in February of 2008. In January 2009, UCB announced that the FDA issued a Complete Response Letter (CRL) relating to the BLA of CIMZIA™, the first PEGylated anti-TNF, for the treatment of rheumatoid arthritis. In July 2008, UCB announced that a Marketing Authorisation Application (MAA) has been submitted to and accepted for review by the EMEA requesting the approval of CIMZIA™ (certolizumab pegol) as a subcutaneous treatment for adults with moderate to severe active rheumatoid arthritis.

UCB is also conducting clinical trials on CIMZIA™ for psoriasis and other indications. The product is in Phase 2 trials for the treatment of psoriasis.

MIRCERA® (C.E.R.A.) (Continuous Erythropoietin Receptor Activator), Agreement with F. Hoffmann-La Roche Ltd

In December 2000, we entered into a license, manufacturing and supply agreement with F. Hoffmann-La Roche Ltd and Hoffmann-La Roche Inc. (Roche), which was amended and restated in its entirety in December 2005. Pursuant to the agreement, we license our proprietary PEGylation materials for use in the development and manufacture of Roche's MIRCERA product. MIRCERA is a novel continuous erythropoietin receptor activator indicated for the treatment of anemia associated with chronic kidney disease in patients on dialysis and patients not on dialysis. We are entitled to receive royalties on net sales of the MIRCERA product in any particular country for the longer of ten years from the first commercial sale of the product in that country or the expiration of patent rights in that particular country. The agreement expires upon the expiration of all of Roche's royalty obligations, unless earlier terminated by Roche for convenience or by either party for cause under certain conditions.

In April 2006, Roche filed a BLA for MIRCERA with the FDA for the treatment of anemia associated with chronic kidney disease, including patients on dialysis or not on dialysis, and an MAA with the EMEA to treat patients with chronic kidney disease. In May 2007, MIRCERA was approved in the EU and the product was subsequently launched by Roche in the EU in August of 2007. In November 2007, the FDA approved Roche's BLA application for MIRCERA but the product has not been launched in the U.S. as a result of patent-related issues.

In October 2008, a federal district court ruled in favor of Amgen Inc. in a patent infringement lawsuit involving MIRCERA and issued a permanent injunction which prevents Roche from marketing or selling MIRCERA in the U.S. even though the FDA approved MIRCERA. This federal district court decision is currently on appeal to the U.S. Court of Appeals for the Federal Circuit. Given the uncertain and lengthy nature of the legal appeal process, it is not possible for us to estimate the timing of a decision on Roche's appeal or potential remand of this case for additional proceedings. If Roche is not successful in getting relief from the current permanent injunction, we estimate that Roche would not be able to market or sell MIRCERA in the U.S. until 2013 at the earliest.

Overview of Select Partnered Drug Development Programs

BAY41-6551 (NKTR-061, Amikacin Inhale), Agreement with Bayer Healthcare LLC

In August 2007, we entered into a co-development, license and co-promotion agreement with Bayer Healthcare LLC (Bayer) to develop a specially-formulated Amikacin (BAY41-6551, NKTR-061, Amikacin Inhale). Under the terms of the agreement, Bayer is responsible for most future clinical development and commercialization costs, all activities to support worldwide regulatory filings, approvals and related activities, further development of formulated Amikacin and final product packaging for BAY41-6551. We are responsible for any future development of the nebulizer device used in BAY41-6551through the completion of Phase 3 clinical trials and scale-up for commercialization. Under the terms of the agreement, we are entitled to development milestones and sales milestones upon achievement of certain annual sales targets. We are also entitled to royalties based on annual worldwide net sales of BAY41-6551. Our right to receive these royalties in any particular country will expire upon the later of ten years after the first commercial sale of the product in that country or the expiration of certain patent rights in that particular country, subject to certain exceptions. The agreement expires in relation to a particular country upon the expiration of all royalty and payment obligations between the parties related to such country. Subject to termination fee payment obligations, Bayer also has the right to terminate the agreement for convenience. In addition, the agreement may also be terminated by either party for certain product safety concerns, the product's failure to meet certain minimum commercial profile requirements or uncured material breaches by the other party. For certain Bayer terminations, we may have reimbursement obligations to Bayer.

BAY41-6551 is under development to treat Gram-negative pneumonias, including Hospital-Acquired (HAP), Healthcare-Associated, and Ventilator-Associated pneumonias. Gram-negative pneumonias are often the result of complications of other patient conditions or surgeries. BAY41-6551 will be adjunctive therapy to the current antibiotic therapies administered intravenously as standard of care. The targeted aerosol delivery platform in BAY41-6551 delivers antimicrobial agent directly to the site of infection in the lungs. The product can be integrated with conventional mechanical ventilators or used as a hand-held 'off-vent' device for patients no longer requiring breathing assistance.

Gram-negative pneumonia carries a mortality risk of over 50% in mechanically-ventilated patients and accounts for a substantial proportion of the pneumonias in intensive care units (ICUs) today.

Hematide™, Agreement with Affymax, Inc.

In April 2004, we entered into a license, manufacturing and supply agreement with Affymax, Inc. (Affymax), under which we granted Affymax a worldwide, non-exclusive license under certain of our proprietary PEGylation technology to develop, manufacture and commercialize Hematide. We currently manufacture our proprietary PEGylation materials for Affymax on a fixed price basis subject to annual adjustments. Affymax has an option to convert this manufacturing pricing arrangement to cost plus at any time prior to the date the NDA for Hematide is submitted to the FDA. In addition, Affymax is responsible for all clinical development, regulatory and commercialization expenses and we are entitled to development milestones and royalties on net sales of Hematide. Our right to receive royalties in any particular country will expire upon the later of ten years after the first commercial sale of the product in that country or the expiration of patent rights in that particular country. The agreement expires on a country-by-country basis upon the expiration of Affymax's royalty obligations. The agreement may also be terminated by either party for the other party's continued material breach after a cure period or by us in the event that Affymax challenges the validity or enforceability of any patent licensed to them under the agreement.

CDP-791, Agreement with UCB Pharma

In December 2000, we entered into a licensing, manufacturing and supply agreement with Celltech Chiroscience Ltd. (subsequently acquired by UCB Pharma or UCB) for several PEGylated antibody fragment products, one of which was a PEG-antibody fragment angiogenesis inhibitor for non-small cell lung cancer. In August 2002, the agreement was superseded by an agreement that relates only to CDP-791. Under the terms of the 2002 agreement, we provide development and manufacturing services for the CDP-791 product. UCB is responsible for all clinical development, regulatory and commercialization expenses. We have the right to receive development milestone payments, manufacturing revenue on a cost-plus basis and royalties on net product sales following commercial launch. Our right to receive royalties in any particular country will expire upon the later of between ten or twelve years (which period depends on certain factors) after the first commercial sale of the product in that country or the expiration of patent rights in that particular country. The agreement expires upon the expiration of all of UCB's royalty obligations, provided that the agreement can be extended for successive two year renewal periods upon mutual agreement of the parties. In addition, UCB may terminate the agreement should it cease the development and marketing of the product and either party may terminate for cause under certain conditions.

Hemophilia Programs, Agreement with Subsidiaries of Baxter International

In September 2005, we entered into an exclusive research, development, license and manufacturing and supply agreement with Baxter Healthcare SA and Baxter Healthcare Corporation (Baxter) to develop products with an extended half-life for the treatment and prophylaxis of Hemophilia A patients using our PEGylation technology. In December 2007, we expanded our agreement with Baxter to include the license of our PEGylation technology and proprietary PEGylation methods with the potential to improve the half-life of any future products Baxter may develop for the treatment and prophylaxis of Hemophilia B patients. Under the terms of the agreement, we are entitled to research and development funding, and we manufacture our proprietary PEGylation materials for Baxter on a cost plus basis. Baxter is responsible for all clinical development, regulatory, and commercialization expenses. In relation to Hemophilia A, we are entitled to development milestones and royalties on net sales varying by product and country of sale. Our right to receive these royalties in any particular country will expire upon the later of ten years after the first commercial sale of the product in that country or the expiration of patent rights in certain designated countries or in that particular country. In relation to Hemophilia B, we are entitled to development and sales milestones and royalties on net sales varying by product and country of sale. Our right to receive these royalties in any particular country will expire upon the later of twelve years after the first commercial sale of the product in that country or the expiration of patent rights in certain designated countries or in that particular country. The agreement expires in relation to a particular product and country upon the expiration of all of Baxter's royalty obligations related to such product and country. The agreement may also be terminated by either party for the other party's material breach or insolvency, provided that such other party has been given a chance to cure or remedy such breach or insolvency. Subject to certain limitations as to time, and possible termination fee payment obligations, Baxter also has the right to terminate the agreement for convenience. We have the right to terminate the agreement or convert Baxter's license from exclusive to non-exclusive in the event Baxter fails to comply with certain diligence obligations.

Cipro Inhale, Assigned to Novartis as of December 31, 2008

We were a party to a collaborative research, development and commercialization agreement with Bayer Schering Pharma AG related to the development of an inhaled powder formulation of Ciprofloxacin for the treatment of chronic lung infections caused by *Pseudomonas aeruginosa* in cystic fibrosis patients. As of December 31, 2008, we assigned the collaborative research, development and commercialization agreement to Novartis Pharma AG in connection with the closing of the asset sale transaction. Pursuant to the terms of the transaction, we maintain the right to receive certain potential royalties in the future based on net product sales if Cipro Inhale receives regulatory approval and is successfully commercialized.

2008 Developments in Our Business

Exit from the Inhaled Insulin Programs

In 1995, we entered into a collaborative development and licensing agreement with Pfizer to develop and market Exubera® and, in 2006 and 2007, we entered into a series of interim letter agreements with Pfizer to develop a next generation form of dry powder inhaled insulin and proprietary inhaler device, also known as NGI. In January 2006, Exubera received marketing approval in the U.S. and EU for the treatment of adults with Type 1 and Type 2 diabetes. Under the collaborative development and licensing agreement, Pfizer had sole responsibility for marketing and selling Exubera. We performed all of the manufacturing of the Exubera dry powder insulin, and through third party contract manufacturers (Bespak Europe Ltd. and Tech Group, Inc.), we supplied Pfizer with the Exubera inhalers. Our total revenue from Pfizer was nil, $189.1 million, and $139.9 million, representing 0%, 69% and 64% of total revenue, for the years ended December 31, 2008, 2007, and 2006, respectively.

On October 18, 2007, Pfizer announced that it was exiting the Exubera business and gave notice of termination under our collaborative development and licensing agreement. On November 9, 2007, we entered into a termination agreement and mutual release with Pfizer. Under this agreement we received a one-time payment of $135.0 million in November 2007 from Pfizer in satisfaction of all outstanding contractual obligations under our then-existing agreements relating to Exubera and NGI. All agreements between Pfizer and us related to Exubera and NGI, other than the termination agreement and mutual release and a related interim Exubera manufacturing maintenance letter, terminated on November 9, 2007. In February 2008, we entered into a termination agreement with Bespak and Tech Group pursuant to which we paid an aggregate of $39.9 million in satisfaction of outstanding accounts payable and termination costs and expenses that were due under the Exubera inhaler contract manufacturing agreement. We also entered into a maintenance agreement with both Pfizer and Tech Group to preserve key personnel and manufacturing capacity to support potential future Exubera inhaler manufacturing if we found a new partner for the inhaled insulin program.

On April 9, 2008, we announced that we had ceased all negotiations with potential partners for Exubera and NGI as a result of new data analysis from ongoing clinical trials conducted by Pfizer which indicated an increase in the number of new cases of lung cancer in Exubera patients who were former smokers as compared to patients in the control group who were former smokers. In April 2008, we ceased all spending associated with maintaining Exubera manufacturing capacity and any further NGI development, including, but not limited to, terminating the Exubera manufacturing capacity maintenance arrangements with Pfizer and Tech Group.

Asset Sale to Novartis

On December 31, 2008, we completed the sale of certain assets related to our pulmonary business, associated technology and intellectual property to Novartis Pharma AG and Novartis Pharmaceuticals Corporation (together referred to as Novartis) for a purchase price of $115.0 million in cash (Novartis Pulmonary Asset Sale). Under the terms of the transaction, we transferred to Novartis certain assets and obligations related to our pulmonary technology, development and manufacturing operations including:

- dry powder and liquid pulmonary technology platform including but not limited to our pulmonary inhalation devices, formulation technology, manufacturing technology and related intellectual property;
- capital equipment, information systems and facility lease obligations for our pulmonary development and manufacturing facility in San Carlos, California;
- manufacturing and associated development services payments for the Cipro Inhale program;
- manufacturing and royalty rights to the Tobramycin Inhalation Powder (TIP) program through the termination of our collaboration agreement with Novartis;
- certain other interests that we had in two private companies; and
- approximately 140 of our personnel primarily dedicated to our pulmonary technology, development programs, and manufacturing operations.

In consideration for the transfer of the above described pulmonary assets, we received $115.0 million in cash on December 31, 2008. In addition, we retained all of our rights to BAY41-6551, partnered with Bayer Healthcare LLC, certain royalty rights for the Cipro Inhale development program partnered with Bayer Schering Pharma AG, all rights to the ongoing development program for NKTR-063, and certain intellectual property rights specific to inhaled insulin.

In connection with Novartis Pulmonary Asset Sale, we also entered into an Exclusive License Agreement with Novartis Pharma. Pursuant to the Exclusive License Agreement, Novartis Pharma granted back to us an exclusive, irrevocable, perpetual, non-transferable, royalty-free and worldwide license under certain specific patent rights and other related intellectual property rights acquired by Novartis Pharma from Nektar in the transaction, as well as certain improvements or modifications thereto that are made by Novartis Pharma after the closing. Certain of such patent rights and other related intellectual property rights relate to our development program for NKTR-063 or are necessary for us to satisfy certain of our continuing contractual obligations to third parties, including in connection with development, manufacture, sale, and commercialization activities related to BAY41-6551. We also entered into a service agreement pursuant to which we have subcontracted to Novartis certain services to be performed related to our partnered program for BAY41-6551 and a transition services agreement pursuant to which Novartis and we will provide each other with specified services for limited time periods following the closing of the Novartis Pulmonary Asset Sale to facilitate the transition of the acquired assets and business from us to Novartis.

Research and Development

Our total Research and development expenditures can be disaggregated into the following significant types of expenses (in millions):

	Years ended December 31,		
	2008	2007	2006
Salaries and employee benefits	$ 58.4	$ 70.7	$ 69.9
Stock compensation expense	4.6	6.3	9.7
Facility and equipment	25.9	33.9	31.0
Outside services, including Contract Research Organizations	40.2	26.8	24.1
Supplies, including clinical trial materials	19.0	10.8	8.9
Travel, lodging, and meals	3.3	2.2	2.4
Other	3.0	2.9	3.4
Research and development	$ 154.4	$ 153.6	$ 149.4

Manufacturing and Supply

We have a manufacturing facility located in Huntsville, Alabama related to our PEGylation and advanced polymer conjugate technologies. This facility is capable of manufacturing PEGylation derivatives and starting materials for active pharmaceutical ingredients (APIs). The facility is also used to produce APIs for clinical development for our proprietary product candidates that utilize our PEGylation and advanced polymer conjugate technology. The facility and associated equipment is designed and operated to be in compliance with the guidelines of the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) applicable to APIs (ICH Q7A guidelines).

We source drug starting materials for our manufacturing activities from one or more suppliers. If we are responsible for manufacturing activities under a collaboration arrangement, we typically source drug starting materials from the collaboration partner. For the drug starting materials necessary for our proprietary drug candidate development, we have agreements for the supply of such drug components with drug suppliers that we believe have sufficient capacity to meet our demands. However, from time to time, we source critical raw materials from one or a limited number of suppliers and there is a risk that if such supply were interrupted, it would materially harm our business. In addition, we typically order raw materials on a purchase order basis and do not enter into long-term dedicated capacity or minimum supply arrangements.

Prior to the closing of the Novartis Pulmonary Asset Sale on December 31, 2008, we operated a drug powder manufacturing and packaging facility in San Carlos, California capable of producing drug powders in quantities sufficient for clinical trials of product candidates utilizing our pulmonary technology. As part of the Novartis Pulmonary Asset Sale, we transferred this manufacturing facility and the related operations, and Novartis hired approximately 140 of the related supporting personnel, as of December 31, 2008.

Government Regulation

The research and development, clinical testing, manufacture and marketing of products using our technologies are subject to regulation by the Food and Drug Administration (FDA) and by comparable regulatory agencies in other countries. These national agencies and other federal, state and local entities regulate, among other things, research and development activities and the testing (in vitro, in animals, and in human clinical trials), manufacture, labeling, storage, recordkeeping, approval, marketing, advertising and promotion of our products.

The approval process required by the FDA before a product using any of our technologies may be marketed in the U.S. depends on whether the chemical composition of the product has previously been approved for use in other dosage forms. If the product is a new chemical entity that has not been previously approved, the process includes the following:

- extensive preclinical laboratory and animal testing;
- submission of an Investigational New Drug application (IND) prior to commencing clinical trials;
- adequate and well-controlled human clinical trials to establish the safety and efficacy of the drug for the intended indication; and
- submission to the FDA of a New Drug Application (NDA) for approval of a drug, a Biologic License Application (BLA) for approval of a biological product or a Premarket Approval Application (PMA) or Premarket Notification 510(k) for a medical device product (a 510(k)).

If the active chemical ingredient has been previously approved by the FDA, the approval process is similar, except that certain preclinical tests relating to systemic toxicity normally required for the IND and NDA or BLA may not be necessary if the company has a right of reference to such data or is eligible for approval under Section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act.

Preclinical tests include laboratory evaluation of product chemistry and animal studies to assess the safety and efficacy of the product and its chosen formulation. Preclinical safety tests must be conducted by laboratories that comply with FDA good laboratory practices (GLP) regulations. The results of the preclinical tests for drugs, biological products and combination products subject to the primary jurisdiction of the FDA's Center for Drug Evaluation and Research (CDER) or Center for Biologics Evaluation and Research (CBER) are submitted to the FDA as part of the IND and are reviewed by the FDA before clinical trials can begin. Clinical trials may begin 30 days after receipt of the IND by the FDA, unless the FDA raises objections or requires clarification within that period.

Clinical trials involve the administration of the drug to healthy volunteers or patients under the supervision of a qualified, identified medical investigator according to a protocol submitted in the IND for FDA review. Drug products to be used in clinical trials must be manufactured according to current good manufacturing practices (cGMP). Clinical trials are conducted in accordance with protocols that detail the objectives of the study and the parameters to be used to monitor participant safety and product efficacy as well as other criteria to be evaluated in the study. Each protocol is submitted to the FDA in the IND.

Apart from the IND process described above, each clinical study must be reviewed by an independent Institutional Review Board (IRB) and the IRB must be kept current with respect to the status of the clinical study. The IRB considers, among other things, ethical factors, the potential risks to subjects participating in the trial and the possible liability to the institution where the trial is conducted. The IRB also reviews and approves the informed consent form to be signed by the trial participants and any significant changes in the clinical study.

Clinical trials are typically conducted in three sequential phases. Phase 1 involves the initial introduction of the drug into healthy human subjects (in most cases) and the product generally is tested for tolerability, pharmacokinetics, absorption, metabolism and excretion. Phase 2 involves studies in a limited patient population to:

- determine the preliminary efficacy of the product for specific targeted indications;
- determine dosage and regimen of administration; and
- identify possible adverse effects and safety risks.

If Phase 2 trials demonstrate that a product appears to be effective and to have an acceptable safety profile, Phase 3 trials are undertaken to evaluate the further clinical efficacy and safety of the drug and formulation within an expanded patient population at geographically dispersed clinical study sites and in large enough trials to provide statistical proof of efficacy and tolerability. The FDA, the clinical trial sponsor, the investigators or the IRB may suspend clinical trials at any time if any one of them believes that study participants are being subjected to an unacceptable health risk. In some cases, the FDA and the drug sponsor may determine that Phase 2 trials are not needed prior to entering Phase 3 trials.

Following a series of formal and informal meetings between the drug sponsor and the regulatory agencies, the results of product development, preclinical studies and clinical studies are submitted to the FDA as an NDA or BLA for approval of the marketing and commercial shipment of the drug product. The FDA may deny approval if applicable regulatory criteria are not satisfied or may require additional clinical or pharmaceutical testing or requirements. Even if such data are submitted, the FDA may ultimately decide that the NDA or BLA does not satisfy all of the criteria for approval. Additionally, the approved labeling may narrowly limit the conditions of use of the product, including the intended uses, or impose warnings, precautions or contraindications which could significantly limit the potential market for the product. Further, as a condition of approval, the FDA may impose post-market surveillance, or Phase 4, studies or risk management programs. Product approvals, once obtained, may be withdrawn if compliance with regulatory standards is not maintained or if safety concerns arise after the product reaches the market. The FDA may require additional post-marketing clinical testing and pharmacovigilance programs to monitor the effect of drug products that have been commercialized and has the power to prevent or limit future marketing of the product based on the results of such programs. After approval, there are ongoing reporting obligations concerning adverse reactions associated with the product, including expedited reports for serious and unexpected adverse events.

Each manufacturer of drug product for the U.S. market must be registered with the FDA and typically is inspected by the FDA prior to NDA or BLA approval of a drug product manufactured by such establishment. Establishments handling controlled substances must also be licensed by the U.S. Drug Enforcement Administration. Manufacturing establishments of U.S. marketed products are subject to inspections by the FDA for compliance with cGMP and other U.S. regulatory requirements. They are also subject to U.S. federal, state, and local regulations regarding workplace safety, environmental protection and hazardous and controlled substance controls, among others.

A number of the drugs we are developing are already approved for marketing by the FDA in another form or using another delivery system. We believe that, when working with drugs approved in other forms, the approval process for products using our alternative drug delivery or formulation technologies may involve less risk and require fewer tests than new chemical entities do. However, we expect that our formulations will often use excipients not currently approved for use. Use of these excipients will require additional toxicological testing that may increase the costs of, or length of time needed to, gain regulatory approval. In addition, as they relate to our products, regulatory procedures may change as regulators gain relevant experience, and any such changes may delay or increase the cost of regulatory approvals.

For product candidates currently under development utilizing pulmonary technology, the pulmonary inhaler devices are considered to be part of a drug and device combination for deep lung delivery of each specific molecule. The FDA will make a determination as to the most appropriate center and division within the agency that will assume prime responsibility for the review of the applicable applications, which would consist of an IND and an NDA or BLA where CDER or CBER are determined to have primary jurisdiction or an investigational device exemption application and PMA or 510(k) where the Center for Devices and Radiological Health (CDRH) is determined to have primary jurisdiction. In the case of our product candidates, CDER in consultation with CDRH could be involved in the review. The assessment of jurisdiction within the FDA is based upon the primary mode of action of the drug or the location of the specific expertise in one of the centers.

Where CDRH is determined to have primary jurisdiction over a product, 510(k) clearance or PMA approval is required. Medical devices are classified into one of three classes—Class I, Class II, or Class III—depending on the degree of risk associated with each medical device and the extent of control needed to ensure safety and effectiveness. Devices deemed to pose lower risks are placed in either Class I or II, which requires the manufacturer to submit to the FDA a Premarket Notification requesting permission to commercially distribute the device. This process is known as 510(k) clearance. Some low risk devices are exempted from this requirement. Devices deemed by the FDA to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices, or devices deemed not substantially equivalent to a previously cleared 510(k) device are placed in Class III, requiring PMA approval.

To date, our partners have generally been responsible for clinical and regulatory approval procedures, but we may participate in this process by submitting to the FDA a drug master file developed and maintained by us which contains data concerning the manufacturing processes for the inhaler device or drug. For our proprietary products, we prepare and submit an IND and are responsible for additional clinical and regulatory procedures for product candidates being developed under an IND. The clinical and manufacturing development and regulatory review and approval process generally takes a number of years and requires the expenditure of substantial resources. Our ability to manufacture and market products, whether developed by us or under collaboration agreements, ultimately depends upon the completion of satisfactory clinical trials and success in obtaining marketing approvals from the FDA and equivalent foreign health authorities.

Sales of our products outside the U.S. are subject to local regulatory requirements governing clinical trials and marketing approval for drugs. Such requirements vary widely from country to country.

In the U.S., under the Orphan Drug Act, the FDA may grant orphan drug designation to drugs intended to treat a rare disease or condition, which is generally a disease or condition that affects fewer than 200,000 individuals in the U.S. The company that obtains the first FDA approval for a designated orphan drug for a rare disease receives marketing exclusivity for use of that drug for the designated condition for a period of seven years. In addition, the Orphan Drug Act provides for protocol assistance, tax credits, research grants, and exclusions from user fees for sponsors of orphan products. Once a product receives orphan drug exclusivity, a second product that is considered to be the same drug for the same indication may be approved during the exclusivity period only if the second product is shown to be “clinically superior” to the original orphan drug in that it is more effective, safer or otherwise makes a “major contribution to patient care” or the holder of exclusive approval cannot assure the availability of sufficient quantities of the orphan drug to meet the needs of patients with the disease or condition for which the drug was designated.

In the U.S., the FDA may grant Fast Track designation to a product candidate, which allows the FDA to expedite the review of new drugs that are intended for serious or life-threatening conditions and that demonstrate the potential to address unmet medical needs. An important feature of Fast Track designation is that it emphasizes the critical nature of close, early communication between the FDA and the sponsor company to improve the efficiency of product development.

Patents and Proprietary Rights

We invest a significant portion of our resources in the creation and development of new drug compounds that serve unmet needs in the treatment of patients. In doing so, we create intellectual property. As part of our strategy to secure our intellectual property created by these efforts, we routinely apply for patents, rely on trade secret protection, and enter into contractual obligations with third parties. When appropriate, we will defend our intellectual property, taking any and all legal remedies available to us, including, for example, asserting patent infringement, trade secret misappropriation and breach of contract claims. As of January 1, 2009, we owned approximately 80 U.S. and 335 foreign patents. Currently, we have over approximately 56 patent applications pending in the U.S. and 466 pending in other countries.

A focus area of our current drug creation and development efforts centers on our innovations in and improvements to our PEGylation and advanced polymer conjugate technology platforms. In this area, our patent portfolio contains patents and patent applications that encompass our PEGylation and advanced polymer conjugate technology platforms, some of which we acquired in our acquisition of Shearwater Corporation in June 2001. More specifically, our patents and patent applications cover polymer architecture, drug conjugates, formulations, methods of making polymers and polymer conjugates, and methods of administering polymer conjugates. Our patent strategy is to file patent applications on innovations and improvements to cover a significant majority of the major pharmaceutical markets in the world. Generally, patents have a term of twenty years from the earliest priority date (assuming all maintenance fees are paid). In some instances, patent terms can be increased or decreased, depending on the laws and regulations of the country or jurisdiction that issued that patent.

In connection with the Novartis Pulmonary Asset Sale, as of December 31, 2008, we entered into an exclusive license agreement with Novartis Pharma. Pursuant to the exclusive license agreement, Novartis Pharma grants back to us an exclusive, irrevocable, perpetual, royalty-free and worldwide license under certain specific patent rights and other related intellectual property rights acquired by Novartis from us in the Novartis Pulmonary Asset Sale, as well as certain improvements or modifications thereto that are made by Novartis. Certain of such patent rights and other related intellectual property rights relate to our development program for NKTR-063 or are necessary for us to satisfy certain continuing contractual obligations to third parties, including in connection with development, manufacture, sale, and commercialization activities related to BAY41-6551 partnered with Bayer Healthcare LLC.

Our revenue is derived from our collaboration agreements with partners, under which we may receive contract research payments, milestone payments based on clinical progress, regulatory progress or net sales achievements, royalties or manufacturing revenue. Bayer (including Bayer Healthcare LLC and Bayer Schering Pharma AG), UCB Pharma, Novartis, and Roche represented 24%, 16%, 15%, and 14%, respectively, of our total revenue during the year ended December 31, 2008. No other partner accounted for more than 10% of our total revenue during the year ended December 31, 2008. If we are unable to continue to develop and protect proprietary intellectual property and license our technologies to partners, our business, results of operations and financial condition could suffer.

The patent positions of pharmaceutical and biotechnology companies, including ours, involve complex legal and factual issues. There can be no assurance that the patents we apply for will be issued to us or that the patents that are issued to us will be held valid and enforceable in a court of law. Even for patents that are enforceable, we anticipate that any attempt to enforce our patents would 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 pending patent applications will be granted with broad coverage or whether the claims that eventually issue, or those that have issued, will be circumvented. Since publication of discoveries in scientific or patent literature often lag behind actual discoveries, we cannot be certain that we were the first inventor of inventions covered by our patents or patent applications or that we were the first to file patent applications for such inventions. Moreover, we may have to participate in interference proceedings in 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.

U.S. and foreign patent rights and other proprietary rights exist that are owned by third parties and relate to pharmaceutical compositions and reagents, medical devices and equipment and methods for preparation, packaging and delivery of pharmaceutical compositions. We cannot predict with any certainty which, if any, of these rights will be considered relevant to our 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. We could incur substantial costs in defending ourselves and our 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 to develop or commercialize some or all of our products in the U.S. and abroad and could result in the award of substantial damages. In the event of a claim of infringement, we or our partners may be required to obtain one or more licenses from 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 alternative technology. The failure to obtain licenses if needed may have a material adverse effect on our business, results of operations and financial condition.

We also rely on trade secret protection for our confidential and proprietary information. No assurance can be given that we can meaningfully protect our trade secrets. Others may independently develop substantially equivalent confidential and proprietary information or otherwise gain access to, or disclose, our trade secrets.

In certain situations in which we work with drugs covered by one or more patents, our ability to develop and commercialize our technologies may be affected by a limited or a complete lack of unfettered access to these proprietary drugs. Even if we believe we are free to work with a proprietary drug, we cannot guarantee we will not be accused of, or determined to be, infringing a third party’s rights and be prohibited from working with the drug or found liable for damages. Any such restriction on access or liability for damages would have a material adverse effect on our business, results of operations and financial condition.

It is our policy to require our employees and consultants, outside scientific collaborators, sponsored researchers and other advisors who receive confidential information from us to execute confidentiality agreements upon the commencement of employment or consulting relationships with us. These agreements provide that all confidential information developed or made known to the individual during the course of the individual's relationship with us is to be kept confidential and not disclosed to third parties except in specific circumstances. The agreements provide that all inventions conceived by an employee shall be our property. There can be no assurance, however, that these agreements will provide meaningful protection or adequate remedies for our trade secrets in the event of unauthorized use or disclosure of such information.

Backlog

In our partnered programs where we manufacture and supply our proprietary drug formulations, inventory is produced and sales are made pursuant to customer purchase orders for delivery. The volume of drug formulation actually purchased by our customers, as well as shipment schedules, are subject to frequent revisions that reflect changes in both the customers' needs and product availability. In our partnered programs where we provide contract research services, those services are typically provided under a work plan that is subject to frequent revisions that change based on the development needs and status of the program. The backlog at a particular time is affected by a number of factors, including scheduled date of manufacture and delivery and development program status. In light of industry practice and our own experience, we do not believe that backlog as of any particular date is indicative of future results.

Competition

Competition in the pharmaceutical and biotechnology industry is intense and characterized by aggressive research and development and rapidly-evolving science, technology, and standards of medical care throughout the world. We frequently compete with pharmaceutical companies and other institutions with greater financial, research and development, marketing and sales, manufacturing and managerial capabilities. We face competition from these companies not just in product development but also in areas such as recruiting employees, acquiring technologies that might enhance our ability to commercialize products, establishing relationships with certain research and academic institutions, enrolling patients in clinical trials and seeking program partnerships and collaborations with larger pharmaceutical companies.

Science and Technology Competition

We believe that our proprietary and partnered products will compete with others in the market on the basis of one or more of the following parameters: efficacy, safety, ease of use and cost. We face intense science and technology competition from a multitude of technologies seeking to enhance the efficacy, safety and ease of use of approved drugs and new drug molecule candidates. A number of the products in our pipeline have direct and indirect competition from large pharmaceutical companies and biopharmaceutical companies. With our PEGylation and advanced polymer conjugate technologies, we believe we have competitive advantages relating to factors such as efficacy, safety, ease of use and cost for certain applications and molecules. We constantly monitor scientific and medical developments in order to improve our current technologies, seek licensing opportunities where appropriate, and determine the best applications for our technology platforms.

In the fields of PEGylation and advanced polymer conjugate technologies, our competitors include The Dow Chemical Company, Enzon Pharmaceuticals, Inc., SunBio Corporation, Mountain View Pharmaceuticals, Inc., Neose Technologies, Inc., and NOF Corporation. Several other chemical, biotechnology and pharmaceutical companies may also be developing PEGylation technology, advanced polymer conjugate technology or technologies intended to deliver similar scientific and medical benefits. Some of these companies license or provide the technology to other companies, while others develop the technology for internal use.

Product and Program Specific Competition

Oral NKTR-118 (oral PEGylated naloxol)

There are no oral drugs approved specifically for the treatment of opioid-induced constipation (OIC) or opioid bowel dysfunction (OBD). The only approved treatment for OIC is a subcutaneous treatment known as methylnaltrexone bromide marketed by Wyeth. Other current therapies that are utilized to treat OIC and OBD include over-the-counter laxatives and stool softeners, such as docusate sodium, senna, and milk of magnesia. These therapies do not address the underlying cause of constipation as a result of opioid use and are generally viewed as ineffective or only partially effective to treat the symptoms of OID and OBD.

There are a number of companies developing potential products which are in various stages of clinical development and are being evaluated for the treatment of OIC and OBD in different patient populations. Potential competitors include Progenics Pharmaceuticals, Inc., Wyeth, Adolor Corporation, GlaxoSmithKline, Mundipharma Int. Limited, Sucampo Pharmaceuticals, and Takeda Pharmaceutical Company Limited.

NKTR-102 (PEGylated irinotecan)

There are a number of chemotherapies and cancer therapies approved today and in clinical development for the treatment of colorectal cancer. Approved therapies for the treatment of colorectal cancer include Eloxatin, Camptosar, Avastin, Erbitux, Vectibux, Xeloda, Adrucil, and Wellcovorin. These therapies are only partially effective in treating the disease. There are a number of drugs in various stages of preclinical and clinical development from companies exploring cancer therapies or improved chemotherapeutic agents to potentially treat colorectal cancer. If these drugs are approved, they could be competitive with NKTR-102. These include products in development from Bristol-Myers Squibb Company, Pfizer, Inc., GlaxoSmithKline plc, Antigenics, Inc., F. Hoffman-La Roche Ltd, Novartis AG, Cell Therapeutics, Inc., Neopharm Inc., Meditech Research Ltd, Alchemia Limited, Enzon Pharmaceuticals, Inc., and others.

There are also a number of chemotherapies and cancer therapies approved today and in various stages of clinical development for ovarian, breast and cervical cancers including but not limited to: Avastin® (bevacizumab), Camptosar® (irinotecan), Ellence® (epirubicin), Gemzar® (gemcitabine), Herceptin® (trastuzumab), Hycamtin® (topotecan), Paraplatin® (carboplatin), and Taxol® (paclitaxel). These therapies are only partially effective in treating ovarian, breast or cervical cancers. Major pharmaceutical or biotechnology companies with approved drugs or drugs in development for these cancers include Bristol-Meyers Squibb, Genentech, Inc., GlaxoSmithKline plc, Pfizer, Inc., Eli Lilly & Co., and many others.

BAY41-6551 (*NKTR-061, Amikacin Inhale)*

There are currently no approved drugs on the market for adjunctive treatment or prevention of Gram-negative pneumonias in mechanically ventilated patients which are also administered via the pulmonary route. The current standard of care includes approved intravenous antibiotics which are partially effective for the treatment of either hospital-acquired pneumonia or ventilator-associated pneumonia in patients on mechanical ventilators. These drugs include drugs that fall into the categories of antipseudomonal cephalosporins, antipseudomonal carbepenems, beta-Lactam/beta-lactamase inhibitors, antipseudomonal fluoroquinolones, such as Ciprofloxacin or levofloxacin, and aminoglycosides, such as amikacin, gentamycin or Tobramycin.

Environment

As a manufacturer of drug products for the U.S. market, we are subject to inspections by the FDA for compliance with cGMP and other U.S. regulatory requirements, including U.S. federal, state and local regulations regarding environmental protection and hazardous and controlled substance controls, among others. Environmental laws and regulations are complex, change frequently and have tended to become more stringent over time. We have incurred, and may continue to incur, significant expenditures to ensure we are in compliance with these laws and regulations. We would be subject to significant penalties for failure to comply with these laws and regulations.

Employees and Consultants

As of December 31, 2008, after the completion of the Novartis asset sale transaction, we had 338 employees, of which 235 employees were engaged in research and development, commercial operations and quality activities and 103 employees were engaged in general administration and business development. Of the 338 employees, 290 were located in the United States and 48 were located in India as of December 31, 2008. We have a number of employees who hold advanced degrees, such as Ph.D.s. None of our employees are covered by a collective bargaining agreement, and we have experienced no work stoppages. We believe that we maintain good relations with our employees.

To complement our own expert professional staff, we utilize specialists in regulatory affairs, process engineering, manufacturing, quality assurance, clinical development and business development. These individuals include certain of our scientific advisors as well as independent consultants.

Available Information

Our website address is *http://www.nektar.com*. The information in, or that can be accessed through, our website is not part of this annual report on Form 10-K. 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 are available, free of charge, on or through our website as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities Exchange Commission (SEC). The public may read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. Information on the operation of the Public Reference Room can be obtained by calling 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding our filings at *www.sec.gov*.

EXECUTIVE OFFICERS OF THE REGISTRANT

The following table sets forth the names, ages and positions of our executive officers as of February 1, 2009:

Name	Age	Position
Howard W. Robin	56	Director, President and Chief Executive Officer
John Nicholson	57	Senior Vice President and Chief Financial Officer
Bharatt M. Chowrira, Ph.D., J.D.	43	Senior Vice President and Chief Operating Officer
Randall W. Moreadith, M.D., Ph.D.	55	Senior Vice President, Drug Development and Chief Development Officer
Gil M. Labrucherie, J.D.	37	Senior Vice President, General Counsel and Secretary
Jillian B. Thomsen	43	Vice President and Chief Accounting Officer

Howard W. Robin has served as our Director, President and Chief Executive Officer since January 2007 and was appointed as a member of our Board of Directors in February 2007. Mr. Robin served as Chief Executive Officer, President and director of Sirna Therapeutics, Inc., a clinical-stage biotechnology company pioneering RNAi-based therapies for serious diseases and conditions, from July 2001 to November 2006 and served as their Chief Operating Officer, President and Director from January 2001 to June 2001. From 1991 to 2001, Mr. Robin was Corporate Vice President and General Manager at Berlex Laboratories, Inc., the U.S. pharmaceutical subsidiary of the German pharmaceutical firm Schering AG, and, from 1987 to 1991, he served as their Vice President of Finance and Business Development and Chief Financial Officer. From 1984 to 1987, Mr. Robin was Director of Business Planning and Development at Berlex and was a Senior Associate with Arthur Andersen LLP prior to joining Berlex. Since February 2006, Mr. Robin has served as a member of the Board of Directors of Acologix, Inc., a biopharmaceutical company focused on therapeutic compounds for the treatment of osteo-renal diseases. He received his B.S. in Accounting and Finance from Fairleigh Dickinson University in 1974.

John Nicholson has served as our Senior Vice President and Chief Financial Officer since December 2007. Mr. Nicholson joined the Company as Senior Vice President of Corporate Development and Business Operations in October 2007 and was appointed Senior Vice President and Chief Financial Officer in December 2007. Before joining Nektar, Mr. Nicholson spent 18 years in various executive roles at Schering Berlin, Inc., the U.S. management holding company of Bayer Schering Pharma AG, a pharmaceutical company. From 1997, he served as Schering Berlin Inc.'s Vice President of Corporate Development and Treasurer. Since 2001, he served concurrently as the President of Schering Berlin Insurance Co., and since 2007, he served concurrently as President of Bayer Pharma Chemicals Co. and Schering Berlin Capital Corp. Mr. Nicholson holds a B.B.A. from the University of Toledo.

Bharatt M. Chowrira, Ph.D., J.D. has served as our Senior Vice President and Chief Operating Officer since May 2008, as well as Chairman of Nektar Therapeutics India Pvt. Ltd. From January 2007 until May 2008, Dr. Chowrira, served as Executive Director, Licensing / External Research at Merck & Co., Inc., a global pharmaceutical company. From January 2005 through 2006, Dr. Chowrira served as Chief Patent Counsel and Vice President, Legal Affairs of Sirna Therapeutics, Inc., a clinical-stage biotechnology company pioneering RNAi-based therapies for serious diseases and conditions that was acquired by Merck & Co. in January 2007. In that position, Dr. Chowrira was responsible for all legal and business licensing activities and general corporate matters. From January 2002 until December 2004, Dr. Chowrira was Vice President of Legal Affairs, Licensing and Patent Counsel at Sirna Therapeutics. Dr. Chowrira joined Sirna Therapeutics (then operating as Ribozyme Pharmaceuticals Inc.) in 1993 as a scientist. Dr. Chowrira holds a J.D. from the College of Law at the University of Denver and a Ph.D. in Microbiology and Molecular Genetics from the University of Vermont. Dr. Chowrira is a member of the Colorado Bar Association, admitted to practice in California as a registered in-house counsel, and is a registered patent attorney before the U.S. Patent and Trademark Office. He is also a member of the American Intellectual Property Law Association, Licensing Executive Society and the Association of Corporate Counsel.

Randall W. Moreadith, M.D., Ph.D. has served as our Senior Vice President, Drug Development and Chief Development Officer since August 2008. From January 2006 until August 2008, Dr. Moreadith, served as Executive Vice President and Chief Medical Officer of Cardium Therapeutics, a company developing therapeutic products and devices for cardiovascular, ischemic and related indications. While at Cardium, he also served as Chief Medical Officer of InnerCool Therapies, a company focused on technology to warm and cool patients, and the Tissue Repair Company, a company focused on the development of growth factor therapeutics that promote tissue repair and regeneration, both of which are wholly-owned subsidiaries of Cardium and were acquired by Cardium in 2006. From August 2004 to December 2005, Dr. Moreadith served as Chief Medical Officer of Renovis, Inc., a company that developed drugs to treat neurological diseases and disorders. He was a cofounder of ThromboGenics Ltd., a company developing biotherapeutics for the treatment of vascular diseases, including acute ischemic stroke, and served as ThromboGenics' President and Chief Operating Officer from December 1998 to December 2003. From April 1996 to February 1997, Dr. Moreadith served as Principal Medical Officer of Quintiles, Inc. and was also a co-founder of the Cardiovascular Therapeutics Group. He received his M.D. from Duke University and his Ph.D. from Johns Hopkins University, and was a Howard Hughes Medical Institute Postdoctoral Fellow in Genetics at Harvard Medical School. His faculty appointments include the University of Texas Southwestern Medical Center, where he was an Established Investigator of the American Heart Association.

Gil M. Labrucherie has served as our Senior Vice President, General Counsel and Secretary since April 2007, responsible for all aspects of our legal affairs. Mr. Labrucherie served as our Vice President, Corporate Legal from October 2005 through April 2007. From October 2000 to September 2005, Mr. Labrucherie was Vice President of Corporate Development at E2open. While at E2open, Mr. Labrucherie was responsible for global corporate alliances and merger and acquisition activity. Prior to E2open, he was the Senior Director of Corporate Development at AltaVista Company, an Internet search company, where he was responsible for strategic partnerships and mergers and acquisitions. Mr. Labrucherie began his career as an associate in the corporate practice of the law firm of Wilson Sonsini Goodrich & Rosati and Graham & James (DLA Piper Rudnick). Mr. Labrucherie received his J.D. from the Berkeley Law School and a B.A. from the University of California Davis.

Jillian B. Thomsen has served as our Vice President Finance and Chief Accounting Officer since April 2008. Ms. Thomsen joined Nektar in March 2006 as our Vice President Finance and Corporate Controller. Before joining Nektar, Ms. Thomsen was Vice President Finance and Deputy Corporate Controller of Calpine Corporation from September 2002 to February 2006. Previously, Ms. Thomsen is a certified public accountant and was a senior manager at Arthur Andersen LLP, where she worked from 1990 to 2002, and specialized in audits of multinational consumer products, life sciences, manufacturing and energy companies. Ms. Thomsen holds a Masters of Accountancy from the University of Denver and a B.A. in Business Economics from Colorado College.

Item 1A. Risk Factors

We are providing the following cautionary discussion of risk factors, uncertainties and possibly inaccurate assumptions that we believe are relevant to our business. These are factors that, individually or in the aggregate, we think could cause our actual results to differ materially from expected and historical results and our forward-looking statements. We note these factors for investors as permitted by Section 21E of the Exchange Act and Section 27A of the Securities Act. You should understand that it is not possible to predict or identify all such factors. Consequently, you should not consider this section to be a complete discussion of all potential risks or uncertainties that may substantially impact our business.

Risks Related to Our Business

Drug development is an inherently uncertain process and there is a high risk of failure at every stage of development and development failures can significantly harm our business.

We have a number of proprietary product candidates and partnered product candidates in research and development ranging from the early discovery research phase through preclinical testing and clinical trials. Preclinical testing and clinical trials are long, expensive and a highly uncertain processes. It will take us, or our collaborative partners, several years to complete clinical trials. Drug development is an uncertain scientific and medical endeavor and failure can unexpectedly occur at any stage of clinical development. Typically, there is a high rate of attrition for product candidates in preclinical and clinical trials due to scientific feasibility, safety, efficacy, changing standards of medical care and other variables.

Even with success in preclinical testing and clinical trials, the risk of clinical failure remains high prior to regulatory approval.

A number of companies in the pharmaceutical and biotechnology industries have suffered significant unforeseen setbacks in later stage clinical trials (i.e., Phase 2 or Phase 3 trials) due to factors such as inconclusive efficacy results and adverse medical events, even after achieving positive results in earlier trials that were satisfactory both to them and to reviewing regulatory agencies. Although we recently announced positive preliminary Phase 2 clinical results for NKTR-118 (oral PEGylated naloxol), there are still substantial risks associated with the future outcome of a Phase 3 clinical trial and the regulatory review process. In addition, although NKTR-102 (PEGylated irinotecan) continues in active Phase 2 clinical development, there remains a significant uncertainty that this drug candidate will eventually receive regulatory approval or this drug candidate will be a commercial success even if approved. The risk of failure is increased for our product candidates that are based on new technologies such as the application of our advanced polymer conjugate technology to small molecules including without limitation NKTR-118 and NKTR-102. If our PEGylation and advanced polymer conjugate technologies fail to generate new drug candidates with positive clinical trial results and approved drugs, our business would be materially harmed.

If we are unable to establish and maintain collaboration partnerships on attractive commercial terms, our business, results of operations and financial condition could suffer.

We intend to continue to seek partnerships with pharmaceutical and biotechnology partners to fund a portion of our research and development expenses and develop and commercialize our product candidates. For example, following the recent announcement of our preliminary Phase 2 clinical results for Oral NKTR-118 (oral PEGylated naloxol), we will be actively seeking a collaboration partner for this program. Our ability to successfully conclude a collaboration partnership for Oral NKTR-118 on commercially favorable terms, or at all, will have a significant impact on our business and financial position in 2009. The timing of any future partnership, as well as the terms and conditions of the partnership, will affect our ability to benefit from the relationship. If we are unable to fund suitable partners or to negotiate collaborative arrangements with favorable commercial terms with respect to our existing and future product candidates or the licensing of our technology, or if any arrangements we negotiate, or have negotiated, are terminated, our business, results of operations and financial condition could suffer. While we may enter new collaboration or license agreements in 2009, we currently expect revenue to decrease in 2009 as a result of the termination of our collaboration agreements with Novartis Vaccines and Diagnostics, Inc. for Tobramycin inhalation powder (TIP) and our assignment of our rights and obligations, other than certain royalty rights, related to the Cipro Inhale program partnered with Schering Pharma AG. Revenue from the TIP and Cipro Inhale collaboration agreements was $13.7 million and $11.7 million, or 15% and 13%, respectively for the year ended December 31, 2008. We will not receive any revenue related to these programs in 2009.

The commercial potential of a drug candidate in development is difficult to predict and if the market size for a new drug is significantly smaller than we anticipated, it could significantly and negatively impact our revenue, results of operations and financial condition.

It is very difficult to estimate the commercial potential of product candidates due to factors such as safety and efficacy compared to other available treatments, including potential generic drug alternatives with similar efficacy profiles, changing standards of care, third party payer reimbursement, patient and physician preferences and the availability of competitive alternatives that may emerge either during the long drug development process or after commercial introduction. If due to one or more of these risks the market potential for a product candidate is lower than we anticipated, it could significantly and negatively impact the commercial terms of any collaboration partnership potential for such product candidate or, if we have already entered into a collaboration for such drug candidate, the revenue potential from royalty and milestones could be significantly diminished and would negatively impact our revenue, results of operations and financial condition.

Our revenue is exclusively derived from our collaboration agreements, which can result in significant fluctuation in our revenue from period to period, and our past revenue is therefore not necessarily indicative of our future revenue.

Our revenue is derived from our collaboration agreements with partners, under which we may receive contract research payments, milestone payments based on clinical progress, regulatory progress or net sales achievements, royalties or manufacturing revenue. Bayer (including Bayer Healthcare LLC and Bayer Schering Pharma AG), UCB Pharma, Novartis, and Roche represented 24%, 16%, 15%, and 14%, respectively, of our total revenue during the year ended December 31, 2008. No other partner accounted for more than 10% of our total revenue during the year ended December 31, 2008. Significant variations in the timing of receipt of cash payments and our recognition of revenue can result from the nature of significant milestone payments based on the execution of new collaboration agreements, the timing of clinical, regulatory or sales events which result in single milestone payments and the timing and success of the commercial launch of new drugs by our collaboration partners. 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 and maintain suitable collaboration partners, the timing of the negotiation and conclusion of collaboration agreements with such partners, whether and when we or our partner achieve clinical and sales milestones, whether the partnership is exclusive or whether we can seek other partners, the timing of regulatory approvals and the market introduction of new drugs, as well as other factors.

If our partners, on which we depend to obtain regulatory approvals for and to commercialize our partnered products, are not successful, or if such collaborations fail, the development or commercialization of our partnered 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:

- design and conduct large scale clinical studies;
- prepare and file documents necessary to obtain government approvals to sell a given product candidate; and/or
- market and sell our products when and if they are approved.

Our reliance on collaboration partners poses a number of risks to our business, including risks that:

- we may be unable to control whether, and the extent to which, our partners 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 partners;
- disagreements with partners could lead to delays in, or termination of, the research, development or commercialization of product candidates or to litigation or arbitration;
- contracts with our partners may fail to provide us with significant protection, or to be effectively enforced, in the event one of our partners fails to perform;
- 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;
- partners with marketing rights may choose to devote fewer resources to the marketing of our partnered products than they do to products of their own development;
- the timing and level of resources that our partners dedicate to the development program will affect the timing and amount of revenue we receive;
- partners may be unable to pay us as expected; and
- partners may terminate their agreements with us unilaterally for any or no reason, in some cases with the payment of a termination fee penalty and in other cases with no termination fee penalty.

Given these risks, the success of our current and future partnerships is highly uncertain. We have entered into collaborations in the past that have been subsequently terminated, such as our collaboration with Pfizer for the development and commercialization of inhaled insulin that was terminated by Pfizer in November 2007. 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 business, results of operations and financial condition.

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

We or our partners may not obtain regulatory approval for product candidates on a timely basis, if at all, or the terms of any approval (which in some countries includes pricing approval) may impose significant restrictions or limitations on use. Product candidates must undergo rigorous animal and human testing and an extensive 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 testing and obtaining approvals is uncertain, and the FDA and other U.S. and foreign regulatory agencies have substantial discretion to terminate clinical trials, require additional testing, delay or withhold registration and marketing approval and mandate product withdrawals, including recalls. In addition, undesirable side effects caused by our product candidates could cause us or regulatory authorities to interrupt, delay or halt clinical trials and could result in a more restricted label or the delay or denial of regulatory approval by 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. Our partnered products that have obtained regulatory approval, and the manufacturing processes for these products, are subject to continued review and periodic inspections by the FDA and other regulatory authorities. Discovery from such review and inspection of previously unknown problems may result in restrictions on marketed products or on us, including withdrawal or recall of such products from the market, suspension of related manufacturing operations or a more restricted label. The failure to obtain timely regulatory approval of product candidates, any product marketing limitations or a product withdrawal would negatively impact our business, results of operations and financial condition.

We are a party to numerous collaboration agreements and other significant agreements, including in connection with the Novartis Pulmonary Asset Sale, which contain complex commercial terms that could result in disputes, litigation or indemnification liability that could adversely affect our business, results of operations and 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 partnered product development programs;
- clinical and commercial manufacturing agreements, some of which are priced on an actual cost basis for products supplied by us to our partners with complicated cost allocation formulas and methodologies;
- intellectual property ownership allocation between us and our partners for improvements and new inventions developed during the course of the partnership;
- royalties on end product sales based on a number of complex variables, including net sales calculations, geography, patent life and other financial metrics; and
- indemnity obligations for third-party intellectual property infringement, product liability and certain other claims.

In addition, we have also entered into complex commercial agreements with Novartis in connection with the sale of certain assets related to our pulmonary business, associated technology and intellectual property to Novartis (Novartis Pulmonary Asset Sale), which was completed on December 31, 2008. Our agreements with Novartis contain complex representations and warranties, covenants and indemnification obligations that could result in substantial future liability and harm our financial condition if we breach any of our agreements with Novartis or any third party agreements impacted by this complex transaction. In addition to the asset purchase, we entered an exclusive license agreement with Novartis Pharma pursuant to which Novartis Pharma grants back to us an exclusive, irrevocable, perpetual, royalty-free and worldwide license under certain specific patent rights and other related intellectual property rights necessary for us to satisfy certain continuing contractual obligations to third parties, including in connection with development, manufacture, sale and commercialization activities related to our partnered program for BAY41-6551 with Bayer Healthcare LLC . We also entered into a service agreement pursuant to which we have subcontracted to Novartis certain services to be performed related to our partnered program for BAY41-6551 and a transition services agreement pursuant to which Novartis and we will provide each other with specified services for limited time periods following the closing of the Novartis Pulmonary Asset Sale to facilitate the transition of the acquired assets and business from us to Novartis.

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

If we or our partners are not able to manufacture drugs in quantities and at costs that are commercially feasible, our proprietary and partnered product candidates may experience clinical delays or constrain commercial supply which could significantly harm our business.

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 delaying our clinical trials or those of our partners and may breach contractual obligations and incur associated damages and costs. In some cases, we may subcontract manufacturing or other services. For instance, we entered a service agreement with Novartis pursuant to which we subcontract to Novartis certain important services to be performed in relation to our partnered program for BAY41-6551 with Bayer Healthcare LLC. If our subcontractors do not dedicate adequate resources to our programs, we risk breach of our obligations to our partners. Building and validating large scale clinical or commercial-scale manufacturing facilities and processes, recruiting and training qualified personnel and obtaining necessary regulatory approvals is complex, expensive and time consuming. In the past we have encountered challenges in scaling up manufacturing to meet the requirements of large scale clinical trials without making modifications to the drug formulation, which may cause significant delays in clinical development. Failure to manufacture products in quantities or at costs that are commercially feasible could cause us not to meet our supply requirements, contractual obligations or other requirements for our proprietary product candidates and, as a result, would negatively impact our business, results of operations and financial condition.

We purchase some of the raw starting material for drugs and drug candidates from a single source or a limited number of suppliers, and the partial or complete loss of one of these suppliers could cause production delays, clinical trial delays, substantial loss of revenue and contract liability to third parties.

We often face very limited supply of a critical raw material that can only be obtained from a single, or a limited number of, suppliers, which could cause production delays, clinical trial delays, substantial lost revenue opportunity or contract liability to third parties. For example, there are only a limited number of qualified suppliers for the raw materials included in our PEGylation and advanced polymer conjugate drug formulations, and any interruption in supply or failure to procure such raw materials on commercially feasible terms could harm our business by delaying our clinical trials, impeding commercialization of approved drugs or increasing operating loss to the extent we cannot pass on increased costs to a manufacturing customer.

The current crisis in global credit and financial markets could materially and adversely affect our business, results of operations and financial condition.

Financial markets have experienced extreme disruption in recent months, including, among other things, extreme volatility in security prices, severely diminished liquidity and credit availability, rating downgrades of certain investments and declining valuations. There could be further deterioration in credit and financial markets and confidence in economic conditions. While we do not currently require access to credit markets to finance our operations, these economic developments are likely to affect our business in various ways. The current tightening of credit in financial markets may harm the ability of our partners to finance operations and they may dedicate fewer resources to our partnered product candidates, which could result in delays in the regulatory approval process and increase the estimated time to commercialization of our product candidates. Since we expect that licensing deals, comprised of a combination of upfront and contract research fees, milestones, manufacturing product sales and product royalties, will represent the majority of our revenue in 2009, such delays could harm our business, results of operations and financial condition. Further, our partners may be unable to continue to develop our partnered product candidates, and some partners may terminate our collaborations. In addition, to date all of our revenue has come from payments from partners, and it may become more difficult to collect any payments due from our partners on a timely basis, or at all. The economic crisis may also affect the ability of suppliers of starting materials to meet our capacity requirements or cause them to increase the price of starting materials. We are unable to predict the likely duration and severity of the current disruption in financial markets and adverse economic conditions in the U.S. and other countries. As a result of the worldwide economic slowdown, it is extremely difficult for us and our partners to forecast future sales levels based on historical information and trends.

If any of our pending patent applications do not issue, or are deemed invalid following issuance, we may lose valuable intellectual property protection.

The patent positions of pharmaceutical, medical device and biotechnology companies, such as ours, are uncertain and involve complex legal and factual issues. We own approximately 80 U.S. and approximately 335 foreign patents and a number of patent applications pending that cover various aspects of our technologies. We have filed patent applications, and plan to file additional patent applications, covering various aspects of our PEGylation and advanced polymer conjugate technologies. There can be no assurance that patents that have issued will be valid and enforceable or that patents for which we apply will issue with broad coverage, if at all. The coverage claimed in a patent application can be significantly reduced before the patent is issued and, as a consequence, our patent applications may result in patents with narrow coverage. Since publication of discoveries in scientific or patent literature often lag behind the date of such discoveries, we cannot be certain that we were the first inventor of inventions covered by our patents or patent applications. As part of the patent application process, 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. Further, an issued patent may undergo further proceedings to limit its scope so as not to provide meaningful protection and any claims that have issued, or that eventually issue, may be circumvented or otherwise invalidated. Any attempt to enforce our patents or patent application rights could be time consuming and costly. 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. Even if a patent is issued and enforceable, 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 related 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 our ability to obtain meaningful patent coverage or enforcement rights to any of our issued patents. New laws, regulations and judicial decisions may be retroactive in effect, potentially reducing or eliminating our ability to implement our patent-related strategies to these changes. Changes to laws, regulations and judicial decisions that affect our business are often difficult or impossible to foresee, which limits our ability to adequately adapt our patent strategies to these changes.

We may not be able to obtain intellectual property licenses related to the development of our technology 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. If we are required to enter into a license with a third party, our potential economic benefit for the products subject to the license will be diminished. The failure to obtain licenses on commercially reasonable terms, or at all, if needed, would have a material adverse effect on us.

We rely on trade secret protection and other unpatented proprietary rights for important proprietary technologies, and any loss of such rights could harm our business, results of operations and financial condition.

We rely on 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. 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. Any loss of trade secret protection or other unpatented proprietary rights could harm our business, results of operations and financial condition.

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 year ended December 31, 2008, we reported net losses of $34.3 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 or biotech companies;
- receive necessary regulatory and marketing approvals;
- maintain or expand manufacturing at necessary levels;
- achieve market acceptance of our partnered products;
- receive royalties on products that have been approved, marketed or submitted for marketing approval with regulatory authorities; and
- maintain sufficient funds to finance our activities.

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

As of December 31, 2008, we had cash, cash equivalents, short-term investments and investments in marketable securities valued at approximately $379.0 million and approximately $242.6 million of indebtedness, including approximately $215.0 million in convertible subordinated notes due September 2012, $21.6 million in capital lease obligations and $6.0 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 the three months ended December 31, 2008, we repurchased approximately $100.0 million in par value of our 3.25% convertible subordinated notes for an aggregate purchase price of $47.8 million.

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. If we are unable to satisfy our debt service requirements, substantial liquidity problems could result. In relation to our convertible subordinated notes, since the market price of our common stock is significantly below the conversion price, the holders of our outstanding convertible subordinated notes are unlikely to convert the notes to common stock in accordance with the existing terms of the notes. If we do not generate sufficient cash from operations to repay principal or interest on our remaining convertible subordinated notes, or satisfy any of our other debt obligations, when due, we may have to raise additional funds from the issuance of equity or debt securities or otherwise restructure our obligations. 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 new collaboration partnerships or the capital markets to continue the marketing and development 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 new collaboration 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.

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 business, results of operations and financial condition.

In both domestic and foreign markets, sales of our partnered and proprietary products that have received regulatory approval will depend in part on market acceptance among physicians and patients, pricing approvals by government authorities and the availability of reimbursement from third-party payers, such as government health administration authorities, managed care providers, private health insurers and other organizations. Such third-party payers 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 healthcare products. Moreover, legislation and regulations affecting the pricing of pharmaceuticals may change before regulatory agencies approve our proposed products for marketing and could further limit pricing approvals for, and reimbursement of, our products from government authorities and third-party payers. A government or third-party payer 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 third parties to conduct the clinical trials for our proprietary product candidates 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 to conduct clinical trials for our proprietary product candidates. Though we rely heavily on these parties for successful execution of our clinical trials and are ultimately responsible for the results of their activities, many aspects of their activities are beyond our control. For example, 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, but the independent clinical investigators may prioritize other projects over ours or communicate issues regarding our products to us in an untimely manner. 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 our clinical trial arrangements, the failure of third parties to comply with the regulations and requirements governing clinical trials or our reliance on results of trials that we have not directly conducted or monitored could hinder or delay the development, approval and commercialization of our product candidates and would adversely affect our business, results of operations and financial condition.

Our manufacturing operations and those of our contract manufacturers are subject to governmental regulatory requirements, which, if not met, would have a material adverse effect on our business, results of operations and financial condition.

We and our contract manufacturers are required in certain cases to maintain compliance with current good manufacturing practices (cGMP), including 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 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, result in the termination or hold on a clinical study or 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 result in costly manufacturing changes or facility or capital equipment upgrades to satisfy the FDA that our 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 material adverse effect on our business, results of operations and financial condition.

Significant competition for our polymer conjugate chemistry 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 business, results of operations and financial condition.

Our PEGylation and advanced polymer conjugate chemistry platforms and our partnered and proprietary products and product candidates compete with various pharmaceutical and biotechnology companies. Competitors of our PEGylation and polymer conjugate chemistry technologies include The Dow Chemical Company, Enzon Pharmaceuticals, Inc., SunBio Corporation, Mountain View Pharmaceuticals, Inc., Neose Technologies, Inc., and NOF Corporation. Several other chemical, biotechnology and pharmaceutical companies may also be developing PEGylation technologies or technologies that have similar impact on target drug molecules. Some of these companies license or provide the technology to other companies, while others are developing the technology for internal use.

There are several competitors for our proprietary product candidates currently in development. For NKTR-061 (inhaled Amikacin), the current standard of care includes several approved intravenous antibiotics for the treatment of either hospital-acquired pneumonia or ventilator-associated pneumonia in patients on mechanical ventilators. For NKTR-118 (PEGylated naloxol), there are currently several alternative therapies used to address opioid-induced constipation (OIC) and opioid-induced bowel dysfunction (OBD), including over-the-counter laxatives and stool softeners such as docusate sodium, senna and milk of magnesia. In addition, there are a number of companies developing potential products which are in various stages of clinical development and are being evaluated for the treatment of OIC and OBD in different patient populations, including Adolor Corporation, GlaxoSmithKline, Progenics Pharmaceuticals, Inc., Wyeth, Mundipharma Int. Limited, Sucampo Pharmaceuticals and Takeda Pharmaceutical Company Limited. For NKTR-102 (PEG-irinotecan), there are a number of approved therapies for the treatment of colorectal cancer, including Eloxatin, Camptosar, Avastin, Erbitux, Vectibux, Xeloda, Adrucil and Wellcovorin. In addition, there are a number of drugs in various stages of preclinical and clinical development from companies exploring cancer therapies or improved chemotherapeutic agents to potentially treat colorectal cancer, including, but not limited to, products in development from Bristol-Myers Squibb Company, Pfizer, Inc., GlaxoSmithKline plc, Antigenics, Inc., F. Hoffmann-La Roche Ltd, Novartis AG, Cell Therapeutics, Inc., Neopharm Inc., Meditech Research Ltd, Alchemia Limited, Enzon Pharmaceuticals, Inc. and others.

There can be no assurance that we or our partners will successfully develop, obtain regulatory approvals and commercialize next-generation or new products that will successfully compete with those of our competitors. Many of our competitors have greater financial, research and development, marketing and sales, manufacturing and managerial capabilities. We face competition from these companies not just in product development but also in areas such as recruiting employees, acquiring technologies that might enhance our ability to commercialize products, establishing relationships with certain research and academic institutions, enrolling patients in clinical trials and seeking program partnerships and collaborations with larger pharmaceutical companies. As a result, our competitors may succeed in developing competing technologies, obtaining regulatory approval or gaining market acceptance for products before we do. These developments could make our products or technologies uncompetitive or obsolete.

We could be involved in legal proceedings and may incur substantial litigation costs and liabilities that will adversely affect our business, results of operations and financial condition.

From time to time, third parties have asserted, and may in the future assert, that we or our partners infringe their proprietary rights. The third party often bases its assertions on a claim that its patents cover our technology. Similar assertions of infringement could be based on future patents that may issue to third parties. In certain of our agreements with our partners, we are obligated to indemnify and hold harmless our partners from intellectual property infringement, product liability and certain other claims, which could cause us to incur substantial costs if we are called upon to defend ourselves and our partners against any claims. If a third party obtains injunctive or other equitable relief against us or our partners, they could effectively prevent us, or our partners, from developing or commercializing, or deriving revenue from, certain products or product candidates in the U.S. and abroad. For instance, F. Hoffmann-La Roche Ltd, to which we license our proprietary PEGylation reagent for use in the MIRCERA product, was a party to a significant patent infringement lawsuit brought by Amgen Inc. related to Roche's proposed marketing and sale of MIRCERA to treat chemotherapy anemia in the U.S. Amgen prevailed in this lawsuit and a U.S. federal district court issued an injunction preventing Roche from marketing and selling MIRCERA in the U.S. Third-party claims could also result in the award of substantial damages to be paid by us or a settlement resulting in significant payments to be made by us. For instance, a settlement might require us to enter a license agreement under which we pay substantial royalties to a third party, diminishing our future economic returns from the related product. In 2006, we entered into a litigation settlement related to an intellectual property dispute with the University of Alabama in Huntsville pursuant to which we paid $11.0 million and agreed to pay an additional $10.0 million in equal $1.0 million installments over ten years ending with the last payment due on July 1, 2016. We cannot predict with certainty the eventual outcome of any pending 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.

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

The manufacture, clinical testing, marketing and sale of medical products involve inherent product liability risks. 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 are ultimately successful in any 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.

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 and partnered product candidates. Our strategy also calls for us to undertake increased research and development activities and to manage an increasing number of relationships with partners and other third parties, while simultaneously managing the expenses generated by these activities. If we are unable to manage effectively our current operations and any growth we may experience, our business, 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 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 partners or other sources that may require us to relinquish rights to certain of our technologies or products that we would not otherwise relinquish.

We are dependent on our management team and key technical personnel, and the loss of any key manager or employee may impair our ability to develop our products effectively and may harm our business, operating results and financial condition.

Our success largely depends on the continued services of our executive officers and other key personnel. The loss of one or more members of our management team or other key employees could seriously harm our business, operating results and financial condition. The relationships that our key managers have cultivated within our industry make us particularly dependent upon their continued employment with us. We are also dependent on the continued services of our technical personnel because of the highly technical nature of our products and the regulatory approval process. Because our executive officers and key employees are not obligated to provide us with continued services, they could terminate their employment with us at any time without penalty. We do not have any post-employment noncompetition agreements with any of our employees and do not maintain key person life insurance policies on any of our executive officers or key employees.

Because competition for highly qualified technical personnel is intense, we may not be able to attract and retain the personnel we need to support our operations and growth.

We must attract and retain experts in the areas of clinical testing, manufacturing, regulatory, finance, marketing and distribution and develop additional expertise in our existing personnel. We face intense competition from other biopharmaceutical companies, research and academic institutions and other organizations for qualified personnel. Many of the organizations with which we compete for qualified personnel have greater resources than we have. Because competition for skilled personnel in our industry is intense, companies such as ours sometimes experience high attrition rates with regard to their skilled employees. Further, in making employment decisions, job candidates often consider the value of the stock options they are to receive in connection with their employment. Our equity incentive plan and employee benefit plans may not be effective in motivating or retaining our employees or attracting new employees, and significant volatility in the price of our stock may adversely affect our ability to attract or retain qualified personnel. If we fail to attract new personnel or to retain and motivate our current personnel, our business and future growth prospects could be severely harmed.

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

Our corporate headquarters, including a substantial portion of our research and development operations, are located in the San Francisco Bay Area, a region known for seismic activity and a potential terrorist target. In addition, we own facilities for the manufacture of products using our PEGylation and advanced polymer conjugate technologies in Huntsville, Alabama and lease offices in Hyderabad, India. There are no backup facilities for our manufacturing operations located in Huntsville, Alabama. In the event of an earthquake or other natural disaster or terrorist event in any of these locations, our ability to manufacture and supply materials for drug candidates in development and our ability to meet our manufacturing obligations to our customers would be significantly disrupted and our business, results of operations and financial condition would be harmed. Our collaborative partners may also be subject to catastrophic events, such as hurricanes and tornadoes, any of which could harm our business, results of operations and financial condition. We have not undertaken a systematic analysis of the potential consequences to our business, results of operations and financial condition from a major earthquake or other catastrophic event, such as a fire, sustained loss of power, terrorist activity or other disaster, 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 any interruption of our business that may occur.

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.

Risks Related to Our Securities

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

Our stock price is volatile. During the year ended December 31, 2008, based on closing bid prices on the NASDAQ Global Select Market, our stock price ranged from $2.83 to $7.50 per share. 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 our 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 trials or those of our competitors, including delays in clinical 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, including intellectual property litigation or entering into intellectual property license agreements and the costs associated with those arrangements;
- 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 stockholders may be diluted, and the price of our common stock may decrease, as a result of the exercise of outstanding stock options and warrants or the 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 1B. Unresolved Staff Comments

None.

Item 2. Properties

We currently lease approximately 100,000 square feet of facilities in San Carlos, California under a capital lease which expires in 2016. The San Carlos facility is home to our administrative headquarters, as well as research and development for our PEGylation and advanced polymer conjugate technology operations. Until December 31, 2008, we leased approximately 230,000 additional square feet in San Carlos, which housed our pulmonary manufacturing facility, as well as research and development laboratories and administrative offices, under a lease which expired in 2012. This lease was assigned to Novartis Pharmaceuticals Corporation in connection with our sale to Novartis of certain of our pulmonary assets on December 31, 2008.

We currently own two facilities consisting of 145,000 square feet in Huntsville, Alabama, which house laboratories as well as administrative, commercial and clinical manufacturing facilities for our PEGylation and advanced polymer conjugate technology operations. Additionally, we lease 18,000 square feet of facilities in Hyderabad, India under various operating leases, with expiration dates ranging from 2009 to 2011. The Hyderabad facilities are used for research and development activities. We are currently constructing an 80,000 square foot research and development facility near Hyderabad, India. We expect to complete construction of this facility by the end of 2009.

Item 3. Legal Proceedings

On June 30, 2006, we, our subsidiary Nektar AL, and a former officer, Milton Harris, entered into a settlement agreement and general release with the University of Alabama Huntsville (UAH) related to an intellectual property dispute. Under the terms of the settlement agreement, we, 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 and Mr. Harris made an initial payment of $15.0 million on June 30, 2006, of which we paid $11.0 million and Mr. Harris paid $4.0 million. During the year ended December 31, 2006, we recorded a litigation settlement charge of $17.7 million, which reflects the net present value of the settlement payments using an 8% annual discount rate. We made payments of $1.0 million in June 2007 and June 2008, respectively. As of December 31, 2008 and 2007, our accrued liability related to the UAH settlement was $6.0 million and $6.5 million, respectively.

In addition, from time to time, we may be subject to other legal proceedings and claims in the ordinary course of business. We are not aware of any such proceedings or claims that we believe will have, individually or in the aggregate, a material adverse effect on our business, financial condition or results of operations.

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

No matters were submitted to a vote of our security holders in the three-month period ended December 31, 2008.

PART II

Item 5. Market for Registrant's Common Equity Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common stock trades on the NASDAQ Global Select Market under the symbol "NKTR." The table below sets forth the high and low closing sales prices for our common stock as reported on the NASDAQ Global Select Market during the periods indicated.

	High	Low
Year Ended December 31, 2007:		
1st Quarter	$ 15.24	$ 11.20
2nd Quarter	13.58	9.32
3rd Quarter	9.75	7.63
4th Quarter	8.98	5.22
Year Ended December 31, 2008:		
1st Quarter	$ 7.50	$ 6.12
2nd Quarter	7.35	3.35
3rd Quarter	5.36	3.10
4th Quarter	5.97	2.83

Holders of Record

As of February 27, 2009, there were approximately 301 holders of record of our common stock.

Dividend Policy

We have never declared or paid any cash dividends on our common stock. We currently expect to retain any future earnings for use in the operation and expansion of our business and do not anticipate paying any cash dividends on our common stock in the foreseeable future.

There were no sales of unregistered securities and there were no common stock repurchases made during the year ended December 31, 2008.

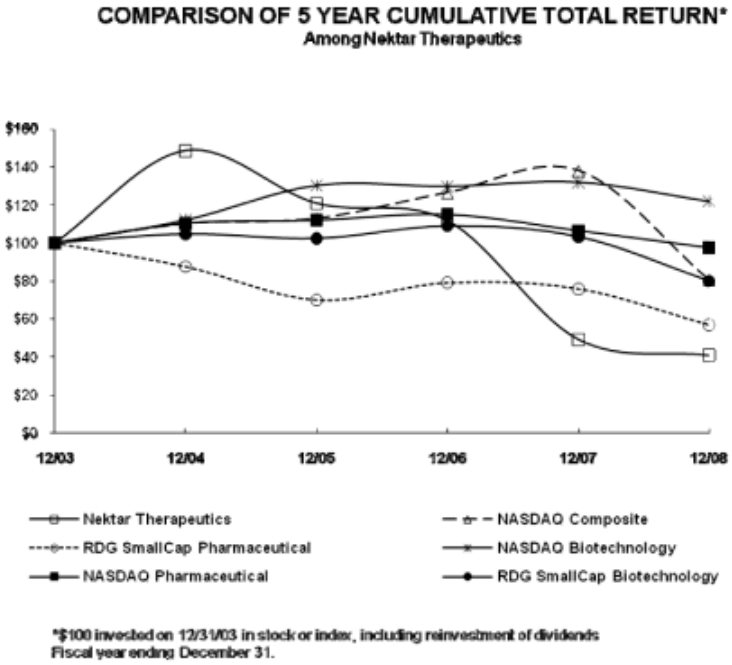
Securities Authorized for Issuance Under Equity Compensation Plans

Information regarding our equity compensation plans as of December 31, 2008 is disclosed in Item 12 "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" of this Annual Report on Form 10-K and is incorporated herein by reference from our proxy statement for our 2009 annual meeting of stockholders to be filed with the SEC pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K.

Performance Measurement Comparison

The material in this section is being furnished and shall not be deemed "filed" with the SEC for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section, nor shall the material in this section be deemed to be incorporated by reference in any registration statement or other document filed with the SEC under the Securities Act or the Exchange Act, except as otherwise expressly stated in such filing.

The following graph compares, for the five year period ended December 31, 2008, the cumulative total stockholder return (change in stock price plus reinvested dividends) of our common stock with (i) the NASDAQ Composite Index, (ii) the NASDAQ Pharmaceutical Index, (iii) the RGD SmallCap Pharmaceutical Index, (iv) the NASDAQ Biotechnology Index and (v) the RDG SmallCap Biotechnology Index. Measurement points are the last trading day of each of our fiscal years ended December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, December 31, 2007 and December 31, 2008. The graph assumes that $100 was invested on December 31, 2003 in the common stock of the Company, the NASDAQ Composite Index, the Nasdaq Pharmaceutical Index, the RGD SmallCap Pharmaceutical Index, the NASDAQ Biotechnology Index and the RDG SmallCap Biotechnology Index and assumes reinvestment of any dividends. The stock price performance in the graph is not intended to forecast or indicate future stock price performance.



Item 6. Selected Financial Data

SELECTED CONSOLIDATED FINANCIAL INFORMATION
(In thousands, except per share information)

The selected consolidated financial data set forth below should be read together with the consolidated financial statements and related notes, "Management's Discussion and Analysis of Financial Condition and Results of Operations," and the other information contained herein.

	Years ended December 31,				
	2008	2007	2006	2005	2004
Statements of Operations Data:					
Revenue:					
Product sales and royalties (1)	$ 41,255	$ 180,755	$ 153,556	$ 29,366	$ 25,085
Collaboration and other (2)	48,930	92,272	64,162	96,913	89,185
Total revenue	90,185	273,027	217, 718	126,279	114,270
Total operating costs and expenses (3)(4)	172,837	309,175	376,948	308,912	188,212
Loss from operations	(82,652)	(36,148)	(159,230)	(182,633)	(73,942)
Gain (loss) on debt extinguishment	50,149	—	—	(303)	(9,258)
Interest and other income (expense), net	(2,639)	4,696	5,297	(2,312)	(18,849)
Provision (benefit) for income taxes	(806)	1,309	828	(137)	(163)
Net loss	$ (34,336)	$ (32,761)	$ (154,761)	$ (185,111)	$ (101,886)
Basic and diluted net loss per share (5)	$ (.37)	$ (0.36)	$ (1.72)	$ (2.15)	$ (1.30)
Shares used in computing basic and diluted net loss per share (5)	92,407	91,876	89,789	85,915	78,461

	As of December 31,				
	2008	2007	2006	2005	2004
Balance Sheet Data:					
Cash, cash equivalents and investments	$ 378,994	$ 482,353	$ 466,977	$ 566,423	$ 418,740
Working capital	$ 337,846	$ 425,191	$ 369,457	$ 450,248	$ 223,880
Total assets	$ 560,536	$ 725,103	$ 768,177	$ 858,554	$ 744,921
Deferred revenue	$ 65,577	$ 80,969	$ 40,106	$ 23,861	$ 31,021
Convertible subordinated notes	$ 214,955	$ 315,000	$ 417,653	$ 417,653	$ 173,949
Other long-term liabilities	$ 25,585	$ 27,543	$ 29,189	$ 27,598	$ 36,250
Accumulated deficit	$ (1,124,090)	$ (1,089,754)	$ (1,056,993)	$ (902,232)	$ (717,121)
Total stockholders' equity	$ 190,154	$ 214,439	$ 227, 060	$ 326,811	$ 467,342

(1) 2006 and 2007 product sales and royalties include commercial manufacturing revenue from Exubera bulk dry powder insulin and Exubera inhalers.

(2) 2007, 2006, and 2005 collaboration and other revenue included Exubera commercialization readiness revenue.

(3) We changed our method of accounting for stock based compensation on January 1, 2006 in connection with the adoption of SFAS No. 123R, *Share-Based Payment.*

(4) Operating costs and expenses includes the Gain on sale of pulmonary assets of $69.6 million in 2008 and the Gain on termination of collaborative agreements, net of $79.2 million in 2007.

(5) Basic and diluted net loss per share is based upon the weighted average number of common shares outstanding.

Item 7. 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 I, Item 1A—Risk Factors."

Overview

Strategic Direction of Our Business

We are a clinical-stage biopharmaceutical company developing a pipeline of drug candidates that utilize our PEGylation and advanced polymer conjugate technology platforms to improve the therapeutic benefits of drugs. Our proprietary product pipeline is comprised of drug candidates across a number of therapeutic areas, including oncology, pain, anti-infectives and immunology. We create our innovative product candidates by using our proprietary chemistry platform to modify the chemical structure of drugs using unique polymer conjugates. Additionally, we may utilize established pharmacologic targets to engineer a new drug candidate relying on a combination of the known properties of these targets and the attributes of our customized polymer chemistry. Our drug candidates are designed to correct deficiencies in the pharmacokinetics, half-life, oral bioavailability, metabolism or distribution of drugs to improve their therapeutic efficacy.

During 2009, we expect to continue to make substantial investments to advance our pipeline of drug candidates from early stage discovery research through clinical development. On March 2, 2009, we announced that we were terminating our Phase 2 clinical trial for Oral NKTR-118 (oral PEGylated naloxol) as a result of positive preliminary results. We also have several Phase 2 clinical trials for NKTR-102 (PEGylated irinotecan) directed at a number of different indications in the oncology therapeutic area already underway or scheduled to begin during 2009. In addition, on February 17, 2009, we announced that we had dosed the first patient in a Phase 1 clinical trial for NKTR-105 (PEGylated docetaxel) for patients with refractory solid tumors. We also have several other products in the early discovery or preclinical stage that we are preparing to move into clinical development or will be moving into clinical development in 2009.

Our focus on research and clinical development requires substantial investments that continue to increase as we advance each drug candidate through the development cycle. While we believe that our strategy has the potential to create significant value if one or more of our drug candidates demonstrates positive clinical results and/or receives regulatory approval in one or more major markets, drug development is an inherently uncertain process and there is a high risk of failure at every stage prior to approval and clinical results are very difficult to predict. Clinical development success and failures can have an unpredictable and disproportionate positive or negative impact on our scientific and medical prospects, financial prospects, financial condition, and market value.

We intend to decide on a product-by-product basis whether we wish to continue development into Phase 3 pivotal clinical trials and commercialize products on our own, or seek a partner, or pursue a combination of these approaches. Following completion of Phase 2 development, or earlier in the development cycle in certain circumstances, we will generally be seeking collaborations with one or more biotechnology or pharmaceutical companies to conduct Phase 3 clinical development, to be responsible for the regulatory approval process and, if such drug candidate is approved, to market and sell the drug in one or more world markets. The commercial terms of such future collaborations, if any, including, without limitation, up-front payments, development milestone payments, and royalty rates, will be critical to the future prospects of our business and financial condition. In particular, our ability to successfully conclude a new collaboration for Oral NKTR-118 on commercially favorable terms (or at all), will have a significant impact on our financial position and business prospects in 2009.

We also have a number of existing license and collaboration agreements with third parties who have licensed our proprietary technologies for drugs that have either received regulatory approval in one or more markets or drug candidates that are still in the clinical development stage. For example, the future clinical and commercial success of Bayer's Amikacin Inhale (BAY41-6551 or NKTR-061), UCB's CIMZIA™, Roche's MIRCERA and Affymax's Hematide, among others, will together have a material impact on our long-term revenue prospects, as will the success of Bayer's Cipro Inhale program, in relation to which we have certain royalty rights. Because drug development and commercialization is subject to a number of risks and uncertainties, there is a risk that our future revenue from one or more of these agreements will be less than we anticipate.

We Exited the Inhaled Insulin Drug Programs in 2008

In 1995, we entered into a collaborative development and licensing agreement with Pfizer to develop and market dry powder inhaled insulin (Exubera) for patients with diabetes. In 2006 and 2007, we entered into a series of interim letter agreements with Pfizer to develop a next generation form of dry powder inhaled insulin (NGI). In January 2006, Exubera received marketing approval in the U.S. and EU. Under the collaborative development and licensing agreement, Pfizer had sole responsibility for marketing and selling Exubera. We performed all of the manufacturing of the bulk dry powder insulin, and through our third party contract manufacturers Bespak Europe Ltd. and Tech Group North America, Inc., we supplied Pfizer with the Exubera inhalers. Our total revenue from Pfizer was nil, $189.1 million, and $139.9 million, representing 0%, 69%, and 64% of total revenue, for the years ended December 31, 2008, 2007, and 2006, respectively.

On October 18, 2007, Pfizer announced that it was exiting the Exubera and inhaled insulin development and gave notice of termination under our collaborative development and licensing agreement. On November 9, 2007, we entered into a termination agreement and mutual release with Pfizer. Under this agreement we received a one-time payment of $135.0 million from Pfizer in November 2007 in satisfaction of all outstanding contractual obligations under our then-existing agreements relating to Exubera and NGI. All agreements between Pfizer and us related to Exubera and NGI, other than the termination agreement and mutual release and a related interim Exubera manufacturing maintenance letter, terminated on November 9, 2007. In February 2008, we entered into a manufacturing termination agreement with Bespak and Tech Group pursuant to which we paid an aggregate of $39.9 million in satisfaction of outstanding accounts payable and termination costs and expenses that were due to the contract manufacturers under the Exubera inhaler contract manufacturing agreement. We also entered into a maintenance agreement with both Pfizer and Tech Group to preserve key personnel and manufacturing capacity to support potential future Exubera manufacturing if we were successful in finding a new partner for the inhaled insulin program.

On April 9, 2008, we announced that we had ceased all negotiations with potential partners for Exubera and NGI as a result of new data analysis from ongoing clinical trials conducted by Pfizer which indicated an increase in the number of new cases of lung cancer in Exubera patients who were former smokers as compared to patients in the control group who were not former smokers. In April 2008, we ceased all spending associated with maintaining Exubera manufacturing capacity and any further NGI development, including, but not limited to, terminating the Exubera manufacturing capacity maintenance arrangements with Pfizer and Tech Group.

We Completed the Sale of Certain Pulmonary Assets and Operations at the End of 2008

On December 31, 2008, we completed the sale of certain assets related to our pulmonary business, associated technology and intellectual property to Novartis Pharma AG and Novartis Pharmaceuticals Corporation (together referred to as Novartis) for a purchase price of $115.0 million in cash (Novartis Pulmonary Asset Sale). Pursuant to the asset purchase agreement entered between Novartis and us, we transferred to Novartis assets and obligations which include certain dry powder and liquid pulmonary formulation and manufacturing assets, including capital equipment and manufacturing facility lease obligations, certain intellectual property and manufacturing methods and associated information systems related to the pulmonary business, and certain other interests in two private companies, and Novartis hired approximately 140 of our pulmonary personnel. In addition, we assigned our rights and obligations, other than certain royalty rights, related to the Cipro Inhale partnered with Bayer Schering Pharma AG to Novartis, and terminated our collaborative research, development, and commercialization agreement related to the Tobramycin inhalation powder (TIP) program with Novartis Vaccines and Diagnostics, Inc. Pursuant to the asset purchase agreement, we retain our rights and obligations under our co-development, license and co-promotion agreement with Bayer Healthcare LLC related to BAY41-6551 (NKTR-061, Amikacin Inhale), our development program related to NKTR-063 (Inhaled Vancomycin) and intellectual property specific to inhaled insulin. Although we completed the Novartis Pulmonary Asset Sale on December 31, 2008, we will pay approximately $4.4 million in related transaction costs in the three months ended March 31, 2009, including legal fees, investment banker fees, and other costs.

Following the completion of the Novartis transaction, we expect our contract research revenue and total revenue to significantly decline in 2009 due to the termination of the inhaled TIP collaboration agreement with Novartis Vaccines and Diagnostics, Inc. and our assignment and transfer of our inhaled Cipro Inhale collaboration agreement with Bayer Schering Pharma AG to Novartis. Our collaboration revenue related to TIP and Cipro Inhale was $13.7 million and $11.7 million, or 15% and 13%, respectively, of our total revenue for the year ended December 31, 2008. We will not receive any revenue from these programs in 2009. However, also following the Novartis transaction, we will no longer incur expenses from the approximately 140 pulmonary personnel and the dedicated pulmonary manufacturing facility, as well as certain other costs related to the assets and obligations, transferred to Novartis. The only future research and development obligations associated with the pulmonary assets that we retained in relation to the Novartis transaction relate to BAY41-66551 and NKTR-063. Under our collaboration agreement with Bayer Healthcare LLC, we are responsible for the completion of final device development and have a reimbursement obligation for up to $10.0 million of Phase 3 development costs incurred by Bayer Healthcare LLC.

Key Developments and Trends in Liquidity and Capital Resources

At December 31, 2008, we had approximately $379.0 million in cash and cash equivalents and $242.6 million in indebtedness. In the three months ended December 31, 2008, we repurchased approximately $100.0 million in par value of our 3.25% convertible subordinated notes for an aggregate purchase price of $47.8 million. We may from time to time purchase or retire additional convertible subordinated notes through cash purchase or exchanges for other securities of the Company in open market or privately negotiated transactions, depending on, among other factors, our levels of available cash and the price at which such convertible notes are available for purchase. We will evaluate such transactions, if any, in light of then-existing market conditions. These transactions, individually or in the aggregate, may be material to our business.

We have financed our operations primarily through revenue from product sales and royalties and research and development contracts and public and private placements of debt and equity. To date we have incurred substantial debt as a result of our issuances of subordinated notes that are convertible into our common stock. Our substantial debt, the market price of our securities, and the general economic climate, among other factors, could have material consequences for our financial condition and could affect our sources of short-term and long-term funding. Our ability to meet our ongoing operating expenses and repay our outstanding indebtedness is dependent upon our and our partners' ability to successfully complete clinical development of, obtain regulatory approvals for and successfully commercialize new drugs. Even if we or our partners are successful, we may require additional capital to continue to fund our operations and repay our debt obligations as they become due. There can be no assurance that additional funds, if and when required, will be available to us on favorable terms, if at all.

For the year ended December 31, 2008, net cash used for our operating activities was $145.8 million. During the year ended December 31, 2008, we made the following payments, among others: (i) $39.9 million to Bespak Europe Ltd. and Tech Group as payment for termination amounts due under our Exubera inhaler manufacturing and supply agreement with those companies, all of which was recorded as an expense in 2007, (ii) $6.8 million to maintain Exubera manufacturing capacity through April 2008 and (iii) $5.4 million for severance, employee benefits and outplacement services in connection with our workforce reduction plans. We do not anticipate incurring any costs in 2009 associated with inhaled insulin.

Our substantial investment in our preclinical and clinical research and any potential new licensing or partnership agreements, if any, will be the key drivers of our results of operations and financial position during 2009. One of our collaboration partners has a one-time license extension option exercisable in December 2009. If this partner elects to exercise this license extension option right, we will receive a cash payment of $31.0 million in December 2009.

Results of Operations

Years Ended December 31, 2008, 2007, and 2006

Revenue (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Product sales and royalties	$ 41,255	$180,755	$153,556	$ (139,500)	$ 27,199	(77)%	18%
Collaboration and other	48,930	92,272	64,162	(43,342)	28,110	(47)%	44%
Total Revenue	$ 90,185	$273,027	$217,718	$ (182,842)	$ 55,309	(67)%	25%

During the year ended December 31, 2008, the decrease in total revenue from the year ended December 31, 2007 was primarily attributable to the termination of our collaboration agreements with Pfizer related to Exubera and NGI, which accounted for $182.4 million, or 67%, of our total revenue during the year ended December 31, 2007. We had no revenue from Pfizer related to Exubera or NGI for the year ended December 31, 2008. Four of our customers, Bayer (including Bayer Healthcare LLC and Bayer Schering Pharma AG), UCB Pharma, Novartis, and Roche represented 24%, 16%, 15%, and 14%, respectively, of our total revenue during the year ended December 31, 2008.

In connection with the completion of the Novartis Pulmonary Asset Sale on December 31, 2008, our collaboration agreement with Novartis Vaccines and Diagnostics, Inc. for TIP was terminated and our collaboration agreement with Bayer Schering Pharma AG for Cipro Inhale was assigned to Novartis. Collaboration revenue related to TIP and Cipro Inhale was $13.7 million and $11.7 million, or 15% and 13%, of our total revenue for the year ended December 31, 2008. We will not receive any revenue related to these programs in 2009. While we may enter new collaboration or license agreements in 2009, we expect revenue to decrease in 2009 as a result of the TIP agreement termination, the assignment of the Cipro Inhale agreement, and lower product sales volumes required by our licensing partners. In addition, if our collaboration partner elects not to exercise its one-time license extension option in December 2009 and pay us the one-time $31.0 million license fee for such option, our revenue would significantly decrease in 2009 as compared to the year ended December 31, 2008.

Product sales and royalties

For the year ended December 31, 2007, Exubera product sales to Pfizer accounted for $132.9 million of our total revenue. We had no revenue from Pfizer related to Exubera for the year ended December 31, 2008. Non-Exubera product sales and royalties decreased by approximately $6.6 million, or 14%, for the year ended December 31, 2008, compared to the year ended December 31, 2007. The decrease in non-Exubera product sales and royalties is primarily attributable to the November 30, 2007 sale of Aerogen Ireland Ltd., one of our former subsidiaries that manufactured and supplied general purpose nebulizer devices, which accounted for $5.5 million in revenue for the year ended December 31, 2007.

Product sales and royalties increased 18% to $180.8 million for the year ended December 31, 2007 as compared to the year ended December 31, 2006. Exubera product sales to Pfizer increased by approximately $32.0 million during the year ended December 31, 2007 as compared to the year ended December 31, 2006. Exubera commercial sales began in January 2006. During the year ended December 31, 2006, we deferred recognition of all Exubera product sales until Pfizer's contractual 60-day right of return period lapsed. As a result, as of December 31, 2006, we deferred $22.9 million in Exubera product sales and we recognized ten months of product shipments in revenue. In January 2007, we began estimating product warranty returns and recognizing Exubera product sales upon shipment. During the year ended December 31, 2007, we recognized product sales through November 9, 2007, when our collaboration agreements with Pfizer terminated, as well as the revenue deferred at December 31, 2006.

Royalty revenues were $3.5 million, $3.7 million, and $9.2 million for the years ended December 31, 2008, 2007, and 2006, respectively.

Collaboration and other revenue

Collaboration and other revenue includes reimbursed research and development expenses, amortization of deferred up-front signing and milestone payments received from our collaboration partners, and intellectual property license fee revenue. Collaboration revenue fluctuates from year to year, and therefore future collaboration revenue cannot be predicted accurately. The level of collaboration and other revenues depends in part upon the continuation of existing collaborations, signing of new collaborations, the stage of program development, and the achievement of milestones.

For the year ended December 31, 2007, collaboration and other revenue from Pfizer related to Exubera and NGI accounted for $49.5 million of our collaboration and other revenue. We had no collaboration and other revenue from Pfizer related to Exubera or NGI for the year ended December 31, 2008. The increase in non-Pfizer collaboration and other revenue of $6.1 million during the year ended December 31, 2008 compared to the year ended December 31, 2007 is primarily attributable to a new intellectual property license agreement we entered into with F. Hoffmann-La Roche Ltd. For the year ended December 31, 2008, we have recognized increased collaboration and other revenue from Bayer (including Bayer Healthcare LLC and Bayer Schering Pharma AG) of $12.3 million under our collaboration agreements for BAY41-6551 (NKTR-061, Amikacin Inhale) and Cipro Inhale. These increases are offset by decreased collaboration and other revenue of $3.3 million from Novartis Vaccines and Diagnostics, Inc. under our collaboration agreement for TIP and of $3.7 million from Solvay Pharmaceuticals, Inc. and Zelos Therapeutics Inc. following the termination of those collaboration agreements in 2008.

The increase in collaboration and other revenue for the year ended December 31, 2007 compared to the year ended December 31, 2006 is primarily attributable to increased revenue from Pfizer of $15.8 million, which includes recognition of $24.6 million in NGI up-front fees upon termination of the Pfizer Agreements. Additionally, collaboration and other revenue from Novartis increased by $8.5 million under our collaboration agreement for TIP, and Bayer (including Bayer Healthcare LLC and Bayer Schering Pharma AG) increased by $3.2 million, and $1.3 million, respectively, under our collaboration agreements for Cipro Inhale and BAY41-6551, respectively. These increases in collaboration and other revenue were partially offset by decreased revenue from Zelos of $4.2 million under our collaboration agreement to develop Ostabolin-C.

The timing and future success of our drug development programs and those of our collaboration partners are subject to a number of risks and uncertainties. See "Part I, Item 1A—Risk Factors" for discussion of the risks associated with our partnered research and development programs.

Revenue by geography

Revenue by geographic area is based on the shipping locations of our customers. The following table sets forth revenue by geographic area (in thousands):

	Years ended December 31,		
	2008	2007	2006
United States	$ 30,800	$ 212,990	$ 182,959
European countries	59,385	60,037	33,471
All other countries	—	—	1,288
Total Revenue	$ 90,185	$ 273,027	$ 217,718

The decrease in revenue attributable to the United States for the year ended December 31, 2008 compared to the year ended December 31, 2007 is primarily attributable to our receipt of no revenue from Pfizer related to Exubera for the year ended December 31, 2008.

The increase in revenue attributable to the United States for the year ended December 31, 2007 compared to the year ended December 31, 2006 is primarily attributable to the increase in revenue from Pfizer related to Exubera for the year ended December 31, 2007. The increase in revenue attributable to European countries for the year ended December 31, 2007 compared to the year ended December 31, 2006 is primarily due to the increase in revenue from Novartis under our collaborative agreement for TIP and from Bayer (including Bayer Healthcare LLC and Bayer Schering Pharma AG) under our collaborative agreements for BAY41-6551 and Cipro Inhale.

Cost of goods sold (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Cost of goods sold	$ 28,216	$ 137,696	$ 113,921	$ (109,480)	$ 23,775	(80)%	21%
Product gross margin	13,039	43,059	39,635	(30,020)	3,424	(70)%	9%
Product gross margin %	32%	24%	26%				

The decrease in cost of goods sold and product gross margin during the year ended December 31, 2008 compared to the year ended December 31, 2007 was primarily due to the termination of our agreements with Pfizer related to Exubera. During the year ended December 31, 2007, Exubera cost of goods sold totaled $103.6 million and Exubera gross margin totaled $29.3 million. The increase in product gross margin percentage is attributable to the change in product mix with our product sales based on our PEGylation and advanced polymer conjugate technologies which have a relatively higher gross margin.

Cost of goods sold during the year ended December 31, 2007 includes Exubera manufacturing costs through the November 9, 2007 termination of the Pfizer agreements. Costs related to our Exubera manufacturing operations after November 9, 2007 are included in other cost of revenue.

The increase in cost of goods sold and product gross margin during the year ended December 31, 2007 compared to the year ended December 31, 2006 is consistent with the proportionate increase in Exubera product sales, which contributed $19.5 million to our product gross margin during the year ended December 31, 2006. The decrease in gross margin percentage during the year ended December 31, 2007 compared to the year ended December 31, 2006 is primarily attributable to product mix, the terms of our cost plus manufacturing arrangement with Pfizer, and the decline in royalty revenue of $5.5 million during 2007.

We expect Cost of goods sold and Product gross margin to decline in 2009 as compared to the year ended December 31, 2008 in connection with the lower manufacturing requirements forecasted by our licensing partners.

Cost of Workforce Reduction Plans (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Cost of goods sold, net of change in inventory	$ 148	$ 974	$ —	$ (826)	$ 974	(85%)	n/a
Other cost of revenue	1,221	—	—	1,221	—	n/a	n/a
Research and development	3,087	5,791	—	(2,704)	5,791	(47%)	n/a
General and administrative	517	1,617	—	(1,100)	1,617	(68%)	n/a
Cost of workforce reduction plans	$ 4,973	$ 8,382	$ —	$ (3,409)	$ 8,382	(41%)	n/a

We executed workforce reduction plans in May 2007 (2007 Plan) and February 2008 (2008 Plan) designed to streamline the company, consolidate corporate functions, and strengthen decision making. The total cost of the 2007 Plan was $8.4 million and the total cost of the 2008 Plan was $5.0 million, comprised of cash payments for severance, medical insurance and outplacement services. Both plans were substantially complete at December 31, 2008. We have already begun to realize the cost savings related to these two plans, as discussed further under “Research and development” and “General and administrative” below.

Other cost of revenue (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Other cost of revenue	$ 6,821	$ 9,821	$ 4,168	$ (3,000)	$ (5,653)	(31%)	>(100%)

Other cost of revenue includes the idle Exubera manufacturing capacity costs and Exubera commercialization readiness costs that were incurred by us prior to the termination of all of our inhaled insulin programs in April 2008.

Idle Exubera manufacturing capacity costs includes the costs of maintaining our manufacturing operating capacity after the termination of the Pfizer agreements on November 9, 2007 through the termination of our inhaled insulin programs on April 9, 2008. Idle Exubera manufacturing capacity costs include amounts payable to Pfizer and Tech Group under interim manufacturing capacity maintenance agreements and an allocation of manufacturing costs shared between commercial operations and research and development, including employee compensation and benefits, rent, and utilities. Idle Exubera manufacturing costs were $6.8 million, $6.3 million, and nil for the year ended December 31, 2008, 2007, and 2006, respectively.

Exubera commercialization readiness costs were start-up manufacturing costs we incurred in our Exubera inhalation bulk powder manufacturing facility and our Exubera inhaler device third party contract manufacturing locations in preparation for commercial scale manufacturing in early 2006. Exubera commercialization readiness costs were nil, $3.5 million, and $4.2 million for the year ended December 31, 2008, 2007, and 2006, respectively.

We do not expect to incur any additional idle Exubera manufacturing capacity or Exubera commercialization readiness costs.

Research and development (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Research & development	$154,417	$153,575	$149,381	$ 842	$ 4,194	1%	3%

Research and development expenses consist primarily of personnel costs, including salaries, benefits and stock-based compensation, clinical studies performed by contract research organizations (CROs), materials and supplies, licenses and fees and overhead allocations consisting of various support and facilities related costs. Our research and development activities are broken down between proprietary and partnered drug development programs. Under the terms of our collaboration agreements, we are generally reimbursed for research and development activities and will receive milestones and royalties on commercial sales of the drug.

Research and development costs include certain allocations of resources shared across our research and development programs, including facilities, manufacturing quality personnel and other shared resources. We have generally allocated these shared costs based on personnel hours. The costs incurred in connection with our research and development programs, is as follows (in millions):

	Clinical Study Status(1)	Years ended December 31, 2008	2007	2006
NKTR-102 (PEGylated irinotecan)	Phase 2	$ 24.2	$ 12.7	$ 2.7
NKTR-118 (oral PEGylated naloxol)	Phase 2	24.6	12.9	5.5
Tobramycin inhalation powder (TIP)(2)	Phase 2	19.7	16.3	12.8
BAY41-6551 (NKTR-061, Amikacin Inhale) (3)	Phase 2	17.7	15.2	13.6
Cipro Inhale(4)	Phase 2	11.4	8.3	5.9
NKTR-105 (PEGylated docetaxel)	Phase 1	8.4	0.4	—
Inhaled Insulin(5)	Discontinued	3.5	37.6	39.5
NKTR-063 (Inhaled Vancomycin)	Phase 1	2.3	—	—
Other PEGylation product candidates	Various	21.0	16.2	12.4
Other pulmonary product candidates(6)	Various	15.7	28.2	54.0
Other(7)		5.9	5.8	3.0
Research and development		$ 154.4	$ 153.6	$ 149.4

(1) Clinical Study Status definitions are provided in the chart found in Part I, Item 1. Business

(2) The collaboration agreement with Novartis Vaccines and Diagnostics, Inc. was terminated on December 31, 2008 in connection with the Novartis Pulmonary Asset Sale.

(3) Partnered with Bayer Healthcare LLC since August 2007. As part of the Novartis Pulmonary Asset Sale , we retained an exclusive license to this technology for the development and commercialization of this product originally developed by Nektar.

(4) The collaboration agreement with Bayer Schering Pharma AG was assigned to Novartis on December 31, 2008 in connection with the Novartis Pulmonary Asset Sale.

(5) Partnership for the collaboration and development of Exubera inhalation powder and the next generation inhaled insulin with Pfizer was terminated on November 9, 2007. Inhaled insulin programs were terminated in April 2008.

(6) Certain proprietary pulmonary intellectual property was transferred to Novartis as part of the Novartis Pulmonary Asset Sale.

(7) Other includes additional costs related Novartis Pulmonary Asset Sale in 2008, workforce reduction charges in 2008 and 2007, and research and development costs related to our ceased super-critical fluids business in 2006.

Research and development expense remained at a consistent level in 2008 as compared to 2007 despite a significant increase in our investment in clinical development of our proprietary drug candidates in 2008. This was a result of the continued transition of our business to focus on our internal proprietary drug candidates in 2008 and a decrease in other research and development activities.

Salaries, benefits, and stock-based compensation expense decreased by approximately $14.0 million for the year ended December 31, 2008 compared to the year ended December 31, 2007, as we continued to realize the benefits of our workforce reduction plans executed in May 2007 and February 2008. Facilities and equipment expense decreased by approximately $8.0 million primarily as a result of lower depreciation due to the write-off of the Pfizer-related equipment in 2007 and certain pulmonary property and equipment classified as held for sale at September 30, 2008. These decreases were offset by increased costs related to our ongoing clinical trials for our proprietary drug candidates, comprised increased outside services of $13.4 million, including costs to CROs, and increased materials and supplies expense of $8.2 million. During the year ended December 31, 2008, research and development expense included approximately $2.7 million in additional costs related to the Novartis Pulmonary Asset Sale, including one-time termination benefits and other costs.

During the year ended December 31, 2008, our research and development spending in our partnered drug development programs decreased after the termination of our Pfizer agreements for inhaled insulin in November 2007. Spending related to our proprietary drug development programs increased as we continued to advance clinical development for NKTR-102, NKTR-118, and NKTR-105.

Research and development expense, excluding workforce reduction charges, decreased by approximately $1.6 million during the year ended December 31, 2007, compared to the year ended December 31, 2006. Research and development expense related to our drug candidates based on PEGylation technology and advanced polymer conjugate technologies increased by approximately $21.6 million as a result of the completion of the Phase 1 clinical trials for NKTR-118 and NKTR-102 and the commencement of Phase 2 clinical trials for these drug development programs. Pulmonary research and development program expenses decreased by approximately $20.2 million as a result of a $20.0 million decrease related to NKTR-024 and a $12.9 million decrease related to Exubera. These decreases are partially offset by increased spending on NGI of $11.0 million, increased spending on TIP of $3.5 million and increased spending on BAY41-6551 of approximately $1.6 million. Additionally, we decreased spending on non-pulmonary and non-PEGylation programs by $3.0 million in connection with the winding down of our Bradford, UK operations in 2006 which related to our super-critical fluid technology.

We anticipate that our research and development expenses will decrease in the year ended December 31, 2009 compared to the year ended December 31, 2008, which will be comprised of decreases in our internal salaries, benefits, and facilities costs as a result of the Novartis Pulmonary Asset Sale, partially offset by an increase in materials and supplies and third party costs for our CROs as we continue to advance clinical trials for NKTR-102, NKTR-118, and NKTR-105.

The estimated completion dates for our programs are not reasonably certain. See Item 1a. Risk Factors for discussion of the risks associated with drug candidates in development and the risks and uncertainties associated with clinical development at any stage.

General and administrative (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease) 2008 vs. 2007	Increase/ (Decrease) 2007 vs. 2006	Percentage Increase/ (Decrease) 2008 vs. 2007	Percentage Increase/ (Decrease) 2007 vs. 2006
	2008	2007	2006				
General & administrative	$ 51,497	$ 57,282	$ 82,358	$ (5,785)	$ (25,076)	(10%)	(30%)

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

The decrease in general and administrative expenses during the year ended December 31, 2008 compared to the year ended December 31, 2007 is primarily attributable to decreased professional fees of $5.1 million and decreased salaries and benefits of $8.8 million, partially offset by increased marketing costs of $1.7 million related to our co-promotion agreement with Bayer Healthcare LLC for BAY41-6551, decreased corporate overhead costs allocated out of general and administrative departments to manufacturing and research and development of $4.0 million, and other net increases of $2.4 million.

The decrease in general and administrative expenses during the year ended December 31, 2007 compared to the year ended December 31, 2006 is primarily attributable to decreased non-cash stock-based compensation expense of $11.9 million, decreased intangible asset amortization of $3.1 million, decreased headcount resulting in decreased salaries and benefits of $2.3 million, decreased professional fees of $5.9 million, and a $1.8 million decrease in connection with the winding down of our Bradford, UK operations in 2006.

Impairment of long lived assets (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease) 2008 vs. 2007	Increase/ (Decrease) 2007 vs. 2006	Percentage Increase/ (Decrease) 2008 vs. 2007	Percentage Increase/ (Decrease) 2007 vs. 2006
	2008	2007	2006				
Impairment of long lived assets	$ 1,458	$ 28,396	$ 9,410	$ (26,938)	$ 18,986	(95%)	>100%

During the year ended December 31, 2008, impairment of long lived assets includes an impairment charge of $1.5 million related to a specialized dryer designed for our PEGylation manufacturing facility. The dryer was not functioning properly and was not being used in operations. We determined the carrying value of the manufacturing equipment exceeded the fair value based on a discounted cash flow model.

During the year ended December 31, 2007, impairment of long lived assets includes an impairment charge of $28.4 million for Exubera-related assets following the termination of our collaborative agreements with Pfizer.

During the year ended December 31, 2006, impairment of long lived assets includes a write-off of $5.5 million of certain intangible assets relating to the operations of our former Ireland subsidiary, $1.2 million relating to the remaining laboratory and office equipment at our Bradford, UK site, and $2.8 million relating to an asset being constructed for use in one of our partnered pulmonary drug development programs.

Gain on sale of pulmonary assets (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Gain on sale of pulmonary assets	$(69,572)	$ —	$ —	$ 69,572	$ —	n/a	n/a

On December 31, 2008, we sold certain of our pulmonary assets to Novartis for $115.0 million. The gain on sale of pulmonary assets includes the purchase price received from Novartis less the net book value of property and equipment of $37.3 million, an equity investment in Pearl Therapeutics, Inc. of $2.7 million, transaction costs of $4.6 million, and other costs of $0.9 million.

Gain on termination of collaborative agreements, net (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Gain on termination of collaborative agreements, net	$ —	$(79,178)	$ —	$ (79,178)	$ 79,178	n/a	n/a

On November 9, 2007, we terminated our collaborative development and license agreement with Pfizer and all other agreements between us and Pfizer related to Exubera and NGI. Pursuant to the termination agreement, we received a one-time payment of $135.0 million from Pfizer in full satisfaction and release of all contract obligations. The gain on termination of collaborative agreements, net, includes the Pfizer termination payment received of $135.0 million less our contractual aggregate liability to Bespak and Tech Group of $32.4 million and less settlement of outstanding receivables and payables with Pfizer of $23.5 million.

Litigation settlement

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Litigation settlement	$ —	$ 1,583	$ 17,710	$ (1,583)	$ (16,127)	n/a	(91)%

During the year ended December 31, 2007, we recorded a litigation settlement charge of $1.6 million related to three employee-related litigation settlements that were entered into in 2007.

On June 30, 2006, we entered into a litigation settlement related to an intellectual property dispute with the University of Alabama, Huntsville pursuant to which we paid $11.0 million and agreed to pay an additional $10.0 million in equal $1.0 million installments over ten years beginning on July 1, 2007. During the year ended December 31, 2006 we recorded a litigation settlement charge of $17.7 million which reflects the net present value of the settlement payments using an 8% annual discount rate.

Interest income (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Interest income	$ 12,495	$ 22,201	$ 23,646	$ (9,706)	$ (1,445)	(44%)	(6%)

The decrease in interest income for the year ended December 31, 2008, compared to the year ended December 31, 2007, was primarily due to lower interest rates on our cash, cash equivalents, and available-for-sale investments in 2008 compared to 2007.

The decrease in interest income during the year ended December 31, 2007 compared to the year ended December 31, 2006 is primarily due to a decline in the average balance of cash, cash equivalents, and investments in marketable securities due to repayment of $102.7 million in convertible subordinated notes.

Interest expense (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Interest expense	$ 15,192	$ 18,638	$ 20,793	$ (3,446)	$ (2,155)	(18%)	(10%)

The decrease in interest expense for the year ended December 31, 2008, compared to the year ended December 31, 2007, was primarily attributable to a lower average balance of convertible subordinated notes outstanding in 2008. We repurchased $100.0 million of our 3.25% convertible subordinated notes during the fourth quarter of 2008. We expect interest expense to decrease in 2009 as a result of this convertible subordinated note repurchase.

The decrease in interest expense during the year ended December 31, 2007 compared to the year ended December 31, 2006 was primarily due to a lower average balance of convertible subordinated notes outstanding during 2007. We repaid $36.0 million of our 5% convertible subordinated notes in February 2007 and we repaid $66.6 million of our 3.5% convertible subordinated notes in October 2007.

Other income, net (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Other income (expense), net	$ 58	$ 1,133	$ 2,444	$ (1,075)	$ (1,311)	(95%)	(54%)

During the year ended December 31, 2007, we recognized a $0.9 million gain from the sale of the management buy-out of our nebulizer device business operated in our wholly-owned Ireland subsidiary, which was completed on November 30, 2007 in consideration of a payment to us of $2.2 million and a net gain of $0.9 million.

During the year ended December 31, 2006, we recognized a $2.2 million gain from the sale of an equity investment in Confluent Technologies. We do not expect to realize income from such transactions in the future.

Gain on debt extinguishment (in thousands except percentages)

	Years ended December 31,			Increase/ (Decrease)	Increase/ (Decrease)	Percentage Increase/ (Decrease)	Percentage Increase/ (Decrease)
	2008	2007	2006	2008 vs. 2007	2007 vs. 2006	2008 vs. 2007	2007 vs. 2006
Gain on debt extinguishment	$ 50,149	$ —	$ —	$ 50,149	$ —	n/a	n/a

During the three months ended December 31, 2008, we repurchased approximately $100.0 million in par value of our 3.25% convertible subordinated notes for an aggregate purchase price of $47.8 million. The recognized gain on debt extinguishment is net of transaction costs of $1.0 million and accelerated amortization of our deferred financing costs of $1.1 million.

Liquidity and Capital Resources

We have financed our operations primarily through revenue from product sales and royalties and research and development contracts, public and private placements of debt and equity. We do not utilize off-balance sheet financing arrangements as a source of liquidity or financing. Additionally, at December 31, 2008, we had letter of credit arrangements with certain financial institutions and vendors, including our landlord, totaling $2.9 million. These letters of credit expire during 2009 and are secured by investments in similar amounts.

As of December 31, 2008, we had cash, cash equivalents and investments in marketable securities of $379.0 million and indebtedness of $242.6 million, including $215.0 million of convertible subordinated notes, $21.6 million in capital lease obligations and $6.0 million in other liabilities.

Due to the recent adverse developments in the credit markets, we may experience reduced liquidity with respect to some of our short-term investments. These investments are generally held to maturity, which is less than one year. However, if the need arose to liquidate such securities before maturity, we may experience losses on liquidation. As of December 31, 2008, we held $233.6 million of available-for-sale investments, excluding money market funds, with an average time to maturity of 72 days. To date we have not experienced any liquidity issues with respect to these securities, but should such issues arise, we may be required to hold some, or all, of these securities until maturity. We believe that, even allowing for potential liquidity issues with respect to these securities, our remaining cash and cash equivalents and short-term investments will be sufficient to meet our anticipated cash needs for at least the next twelve months. We have the ability and intent to hold our debt securities to maturity when they will be redeemed at full par value. Accordingly, we consider unrealized losses to be temporary and have not recorded a provision for impairment.

Cash flows used in operating activities

During the year ended December 31, 2008, net cash used for our operating activities was $145.8 million. The decrease in net cash provided by our operating activities for the year ended December 31, 2008 as compared to the year ended December 31, 2007, resulted from the $135.0 million cash payment received from Pfizer in 2007 under the Exubera termination agreement and up-front payments of $50.0 million and $24.6 million received in 2007 from Bayer Healthcare LLC and Pfizer, respectively. In addition, the net cash used for our operating activities for the year ended December 31, 2008 included a number of significant items including a $10.0 million clinical development milestone received from Bayer Healthcare LLC under our collaboration agreement for BAY41-6551 (NKTR-061, Amikacin Inhale), payments by us to Bespak Europe Ltd. and Tech Group, Inc. of $39.9 million for amounts due under termination agreements with these Exubera inhaler device contract manufacturers, all of which was recorded as an expense in 2007, $6.8 million paid to maintain Exubera manufacturing capacity through April 2008, and $5.4 million for severance, employee benefits, and outplacement services in connection with our workforce reduction plans. We expect our cash flows used in operations to decrease in 2009.

During the year ended December 31, 2007, net cash provided by operating activities was $146.3 million. During the year ended December 31, 2007, net cash provided by operating activities increased by $239.0 million compared to the year ended December 31, 2006, in which we used $92.7 million in operating activities. The increase in cash provided by operations in the year ended December 31, 2007 included a number of significant items including a contract termination payment received from Pfizer of $135.0 million and up-front payments of $50.0 million and $24.6 million received from Bayer Healthcare LLC and Pfizer, respectively.

Cash flows from investing activities

On December 31, 2008, we completed the sale of certain pulmonary assets to Novartis for a purchase price of $115.0 million. We paid $0.2 million in transaction costs related to the sale during the year ended December 31, 2008 and expect to pay approximately $4.4 million in transaction costs in the three months ending March 31, 2009, all of which we expensed in the three months ended December 31, 2008.

We purchased $18.9 million, $32.8 million, and $22.5 million of property and equipment in the year ended December 31, 2008, 2007, and 2006, respectively. We expect our capital additions to remain at a consistent level during the year ended December 31, 2009, as we complete our research and development facility in Hyderabad, India.

In July 2008, we invested $4.2 million in Pearl Therapeutics Inc. (Pearl). In 2007, we granted Pearl a limited field intellectual property license to certain of our proprietary pulmonary delivery technology. Upon the closing of the Novartis asset sale transaction on December 31, 2008, we transferred our ownership interest in Pearl to Novartis and assigned the intellectual property license to Novartis.

Cash flows used in financing activities

During the year ended December 31, 2008, we repurchased approximately $100.0 million in par value of our 3.25% convertible subordinated notes for an aggregate purchase price of $47.8 million. The $215.0 million of 3.25% convertible subordinated notes outstanding at December 31, 2008, are due in September 2012.

During the year ended December 31, 2007, we repaid $102.7 million of convertible subordinated notes.

Contractual Obligations

	Payments due by period				
	Total	<=1 yr 2009	2-3 yrs 2010-2011	4-5 yrs 2012-2013	2014+
Obligations (1)					
Convertible subordinated notes, including interest	$ 241,153	$ 6,986	$ 13,972	$ 220,195	$ —
Capital leases, including interest	38,822	4,717	9,659	10,022	14,424
Purchase commitments (2)	17,042	17,042	—	—	—
Litigation settlement, including interest	8,000	1,000	2,000	2,000	3,000
	$ 305,017	$ 29,745	$ 25,631	$ 232,217	$ 17,424

(1) The above table does not include certain commitments and contingencies which are discussed in Note 8 of Item 8. Financial Statements and Supplementary Data.

(2) Substantially all of this amount was subject to open purchase orders as of December 31, 2008 that were issued under existing contracts. This amount does not represent minimum contract termination liability.

Given our current cash requirements, we forecast that we will have sufficient cash to meet our net operating expense requirements and contractual obligations at least through December 31, 2010. We plan to continue to invest in our growth and our future cash requirements will depend upon the timing and results of these investments. Our capital needs will depend on many factors, including continued progress in our research and development programs, progress with preclinical and clinical trials of our proprietary and partnered drug candidates, our ability to successfully enter into additional collaboration agreements for one or more of our proprietary drug candidates or intellectual property that we control, the time and costs involved in obtaining regulatory approvals, the costs of developing and scaling our clinical and commercial manufacturing operations, the costs involved in preparing, filing, prosecuting, maintaining and enforcing patent claims, the need to acquire licenses to new technologies and the status of competitive products. Included in our purchase commitments above is approximately $2.7 million of capital purchase commitments.

To date we have incurred substantial debt as a result of our issuances of subordinated notes that are convertible into our common stock. Our substantial debt, the market price of our securities, and the general economic climate, among other factors, could have material consequences for our financial condition and could affect our sources of short-term and long-term funding. Our ability to meet our ongoing operating expenses and repay our outstanding indebtedness is dependent upon our and our partners' ability to successfully complete clinical development of, obtain regulatory approvals for and successfully commercialize new drugs. Even if we or our partners are successful, we may require additional capital to continue to fund our operations and repay our debt obligations as they become due. There can be no assurance that additional funds, if and when required, will be available to us on favorable terms, if at all.

Off Balance Sheet Arrangements

We do not utilize off-balance sheet financing arrangements as a source of liquidity or financing.

Critical Accounting Policies

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 amounts of revenues and expenses during the reporting period.

We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results 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. We have determined that for the periods reported in this report, the following accounting policies and estimates are critical in understanding our financial condition and results of our operations.

Revenue Recognition

Collaboration and other research revenue includes amortization of up-front fees. Up-front fees should be recognized ratably over the expected benefit period under the arrangement. Given the uncertainties of research and development collaborations, significant judgment is required to determine the duration of the arrangement. We have $57.2 million of deferred up-front fees related to five research and collaboration agreements that are being amortized over an average of 12 years. We considered shorter and longer amortization periods. The shortest reasonable period is the end of the development period (estimated to be 4 to 6 years). Given the statistical probability of drug development success in the bio-pharmaceutical industry, drug development programs have only a 5%-10% probability of reaching commercial success. The longest period is either the contractual life of the agreement, which is generally 10-12 years from the first commercial sale, or the end of the patent life, which is frequently 15-17 years. If we had determined a longer or shorter amortization period was appropriate, our annual up-front fee amortization could be as low as $4.0 million or as high as $14.0 million.

Milestone payments that we receive under our collaboration agreements are deferred and recorded as revenue ratably over the period of time between the achievement of the milestone and the estimated date of completion of the next development milestone. Management makes its best estimate of the period of time until the next milestone is reached. This estimate affects the recognition of revenue for completion of the previous milestone. The original estimate is periodically evaluated to determine if circumstances have caused the estimate to change and if so, amortization of revenue is adjusted prospectively.

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 service period of the option or performance period of the Restricted Stock Unit award (RSU). 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 the 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.

The first performance milestone was achieved and approximately 174,035 shares were fully vested and released during the year ended December 31, 2007. The second performance milestone related to the achievement of $30.0 million of Exubera royalty revenue from Pfizer in one calendar quarter. During the year ended December 31, 2007, we determined that it is not probable that future Exubera product sales will be sufficient to meet the second performance milestone and we reversed $2.8 million of previously recognized expense. The third performance milestone relates to the first filing (whether by us 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 drug candidate. Based on our current product pipeline development efforts, we currently estimate that the third performance milestone is currently probable of achievement by the end of the third quarter of 2011.

Evaluating and estimating the probability of achieving the remaining performance milestone and the appropriate timing related to the achievement is highly subjective and requires periodic reassessment of rapidly changing facts and circumstances. 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 awards.

Clinical Trial Accruals

We record accruals for the estimated costs of our clinical trials. Most of our clinical trials are performed by third-party CROs, which are a significant component of our Research and development expense. We accrue costs associated with the start-up and reporting phases of the clinical trials ratably over the estimated duration of the start-up and reporting phases. If the actual timing of these phases varies from the estimate, we will adjust the accrual prospectively. We accrue costs associated with treatment phase of clinical trials based on the total estimated cost of the clinical trials and are expensed ratably based on patient enrollment in the trials.

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 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 December 31, 2008, 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 more likely than not 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. 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.

Recent Accounting Pronouncements

FASB Statement of Position No. 157-2

In February 2008, the FASB issued FASB Staff Position 157-2, *Effective Date of FASB Statement No. 157* (FSP 157-2), which delays the effective date of SFAS No. 157 to fiscal years beginning after November 15, 2008, for all nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). In accordance with FSP 157-2, the fair value measurements for non-financial assets and liabilities is required to be adopted effective for fiscal years beginning after November 15, 2008 We believe the adoption of the delayed items of SFAS No. 157 will not have a material impact on our financial statements.

EITF 07-1

In December 2007, the FASB ratified EITF Issue No. 07-1, *Accounting for Collaborative Arrangements*, which defines collaborative arrangements and establishes reporting and disclosure requirements for transactions between participants in a collaborative arrangement and between participants in the arrangements and third parties. This issue is effective retrospectively to all prior periods presented for all collaborative arrangements existing as of the effective date for fiscal years beginning after December 15, 2008. We believe the adoption of EITF 07-1 will not have a material impact on our financial statements.

FSP APB 14-1

In May 2008, the FASB issued FSP Accounting Principles Board (APB) 14-1 "*Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)*" (FSP APB 14-1). FSP APB 14-1 addresses instruments commonly referred to as Instrument C from EITF 90-19, which requires the issuer to settle the principal amount in cash and the conversion spread in cash or net shares at the issuer's option. FSP APB 14-1 requires the issuer of these instruments account for the liability (debt) and equity (conversion option) components of the instrument in a manner that reflects the issuer's nonconvertible debt borrowing rate. FSP APB 14-1 is effective for fiscal years beginning after December 15, 2008 and interim periods within those fiscal years on a retroactive basis. Early application is not permitted. The noteholders may only convert outstanding convertible subordinated notes to shares of our common stock, therefore we do not expect FSP APB 14-1 to have a material impact on our financial position or results of operations.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate and Market Risk

The primary objective of our investment activities is to preserve principal while at the same time maximizing yields without significantly increasing risk. To achieve this objective, we invest in liquid, high quality debt securities. Our investments in debt securities are subject to interest rate risk. To minimize the exposure due to an adverse shift in interest rates, we invest in short-term securities and maintain a weighted average maturity of one year or less.

A hypothetical 50 basis point increase in interest rates would result in an approximate $0.4 million decrease, less than 1%, in the fair value of our available-for-sale securities at December 31, 2008. This potential change is based on sensitivity analyses performed on our investment securities at December 31, 2008. Actual results may differ materially. The same hypothetical 50 basis point increase in interest rates would have resulted in an approximate $0.7 million decrease, less than 1%, in the fair value of our available-for-sale securities at December 31, 2007.

Due to the adverse developments in the credit markets in 2008, we may experience reduced liquidity with respect to some of our short-term investments. These investments are generally held to maturity, which is less than one year. However, if the need arose to liquidate such securities before maturity, we may experience losses on liquidation. As of December 31, 2008, we held $233.6 million of available-for-sale investments, excluding money market funds, with an average time to maturity of 72 days. To date we have not experienced any liquidity issues with respect to these securities, but should such issues arise, we may be required to hold some, or all, of these securities until maturity. We believe that, even allowing for potential liquidity issues with respect to these securities, our remaining cash and cash equivalents and short-term investments will be sufficient to meet our anticipated cash needs for at least the next twelve months. We have the ability and intent to hold our debt securities to maturity when they will be redeemed at full par value. Accordingly, we consider unrealized losses to be temporary and have not recorded a provision for impairment.

Foreign Currency Risk

The majority of our revenue, expense, and capital purchasing activities are transacted in U.S. dollars. However, since a portion of our operations consists of research and development activities outside the United States, we have entered into transactions in other currencies, primarily the Indian Rupee, and we therefore are subject to foreign exchange risk.

Our international operations are subject to risks typical of international operations, including, but not limited to, differing economic conditions, changes in political climate, differing tax structures, other regulations and restrictions, and foreign exchange rate volatility. We do not utilize derivative financial instruments to manage our exchange rate risks.

Item 8. Financial Statements and Supplementary Data

NEKTAR THERAPEUTICS

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders, Nektar Therapeutics

We have audited the accompanying consolidated balance sheets of Nektar Therapeutics as of December 31, 2008 and 2007, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2008. Our audits also included the financial statement schedule listed in the Index at Item 15(a)(2). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Nektar Therapeutics at December 31, 2008 and 2007, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As discussed in Note 1 to the consolidated financial statements, Nektar Therapeutics changed its method of accounting for uncertain tax positions as of January 1, 2007.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Nektar's internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 4, 2009 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Jose, California
March 4, 2009

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders, Nektar Therapeutics

We have audited Nektar Therapeutic's internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Nektar Therapeutic's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

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

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

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

In our opinion, Nektar Therapeutics maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on the COSO criteria**.**

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Nektar Therapeutics as of December 31, 2008 and 2007, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2008 of Nektar Therapeutics and our report dated March 4, 2009 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Jose, California
March 4, 2009

NEKTAR THERAPEUTICS

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

	December 31, 2008	December 31, 2007
ASSETS		
Current assets:		
Cash and cash equivalents	$ 155,584	$ 76,293
Short-term investments	223,410	406,060
Accounts receivable, net of allowance of $92 and $33 at December 31, 2008 and 2007, respectively	11,161	21,637
Inventory	9,319	12,187
Other current assets	6,746	7,106
Total current assets	$ 406,220	$ 523,283
Property and equipment, net	73,578	114,420
Goodwill	76,501	78,431
Other assets	4,237	8,969
Total assets	$ 560,536	$ 725,103
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 13,832	$ 3,589
Accrued compensation	11,570	14,680
Accrued clinical trial expenses	17,622	2,895
Accrued expenses to contract manufacturers	—	40,444
Accrued expenses	9,923	9,551
Deferred revenue, current portion	10,010	19,620
Other current liabilities	5,417	7,313
Total current liabilities	$ 68,374	$ 98,092
Convertible subordinated notes	214,955	315,000
Capital lease obligations	20,347	21,632
Deferred revenue	55,567	61,349
Deferred gain	5,901	8,680
Other long-term liabilities	5,238	5,911
Total liabilities	$ 370,382	$ 510,664
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, 10,000 shares authorized		
Series A, $0.0001 par value: 3,100 shares designated; no shares issued or outstanding at December 31, 2008 and 2007	—	—
Common stock, $0.0001 par value; 300,000 authorized; 92,503 shares and 92,301 shares issued and outstanding at December 31, 2008 and 2007, respectively	9	9
Capital in excess of par value	1,312,796	1,302,541
Accumulated other comprehensive income	1,439	1,643
Accumulated deficit	(1,124,090)	(1,089,754)
Total stockholders' equity	190,154	214,439
Total liabilities and stockholders' equity	$ 560,536	$ 725,103

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

NEKTAR THERAPEUTICS

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

	Years ended December 31,		
	2008	**2007**	**2006**
Revenue:			
Product sales and royalties	$ 41,255	$ 180,755	$ 153,556
Collaboration and other	48,930	92,272	64,162
Total revenue	$ 90,185	$ 273,027	$ 217,718
Operating costs and expenses:			
Cost of goods sold	28,216	137,696	113,921
Other cost of revenue	6,821	9,821	4,168
Research and development	154,417	153,575	149,381
General and administrative	51,497	57,282	82,358
Impairment of long lived assets	1,458	28,396	9,410
Gain on sale of pulmonary assets	(69,572)	—	—
Gain on termination of collaborative agreements, net	—	(79,178)	—
Litigation settlement	—	1,583	17,710
Total operating costs and expenses	$ 172,837	$ 309,175	$ 376,948
Loss from operations	(82,652)	(36,148)	(159,230)
Non-Operating income (expense):			
Interest income	12,495	22,201	23,646
Interest expense	(15,192)	(18,638)	(20,793)
Other income (expense), net	58	1,133	2,444
Gain on extinguishment of debt	50,149	—	—
Total non-operating income	47,510	4,696	5,297
Loss before provision (benefit) for income taxes	$ (35,142)	$ (31,452)	$ (153,933)
Provision (benefit) for income taxes	(806)	1,309	828
Net loss	$ (34,336)	$ (32,761)	$ (154,761)
Basic and diluted net loss per share	$ (0.37)	$ (0.36)	$ (1.72)
Shares used in computing basic and diluted net loss per share	92,407	91,876	89,789

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

NEKTAR THERAPEUTICS

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands)

	Preferred Shares		Common Shares		Capital In Excess of Par Value	Deferred Compensation	Accumulated Other Comprehensive Income/(Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount Paid In	Shares	Par Value					
Balance at December 31, 2005	20	—	87,707	$ 9	$ 1,233,690	$ (2,949)	$ (1,707)	$ (902,232)	$ 326,811
Stock option exercises	—	—	2,326	—	20,642	—	—	—	20,642
Stock-based compensation	—	—	—	—	29,143	—	—	—	29,143
SFAS No. 123R transition adjustment	—	—		—	(2,949)	2,949	—	—	—
Conversion of Preferred Stock	(20)	—	1,023	—	—	—	—	—	—
Warrant exercises	—	—	12	—	—	—	—	—	—
Shares issued for employee plans(1)	—	—	212	—	3,425	—	—	—	3,425
Stock-based compensation to consultants	—	—	—	—	31	—	—	—	31
Other comprehensive income	—	—	—	—	—	—	1,769	—	1,769
Net loss	—	—	—	—	—	—	—	(154,761)	(154,761)
Comprehensive loss									(152,992)
Balance at December 31, 2006	—	—	91,280	$ 9	$ 1,283,982	$ —	$ 62	$ (1,056,993)	$ 227,060
Stock option exercises and RSU release	—	—	761	—	2,915	—	—	—	2,915
Stock-based compensation	—	—	—	—	13,193	—	—	—	13,193
Shares issued for employee plans(1)	—	—	260	—	2,451	—	—	—	2,451
Other comprehensive income	—	—	—	—	—	—	1,581	—	1,581
Net loss	—	—	—	—	—	—	—	(32,761)	(32,761)
Comprehensive loss									(31,180)
Balance at December 31, 2007	—	—	92,301	$ 9	$ 1,302,541	$ —	$ 1,643	$ (1,089,754)	$ 214,439
Stock option exercises and RSU release	—	—	146	—	122	—	—	—	122
Stock-based compensation	—	—	—	—	9,871	—	—	—	9,871
Shares issued for employee plans(1)	—	—	56	—	262	—	—	—	262
Other comprehensive loss	—	—	—	—	—	—	(204)	—	(204)
Net loss	—	—	—	—	—	—	—	(34,336)	(34,336)
Comprehensive loss									(34,540)
Balance at December 31, 2008	—	—	92,503	$ 9	$ 1,312,796	$ —	$ 1,439	$ (1,124,090)	$ 190,154

(1) Employee plans include Employee Stock Purchase Plan (ESPP) and 401K Plan

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

NEKTAR THERAPEUTICS

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Years ended December 31,		
	2008	2007	2006
Cash flows provided by (used in) operating activities:			
Net loss	$ (34,336)	$ (32,761)	$ (154,761)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Gain on sale of pulmonary assets	(69,572)	—	—
Gain on extinguishment of debt	(50,149)	—	—
Depreciation and amortization	22,489	29,028	33,509
Stock-based compensation	9,871	14,779	30,982
Impairment of long lived assets	1,458	28,396	9,410
Other non-cash transactions	1,251	109	(3,003)
Changes in assets and liabilities:			
Decrease (increase) in trade accounts receivable	10,476	24,318	(34,654)
Decrease (increase) in inventories	2,868	1,503	3,971
Decrease (increase) in other assets	1,166	7,443	1,095
Increase (decrease) in accounts payable	6,181	(3,147)	(8,926)
Increase (decrease) in accrued compensation	(3,382)	986	3,581
Increase (decrease) in accrued clinical trial expenses	14,727	907	1,322
Increase (decrease) in accrued expenses to contract manufacturers	(40,444)	40,444	—
Increase (decrease) in accrued expenses	(1,332)	(5,200)	4,181
Increase (decrease) in deferred revenue	(15,392)	40,863	16,245
Increase (decrease) in other liabilities	(1,662)	(1,366)	4,333
Net cash provided by (used in) operating activities	$ (145,782)	$ 146,302	$ (92,715)
Cash flows from investing activities:			
Proceeds from sale of pulmonary assets, net of transaction costs	114,831	—	—
Investment in Pearl Therapeutics	(4,236)	—	—
Purchases of property and equipment	(18,855)	(32,796)	(22,524)
Maturities of investments	588,168	591,202	405,622
Sales of investments	70,060	2,057	2,252
Purchases of investments	(475,316)	(593,118)	(502,230)
Net cash provided by (used in) investing activities	$ 274,652	$ (32,655)	$ (116,880)
Cash flows from financing activities:			
Issuance of common stock, net of issuance costs	384	3,780	22,259
Payments of loan and capital lease obligations	(2,368)	(2,895)	(10,488)
Repayments of convertible subordinated notes	(47,757)	(102,653)	—
Net cash provided by (used in) financing activities	$ (49,741)	$ (101,768)	$ 11,771
Effect of exchange rates on cash and cash equivalents	162	654	311
Net increase (decrease) in cash and cash equivalents	$ 79,291	$ 12,533	$ (197,513)
Cash and cash equivalents at beginning of year	76,293	63,760	261,273
Cash and cash equivalents at end of year	$ 155,584	$ 76,293	$ 63,760
Supplemental disclosure of cash flows information:			
Cash paid for interest	$ 14,706	$ 17,389	$ 17,751
Cash paid for income taxes	$ 812	$ 801	$ —
Supplemental schedule of non-cash investing and financing activities:			
Property acquired through capital leases	$ —	$ 4,445	$ —

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

NEKTAR THERAPEUTICS

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2008

Note 1—Organization and Summary of Significant Accounting Policies

Organization and Basis of Presentation

We are a clinical-stage biopharmaceutical company headquartered in San Carlos, California and incorporated in Delaware. We are developing a pipeline of drug candidates that utilize our PEGylation and advanced polymer conjugate technology platforms designed to improve the therapeutic benefits of drugs.

Principles of Consolidation and Use of Estimates

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

Our 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 loss in the stockholders' equity section of the balance sheet. To date, such cumulative translation adjustments have not been material to our consolidated financial position. Transaction gains and losses arising from activities in other than applicable functional currency are calculated using the average exchange rate for the applicable period and reported in net income as a non-operating item in each period. Aggregate gross foreign currency transaction gains (losses) recorded in net income for the years ended December 31, 2008, 2007, and 2006 were not material.

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 amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. On an ongoing basis, we evaluate our estimates, including those related to inventories and related impairment of investments and long lived assets, restructuring and contingencies, stock based compensation, and litigation. We base our estimates on historical experience and on other assumptions that management believes are reasonable under the circumstances. These estimates form the basis for making judgments about the carrying values of assets and liabilities when these values are not readily apparent from other sources.

Reclassifications

Certain items previously reported in specific financial statement captions have been reclassified to conform to the current period presentation. Such reclassifications have not impacted previously reported revenues, operating loss or net loss.

Cash, Cash Equivalents, and Investments and Fair Value of Financial Instruments

We consider all investments in marketable securities with an original maturity of three months or less to be cash equivalents. Investments are designated as available-for-sale and are carried at fair value, with unrealized gains and losses reported in stockholders' equity as accumulated other comprehensive income (loss). The disclosed fair value related to our investments is based primarily on the reported fair values in our period-end brokerage statements. We independently validate these fair values using available market quotes and other information. Investments with maturities greater than one year from the balance sheet date, if any, are classified as long-term.

Interest and dividends on securities classified as available-for-sale, as well as amortization of premiums and accretion of discounts to maturity, are included in interest income. Realized gains and losses and declines in value of available-for-sale securities judged to be other-than-temporary, if any, are included in other income (expense). The cost of securities sold is based on the specific identification method.

The carrying value of cash, cash equivalents, and investments approximates fair value and is based on quoted market prices. On January 1, 2008, we adopted the provisions of Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* (SFAS No. 157), for financial assets and financial liabilities. SFAS No. 157 defines fair value, establishes a framework for measuring fair value in GAAP, and expands disclosures about fair value measurements. SFAS No. 157 does not require any new fair value measurements, but provides guidance on how to measure fair value by providing a fair value hierarchy used to classify the source of the information. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

Level 1—Quoted prices in active markets for identical assets or liabilities that the entity has the ability to access.

Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

In accordance with FASB Statement of Position No. 157-2, we have deferred adoption of SFAS No. 157 for non-financial assets and non-financial liabilities, including goodwill and property and equipment, until January 1, 2009.

Accounts Receivable and Significant Customer Concentrations

Our customers are primarily pharmaceutical and biotechnology companies that are located in the U.S. and Europe. Our accounts receivable balance contains billed and unbilled trade receivables from product sales and royalties and collaborative research agreements. We provide for an allowance for doubtful accounts by reserving for specifically identified doubtful accounts. We generally do not require collateral from our customers. We perform a regular review of our customers' payment histories and associated credit risk. We have not experienced significant credit losses from our accounts receivable. At December 31, 2008, three different customers represented 29%, 19%, and 15%, respectively, of our accounts receivable. At December 31, 2007, three different customers represented 28%, 24%, and 22%, respectively, of our accounts receivable.

Inventories and Significant Supplier Concentrations

Inventories are computed on a first-in, first-out basis and stated net of reserves at the lower of cost or market. Inventory costs include direct materials, direct labor, and manufacturing overhead. Supplies inventory related to research and development activities are expensed when purchased.

We are dependent on our partners and vendors 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.

Property and Equipment

Property and equipment are stated at cost. Major improvements are capitalized, while maintenance and repairs are expensed when incurred. Manufacturing, laboratory and other equipment are depreciated using the straight-line method generally over estimated useful lives of three to seven years. Leasehold improvements and buildings are depreciated using the straight-line method over the shorter of the estimated useful life or the remaining term of the lease.

In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets,* we periodically review our property and equipment for recoverability whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Generally, an impairment loss would be recognized if the carrying amount of an asset exceeds the sum of the discounted cash flows expected to result from the use and eventual disposal of the asset. Please refer to Note 13 of Notes to Consolidated Financial Statements for additional information on the impairment analysis performed.

Goodwill

Goodwill represents the excess of the price paid for another entity over the fair value of the assets acquired and liabilities assumed in a business combination. We account for our goodwill asset in accordance with SFAS No. 142, *Goodwill and Other Intangible Assets* (SFAS No. 142), and test for impairment in the fourth quarter of each year using an October 1 measurement date, as well as at other times when impairment indicators exists or when events occur or circumstances change that would indicate the carrying amount may not be fully recoverable.

For purposes of our annual impairment test, we have identified and assigned goodwill to two reporting units (as defined in SFAS No. 142): (1) pulmonary technology and (2) PEGylation and advanced polymer conjugate technology. Goodwill is tested for impairment at the reporting unit level using a two-step approach. The first step is to compare the fair value of a reporting unit's net assets, including assigned goodwill, to the book value of its net assets, including assigned goodwill. If the fair value of the reporting unit is greater than its net book value, the assigned goodwill is not considered impaired. If the fair value is less than the reporting unit's net book value, we perform a second step to measure the amount of the impairment, if any. The second step would be to compare the book value of the reporting unit's assigned goodwill to the implied fair value of the reporting unit's goodwill. As of December 31, 2008 and 2007, the carrying value of our goodwill was $76.5 million and $78.4 million, respectively. Approximately $1.9 million of goodwill allocated to our pulmonary reporting unit was included in the sale of certain pulmonary assets to Novartis. There were no indications of impairment at December 31, 2008 or December 31, 2007.

Revenue Recognition

We recognize revenue in accordance with Securities and Exchange Commission Staff Accounting Bulletin No. 104, *Revenue Recognition in Financial Statements* (SAB 104) and Emerging Issues Task Force, Issue No. 00-21 (EITF 00-21), *Revenue Arrangements with Multiple Deliverables.*

Revenue is recognized when there is persuasive evidence that an arrangement exists, delivery has occurred, the price is fixed and determinable, and collection is reasonably assured. Allowances are established for estimated sales returns and uncollectible amounts.

Product Sales and Royalty Revenue

Product sales are primarily derived from cost-plus manufacturing and supply agreements with our collaboration partners, and revenue is recognized in accordance with the terms of the related collaboration agreement. We have not experienced any significant returns from our customers.

Generally, we are entitled to royalties from our partners based on their net sales once their products are approved for commercial sale. We recognize royalty revenue when the cash is received or when the royalty amount to be received is estimable and collection is reasonably assured.

Collaboration and other revenue

Collaborative research and development arrangements

We enter into collaborative research and development arrangements with pharmaceutical and biotechnology partners that may involve multiple deliverables. Our arrangements may contain the following elements: upfront fees, collaborative research, milestone payments, manufacturing and supply, royalties and license fees. The principles and guidance outlined in EITF No. 00-21 provide a framework to (a) determine whether an arrangement involving multiple deliverables contains more than one unit of accounting, and (b) determine how the arrangement consideration should be measured and allocated to the separate units of accounting in the arrangement. Significant judgment is required when determining the separate units of accounting and the fair value of individual deliverables. For each separate unit of accounting we have objective and reliable evidence of fair value using available internal evidence for the undelivered item(s) and our arrangements generally do not contain a general right of return relative to the delivered item. We use the residual method to allocate the arrangement consideration when it does not have fair value of a delivered item(s). Under the residual method, the amount of consideration allocated to the delivered item equals the total arrangement consideration less the aggregate fair value of the undelivered items.

Contract research revenue from collaborative research and development agreements is recorded when earned based on the performance requirements of the contract. Advance payments for research and development revenue received in excess of amounts earned are classified as deferred revenue until earned. Amounts received under these arrangements are generally non-refundable even if the research effort is unsuccessful.

Payments received for milestones achieved are deferred and recorded as revenue ratably over the period of time from the achievement of milestone for which we received payment and our estimate of the date on which the next milestone will be achieved. Management makes its best estimate of the period of time until the next milestone is reached. This estimate affects the recognition of revenue for completion of the previous milestone. The original estimate is periodically evaluated to determine if circumstances have caused the estimate to change and if so, amortization of revenue is adjusted prospectively. Final milestone payments are recorded and recognized upon achieving the respective milestone, provided that collection is reasonably assured.

License Fee Revenue

We have granted licenses for certain of our intellectual property assets for use in developing new molecules. We recognize revenue when delivery has occurred and we have no further performance obligations. We consider delivery to have occurred when the license is granted on an exclusive basis and the license is for the duration of the intellectual property life.

Exubera Commercialization Readiness Revenue

Exubera commercialization readiness revenue represents reimbursements from Pfizer, of certain agreed upon operating costs relating to our Exubera inhalation powder manufacturing facilities and our device contract manufacturing locations in preparation for commercial production, plus a markup on such costs. Exubera commercialization readiness costs are start up manufacturing costs we have incurred in our Exubera Inhalation Powder manufacturing facility and our Exubera Inhaler device contract manufacturing locations in preparation for commercial production.

Shipping and Handling Costs

We record costs related to shipping and handling of product to customers in cost of goods sold.

Stock-Based Compensation

Stock-based compensation arrangements covered by SFAS No. 123R, *Share-Based Payment* (SFAS No. 123R) currently include stock option grants and restricted stock unit (RSU) awards under our equity incentive plans and purchases of common stock by our employees at a discount to the market price under our Employee Stock Purchase Plan (ESPP). Under SFAS No. 123R, the value of the portion of the option or award that is ultimately expected to vest is recognized as expense on a straight line basis over the requisite service periods in our Consolidated Statements of Operations. Stock-based compensation expense for purchases under the ESPP are recognized based on the estimated fair value of the common stock during each offering period and the percentage of the purchase discount.

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 service period of the option or performance period of the RSU award. Expense amounts are allocated among inventory, cost of goods sold, research and development expenses, and general and administrative expenses based on the function of the applicable employee. 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 the ESPP. In addition, management will continue to assess the assumptions and methodologies used to calculate 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.

Research and Development Expense

Research and development costs are expensed as incurred and include salaries, benefits and other operating costs such as outside services, supplies and allocated overhead costs. We perform research and development for our proprietary drug candidates and technology development and for certain third parties under collaboration agreements. For our proprietary drug candidates and our internal technology development programs, we invest our own funds without reimbursement from a third party. Costs associated with treatment phase of clinical trials are accrued based on the total estimated cost of the clinical trials and are expensed ratably based on patient enrollment in the trials. Costs associated with the start-up and reporting phases of the clinical trials are expensed ratably over the duration of the reporting and start-up phases.

Our collaboration agreements typically include a license to our intellectual property, technology and clinical development support, and in certain cases, the manufacture and supply of our proprietary drug components. Under these collaboration agreements, we may receive up-front license fees, development cost reimbursement, clinical development and regulatory milestone payments, fees for manufacturing our proprietary drug components, and royalties on sales if the drug candidate receives regulatory approval. Many of our collaboration agreements are cancelable by the partner without significant financial penalty.

On January 1, 2008, we adopted EITF No. 07-3, *Accounting for Nonrefundable Advance Payments for Goods or Services for Use in Future Research and Development Activities,* which provides guidance on the accounting for certain nonrefundable advance payments for goods or services that will be used or rendered for future research and development activities. The adoption did not have a material impact on our financial position or results of operations.

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 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):

	Years ended December 31,		
	2008	2007	2006
Convertible subordinated notes	13,804	15,781	16,896
Stock options	14,147	11,108	8,901
Warrants	—	—	13
Total	27,951	26,889	25,810

Income Taxes

We account for income taxes under the liability method in accordance with SFAS No. 109, *Accounting for Income Taxes* (SFAS No. 109), 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.

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 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 2004, although depending upon jurisdiction, tax years may remain open, subject to certain limitations.

Recent Accounting Pronouncements

FASB Statement of Position No. 157-2

In February 2008, the FASB issued FASB Staff Position 157-2, *Effective Date of FASB Statement No. 157* (FSP 157-2), which delays the effective date of SFAS No. 157 to fiscal years beginning after November 15, 2008, for all nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). In accordance with FSP 157-2, the fair value measurements for non-financial assets and liabilities is required to be adopted effective for fiscal years beginning after November 15, 2008 We believe the adoption of the delayed items of SFAS No. 157 will not have a material impact on our financial statements.

EITF 07-1

In December 2007, the FASB ratified EITF Issue No. 07-1, *Accounting for Collaborative Arrangements*, which defines collaborative arrangements and establishes reporting and disclosure requirements for transactions between participants in a collaborative arrangement and between participants in the arrangements and third parties. This issue is effective retrospectively to all prior periods presented for all collaborative arrangements existing as of the effective date for fiscal years beginning after December 15, 2008. We believe the adoption of EITF 07-1 will not have a material impact on our financial statements.

FSP APB 14-1

In May 2008, the FASB issued FSP Accounting Principles Board 14-1 "*Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)*" (FSP APB 14-1). FSP APB 14-1 addresses instruments commonly referred to as Instrument C from EITF 90-19, which requires the issuer to settle the principal amount in cash and the conversion spread in cash or net shares at the issuer's option. FSP APB 14-1 requires the issuer of these instruments account for the liability (debt) and equity (conversion option) components of the instrument in a manner that reflects the issuer's nonconvertible debt borrowing rate. FSP APB 14-1 is effective for fiscal years beginning after December 15, 2008 and interim periods within those fiscal years on a retroactive basis. Early application is not permitted. The noteholders may convert outstanding convertible subordinated notes to shares of our common stock only, therefore we do not expect FSP APB 14-1 to have a material impact on our financial position or results of operations.

Note 2—Cash, Cash Equivalents, and Available-For-Sale Investments

Cash, cash equivalents, and available-for-sale investments are as follows (in thousands):

	Estimated Fair Value at	
	December 31, 2008	**December 31, 2007**
Cash and cash equivalents	$ 155,584	$ 76,293
Short-term investments (less than one year to maturity)	223,410	406,060
Total cash, cash equivalents, and available-for-sale investments	$ 378,994	$ 482,353

Our portfolio of cash, cash equivalents, and available-for-sale investments includes (in thousands):

	Estimated Fair Value at	
	December 31, 2008	**December 31, 2007**
U.S. corporate commercial paper	$ 115,658	$ 293,866
Obligations of U.S. corporations	26,275	100,727
Obligations of U.S. government agencies	91,667	37,333
Cash and money market funds	145,394	50,427
Total cash, cash equivalents, and available-for-sale investments	$ 378,994	$ 482,353

The primary objective of our investment activities is to preserve principal while at the same time maximizing yields without significantly increasing risk. To achieve this objective, we invest in liquid, high quality debt securities. Our investments in debt securities are subject to interest rate risk. To minimize the exposure due to an adverse shift in interest rates, we invest in short-term securities and maintain a weighted average maturity of one year or less. At December 31, 2008, the average portfolio duration was approximately two months and the contractual maturity of any single investment did not exceed twelve months. At December 31, 2007, the average portfolio duration was approximately four months and the contractual maturity of any single investment did not exceed twelve months

Gross unrealized gains and losses were insignificant at December 31, 2008 and at December 31, 2007. The gross unrealized losses were primarily due to changes in interest rates on fixed income securities. We have a history of holding our investments to maturity and we have the ability and intent to hold our debt securities to maturity when they will be redeemed at full par value. Accordingly, we consider these unrealized losses to be temporary and have not recorded a provision for impairment.

During the year ended December 31, 2008, we sold available-for-sale securities to fund our convertible subordinated note repurchase. We received proceeds from these sales totaling $70.1 million and realized a gain of $0.1 million in the income statement for the year period ended December 31, 2008.

At December 31, 2008 and 2007, we had letter of credit arrangements with certain financial institutions and vendors, including our landlord, totaling $2.9 million and $2.8 million, respectively. These letters of credit are secured by investments of similar amounts.

The following table represents the fair value hierarchy for our financial assets measured at fair value on a recurring basis as of December 31, 2008 (in thousands):

	Level 1	Level 2	Level 3	Total
Money market funds	$ 134,686	$ —	$ —	$ 134,686
U.S. corporate commercial paper	—	115,658	—	115,658
Obligations of U.S. corporations	—	26,275	—	26,275
Obligations of U.S. government agencies	—	91,667	—	91,667
Cash equivalents and available-for-sale investments	$ 134,686	$ 233,600	$ —	$ 368,286
Cash				10,708
Cash, Cash equivalents, and available-for-sale investments				$ 378,994

Level 1—Quoted prices in active markets for identical assets or liabilities.

Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

Note 3—Inventory

Inventory consists of the following (in thousands):

	December 31,	
	2008	2007
Raw materials	$ 6,964	$ 9,522
Work-in-process	1,743	1,749
Finished goods	612	916
Total	$ 9,319	$ 12,187

Inventory consists of raw materials, work-in-process, and finished goods for our commercial PEGylation business.

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 $5.0 million and $5.8 million as of December 31, 2008 and 2007, respectively.

Note 4—Property and Equipment

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

	December 31,	
	2008	2007
Building and leasehold improvements	$ 62,260	$ 114,210
Laboratory equipment	24,549	48,425
Manufacturing equipment	8,682	18,493
Furniture, fixtures and other equipment	14,717	21,169
Construction-in-progress	6,875	18,374
Property and equipment at cost	$ 117,083	$ 220,671
Less: accumulated depreciation	(43,505)	(106,251)
Property and equipment, net	$ 73,578	$ 114,420

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. Construction-in-progress includes assets being built to enhance our manufacturing and research and development programs. Property and equipment includes assets acquired through capital leases, please refer to Note 6 of Notes to Consolidated Financial Statements for additional information on assets acquired through capital leases. During the year ended December 31, 2008, we capitalized $1.9 million of purchased software costs, which are included in furniture, fixtures and other equipment.

Depreciation expense, including depreciation of assets acquired through capital leases, for the years ended December 31, 2008, 2007, and 2006 was $19.8 million, $25.9 million, and $26.8 million, respectively.

On December 31, 2008, we sold certain assets and obligations related to our pulmonary technology, development and manufacturing operations to Novartis Pharmaceuticals Corporation and Novartis Pharma AG (together referred to as Novartis), including property and equipment with a gross book value of $108.0 million, accumulated depreciation of $70.7 million, and a net book value of $37.3 million. Please refer to Note 11 of Notes to Consolidated Financial Statements for additional information related to the sale of certain pulmonary assets to Novartis.

In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets,* we periodically review our Property and Equipment for recoverability whenever events or changes in circumstances indicate that the carrying value may not be recoverable. During the years ended December 31, 2008, 2007, and 2006, we recorded impairment charges on our Property and Equipment of $1.5 million for a specialized dryer in our PEGylation commercial manufacturing facility, $28.4 million for Exubera-related property and equipment, and $2.8 million for our property and equipment at Bradford, UK due to shut down of its operations, respectively. Please refer to Note 13 of Notes to Consolidated Financial Statements for additional information related to Impairment of Long-Lived Assets.

Note 5—Convertible Subordinated Notes

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

	Semi-Annual Interest Payment Dates	December 31, 2008	December 31, 2007
3.25% Notes due September 2012	March 28, September 28	$ 214,955	$ 315,000

Our convertible subordinated notes are unsecured and subordinated in right of payment to any future senior debt. Costs related to the issuance of these convertible notes are recorded in other assets in our 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 $2.2 million and $5.1 million as of December 31, 2008 and 2007, respectively.

Gain on Extinguishment of Debt

During the fourth quarter of 2008, we repurchased $100.0 million of our 3.25% notes for $47.8 million. The recognized gain on debt extinguishment of $50.1 million is net of transaction costs of $1.0 million and accelerated amortization of deferred financing costs of $1.1 million.

Conversion and Redemption

The notes are convertible at the option of the holder at any time on or prior to maturity into shares of our common stock. The 3.25% Notes have a conversion rate of 46.4727 shares per $1,000 principal amount, which is equal to a conversion price of approximately $21.52. Additionally, at any time prior to maturity, if a fundamental change as defined in the 3.25% subordinated debt indenture occurs, we may be required to pay a make-whole premium on notes converted in connection therewith by increasing the conversion rate applicable to the notes.

We may redeem the 3.25% Notes in whole or in part for cash at a redemption price equal to 100% of the principal amount of the Notes plus any accrued but unpaid interest if the closing price of the common stock has exceeded 150% of the conversion price for at least 20 days in any consecutive 30 day trading period.

Note 6—Capital Leases

We lease office space and office equipment under capital lease arrangements. The gross carrying value by major asset class and accumulated depreciation included in Property and equipment as of December 31, 2008 and 2007 are as follows (in thousands):

	December 31,	
	2008	2007
Building and leasehold improvements	$ 23,962	$ 23,962
Furniture, fixtures and other equipment	261	591
Construction in progress	—	1,602
Total assets recorded under capital leases	$ 24,223	$ 26,155
Less: accumulated depreciation	(8,050)	(6,124)
Net assets recorded under capital leases	$ 16,173	$ 20,031

Building Lease

We lease office space at 201 Industrial Road in San Carlos, California under capital lease arrangements. During the year ended December 31, 2007, we modified our existing lease agreement to increase our office space by 20,123 square feet of additional premises. We re-evaluated the lease as amended and continue to classify it as a capital lease.

Under the terms of the lease, the rent will escalate 2% in October of each year for the original leased premises and the rent will escalate 3% in November of each year for the additional leased premises. The lease termination date for the original and additional premises is October 5, 2016.

Office Equipment

In November 2007, we entered into a twelve-month lease with Cisco Systems Capital Corporation related to communication equipment. In October 2008, the lease term ended and we purchased the equipment for $1.

Future Minimum Lease Payments

Future minimum payments for our capital leases at December 31, 2008 are as follows (in thousands):

Years ending December 31,	
2009	$ 4,717
2010	4,752
2011	4,907
2012	4,958
2013	5,064
2014 and thereafter	14,424
Total minimum payments required	$ 38,822
Less: amount representing interest	(17,190)
Present value of future payments	$ 21,632
Less: current portion	(1,285)
Non-current portion	$ 20,347

Note 7—Litigation Settlement

On June 30, 2006, we, our subsidiary Nektar AL, and a former officer, Milton Harris, entered into a settlement agreement and general release with the University of Alabama, Huntsville (UAH) related to an intellectual property dispute. Under the terms of the settlement agreement, we, 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 and Mr. Harris made an initial payment of $15.0 million on June 30, 2006, of which we paid $11.0 million and Mr. Harris paid $4.0 million. During the year ended December 31, 2006, we recorded a litigation settlement charge of $17.7 million, which reflects the net present value of the settlement payments using an 8% annual discount rate. In June 2007 and 2008, respectively, we paid our annual $1.0 million installment payments. As of December 31, 2008, our accrued liability related to the UAH settlement was $6.0 million, which is the net present value of our eight annual $1.0 million payments remaining.

Note 8—Commitments and Contingencies

Unconditional Purchase Obligations

As of December 31, 2008, we had approximately $17.0 million of unconditional purchase obligations for purchases of goods and services in 2009 that have not been recognized on our consolidated balance sheet. These obligations include approximately $6.5 million for research and development activities pertaining to our ongoing proprietary development of NKTR-102, NKTR-105, and NKTR-118, $3.4 million for early research activities pertaining to PEGylation and advanced polymer conjugate drug candidates, $2.7 million for capital projects to enhance our manufacturing capabilities, research and development programs, and facilities, $1.4 million for inventory purchases related to PEGylation and advanced polymer conjugate programs, and $2.0 million for partnered contract research programs.

Royalty Expense

We have certain royalty commitments associated with the shipment and licensing of certain products. Royalty expense, which is reflected in cost of goods sold in our Consolidated Statements of Operations, was approximately $4.8 million, $3.9 million, and $5.5 million for the years ended December 31, 2008, 2007, and 2006, respectively. The overall maximum amount of the obligations is based upon sales of the applicable product and cannot be reasonably estimated.

Operating Leases

For the years ended December 31, 2008, 2007, and 2006, rent expense for operating leases was approximately $3.5 million, $4.3 million, and $4.1 million.

We were a party of an operating lease for our San Carlos manufacturing facility through 2012. On December 31, 2008, this operating lease was assigned to Novartis Pharmaceuticals Inc as part of the pulmonary asset sale. We have no further liabilities related to this lease.

Legal Matters

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.

Indemnifications in Connection with Commercial Agreements

As part of our collaboration agreement with our partners related to the license, development, manufacture and supply of drugs based on our proprietary technologies, we generally agree to defend, indemnify and hold harmless our partners from and against third party liabilities arising out of the agreement, including product liability (with respect to our activities) and infringement of intellectual property to the extent the intellectual property is developed by us and licensed to our partners. The term of these indemnification obligations is generally perpetual any time after execution of the agreement. There is generally no limitation on the potential amount of future payments we could be required to make under these indemnification obligations.

As part of our pulmonary asset sale to Novartis that closed on December 31, 2008, we and Novartis made representations and warranties and entered into certain covenants and ancillary agreements which are supported by an indemnity obligation. In the event it were determined that we breached any of the representations and warranties or covenants and agreements made by us in the transaction documents, we could incur an indemnification liability depending on the timing, nature, and amount of any such claims.

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 Consolidated Balance Sheets as of December 31, 2008 or 2007.

Indemnification of Underwriters and Initial purchasers of our Securities

In connection with our sale of equity and convertible debt securities, we have agreed to defend, indemnify and hold harmless our underwriters or initial purchasers, as applicable, as well as certain related parties from and against certain liabilities, including liabilities under the Securities Act of 1933, as amended. The term of these indemnification obligations is generally perpetual. 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 are triggered, however, we may incur substantial liabilities. Because the obligated amount of this agreement 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 Consolidated Balance Sheets as of December 31, 2008 or 2007.

Director and Officer Indemnifications

As permitted under Delaware law, and as set forth in our Certificate of Incorporation and our Bylaws, we indemnify our directors, executive officers, other officers, employees, and other agents for certain events or occurrences that arose while in such capacity. The maximum potential amount of future payments we could be required to make under this indemnification is unlimited; however, we have insurance policies that may limit our exposure and may enable us to recover a portion of any future amounts paid. Assuming the applicability of coverage, the willingness of the insurer to assume coverage, and subject to certain retention, loss limits and other policy provisions, we believe any obligations under this indemnification are not material, other than an initial $500,000 per incident for securities related claims and $250,000 per incident for non-securities related claims retention deductible per our insurance policy. However, no assurances can be given that the covering insurers will not attempt to dispute the validity, applicability, or amount of coverage without expensive litigation against these insurers, in which case we may incur substantial liabilities as a result of these indemnification obligations. Because the obligated amount of this agreement 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 Consolidated Balance Sheets as of December 31, 2008 or 2007.

Note 9—Stockholders' Equity

Preferred Stock

We have authorized 10,000,000 shares of Preferred Stock, each share having a par value of $0.0001. Of these shares, 3,100,000 shares are designated Series A Junior Participating Preferred Stock (Series A Preferred Stock). The remaining shares are undesignated. We have no preferred shares issued and outstanding as of December 31, 2008 or 2007.

Series A Preferred Stock

On June 1, 2001, the Board of Directors approved the adoption of a Share Purchase Rights Plan. Terms of the Rights Plan provide for a dividend distribution of one preferred share purchase right for each outstanding share of our Common Stock. The Rights have certain anti-takeover effects and will cause substantial dilution to a person or group that attempts to acquire us on terms not approved by our Board of Directors. The dividend distribution was payable on June 22, 2001, to the stockholders of record on that date. Each Right entitles the registered holder to purchase from us one one-hundredth of a share of Series A Preferred Stock at a price of $225.00 per one one-hundredth of a share of Series A Preferred Stock, subject to adjustment. Each one one-hundredth of a share of Series A Preferred Stock has designations and powers, preferences and rights, and the qualifications, limitations and restrictions which make its value approximately equal to the value of a share of Common Share.

The Rights are not exercisable until the Distribution Date (as defined in the Certificate of Designation for the Series A Preferred Stock). The Rights will expire on June 1, 2011, unless the Rights are earlier redeemed or exchanged by us. Each share of Series A Preferred Stock will be entitled to a minimum preferential quarterly dividend payment of $1.00, or if greater than $1.00, will be entitled to an aggregate dividend of 100 times the dividend declared per share of Common Stock. In the event of liquidation, the holders of the Series A Preferred Stock would be entitled to $100 per share or, if greater than $100, an aggregate payment equal to 100 times the payment made per share of Common Stock. Each share of Series A Preferred Stock will have 100 votes, voting together with the Common Stock. Finally, in the event of any merger, consolidation or other transaction in which our Common Stock is exchanged, each share of Series A Preferred Stock will be entitled to receive 100 times the amount of consideration received per share of Common Stock. Because of the nature of the Series A Preferred Stock dividend and liquidation rights, the value of one one-hundredth of a share of Series A Preferred Stock should approximate the value of one share of Common Stock. The Series A Preferred Stock would rank junior to any other future series of preferred stock. Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder, including, without limitation, the right to vote or to receive dividends.

Reserved Shares

At December 31, 2008, we have reserved shares of common stock for issuance as follows (in thousands):

	As of December 31, 2008
Convertible subordinated notes	9,989
Option Plans	28,922
ESPP	161
401(k) retirement plans	220
Total	39,292

Stock Option Plans

The following table summarizes information with respect to shares of our common stock that may be issued under our existing equity compensation plans as of December 31, 2008 (share number in thousands):

Plan Category	Number of securities to be issued upon exercise of outstanding options (a) (1)	Weighted-average exercise price of outstanding options (b)	Number of securities remaining available for issuance under equity compensation plans (excluding securities reflected in column(a)) (c)
Equity compensation plans approved by security holders (2)	7,833	$ 12.53	12,443
Equity compensation plans not approved by security holders	5,948	$ 11.66	2,827
Total	13,781	$ 12.16	15,270

(1) Does not include options 31,738 shares we assumed in connection with the acquisition of Shearwater Corporation (with a weighted-average exercise price of $0.03 per share).

(2) Includes shares of common stock available for future issuance under our ESPP as of December 31, 2008.

2008 Equity Incentive Plan

Our 2008 Equity Incentive Plan (2008 Plan) was adopted by the Board of Directors on March 20, 2008 and was approved by our stockholders on June 6, 2008. The purpose of the 2008 Equity Incentive Plan is to attract and retain qualified personnel, to provide additional incentives to our employees, officers, consultants and employee directors and to promote the success of our business. Pursuant to the 2008 Plan, we may grant or issue incentive stock options to employees and officers and non-qualified stock options, rights to acquire restricted stock, restricted stock units, and stock bonuses to consultants, employees, officers and non-employee directors.

The maximum number of shares of our common stock that may be issued or transferred pursuant to awards under the 2008 Plan is 9,000,000 shares. Shares issued in respect of any stock bonus or restricted stock award granted under the 2008 Plan will be counted against the plan's share limit as 1.5 shares for every one share actually issued in connection with the award. The 2008 Plan will terminate on March 20, 2018, unless earlier terminated by the Board.

The maximum term of a stock option under the 2008 Equity Incentive Plan is eight years, but if the optionee at the time of grant has voting power of more than 10% of our outstanding capital stock, the maximum term of an incentive stock option is five years. The exercise price of stock options granted under the 2008 Plan must be at least equal to 100% (or 110% with respect to holders of more than 10% of the voting power of our outstanding capital stock) of the fair market value of the stock subject to the option as determined by the closing price of our common stock on the Nasdaq Global Market on the date of grant.

To the extent that shares are delivered pursuant to the exercise of a stock option, the number of underlying shares as to which the exercise related shall be counted against the applicable share limits of the 2008 Plan, as opposed to only counting the shares actually issued. Shares that are subject to or underlie awards which expire or for any reason are cancelled or terminated, are forfeited, fail to vest or for any other reason are not paid or delivered under the 2008 Plan will again be available for subsequent awards under the 2008 Plan.

2000 Equity Incentive Plan

On April 19, 2000 the Board of Directors adopted our 2000 Equity Incentive Plan (2000 Plan) by amending and restating our 1994 Equity Incentive Plan. The purpose of the 2000 Equity Incentive Plan is to attract and retain qualified personnel, to provide additional incentives to our employees, officers, consultants and employee directors and to promote the success of our business. Pursuant to the 2000 Plan, we may grant or issue incentive stock options to employees and officers and non-qualified stock options, rights to acquire restricted stock, restricted stock units, and stock bonuses to consultants, employees, officers and non-employee directors.

The maximum term of a stock option under the 2000 Plan is eight years, but if the optionee at the time of grant has voting power of more than 10% of our outstanding capital stock, the maximum term of an incentive stock option is five years. The exercise price of incentive stock options granted under the 2000 Equity Incentive Plan must be at least equal to 100% (or 110% with respect to holders of more than 10% of the voting power of our outstanding capital stock) of the fair market value of the stock subject to the option as determined by the closing price of our common stock on the Nasdaq Global Market on the date of grant.

The Board may amend the 2000 Plan at any time, although certain amendments would require stockholder approval. The 2000 Plan will terminate on February 9, 2010, unless earlier terminated by the Board. On June 1, 2006, our stockholders approved an amendment to the 2000 Plan to increase the number of shares of Common Stock authorized for issuance under the Purchase Plan to a total of 18,250,000 shares.

2000 Non-Officer Equity Incentive Plan

Our 1998 Non-Officer Equity Incentive Plan was adopted by the Board of Directors on August 18, 1998, and was amended and restated in its entirety and renamed the 2000 Non-officer Equity Incentive Plan on June 6, 2000 (2000 Non-Officer Plan). The purpose of the 2000 Non-Officer Plan is to attract and retain qualified personnel, to provide additional incentives to employees and consultants and to promote the success of our business. Pursuant to the 2000 Non-Officer Plan, we may grant or issue non-qualified stock options, rights to acquire restricted stock and stock bonuses to employees and consultants who are neither Officers nor Directors of Nektar. The maximum term of a stock option under the 2000 Non-Officer Plan is eight years. The exercise price of stock options granted under the 2000 Non-Officer Plan are determined by the Board of Directors by reference to closing price of our common stock on the Nasdaq Global Market.

Non-Employee Directors' Stock Option Plan

On February 10, 1994, our Board of Directors adopted the Non-Employee Directors' Stock Option Plan under which options to purchase up to 400,000 shares of our Common Stock at the then fair market value may be granted to our non-employee directors. There are no remaining options available for grant under this plan as of December 31, 2008.

Restricted Stock Units

During the years ended December 31, 2008, 2007 and 2006, we issued Restricted Stock Unit awards (RSU awards) to certain officers, non-employees, directors, employees and consultants. RSU awards are similar to restricted stock in that they are issued for no consideration; however, the holder generally is not entitled to the underlying shares of common stock until the RSU award vests. Also, because the RSU awards are issued for $0.01, the grant-date fair value of the award is equal to the intrinsic value of our common stock on the date of grant. The RSU awards were issued under both the 2000 Plan and the 2000 Non-Officer Plan and are settled by delivery of shares of our common stock on or shortly after the date the awards vest.

We issued approximately 48,000, 345,000 and 1,089,000 RSU awards during the years ended December 31, 2008, 2007 and 2006. The RSU awards issued in 2008 and 2007 are service based awards and vest based on the passage of time. Approximately 1,010,000 of the RSU awards issued in 2006 vest upon the achievement of three performance-based milestones. During the year ended December 31, 2007, one of the performance based milestones was achieved and 174,035 shares vested and were released. Beginning with shares granted in the year ended December 31, 2005, each RSU award depletes the pool of options available for grant under our equity incentive plans by a ratio of 1:1.5.

Employee Stock Purchase Plan

In February 1994**,** our Board of Directors adopted the Employee Stock Purchase Plan (ESPP), pursuant to section 423(b) of the Internal Revenue Code of 1986. Under the ESPP, 800,000 shares of common stock have been authorized for issuance. The terms of the ESPP provide eligible employees with the opportunity to acquire an ownership interest in Nektar through participation in a program of periodic payroll deductions for the purchase of our common stock. Employees may elect to enroll or re-enroll in the plan on a semi-annual basis. Stock is purchased at 85% of the lower of the closing price on the first day of the enrollment period or the last day of the enrollment period.

401(k) Retirement Plan

We sponsored a 401(k) retirement plan whereby eligible employees may elect to contribute up to the lesser of 60% of their annual compensation or the statutorily prescribed annual limit allowable under Internal Revenue Service regulations. The 401(k) plan permits us to make matching contributions on behalf of all participants.

An amendment was made to the current 401(k) plan, effective January 1, 2008, to provide each eligible participant with a base employer matching cash contribution of $1,000 and up to an additional $2,000 in matching cash contributions (for a maximum aggregate of $3,000). The base annual employer matching contribution of $1,000 accrues to the participant for participating at any level in the 401(k) plan during the calendar year. The additional matching contribution accrues to the participant on a $1 for $1 basis based upon each participant's annual contribution to the 401(k) plan. In order for a participant to be eligible for any amount of the employer contribution match, the participant must be an employee at the end of the calendar year. If the participant commences employment during the calendar year, the base matching contribution will be pro-rated based on the number of calendar quarters the participant is employed during the year. Both the base and additional employer matching contribution are 100% vested on the date of the match.

In 2007 and 2006, we matched the lesser of 75% of year to date participant contributions or 3% of eligible wages. The matching contribution is in the form of shares of our common stock Vesting of the employer match, plus actual earnings thereon, is based on years of service. Participants vest 33% in employer matching contributions each year with 100% vesting after three years of service.

We issued approximately 161,000 shares and 103,000 shares of our common stock valued at approximately $1.6 million and $1.8 million in connection with the employer matching common stock contributions in 2007 and 2006 respectively. During part of 2007, shares reserved for issuance related to matching contributions that had been previously been approved by our Board of Directors became fully depleted. During the year ended December 31, 2007, our Board of Directors approved an additional 300,000 shares to be reserved for issuance related to matching contributions.

Change in Control Severance Plan

On December 6, 2006, the Board of Directors approved a Change of Control Severance Benefit Plan (CIC Plan) and on February 14, 2007 and October 21, 2008, the Board of Directors amended and restated the CIC Plan. The CIC Plan is designed to make certain benefits available to eligible employees of the Company in the event of a change of control of the Company and, following such change of control, an employee's employment with the Company or successor company is terminated in certain specified circumstances. We adopted the CIC Plan to support the continuity of the business in the context of a change of control transaction. The CIC Plan was not adopted in contemplation of any specific change of control transaction. A brief description of the material terms and conditions of the CIC Plan is provided below.

Under the CIC Plan, in the event of a change of control of the Company and a subsequent termination of employment initiated by the Company or a successor company other than for Cause or initiated by the employee for a Good Reason Resignation (as hereinafter defined) in each case within twelve months following a change of control transaction, (i) the Chief Executive Officer would be entitled to receive cash severance pay equal to 24 months base salary plus annual target incentive pay, the extension of employee benefits over this severance period and the full acceleration of unvested outstanding equity awards, and (ii) the Senior Vice Presidents and Vice Presidents (including Principal Fellows) would each be entitled to receive cash severance pay equal to twelve months base salary plus annual target incentive pay, the extension of employee benefits over this severance period and the full acceleration of unvested outstanding equity awards. In the event of a change of control of the Company and a subsequent termination of employment initiated by the Company or a successor company other than for Cause (as hereinafter defined) within twelve months following a change of control transaction, all other employees would each be entitled to receive cash severance pay equal to 6 months base salary plus annual target incentive pay, the extension of employee benefits over this severance period and the full acceleration of each such employee's unvested outstanding equity awards.

On December 6, 2006, the Board of Directors approved an amendment to all outstanding stock awards held by non-employee directors to provide for full acceleration of vesting in the event of a change of control transaction.

Note 10—Collaborative Agreements

We have entered into various license and collaborative research and development agreements with pharmaceutical and biotechnology companies. Under these arrangements, we are entitled to receive license fees, up-front payments, milestone payments when and if certain development or regulatory milestones are achieved, and/or reimbursement for research and development activities. All of our research and development agreements are generally cancelable by our partners without significant financial penalty to the partner. Revenues generated from our collaboration agreements are recorded as Collaboration and other revenue and our costs of performing these services are included in Research and development expense.

In accordance with these agreements, we recorded Collaboration and other revenue as follows (in thousands):

		Years ended December 31,		
Partner	**Agreement**	**2008**	**2007**	**2006**
Novartis Vaccines and Diagnostics, Inc.	Tobramycin inhalation powder (TIP)	$ 13,723	$ 17,036	$ 8,516
Bayer Schering Pharma AG	Cipro Inhale	11,653	8,116	4,884
Bayer Healthcare LLC	BAY41-6651 (NKTR-061, Amikacin Inhale)	10,054	1,306	—
Pfizer Inc.	Exubera® inhalation powder Next-generation inhaled insulin (NGI)	—	49,490	33,674
Other		13,500	16,324	17,088
Collaboration and other revenue		$ 48,930	$ 92,272	$ 64,162

Novartis Vaccines and Diagnostics, Inc.

Tobramycin inhalation powder (TIP)

We were party to a collaborative research, development and commercialization agreement with Novartis Vaccines and Diagnostics, Inc. related to the development of Tobramycin inhalation powder (TIP) for the treatment of lung infections caused by the bacterium *Pseudomonas aeruginosa* in cystic fibrosis patients. We were reimbursed for the cost of work performed on a revenue per annual full-time equivalent (FTE) basis, plus out of pocket third party costs. Revenue recognized approximates the cost associated with these billable services. We recognized $13.2 million, $17.0 million, and $8.5 million in reimbursed research and development revenue during the years ended December 31, 2008, 2007, and 2006.

Our collaborative research, development and commercialization agreement with Novartis Vaccines and Diagnostics, Inc. for related to TIP was terminated on December 31, 2008. As part of the termination, we relinquished its rights to future research and development funding and milestone payments, as well as to any future royalty payments or manufacturing revenue.

Bayer Schering Pharma AG

Cipro Inhale

We were party to a collaborative research, development and commercialization agreement with Bayer Schering Pharma AG related to the development of an inhaled powder formulation of Cipro Inhale for the treatment of chronic lung infections caused by *Pseudomonas aeruginosa* in cystic fibrosis patients. We were reimbursed for the cost of work performed on a revenue per annual FTE basis, plus out of pocket third party costs. Revenue recognized approximates the cost associated with these billable services. We recognized $10.3 million, $7.7 million, and $4.8 million in reimbursed research and development revenue during the years ended December 31, 2008, 2007, and 2006.

As of December 31, 2008, we assigned the collaborative research, development and commercialization agreement to Novartis Pharma AG. Pursuant to the terms of the Asset Purchase Agreement with Novartis, we maintain the right to receive potential royalties in the future based on net product sales if Cipro Inhale receives regulatory approval and is successfully commercialized. See Note 11 to Notes to Consolidated Financial Statements for further information on the pulmonary asset sale to Novartis.

Bayer Healthcare LLC

BAY41-6651 (NKTR-061, Amikacin Inhale)

On August 1, 2007, we entered into a co-development, license and co-promotion agreement with Bayer Healthcare LLC to develop a specially-formulated inhaled Amikacin (BAY41-6651). We are responsible for any future development of the nebulizer device included in the Amikacin product through the completion of Phase 3 clinical trials and scale-up for commercialization. Bayer Healthcare LLC is responsible for most future clinical development and commercialization costs, all activities to support worldwide regulatory filings, approvals and related activities, further development of BAY41-6651 and final product packaging. We received an up-front payment of $40.0 million in 2007 and performance milestone payments of $20.0 million, of which we have recognized $10.1 million and $1.3 million during the years ended December 31, 2008 and 2007, respectively. We are entitled to development milestones and sales milestones upon achievement of certain annual sales targets and royalties based on annual worldwide net sales of BAY 41-6651.

Pfizer Inc.

Exubera ® inhalation powder and Next-generation inhaled insulin (NGI)

We were a party to collaboration agreements with Pfizer related to the development of Exubera and the next-generation inhaled insulin that terminated on November 9, 2007. Under the terms of the collaboration agreements, we received contract research and development revenue as well as milestone and up-front fees related to the Exubera bulk powder insulin manufacturing, Exubera inhaler device manufacturing through our contract manufacturers, and development related to NGI. We were reimbursed for the cost of work performed on a revenue per annual FTE basis, plus out of pocket third party costs. Revenue recognized approximates the cost associated with these billable services. We recognized nil, $18.5 million, and $22.7 million, respectively, in reimbursed research and development revenue during the years ended December 31, 2008, 2007, and 2006. Please refer to Note 12 of Notes to Consolidated Financial Statements for further information on the termination of our collaborative agreements with Pfizer Inc.

Note 11 —Novartis Pulmonary Asset Sale

On December 31, 2008, we completed the sale of certain assets related to our pulmonary business, associated technology and intellectual property to Novartis Pharma AG and Novartis Pharmaceuticals Corporation (together referred to as Novartis) for a purchase price of $115.0 million in cash (the Novartis Pulmonary Asset Sale). Pursuant to the asset purchase agreement entered between Novartis and us, we transferred to Novartis certain assets and obligations related to our pulmonary technology, development and manufacturing operations including:

- dry powder and liquid pulmonary technology platform including but not limited to our pulmonary inhalation devices, formulation technology, manufacturing technology and related intellectual property;
- manufacturing and associated development services payments for the Cipro Inhale program;
- manufacturing and royalty rights to the TIP program;
- capital equipment, information systems and facility lease obligations for our pulmonary development and manufacturing facility in San Carlos, California;
- certain other interests that we had in two private companies, Pearl Therapeutics Inc. and Stamford Devices Limited; and
- approximately 140 of our personnel primarily dedicated to our pulmonary technology, development programs, and manufacturing operations, whom Novartis hired immediately following the closing of the transaction.

We have retained all of our rights to BAY41-6651 partnered with Bayer Healthcare LLC, certain royalty rights on commercial sales of Cipro Inhale by Bayer Schering Pharma AG, all rights to the ongoing development program for NKTR-063 and certain intellectual property rights specific to inhaled insulin.

Gain on sale of pulmonary assets

On December 31, 2008, we recognized a Gain on sale of pulmonary assets for certain assets sold to Novartis, which is comprised of the following (in thousands):

	Year ended December 31, 2008
Proceeds from sale of certain pulmonary assets	$ 115,000
Transaction costs	(4,609)
Net book value of property and equipment sold	(37,291)
Equity investment in Pearl Therapeutics, net	(2,658)
Goodwill related to pulmonary assets sold	(1,930)
Other, net	1,060
Gain on sale of pulmonary assets	$ 69,572

Additional Costs

In addition to the transaction costs recorded as part of the Gain on sale of pulmonary assets, we expect to incur approximately $3.7 million to $4.2 million of additional costs in connection with the Novartis Pulmonary Asset Sale, comprised of $1.9 million of one-time employee termination costs, $1.0 million to $1.5 million to relocate our IT server room, and $0.8 million in other costs. Under our Transition Service Agreement with Novartis, we have until December 31, 2009 to relocate our server room. During 2008, we have recognized approximately $2.7 million of additional costs incurred in our Statement of operations within Research and development expenses, of which we paid $1.8 million.

Note 12 —Termination of Pfizer Agreements and Inhaled Insulin Program

On November 9, 2007, we entered into a termination agreement and mutual release of our collaborative development and license agreements agreement with Pfizer and all other related agreements (Pfizer agreements). Under the termination agreement, we received a one-time payment of $135.0 million in November 2007 from Pfizer in satisfaction of all outstanding contractual obligations under our existing agreements relating to Exubera and NGI. Contractual obligations included unbilled product sales and contract research revenue through November 9, 2007, outstanding accounts receivable as of November 9, 2007, unrecovered capital costs at November 9, 2007, and contract termination costs.

On February 12, 2008, we entered into a Termination and 2008 Continuation Agreement (TCA) with Tech Group pursuant to which the manufacturing and supply agreement for the Exubera inhaler device (Exubera Inhaler MSA) was terminated in its entirety and we agreed to pay Tech Group $13.8 million in termination costs and $4.8 million in satisfaction of outstanding accounts payable. As part of the TCA, we agreed to compensate Tech Group to retain a limited number of core Exubera inhaler manufacturing personnel and its dedicated Exubera inhaler manufacturing facility for a limited period in 2008. We also entered into a letter agreement with Pfizer to retain a limited number of Exubera manufacturing personnel at Pfizer's Terre Haute, Indiana manufacturing facility during March and April 2008.

On February 14, 2008, we entered into a Termination and Mutual Release Agreement with Bespak pursuant to which the Exubera Inhaler MSA was terminated in its entirety and we agreed to pay Bespak £11.0 million, or approximately $21.6 million, including $3.0 million in satisfaction of outstanding accounts payable and $18.6 million in termination costs and expenses that were due and payable under the termination provisions of the Exubera Inhaler MSA, which included reimbursement of inventory, inventory purchase commitments, unamortized depreciation on property and equipment, severance costs and operating lease commitments.

On April 9, 2008, we announced that we had ceased all negotiations with potential partners for Exubera and NGI as a result of new data analysis from ongoing clinical trials conducted by Pfizer which indicated an increase in the number of new cases of lung cancer in Exubera patients who were former smokers as compared to patients in the control group who were former smokers. Following the termination of our inhaled insulin programs on April 9, 2008, we terminated our continuation agreements with Tech Group and Pfizer.

Gain on Termination of Collaborative Agreements, Net

During the year ended December 31, 2007, we recognized a Gain on termination of collaborative agreements, net which is comprised of the following (in thousands):

	Year ended December 31, 2007
Pfizer termination settlement payment received	$ 135,000
Exubera Inhaler Manufacturing and Supply Agreement Termination	
Tech Group	(13,765)
Bespak	(18,598)
	102,637
Settlement of assets and liabilities related to Pfizer	(23,459)
Gain on termination of collaborative agreements, net	$ 79,178

Idle Exubera Manufacturing Capacity Costs

Idle Exubera manufacturing capacity costs, which is disclosed as a component of Other cost of revenue, include costs payable to Pfizer and Tech Group under our continuation agreements and internal salaries, benefits and stock-based compensation related to Exubera commercial manufacturing employees, overhead at our San Carlos manufacturing facility, including rent, utilities and maintenance and depreciation of property and equipment. We incurred these costs from the termination of the Pfizer Agreements on November 9, 2007 through the termination of our inhaled insulin programs in April 2008. For the years ended December 31, 2008 and 2007, we recognized Cost of idle Exubera manufacturing capacity of $6.8 million and $6.3 million, respectively.

Accrued Expenses to Contract Manufacturers

As of December 31, 2007, we recorded $40.4 million of accrued expenses to Bespak and Tech Group for outstanding accounts payable and termination costs and expenses that were due and payable under the termination provisions of the Exubera Inhaler MSA. This liability was repaid in its entirety in 2008. As of December 31, 2008, we have no further liabilities related to the Pfizer Agreements.

Note 13—Impairment of Long Lived Assets

During the years ended December 31, 2008, 2007, and 2006, we recorded the following charges in the Impairment of long lived assets line item of our Consolidated Statements of Operations (in thousands):

	Years ended December 31,		
	2008	2007	2006
Property and Equipment			
PEGylation manufacturing equipment	$ 1,458	$ —	$ —
Exubera-related	—	28,396	—
Bradford, UK	—	—	1,156
Construction in progress	—	—	2,757
Aerogen core-technology intangible assets	—	—	5,497
Impairment of long lived assets	$ 1,458	$ 28,396	$ 9,410

PEGylation manufacturing equipment

As of December 31, 2008, we determined that a specialized dryer used in our PEGylation manufacturing facility was not functioning properly and is not being used in operations currently. We performed an impairment analysis and determined the carrying value exceeded the fair value based on a discounted cash flow model. As a result, we recorded an impairment loss for the net book value of the equipment of $1.5 million.

Exubera-related property and equipment

On November 9, 2007, we entered into a termination agreement and mutual release with Pfizer related to Exubera and NGI. As a result, we performed an impairment analysis of the property and equipment that support Exubera commercial operations and NGI (Exubera-related assets), including machinery and equipment at our contract manufacturer locations and machinery, equipment, and leasehold improvements in San Carlos and determined the fair value based on a discounted cash flow model. As of December 31, 2007, we concluded that the carrying value exceeded the estimated future cash flow and recorded an impairment charge of $28.4 million for the Exubera-related assets. See Note 12 for further discussion of the termination of the inhaled insulin programs.

Bradford UK property and equipment

In June 2006, we involuntarily terminated the majority of the personnel located at our Bradford, UK site, commenced with plans to wind-down the location and its related operations, and reassessed the useful life of the remaining laboratory and office equipment. We determined that these assets could not be redeployed and had no future or alternative use. Due to our revised estimate of the useful life of these assets, we accelerated approximately $1.2 million of remaining depreciation in the year ended December 31, 2006.

Construction in progress

In December 2006, we determined that one of our construction-in-progress assets would no longer be completed based on the contract renegotiation with one of our collaboration partners and we recorded an impairment loss for the costs incurred to date of $2.8 million.

Aerogen core-technology intangible assets

As part of the October 2005 acquisition of Aerogen, Inc., we also acquired $7.2 million in core technology intangible assets. In late December 2006, we entered into a non-binding letter of intent to sell our general purpose nebulizer device business to the former management of Aerogen Ireland, a wholly-owned subsidiary of Aerogen, Inc. During the year ended December 31, 2006, we determined that the non-binding letter of intent to sell the general purpose nebulizer device business, the anticipated proceeds of such potential sale, and the historical losses of the general purposes nebulizer device business were indicators that this intangible asset did not have future value and, as a result, we recorded a $5.5 million impairment charge.

Note 14—Workforce Reduction Plans

In an effort to reduce ongoing operating costs and improve our organizational structure, efficiency and productivity, we executed workforce reduction plans in May 2007 (2007 Plan) and February 2008 (2008 Plan) designed to streamline the company, consolidate corporate functions, and strengthen decision-making and execution within our business units.

The 2007 Plan reduced our workforce by approximately 180 full-time employees, or approximately 25 percent of our regular full-time employees. The 2008 Plan reduced our workforce by approximately 110 employees, or approximately 20 percent of our regular full-time employees. The 2007 Plan and the 2008 Plan cost approximately $8.4 million and $5.0 million, respectively, comprised of cash payments for severance, medical insurance, and outplacement services. Both plans were substantially complete at December 31, 2008.

For the years ended December 31, 2008 and 2007, workforce reduction charges were recorded in our Consolidated Financial Statements as follows (in thousands):

	Years ended December 31,	
	2008	2007
Cost of goods sold, net of inventory change	$ 148	$ 974
Other cost of revenue	1,221	—
Research and development expense	3,087	5,791
General and administrative expense	517	1,617
Total workforce reduction charges	$ 4,973	$ 8,382

The following table summarizes the liabilities associated with the 2007 Plan and the 2008 Plan included in Accrued compensation in our Consolidated Balance Sheets as of December 31, 2008 and December 31, 2007, and the activity during the year ended December 31, 2008 (in thousands):

	2007 Plan	2008 Plan	Total
Balance at December 31, 2007	$ 580	$ —	$ 580
Charges	—	4,973	4,973
Payments	(580)	(4,868)	(5,448)
Balance at December 31, 2008	$ —	$ 105	$ 105

Note 15—Stock-Based Compensation

We issue stock-based awards from three equity incentive plans, which are more fully described in Note 9 Stockholder's Equity. Stock-based compensation cost is recorded in the following line items of our Consolidated Financial Statements:

	Years ended December 31,		
	2008	2007	2006
Cost of goods sold, net of change in inventory	$ 269	$ 1,003	$ 1,614
Research and development	4,642	6,275	9,692
General and administrative	4,960	5,915	17,837
Total compensation cost for share-based arrangements	$ 9,871	$ 13,193	$ 29,143

For the years ended December 31, 2008, 2007, and 2006, we recorded approximately $2.2 million, $0.5 million, and $11.8 million, respectively, of stock-based compensation expense related to modifications of certain stock grants in connection with employment separation agreements. Generally, the modifications extended the option holder's exercise period beyond the 90 day period after termination and accelerated a portion of the option holder's unvested grants. Stock-based compensation charges are non-cash charges and as such have no impact on our financial position or reported cash flows.

Aggregate Unrecognized Stock-based Compensation Expense

As of December 31, 2008, total unrecognized compensation expense related to unvested stock-based compensation arrangements under the Options Plans is expected to be recognized over a weighted-average period of 1.98 years as follows (in thousands):

Fiscal Year	As of December 31, 2008
2009	$ 8,080
2010	6,845
2011	5,662
2012 and thereafter	966
	$ 21,553

Black-Scholes Assumptions

The following tables list the Black-Scholes assumptions used to calculate the fair value of employee stock options and ESPP purchases.

	Year ended December 31, 2008		Year ended December 31, 2007		Year ended December 31, 2006	
	Employee Stock Options	ESPP	Employee Stock Options	ESPP	Employee Stock Options	ESPP
Average risk-free interest rate	2.5%	2.00%	4.2%	4.8%	4.8%	5.2%
Dividend yield	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Volatility factor	51.58%	72.34%	53.3%	38.4%	63.1%	33.3%
Weighted average expected life	4.97 years	0.5 years	5.09 years	0.5 years	5.20 years	0.5 years

Generally the stock-based grants have expected terms ranging from 30 months to 61 months. For the period ended December 31, 2008, the annual forfeiture rate for directors, employee options, and employee RSU awards was estimated to be 0%, 11%, and 25% respectively. For the twelve months ended December 31, 2007 and 2006, the annual forfeiture rate for executives and staff was estimated to be 4.7% and 7.4%, respectively, based on our qualitative and quantitative analysis of our historical forfeitures.

The grant date fair value of RSU awards is always equal to the intrinsic value of the award on the date of grant since the awards were issued for no consideration. The weighted average life of the 2008, 2007, and 2006 RSU awards is estimated to be 0.8 years, 1.2 years, and 3.0 years, respectively.

Summary of Stock Option Activity

The table below presents a summary of stock option activity under the 2000 Equity Incentive Plan, the Non-Employee Directors' Stock Option Plan, and the 2000 Non-Officer Equity Incentive Plan (in thousands, except for price per share information):

	Options Outstanding		Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Life (in years)	Aggregate Intrinsic Value (1)
	Number of Shares	Exercise Price Per Share			
Balance at December 31, 2005	13,253	$ 0.01–61.63	$ 17.85	5.38	$ 37,678
Options granted	1,115	14.36–21.51	17.88		
Options exercised	(2,160)	0.05–20.41	9.51		$ 18,651
Options forfeited & canceled	(1,501)	4.62–52.16	21.86		
Balance at December 31, 2006	10,707	$ 0.01–61.63	$ 18.97	4.78	$ 15,348
Options granted	5,257	5.98–15.24	9.87		
Options exercised	(429)	0.01–14.25	6.80		$ 1,770
Options forfeited & canceled	(3,323)	4.50–55.19	18.47		
Balance at December 31, 2007	12,212	$ 0.01–61.63	$ 15.62	5.20	$ 643
Options granted	6,180	2.83–7.13	6.02		
Options exercised	(39)	0.03–7.33	5.72		$ 42
Options forfeited & canceled	(4,802)	0.01–61.63	12.93		
Balance at December 31, 2008	13,551	$ 0.01–60.88	$ 12.13	4.84	$ 2,032
Exercisable at December 31, 2008	7,144		$ 16.57	2.89	$ 276
Exercisable at December 31, 2007	7,023		$ 19.15	3.64	$ 584
Exercisable at December 31, 2006	8,185		$ 19.88	4.09	$ 12,229

(1) Aggregate Intrinsic Value represents the difference between the exercise price of the option and the closing market price of our common stock on the exercise date or December 31, as applicable.

The weighted-average grant-date fair value of options granted during the years ended December 31, 2008, 2007, and 2006 was $2.79, $5.11, and $10.54, respectively. The estimated fair value of options that vested during the years ended December 31, 2008, 2007, and 2006 was $9.8 million, $8.7 million, and $12.0 million, respectively.

The following table provides information regarding our outstanding stock options as of December 31, 2008 (in thousands except for price per share information and contractual life):

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Number of Shares	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Life (in years)	Number of Shares	Weighted-Average Exercise Price Per Share
$0.01 – $4.83	1,505	$ 4.34	7.40	38	$ 0.20
$4.90 – $6.46	1,376	$ 5.99	6.24	521	$ 5.97
$6.50 – $6.65	2,590	$ 6.65	5.99	499	$ 6.65
$6.66 – $7.58	1,463	$ 7.01	5.99	568	$ 7.04
$7.63 – $11.86	1,423	$ 9.86	4.64	970	$ 9.88
$12.30 – $14.52	1,626	$ 13.97	3.74	1,162	$ 13.90
$14.53 – $19.29	1,373	$ 17.55	3.47	1,216	$ 17.62
$19.40 – $27.88	1,864	$ 26.16	1.99	1,839	$ 26.24
$27.96 – $60.88	331	$ 37.91	1.12	331	$ 37.91
	13,551	$ 12.13	4.84	7,144	$ 16.57

Summary of RSU Award Activity

During 2008, we issued 47,900 RSU awards, respectively to certain officers on a time-based vesting schedule. Expense for these awards is recognized ratably over the underlying time-based vesting period and will settle by delivery of shares of our common stock on or shortly after the date the awards vest. The RSU awards become fully vested over a period of 12 months. We are expensing the grant date fair value of the awards ratably over the service period.

During 2007, we issued 344,811 RSU awards, respectively to certain officers and employees on a time-based vesting schedule. Expense for these awards is recognized ratably over the underlying time-based vesting period and will settle by delivery of shares of our common stock on or shortly after the date the awards vest. The RSU awards become fully vested over a period of 12 to 48 months. We are expensing the grant date fair value of the awards ratably over the service period.

During 2006, we issued RSU awards totaling 1,088,300 shares of our common stock to certain employees and directors. The RSU awards are settled by delivery of shares of our common stock on or shortly after the date the awards vest. A significant portion of these awards vest based upon achieving three pre-determined performance milestones which were initially expected to occur over a period of 40 months. We are expensing the grant date fair value of the awards ratably over the expected performance period.

One of the three milestones was achieved during the three-month period ended June 30, 2007 and approximately 174,000 shares were vested and released. During 2007, we determined that the second milestone would not be met. As a result, we reversed all previously recorded compensation expense related to this performance milestone, approximately $2.8 million, in the third quarter of 2007. Based on our current drug candidate development efforts, we currently estimate that the achievement of the third performance milestone is probable by the third quarter in 2011. 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.

A summary of RSU award activity is as follows (in thousands):

	Units Issued	Weighted-Average Remaining contractual Life (in years)	Weighted-Average Grant-Date Fair value(1)	Aggregate Intrinsic Value
Balance at December 31, 2005	284	1.14		$ 4,676
Granted	1,088		$ 19.55	
Released	(178)			$ 3,184
Forfeited & Canceled	(110)			
Balance at December 31, 2006	1,084	1.52		$ 16,479
Granted	345		$ 11.01	
Released	(334)			$ 3,808
Forfeited & Canceled	(360)			
Balance at December 31, 2007	735	2.03		$ 4,925
Granted	48		$ 5.26	
Released	(107)			$ 487
Forfeited & Canceled	(411)			
Balance at December 31, 2008	265	2.48		$ 1,472

(1) Fair value represents the difference between the exercise price of the award and the closing market price of our common stock on the release date or the year ended December 31, 2008 as applicable.

Note 16—Income Taxes

For financial reporting purposes, "Loss before provision for income taxes," includes the following components (in thousands):

	Years ended December 31,		
	2008	2007	2006
Domestic	$ (69,350)	$ (30,143)	$ (147,059)
Foreign	34,208	(1,309)	(6,874)
Total	$ (35,142)	$ (31,452)	$ (153,933)

As of December 31, 2008, we had a net operating loss carryforward for federal income tax purposes of approximately $720.6 million, portions of which will begin to expire in 2009. We had a total state net operating loss carryforward of approximately $423.1 million, which will begin to expire in 2010. Due to the discontinuation of our Bradford, UK operations, we no longer have a foreign net operating loss carryforward available as of December 31, 2008.

Utilization of the federal and state net operating loss and credit carryforwards may be subject to a substantial annual limitation due to the "change in ownership" provisions of the Internal Revenue Code of 1986 and similar state provisions. The annual limitation may result in the expiration of net operating losses and credits before utilization.

The provision (benefit) for income taxes consists of the following (in thousands):

	Years ended December 31,		
	2008	2007	2006
Current:			
Federal	$ (970)	$ 194	$ —
State	(69)	782	6
Foreign	519	333	—
Total Current	(520)	1,309	6
Deferred:			
Federal	—	—	—
State	—	—	822
Foreign	(286)	—	—
Total Deferred	(286)	—	822
Provision (Benefit) for income taxes	$ (806)	$ 1,309	$ 828

Income tax provision (benefit) related to continuing operations differs from the amounts computed by applying the statutory income tax rate of 35% to pretax loss as follows (in thousands):

	Years ended December 31,		
	2008	2007	2006
U.S. federal provision (benefit)			
At statutory rate	$ (12,300)	$ (10,998)	$ (52,337)
State taxes	(69)	782	6
Change in valuation allowance	29,768	27,829	50,385
Foreign tax differential	(11,754)	—	—
Foreign subsidiary investment	(4,777)	—	—
Unrecognized tax credits	(2,366)	(13,109)	—
Capital lease true-up	(1,431)	—	—
Expiring tax attributes	1,508	—	—
Non-deductible employee compensation	14	210	2,138
Sale of Irish subsidiary	—	(3,604)	—
Investment impairment and non-deductible amortization	—	—	636
Other	601	199	—
Total	$ (806)	$ 1,309	$ 828

Deferred income taxes reflect the net tax effects of loss and credit carryforwards and temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of our deferred tax assets for federal and state income taxes are as follows (in thousands):

	December 31,	
	2008	2007
Deferred tax assets:		
Net operating loss carryforwards	$ 289,631	$ 254,419
Research and other credits	50,350	47,274
Capitalized research expenses	4,563	6,670
Deferred revenue	28,659	11,050
Depreciation	—	7,423
Reserve and accruals	9,629	24,495
Stock based compensation	20,315	16,375
Capital loss carryforward	—	3,918
Other	5,163	6,170
Deferred tax assets before valuation allowance	408,310	377,794
Valuation allowance for deferred tax assets	(402,907)	(375,318)
Total deferred tax assets	$ 5,403	$ 2,476
Deferred tax liabilities:		
Depreciation	(1,479)	—
Acquisition related intangibles	(3,352)	(2,476)
Other	(286)	—
Total deferred tax liabilities	$ (5,117)	$ (2,476)
Net deferred tax assets	$ 286	$ —

Realization of our deferred tax assets is dependent upon future earnings, if any, the timing and amount of which are uncertain. Because of our lack of U.S. earnings history, the net U.S. deferred tax assets have been fully offset by a valuation allowance. The valuation allowance increased by $27.6 million and $52.8 million during the years ended December 31, 2008 and 2007, respectively. The valuation allowance includes approximately $35.6 million of benefit as of December 31, 2008 and December 31, 2007 related to stock based compensation and exercises, prior to the implementation of SFAS No. 123R, that will be credited to additional paid in capital when realized. We have federal research credits of approximately $20.8 million, which will begin to expire in 2009 and state research credits of approximately $16.8 million which have no expiration date. We have federal orphan drug credits of $12.8 million which will expire in 2024.

Undistributed earnings of our foreign subsidiary in India are considered to be permanently reinvested and accordingly, no deferred U.S. income taxes have been provided thereon. Upon distribution of those earnings in the form of dividends or otherwise, we would be subject to U.S. income tax.

In July 2006, the FASB issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*. This interpretation, among other things, creates a two-step approach for evaluating uncertain tax positions. Recognition occurs when an enterprise concludes that a tax position, based on its technical merits, is more-likely-than-not to be sustained upon examination. Measurement determines the amount of benefit that more-likely-than-not will be realized. De-recognition of a tax position that was previously recognized would occur when a company subsequently determines that a tax position no longer meets the more-likely-than-not threshold of being sustained. FIN 48 specifically prohibits the use of a valuation allowance as a substitute for de-recognition of tax positions, and it has expanded disclosure requirements.

As of December 31, 2008 and December 31, 2007, we had $11.7 million and $9.2 million, respectively, of unrecognized tax benefits. 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.

It is reasonably possible that certain unrecognized tax benefits may increase or decrease within the next twelve months due to tax examination changes, settlement activities, expirations of statute of limitations, or the impact on recognition and measurement considerations related to the results of published tax cases or other similar activities. We do not anticipate any significant changes to unrecognized tax benefits over the next 12 months.

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 under the provisions of FIN 48. During the years ended December 31, 2008 and 2007, no interest or penalties were required to be recognized relating to unrecognized tax benefits.

We file income tax returns in the U.S., as well as California, Alabama, 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 2005 for U.S. and Alabama and 2004 for California, although depending upon jurisdiction, tax years may remain open subject to limitations. We have evaluated the need for additional tax reserves for any audits as part of our FIN 48 adoption process.

We have the following activity relating to unrecognized tax benefits (in thousands):

	December 31,	
	2008	**2007**
Beginning balance	$ 9,222	$ 7,176
Tax positions related to current year		
Additions	2,438	2,046
Reductions	—	—
Tax positions related to prior year		
Additions	—	—
Reductions	—	—
Settlements	—	—
Lapses in statute of limitations	—	—
Ending balance	$ 11,660	$ 9,222

Note 17—Segment Reporting

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, PEGylation technology and pulmonary technology.

Our revenue is derived primarily from clients in the pharmaceutical and biotechnology industries. Four of our customers, Bayer (including Bayer Healthcare LLC and Bayer Schering Pharma AG), UCB Pharma, Novartis, and Roche represented 24%, 16%, 15%, and 14%, respectively, of our total revenue during the year ended December 31, 2008. Due to the termination of our collaborative agreements with Pfizer, we did not receive any revenue from Pfizer in 2008 related to Exubera or NGI. Revenue from Pfizer Inc. represented 69% and 64% of our revenue for the years ended December 31, 2007 and 2006, respectively.

Revenue by geographic area is based on the shipping locations of the customers. The following table sets forth revenue by geographic area (in thousands):

	Years ended December 31,		
	2008	2007	2006
United States	$ 30,800	$ 212,990	$ 182,959
European countries	59,385	60,037	33,471
All other countries	—	—	1,288
Total Revenue	$ 90,185	$ 273,027	$ 217,718

At December 31, 2008, $69.2 million, or approximately 94%, of the net book value of our property and equipment was located in the United States and $4.4 million, or approximately 6%, was located in India. At December 31, 2007, approximately 98% of the net book value of our property and equipment of $114.4 million was located in the United States.

Note 18—Selected Quarterly Financial Data (Unaudited)

The following table sets forth certain unaudited quarterly financial data. In our opinion, the unaudited information set forth below has been prepared on the same basis as the audited information and includes all adjustments necessary to present fairly the information set forth herein. We have experienced fluctuations in our quarterly results. We expect these fluctuations to continue in the future. Due to these and other factors, we believe that quarter-to-quarter comparisons of our operating results will not be meaningful, and you should not rely on our results for one quarter as an indication of our future performance. Certain items previously reported in specific financial statement captions have been reclassified to conform to the current period presentation. Such reclassifications have not impacted previously reported revenues, operating loss or net loss. All data is in thousands except per share information.

	Fiscal Year 2008				Fiscal Year 2007			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Product sales and royalty revenue (1)	$ 10,371	$ 9,010	$ 9,474	$ 12,400	$ 71,355	$ 47,001	$ 35,697	$ 26,702
Collaboration and other revenue	$ 9,621	$ 11,392	$ 11,965	$ 15,952	$ 13,661	$ 18,916	$ 20,624	$ 39,071
Gross margin on product sales	$ 3,144	$ 3,566	$ 4,125	$ 2,204	$ 15,727	$ 8,626	$ 9,391	$ 9,315
Research and development expenses	$ 37,373	$ 33,500	$ 38,265	$ 45,279	$ 37,492	$ 41,000	$ 35,773	$ 39,310
General and administrative expenses (2)	$ 11,947	$ 13,329	$ 12,386	$ 13,835	$ 16,971	$ 13,415	$ 12,663	$ 14,233
Impairment of long lived assets	$ —	$ —	$ —	$ 1,458	$ —	$ —	$ —	$ 28,396
Gain on sale of pulmonary assets	$ —	$ —	$ —	$ (69,572)	$ —	$ —	$ —	$ —
Gain on termination of collaborative agreements, net	$ —	$ —	$ —	$ —	$ —	$ —	$ —	$ (79,178)
Operating income (loss)	$ (41,889)	$ (33,358)	$ (34,561)	$ 27,156	$ (25,969)	$ (27,988)	$ (19,572)	$ 37,381
Interest expense	$ 3,918	$ 3,929	$ 3,988	$ 3,357	$ 4,933	$ 4,702	$ 4,773	$ 4,230
Gain on extinguishment of debt	$ —	$ —	$ —	$ 50,149	$ —	$ —	$ —	$ —
Net income (loss)	$ (40,705)	$ (33,375)	$ (37,038)	$ 76,782	$ (25,673)	$ (27,510)	$ (18,620)	$ 39,042
Basic and diluted net income (loss) per share (3)(4)	$ (0.44)	$ (0.36)	$ (0.40)	$ 0.83	$ (0.28)	$ (0.30)	$ (0.20)	$ 0.42

(1) Exubera commercialization readiness revenue was reclassified from Product sales and royalties to Collaboration and other revenue.

(2) Amortization of other intangible assets was previously separately disclosed, but has been combined with General and administrative expenses for the years ended December 31, 2008, 2007, and 2006.

(3) Quarterly loss per share amounts may not total the year-to-date loss per share due to rounding.

(4) During the fourth quarter of 2008 and 2007, there were approximately 81 dilutive shares and 578 dilutive shares, respectively, outstanding which did not change earnings per share.

SCHEDULE II

NEKTAR THERAPEUTICS

VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

YEARS ENDED DECEMBER 31, 2008, 2007, and 2006

Description	Balance at Beginning of Year	Charged to Costs and Expenses, Net of Reversals	Utilizations	Balance At End of Year
		(In thousands)		
2008:				
Allowance for doubtful accounts	$ 33	$ 61	$ (2)	$ 92
Allowance for inventory reserves	$ 5,772	$ 2,668	$ (3,451)	$ 4,989
2007:				
Allowance for doubtful accounts	$ 357	$ (16)	$ (308)	$ 33
Allowance for inventory reserves	$ 4,160	$ 4,670	$ (3,058)	$ 5,772
2006:				
Allowance for doubtful accounts	$ 70	$ 380	$ (93)	$ 357
Allowance for inventory reserves	$ 3,068	$ 2,592	$ (1,500)	$ 4,160

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

Not applicable.

Item 9A. 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 our 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. Accordingly, management believes that the financial statements included in this report fairly present in all material respects our financial condition, results of operations and cashflows for the periods presented.

Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

Our management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2008. In making its assessment of internal control over financial reporting, management used the criteria described in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

Based on our evaluation under the framework described in *Internal Control—Integrated Framework*, our management concluded that our internal control over financial reporting was effective as of December 31, 2008.

The effectiveness of our internal control over financial reporting as of December 31, 2008 has been audited by an independent registered public accounting firm, as stated in their report, which is included herein.

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. In October 2008, we completed the implementation of an upgraded enterprise resource planning (ERP) system designed and implemented to make our financial reporting more efficient and integrated across our enterprise. The implementation of the ERP system did not result in changes to our controls over financial reporting. As a result, there was no change in our internal control over financial reporting during the quarter ended December 31, 2008, which was identified in connection with our management's evaluation required by Exchange Act Rules 13a-15(f) and 15d-15(f) that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent 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 error or mistake. 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.

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Information relating to our executive officers required by this item is set forth in Part I—Item 1 of this report under the caption "Executive Officers of the Registrant" and is incorporated herein by reference. The other information required by this Item is incorporated by reference from the definitive proxy statement for our 2009 Annual Meeting of Stockholders to be filed with the SEC pursuant to Regulation 14A (Proxy Statement) not later than 120 days after the end of the fiscal year covered by this Form 10-K under the captions "Corporate Governance and Board of Directors," "Proposal 1—Election of Directors" and "Section 16(a) Beneficial Ownership Reporting Compliance."

Information regarding our audit committee financial expert will be set forth in the Proxy Statement under the caption "Audit Committee," which information is incorporated herein by reference.

In December 2003, we adopted a Code of Business Conduct and Ethics applicable to all employees, including the principal executive officer, principal financial officer and principal accounting officer or controller, or persons performing similar functions. The Code of Business Conduct and Ethics is posted on our website at *www.nektar.com*. Amendments to, and waivers from, the Code of Business Conduct and Ethics that apply to any of these officers, or persons performing similar functions, and that relate to any element of the code of ethics definition enumerated in Item 406(b) of Regulation S-K will be disclosed at the website address provided above and, to the extent required by applicable regulations, on a current report on Form 8-K.

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 their 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.

Item 11. Executive Compensation

The information required by this Item is included in the Proxy Statement and incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this Item is included in the Proxy Statement and incorporated herein by reference.

Item 13. Certain Relationships and Related Transactions and Director Independence

The information required by this Item is included in the Proxy Statement and incorporated herein by reference.

Item 14. Principal Accountant Fees and Services

The information required by this Item is included in the Proxy Statement and incorporated herein by reference.

PART IV

Item 15. Exhibits, Financial Statement Schedules

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

(1) Consolidated Financial Statements:

The following financial statements are filed as part of this report under Item 8 "Financial Statements and Supplementary Data."

(2) Financial Statement Schedules:

Schedule II, *Valuation and Qualifying Accounts and Reserves*, is filed as part of this Annual Report on Form 10-K. All other financial statement schedules have been omitted because they are not applicable, or the information required is presented in our consolidated financial statements and notes thereto under Item 8 of this Annual Report on Form 10-K.

(3) Exhibits.

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

Exhibit Number		Description of Documents
2.1	(23)	Asset Purchase Agreement, dated October 20, 2008, by and between Nektar Therapeutics, a Delaware corporation, AeroGen, Inc., a Delaware corporation and wholly-owned subsidiary of Nektar Therapeutics, Novartis Pharmaceuticals Corporation, a Delaware corporation, and Novartis Pharma AG, a Swiss corporation+
3.1	(1)	Certificate of Incorporation of Inhale Therapeutic Systems (Delaware), Inc.
3.2	(2)	Certificate of Amendment of the Amended Certificate of Incorporation of Inhale Therapeutic Systems, Inc.
3.3	(3)	Certificate of Designation of Series A Junior Participating Preferred Stock of Nektar Therapeutics
3.4	(4)	Certificate of Designation of Series B Convertible Preferred Stock of Nektar Therapeutics
3.5	(5)	Certificate of Ownership and Merger of Nektar Therapeutics
3.6	(6)	Amended and Restated Bylaws of Nektar Therapeutics
4.1		Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6
4.2	(5)	Specimen Common Stock certificate
4.3	(3)	Rights Agreement, dated as of June 1, 2001, by and between Nektar Therapeutics and Mellon Investor Services LLC, as Rights Agent
4.4	(3)	Form of Right Certificate
4.5	(7)	Indenture, dated September 28, 2005, by and between Nektar Therapeutics, as Issuer, and J.P. Morgan Trust Company, National Association, as Trustee
4.6	(7)	Registration Right Agreement, dated as of September 28, 2005, among Nektar Therapeutics and entities named therein

Exhibit Number		Description of Documents
10.1	(8)	1994 Non-Employee Directors' Stock Option Plan, as amended++
10.2	(9)	1994 Employee Stock Purchase Plan, as amended and restated++
10.3	(10)	2000 Non-Officer Equity Incentive Plan, as amended and restated++
10.4	(11)	Form of 2000 Non-Officer Equity Incentive Plan Stock Option Agreement (Nonstatutory Stock Option)++
10.5	(11)	Form of 2000 Non-Officer Equity Incentive Plan Stock Option Agreement (Nonstatutory (Unapproved) Stock Option)++
10.6	(12)	Forms of 2000 Non-Officer Equity Incentive Plan Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement++
10.7	(13)	2000 Equity Incentive Plan, as amended and restated++
10.8	(14)	Form of Stock Option Agreement under the 2000 Equity Incentive Plan++
10.9	(12)	Forms of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement under the 2000 Equity Incentive Plan++
10.10	(15)	Form of Non-Employee Director Stock Option Agreement under the 2000 Equity Incentive Plan++
10.11	(15)	Form of Non-Employee Director Restricted Stock Unit Agreement under the 2000 Equity Incentive Plan++
10.12	(15)	Employment Transition and Separation Release Agreement, executed effective on September 4, 2007, with Louis Drapeau++
10.13	(15)	Employment Transition and Separation Release Agreement, executed effective on October 5, 2007, with David Johnston++
10.14	(22)	Compensation Plan for Non-Employee Directors, as amended and restated++
10.15	(10)	401(k) Retirement Plan++
10.16	(22)	2008 Discretionary Performance-Based Incentive Compensation Policy++
10.17	(23)	Amended and Restated Change of Control Severance Benefit Plan++
10.18	(17)	Transition and Retirement Agreement, dated March 13, 2006, with Ajit S. Gill++
10.19	(18)	Letter Amendment, dated October 5, 2006, with Ajit S. Gill, amending that certain Transition and Retirement Agreement, dated March 13, 2006, with Mr. Gill++
10.20	(23)	2008 Equity Incentive Plan++
10.21	(23)	Forms of Stock Option Grant Notice and of Stock Option Agreement under the 2008 Equity Incentive Plan++
10.22	(23)	Forms of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement under the 2008 Equity Incentive Plan++
10.23	(19)	Separation and General Release Agreement, dated November 17, 2008, with John S. Patton++
10.24	(20)	Bonus and General Release Agreement, dated December 27, 2008, with Nevan C. Elam++
10.25	(15)	Form of Severance Letter for executive officers of the company++
10.26	(23)	Amended and Restated Letter Agreement, executed effective on December 1, 2008, with Howard W. Robin++
10.27	(23)	Amended and Restated Letter Agreement, executed effective on December 1, 2008, with John Nicholson++
10.28	(23)	Amended and Restated Letter Agreement, executed effective on December 1, 2008, with Bharatt M. Chowrira, Ph.D., J.D.++

Exhibit Number		Description of Documents
10.29	(23)	Amended and Restated Letter Agreement, executed effective on December 1, 2008, with Dr. Randall Moreadith++
10.30	(15)	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
10.31	(21)	Settlement Agreement and General Release, dated June 30, 2006, by and between The Board of Trustees of the University of Alabama, The University of Alabama in Huntsville, Nektar Therapeutics AL Corporation (a wholly-owned subsidiary of Nektar Therapeutics), Nektar Therapeutics and J. Milton Harris
10.32	(15)	Co-Development, License and Co-Promotion Agreement, dated August 1, 2007, between Nektar Therapeutics (and its subsidiaries) and Bayer Healthcare LLC+
10.33	(16)	Termination Agreement and Mutual Release, dated November 9, 2007, between Nektar Therapeutics and Pfizer Inc.+
10.34	(23)	Exclusive Research, Development, License and Manufacturing and Supply Agreement, by and among Nektar AL Corporation, Baxter Healthcare SA, and Baxter Healthcare Corporation, dated September 26, 2005, as amended+
10.35	(23)	Exclusive License Agreement, dated December 31, 2008, between Nektar Therapeutics, a Delaware corporation, and Novartis Pharma AG, a Swiss corporation+
21.1	(23)	Subsidiaries of Nektar Therapeutics
23.1	(23)	Consent of Independent Registered Public Accounting Firm
24		Power of Attorney (reference is made to the signature page)
31.1	(23)	Certification of Nektar Therapeutics' principal executive officer required by Rule 13a-14(a) or Rule 15d-14(a)
31.2	(23)	Certification of Nektar Therapeutics' principal financial officer required by Rule 13a-14(a) or Rule 15d-14(a)
32.1*	(23)	Section 1350 Certifications

+ Confidential treatment with respect to specific portions of this Exhibit has been requested, and such portions are omitted and have been filed separately with the SEC.

++ Management contract or compensatory plan or arrangement.

* Exhibit 32.1 is being furnished and shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall such exhibit be deemed to be incorporated by reference in any registration statement or other document filed under the Securities Act of 1933, as amended, or the Securities Exchange Act, except as otherwise stated in such filing.

(1) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Quarterly Report on Form 10-Q for the quarter ended June 30, 1998.

(2) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Quarterly Report on Form 10-Q for the quarter ended June 30, 2000.

(3) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K, filed on June 4, 2001.

(4) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K, filed on January 8, 2002.

(5) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K, filed on January 23, 2003.

(6) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K, filed on December 12, 2007.

(7) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K, filed on September 28, 2005.

(8) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Quarterly Report on Form 10-Q for the quarter ended June 30, 1996.

(9) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Registration Statement on Form S-8 (No. 333-98321), filed on August 19, 2002.

(10) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Quarterly Report on Form 10-Q for the quarter ended June 30, 2004.

(11) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Registration Statement on Form S-8 (No. 333-71936), filed on October 19, 2001, as amended.

(12) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Annual Report on Form 10-K, as amended, for the year ended December 31, 2005.

(13) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K, filed on June 7, 2006.

(14) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Quarterly Report on Form 10-Q for the quarter ended September 30, 2000.

(15) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Quarterly Report on Form 10-Q for the quarter ended September 30, 2007.

(16) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Annual Report on Form 10-K for the year ended December 31, 2007.

(17) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K/A, filed on March 16, 2006.

(18) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Quarterly Report on Form 10-Q for the quarter ended September 30, 2006.

(19) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K, filed on November 21, 2008.

(20) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K, filed on January 2, 2009.

(21) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Quarterly Report on Form 10-Q for the quarter ended June 30, 2006.

(22) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Quarterly Report on Form 10-Q for the quarter ended March 31, 2008.

(23) Filed herewith.

SIGNATURES

Pursuant to 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, in the City of San Carlos, County of San Mateo, State of California on March 6, 2009.

By: /s/ JOHN NICHOLSON
John Nicholson
Senior Vice President and Chief Financial Officer

By: /s/ JILLIAN B. THOMSEN
Jillian B. Thomsen
Vice President and Chief Accounting Officer

POWER OF ATTORNEY

KNOW ALL PERSON BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John Nicholson and Jillian B. Thomsen and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratify and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed by the following persons in the capacities and on the dates indicated:

SIGNATURE	TITLE	DATE
/s/ Howard W. Robin **Howard W. Robin**	Chief Executive Officer, President and Director (Principal Executive Officer)	March 6, 2009
/s/ John Nicholson **John Nicholson**	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	March 6, 2009
/s/ Jillian B, Thomsen **Jillian B. Thomsen**	Vice President Finance and Chief Accounting Officer (Principal Accounting Officer)	March 6, 2009
/s/ Robert B. Chess **Robert B. Chess**	Director, Chairman of the Board of Directors	March 6, 2009
/s/ Michael A. Brown **Michael A. Brown**	Director	March 6, 2009
/s/ Hoyoung Huh **Hoyoung Huh**	Director	March 6, 2009
/s/ Joseph J. Krivulka **Joseph J. Krivulka**	Director	March 6, 2009
/s/ Christopher A. Kuebler **Christopher A. Kuebler**	Director	March 6, 2009
/s/ Lutz Lingnau **Lutz Lingnau**	Director	March 6, 2009
/s/ Susan Wang **Susan Wang**	Director	March 6, 2009
/s/ Roy A. Whitfield **Roy A. Whitfield**	Director	March 6, 2009

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

Exhibit Number		Description of Documents
2.1	(23)	Asset Purchase Agreement, dated October 20, 2008, by and between Nektar Therapeutics, a Delaware corporation, AeroGen, Inc., a Delaware corporation and wholly-owned subsidiary of Nektar Therapeutics, Novartis Pharmaceuticals Corporation, a Delaware corporation, and Novartis Pharma AG, a Swiss corporation+
3.1	(1)	Certificate of Incorporation of Inhale Therapeutic Systems (Delaware), Inc.
3.2	(2)	Certificate of Amendment of the Amended Certificate of Incorporation of Inhale Therapeutic Systems, Inc.
3.3	(3)	Certificate of Designation of Series A Junior Participating Preferred Stock of Nektar Therapeutics
3.4	(4)	Certificate of Designation of Series B Convertible Preferred Stock of Nektar Therapeutics
3.5	(5)	Certificate of Ownership and Merger of Nektar Therapeutics
3.6	(6)	Amended and Restated Bylaws of Nektar Therapeutics
4.1		Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6
4.2	(5)	Specimen Common Stock certificate
4.3	(3)	Rights Agreement, dated as of June 1, 2001, by and between Nektar Therapeutics and Mellon Investor Services LLC, as Rights Agent
4.4	(3)	Form of Right Certificate
4.5	(7)	Indenture, dated September 28, 2005, by and between Nektar Therapeutics, as Issuer, and J.P. Morgan Trust Company, National Association, as Trustee
4.6	(7)	Registration Right Agreement, dated as of September 28, 2005, among Nektar Therapeutics and entities named therein
10.1	(8)	1994 Non-Employee Directors' Stock Option Plan, as amended++
10.2	(9)	1994 Employee Stock Purchase Plan, as amended and restated++
10.3	(10)	2000 Non-Officer Equity Incentive Plan, as amended and restated++
10.4	(11)	Form of 2000 Non-Officer Equity Incentive Plan Stock Option Agreement (Nonstatutory Stock Option)++
10.5	(11)	Form of 2000 Non-Officer Equity Incentive Plan Stock Option Agreement (Nonstatutory (Unapproved) Stock Option)++
10.6	(12)	Forms of 2000 Non-Officer Equity Incentive Plan Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement++
10.7	(13)	2000 Equity Incentive Plan, as amended and restated++
10.8	(14)	Form of Stock Option Agreement under the 2000 Equity Incentive Plan++
10.9	(12)	Forms of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement under the 2000 Equity Incentive Plan++
10.10	(15)	Form of Non-Employee Director Stock Option Agreement under the 2000 Equity Incentive Plan++
10.11	(15)	Form of Non-Employee Director Restricted Stock Unit Agreement under the 2000 Equity Incentive Plan++
10.12	(15)	Employment Transition and Separation Release Agreement, executed effective on September 4, 2007, with Louis Drapeau++
10.13	(15)	Employment Transition and Separation Release Agreement, executed effective on October 5, 2007, with David Johnston++

Exhibit Number		Description of Documents
10.14	(22)	Compensation Plan for Non-Employee Directors, as amended and restated++
10.15	(10)	401(k) Retirement Plan++
10.16	(22)	2008 Discretionary Performance-Based Incentive Compensation Policy++
10.17	(23)	Amended and Restated Change of Control Severance Benefit Plan++
10.18	(17)	Transition and Retirement Agreement, dated March 13, 2006, with Ajit S. Gill++
10.19	(18)	Letter Amendment, dated October 5, 2006, with Ajit S. Gill, amending that certain Transition and Retirement Agreement, dated March 13, 2006, with Mr. Gill++
10.20	(23)	2008 Equity Incentive Plan++
10.21	(23)	Form of Stock Option Agreement under the 2008 Equity Incentive Plan++
10.22	(23)	Forms of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement under the 2008 Equity Incentive Plan++
10.23	(19)	Separation and General Release Agreement, dated November 17, 2008, with John S. Patton++
10.24	(20)	Bonus and General Release Agreement, dated December 27, 2008, with Nevan C. Elam++
10.25	(15)	Form of Severance Letter for executive officers of the company++
10.26	(23)	Amended and Restated Letter Agreement, executed effective on December 1, 2008, with Howard W. Robin++
10.27	(23)	Amended and Restated Letter Agreement, executed effective on December 1, 2008, with John Nicholson++
10.28	(23)	Amended and Restated Letter Agreement, executed effective on December 1, 2008, with Bharatt M. Chowrira, Ph.D., J.D.++
10.29	(23)	Amended and Restated Letter Agreement, executed effective on December 1, 2008, with Dr. Randall Moreadith++
10.30	(15)	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
10.31	(21)	Settlement Agreement and General Release, dated June 30, 2006, by and between The Board of Trustees of the University of Alabama, The University of Alabama in Huntsville, Nektar Therapeutics AL Corporation (a wholly-owned subsidiary of Nektar Therapeutics), Nektar Therapeutics and J. Milton Harris
10.32	(15)	Co-Development, License and Co-Promotion Agreement, dated August 1, 2007, between Nektar Therapeutics (and its subsidiaries) and Bayer Healthcare LLC+
10.33	(16)	Termination Agreement and Mutual Release, dated November 9, 2007, between Nektar Therapeutics and Pfizer Inc.+
10.34	(23)	Exclusive Research, Development, License and Manufacturing and Supply Agreement, by and among Nektar AL Corporation, Baxter Healthcare SA, and Baxter Healthcare Corporation, dated September 26, 2005, as amended+
10.35	(23)	Exclusive License Agreement, dated December 31, 2008, between Nektar Therapeutics, a Delaware corporation, and Novartis Pharma AG, a Swiss corporation+
21.1	(23)	Subsidiaries of Nektar Therapeutics
23.1	(23)	Consent of Independent Registered Public Accounting Firm

Exhibit Number		Description of Documents
24		Power of Attorney (reference is made to the signature page)
31.1	(23)	Certification of Nektar Therapeutics' principal executive officer required by Rule 13a-14(a) or Rule 15d-14(a)
31.2	(23)	Certification of Nektar Therapeutics' principal financial officer required by Rule 13a-14(a) or Rule 15d-14(a)
32.1*	(23)	Section 1350 Certifications

+ Confidential treatment with respect to specific portions of this Exhibit has been requested, and such portions are omitted and have been filed separately with the SEC.

++ Management contract or compensatory plan or arrangement.

* Exhibit 32.1 is being furnished and shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall such exhibit be deemed to be incorporated by reference in any registration statement or other document filed under the Securities Act of 1933, as amended, or the Securities Exchange Act, except as otherwise stated in such filing.

(1) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Quarterly Report on Form 10-Q for the quarter ended June 30, 1998.

(2) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Quarterly Report on Form 10-Q for the quarter ended June 30, 2000.

(3) Incorporated by reference to the indicated exhibit in Nektar Therapeutics' Current Report on Form 8-K, filed on June 4, 2001.

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ended March 31, 2008.

(23) Filed herewith.

Exhibit 2.1

*****Text Omitted and Filed Separately with the Securities and Exchange Commission. Confidential Treatment Requested Under 17 C.F.R. Sections 200.80(b)(4) and 240.24b-2**

EXECUTION COPY

ASSET PURCHASE AGREEMENT

Dated as of October 20, 2008

By and Between

NEKTAR THERAPEUTICS (the "Company"),

AEROGEN, INC. (the "Transferring Subsidiary"),

NOVARTIS PHARMACEUTICALS CORPORATION (the "Buyer")

and

NOVARTIS PHARMA AG (the "Intangibles Purchaser")

*****Text Omitted and Filed Separately with the Securities and Exchange Commission. Confidential Treatment Requested Under 17 C.F.R. Sections 200.80(b)(4) and 240.24b-2**

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT is dated as of October 20, 2008 (this "Agreement"), by and among (i) Novartis Pharmaceuticals Corporation, a Delaware corporation (the "Buyer"), (ii) Novartis Pharma AG, a corporation organized under the laws of Switzerland, and an Affiliate of the Buyer (the "Intangibles Purchaser"), (iii) Nektar Therapeutics, a Delaware corporation (the "Company"), and (iv) AeroGen, Inc., a Delaware corporation and a direct Subsidiary of the Company (the "Transferring Subsidiary").

RECITALS

WHEREAS, the Company Parties are engaged in the research and development of technology arising out of the business unit commonly referred to as "pulmonary" by the Company, including the formulation, filling, manufacturing and device capabilities of such unit (the "Business"); and

WHEREAS, upon the terms and conditions set forth herein, the Buyer and the Intangibles Purchaser desire to purchase, and the Company and the Transferring Subsidiary desire to sell to the Buyer and the Intangibles Purchaser, [***] the Business as set forth herein, including the Business Intellectual Property (as defined below) (the "Acquisition");

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Defined Terms. Defined terms used in this Agreement have the meanings ascribed to them as follows:

"Affiliate" shall mean, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. When used in this Agreement, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of a majority of the equity interests or the power to elect a majority of the board of directors (or Persons performing similar functions) of such Person, whether through the ownership of voting securities, status as a general partner, by contract or otherwise.

"Board of Directors" shall mean the board of directors of the Company.

"Business" shall have the meaning set forth in the Recitals, and, for the avoidance of doubt, is intended to define the scope of assets being purchased and sold hereunder, subject to the terms and conditions hereof, not the purposes for which such assets may be used.

"Business Day" shall mean any day other than (i) a Saturday or Sunday, (ii) a day on which banks in New York, New York are required or authorized by law, executive order or governmental decree to be closed or (iii) a public holiday in the cantons of Basel-Landschaft and Basel-Stadt, Switzerland.

"Business Employees" shall mean the employees of the Business set forth in Schedule 1.1(a) attached hereto.

"Business Intellectual Property" shall mean any or all Intellectual Property Rights that are owned by or licensed to the Company Parties, in each case which are used, held for use in, intended for use in, developed by or that arise or have arisen out of, or necessary for the operation of the Business other than SEDS Intellectual Property and the Intellectual Property Rights on Schedule 1.1(f).

"Business Records" shall mean all books and records, including all books of account, ledgers, financial, accounting, scientific (including laboratory notebooks and invention disclosures) records and files, personnel records and files of the Transferred Employees, manuals, supplier lists and correspondence (in all cases in any form or medium) used, held for use or intended for use in the Business or arising from or necessary for the operation of the Business and such other books and records that otherwise relate primarily to the Business; provided, however, that, in each case, the Company may exclude (i) those personnel-related books and records that are prohibited by applicable Law from being transferred to the Buyer, (ii) those books and records related solely to the Retained Assets [***] and (iii) the Corporate Records.

"Buyer Service Agreement" shall mean that certain Service Agreement, to be dated as of the Closing Date, by and between the Company, the Transferring Subsidiary and the Buyer, in the form attached hereto as Exhibit A or otherwise mutually agreed by the Company and the Buyer.

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

"Combination DMF" shall have the meaning set forth in the Exclusive License Agreement.

"Company Disclosure Schedule" shall mean the Company's disclosure schedule delivered by the Company to the Buyer immediately prior to the execution of this Agreement and attached hereto and made a part hereof.

"Company Parties" shall mean the Company, the Transferring Subsidiary and the other direct and indirect Subsidiaries of the Company.

"Confidentiality Agreement" shall mean the Confidential Disclosure Agreement effective as of May 26, 2008, by and between the Company and Novartis Pharma AG.

"Contracts" shall mean all binding contractual arrangements, as amended from time to time (subject to Section 5.2 of this Agreement), to which any Company Party is a party or by which any of them is bound that are used, held for use or intended for use in, or that arise out of, the Business, and such other binding contractual arrangements that otherwise relate primarily to the Business.

"dollars" or "$" shall mean United States dollars.

"[***]" means [***].

"Environmental Laws" shall mean all Laws or Orders applicable to the Business or Transferred Assets relating to (i) pollution, contamination, restoration or protection of the environment, health or safety or natural resources or (ii) the handling, use, presence, disposal, release or threatened release of any Hazardous Substance.

"Environmental Reports" shall mean the documents set forth in Schedule 1.1(b) attached hereto.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded Taxes" shall mean (i) all Taxes imposed on or payable by, or due to any Governmental Authority from, any Company Party other than (x) the [***] of California sales Taxes that the Buyer has agreed to pay pursuant to Section 6.4 hereof, and (y) Taxes relating to the Business or to the Transferred Assets that are attributable to, or payable for, any Post-Closing Period; and (ii) all Taxes relating to the Business or Transferred Assets that are attributable to, or payable for, any Pre-Closing Period.

"Exclusive License Agreement" shall mean that certain Exclusive License Agreement, to be dated as of the Closing Date, by and between the Company and the Intangibles Purchaser, in the form attached hereto as Exhibit B or otherwise mutually agreed by the Company and the Intangibles Purchaser.

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

"GAAP" shall mean United States generally accepted accounting principles.

"Governmental Authority" shall mean any federal, state, municipal, foreign or other governmental body, department, commission, board, bureau, agency, court or instrumentality, domestic or foreign, or other entity exercising any executive, legislative, judicial, quasi-judicial, tax, regulatory or administrative function of government, including the FDA and all foreign equivalents thereof.

"Hazardous Substance" shall mean any substance that is (i) listed, classified or regulated pursuant to any Environmental Law, (ii) any petroleum or petroleum product or by-product, asbestos-containing material, lead-containing paint or plumbing, polychlorinated biphenyls, radioactive materials or radon or (iii) any other substance which may be the subject of regulatory action by any Governmental Authority pursuant to any Environmental Law.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Independent Accounting Firm" shall mean KPMG LLP or, if KPMG is unable to provide services as contemplated herein, such other independent accounting firm as the parties mutually agree.

"Intellectual Property Rights" shall mean any and all rights in, arising out of or associated with (a) all United States, international and foreign patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (b) all Know-How; (c) all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world; (d) all industrial designs and any registration and applications therefor throughout the world; (e) all trade names, brand names, model names and other source indicators, logos, domain names, URLs, common law trademarks and service marks, including all good will associated therewith, and all registration and applications therefor throughout the world; (f) all mask works and all applications, registrations, and renewals in connection therewith; and (g) all databases and data collections and all rights therein throughout the world.

"Inventory" shall mean all of the Company Parties' inventory and raw materials, work-in-process, finished products, supplies, biological and chemical materials, accessories, packaging materials, goods or parts used, held for use, held for sale or intended for use or sale in, or to be furnished in relation to the Business, or such other inventory that otherwise relates primarily to the Business.

"Know-How" shall mean 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 pharmacological, toxicological and clinical data, analytical and quality control data, manufacturing data and descriptions, patents and legal data, market data, financial data or descriptions, devices, assays, chemical formulations, results of experiments, notes of experiments, specifications, compositions of matter, product samples and other samples, physical, chemical and biological materials and compounds, and the like, whether in intangible, tangible, written, electronic or other form.

"Knowledge of the Company" and similar phrases shall mean, with respect to any matter in question, the actual knowledge after due inquiry and investigation of the Persons listed in Schedule 1.1(c) attached hereto as would be reasonably expected for each such Person in such role.

"Law" shall mean any federal, state, local or foreign law, statute, common law, rule, regulation, code, directive, ordinance or other requirement of general application of any Governmental Authority, including Environmental Laws.

"Lease" shall mean that certain Sublease and Lease Agreement dated as of October 2, 1996, by and between TMT Associates, LLC (the "Landlord") and the Company, as amended by that certain (i) First Amendment to Sublease and Lease Agreement dated as of October 30, 1996, by and between the Landlord and the Company, (ii) Letter Agreement dated as of April 9, 1997, by and between the Landlord and the Company, (iii) Third Amendment to Sublease and Lease Agreement dated as of April 16, 1997, by and between the Landlord and the Company, and (iv) Fourth Amendment to Sublease and Lease Agreement dated as of November 5, 1997, by and between the Landlord and the Company.

"Liabilities" shall mean any direct or indirect liability, indebtedness, claim, loss, damage, deficiency, Tax, obligation or responsibility, fixed or unfixed, liquidated or unliquidated, secured or unsecured, accrued, absolute or contingent.

"Licenses and Permits" shall mean all licenses, permits, concessions, exemptions, consents, franchises, certificates, DMFs (as defined in the Exclusive License Agreement), variances, approvals, filings and other authorizations that are required by Governmental Authorities under any applicable Law for the Company Parties to operate the Business as presently conducted and to own or use the other Transferred Assets.

"Lien" shall mean any lien, claim, charge, option, mortgage, pledge or security interest, rights of first refusal or rights of first offer, encumbrance (including leases, easements, licenses, zoning ordinances, covenants, conditions, restrictions and rights-of-way) or other similar right affecting real or personal property, in each case, whether arising by contract, operation of law or otherwise.

"[***]" means [***].

"Losses" of any Person shall mean any and all demands, claims, suits, actions, causes of action, proceedings, assessments, losses, damages, Liabilities, Taxes, costs and expenses incurred by such Person, including settlement costs, costs of collection, interest, penalties and customary attorneys' fees, third-party expert and consultant fees and expenses, fines, judgments and awards.

"Material Adverse Effect" shall mean any event, change, circumstance or effect that is materially adverse to the financial condition, properties, assets, business, liabilities or results of operations of the Transferred Assets or the Business or the ability of the Company or the Transferring Subsidiary to consummate the transactions contemplated hereunder on a timely basis; provided, however, that a "Material Adverse Effect" shall not include (i) changes, effects and circumstances in connection with factors generally affecting the device and pharmaceutical industries, but which do not have a disproportionate impact on the Transferred Assets or the Business; or (ii) compliance by any party hereto with their respective express obligations pursuant to the terms and conditions of this Agreement.

"Nektar UK" shall mean Nektar Therapeutics UK Limited, a limited liability company formed under the laws of England and Wales.

"[***]" shall mean [***].

"Option Agreement" shall mean that certain Option Agreement dated as of October 2, 1996, by and between the Company and T.M.T. Associates, LLC.

"Order" shall mean any order, writ, injunction, judgment, decree or ruling entered, issued, made or rendered by any court, administrative agency, arbitration tribunal or other Governmental Authority of competent jurisdiction.

"Permitted Liens" shall mean (i) mechanics', carriers', workers' or repairmen's Liens arising in the ordinary course of business and securing payments or obligations that are not delinquent; (ii) Liens for Taxes, assessments and other similar governmental charges which are not due and payable; (iii) Liens that arise under zoning, land use and other similar Laws and other imperfections of title or encumbrances, if any, which do not materially affect the marketability of the property subject thereto and do not materially impair the use of the property subject thereto as used as of the date hereof; (iv) Liens that arise under leasing arrangements relating to equipment or other personal property transferred to the Buyer or the Intangibles Purchaser pursuant to this Agreement and set forth in Schedule 1.1(e) attached hereto; (v) licenses that arise under the agreements set forth in Schedules 4.1(q)(iv) or (q)(v); and (vi) other Liens set forth in Schedule 1.1(e) attached hereto.

"Person" shall mean any individual, corporation, partnership, firm, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, Governmental Authority or other entity.

"Post-Closing Period" shall mean (i) any taxable period that begins after the Closing Date and (ii) the portion of a Straddle Period that begins after the Closing Date.

"Pre-Closing Period" shall mean (i) any taxable period that ends on or before the Closing Date and (ii) the portion of a Straddle Period that ends on the Closing Date.

"Proceeding" shall mean any action, suit, dispute, litigation, hearing, claim, grievance, arbitral action or other proceeding before any Governmental Authority, at law or in equity.

"Registered Intellectual Property" shall mean those United States, international and foreign: (a) patents and patent applications (including provisional applications); (b) registered trademarks, registered service marks, registered tradenames, applications to register trademarks, service marks or tradenames, intent-to-use applications, or other registrations or applications related to trademarks or service marks; (c) registered copyrights and applications for copyright registration; and (d) registered domain names and applications for domain name registrations, in each case that are owned by the Company Parties as part of the Business Intellectual Property.

"Representative" shall mean any attorney, accountant, financial advisor or other authorized representative of any Person.

"Retained Intellectual Property" shall mean the Intellectual Property Rights that are owned by or licensed to the Company or the Transferring Subsidiary that do not constitute Business Intellectual Property.

"SEC" shall mean the United States Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"SEDS Intellectual Property" shall mean those certain Intellectual Property Rights held by any Company Party relating solely to SEDS Technology and not to any other Business Intellectual Property. Notwithstanding anything to the contrary in this Agreement but subject to Section 5.15 of this Agreement, the representations or warranties of any Company Party set forth in this Agreement, any Transaction Document or any certificate executed by any Company Party for the benefit of the Buyer or the Intangibles Purchaser delivered in connection herewith apply to any of the SEDS Intellectual Property.

"SEDS Technology" shall mean [***].

"Service Agreements" shall mean the Buyer Service Agreement and the Transition Services Agreement.

"Specified Equipment" shall mean the tangible personal property set forth in Schedule 2.1(a)(iii), and the spray dryers and filler heads set forth in Schedule 1.1(g) attached hereto whether or not located at the Transferred Real Property.

"Stamford Notes" shall mean that certain $7,000,000 Vendor Loan Note (6.7% per annum) and those certain €662,727 (Euros) in loan notes payable by Stamford Devices Limited to the Company.

"Straddle Period" shall mean any taxable period that begins on or before, and ends after, the Closing Date.

"Subsidiary" and "Subsidiaries" when used with respect to any Person shall mean any Person in which such Person directly or indirectly owns fifty percent (50%) or more of the aggregate equity interests of such Person, whether voting or non-voting, or controls the ability to appoint, remove or replace a general partner, fifty percent (50%) or more of the board of directors or Persons conducting a similar function.

"[***]" shall mean [***].

"Tax" or "Taxes" shall mean (i) any taxes of any kind, including those measured on, measured by or referred to as, income, alternative or add-on minimum, gross receipts, escheat, capital, capital gains, sales, use, *ad valorem*, franchise, profits, license, privilege, transfer, withholding, payroll, employment, social, excise, severance, stamp, occupation, premium, value added, property, environmental or windfall profits taxes, customs, duties or similar fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts (including any interest thereon) imposed by any Governmental Authority and (ii) any liability for the payment of any amount of the type described in clause (i) above as a result of a Person (A) being a "transferee" (within the meaning of Section 6091 of the Code or any other applicable Law) of another Person, (B) being a member of an affiliated, combined or consolidated group, (C) being "disregarded as an entity separate from its owner" (under Treasury Regulations Section 301.7701-2(c)(2)(i) or similar provision of state, local or non U.S. law), or (D) being subject to a contractual or other arrangement.

"Tax Proceeding" shall mean any pending or threatened Tax audit, assessment, examination, investigation or administrative or court proceeding.

"Tax Returns" shall mean all reports, estimates, declarations of estimated Tax, claims for refund, information statements and returns relating to, or required to be filed in connection with, any Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"TIP Termination Agreement" shall mean that certain Termination Agreement, to be dated as of the Closing Date, by and between the Company and Novartis Vaccines and Diagnostics, Inc., in the form attached hereto as Exhibit C or otherwise mutually agreed by the Company and the Buyer.

"Transaction Documents" shall mean the Exclusive License Agreement, the Service Agreements and the TIP Termination Agreement.

"Transfer Taxes" shall mean all sales, use, value added, documentary, stamp, gross receipts, registration, transfer, conveyance, excise, recording, license, stock transfer stamps and other similar Taxes and fees arising out of or in connection with or attributable to the transactions effected pursuant to this Agreement.

"Transferred Real Property" shall mean the real property subject to the Lease.

"Transition Services Agreement" shall mean that certain Transition Services Agreement, to be dated as of the Closing Date, by and between the Company and the Buyer, in the form attached hereto as Exhibit D or otherwise mutually agreed by the Company and the Buyer.

1.2 Other Defined Terms. The following capitalized terms are defined in this Agreement in the Section indicated below:

Defined Term	Section
401(k) Plan	5.7(c)
1060 Forms	3.2(a)
Acquisition	Recitals
Acquisition Proposal	5.3
Adjustment	2.5(c)
Agreement	Preamble
Applicable Period	5.3
ARC	5.5(b)
Assignment and Assumption Agreement	8.2(d)
Assumed Liabilities	2.2(a)
[***]	[***]
Building	4.1(e)
Business	Recitals
Buyer	Preamble
Buyer's 401(k) Plan	5.7(c)
[***]	[***]

Defined Term	Section
CIP Royalties	2.1(b)(vii)
Closing	7.1
Closing Date	7.1
COBRA	5.7(h)
Company	Preamble
Company Plan	4.1(k)(i)
Consents	2.4(a)
Corporate Records	2.1(b)(v)
Direct Claim	10.4(b)
DOJ	5.5(b)
ERISA Affiliate	4.1(k)(iii)
Excluded Contracts	2.1(b)(xii)
FTC	5.5(b)
GFCO	5.5(b)
Identified Employee	5.7(a)
indemnified party	10.3
indemnifying party	10.3
Intangibles Purchaser	Preamble
Material Contracts	4.1(p)(2)
Nonassignable Asset	2.4
Option	4.1(e)
Pearl	2.1(a)(ix)
Purchase Price	3.1
Related Person	4.1(o)
Retained Assets	2.1(b)
Retained Liabilities	2.2(b)
[***]	[***]
SEDS Contracts	4.1(q)(x)
SEDS Option Period	5.15(a)
SEDS Notice	5.15(a)
Seller Parties	5.1(c)
Severance Costs	5.7(a)
Stamford	2.1(a)(ix)
Termination Date	9.1(b)
Third Party Claim	10.4(a)
[***]	[***]
Transfer Costs	2.2(b)(v)
Transferred 201 Assets	2.1(a)(iii)
Transferred Assets	2.1(a)
Transferred Licenses	2.1(a)(v)
Transferred Employees	5.7(a)
Transferred Share Agreements	2.1(a)(ix)
Transferred Shares	2.1(a)(ix)
Transferring Subsidiary	Preamble
Violation	4.1(c)
WARN	5.2(a)(xi)

1.3 Rules of Construction. References in this Agreement to gender include references to all genders, and references to the singular include references to the plural and vice versa. The words "include," "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation." The words "to the extent" when used in this Agreement shall be deemed to be followed by the phrase "and only to the extent." Unless the context otherwise requires, references in this Agreement to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement. The table of contents and headings contained in this Agreement and the Company Disclosure Schedule are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

ARTICLE II

PURCHASE AND SALE OF THE TRANSFERRED ASSETS

2.1 Purchase and Sale of the Transferred Assets.

(a) Subject to the satisfaction or waiver of the conditions set forth in this Agreement, at the Closing and as of the Closing Date, the Company or the Transferring Subsidiary shall (or shall cause the other Company Parties to) sell, transfer, convey, assign and deliver to the Buyer or the Intangibles Purchaser, and the Buyer or the Intangibles Purchaser shall purchase and acquire all of the Company Parties' right, title and interest in, to and under all of the assets (other than the Retained Assets) used, held for use or intended for use in, or that arise out of, the Business, and such other assets that otherwise relate primarily to the Business, including:

(i) the Inventory existing on the Closing Date;

(ii) the Company Parties' owned or leased tangible personal property that is either located at the Transferred Real Property or used, held for use or intended for use in, or that arises out of, the Business, and such other tangible personal property that otherwise relates primarily to the Business, including machinery, mobile and immobile equipment, the Specified Equipment, furniture, office equipment, furnishings, transportation equipment, supplies and other tangible personal property, and any warranties or guarantees, express or implied, existing for the benefit of the Company Parties in respect to such tangible personal property;

(iii) the Company Party's owned or leased tangible personal property located, as of the date hereof or the Closing Date, at 201 Industrial Road in San Carlos, California and that is either set forth in Schedule 2.1(a)(iii) attached hereto or used, held for use or intended for use in, or that arises out of, the Business, and such other tangible personal property that otherwise relates primarily to the Business, including machinery, mobile and immobile equipment, furniture, office equipment, furnishings, transportation equipment, supplies and other tangible personal property, and any warranties or guarantees, express or implied, existing for the benefit of the Company Parties in respect to such tangible personal property (the "Transferred 201 Assets");

(iv) each of the Contracts, including the Lease and the Option Agreement, but excluding the Excluded Contracts;

(v) the Licenses and Permits, to the extent transferable, each of which is set forth in Schedule 2.1(a)(v) attached hereto (the "Transferred Licenses");

(vi) express or implied warranties, representations or guarantees, whether oral, written or implied, made by suppliers of furnishing goods or services for the benefit of the Business to the extent transferable;

(vii) the information systems, hardware, software systems, transferable software licenses and database systems either (A) located at the Transferred Real Property, (B) located elsewhere but that are used exclusively in relation to the Business or run on the servers set forth in Schedule 2.1(a)(vii), and (C) the servers set forth in Schedule 2.1(a)(vii) attached hereto but, in the case of (A) and (B), excluding Company-wide systems and other Retained Assets;

(viii) the Business Intellectual Property;

(ix) subject to Schedule 3.1, the Stamford Notes, all of the shares of capital stock, options to acquire capital stock and all other securities, if any, held by any Company Party (in each case, including all accrued but unpaid dividends, interest or other rights) in each of (A) Pearl Therapeutics, Inc., a Delaware corporation ("Pearl"), and (B) Stamford Devices Limited, a company organized under the laws of the Republic of Ireland ("Stamford") (collectively, the "Transferred Shares"), including all agreements of the Company and its Subsidiaries associated with the Transferred Shares set forth in Schedule 2.1(a)(ix) attached hereto (the "Transferred Share Agreements");

(x) copies of the Business Records which shall be shared and transferred pursuant to Section 5.12(a); and

(xi) copies of the portions of the Corporate Records that relate primarily to the Business.

The properties, assets, rights and claims to be purchased by the Buyer or the Intangibles Purchaser pursuant to this Section 2.1(a) shall collectively be referred to herein as the "Transferred Assets." As of the Closing, all right, title and interest to and risk of loss as to the Transferred Assets (whether or not covered by insurance) shall pass from the applicable Company Party to the Buyer or the Intangibles Purchaser free and clear of all Liens other than Permitted Liens. As of the Closing, the Transferred Assets set forth in clauses (i), (ii), (iii), (iv), (v), (vi), and(vii) of this Section 2.1(a) shall be purchased and acquired by the Buyer and the Transferred Assets set forth in clauses (viii), (ix) and (x) of this Section 2.1(a) shall be purchased and acquired by the Intangibles Purchaser.

(b) Notwithstanding anything to the contrary in Section 2.1(a) hereof, the Company and the Transferring Subsidiary shall retain all of their respective existing right, title and interest in, to and under, and the Transferred Assets shall exclude, the following assets (collectively, the "Retained Assets"):

(i) all inventory owned or used by the Company Parties relating solely to the other Retained Assets;

(ii) any Company Party's owned or leased tangible personal property located, as of the date hereof, on the Transferred Real Property set forth in Schedule 2.1(b)(ii) attached hereto, including any warranties or guarantees, express or implied, existing for the benefit of any Company Party in respect to such tangible personal property;

(iii) all cash and cash equivalents;

(iv) all income Tax Returns, Tax refunds, Tax losses, Tax carryforwards, Tax credits and Tax benefits of any Company Party;

(v) the books, records, files and minutes of meetings of the board of directors, committees or shareholders, incorporation, stock transfer and Tax documents and all similar or related corporate records of any Company Party (the "Corporate Records") to the extent not relating to the Business or not reasonably necessary for the reporting, operation, conduct or planning of the Business;

(vi) all of the Company Parties' right, title and interest under this Agreement and the Transaction Documents;

(vii) [***] all right, title and interest to [***] (the "CIP Royalties");

(viii) records pertaining to the Business Employees not constituting Transferred Employees;

(ix) the Company-wide information systems, telephone systems, the servers set forth in Schedule 2.1(b)(x) attached hereto, and database systems and software systems that are run on the servers set forth in Schedule 2.1(b)(x);

(x) the Company's Enterprise Resource Planning (ERP) system;

(xi) the Retained Intellectual Property;

(xii) each of the contracts, agreements, and arrangements set forth in Schedule 2.1(b)(xiii) (the "Excluded Contracts");

(xiii) subject to Section 5.15, the SEDS Intellectual Property and SEDS Contracts; and

(xiv) the Combination DMF.

2.2 Assumption of Liabilities.

(a) Subject to the satisfaction or waiver of the conditions set forth in this Agreement, at the Closing and as of the Closing Date, the Buyer or the Intangibles Purchaser shall (or, subject to Section 11.7 hereof, shall cause their respective Affiliates to) assume and agree to pay, discharge or perform when due, only the Liabilities expressly set forth below:

(i) subject to Section 2.4 hereof, all Liabilities arising under the Contracts relating to periods after the Closing, to the extent such Liabilities have not arisen as a result of a default or breach of any such Contract by any Company Party;

(ii) all Liabilities related to the Transferred Employees (other than salary, wages, accrued but unused paid time off, expense reimbursement payments, commissions and bonuses accrued prior to the Closing) to the extent relating to periods after the Closing and, subject to Sections 5.7 and 5.9, certain Liabilities related to the Transferred Employees under WARN;

(iii) all Liabilities related to the Transferred Assets to the extent relating to periods after the Closing, including arising out of Buyer's or the Intangibles Purchaser's use or ownership of the Transferred Assets relating to periods after the Closing;

(iv) all Liabilities with respect to the Transferred Assets and the Transferred Real Property arising pursuant to Environmental Laws to the extent relating to periods after the Closing;

(v) all Liabilities relating to any fees and expenses of the Buyer, the Intangibles Purchaser or any of their Affiliates incurred in connection with this Agreement, the Acquisition or the transactions contemplated hereby or thereby, including any fees or expenses of counsel to, or any brokers, financial advisors or comparable other persons retained or employed by, the Buyer, the Intangibles Purchaser or any of their Affiliates;

(vi) all Liabilities for Taxes arising out of the Business or the Transferred Assets to the extent relating to periods after the Closing Date, and all liability for [***] of California sales taxes that the Buyer has agreed to pay pursuant to Section 6.4 hereof;

(vii) all Liabilities for death, personal injury, other injury to persons or property damage relating to, resulting from, caused by or arising out of, directly or indirectly, use after the Closing Date of, or exposure after the Closing Date to, any of the Transferred Assets, or any part or component thereof serviced, distributed, leased or sold after the Closing Date by or on behalf of the Buyer, the Intangibles Purchaser or any of their Affiliates, including any such Liabilities based on negligence, strict liability, product liability, design or manufacturing defect, conspiracy, failure to warn or breach of express or implied warranties of merchantability or fitness for any purpose or use, or any allegations concerning any of the foregoing;

(viii) all Liabilities related to the Transferred Shares or the Transferred Share Agreements to the extent relating to periods after the Closing; and

(ix) all Liabilities that the Buyer or the Intangibles Purchaser has expressly agreed to retain, pay for or be responsible for pursuant to this Agreement.

The Liabilities assumed by the Buyer or the Intangibles Purchaser pursuant to this Section 2.2(a) shall collectively be referred to herein as the "Assumed Liabilities."

(b) Except as otherwise expressly provided in this Agreement or any Transaction Document, the Company and the Transferring Subsidiary shall retain all Liabilities other than the Assumed Liabilities, including:

(i) all Liabilities related to or arising out of the Company Party's use or ownership of the Retained Assets;

(ii) all Liabilities for Taxes relating to or arising out of the Transferred Assets or the Business to the extent attributable to or relating to periods on or prior to the Closing Date and, subject to Section 6.4, all Liabilities imposed on or payable by or due to any Governmental Authority from any Company Party;

(iii) all Liabilities related to (A) the Transferred Employees to the extent relating to periods on or prior to the Closing Date (including salary, wages, accrued but unused paid time off, expense reimbursement payments, commissions, bonuses accrued prior to the Closing, severance obligations, obligations related to stock options granted by the Company, other rights under any Company Plan (as defined herein) or other rights of payment) and (B) all employees of the Company who are not Transferred Employees;

(iv) all Liabilities relating to any fees and expenses of any Company Party incurred in connection with this Agreement, the Acquisition or the transactions contemplated hereby or thereby, including any fees or expenses of counsel to, or any brokers, financial advisors or comparable other Persons, including J.P. Morgan Securities, Inc., retained or employed by, any Company Party;

(v) all transfer, assumption or assignment fees or expenses or other amounts or obligations paid or incurred in connection with or by reason of assigning or transferring the Contracts or other Transferred Assets and Assumed Liabilities to the Buyer or the Intangibles Purchaser (the "Transfer Costs");

(vi) any termination fee payable by the Company, the Transferring Subsidiary, the Buyer, the Intangibles Purchaser or any of their respective Affiliates under any Contract as a result of the Acquisition or the other transactions to be consummated at the Closing, including any Contract not transferable to the Buyer or the Intangibles Purchaser pursuant to the terms of such Contract or assignable only upon the consent of the respective third party to such Contract and such third party does not consent to the assignment to the Buyer or the Intangibles Purchaser of such Contract pursuant to this Agreement;

(vii) all Liabilities with respect to the Transferred Assets and the Transferred Real Property arising pursuant to Environmental Laws to the extent relating to periods prior to or at the Closing;

(viii) subject to Section 2.4 hereof, all Liabilities arising under or related to (A) the Contracts relating to periods prior to or at the Closing, or (B) the Excluded Contracts regardless of time period;

(ix) all Liabilities related to the Transferred Assets to the extent relating to periods prior to the Closing, including arising out of the Company Parties' use or ownership of the Transferred Assets relating to periods prior to or at the Closing;

(x) all Liabilities related to Permitted Liens to the extent arising prior to or at the Closing;

(xi) all accounts payable of the Company Parties, including all accounts payable relating to the Transferred Assets and the Business incurred by any Company Party prior to or at the Closing;

(xii) all Liabilities for death, personal injury, other injury to persons or property damage relating to, resulting from, caused by or arising out of, directly or indirectly, use prior to or on the Closing Date of, or exposure prior to or on the Closing Date to, any of the Transferred Assets, or any part or component thereof serviced, distributed, leased or sold prior to or on the Closing Date by or on behalf of any Company Party, including any such Liabilities based on negligence, strict liability, product liability, design or manufacturing defect, conspiracy, failure to warn or breach of express or implied warranties of merchantability or fitness for any purpose or use, or any allegations concerning any of the foregoing;

(xiii) all Liabilities related to the Transferred Shares or the Transferred Share Agreements to the extent related to periods prior to or at the Closing;

(xiv) all Liabilities that the Company or the Transferring Subsidiary has expressly agreed to retain, pay for or be responsible for pursuant to this Agreement; and

(xv) all Liabilities related to the SEDS Contracts or the SEDS Intellectual Property.

The Liabilities retained by the Company and the Transferring Subsidiary pursuant to this Section 2.2(b) are referred to herein as the "Retained Liabilities".

2.3 Transfer of Transferred Assets and Assumed Liabilities. The Transferred Assets shall be sold, acquired, conveyed, transferred, assigned and delivered free and clear of all Liens other than Permitted Liens, and the Assumed Liabilities shall be assumed, pursuant to transfer and assumption agreements, notifications, or other instruments in such form, reasonably satisfactory to the Company and the Buyer, as are necessary to effect a conveyance of the Transferred Assets and an assumption of the Assumed Liabilities in the jurisdictions in which such transfers are to be made. Such agreements and instruments, and such other conveyance and assumption documents as may be required in such jurisdictions, shall be executed, upon the terms and subject to the conditions hereof, on the Closing Date by the Company, the Transferring Subsidiary, the Buyer or the Intangibles Purchaser, as applicable.

2.4 Procedures for Assets Not Transferable. (a) Notwithstanding anything to the contrary contained in this Agreement and subject to Schedule 3.1, to the extent that the sale, conveyance, transfer, assignment or delivery, or attempted sale, conveyance, transfer, assignment or delivery, to the Buyer or the Intangibles Purchaser of any Transferred Asset (a "Nonassignable Asset") is prohibited by applicable Law or would require any governmental or third-party authorizations, approvals, consents or waivers (collectively, the "Consents"), and such Consent is not required to be delivered pursuant to Section 8.2(i) hereof, if any such Consent shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, conveyance, transfer, assignment or delivery thereof if any of the foregoing would constitute a breach of applicable Law or the rights of any third party; provided, however, that, notwithstanding the foregoing, subject to Article VIII hereof, the Closing shall occur on the terms and conditions set forth herein, including the Company's right to receipt of the Purchase Price in full at the Closing pursuant to Section 3.1 hereof; provided, further, that the Company and the Transferring Subsidiary shall not be relieved of their obligations to sell, and the Buyer and the Intangibles Purchaser shall not be relieved of their obligations to purchase, acquire and assume, any such Nonassignable Asset. Following the Closing, the Company shall use its reasonable best efforts, and the Buyer shall cooperate with the Company, to obtain promptly such Consents. If any such Consent is obtained after the Closing, the Company or the Transferring Subsidiary, as applicable, shall convey, transfer, assign and deliver the applicable Nonassignable Asset to the Buyer or the Intangibles Purchaser. Pending receipt of any such Consent, the parties shall use their reasonable best efforts to implement an alternative arrangement to permit the Buyer or the Intangibles Purchaser, as the case may be, to realize, receive and enjoy substantially similar rights and the full benefits of any such Nonassignable Asset as if such impediment to assignment or transfer did not exist. To the extent such Nonassignable Asset is a Contract and such Contract may not be assigned to the Buyer by reason of the absence of any such Consent, then (i) the Company shall promptly pay over to the Buyer the amount of all payments received by it, from time to time, in respect of the applicable Nonassignable Assets, and (ii) the Buyer shall promptly reimburse (or the Company shall reduce any amounts payable by it under clause (i) by) the amount of any expenses incurred by the Company in the course of providing the benefits of such Nonassignable Assets in amounts consistent with expenses incurred by the Company performing such services prior to the Closing.

(b) In the event any Specified Equipment is not transferred to the Buyer at Closing, the Company and Transferring Subsidiary shall pay to Buyer (or reduce the Purchase Price hereunder) by an amount equal to the replacement cost of such Specified Equipment that is not so transferred.

2.5 Payments Post-Closing; Prorations.

(a) If, following the Closing Date, the Company, the Transferring Subsidiary or any of their Affiliates receives any payment or other proceeds any portion of which constitutes a Transferred Asset, the Company or the Transferring Subsidiary shall promptly remit to the Buyer the amount of any such payment or proceeds to the extent such payment or proceeds constitute Transferred Assets. Any such payment or proceeds received, and any remittance made pursuant to this Section 2.5(a), shall be treated as having been received and made by the relevant entity solely as an agent for the Buyer.

(b) If, following the Closing Date, the Buyer, the Intangibles Purchaser or any of their Affiliates receives any payment or other proceeds any portion of which constitutes a Retained Asset, including the CIP Royalties, the Buyer or the Intangibles Purchaser shall promptly remit to the Company the amount of any such payment or proceeds (net of Taxes on the Buyer or the Intangibles Purchaser) to the extent such payment or proceeds constitute Retained Assets [***]. Any such payment or proceeds received, and any remittance made pursuant to this Section 2.5(b), shall be treated as having been received and made by the relevant entity solely as an agent for the Company.

(c) Except as otherwise expressly provided in this Agreement or any Transaction Document, including Section 2.2 hereof, expenses and costs (including business and license fees, utility charges, property and equipment rentals, fees, sales and service charges, and similar items, but not Taxes or other types of Liabilities) related to the Business or the Transferred Assets that are periodically invoiced (whether in advance or arrears) and the period in any such invoice includes the Closing Date, shall be prorated between the Buyer and the Company on the following basis: (i) the Company shall be responsible for all such expenses and costs allocable to the conduct of the Business or operation of the Transferred Assets for the period ending at midnight on the Closing Date and (ii) the Buyer shall be responsible for all expenses and costs allocable to the conduct of the Business or operation of the Transferred Assets after midnight on the Closing Date (the "Proration").

(d) In the case of any Straddle Period, the amount of any Taxes for the Pre-Closing Tax Period shall (i) in the case of ad valorem or property Taxes, be deemed to be the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days during the Straddle Period ending on (and including) the Closing Date and the denominator of which is the total number of calendar days in the Straddle Period, and (ii) in the case of all other Taxes, be determined based on an interim closing of the books as of the close of business on the Closing Date. The balance of any Taxes for the Straddle Period shall be attributable to the Post-Closing Tax Period. In the event the Company has received prepayment on any Contract that constitutes a Transferred Asset for services to be provided after the Closing Date, such prepayment shall be credited to the account of the Buyer. In the event any Company Party has prepaid any Taxes that constitute an Assumed Liability, such Taxes shall be reimbursed by the Buyer to the Company.

(e) The initial determination of the final amount of the Proration shall be made by the Buyer. Upon such determination, but no more than ninety (90) days after the Closing Date or such later date if an invoice is received after such date, the Buyer shall submit such determination to the Company for approval. If the Company disagrees with the determination made by the Buyer of the Proration, the Company shall give prompt notice thereof, but in no event later than thirty (30) days after receipt of such determination, specifying in reasonable detail the nature and extent of such disagreement, and the Buyer and the Company shall have a period of thirty (30) days to resolve such disagreement. If the parties are unable to resolve such disagreement within such thirty (30) day period, the matter shall be resolved following the procedures contemplated in Section 3.2(b) hereof.

ARTICLE III

PURCHASE PRICE

3.1 Purchase Price. Subject to Schedule 3.1, the aggregate purchase price for the Transferred Assets and the rights conveyed by the Company and the Transferring Subsidiary to the Buyer and the Intangibles Purchaser pursuant to this Agreement shall be an amount equal to $115,000,000 (ONE HUNDRED FIFTEEN MILLION DOLLARS) (the "Purchase Price"), payable, subject to the terms and conditions hereof, in full in cash by the Buyer to the Company at the Closing by wire transfer of immediately available funds to an account designated by the Company at least five (5) Business Days prior to the Closing.

3.2 Allocation of Purchase Price.

(a) The parties hereto agree to allocate the Purchase Price (and any Liabilities assumed hereunder or under the Exclusive License Agreement that are properly treated as purchase price) in accordance with the rules under Section 1060 of the Code and the Treasury Regulations promulgated thereunder. The parties agree to act in accordance with the computations and allocations as determined pursuant to this Section 3.2 in any relevant Tax Returns or filings, including any forms or reports required to be filed pursuant to Section 1060 of the Code, the Treasury Regulations promulgated thereunder or any provisions of local, state and foreign law (the "1060 Forms"), and to cooperate in the preparation of any 1060 Forms and to file such 1060 Forms in the manner required by applicable Law. Notwithstanding the foregoing, the parties agree to allocate the Purchase Price (and any Liabilities assumed hereunder or under the Exclusive License Agreement that are properly treated as purchase price) in accordance with Schedule 3.2(a) attached hereto. The Buyer shall prepare draft 1060 Forms that are consistent with the foregoing within thirty (30) days of the Closing, which it shall submit to the Company and the Transferring Subsidiary for their consent, which consent shall not be unreasonably withheld or delayed.

(b) Any issues with respect to the allocation referred to in Section 3.2(a) above which have not been finally resolved within forty-five (45) days following the Closing shall be referred to the Independent Accounting Firm, which shall, within twenty (20) days after such submission or such longer period as the Independent Accounting Firm may reasonably require, determine and report to the Buyer and the Company upon such remaining disputed items, and such determination shall be final, binding and conclusive on the parties hereto. The fees and disbursements of the Independent Accounting Firm shall be allocated between the Buyer and the Intangibles Purchaser, on the one hand, and the Company and the Transferring Subsidiary, on the other hand, in such manner that the Buyer and the Intangibles Purchaser shall be responsible for that portion of the fees and expenses equal to such fees and expenses multiplied by a fraction, the numerator of which is the aggregate dollar value of disputed items submitted to the Independent Accounting Firm that are resolved against the Buyer and the Intangibles Purchaser (as finally determined by the Independent Accounting Firm) and the denominator of which is the total dollar value of the disputed items so submitted, and the Company and the Transferring Subsidiary shall be responsible for the remainder of such fees and expenses.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Company. Except as set forth in the Company Disclosure Schedule, the Company and the Transferring Subsidiary hereby, jointly and severally, represent and warrant to the Buyer and the Intangibles Purchaser as set forth in this Article IV. Each disclosure set forth in the Company Disclosure Schedule shall be deemed disclosed for purposes of, and shall qualify and be treated as an exception to, any section of this Agreement to the extent disclosure in one specific section of the Company Disclosure Schedule is specifically referred to in another specific section of the Company Disclosure Schedule or indicated by appropriate cross-reference or where it is reasonably apparent from the face of the disclosure (without any additional investigation or knowledge) that a reference in one specific section in the Company Disclosure Schedule also relates to another specific section of the Company Disclosure Schedule.

(a) Due Organization. Each of the Company and the Transferring Subsidiary is a corporation duly organized, validly existing and, where applicable, in good standing under the laws of the jurisdiction of its organization. Each Company Party (i) has all requisite corporate power and authority to own, lease and operate all of its properties and assets (including all of the Transferred Assets) and to carry on the Business and its other businesses as they are now being conducted and (ii) is in good standing and is duly qualified to do business in each jurisdiction in which the nature of the Business and its other businesses or the ownership, leasing or operation of its properties (including all of the Transferred Assets) makes such qualification necessary, except where the failure to so qualify or be in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The copies of the certificate of incorporation and by-laws or similar organizational documents of the Company and the Transferring Subsidiary, which were previously made available to the Buyer, are true, complete and correct copies of such documents as in effect on the date of this Agreement. The Company Parties include all entities that are presently Affiliates of the Company. Neither the Company nor the Transferring Subsidiary holds any stock, limited liability company interest, partnership interest or any other equity interest in any Person other than the other Company Parties, Pearl and Stamford.

(b) Authorization and Validity of Agreement. The Company and the Transferring Subsidiary have all requisite corporate power and authority to enter into this Agreement and the Transaction Documents to which each is, or is specified to be, a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Company and the Transferring Subsidiary of this Agreement and the Transaction Documents and the consummation by the Company and the Transferring Subsidiary of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action and no other corporate action or proceeding (including the approval of Company stockholders) on the part of the Company or the Transferring Subsidiary is or will be necessary for the execution, delivery and performance by the Company and the Transferring Subsidiary of this Agreement or the Transaction Documents and the consummation by the Company and the Transferring Subsidiary of the transactions contemplated hereby or thereby. This Agreement and the Transaction Documents to which each is, or is specified to be, a party have been duly and validly executed and delivered by the Company and the Transferring Subsidiary, as applicable, and, assuming the due authorization, execution and delivery hereof and thereof by the Buyer and the Intangibles Purchaser party thereto, constitute legal, valid and binding obligations of the Company and the Transferring Subsidiary, enforceable against each of them in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other Laws relating to or affecting creditors' rights generally and by general equity principles (whether considered in a proceeding in equity or at law). The Board of Directors and the board of directors of the Transferring Subsidiary, by resolutions duly adopted at a meeting duly called and held, has each (i) determined that the Acquisition and the transactions contemplated by this Agreement and the Transaction Documents are expedient and in the best interests of the Company, the Transferring Subsidiary and their respective stockholders and declared the Acquisition and the transactions contemplated by this Agreement and the Transaction Documents advisable and (ii) approved this Agreement and the Transaction Documents and the transactions contemplated by this Agreement and the Transaction Documents, including the Acquisition.

(c) No Conflict. The execution and delivery by the Company and the Transferring Subsidiary of this Agreement does not, and the execution and delivery by the Company and the Transferring Subsidiary of each Transaction Document to which it is or is specified to be a party will not, and the consummation of the Acquisition and the other transactions contemplated hereby and thereby and compliance by the Company and the Transferring Subsidiary with the terms hereof and thereof will not, except as set forth in the exceptions to Section 4.1(d) hereof, (i) conflict with, or result in any violation in any material respect of, or constitute in any material respect a default (with or without notice or lapse of time or both) under, or give rise to a right of termination, cancellation, acceleration or increase of any obligation or liability or the loss of a material benefit under, or the creation of a Lien on any of the Transferred Assets (any such conflict, violation, default, right of termination, cancellation or acceleration, loss or creation, a "Violation"), (ii) result in a Violation pursuant to any provision of the certificate of incorporation, bylaws or other governing documents of any Company Party, (iii) result in any Violation in any material respect of any material contractual obligations (including the Contracts) of any Company Party, including any contract constituting a Retained Asset, or (iv) result in any Violation in any material respect of any Licenses and Permits, Order or Law applicable to the Business or the Transferred Assets.

(d) Consents. No consent, approval, authorization, Order, Licenses and Permits, or registration, declaration or filing with, or notice to, any Governmental Authority or of, with or from any other Person, is required in connection with the execution and delivery of this Agreement or any Transaction Document by the Company or the Transferring Subsidiary or the consummation by the Company or the Transferring Subsidiary of the transactions contemplated hereby or thereby, except for (i) the filing with the SEC of such reports and other materials under the Exchange Act as may be required in connection with this Agreement and the Transaction Documents and the transactions contemplated hereby and thereby, (ii) any such consent, approval, authorization, Order, Licenses and Permits, registration, declaration, filing or notice required under the HSR Act and ARC and (iii) consents, approvals, authorizations, Orders, Licenses and Permits, registrations, declarations, filings or notices which are set forth in Schedule 4.1(d) or are not material to the Transferred Assets and the Business.

(e) Transferred Real Property. The Company has furnished to the Buyer an accurate and complete copy of each instrument comprising the Lease, together with accurate and complete copies of each material notice or waiver delivered in connection with the Lease. The Company is not in breach in any material respect or default under the Lease and, to the Knowledge of the Company, no event has occurred which, with notice or lapse of time or both, would constitute a breach in any material respect or default under the Lease. Neither the Company nor the Transferring Subsidiary has received any written notice from the Landlord alleging that any breach or default by any Company Party exists under the terms of the Lease. The Lease will continue to be binding in accordance with its terms immediately following the Closing, except in the event the Lease would no longer be binding as a result of actions that are taken by the Buyer, the Intangibles Purchaser or any of their respective Affiliates, provided that the failure to satisfy the condition specified in Section 8.2(i) shall not in any case be deemed to result from the actions taken by the Buyer or any of its Affiliates other than if such failure results from a breach by the Buyer of Section 5.5 hereof. Other than by the instruments referred to in the definition of Lease, the Lease has not been amended or modified and no material consent or waiver has been granted with respect to any of the terms thereof. The Company has furnished to the Buyer an accurate and complete copy of the Option Agreement, pursuant to which the Company has rights to an option (the "Option") to purchase the building (the "Building") in which the premises subject to the Lease are located. The Company has not exercised the Option, and the Option is, to the Knowledge of the Company, in full force and effect. Other than by the instruments referred to in the definition of Option Agreement, the Option Agreement has not been amended or modified and no material consent or waiver has been granted with respect to any of the terms thereof. The Company has furnished to the Buyer a complete and accurate copy of any non-disturbance agreement presently in effect between the Company and the holder of any deed of trust encumbering the Building.

(f) Title; Sufficiency of the Assets.

(i) The Company or the Transferring Subsidiary has good, valid and marketable title, of record and beneficially, to all of the Transferred Assets (the "Transferred Assets") and at the Closing will transfer and deliver to the Buyer or the Intangibles Purchaser legal and valid title to the Transferred Assets, free and clear of all Liens other than Permitted Liens. All of the machinery, equipment and other tangible assets included in the Transferred Assets are in good and usable condition, ordinary wear and tear excepted, have been maintained in accordance with normal industry practice and are otherwise suitable for the purposes for which they are presently used by the Company and the Transferring Subsidiary.

(ii) Schedule 4.1(f)(ii) lists all of the Transferred Shares, the Stamford Notes and the record owners thereof. The Transferred Shares are validly issued, fully paid and nonassessable and constitute all of the securities held by any Company Party in Pearl and Stamford. Other than the Transferred Share Agreements, there are no outstanding obligations, options, warrants or other rights, agreements, arrangements or commitments of any kind held by the Company Parties relating to any securities of Pearl or Stamford. Other than the Transferred Shares listed in Schedule 4.1(f)(ii), none of the Company Parties holds, directly or indirectly, any securities of any entity engaged in the Business.

(iii) The Transferred Assets comprise all of the assets employed by the Company Parties in connection with the Business, other than the Retained Assets. The Transferred Assets, the rights of the Buyer and the Intangibles Purchaser under the Transaction Documents and the rights of the Buyer and the Intangibles Purchaser under the Business Intellectual Property (subject to Section 4.1(q)(vi) hereof) are sufficient for the Buyer and the Intangibles Purchaser to operate the Business (other than the items in clauses 2.1(b)(iii), (iv), (v), (vii), (viii), (ix), (x), (xi) and (xii)) immediately following the Closing in substantially the same manner as the Business is presently conducted.

(g) Taxes. There are no Liens (other than Permitted Liens) for Taxes upon the Transferred Assets. All Taxes related to the Transferred Assets, to the extent attributable to the Pre-Closing Period, have been or shall be, when due, paid by the Company or the Transferring Subsidiary. All Tax Returns required to have been filed by the Company Parties have been timely filed (and were true, correct and complete in all material respects) and all Taxes required to be paid (including any Taxes shown to be payable on such Tax Returns) by the Company Parties have been paid. All Taxes which the Company Parties are required by Law to withhold and collect on or prior to the Closing Date from the wages of employees (including sales Taxes, withholding of Taxes from the wages of employees and withholding of Taxes on distribution or payments made to non-U.S. entities) have been, or will have been, duly withheld, collected and paid over, in each case, to the proper taxing authorities to the extent due and payable. To the Knowledge of the Company, no written claim has ever been made by any Governmental Authority in any jurisdiction where any of the Company Parties does not file Tax Returns, or pay and collect Taxes in respect of a particular type of Tax imposed by that jurisdiction, that any of such entities is, or may be, subject to an obligation to file Tax Returns, or pay or collect Taxes, in respect of such Tax in that jurisdiction. None of the Company Parties has agreed to any extension or waiver of the statute of limitations applicable to any Tax Return, or agreed to any extension of time with respect to a Tax assessment or deficiency, which period (after giving effect to such extension or waiver) has not yet expired. There are no ongoing or pending Tax audits of any Company Party.

(h) Legal Proceedings. There are no, and since November 1, 2005 there have not been any, material Proceedings pending or, to the Knowledge of the Company, threatened in writing against, affecting or involving any of the Transferred Assets or arising out of the conduct of the Business. Neither the Company nor the Transferring Subsidiary is, or since November 1, 2005 has been, subject to any material Order affecting the Business or involving the Transferred Assets.

(i) Licenses and Permits; Compliance with Laws.

(i) Schedule 4.1(i) contains a complete and accurate list of all Licenses and Permits. The Licenses and Permits (whether or not comprising Transferred Licenses) include all licenses, permits, concessions, exemptions, consents, franchises, certificates, variances, approvals and filings with Governmental Authorities necessary for the Company Parties to own, lease and operate the Transferred Assets and to carry on the conduct of the Business as it is being conducted as of the date hereof.

(ii) The Company or the Transferring Subsidiary owns or possesses, as of the date hereof, each of the Licenses and Permits and has made (on a timely basis in all material respects) all required filings, applications and registrations with Governmental Authorities required to be made by the Company or the Transferred Subsidiary in relation to the Business and the Transferred Assets (including all authorizations required by the regulations of the FDA and all foreign equivalents thereof). All Licenses and Permits are in full force and effect and all Transferred Licenses shall remain in full force and effect immediately after the Closing.

(iii) No loss of any License or Permit is pending in any Proceeding or, to the Knowledge of the Company, has been threatened in writing by a Governmental Authority, except for normal expirations in accordance with the terms thereof or applicable Law, and all Transferred Licenses may be transferred to the Buyer or the Intangibles Purchaser.

(iv) The Company and the Transferring Subsidiary are, and for the past three (3) years have been, in compliance in all material respects with (A) the terms and conditions of the Licenses and Permits and (B) all Laws applicable to the ownership or use of the Transferred Assets or the conduct of the Business as conducted by the Company or the Transferring Subsidiary at the applicable time, and the Company has not received any written notice alleging facts which, if true, would constitute a failure to comply with either (A) or (B) of this Section 4.1(i)(iv).

(v) The Company has filed with the FDA all material required notices, supplemental applications and annual or other reports required to be filed by the Company Parties in connection with the operation of the Transferred Assets or the conduct of the Business.

(j) Environmental Matters.

(i) The Company Parties have complied in all material respects with all Environmental Laws applicable to the Business, Transferred Real Property and the Transferred Assets.

(ii) Except as set forth in the Environmental Reports and as would not reasonably be expected to result in the Buyer and the Intangibles Purchaser incurring material Liabilities pursuant to Environmental Laws, (i) the Company Parties have not contaminated the Transferred Real Property with any Hazardous Substance and (ii) to the Knowledge of the Company, no other Person has contaminated the Transferred Real Property with any Hazardous Substance.

(iii) None of the Company Parties have received any written notice, demand, letter, claim or request for information indicating that any such Person may be in violation of or subject to Liability under any Environmental Laws relating to the Transferred Real Property.

(iv) No Proceeding is pending or, to the Knowledge of the Company, threatened against any Company Party with respect to the Business, the Transferred Real Property or the Transferred Assets, or against the Business, the Transferred Real Property or the Transferred Assets, under any applicable Environmental Laws, and none of the Company Parties has assumed by Contract or operation of Law with respect to the Business, the Transferred Real Property or the Transferred Assets any outstanding material Liability pursuant to any applicable Environmental Law.

(k) Employee Benefits.

(i) The term "Company Plan" includes (1) each "employee benefit plan" (within the meaning of Section 3(3) of ERISA) and (2) any other material plan, contract, agreement, policy or other arrangement providing for employment, severance, deferred compensation, bonus, performance awards, change-in-control benefits, stock or stock-related awards, fringe benefits, disability benefits, supplemental employment benefits, paid time off, vacation benefits, if any, retirement benefits, profit-sharing, post-retirement benefits or other employee benefits or remuneration of any kind, in each case entered into, maintained or contributed to in respect of any Business Employees or with respect to which any Company Party has any material Liability in respect of any Business Employees. Schedule 4.1(k)(i) contains a true and complete list of each Company Plan under which any Business Employee has or may have any present or future right to benefits with respect to his or her employment with the Company or the Transferring Subsidiary. Each Company Plan is maintained by and in the name of the Company or the Transferring Subsidiary.

(ii) With respect to each Company Plan, the Company has provided or made available to the Buyer a current, accurate and complete copy (or, to the extent no such copy exists, an accurate description) of (A) all plan documents (including all amendments thereto), (B) the most recent summary plan description together with the summary or summaries of material modifications thereto, if any, (C) the most recent Annual Report (Form 5500) for each plan for which such a report is required and (D) the most recent Internal Revenue Service determination letter issued to any Company Plan intended to be qualified under Section 401(a) of the Code.

(iii) No plan presently or ever in the past maintained, sponsored, contributed to or required to be contributed to by the Company, the Transferring Subsidiary or any of their respective ERISA Affiliates is or ever in the past was (i) a "multiemployer plan" as defined in Section 3(37) of ERISA, (ii) a plan described in Section 413 of the Code, (iii) a plan subject to Title IV of ERISA, Section 302 of ERISA, or Section 412 of the Code or (iv) a plan that provided health or other non-pension benefits following an employee's retirement. The term "ERISA Affiliate" means any Person that, together with the Company or any of its Subsidiaries, would be deemed a "single employer" within the meaning of Section 414(b), (c), (m) or (o) of the Code.

(iv) Each Company Plan has been maintained, administered and operated in material compliance with the terms and applicable provisions of ERISA, the Code and other Applicable law. The Company or the Transferring Subsidiary has received a favorable determination letter from the Internal Revenue Service or that each Company Plan that is intended to meet the qualification requirements of Section 401(a) of the Code has met such requirements and, to the Company's knowledge, nothing has occurred since the date of such letter that could be expected to adversely affect such qualified status.

(v) All Business Employees have been paid in full all wages, salaries, bonuses, commissions, paid time off and severance for services performed up to the date hereof, and all contributions required to be made to any Company Plan have been timely made.

(vi) The Transferred Employees do not participate in any employee benefit plan, program or arrangement maintained or contributed to by the Company Parties outside of the United States.

(vii) With respect to any Company Plan that is a "group health plan" within the meaning of Section 607 of ERISA and is subject to Section 4980B of the Code, the Company has complied in all material respects with the continuation coverage requirements of the Code and ERISA with respect to the Business Employees.

(l) Labor and Employment Matters.

(i) With respect to the Business Employees (a) there are no collective bargaining or other labor union agreements presently in existence or being negotiated by the Company Parties to which any of the Company Parties is or may become a party or by which any of them is or may become bound; (b) no labor organization has been certified or recognized as the representative of any Business Employees; (c) none of the Company Parties has encountered any labor union organizing activity or had any employee strikes, material work stoppages, material slowdowns or lockouts; (d) there are no unfair labor practice charges, administrative charges or complaints pending or, to the Knowledge of the Company, threatened against the Company Parties; (e) there are no Proceedings pending or, to the Knowledge of the Company, threatened in writing against the Company Parties by or with respect to any of the Business Employees asserting violations of any laws respecting employment, including provisions related to payment of wages, hours of work, equal opportunity, discrimination, harassment, retaliation, occupational health and safety and employee privacy rights; and (f) the Company Parties are in compliance in all material respects with all Laws respecting employment, including provisions related to payment of wages, hours of work, equal opportunity, discrimination, harassment, retaliation, citizenship and immigration, occupational health and safety, WARN and employee privacy rights.

(ii) Schedule 4.1(l)(ii) sets forth a true, complete and accurate list of each Business Employee, his or her date(s) of hire by the Company, position and title, if any, current rate of compensation (including bonuses, commissions and incentive compensation, if any), and in the case of each Business Employee, whether such employee is hourly or salaried, whether such employee is exempt or non-exempt and whether such employee is absent from active employment and, if so, the date such employee became inactive, the reason for such inactive status and, if applicable, the anticipated date of return to active employment. All such Business Employees are employed by the Company or the Transferring Subsidiary. The Company has delivered or made available to the Buyer all written employee handbooks, policies, programs and arrangements with respect to the Business Employees.

(iii) All Business Employees are employees at will or, subject to applicable employment Laws, otherwise employed such that the Company may lawfully terminate their employment at any time, with or without cause (in some cases subject to notice requirements and/or obligations to pay severance or other termination payments), without creating severance obligations. A true and correct copy of any form of non-compete, non-solicitation or confidentiality agreement presently in force with any of the Business Employees has been delivered or made available to Buyer.

(iv) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall cause the Company Parties to be in material breach of any material contract with any Business Employee or cause the Company Parties to be liable to pay any material severance or other material amount to any such employee.

(v) The Company reviewed all work permits, visas and other immigration documents relating to any Transferred Employees, determining that they were in compliance with Applicable Laws.

(m) Brokers, Finders, etc. No agent, broker, investment banker, financial advisor or other firm or Person is or will be entitled to any broker's or finder's fee or any other similar commission or fee in connection with any of the transactions contemplated by this Agreement, except J.P. Morgan Securities, Inc., whose fees and expenses will be paid by the Company in accordance with the Company's agreement with such advisor.

(n) Insurance. Schedule 4.1(n) contains a complete and accurate list of all policies or binders of insurance presently maintained by the Company or the Transferring Subsidiary that provide coverage with respect to the Transferred Assets or the conduct of the Business, showing as to each policy or binder the carrier, policy number, expiration dates and a general description of the type of coverage provided. All such policies are in full force and effect, all premiums due and payable thereon have been paid and no written notice of cancellation or termination has been received with respect to any such policy, which has not been replaced on substantially similar terms prior to the date of such cancellation.

(o) Transactions with Related Persons. Other than employment related Contracts, the Contracts do not include any agreements with any of the stockholders holding five (5) percent or more of the outstanding common stock of the Company, directors, officers or employees of the Company, the Transferring Subsidiary or any Affiliate thereof or any relative or spouse of any of the foregoing Persons or any other Affiliate of the foregoing Persons (collectively, the "Related Persons").

(p) Material Contracts.

(i) Schedule 4.1(p) sets forth all of the Contracts, other than the SEDS Contracts:

(A) with respect to the employment or termination of, or severance or retirement arrangements relating to, any Business Employees, excluding offer letters that confirm at-will employment and ordinary course agreements to arbitrate, confidentiality agreements and equity award agreements substantially in the Company's standard form;

(B) with respect to any bonus, retention, profit sharing, stock option, stock purchase, phantom stock, pension, retirement, post-retirement, deferred compensation, employment or other employee benefit plans, agreements, trusts, funds or other arrangements for the benefit or welfare of any Business Employee, excluding offer letters that confirm at-will employment and ordinary course agreements to arbitrate, confidentiality agreements and equity award substantially in the Company's standard form;

(C) which is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC);

(D) which provides for any payment by or to the Company or the Transferring Subsidiary in excess of [***] in any year or which is not terminable within one (1) year of that date hereof without penalty;

(E) which provides for or requires any aggregate future payments in excess of [***] with respect to, or in connection with, any capital expenditures or the acquisition or construction of fixed assets;

(F) which contains any ongoing indemnification obligation by any of the Company Parties which could reasonably be expected to require the payment by such entity in excess of [***] in the aggregate;

(G) relating to, or evidencing, indebtedness for borrowed money or any guarantee of indebtedness for borrowed money, in each case involving an amount in excess of [***] or otherwise placing a Lien on any portion of the Business or Transferred Assets;

(H) to which any Governmental Authority is a party;

(I) the Contracts disclosed or required to be disclosed pursuant to Sections 4.1(q)(iv) or (v);

(J) with respect to any all joint venture, partnership or similar agreements or arrangements;

(K) that limit or purport to limit the ability of the any of the Company Parties, or would limit or purport to limit the ability of the Buyer, the Intangibles Purchaser or any of their Affiliates, to compete in any line of business or with any Person or in any geographic area or during any period of time and that relate to the Business or the Transferred Assets;

(L) with respect to which (a) the provider thereunder is the sole source of the respective goods or services or (b) the goods or services could not be reasonably obtained from an alternate provider on commercially reasonable terms no less favorable to the Company or the Buyer in any material respect than those set forth in relevant agreement; or

(M) is otherwise material to the conduct of the Business as presently conducted or with respect to the Transferred Assets.

(ii) The Company has previously made available to the Buyer complete and accurate copies of each Contract set forth in Schedule 4.1(p) (the "Material Contracts"). All of the Material Contracts are valid and in full force and effect. Either of the Company or the Transferring Subsidiary is party to each Material Contract and no Affiliate of the Company or the Transferring Subsidiary is party thereto. Neither the Company nor the Transferring Subsidiary, and, to the Knowledge of the Company, none of the other parties thereto, has violated in any material respect, or committed or failed to perform any act which (with or without notice, lapse of time or both) would constitute a material default under the provisions of, any Material Contract.

(q) Intellectual Property.

(i) Schedule 4.1(q)(i) lists all pending Proceedings before any Governmental Authority (including the United States Patent and Trademark Office or equivalent authority anywhere in the world) related to any Business Intellectual Property, but excluding any such Proceedings in the normal course of prosecution of any pending trademark or patent application included in the Registered Intellectual Property (including any office action, examiner interview and the like). No Business Intellectual Property is the subject of any pending Proceeding, Order or stipulation binding on any Company Party restricting in any material respect the use, transfer or licensing thereof by such Company Party.

(ii) With respect to each item of material Registered Intellectual Property, necessary registration, maintenance, annuities and renewal fees in connection with such Registered Intellectual Property have been made in a timely manner and all necessary documents and certificates in connection with such Registered Intellectual Property have been filed in a timely manner with the relevant patent authorities in the United States and other countries of the world for the purposes of maintaining such Registered Intellectual Property, except for any failure to pay any fees or file any documents or certificates in a timely manner which has been made known to Buyer and may be corrected before the date on which the applicable Registered Intellectual Property could not be renewed or revived (as determined under applicable statute, rule or regulation).

(iii) All Registered Intellectual Property is listed in Schedule 4.1(q)(iii). The Company or the Transferring Subsidiary, and not any other Company Party, owns and has good and exclusive title, in each case free and clear of any Lien (other than Permitted Liens), to all Business Intellectual Property.

(iv) Schedule 4.1(q)(iv) lists each agreement pursuant to which any Company Party has received a license or similar rights to any Intellectual Property Rights owned by a third party that constitutes Business Intellectual Property, but excluding shrink-wrap software agreements that are generally commercially available or non-disclosure agreements that provide to any Company Party no more than limited use for evaluation of trade secrets.

(v) Schedule 4.1(q)(v) lists each agreement pursuant to which any Company Party has transferred ownership of, or granted any license or similar rights with respect to, any Business Intellectual Property to any third party.

(vi) To the Knowledge of the Company, the Company or the Transferring Subsidiary owns or possesses adequate licenses or rights to use, in each case free and clear of any Lien (other than Permitted Liens) and subject to existing rights or obligations under any Contracts or Excluded Contracts, all Business Intellectual Property, in the conduct of the Business as presently conducted.

(vii) To the Knowledge of the Company, (A) no person has infringed or misappropriated or is infringing or misappropriating any Business Intellectual Property and (B) neither the Company nor the Transferring Subsidiary nor any of their respective Affiliates has infringed or misappropriated or is infringing or misappropriating, in connection with the operation of the Transferred Assets or the conduct of the Business as presently conducted, the Intellectual Property Rights of any third party. No Company Party has received written notice that it infringes or misappropriates, or is alleged to infringe or misappropriate, the Intellectual Property Rights of any third party in connection with the operation of the Transferred Assets or the conduct of the Business as presently conducted.

(viii) All employees, officers, contractors and consultants of the Company Parties employed or providing technology-related services for the Business have executed agreements requiring assignment to a Company Party of all inventions made during the course of and as a result of their association with it as part of the Business and obligating the individual to maintain as confidential the confidential information of the applicable Company Party that constitutes Business Intellectual Property.

(ix) To the Knowledge of the Company, there are no conduct or matters which could reasonably be expected to adversely affect the validity or the enforceability of any Business Intellectual Property.

(x) Neither the SEDS Intellectual Property nor any contract, agreement or arrangement relating thereto is necessary to conduct the Business as it is presently conducted.

(r) Financial Information.

(i) [***].

(ii) [***].

(s) No Material Adverse Effect. Since June 30, 2008, no event, occurrence or circumstance has arisen that has had or could reasonably be expected to result in a Material Adverse Effect.

(t) Absence of Changes or Events. Except as expressly contemplated by this Agreement since June 30, 2008, neither the Company nor the Transferring Subsidiary, in relation to the Transferred Assets or the Business, has:

(i) borrowed any amount or incurred or become subject to any Liabilities, other than (A) Liabilities incurred in the ordinary course of business), (B) Liabilities under contracts entered into in the ordinary course of business (provided such contracts are disclosed pursuant to Section 4.1(p) hereof or are not required to be disclosed thereunder) and (C) borrowings from banks (or similar financial institutions) necessary to meet ordinary course working capital requirements);

(ii) mortgaged, pledged or subjected to any Liens (other than Permitted Liens) any portion of the Transferred Assets;

(iii) amended the charter or bylaws (or similar organizational document) of the Company or the Transferring Subsidiary;

(iv) sold, assigned, transferred or otherwise disposed of any Business Intellectual Property;

(v) adopted a plan or agreement of restructuring, merger, arrangement, consolidation, recapitalization or other reorganization;

(vi) made any change to the methods of accounting, accounting practices, accounting policies, or accounting procedures;

(vii) made any capital investment in, any loan to or any acquisition of the securities or assets constituting a business of any other Person (other than an investment by the Company in a wholly-owned Subsidiary);

(viii) entered into any employment contract with any Business Employee with base compensation exceeding $50,000 per year or any collective bargaining agreement or other labor-related agreements with any labor union, labor organization, employee association, employee bargaining agent or affiliated bargaining agent, or modified the terms of any such existing contract or agreement;

(ix) made any other material change in employment terms (including compensation) for any Business Employees having employment contracts with annual payments exceeding $50,000 per year; or

(x) entered into any contract or agreement, whether written or oral, to do any of the actions referred to in Sections 4.1(t)(i) through (ix) above.

(u) Solvency. The Company is not now insolvent, and will not be rendered insolvent, by consummating the Acquisition. As used in this section, "insolvent" means that the sum of the debts and other probable Liabilities of the Company exceeds the present fair saleable value of the Company's assets. Immediately after giving effect to the transactions contemplated by this Agreement and the Transaction Documents (i) the Company will be able to pay its Liabilities as they become due in the normal course of its business; (ii) the Company will not have unreasonably small capital with which to conduct its present or proposed business; (iii) the Company will have assets (calculated at fair market value) that exceed its Liabilities; and (iv) taking into account all pending and threatened litigation, final judgments against the Company in actions for money damages are not reasonably anticipated to be rendered at a time when, or in amounts such that, the Company will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum probable amount of such judgments in any such actions and the earliest reasonable time at which such judgments might be rendered) as well as all other obligations of the Company then due by the Company. Immediately after giving effect to the transactions contemplated by this Agreement and the Transaction Documents, the cash available to the Company, after taking into account all other expected uses of such cash, will be sufficient to pay all such debts and judgments promptly in accordance with their terms.

(v) Regulatory Status. The Company has not received any written notice that any filings with any Governmental Authority in relation to the Business or the Transferred Assets are not presently in good standing. The Company or, to the Knowledge of the Company, the applicable third party has filed with the FDA all required notices, supplemental applications and annual or other reports, which are material to the operation of the Business as presently conducted by the Company. The Company has delivered to the Buyer copies of all (i) material reports of inspection observations, (ii) material establishment inspection reports, (iii) material warning letters and (iv) any other material documents received by the Company from the FDA or any other Governmental Authority relating to the Business or Transferred Assets that assert ongoing material lack of compliance with any Laws (including regulations promulgated by the FDA and any other Governmental Authority) by the Company.

(w) Inventory. The Inventory of the Business consists of raw materials and supplies, manufactured and purchased parts, goods in process and finished goods, all of which is merchantable and fit for the purpose for which it was procured or manufactured, held in amounts as required in the ordinary course of business.

4.2 Representations and Warranties of the Buyer. The Buyer and the Intangibles Purchaser hereby, jointly and severally, represent and warrant to the Company and the Transferring Subsidiary as set forth in this Section 4.2.

(a) Due Organization and Power. Each of the Buyer and the Intangibles Purchaser is a corporation duly incorporated or otherwise organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization.

(b) Authorization and Validity of Agreement. The Buyer and the Intangibles Purchaser have all requisite corporate power and authority to enter into this Agreement and the Transaction Documents to which each is, or is specified to be, a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Buyer and the Intangibles Purchaser of this Agreement and the Transaction Documents and the consummation by the Buyer and the Intangibles Purchaser of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action by the board of directors of the Buyer and the Intangibles Purchaser and no other corporate action or proceeding on the part of the Buyer or the Intangibles Purchaser is or will be necessary for the execution, delivery and performance by the Buyer and the Intangibles Purchaser of this Agreement or the Transaction Documents and the consummation by the Buyer and the Intangibles Purchaser of the transactions contemplated hereby or thereby. This Agreement and the Transaction Documents to which each is, or is specified to be, a party have been duly and validly executed and delivered by the Buyer and the Intangibles Purchaser, as applicable, and, assuming the due authorization, execution and delivery hereof by the Company and the Transferring Subsidiary party thereto, constitute legal, valid and binding obligations of the Buyer and the Intangibles Purchaser, enforceable against the Buyer and the Intangibles Purchaser in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other Laws relating to or affecting creditors' rights generally and by general equity principles (whether considered in a proceeding in equity or at law).

(c) No Conflict. The execution and delivery of this Agreement or any Transaction Documents does not, and the Closing will not except as set forth in the exceptions to Section 4.2(d) hereof, (i) result in any violation of any provision of the articles or certificate of incorporation, by-laws or similar organizational documents of the Buyer, the Intangibles Purchaser or any of their Subsidiaries, (ii) conflict with any material loan or credit agreement, note, bond, mortgage, guarantee, deed of trust, indenture or lease, to which the Buyer, the Intangibles Purchaser or any of their Subsidiaries is a party or (iii) result in any violation of any license, permit, concession, exemption, consent, franchise, certificate, variance, approval, Order or Law applicable to the Buyer, the Intangibles Purchaser or any of their Subsidiaries or their respective properties, rights or assets, except in the case of subclause (ii) or (iii) for any such conflict or violation which would not materially adversely affect the ability of the Buyer or the Intangibles Purchaser to perform its obligations under this Agreement.

(d) Consents. No consent, approval, authorization, Order, licenses, permits, or registration, declaration or filing with, or notice to, any Governmental Authority or of, with or from any other Person, is required in connection with the execution and delivery of this Agreement or any Transaction Documents by the Buyer or the Intangibles Purchaser or the consummation by the Buyer or the Intangibles Purchaser of the transactions contemplated hereby or thereby, except for (i) the filing with the SEC of such reports and other materials under the Exchange Act as may be required in connection with this Agreement and the transactions contemplated hereby (ii) any such consent, approval, authorization, registration, declaration, filing or notice required under the HSR Act and ARC and (iii) consents, approvals, authorizations or registrations which are set forth in Schedule 4.2(d) or which would not materially adversely affect the ability of the Buyer or the Intangibles Purchaser to perform its obligations under this Agreement.

(e) Brokers, Finders, etc. None of the Buyer, the Intangibles Purchaser nor any of their Affiliates has employed any agent, broker, investment banker, financial advisor or other firm or Person in connection with the transactions contemplated by this Agreement, who is entitled to a fee or commission in connection with such transactions.

(f) Financing. The Buyer and the Intangibles Purchaser will have available to them, at the Closing, immediately available funds necessary to pay the Purchase Price.

(g) Legal Proceedings. There are no Proceedings pending or threatened against or affecting the Buyer, the Intangibles Purchaser or any of their Subsidiaries, or any of their respective properties, assets or rights, and none of the Buyer, the Intangibles Purchaser nor any of their Subsidiaries is subject to any Order which, in either case, would or seeks to enjoin, rescind or materially delay the transactions contemplated by this Agreement or otherwise hinder the Buyer or the Intangibles Purchaser from timely complying with the terms and provisions of this Agreement.

(h) Investment Intent. The Buyer or the Intangibles Purchaser, as applicable, is acquiring the Transferred Shares for investment and not with a view toward, or for sale in connection with, any distribution thereof in violation of any applicable federal or state securities Laws. The Buyer and the Intangibles Purchaser acknowledge that the Transferred Shares have not been registered under the Securities Act or the securities or "blue sky" laws of any state or province and that the Transferred Shares may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act, except pursuant to an exemption from such registration available under the Securities Act, and without compliance with state, provincial and foreign securities Laws, in each case to the extent applicable.

(i) [***].

(i) [***].

(ii) No Fraud Waiver. Notwithstanding anything to the contrary set forth in this Agreement, including this Section 4.2(j), in no event shall the Buyer, the Intangibles Purchaser, the Company, the Transferring Subsidiary or any of their Affiliates waive hereby, or be deemed to have waived hereby, any right, claim or cause of action that the Buyer, the Intangibles Purchaser, the Company, the Transferring Subsidiary or any of their Affiliates may have or assert against any other party hereto or any of its Affiliates relating to fraud, and the waivers in this Agreement shall not be deemed to waive or absolve the Buyer, the Intangibles Purchaser, the Company, the Transferring Subsidiary or any of their Affiliates from any Liability for fraud.

ARTICLE V

COVENANTS

5.1 Access; Information and Records.

(a) Subject to Section 5.10 hereof, from the date hereof to the earlier of the Closing Date or the termination of this Agreement, upon reasonable prior written notice, the Company shall afford the officers, employees, auditors and other Representatives of the Buyer reasonable access, consistent with applicable Law, at all reasonable times, to officers, employees, properties, offices, plants and other facilities of the Transferring Subsidiary or any of its Subsidiaries and to all books and records of the Company Subsidiaries related to the Transferred Assets or the Business and shall furnish the Buyer with all financial, operating and other data and information as the Buyer, through its officers, employees, auditors or other Representatives, may from time to time reasonably request in writing and any reports and other documents filed by the Company Parties during such period with any Governmental Authority pursuant to the requirements of applicable Law relating to the Transferred Assets or the Business.

(b) The Buyer and the Intangibles Purchaser agree that all communications by, or at the direction of, the Buyer or the Intangibles Purchaser to any director, officer, employee or Representative of any Company Party shall be coordinated through the Company, unless the Company shall otherwise consent in writing, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, once initially coordinated by the Company, the Buyer, the Intangibles Purchaser or their Affiliates shall be entitled to have direct communication and contact with Business Employees with regard to the terms and conditions of employment by the Buyer, the Intangibles Purchaser or their Affiliates.

(c) Within three days of the date hereof, the Company shall request from the Landlord consent for the Buyer to conduct, or cause to be conducted, a Phase II environmental risk assessment for soil and ground water at the Transferred Property (the "Phase II"). The Company shall use commercially reasonable efforts to obtain such consent and enable the Phase II to be conducted prior to Closing. The Phase II shall occur during normal business hours. The Buyer and its Representatives shall be entitled to enter the Transferred Real Property to perform the Phase II and any and all other reasonable inspections and tests reasonably required by the Buyer of the Transferred Real Property; provided, however, that (i) any inspections or tests of the Transferred Real Property leased or subleased by the Company or any of its Affiliates, including the Phase II, shall be conducted only upon receipt by the Company and the Buyer of the prior written consent of the owner of such Transferred Real Property, to the extent required by Law or contract, (ii) such inspections or tests shall be conducted at the Buyer's sole cost and expense, and (iii) such inspections or tests shall not materially disrupt or disturb the ongoing operation of the Business, the Transferred Real

Property or the rights of any tenants or users thereof beyond a de minimis extent. In connection with the Phase II, the Buyer shall provide the Company with an original certificate of insurance, in a form reasonably approved by the Company, naming the Company, and each such other Person as the Company reasonably may name, as an additional named insured. After making any tests and inspections pursuant to this Section 5.1(c), the Buyer agrees to promptly restore the Transferred Real Property to substantially the same condition prior to such tests and inspections, which obligation shall survive any termination of this Agreement. Prior to the Closing, the Buyer agrees not to cause any lien to be imposed upon the Transferred Real Property and to indemnify, defend and hold harmless the Company, the Transferring Subsidiary and their Affiliates and respective directors, officers, managers, employees, agents, advisors, Representatives, successors and assigns (collectively, the "Seller Parties") from and against any and all Losses by reason of any damage to the Transferred Real Property or injury to Persons caused solely by the Buyer or any of its Affiliates, agents or other Representatives in exercising their rights under this Section 5.1(c). The indemnity provided pursuant to this Section 5.1(c) shall survive the Closing and any termination of this Agreement.

5.2 Conduct of the Business Prior to the Closing Date.

From the date hereof to the earlier of the Closing Date or the termination of this Agreement (except as expressly permitted or required by this Agreement, as set forth in Schedule 5.2(a) attached hereto or to the extent the Buyer otherwise consents in writing, the Company and the Transferring Subsidiary shall, and shall cause the other Company Parties to, (A) operate the Transferred Assets and conduct the Business in the ordinary course of business consistent with past practice and (B) use its reasonable best efforts to preserve the Business intact and retain all Business Employees. Without limiting the foregoing, the Company and the Transferring Subsidiary shall, and shall cause the other Company Parties to:

(a) perform in all material respects all of their respective obligations under the Contracts in accordance with the terms thereof;

(b) pay and discharge all Liabilities related to the Transferred Assets or the Business as they become due and payable in the ordinary course of business consistent with past practice (subject to the Company's ability to pursue in good faith any bona fide disputes);

(c) comply in all material respects with all Laws applicable to the Transferred Assets or the Business and, promptly following receipt thereof, give to the Buyer copies of any notice received from any Governmental Authority or other Person alleging any violation of any such Laws;

(d) not sell, lease, assign, transfer, license, sublicense, encumber or otherwise dispose of, in whole or in part, any of the Transferred Assets;

(e) not modify, change or otherwise alter in any material respect the fundamental nature of the Transferred Assets or the Business;

(f) not cancel, rescind, terminate, renew, assign or make any material amendment or change to any Contract, other than the expiration of a Contract in accordance with its terms as of the date hereof;

(g) not incur, create or assume any indebtedness or Liabilities for borrowed money or guarantee any such obligation which would constitute an Assumed Liability;

(h) (A) not incur, create, assume or suffer to exist any Lien on any Transferred Asset (except for the Permitted Liens) unless such Lien is released upon or prior to the Closing and (B) remove the Liens by Pfizer Incorporated and its Affiliates on any Transferred Assets, including any Business Intellectual Property;

(i) except as required by any applicable Law, Governmental Authority or any Company Plan, not (A) increase the compensation, bonus or benefits of any Business Employee, (B) loan or advance any money or other property to any Business Employee, (C) establish, adopt, enter into, amend or terminate any Company Plan or any plan, agreement, program, policy, trust, fund or other arrangement that would be a Company Plan with respect to any Business Employee, (D) pay any benefit or amount to any Business Employee not required under any Company Plan as in effect on the date of this Agreement other than payment of normal wages and salary in the ordinary course of business consistent with past practice, (E) grant any awards to any Business Employee under any bonus, incentive, performance or other compensation plan, arrangement or Company Plan or (F) take any action to accelerate the vesting or payment of any compensation or benefit under any Company Plan;

(j) not terminate any Business Employee, except "for cause" (as such term is defined in a contract with any such Business Employee or in the Company's personnel policies or practices);

(i) not effectuate a "plant closing," "mass layoff" or other similar triggering event as those terms are defined in the Worker Adjustment and Retraining Notification Act ("WARN") or any other applicable analogous Law, affecting in whole or in part the Identified Employees;

(ii) not institute, settle or agree to settle any Proceeding by or before any Governmental Authority that creates or imposes any continuing obligation or restriction on the Transferred Assets or would otherwise constitute an Assumed Liability;

(iii) not receive a license of the kind required to be disclosed on Schedule 4.1(q)(iv) and not sell, license or sublicense or otherwise transfer any rights to any third party under any Business Intellectual Property;

(iv) not surrender, revoke or otherwise terminate any Licenses or Permits, except in connection with any renewal or reissuance of any such License or Permit;

(v) not waive, release or assign any material rights, which rights, but for such waiver, release or assignment, would have been classified as a Transferred Asset, other than in the ordinary course of business consistent with past practice;

(vi) preserve materially intact the goodwill of the Business;

(vii) maintain the Transferred Assets in reasonably good condition and repair in all material respects and maintain Inventory and supplies at customary operating levels in the ordinary course of business;

(viii) maintain insurance reasonably comparable to that in effect on the date hereof and, in the event of a casualty, loss or damage to any Transferred Asset prior to the Closing Date for which the Company is insured, either repair or replace such Transferred Asset or, if the Buyer agrees, transfer the proceeds of such insurance to the Buyer at the Closing;

(ix) maintain the books, accounts and records relating to, used in or necessary for the operation of the Business in accordance with past custom and practice and in accordance with GAAP, as applicable;

(x) maintain in full force and effect all material Business Intellectual Property;

(xi) not take or omit to take any action that would reasonably be anticipated to have a Material Adverse Effect; and

(xii) not authorize any of, or commit or agree, whether in writing or otherwise, to take any of, the foregoing actions.

5.3 Acquisition Proposals. From the date hereof until the earlier of the Closing Date or the termination of this Agreement (the "Applicable Period"), without limiting the provisions of Section 5.2 hereof, the Company shall not, and shall cause its directors, officers and Representatives not to, directly or indirectly, (i) solicit, initiate, knowingly encourage or knowingly take any action designed to facilitate any inquiries or the making of any proposal that constitutes an Acquisition Proposal, (ii) participate in any negotiations or discussions regarding, or furnish to any Person any nonpublic information with respect to, any Acquisition Proposal, (iii) approve, endorse or recommend any Acquisition Proposal or (iv) enter into any letter of intent or similar document or any contract, agreement or commitment accepting any Acquisition Proposal. For purposes of this Agreement, an "Acquisition Proposal" shall mean any bona fide inquiry, proposal, request or offer from any third party relating to (A) any direct or indirect acquisition or purchase of any material portion of the Transferred Assets or the Business or (B) any merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company or the Transferring Subsidiary, unless, in the case of clause (B), such third party would be required to perform, or cause any Company Party to any Transaction Document to perform, their obligations under each of the Transaction Documents and such third party expressly affirms and assumes such obligations by written instrument, a copy of which is promptly provided to the Buyer.

5.4 Non-Solicitation.

(a) Each of the Company and the Transferring Subsidiary agrees that, for a period of [***] from and after the Closing Date, neither it nor any of its Subsidiaries shall, without the prior written consent of the Buyer, directly or indirectly, solicit (i) any Transferred Employee or (ii) any Person employed by the Buyer, the Intangibles Purchaser or any of their Affiliates who became known to the Company or the Transferring Subsidiary in connection with the transactions contemplated by this Agreement. Notwithstanding the foregoing, the restrictions set forth in this Section 5.4(a) shall not apply to [***].

(b) Each of the Buyer and the Intangibles Purchaser agrees that, for a period of [***] from and after the Closing Date, neither it nor any of its Subsidiaries shall, without the prior written consent of the Company, directly or indirectly, solicit (i) any Business Employee that is not a Transferred Employee or (ii) any Person employed by the Company, the Transferring Subsidiary or any of their Affiliates who became known to the Buyer or the Intangibles Purchaser in connection with the transactions contemplated by this Agreement. Notwithstanding the foregoing, the restrictions set forth in this Section 5.4(b) shall not apply to [***].

(c) The parties agree that if, in the opinion of any court of competent jurisdiction, any of the provisions contained in this Section 5.4 are not reasonable in any respect, then such court shall have the right, power and authority to excise or modify such provision or provisions of this Section 5.4 that such court may find unreasonable and to enforce the remainder of the restrictions as so amended.

5.5 Further Actions; Efforts.

(a) Subject to the terms and conditions of this Agreement, each party thereto shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate the Acquisition and the other transactions contemplated by this Agreement and the Transaction Documents, including preparing and filing as promptly as practicable all documentation, if any, to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents necessary to consummate the Acquisition and the other transactions contemplated by this Agreement and the Transaction Documents, including under the HSR Act and ARC.

(b) As soon as may be reasonably practicable and in any event within (i) fourteen (14) days of the date hereof, the Company and the Buyer shall each file with the United States Federal Trade Commission (the "FTC") and the Antitrust Division of the United States Department of Justice (the "DOJ") the notification and report forms relating to the transactions contemplated hereby as required by the HSR Act and (ii) twenty (20) days of the date hereof, the Company and the Buyer shall each file with the German Federal Cartel Office (Bundeskartellamt) (the "GFCO") the notification and report forms relating to the transactions contemplated hereby as required by the German Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschraenkungen) (the "ARC"). The Company and the Buyer shall promptly (a) supply the other with any information that may be required in order to effectuate such filings and (b) supply any additional information that may reasonably be required by the FTC, the DOJ, the GFCO or the competition or acquisition control authorities of any other jurisdiction and which the Company and the Buyer may reasonably deem appropriate. Notwithstanding anything to the contrary in this Section 5.5, the obligation to use "commercially reasonable efforts" in connection with this Section 5.5 shall not require the Buyer, the Intangibles Purchaser, the Company, the Transferring Subsidiary or any of their Affiliates to divest any business, asset or property owned by any of them or to agree to any hold separate orders or conduct or licensing provisions relating to any business, asset or property.

(c) In the event that any Proceeding or Order is instituted (or threatened to be instituted) by a Governmental Authority or private party challenging the Acquisition or any other transaction contemplated by this Agreement and the Transaction Documents, including under the HSR Act and ARC, (i) the parties hereto shall cooperate in all respects with each other and use their commercially reasonable efforts to contest and resist any such Proceeding or Order and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated by this Agreement, and (ii) the parties hereto shall use their commercially reasonable efforts to defend, each at their own cost and expense, any action or actions, whether judicial or administrative, in connection with the transactions contemplated by this Agreement and the Transaction Documents, including under the HSR Act and ARC.

5.6 Public Announcements. No party to this Agreement shall originate any publicity, news release or other public announcement, written or oral, whether relating to this Agreement or the existence of any arrangement between the parties, without the prior written consent of the Company (in the case of origination by the Buyer or the Intangibles Purchaser) or the Buyer (in the case of origination by the Company or the Transferring Subsidiary), whether named in such publicity, news release or other public announcement or not, except where such publicity, news release or other public announcement is required by law; provided, however, in such event, the party issuing such publicity, news release or other public announcement shall still be required to consult with the Company or the Buyer, as applicable, whether named in such publicity, news release or public announcement or not, a reasonable time but no less than forty-eight (48) hours prior to its release to allow the Company or the Buyer, as applicable, to comment thereon and, after its release, shall provide the other party with a copy thereof. If any party, based on the advice of its counsel, determines that this Agreement, or any of the other documents executed in connection herewith, must be filed with the SEC, then such party, prior to making any such filing, shall provide the Company or the Buyer, as applicable, and its counsel with a version of this Agreement or any other related documents which it intends to file, showing any proposed redactions, and will give due consideration to any comments provided by the Company or the Buyer, as applicable, or its counsel and use reasonable efforts to ensure the confidential treatment by the SEC of those sections specified by the Company or the Buyer, as applicable, or its counsel.

5.7 Company Employee Benefits.

(a) As promptly as practicable after satisfaction or waiver (subject to applicable Law) of the conditions (excluding conditions that, by their terms, are to be satisfied on the Closing Date) set forth in Article VIII hereof, the Company shall deliver an updated Schedule 1.1(a) to the Buyer, which Schedule shall provide the Buyer with the job title, base salary and other compensation provided each Business Employee. At least two (2) days prior to the Closing Date, the Buyer shall deliver to the Company a list of the Business Employees to whom the Buyer has made or intends to make offers of employment (each, an "Identified Employee"). The Buyer shall offer employment, commencing on the Closing Date, to each Identified Employee, each at a wage, salary and incentive compensation level that are substantially comparable in the aggregate to those provided to such Identified Employee on the day preceding the Closing Date and on such other employment terms and conditions Buyer deems appropriate, including Buyer's customary, confidentiality and non-solicitation agreements. Each Identified Employee who accepts the offer of employment from the Buyer shall be a "Transferred Employee" for purposes of this Agreement, effective as of the Closing Date (except for any Identified Employee who is receiving either short-term or long-term disability benefits as of the Closing Date, which individual shall become a Transferred Employee when he or she returns to active employment with the Buyer). The Company shall be liable for all Severance Costs. For purposes of this Agreement, the term "Severance Costs" shall mean, for each Identified Employee who does not accept the offer of employment described above, the amount of severance payments and benefits to which such employee would be entitled under any Company Plan that is a severance plan or agreement (as in effect on the date hereof) applicable to such employee, as if his employment had been involuntarily terminated on the Closing Date.

(b) From and after the Closing Date until the first anniversary of the Closing Date, the Buyer shall provide the Transferred Employees, for so long as such Transferred Employees remain employed by the Buyer or any of its Subsidiaries during such one (1) year period, health benefits (which term shall include medical, dental, vision and other welfare benefits but shall not include life insurance and post-retirement medical benefits) which are substantially comparable, in the aggregate, to those provided to employees of a division of the Buyer or any of its Subsidiaries that is of a size and nature, and in a geographic location, substantially comparable to the Company and who are in positions comparable to the positions held by such Transferred Employees with the Buyer or any of its Subsidiaries from time to time after the Closing Date.

(c) Effective as of the Closing Date, the Company shall fully vest each Transferred Employee (including any such Transferred Employee then on short-term or long-term disability) in his or her account balance under the Company's 401(k) Plan (the "401(k) Plan") and such Transferred Employees shall cease to participate in the 401(k) Plan as of the Closing Date. Effective on or as soon as practicable after the Closing Date, each Transferred Employee shall be eligible to commence participation in a 401(k) plan maintained by the Buyer (the "Buyer's 401(k) Plan"). The Buyer's 401(k) Plan will recognize the months and years of service credited to such employees under the 401(k) Plan for purposes of eligibility and vesting, but not for benefit accrual. The Buyer's 401(k) Plan will accept the transfer of a Transferred Employee's account balance under the 401(k) Plan, including any outstanding loans, provided that the Buyer determines that the distribution and transfer of such amount constitutes an "eligible rollover distribution" under the Code.

(d) The Company shall remain liable and retain responsibility for and continue to pay all medical, life insurance and other welfare plan expenses, premiums or adjustments, and benefits for each Business Employee with respect to claims incurred by such Business Employees on or prior to the Closing Date. The Buyer shall be liable and responsible for all medical and other welfare plan expenses, premiums or adjustments and benefits with respect to claims incurred by Business Employees after the Closing Date. For purposes of this paragraph, a claim is deemed incurred: in the case of medical benefits, when the services that are the subject of the claim are performed; in the case of life insurance, when death occurs; and in the case of accidental death and dismemberment, when the event giving rise to the claim occurs.

(e) From and after the Closing Date, the Buyer shall recognize each Transferred Employee's prior service with the Company, any of its Subsidiaries or a Person acquired by the Company to the same extent such service was credited by the Company, in connection with those employee benefit plans, programs or arrangements of the Buyer or any of its Affiliates (excluding Buyer's Stock Incentive Plan and any plan or program providing life insurance or post-retirement medical benefits) in which any such employees are eligible to participate following the Closing Date, for purposes of (i) eligibility, vesting and levels of paid time off or vacation and severance benefits but not for purposes of benefit accruals under any defined benefit pension plan; (ii) benefit eligibility or accrual under a retiree medical plan or program (or its equivalent); or (iii) to the extent that such recognition would result in duplication of benefits. From and after the Closing Date, and to the extent permitted by applicable Law and/or applicable insurance providers and to the extent practicable and commercially reasonable, the Buyer shall cause any pre-existing conditions or limitations and eligibility waiting periods (to the extent such waiting periods would be inapplicable, taking into account service with the Company and any of its Affiliates), under any group health plans of the Buyer or any of its Affiliates in which the Transferred Employees are otherwise to become eligible to participate after the Closing Date, to be waived with respect to such employees and their eligible dependents. The Buyer shall give each Transferred Employee credit for any deductibles and annual out-of-pocket limits for medical expenses paid during the applicable plan year in which the Closing occurs under any "welfare benefit" plans (within the meaning of Section 3(i) of ERISA) maintained or contributed to by the Company prior to the Closing in satisfying any deductibles and annual out-of-pocket limits for medical expenses for the same plan year under any welfare plans maintained or contributed to by the Buyer or its Affiliates in which such employees participate during such year.

(f) Except as required by applicable Law, as of the Closing Date, the Transferred Employees shall cease to accrue further benefits under the employee benefit plans and arrangements maintained by the Company and its Affiliates. From and after the Closing Date, the Company shall remain solely responsible for any and all Liabilities in respect of the Company Plans, except as otherwise provided herein.

(g) Subject to Section 5.9 hereof, the Company shall be responsible for providing or discharging any and all notifications, benefits and liabilities to Business Employees and Governmental Authorities required by WARN or any other applicable Law, including but not limited to, the California Labor Code and any similar state law in relation to the transactions contemplated by this Agreement. At the Closing, the Company shall provide notice to Buyer setting forth the number of employees of the Company terminated in the period that is ninety (90) days prior to the Closing at any facility located in San Carlos, California.

(h) The Company shall be responsible for providing all Business Employees (and their dependents) with any notices required by the Consolidated Omnibus Budget Reconciliation Act ("COBRA") with respect to any qualifying events that occur on or prior to the Closing Date and retain all obligations with respect to continuation coverage under COBRA (and any similar state law) and the regulations thereunder with respect to such qualifying events. The Buyer shall be responsible for providing all Transferred Employees (and their dependents) with any notices required by COBRA with respect to any qualifying events that occur following the Closing Date and retain all obligations with respect to any qualifying events that occur following the Closing Date and retain all obligations with respect to continuation coverage under COBRA (and any similar state law) and the regulations thereunder with respect to such qualifying events.

(i) No provision of this Agreement shall create any third party beneficiary rights in any Business Employee, any beneficiary or dependent thereof or any collective bargaining representative thereof, with respect to the compensation, terms and conditions of employment or benefits that may be provided to any Transferred Employee by the Buyer or any of its Affiliates under any benefit plan that Buyer or any of its Affiliates may maintain, or otherwise. Nothing herein shall be construed as an amendment to any Company Plan for any purpose.

(j) The Company will pay, on or prior to the Closing Date, each Transferred Employee a bonus in an amount equal to each Transferred Employee's 2008 annual bonus target under the Company's Discretionary Performance-Based Incentive Compensation Policy for the 2008 calendar year, determined on a prorated basis for the period from January 1, 2008 to the Closing Date, payable to such Transferred Employee.

(k) The Company shall retain liability for all Company-issued stock options, restricted stock units and any other equity or equity equivalents of the Company held by the Transferred Employees as of the Closing Date.

(l) Notwithstanding anything herein to the contrary, each Business Employee who is receiving short-term or long-term disability benefits as of the Closing Date will continue employment with the Company until he or she is able to return to active employment. At such time, the Buyer will offer any such Business Employee employment on the same terms as set forth in Section 5.7(a) hereof.

(m) The Company and the Buyer will cooperate with respect to any employee communications regarding the matters provided for herein. Until the Closing Date, the Company will allow the Buyer and its representatives and agents access, upon reasonable notice, during normal working hours to the personnel, including arranging and effectuating meetings with Business Employees, provided that, by the Closing Date, the Company shall have delivered to or furnished Buyer with the complete employment and personnel files of each Identified Employee (except to the extent information is protected by any applicable Law after giving effect to any consent or waiver given by such Identified Employee). Buyer shall have the right to review any and all notices provided to the Business Employees in connection with the transactions contemplated before any such notice is distributed to such Employees. The Company shall have the right to review any and all communications, offer letters, employment agreements, confidentiality agreements, and non-compete or non-solicitation agreements that Buyer intends to provide to any Identified Employee before any such communication, offer letter or agreement is provided to an Identified Employee.

(n) Immediately prior to the Closing, the Transferred Employees will cease to contribute to the Company's Section 125 Plan (the "Company's 125 Plan") and the Company's 125 Plan will reimburse the Transferred Employees for those claims (if any) they incurred prior to the Closing Date. Contributions will be made to any Transferred Employee's accounts under the Company's 125 Plan for compensation earned before but not after the Closing Date. Transferred Employees who were participants in the Company's 125 Plan for the 2008 plan year will become participants in the section 125 plan maintained by the Buyer as of the Closing Date (the "Buyer's 125 Plan") as if their participation in the Buyer's 125 Plan had been continuous from January 1, 2008. Each Transferred Employee will be reimbursed for medical and dependent care expenses incurred by him or her at any time during 2008 (including claims incurred before the Closing Date), up to the amount of the elections made by each Transferred Employee under the Company's 125 Plan for 2008, reduced by amounts previously reimbursed by the Company pursuant to the Company's 125 Plan in 2008. To effectuate the foregoing, as soon as administratively practicable after the Closing Date, the Company will notify the Buyer whether the amounts of the account balances (if any) under the Company's 125 Plan are positive or negative in the aggregate immediately prior to the Closing Date, and the Company will pay the Buyer such aggregate balance (if positive) or the Buyer will pay the Company such aggregate balance (if negative), with respect to all Transferred Employees who become participants in the Buyer's 125 Plan for the 2008 plan year.

5.8 Certain Notices. From and after the date of this Agreement until the Closing, the Company and the Buyer shall promptly notify each other orally and in writing of (a) any notice or other communication from any Person alleging that the Consent of such Person may be required in connection with the Transferred Assets, including the Transferred Shares, and (b) any Proceedings commenced or, to the Knowledge of the Company or the knowledge of the Buyer, as the case may be, threatened in writing against, relating to or involving or otherwise affecting such party or any of its Subsidiaries that, if pending on the date of this Agreement, would have been required to be disclosed pursuant to Article IV or that relate to the transactions contemplated by this Agreement or (c) any breach of a representation or warranty of such party which such party expects will make it unable to satisfy any condition of such party set forth in Article VIII hereof.

5.9 WARN. Subject to Section 5.7(f) hereof, the Buyer shall not, at any time within the ninety (90) day period following the Closing Date, effectuate a "plant closing," "mass layoff" or other similar triggering event as those terms are defined in the WARN or any other similar applicable Law, affecting in whole or in part any site of employment, facility or operating unit of the Business that results in the loss of employment of any Transferred Employees. Notwithstanding any other provision of this Agreement, the Company shall retain any and all Liabilities under WARN arising from the Acquisition in respect to all employees of the Company other than Transferred Employees.

5.10 Confidentiality. (a) The parties hereto and/or their respective Affiliates have disclosed, and may hereafter from time to time in the course of the performance of this Agreement and the other Transaction Documents disclose for a period of [***] after the date hereof, proprietary, secret or confidential data and information ("Confidential Information") to the other parties hereto. For the avoidance of doubt, all such data and information relating to the Business or the Transferred Assets, other than those related to the Retained Assets (collectively, "Business Confidential Information"), is Confidential Information of Buyer. Except as expressly permitted by this Agreement or a Transaction Document, the Company and the Transferring Subsidiary shall, and shall cause their respective Affiliates to, hold in confidence all Confidential Information of the Buyer, the Intangibles Purchaser and their Affiliates. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party to the receiving party's directors, officers, employees, Affiliates, consultants, subcontractors, sublicensees, agents or external advisors on a "need to know" basis, and solely to the extent reasonably necessary to carry out its obligations under this Agreement or the Transaction Documents, provided that such directors, officers, employees, Affiliates, consultants, subcontractors, sublicensees, agents or external advisors have been advised of the confidential nature of such information and have agreed to maintain such information as confidential and comply with non-use obligations to the same extent required by, and as stringent as, this Section 5.10.

(b) Confidential Information shall not include information that the receiving party can demonstrate:

(i) was known by the receiving party or its Affiliates prior to the date it was disclosed to the receiving party or its Affiliates by the disclosing party or its Affiliates, as evidenced by the prior written records of the receiving party or its Affiliates, provided that this exception will not apply, in the case of the Company, to any Business Confidential Information;

(ii) is lawfully disclosed to the receiving party or its Affiliates by a third party rightfully in possession of such information without an obligation of confidentiality after the date of the disclosure to the receiving party or the Affiliates;

(iii) becomes generally known to the public through no act or omission on the part of the receiving party or its Affiliates, either before or after the date of the disclosure to the receiving party or its Affiliates; or

(iv) is independently developed by the receiving party or its Affiliates without reference or access to, or reliance upon, any Confidential Information of the disclosing party or its Affiliates as demonstrated by the receiving party's written records.

(c) The restrictions set forth in this Section 5.10 shall not prevent either party from (i) disclosing Confidential Information in connection with preparing, filing, prosecuting or maintaining the Licensed Intellectual Property (as defined in the Exclusive License Agreement) in accordance with the Exclusive License Agreement, (ii) disclosing Confidential Information to governmental agencies to the extent required by applicable Laws or desirable to obtain a regulatory approval, (iii) disclosing Confidential Information to potential private financial institution investors (under a confidentiality agreement at least as restrictive as the provisions of this Section 5.10) in connection with fundraising activities, (iv) disclosing Confidential Information to underwriters and financial advisors (under an obligation of confidentiality at least as restrictive as the provisions of this Section 5.10) in connection with the public offering of securities, (v) disclosing Confidential Information that is reasonably determined is required to be disclosed by the receiving party pursuant to a judicial or governmental order, or to public investors or governmental agencies (to comply with applicable securities or other laws) in connection with the public offering of securities, or (vi) disclosing Confidential Information as required pursuant to the exercise by each Party of its rights granted to it under this Agreement or its retained rights (under an obligation of confidentiality at least as restrictive as the provisions of this Section 5.10); provided that in the cases of (i), (ii) and (v) above, the party disclosing Confidential Information of the disclosing party shall use all reasonable efforts to provide prior written notice of such disclosure to the disclosing party and to take reasonable and lawful actions to avoid or limit such disclosure (such as seeking a protective order) or to assist the disclosing party in avoiding or limiting such disclosure.

5.11 Required Notices, Approvals and Consents. The Company shall (i) provide all notices to third parties as required pursuant to the terms of, or as otherwise required by, any of the Contracts; (ii) use its commercially reasonable efforts (A) to obtain all consents required to effect the assignment of the Contracts to the Buyer and (B) to obtain an estoppel certificate from the Landlord in form and substance reasonably acceptable to the Buyer from the Landlord; (iii) file or submit, to the FDA or any other Governmental Authority, all such duly executed filings and submissions as are necessary to transfer the rights to the Licenses and Permits (to the extent so transferable) to the Buyer; and (iv) make such filings as are reasonably necessary to transfer, to the extent so transferable from the Company under applicable Law, all special permits or licenses issued by the state or municipality in which the Transferred Real Property is located (including any environmental protection permits).

5.12 Availability of Records.

(a) After the Closing, the Company and the Transferring Subsidiary, on the one hand, and the Buyer and the Intangibles Purchaser, on the other hand, (i) shall cooperate to promptly effectuate the copying and delivery of the Corporate Records and Business Records to which the Buyer or the Intangibles Purchaser are entitled to have copies hereunder and (ii) shall make available to each other party and its respective Affiliates and Representatives, during normal business hours when reasonably requested (including in relation to any filing required to be made with the SEC), all other information, records and documents related to the Transferred Assets or the Business Records in its possession and shall preserve the same until the later of (A) six (6) years after the Closing, (B) the expiration of all statutes of limitations for assessing or collecting Taxes for periods ending on or prior to the Closing and periods including the Closing Date, including extensions thereof applicable to the Company or the Buyer, or (C) the required retention period under any applicable Law for all such information, records or documents (it being understood that the parties shall not be required to provide any Tax returns to any Person, other than as required by applicable Law). The Buyer, the Intangibles Purchaser, the Company and the Transferring Subsidiary shall also make available to each other during normal business hours, when reasonably requested, personnel responsible for preparing or maintaining information, records and documents in connection with Tax matters, governmental contracts, litigation or potential litigation, each as it relates to the Business, the Transferred Assets or Assumed Liabilities prior to the Closing (with respect to the Company) or from and after the Closing Date (with respect to the Buyer), including products liability and general insurance liability.

(b) Following the Closing, each of the Company and the Transferring Subsidiary will afford to the Buyer and the Intangibles Purchaser and their counsel and accountants, and each of the Buyer and the Intangibles Purchaser will afford to the Company and the Transferring Subsidiary and their counsel and accountants, during normal business hours, reasonable access to the Corporate Records or the Business Records, as applicable, in its respective possession with respect to periods prior to the Closing (in the case of Corporate Records in the possession of the Company or the Transferring Subsidiary) or the after the Closing (in the case of Business Records in the possession of the Buyer or the Intangibles Purchaser) and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the applicable party hereto to facilitate the investigation, litigation and final disposition of any claims that may have been or may be made against such party or its Affiliates, or for any other reasonable business purpose, relating to the Business, the Transferred Assets or the Assumed Liabilities (in the case of Buyer or the Intangibles Purchaser) or the Business, the Retained Assets or the Retained Liabilities (in the case of the Company or the Transferring Subsidiary). The applicable party's agents shall keep confidential and not disclose any information learned as a result of any examination conducted pursuant to this Section 5.12(b) to any other Person without the prior consent of the Company (in the case of the Buyer or the Intangibles Purchaser) or the Buyer (in the case of the Company or the Transferring Subsidiary), unless (i) the disclosure is in response to legal order or subpoena or (ii) the information is readily ascertainable from public or published information or trade sources without violation of the foregoing provisions of this sentence. The Buyer or the Company, as applicable, shall reimburse the other for reasonable out-of-pocket costs and expenses incurred in assisting the requesting party pursuant to this Section 5.12(b). None of the parties hereto shall be required by this Section 5.12(b) to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations.

(c) Subject to Section 5.10 hereof, the Company may retain a copy of any Business Records that are transferred to the Buyer or the Intangibles Purchaser and the Buyer or the Tangibles Purchaser may retain a copy of any Corporate Records of which the Buyer or the Intangibles Purchaser may receive a copy pursuant to this Agreement, and each party hereto consents and agrees to retain such records in accordance with the Company's standard retention policies and practices.

5.13 [***].

5.14 [***].

(a) [***].

(b) [***].

5.15 SEDS Option.

(a) [***].

(b) [***].

(c) To the extent the Buyer or the Intangibles Purchaser does not provide the Company with the SEDS Notice prior to the expiration of the SEDS Option Period, the Buyer will forfeit all of its rights to acquire SEDS Intellectual Property pursuant to this Agreement and this Section 5.15 shall automatically expire and be of no further force or effect.

(d) Nektar UK is executing and delivering a copy of this Agreement solely with respect to this Section 5.15 and Article XI hereof and the Buyer and the Intangibles Purchaser may enforce this Section 5.15 directly against the Company, the Transferring Subsidiary and/or Nektar UK.

5.16 [***].

5.17 [***].

5.18 [***]. (a)

(i) [***]; and

(ii) [***].

[***].

(b) [***].

5.19 Parking Spaces. For so long as the Company is a tenant at 201 Industrial Road in San Carlos, California, the Company shall provide to the Buyer's employees located at the Transferred Real Property, at no cost, such access to Parking Lot B as necessary to comply with applicable regulations and ordinances. The Company shall give Buyer written notice at least thirty (30) days prior to the termination of its lease at 201 Industrial Road, San Carlos, California.

5.20 [***].

ARTICLE VI

TAX MATTERS

6.1 Company Tax Returns. The Company and the Transferring Subsidiary shall be responsible for the preparation and filing of all Tax Returns required to be filed by the Company, the Transferring Subsidiaries and any of their Affiliates that include items with respect to the Business and the Transferred Assets. The Company and the Transferring Subsidiary shall make all payments required with respect to any such Tax Return, provided that the Buyer shall promptly reimburse the Company for any Taxes for which the Buyer or the Intangibles Purchaser is responsible under this Agreement upon written notice from the Company of the amount of such Taxes together with appropriate documentation.

6.2 Buyer Tax Returns. The Buyer and the Intangibles Purchaser shall be responsible for the preparation and filing of all Tax Returns required to be filed by the Buyer, the Intangibles Purchaser and any of their Affiliates that include items with respect to the Business and the Transferred Assets. The Buyer and the Intangibles Purchaser shall make all payments required with respect to any such Tax Return, provided that the Company shall promptly reimburse the Buyer for any Taxes for which the Company or the Transferring Subsidiary is responsible under this Agreement upon written notice from the Buyer of the amount of any such Taxes together with appropriate documentation.

6.3 Assistance. Each of the Company, the Transferring Subsidiary, the Buyer and the Intangibles Purchaser shall, at their own expense:

(a) provide reasonable assistance to any other party in preparing any Tax Returns which such other party is responsible for preparing and filing in accordance with this Article VI;

(b) provide reasonable assistance to any other party in preparing for any audits of, or disputes with Taxing authorities regarding, any Tax Returns relating to the Transferred Assets;

(c) make available to any other party and to any Taxing authority, as reasonably requested, all information, records and documents relating to Taxes related to the Transferred Assets;

(d) provide timely written notice to any other party of any Tax Proceeding with respect to the Transferred Assets for taxable periods for which such other party may have a Liability under this Article VI;

(e) furnish any other party with copies of all correspondence received from any Taxing authority in connection with any Tax Proceeding with respect to any taxable period for which such other party may have a Liability under this Agreement; and

(f) retain any books and records that could reasonably be expected to be necessary or useful in connection with the Company's, the Transferring Subsidiary's, the Buyer's or the Intangibles Purchaser's preparation, as the case may be, of any Tax Return, or for any Tax Proceeding related to the Transferred Assets. Such books and records shall be retained until the expiration of the applicable statute of limitations, including extensions thereof; provided, however, that in the event a Tax Proceeding has been instituted prior to the expiration of the applicable statute of limitations or in the event of any claim under this Agreement, the books and records shall be retained until there is a final determination thereof and the time for any appeals has expired.

6.4 Transfer Taxes. The Company shall be responsible for the timely payment (on an after-tax basis) of, and shall indemnify the Buyer, the Intangible Purchaser and their respective Affiliates for, all Transfer Taxes; provided, however, that all California sales taxes arising out of or in connection with or attributable to the transactions effected pursuant to this Agreement shall be [***] by the Company and the Buyer, and the Buyer or the Company, as the case may be, shall promptly reimburse the other party for its share of such sales taxes upon written notice from the other party of the amount of such sales taxes together with appropriate documentation. The Company shall use commercially reasonable efforts to determine whether the transactions effected pursuant to this Agreement qualify for an exemption from sales tax, provided, that the decision to claim any such exemption (on a Tax Return or otherwise) is within the Company's sole discretion. If the Company claims an exemption from sales tax, and the exemption is later denied by the taxing authority or a court of competent jurisdiction, the Buyer shall promptly reimburse the Company for [***] of the California sales tax determined to be due and [***] of the interest assessed thereon. The Company, the Transferring Subsidiary, the Buyer and Intangibles Purchaser shall use their respective commercially reasonable efforts to deliver or facilitate delivery, as applicable, certain of the Transferred Assets, as appropriate, through an electronic delivery or in such other manner reasonably calculated and legally permitted, and take all other commercially reasonable actions necessary, to minimize or avoid the incurrence of Transfer Taxes.

ARTICLE VII

CLOSING

7.1 Closing Date. Unless this Agreement shall have been terminated and the transactions herein shall have been abandoned pursuant to Article IX hereof, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Kaye Scholer LLP located at 425 Park Avenue, New York, New York 10022 at 10:00 a.m. New York time on the date (the "Closing Date") that is the later of (a) December 31, 2008 and (b) five (5) Business Days after satisfaction or waiver (subject to applicable Law) of the conditions (excluding conditions that, by their terms, are to be satisfied on the Closing Date) set forth in Article VIII, or at such other time or date as agreed to in writing by the parties hereto. Notwithstanding the foregoing, the Closing shall for all purposes be deemed to occur at 11:59 p.m. Eastern Standard Time on the Closing Date.

ARTICLE VIII

CONDITIONS PRECEDENT

8.1 Conditions Precedent to Obligations of Parties. The respective obligations of each of the parties hereto to effect the Acquisition are subject to the satisfaction or waiver, at or prior to the Closing Date, of each of the following conditions:

(a) No Injunctions; Illegality. At the Closing Date, there shall be no Order or other legal restraint or prohibition of any nature of any court or Governmental Authority of competent jurisdiction that is in effect that restrains or prohibits the consummation of the Acquisition. There shall not be any action taken, or any statute, rule or regulation enacted, entered, enforced or deemed applicable to the Acquisition, by any Governmental Authority which makes the consummation of the Acquisition illegal.

(b) Governmental Consents. All material consents, approvals and authorizations of any Governmental Authority, including under the HSR Act and ARC, required to be made or obtained by the Company, the Transferring Subsidiary, the Buyer or the Intangibles Purchaser or any of their respective Affiliates to consummate the Acquisition, shall be in full force and effect.

(c) No Proceedings. There shall not be pending or threatened any investigation or Proceeding to which a Governmental Authority is a party, including under the HSR Act and ARC, (i) seeking to restrain or prohibit the consummation of the transactions contemplated hereby or (ii) seeking to prohibit or limit the ownership or operation by the Buyer, the Intangibles Purchaser, the Company or the Transferring Subsidiary of any material portion of the Transferred Assets or the Business.

8.2 Conditions to Obligations of the Buyer and the Intangibles Purchaser. The obligations of the Buyer and the Intangibles Purchaser to effect the Acquisition are subject to the satisfaction (unless waived by the Buyer), at or prior to the Closing Date, of each of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Company or the Transferring Subsidiary set forth in this Agreement that are qualified as to materiality shall be true and correct in all respects, and those not so qualified shall be true and correct in all material respects, as of the date of this Agreement and (except to the extent such representations and warranties speak as of any earlier date) as of the Closing Date as though made on and as of the Closing Date, and the Buyer shall have received a certificate signed on behalf of the Company by the Chief Executive Officer and the Chief Financial Officer of the Company to such effect.

(b) Performance of Obligations of the Company. Each of the Company and the Transferring Subsidiary shall have performed or complied, in all material respects, with all of its respective obligations required to be performed or complied with by it under this Agreement at or prior to the Closing Date, and the Buyer shall have received a certificate signed on behalf of the Company by the Chief Executive Officer and Chief Financial Officer of the Company to such effect.

(c) Assignment and Conveyance Instruments. The Buyer shall have received an Assignment and Assumption Agreement, in a form mutually agreed by the Company and the Buyer (the "Assignment and Assumption Agreement"), duly executed and delivered by the Company and the Transferring Subsidiary and any other assignment and conveyance instruments required under Section 2.3 hereof, including such instruments as are necessary to effect the valid transfer to the Buyer or the applicable the Intangibles Purchaser of the Specified Equipment.

(d) Service Agreements. The Buyer shall have received the Services Agreements duly executed and delivered by the Company.

(e) Exclusive License Agreement. The Buyer shall have received the Exclusive License Agreement duly executed and delivered by the Company.

(f) FIRPTA Certificate. The Company and the Transferring Subsidiary shall each have delivered to Buyer a certificate in form and substance reasonably satisfactory to Buyer, duly executed and acknowledged, certifying any facts that would exempt the transactions contemplated hereby from withholding under section 1445 of the Code and the Treasury Regulations promulgated thereunder.

(g) Opinions of the Company's Counsel. The Buyer shall have received opinions dated the Closing Date from each of the counsel to the Company, substantially in the forms of Exhibit E and Exhibit F.

(h) Consents and Permits. The written consents to the transfer and assignment of the Contracts set forth in Schedule 8.2(i) attached hereto shall have been obtained.

(i) Other Documents. The Buyer shall have received such other documents and instruments as counsel for the Buyer and the Company mutually agree to be reasonably necessary to consummate the transactions described herein.

(j) No Litigation. There shall not be pending any meritorious Proceeding to which a third party is a party (i) seeking to restrain or prohibit the consummation of the transactions contemplated hereby or (ii) seeking to prohibit or limit the ownership or operation by the Buyer, the Intangibles Purchaser, the Company or the Transferring Subsidiary of any material portion of the Transferred Assets or the Business.

8.3 Conditions to the Obligations of the Company and the Transferring Subsidiary. The obligations of the Company and the Transferring Subsidiary to effect the Acquisition are subject to the satisfaction (unless waived by the Company), at or prior to the Closing Date, of each of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Buyer or the Intangibles Purchaser set forth in this Agreement that are qualified as to materiality shall be true and correct in all respects, and those not so qualified shall be true and correct in all material respects, as of the date of this Agreement and (except to the extent such representations and warranties speak as of any earlier date) as of the Closing Date as though made on and as of the Closing Date, and the Company shall have received a certificate signed on behalf of the Buyer by the Chief Executive Officer and the Chief Financial Officer of the Buyer to such effect.

(b) Performance of Obligations of the Buyer. Each of the Buyer and the Intangibles Purchaser shall have performed or complied, in all material respects, with all of its respective obligations required to be performed or complied with by it under this Agreement at or prior to the Closing Date, and the Company shall have received a certificate signed on behalf of the Buyer by the Chief Executive Officer and Chief Financial Officer of the Buyer to such effect.

(c) Purchase Price. The Company shall have received the Purchase Price at the Closing in full in cash by wire transfer of immediately available funds to an account designated by the Company at least two (2) Business Days prior to the Closings.

(d) Assignment and Conveyance Instruments. The Company shall have received the Assignment and Assumption Agreement duly executed and delivered by the Buyer and the Intangibles Purchaser and any other assignment and conveyance instruments required under Section 2.3 hereof.

(e) Service Agreements. The Company shall have received the Buyer Service Agreement and the Transition Services Agreement duly executed and delivered by the Buyer.

(f) Exclusive License Agreement. The Company shall have received the Intellectual Property License agreement duly executed and delivered by the Intangibles Purchaser.

(g) Other Documents. The Company shall have received such other documents and instruments as counsel for the Buyer and the Company mutually agree to be reasonably necessary to consummate the transactions described herein.

ARTICLE IX

TERMINATION

9.1 Termination. This Agreement may be terminated and the Acquisition contemplated hereby may be abandoned at any time prior to the Closing:

(a) by mutual written consent of the Buyer and the Company;

(b) by either the Company or the Buyer, upon written notice to the other party, in the event the Acquisition shall not have been consummated within one (1) year of the date hereof (the "Termination Date"); provided, however, that the right to terminate this Agreement under this Section 9.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the primary cause of, or resulted in, the failure of such consummation to occur on or before the Termination Date;

(c) by either the Company or the Buyer, upon written notice to the other party, if any Governmental Authority shall have issued an Order or taken any other action (which the parties shall have used their respective reasonable best efforts to resist, resolve or lift, as applicable, in accordance with Section 5.5 hereof) permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such Order shall have become final and nonappealable;

(d) by the Buyer, upon written notice to the Company, if there shall have been a breach of any representation, warranty, covenant or agreement on the part of the Company or the Transferring Subsidiary contained in this Agreement, which breach would, individually or in the aggregate together with all such other then uncured breaches by the Company and the Transferring Subsidiary, constitute grounds for the conditions set forth in Section 8.2(a) or (b) not to be satisfied at the Closing Date and such breach is not reasonably capable of being cured (i) prior to the Termination Date or (ii) if such breach is reasonably capable of being cured prior to the Termination Date, such breach shall not have been cured prior to the earlier of (A) thirty (30) days after the Buyer has provided to the Company written notice of such breach and (B) three (3) Business Days prior to the Termination Date; or

(e) by the Company, upon written notice provided to the Buyer, if there shall have been a breach of any representation, warranty, covenant or agreement on the part of the Buyer or the Intangibles Purchaser contained in this Agreement which breach would, individually or in the aggregate together with all such other then uncured breaches by the Buyer and the Intangibles Purchaser, constitute grounds for the conditions set forth in Section 8.3(a) or (b) not to be satisfied at the Closing Date and such breach is not reasonably capable of being cured (i) prior to the Termination Date or (ii) if such breach is reasonably capable of being cured prior to the Termination Date, such breach shall not have been cured prior to the earlier of (A) thirty (30) days after the Company has provided to the Buyer written notice of such breach and (B) three (3) Business Days prior to the Termination Date.

9.2 Effect of Termination. In the event of termination of this Agreement by either the Company or the Buyer as provided in Section 9.1 hereof, this Agreement shall forthwith become null and void and there shall be no liability or obligation on the part of the parties hereto or their respective officers, directors or other Affiliates, except for Section 5.6, Section 5.10, this Section 9.2, Article X and Article XI, each of which shall survive termination; provided, however, that nothing herein shall relieve any party from liability for any intentional and material breach of any of the representations, warranties, covenants or agreements set forth in this Agreement.

ARTICLE X

INDEMNIFICATION

10.1 Indemnification by the Company.

(a) From and after the Closing, the Company and the Transferring Subsidiary, jointly and severally, shall indemnify the Buyer, the Intangibles Purchaser, their respective Affiliates and each of their respective officers, directors, employees, stockholders, agents and representatives against, and hold them harmless, from and against, any and all Losses, as incurred (payable promptly upon written request), arising from, in connection with or otherwise with respect to:

(i) any breach of any representation or warranty of the Company or the Transferring Subsidiary contained in this Agreement or any Transaction Document or in any certificate executed by the Company or the Transferring Subsidiary for the benefit of the Buyer or the Intangibles Purchaser delivered in connection herewith;

(ii) the failure by the Company or the Transferring Subsidiary to perform any covenant, agreement, obligation or undertaking contained in this Agreement, including Section 11.3 hereof, or any Transaction Document;

(iii) any Retained Liability or the operation or ownership of the Retained Assets, except to the extent any such Loss results from a failure by the Buyer or the Intangibles Purchaser to perform any covenant, agreement, obligation or undertaking contained in this Agreement or any Transaction Document;

(iv) any Excluded Taxes; and

(v) any fees, expenses or other payments incurred or owed by the Company, the Transferring Subsidiary or any of their respective Affiliates to any brokers, financial advisors or comparable other persons retained or employed by it in connection with the transactions contemplated by this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, any Transaction Document or any certificate or agreement executed by the Company or the Transferring Subsidiary for the benefit of the Buyer or the Intangibles Purchaser delivered in connection herewith, the Company and the Transferring Subsidiary shall not have any liability:

(i) under Section 10.1(a)(i) unless the aggregate of all Losses for which the Company and the Transferring Subsidiary would, but for this clause (i), be liable under Section 10.1(a)(i) exceeds, on a cumulative basis, an amount equal to [***] of such Losses; provided, however, that this clause (i) shall not apply to any claim for indemnification arising out of (x) fraud (including any willful misrepresentation or willful concealment) by or on behalf of the Company or the Transferring Subsidiary or (y) a breach or alleged breach of [***]; or

(ii) under Section 10.1(a)(i) in excess of [***] in the aggregate; provided, however, that this clause (ii) shall not apply to any claim for indemnification arising out of (x) fraud (including any willful misrepresentation or willful concealment) by or on behalf of the Company or the Transferring Subsidiary or (y) a breach or alleged breach of [***].

For the avoidance of doubt, the limits set forth in this Section 10.1(b) shall apply only to such claims made pursuant to Section 10(a)(i) and shall not limit claims made in respect of the same subject matter pursuant to another provision of this Agreement or otherwise.

10.2 Indemnification by the Buyer. From and after the Closing, the Buyer and the Intangibles Purchaser, jointly and severally, shall indemnify the Company, the Transferring Subsidiary, their respective Affiliates and each of their respective officers, directors, employees, stockholders, agents and representatives against, and hold them harmless from and against, any and all Losses, as incurred (payable promptly upon written request), arising from, in connection with or otherwise with respect to:

(a) any breach of any representation or warranty of the Buyer or the Intangibles Purchaser contained in this Agreement, any Transaction Document or in any certificate executed by the Buyer or the Intangibles Purchaser for the benefit of the Company or the Transferring Subsidiary delivered in connection herewith;

(b) the failure by the Buyer or the Intangibles Purchaser to perform any covenant, agreement, obligation or undertaking contained in this Agreement or any Transaction Document; and

(c) any Assumed Liability or the ownership or operation of the Transferred Assets by the Buyer, the Intangible Purchaser or their respective Affiliates, except to the extent any such Loss results from a failure by the Company or the Transferring Subsidiary to perform any covenant, agreement, obligation or undertaking contained in this Agreement or in any Transaction Document.

10.3 Termination of Indemnification. (i) The obligations to indemnify and hold harmless any party, pursuant to Section 10.1(a)(i) or 10.2(a), shall terminate when the applicable representation or warranty terminates pursuant to Section 10.5; and (ii) the other clauses of Sections 10.1 and 10.2, shall not terminate; provided, however, that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which the person to be indemnified pursuant to this Article X (an "indemnified party") shall have, before the expiration of the applicable period, previously made a claim by delivering a written notice of such claim pursuant to Section 10.4 hereof to the party to be providing such indemnification (an "indemnifying party").

10.4 Procedures.

(a) Procedures for Third Party Claims.

(i) If a claim by a third party is made against an indemnified party arising out of a matter for which such indemnified party is entitled to be indemnified under this Agreement (a "Third Party Claim"), such indemnified party shall promptly notify the indemnifying party in writing of such claim. The failure to notify promptly the indemnifying party hereunder shall not relieve the indemnifying party of its obligations hereunder except to the extent that the indemnifying party is actually and materially prejudiced by such failure. The indemnifying party shall be responsible for the reasonable fees and expenses of counsel employed by the indemnified party, provided that in no event shall the indemnifying party be liable for the fees and expenses of more than one such counsel (in addition to the reasonable fees of one local counsel) for all indemnified parties in connection with any one action or separate but similar or related actions arising out of the same general allegations or circumstances.

(ii) The indemnifying party shall be entitled to participate in the defense of a Third Party Claim, individually or jointly, through their counsel, at their own expense, provided that with respect to any Third Party Claim, the indemnified party shall control all proceedings taken in connection with such Third Party Claim and, without limiting the foregoing, may in its sole discretion, subject to Section 10.4(a)(iii), either pay the amount claimed and sue for a refund where applicable Law permits such refund suits, settle or contest the Third Party Claim in any permissible manner.

(iii) So long as the indemnifying party is participating in the defense of a Third Party Claim in good faith, the indemnified party shall reasonably cooperate with the indemnifying party by (x) providing records, information and testimony that are reasonably relevant to such Third Party Claim, including any counterclaims filed by the indemnified party, (y) providing access to properties and individuals as reasonably requested by the indemnified party and (z) attending such conferences, discovery proceedings, hearings, trials, appeals and other proceedings as may be reasonably requested in connection therewith, in each case at the expense of the indemnifying parties. Neither the indemnified party nor the indemnifying party shall settle or compromise any Third Party Claim without the written consent of the other party, which consent will not be unreasonably withheld, conditioned or delayed. No such consent will be required if the party proposing such settlement (a)(A) agrees in writing to forego all claims for indemnification from the indemnifying party with respect to such Third Party Claim or (B) reasonably believes itself to be potentially or actually exposed to non-monetary remedies and (b) the settlement provides a release of the other party with respect to all such Third Party Claims and does not contain any allegations or statements that the other party or its Affiliates is culpable, liable or at fault.

(b) Procedures for Direct Claims. In the event any indemnified party should have a claim against any indemnifying party under this Agreement that does not involve a Third Party Claim being asserted against or sought to be collected from such indemnified party (a "Direct Claim"), the indemnified party shall deliver notice of such Direct Claim with reasonable promptness to the indemnifying party. The failure by any indemnified party to so notify the indemnifying party hereunder shall not relieve the indemnifying party of its obligations hereunder except to the extent that the indemnifying party is actually and materially prejudiced by such failure. If the indemnifying party does not notify in writing the indemnified party within thirty (30) calendar days that it disputes its liability to the indemnified party such Direct Claim specified by the indemnified party in such notice shall be conclusively deemed a liability of the indemnifying party and the indemnifying party shall pay the amount of such liability to the indemnified party on demand or, in the case of any notice in which the amount of the Direct Claim (or any portion thereof) is estimated, on such later date when the amount of such Direct Claim (or such portion thereof) becomes finally determined.

10.5 Survival. The representations and warranties of the parties contained in this Agreement or any certificate delivered in connection herewith shall survive the Closing for [***]. The agreements and covenants and other indemnification provisions of the parties contained in this Agreement shall survive indefinitely, unless otherwise provided in this Agreement.

10.6 Tax Treatment. All payments made pursuant to this Article X shall be treated to the extent permitted by applicable Law as adjustments to the Purchase Price for all Tax purposes.

10.7 Tax Refunds. The party bearing the liability or obligation to indemnify for any Taxes shall be entitled to any refunds, credits or offsets of such Taxes. The Buyer shall promptly forward to the Company, or after the Buyer's receipt reimburse the Company, for any refunds or credits due the Company (net of the cost to, or the Taxes imposed on, the Buyer with respect to the receipt of such Tax refunds) pursuant to the terms of this Section 10.7, and the Company shall promptly forward to the Buyer, or after the Company's receipt reimburse the Buyer, for any refunds or credits due the Buyer pursuant to the terms of this Section 10.7.

10.8 Indemnification Not Affected by Investigation. The Company and the Transferring Subsidiary hereby acknowledge and agree that any actual or constructive knowledge on the part of the Buyer of any breach of any of the representations and warranties of the Company and the Transferring Subsidiary contained in this Agreement to be true and correct shall in no way affect or limit the applicability of the indemnification provisions contained in this Article X or the ability of the Buyer and any of its Affiliates to seek any such indemnification against the Company and the Transferring Subsidiary. The Buyer and the Intangibles Purchaser hereby acknowledge and agree that any actual or constructive knowledge on the part of the Company of any breach of any of the representations and warranties of the Buyer and the Intangibles Purchaser contained in this Agreement to be true and correct shall in no way affect or limit the applicability of the indemnification provisions contained in this Article X or the ability of the Company and any of its Affiliates to seek any such indemnification against the Buyer and the Intangibles Purchaser.

10.9 Insurance. Each indemnified party shall use reasonable efforts to collect any amounts available under insurance coverage, or from any other Person alleged to be responsible, for any Losses payable under this Article X. The amount of any Losses for which indemnification is provided under this Agreement shall be net of any amounts actually recovered by the indemnified party under insurance policies with respect to such Losses in excess of the sum of (i) reasonable out-of-pocket costs and expenses relating to collection under such policies, (ii) any deductible associated therewith to the extent paid and (iii) any corresponding increase in insurance premiums or other chargebacks arising or resulting from or in respect of insurance payments for the Losses.

ARTICLE XI

MISCELLANEOUS

11.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or by telecopy or facsimile, upon confirmation of receipt, (b) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service or (c) on the fifth Business Day following the date of mailing if delivered by registered or certified mail return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

(i) if to the Company or the Transferring Subsidiary, to it at:

Nektar Therapeutics
201 Industrial Road
San Carlos, California 94070
Attention: Gil M. Labrucherie
Facsimile: +1 (650) 620-5360

with copies to:

O'Melveny & Myers LLP
2765 Sand Hill Road
Menlo Park, California 94025
Attention: Sam Zucker
Facsimile: +1 (650) 473-2601

(ii) if to the Buyer or the Intangibles Purchaser, to it at:

Novartis Pharmaceuticals Corporation
One Health Plaza
East Hanover, NJ 07936
Attention: General Counsel
Facsimile: +1 (973) 781-5260

with copies to:

Novartis Pharma AG
Lichtstrasse 35
CH-4056 Basel
Switzerland
Attention: General Counsel
Facsimile: +41 (61) 324-6859

Novartis International AG
Lichtstrasse 35
CH-4056 Basel
Switzerland
Attention: Joerg Walther
Facsimile: +41 (61) 324-7476

and

Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
Attention: Adam Golden
Facsimile: +1 (212) 836-8689

11.2 Counterparts; Facsimile Signature. This Agreement may be executed in any number of counterparts, each of which shall be considered one and the same agreement and shall become effective when all counterparts have been signed by each of the parties and delivered to the other party, it being understood that the parties need not sign the same counterpart. Any party may execute this Agreement by facsimile or scanned signature, and the other parties will be entitled to rely on such facsimile or scanned signature as conclusive evidence that this Agreement has been duly executed by such party.

11.3 Bulk Sales. The parties hereto agree to waive compliance with the provisions of the Laws of any jurisdiction relating to a bulk sale or transfer of assets that may be applicable to the transactions contemplated by this Agreement; provided, however, that to the extent the Buyer or the Intangibles Purchaser is required to make any payments with respect to any provisions of the Laws of any jurisdiction relating to a bulk sale that may be applicable to the transactions contemplated by this Agreement, the Company shall indemnify the Buyer for such payments pursuant to Section 10.1(a)(ii).

11.4 Further Assurances. From time to time after the Closing and without further consideration, the parties hereto shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver such documents and instruments of conveyance, assignment, assumption, transfer and delivery and take or cause to be taken such other actions as the Buyer or the Company, as applicable, may reasonably request in order to carry out the purpose and intention of this Agreement and the Transaction Documents, including to consummate more effectively the purchase, sale, conveyance, assignment, assumption, transfer and delivery of the Transferred Assets as contemplated by this Agreement, to vest in the Buyer or the Intangibles Purchaser title to the Transferred Assets, to document and evidence the Company's or the Transferring Subsidiary's, as applicable, continuing ownership or control of the Retained Assets, to evidence the assumption of the Assumed Liabilities by the Buyer and the Intangibles Purchaser or as otherwise appropriate to consummate the transactions contemplated by this Agreement and the Transaction Documents.

11.5 Entire Agreement. This Agreement and the agreements, documents, certificates and instruments referred to herein or delivered pursuant hereto, including the Confidentiality Agreement, the Exclusive License Agreement and the Service Agreements, constitute the entire agreement among the parties hereto with respect to the subject matter hereof and terminate and supersede all prior agreements and understandings, oral and written, among the parties hereto with respect to the subject matter hereof and thereof.

11.6 No Third-Party Beneficiaries. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Nothing in this Agreement (except as expressly set forth in Article X hereof), expressed or implied, is intended to or shall confer on any Person other than the parties hereto or their respective successors and assigns, any rights, remedies or Liabilities under or by reason of this Agreement.

11.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other parties, and any attempt to make any such assignment without such consent shall be null and void; provided, however, that the Buyer and/or the Intangibles Purchaser may assign in writing its rights and obligations, in whole or in part, to one or more of its Affiliates, but the Buyer shall remain jointly and severally liable with any such assignee(s) with respect to all obligations and liabilities of the Buyer and/or the Intangibles Purchaser hereunder.

11.8 Amendment and Modification; Waiver. This Agreement may not be amended, modified or supplemented, except by an instrument in writing signed on behalf of each of the parties hereto. At any time prior to the Closing, the parties hereto may, to the extent legally permitted, (a) extend the time for the performance of any of the obligations or other acts of any other party hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered hereto or (c) waive compliance with any of the agreements or conditions contained herein. Any agreement by a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. The failure of a party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

11.9 Enforcement; Jurisdiction. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any federal court or state court sitting in the State of New York, this being in addition to any other remedy to which they are entitled at law or in equity subject to the terms hereof. In addition, each of the parties hereto (a) hereby irrevocably agrees that any legal action or proceeding with respect to this Agreement or for recognition and enforcement of any judgment in respect hereof brought by another party hereto or its successors or assigns may be brought and determined in the federal courts located in the State of New York, or, if such federal courts lack jurisdiction, in the state courts of the State of New York located in Manhattan, and each party hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the exclusive jurisdiction of the aforesaid courts, and (b) irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (i) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to lawfully serve process, (ii) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (iii) to the fullest extent permitted by applicable Law, that (A) the suit, action or proceeding in any such court is brought in an inconvenient forum, (B) the venue of such suit, action or proceeding is improper and (C) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

11.10 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

11.11 Costs and Expenses. Regardless of whether the transactions contemplated by this Agreement are consummated and except as otherwise provided in this Agreement, the Company and the Transferring Subsidiary, on the one hand, and the Buyer and the Intangibles Purchaser, on the other hand, shall each bear their own costs and expenses (including attorneys' fees and costs) incurred in connection with this Agreement and the transactions contemplated by this Agreement, except that fees relating to any filings pursuant to the HSR Act and ARC shall be shared equally.

11.12 Mutual Drafting. The parties hereto have been represented by counsel who have carefully negotiated the provisions hereof. As a consequence, the parties do not intend that the presumptions of any laws or rules relating to the interpretation of contracts against the drafter of any particular clause should be applied to this Agreement and therefore waive their effects. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intent of the parties.

11.13 Governing Law. This Agreement (and any claims or disputes arising out of or related hereto or to the transactions contemplated hereby or to the inducement of any party to enter herein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance, in each case without reference to any conflict of law rules that might lead to the application of the laws of any other jurisdiction.

11.14 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability and shall not render invalid or unenforceable the remaining terms and provisions of this Agreement or affect the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

"COMPANY"

NEKTAR THERAPEUTICS

By: /s/ Gil M. Labrucherie
Name: Gil M. Labrucherie
Title: General Counsel

"TRANSFERRING SUBSIDIARY"

AEROGEN, INC.

By: /s/ Gil M. Labrucherie
Name: Gil M. Labrucherie
Title: Secretary

"BUYER"

NOVARTIS PHARMACEUTICALS CORPORATION

By: /s/ Ludwig Hantson
Name: Ludwig Hantson
Title: Chief Executive Officer

"INTANGIBLES PURCHASER"

NOVARTIS PHARMA AG

By: /s/ Joseph Jimenez
Name: Joseph Jimenez
Title: Chief Executive Officer

By: /s/ Jörg Walther
Name: Jörg Walther
Title: Authorized Signatory

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

SOLELY FOR THE PURPOSES OF SECTION 5.15 AND ARTICLE XI HEREOF:

"NEKTAR UK"

NEKTAR THERAPEUTICS UK LIMITED

By: /s/ Gil M. Labrucherie
Name: Gil M. Labrucherie
Title: Director

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

Exhibit 10.17

NEKTAR THERAPEUTICS

AMENDED AND RESTATED CHANGE OF CONTROL SEVERANCE BENEFIT PLAN

PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION

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 and on October 21, 2008. 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 in connection with or 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 in connection with or 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 and deliver to the Company a Separation and General Release Agreement in substantially the form attached hereto as Exhibit A and must not revoke such agreement within any revocation period provided under applicable law.

- 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:

- Officer Participants. 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 Development 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.

- Non-Officer Participants. 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 occurs within the period beginning on the date of the Change of Control and ending 12 months following the Change of Control.

- Termination of Employment — Asset Sale. Notwithstanding anything else contained in this Plan to the contrary, a participant shall not be entitled to benefits under this Plan as a result of a termination of the participant's employment with the Company or Successor Company if such termination of employment occurs in connection with a sale of assets by the Company or Successor Company and each of the following conditions is satisfied in connection with such sale: (1) the participant becomes employed by the purchaser (which term shall include for these purposes a parent, subsidiary, or other affiliated entity of such purchaser) of such assets upon or within sixty (60) days following such sale or such purchaser offers the participant employment effective upon or within sixty (60) days following such sale (regardless of whether the participant actually accepts or commences such employment) on substantially the same terms; and (2) such purchaser adopts this Plan (or a substantially similar severance plan) to provide the participant with substantially the same severance protections afforded by this Plan had this Plan continued in effect as to the participant after such sale on its terms (subject, without limitation, to any such entity's right to terminate this Plan as provided herein). Whether employment is on "substantially the same terms" for this purpose shall be determined by comparing the relevant aspects of the terms of the participant's employment before giving effect to such asset sale to the relevant aspects of the terms of the participant's employment (or offer of employment, as the case may be) with the purchaser after giving effect to such asset sale (in each case relative to the Company and its subsidiaries, or the purchaser and its parent, subsidiary, and other affiliated entities, as the case may be, on a consolidated basis, not simply with reference to the participant's employer).

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 following the occurrence of any of the following conditions without the Officer Participant's express written consent:

- Assignment of any authority, duties or responsibilities that results in a material diminution in the participant's authority, duties or responsibilities 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.
- A material diminution 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 during the 12-month period following the Change of Control 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 (provided that such participant does in fact terminate his or her employment within the time period prescribed below).
- 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.

provided, however, that any such condition shall not constitute grounds for a Good Reason Resignation unless both (x) the Officer Participant provides written notice to the Company of the condition claimed to constitute grounds for the Good Reason Resignation within sixty (60) days of the initial existence of such condition, and (y) the Company fails to remedy such condition within thirty (30) days of receiving such written notice thereof; and provided, further, that in all events the termination of the Officer Participant's employment with the Company shall not be treated as a Good Reason Resignation unless such termination occurs not more than six (6) months following the initial existence of the condition claimed to constitute "Good Reason."

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

A participant who is eligible to participate in this Plan in accordance with Section 2 and who becomes eligible to receive severance benefits under this Plan as determined under Section 3 shall be entitled to receive, subject to the terms and conditions herein, the following severance benefits set forth in this Section 4:

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 Development 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 severance benefits (including, without limitation, any other change-in-control severance benefits and any other severance benefits generally) that the participant may be entitled to under any other plan or program with the Company. For purposes of the foregoing, any cash severance benefits payable to the participant under any other plan or program with the Company (including, without limitation, the Company's Severance Benefit Plan or any similar successor plan) shall offset the Cash Severance Pay otherwise payable to the participant under this Plan on a dollar-for-dollar basis. For purposes of the foregoing, non-cash severance benefits to be provided to the participant under any other plan or program with the Company shall offset any corresponding benefits otherwise to be provided to the participant under this Plan or, if there are no corresponding benefits otherwise to be provided to the participant under this Plan, the value of such benefits shall offset the cash severance benefits otherwise payable to the participant under this Plan on a dollar-for-dollar basis. If the amount of other benefits to be offset against the Cash Severance Pay otherwise payable to the participant under this Plan in accordance with the preceding two sentences exceeds the amount of Cash Severance Pay otherwise payable to the participant under this Plan, then the excess may be used to offset other non-cash severance benefits otherwise to be provided to the participant under this Plan on a dollar-for-dollar basis. For purposes of this paragraph, the Plan Administrator shall reasonably determine the value of any non-cash benefits;

- 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 Cash Severance Pay becomes payable.

4.2 Cash Severance Pay; Time of Payment. The Cash 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 sixty (60) days following the date on which the participant's Separation from Service (as defined below) occurs, subject to the provisions of Section 3.1. Notwithstanding the foregoing sentence or any other provision of this Plan to the contrary, if the participant is an Officer Participant or is otherwise a "specified employee" within the meaning of Treasury Regulation Section 1.409A-1(i) as of the date of the participant's Separation from Service, the participant shall not be entitled to any payment of Cash Severance Pay until the earlier of (i) the date which is six (6) months after the participant's Separation from Service for any reason other than death, or (ii) the date of the participant's death. Any amounts otherwise payable to the participant upon or in the six (6) month period following the participant's Separation from Service that are not so paid by reason of this paragraph shall be paid (without interest) as soon as practicable (and in all events within thirty (30) days) after the date that is six (6) months after the participant's Separation from Service (or, if earlier, as soon as practicable, and in all events within thirty (30) days, after the date of the participant's death). The provisions of this paragraph shall only apply if, and to the extent, required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the U.S. Internal Revenue Code of 1986, as amended (the "Code").

As used herein, a participant's "Separation from Service" occurs when the participant dies, retires, or otherwise has a termination of employment with the Company that constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h)(1), without regard to the optional alternative definitions available thereunder.

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. To the extent that the payment of any COBRA premiums pursuant to this Section 4.3 is taxable to the participant, any such payment shall be paid to the participant on or before the last day of the participant's taxable year following the taxable year in which the related expense was incurred. The participant's right to payment of such premiums is not subject to liquidation or exchange for another benefit and the amount of such benefits that the participant receives in one taxable year shall not affect the amount of such benefits that the participant receives in any other taxable year.

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, any such reimbursement to be made in accordance with the Company's reimbursement policies generally and in all events not later than the end of the calendar year following the year in which the related expense was incurred. The participant's right to benefits under this Section 4.4 is not subject to liquidation or exchange for another benefit and the amount of such benefits that the participant receives in one taxable year shall not affect the amount of such benefits that the participant receives in any other taxable year.

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 hereunder 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 (collectively, the "Payments"), 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 (the "Excise Tax"), then the following rules shall apply:

(i) If a reduction in the amount of the Payments by an amount up to but not in excess of ten percent (10%) of the amount of the Payments would avoid the imputation of any Excise Tax on the remaining Payments (after such reduction), then the Payments shall be reduced (but not below zero) if and to the extent that such a reduction in the Payments would result in the participant retaining a larger amount, on an after-tax basis (taking into account federal, state and local income taxes and the Excise Tax), than if the participant received the entire amount of the Payments. The Company shall reduce or eliminate the Payments by first reducing or eliminating any Cash Severance Pay, then by reducing or eliminating any accelerated vesting of equity awards, then by reducing or eliminating any other remaining Payments.

(ii) If a reduction in the amount of the Payments by 10% of the amount of the Payments would not avoid the imputation of any Excise Tax on the remaining Payments (after such reduction), then the Company shall pay to the participant (or to the applicable taxing authority on participant's behalf) an additional cash payment (the "Gross-Up Payment") equal to an amount such that after payment by the participant of all taxes, interest, penalties, additions to tax and costs imposed or incurred with respect to the Gross-Up Payment (including, without limitation, any income and excise taxes imposed upon the Gross-Up Payment), the participant retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon such Payment or Payments. The Gross-Up Payment, if triggered pursuant to this Section 4.7(ii), is intended to put the participant in the same position as the participant would have been had no Excise Tax been imposed upon or incurred as a result of any Payment. Any such Gross-Up Payment shall be paid as soon as practicable and in all events no later than the end of the calendar year following the year in which the participant remits the related taxes.

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 Therapuetics
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). The Plan is intended to comply with Section 409A of the Code (including the Treasury regulations and other published guidance relating thereto) so as not to subject any participant to payment of any interest or additional tax imposed under Code Section 409A. The provisions of the Plan shall be construed and interpreted to avoid the imputation of any such additional tax, penalty or interest under Code Section 409A yet preserve (to the nearest extent reasonably possible) the intended benefit payable to the participant.

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 A

FORM OF SEPARATION AND GENERAL RELEASE AGREEMENT

This Separation and General Release Agreement (this "Agreement") is entered into this _____ day of _____ 20___, by and between ____, an individual ("Employee"), and Nektar Therapeutics, a Delaware corporation (the "Company").

WHEREAS, Employee has been employed by the Company or one of its subsidiaries; and

WHEREAS, Employee's employment by the Company or one of its subsidiaries has terminated and, in connection with the Company's Amended and Restated Change in Control Severance Plan (the "Plan"), the Company and Employee desire to enter into this Agreement upon the terms set forth herein;

NOW, THEREFORE, in consideration of the covenants undertaken and the releases contained in this Agreement, and in consideration of the Company's (or one of its subsidiaries') obligation to pay severance benefits (conditioned upon this release) under and pursuant to the Plan, Employee and the Company agree as follows:

1. Separation Date. Your last day of work is [_____, 20___] (the "Separation Date").

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 6(a).

3. Incentive Compensation. You will be eligible for payments under the Company's Discretionary Performance-Based Incentive Compensation Policy ("Bonus Plan") if the Company meets its corporate objectives and goals under the Bonus Plan for the six-month performance period that ended on **[**_____, 20_____**]**. Your bonus payment (if any) will be based on the Company's corporate performance percentage rating such six-month performance period and your manager's rating of your individual performance, and will be paid to you at approximately the same time payments are made to the Company's employees under the Bonus Plan for such period. The foregoing payments (if any) are subject to standard payroll deductions and withholdings.

4. Payment in Full. You acknowledge and agree that you have received all salary, wages, accrued vacation, bonuses, commissions, expense reimbursements, or other such sums due to you other than the severance benefits to be paid or provided to you pursuant to the Plan. In light of the payment by Company of all wages due, you and the Company further acknowledge and agree that California Labor Code § 206.5 is not applicable. That section provides in pertinent part as follows:

> No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an event on wages to be earned, unless payment of such wages has been made.

5. 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.

6. 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.

7. 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.

8. 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, cell phones, pagers, PDAs (*e.g.*, Blackberrys), 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.**

9. 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.

10. 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.

11. General Release. Except as otherwise stated in this Agreement, and in exchange for the consideration given under the Plan, 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).

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.

Notwithstanding the release of claims otherwise provided for in this Section of the Agreement, it is expressly understood that nothing in this Agreement will prevent you from filing a charge of discrimination with the Equal Employment Opportunity Commission or any of its state or local deferral agencies, or participating in any investigation by the Equal Employment Opportunity Commission or any of its state or local deferral agencies, although you understand that by signing this Agreement, you waive the right to recover any damages or to receive other relief in any claim or suit brought by or through the Equal Employment Opportunity Commission or any other state or local deferral agency on your behalf. Further, it is expressly understood that nothing in this Agreement shall be construed to be a waiver by you of any benefit that vested in any benefit plan prior to his termination date or as a waiver of his right to continue any benefit in accordance with the terms of a benefit plan. Likewise nothing in this Agreement shall be construed to waive any right that is not subject to waiver by private agreement, including any right that you may have under California Labor Code Section 2802 to indemnification of any expenses or losses incurred in discharging your duties. It is also expressly understood that nothing in this Agreement shall in any way prohibit you from bringing any complaint, claim or action seeking to challenge the validity of this Agreement and/or bringing any complaint claim or action alleging a breach of this Agreement by the Company.

12. [ADEA Waiver.[1] 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 the Plan (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)/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 General Counsel;

(e) this Agreement shall not be effective until the revocation period expires which will be the eighth day after you sign this Agreement;

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1 Section 12 will be included if the Employee is age 40 or older as of the date that the Employee's employment with the Company terminates or in such other circumstances (if any) as the Employee may have claims under the ADEA. In the event Section 12 is included, whether the Employee has 21 days, 45 days, or some other period in which to consider the Release Agreement will be determined with reference to the requirements of the ADEA in order for such waiver to be valid in the circumstances. The determinations referred to in the preceding two sentences shall be made by the Company in its sole discretion.

(f) nothing in this Agreement prevents or precludes you from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs for doing so, unless specifically authorized by federal law; and

(g) in order to revoke this Agreement, you must deliver to Gil Labrucherie's attention at the following address a written revocation before 12:00 a.m. (midnight) p.s.t. on the seventh calendar day following the date you sign the Agreement:

Gil M. Labrucherie
General Counsel
Nektar Therapeutics
201 Industrial Road
San Carlos, CA 94070
(650) 620-5360**]**

13. Waiver of Unknown Claims. You further agree and acknowledge that the release provided for in this Agreement shall apply to all unknown and unanticipated injuries and/or damages. You acknowledge and understand that Section 1542 of the Civil Code of the State of California provides as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his/her favor at the time of executing the release, which if known by him/her must have materially affected his/her settlement with the debtor.

Being aware of Section 1542 of the California Civil Code, you by signing this Agreement expressly waive the provision of Section 1542 of the California Civil Code and any similar provisions of law that may be applicable.

14. Entire Agreement; Modification. This Agreement, together with the Plan 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 the Company, and inure to the benefit of both you and the Company, 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.

If this Agreement is acceptable to you, please sign below and return the original to Human Resources on or before _____, 2008. You will not be entitled to any severance benefits under the Plan if we do not receive the fully executed Agreement from you by the aforementioned date and you do not revoke this Agreement within any revocation period provided under applicable law.

NEKTAR THERAPEUTICS

By: _____ Dated: _____

DORIAN RINELLA
SVP, HUMAN RESOURCES

[EMPLOYEE NAME]

_____ Dated: _____

Exhibit 10.20

NEKTAR THERAPEUTICS

2008 Equity Incentive Plan

Termination Date: March 20, 2018

1. Purposes.

(a) Adoption. The 2008 Equity Incentive Plan was approved by the Board of Directors on March 20, 2008.

(b) Eligible Stock Award Recipients. The persons eligible to receive Stock Awards are the Employees, Directors and Consultants of the Company and its Affiliates.

(c) Available Stock Awards. The purpose of the Plan is to provide a means by which eligible recipients of Stock Awards may be given an opportunity to benefit from increases in value of the Common Stock through the granting of the following Stock Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) stock bonuses and (iv) rights to acquire restricted stock.

(d) General Purpose. The Company, by means of the Plan, seeks to retain the services of the group of persons eligible to receive Stock Awards, to secure and retain the services of new members of this group and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.

2. Definitions.

(a) "***Affiliate***" means any parent corporation or subsidiary corporation of the Company, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

(b) "***Board***" means the Board of Directors of the Company.

(c) "***Code***" means the Internal Revenue Code of 1986, as amended.

(d) "***Committee***" means a Committee appointed by the Board in accordance with subsection 3(c).

(e) "***Common Stock***" means the common stock of the Company.

(f) "***Company***" means Nektar Therapeutics, a Delaware corporation.

(g) "***Consultant***" means any person, including an advisor, (1) engaged by the Company or an Affiliate to render consulting or advisory services and who is compensated for such services or (2) who is a member of the Board of Directors of an Affiliate. However, the term "Consultant" shall not include either Directors of the Company who are not compensated by the Company for their services as Directors or Directors of the Company who are merely paid a director's fee by the Company for their services as Directors.

(h) "***Continuous Service***" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. The Participant's Continuous Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's Continuous Service. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or a Director of the Company will not constitute an interruption of Continuous Service. The Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave.

(i) "***Covered Employee***" means the chief executive officer and the four (4) other highest compensated officers of the Company for whom total compensation is required to be reported to stockholders under the Exchange Act, as determined for purposes of Section 162(m) of the Code.

(j) "***Director***" means a member of the Board of Directors of the Company.

(k) "***Disability***" means the permanent and total disability of a person within the meaning of Section 22(e)(3) of the Code.

(l) "***Employee***" means any person employed by the Company or an Affiliate. Mere service as a Director or payment of a director's fee by the Company or an Affiliate shall not be sufficient to constitute "employment" by the Company or an Affiliate.

(m) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

(n) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on the Nasdaq Global Select Market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the day of determination, as reported in The Wall Street Journal or such other source as the Board deems reliable.

(ii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined in good faith by the Board.

(o) "***Incentive Stock Option***" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(p) "***Non-Employee Director***" means a Director of the Company who either (i) is not a current Employee or Officer of the Company or its parent or a subsidiary, does not receive compensation (directly or indirectly) from the Company or its parent or a subsidiary for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act ("Regulation S-K")), does not possess an interest in any other transaction as to which disclosure would be required under Item 404(a) of Regulation S-K and is not engaged in a business relationship as to which disclosure would be required under Item 404(b) of Regulation S-K; or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3.

(q) "***Nonstatutory Stock Option***" means an Option not intended to qualify as an Incentive Stock Option.

(r) "***Officer***" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(s) "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option granted pursuant to the Plan.

(t) "***Option Agreement***" means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an individual Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(u) "***Optionholder" or "Optionee"*** means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(v) "***Outside Director***" means a Director of the Company who either (i) is not a current employee of the Company or an "affiliated corporation" (within the meaning of Treasury Regulations promulgated under Section 162(m) of the Code), is not a former employee of the Company or an "affiliated corporation" receiving compensation for prior services (other than benefits under a tax qualified pension plan), was not an officer of the Company or an "affiliated corporation" at any time and is not currently receiving direct or indirect remuneration from the Company or an "affiliated corporation" for services in any capacity other than as a Director or (ii) is otherwise considered an "outside director" for purposes of Section 162(m) of the Code.

(w) "***Participant***" means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(x) "***Plan***" means this Nektar Therapeutics 2008 Equity Incentive Plan.

(y) "***Rule 16b-3***" means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(z) "***Securities Act***" means the Securities Act of 1933, as amended.

(aa) "***Stock Award***" means any right granted under the Plan, including an Option, a stock bonus and a right to acquire restricted stock.

(bb) "***Stock Award Agreement***" means a written agreement between the Company and a holder of a Stock Award evidencing the terms and conditions of an individual Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(cc) "***Ten Percent Stockholder***" means a person who owns (or is deemed to own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any of its Affiliates.

3. **ADMINISTRATION**.

(a) Administration by Board. The Board will administer the Plan unless and until the Board delegates administration to a Committee, as provided in subsection 3(c).

(b) Powers of Board. The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time which of the persons eligible under the Plan shall be granted Stock Awards; when and how each Stock Award shall be granted; what type or combination of types of Stock Award shall be granted; the provisions of each Stock Award granted (which need not be identical), including the time or times when a person shall be permitted to receive stock pursuant to a Stock Award; and the number of shares with respect to which a Stock Award shall be granted to each such person.

(ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(iii) To amend the Plan or a Stock Award as provided in Section 12.

(iv) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company which are not in conflict with the provisions of the Plan.

(c) Delegation to Committee.

(i) General. The Board may delegate administration of the Plan to a Committee or Committees of one (1) or more members of the Board, and the term "Committee" shall apply to any person or persons to whom such authority has been delegated. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may abolish the Committee at any time and revest in the Board the administration of the Plan.

(ii) Committee Composition when Common Stock is Publicly Traded. At such time as the Common Stock is publicly traded, in the discretion of the Board, a Committee may consist solely of two or more Outside Directors, in accordance with Section 162(m) of the Code, and/or solely of two or more Non-Employee Directors, in accordance with Rule 16b-3. Within the scope of such authority, the Board or the Committee may (i) delegate to a committee of one or more members of the Board who are not Outside Directors, the authority to grant Stock Awards to eligible persons who are either (a) not then Covered Employees and are not expected to be Covered Employees at the time of recognition of income resulting from such Stock Award or (b) not persons with respect to whom the Company wishes to comply with Section 162(m) of the Code and/or (ii) delegate to a committee of one or more members of the Board who are not Non-Employee Directors the authority to grant Stock Awards to eligible persons who are not then subject to Section 16 of the Exchange Act.

(d) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

4. Shares Subject to the Plan.

(a) Share Reserve. Subject to the provisions of Section 11 relating to adjustments upon changes in stock, the stock that may be issued pursuant to Stock Awards shall not exceed in the aggregate Nine Million (9,000,000) shares of Common Stock. Subject to Section 4(b), the number of shares available for issuance under the Plan shall be reduced by (i) one (1) share for each share of stock issued pursuant to an Option granted under Section 6, and (ii) one and one-half (1.5) shares for each share that is issued pursuant to a stock bonus award or restricted stock award under Section 7.

(b) Reversion of Shares to the Share Reserve. If any Stock Award shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full or if any shares of Common Stock issued to a Participant pursuant to a Stock Award are forfeited to or reacquired or repurchased by the Company, including, but not limited to, any forfeiture, reacquisition or repurchase caused by the failure to meet a contingency or condition required for the vesting of such shares, the stock not acquired under such Stock Award shall revert to and again become available for issuance under the Plan at the rate of (i) one (1) share for each share of stock that had been issued pursuant to an Option granted under Section 6, and (ii) one and one-half (1.5) shares for each share that had been issued pursuant to a stock bonus award or restricted stock award under Section 7; *provided, however,* that if any unvested Common Stock acquired pursuant to a Stock Award is forfeited to or reacquired or repurchased by the Company, the unvested stock forfeited to or reacquired or repurchased by the Company shall revert to and again become available for issuance under the Plan for all Stock Awards other than Incentive Stock Options.

(c) Source of Shares. The stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

5. Eligibility.

(a) Eligibility for Specific Stock Awards. Incentive Stock Options may be granted only to Employees. Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants.

(b) Ten Percent Stockholders. No Ten Percent Stockholder shall be eligible for the grant of an Incentive Stock Option unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value of the Common Stock at the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

(c) Section 162(m) Limitation. Subject to the provisions of Section 11 relating to adjustments upon changes in stock, no employee shall be eligible to be granted Options covering more than Three Million (3,000,000) shares of the Common Stock during any calendar year.

(d) Consultants. A Consultant shall not be eligible for the grant of a Stock Award if, at the time of grant, a Form S-8 Registration Statement under the Securities Act ("Form S-8") is not available to register either the offer or the sale of the Company's securities to such Consultant because of the nature of the services that the Consultant is providing to the Company, or because the Consultant is not a natural person, or as otherwise provided by the rules governing the use of Form S-8, unless the Company determines both (i) that such grant (A) shall be registered in another manner under the Securities Act (*e.g.,* on a Form S-3 Registration Statement) or (B) does not require registration under the Securities Act in order to comply with the requirements of the Securities Act, if applicable, and (ii) that such grant complies with the securities laws of all other relevant jurisdictions.

6. Option Provisions.

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and a separate certificate or certificates will be issued for shares purchased on exercise of each type of Option. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

(a) Term. Subject to the provisions of subsection 5(b) regarding Ten Percent Stockholders, no Incentive Stock Option shall be exercisable after the expiration of eight (8) years from the date it was granted. No Nonstatutory Stock Option shall be exercisable after the expiration of eight (8) years from the date it was granted.

(b) Exercise Price of an Incentive Stock Option. Subject to the provisions of subsection 5(b) regarding Ten Percent Stockholders, the exercise price of each Incentive Stock Option shall be not less than one hundred percent (100%) of the Fair Market Value of the stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Incentive Stock Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

(c) Exercise Price of a Nonstatutory Stock Option. The exercise price of each Nonstatutory Stock Option shall be not less than one hundred percent (100%) of the Fair Market Value of the stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, a Nonstatutory Stock Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

(d) Consideration.

(i) The purchase price of stock acquired pursuant to an Option shall be paid, to the extent permitted by applicable statutes and regulations, either (A) in cash at the time the Option is exercised or (B) at the discretion of the Board at the time of the grant of the Option (or subsequently in the case of a Nonstatutory Stock Option) by delivery to the Company of other Common Stock, according to a deferred payment or other similar arrangement (which may include, without limiting the generality of the foregoing, the use of other Common Stock) with the Participant or in any other form of legal consideration that may be acceptable to the Board; provided, however, that at any time that the Company is incorporated in Delaware, payment of the Common Stock's "par value," as defined in the Delaware General Corporation Law, shall not be made by deferred payment.

(ii) Unless otherwise specifically provided in the Option, the purchase price of Common Stock acquired pursuant to an Option that is paid by delivery to the Company of other Common Stock acquired, directly or indirectly from the Company, shall be paid only by shares of the Common Stock of the Company that have been held for more than six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes).

(iii) In the case of any deferred payment arrangement, interest shall be compounded at least annually and shall be charged at the minimum rate of interest necessary to avoid the treatment as interest, under any applicable provisions of the Code, of any amounts other than amounts stated to be interest under the deferred payment arrangement.

(e) Transferability of an Incentive Stock Option. An Incentive Stock Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing provisions of this subsection 6(e), the Optionholder may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

(f) Transferability of a Nonstatutory Stock Option. A Nonstatutory Stock Option shall be transferable to the extent provided in the Option Agreement. If the Nonstatutory Stock Option does not provide for transferability, then the Nonstatutory Stock Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing provisions of this subsection 6(f), the Optionholder may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

(g) Vesting Generally. The total number of shares of Common Stock subject to an Option may, but need not, vest and therefore become exercisable in periodic installments which may, but need not, be equal. The Option may be subject to such other terms and conditions on the time or times when it may be exercised (which may be based on performance or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options may vary. The provisions of this subsection 6(g) are subject to any Option provisions governing the minimum number of shares as to which an Option may be exercised.

(h) Termination of Continuous Service. In the event an Optionholder's Continuous Service terminates (other than upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise it as of the date of termination) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Optionholder's Continuous Service (or such longer or shorter period specified in the Option Agreement), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified in the Option Agreement, the Option shall terminate.

(i) Extension of Termination Date. An Optionholder's Option Agreement may also provide that if the exercise of the Option following the termination of the Optionholder's Continuous Service (other than upon the Optionholder's death or Disability) would be prohibited at any time solely because the issuance of shares would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of the term of the Option set forth in subsection 6(a) or (ii) the expiration of a period of three (3) months (or such longer or shorter period specified in the Option Agreement) after the termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements.

(j) Disability of Optionholder. In the event an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise it as of the date of termination), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination (or such longer or shorter period specified in the Option Agreement) or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified herein, the Option shall terminate.

(k) Death of Optionholder. In the event an Optionholder's Continuous Service terminates as a result of the Optionholder's death, then, subject to any restrictions in the Option Agreement, the Option shall become fully vested and exercisable as of the date of termination. In the event (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death or (ii) the Optionholder dies within the period (if any) specified in the Option Agreement after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise the Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the Option upon the Optionholder's death pursuant to subsection 6(e) or 6(f), but only within the period ending on the earlier of (1) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Option Agreement) or (2) the expiration of the term of such Option as set forth in the Option Agreement. If, after death, the Option is not exercised within the time specified herein, the Option shall terminate.

(l) Early Exercise. The Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the shares subject to the Option prior to the full vesting of the Option. Any unvested shares so purchased may be subject to an unvested share repurchase option in favor of the Company or to any other restriction the Board determines to be appropriate.

7. Provisions of Stock Awards Other than Options.

(a) Stock Bonus Awards. Each stock bonus agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of stock bonus agreements may change from time to time, and the terms and conditions of separate stock bonus agreements need not be identical, but each stock bonus agreement shall include (through incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(b) Consideration. A stock bonus shall be awarded in consideration for past services actually rendered to the Company for its benefit.

(c) Vesting. Shares of Common Stock awarded under the stock bonus agreement may, but need not, be subject to a share repurchase option in favor of the Company in accordance with a vesting schedule to be determined by the Board.

(d) Termination of Participant's Continuous Service. In the event a Participant's Continuous Service terminates, the Company may reacquire any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination under the terms of the stock bonus agreement; provided, however, that in the event a Participant's Continuous Service terminates as a result of the Participant's death, then, subject to any restrictions in the stock bonus agreement, the shares acquired pursuant to the stock bonus agreement shall become fully vested as of the date of termination.

(e) Transferability. Rights to acquire shares under the stock bonus agreement shall be transferable by the Participant only upon such terms and conditions as are set forth in the stock bonus agreement, as the Board shall determine in its discretion, so long as stock awarded under the stock bonus agreement remains subject to the terms of the stock bonus agreement.

(f) Restricted Stock Awards. Each restricted stock purchase agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of the restricted stock purchase agreements may change from time to time, and the terms and conditions of separate restricted stock purchase agreements need not be identical, but each restricted stock purchase agreement shall include (through incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(g) Purchase Price. The purchase price under each restricted stock purchase agreement shall be such amount as the Board shall determine and designate in such restricted stock purchase agreement. The purchase price shall not be less than one hundred percent (100%) of the stock's Fair Market Value on the date such award is made or at the time the purchase is consummated.

(h) Consideration. The purchase price of stock acquired pursuant to the restricted stock purchase agreement shall be paid either: (i) in cash at the time of purchase; (ii) at the discretion of the Board, according to a deferred payment or other similar arrangement with the Participant; or (iii) in any other form of legal consideration that may be acceptable to the Board in its discretion; provided, however, that at any time that the Company is incorporated in Delaware, payment of the Common Stock's "par value," as defined in the Delaware General Corporation Law, shall not be made by deferred payment.

(i) Vesting. Shares of Common Stock acquired under the restricted stock purchase agreement may, but need not, be subject to a share repurchase option in favor of the Company in accordance with a vesting schedule to be determined by the Board.

(j) Termination of Participant's Continuous Service. In the event a Participant's Continuous Service terminates, the Company may repurchase or otherwise reacquire any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination under the terms of the restricted stock purchase agreement; provided, however, that in the event a Participant's Continuous Service terminates as a result of the Participant's death, then, subject to any restrictions in the restricted stock purchase agreement, the shares acquired pursuant to the restricted stock purchase agreement shall become fully vested as of the date of termination.

(k) Transferability. Rights to acquire shares under the restricted stock purchase agreement shall be transferable by the Participant only upon such terms and conditions as are set forth in the restricted stock purchase agreement, as the Board shall determine in its discretion, so long as stock awarded under the restricted stock purchase agreement remains subject to the terms of the restricted stock purchase agreement.

8. Covenants of the Company.

(a) Availability of Shares. During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Stock Awards.

(b) Securities Law Compliance. The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; provided, however, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Stock Award or any stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell stock upon exercise of such Stock Awards unless and until such authority is obtained.

9. Use of Proceeds From Stock.

Proceeds from the sale of stock pursuant to Stock Awards shall constitute general funds of the Company.

10. Miscellaneous.

(a) Acceleration of Exercisability and Vesting. The Board shall have the power to accelerate the time at which a Stock Award may first be exercised or the time during which a Stock Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Stock Award stating the time at which it may first be exercised or the time during which it will vest.

(b) Stockholder Rights. No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares subject to such Stock Award unless and until such Participant has satisfied all requirements for exercise of the Stock Award pursuant to its terms.

(c) No Employment or other Service Rights. Nothing in the Plan or any instrument executed or Stock Award granted pursuant thereto shall confer upon any Participant or other holder of Stock Awards any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(d) Incentive Stock Option $100,000 Limitation. To the extent that the aggregate Fair Market Value (determined at the time of grant) of stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and its Affiliates) exceeds one hundred thousand dollars ($100,000), the Options or portions thereof which exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options.

(e) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring the stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (iii) the issuance of the shares upon the exercise or acquisition of stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act or (iv) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the stock.

(f) Withholding Obligations. To the extent provided by the terms of a Stock Award Agreement, the Participant may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of stock under a Stock Award by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company) or by a combination of such means: (i) tendering a cash payment; (ii) authorizing the Company to withhold shares from the shares of the Common Stock otherwise issuable to the Participant as a result of the exercise or acquisition of stock under the Stock Award, provided, however, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law; or (iii) delivering to the Company owned and unencumbered shares of the Common Stock. The Participant is solely responsible for satisfaction of all federal, state or local tax withholding obligations relating to the exercise or acquisition of stock under a Stock Award and no shares of Common Stock will be issued until the Company has received a definitive agreement or other documentation satisfactory to the Company, in its sole discretion, that such withholding obligations have been or will be satisfied by the Participant.

11. Adjustments Upon Changes in Stock.

(a) Capitalization Adjustments. If any change is made in the stock subject to the Plan, or subject to any Stock Award, without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company), the Plan will be appropriately adjusted in the class(es) and maximum number of securities subject to the Plan pursuant to subsection 4(a) and the maximum number of securities subject to award to any person pursuant to subsection 5(c), and the outstanding Stock Awards will be appropriately adjusted in the class(es) and number of securities and price per share of stock subject to such outstanding Stock Awards. Such adjustments shall be made by the Board, the determination of which shall be final, binding and conclusive. (The conversion of any convertible securities of the Company shall not be treated as a transaction "without receipt of consideration" by the Company.)

(b) Dissolution or Liquidation. In the event of a dissolution or liquidation of the Company, then such Stock Awards shall be terminated if not exercised (if applicable) prior to such event.

(c) Corporate Transaction. In the event of (1) a sale, lease or other disposition of all or substantially all of the assets of the Company, (2) a merger or consolidation in which the Company is not the surviving corporation or (3) a reverse merger in which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise (a "Corporate Transaction"), then any surviving corporation or acquiring corporation shall assume any Stock Awards outstanding under the Plan or shall substitute similar stock awards (including an award to acquire the same consideration paid to the stockholders in the Corporate Transaction) for those outstanding under the Plan. In the event any surviving corporation or acquiring corporation refuses to assume such Stock Awards or to substitute similar stock awards for those outstanding under the Plan, then with respect to Stock Awards held by Participants whose Continuous Service has not terminated, the vesting of such Stock Awards (and, if applicable, the time during which such Stock Awards may be exercised) shall be accelerated in full, and the Stock Awards shall terminate if not exercised (if applicable) at or prior to such Corporate Transaction. With respect to any other Stock Awards outstanding under the Plan, such Stock Awards shall terminate if not exercised (if applicable) prior to such Corporate Transaction.

(d) Securities Acquisition. In the event of an acquisition by any person, entity or group within the meaning of Section 13(d) or 14(d) of the Exchange Act, or any comparable successor provisions (excluding any employee benefit plan, or related trust, sponsored or maintained by the Company or an Affiliate) of the beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act, or comparable successor rule) of securities of the Company representing at least fifty percent (50%) of the combined voting power entitled to vote in the election of Directors and provided that such acquisition is not a result of, and does not constitute, a Corporate Transaction described in subsection 11(c) hereof, then with respect to Stock Awards held by Participants whose Continuous Service has not terminated, the vesting of such Stock Awards (and, if applicable, the time during which such Stock Awards may be exercised) shall be accelerated in full.

12. Amendment of the Plan and Stock Awards.

(a) Amendment of Plan. The Board at any time, and from time to time, may amend the Plan. However, except as provided in Section 11 relating to adjustments upon changes in stock, no amendment shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy the requirements of Section 422 of the Code, Rule 16b-3 or any Nasdaq or securities exchange listing requirements.

(b) Stockholder Approval. The Board may, in its sole discretion, submit any other amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 162(m) of the Code and the regulations thereunder regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to certain executive officers.

(c) Contemplated Amendments. It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide eligible Employees with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder relating to Incentive Stock Options and/or to bring the Plan and/or Incentive Stock Options granted under it into compliance therewith.

(d) No Impairment of Rights. Rights under any Stock Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the Participant and (ii) the Participant consents in writing.

(e) Amendment of Stock Awards. The Board at any time, and from time to time, may amend the terms of any one or more Stock Awards; provided, however, that the rights under any Stock Award shall not be impaired by any such amendment unless (i) the Company requests the consent o**f the Participant and (ii) the Participant consents in writing.**

(f) Repricing of Stock Awards. Without prior stockholder approval, the Board will not effect a "repricing" (as hereinafter defined) of any Stock Awards under the Plan. For purposes of the immediately preceding sentence, a "repricing" shall be deemed to mean any of the following actions: (a) the lowering of the purchase price of a Stock Award after it is granted; (b) the canceling of a Stock Award in exchange for another Stock Award at a time when the purchase price of the cancelled Stock Award exceeds the Fair Market Value of the underlying stock (unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off, dissolution, winding up or other similar corporate transaction with respect to the Company or any subsidiary of the Company to which the holder of such Stock Award is providing or had provided service); or (c) the purchase of a Stock Award for cash or other consideration at a time when the purchase price of the purchased Stock Award exceeds the Fair Market Value of the underlying stock (unless the purchase occurs in connection with a merger, acquisition, spin-off, dissolution, winding up or other similar corporate transaction with respect to the Company or any subsidiary of the Company to which the holder of such Stock Award is providing or had provided service).

13. Termination or Suspension of the Plan.

(a) Plan Term. The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate on March 20, 2018. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) No Impairment of Rights. Rights and obligations under any Stock Award granted while the Plan is in effect shall not be impaired by suspension or termination of the Plan, except with the written consent of the Participant.

14. Effective Date of Plan.

The Plan shall become effective upon adoption by the Board, but no Stock Award shall be exercised (or, in the case of a stock bonus, shall be granted) unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

15. Choice of Law.

The law of the State of Delaware shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to such state's conflict of laws rules.

Exhibit 10.21

NEKTAR THERAPEUTICS
2008 EQUITY INCENTIVE PLAN

STOCK OPTION GRANT NOTICE
(US OPTIONHOLDERS)

Nektar Therapeutics (the ***"Company"***), pursuant to its 2008 Equity Incentive Plan (the ***"Plan"***), hereby grants to you, the Optionholder, an option to purchase the number of shares of the Company's Common Stock set forth below. This Option is subject to all of the terms and conditions as set forth herein and in the Stock Option Agreement, the Plan and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Plan or the Stock Option Agreement.

Optionholder: _____
Date of Grant: _____
Vesting Commencement Date: _____
Number of Shares Subject to Option: _____
Exercise Price Per Share: _____
Expiration Date: _____

Exercise Schedule: Same as Vesting Schedule
Vesting Schedule: _____ of the shares vest one year after the Vesting Commencement Date.
_____ of the shares vest monthly thereafter over the next _____ years.

Additional Terms/Acknowledgements: You acknowledge receipt of, and understand and agree to, this Grant Notice, the Stock Option Agreement and the Plan. You further acknowledge that as of the Date of Grant, this Grant Notice, the Stock Option Agreement and the Plan set forth the entire understanding between you and the Company regarding the acquisition of stock in the Company and supersede all prior oral and written agreements on that subject with the exception of (i) Options previously granted and delivered to you under the Plan, and (ii) the following agreements only:

OTHER AGREEMENTS: _____
_____

NEKTAR THERAPEUTICS:

By: _____
Signature
Name: _____
Print
Title: _____
Date: _____

OPTIONHOLDER:

_____
Signature
Date: _____

ATTACHMENTS: Stock Option Agreement, 2008 Equity Incentive Plan, and Notice of Exercise

NEKTAR THERAPEUTICS
2008 EQUITY INCENTIVE PLAN

STOCK OPTION AGREEMENT
(US OPTIONHOLDERS)

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 2008 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, 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 such termination.

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 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 you are a US taxpayer and 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 as described in Section 10 below 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. Tax Obligations.

(a) You are responsible for satisfaction of all federal, state, local and foreign tax withholding obligations of the Company and its Affiliates, if any, which arise in connection with the option, including, without limitation, obligations arising upon (i) the exercise, in whole or in part, of the option, (ii) the transfer, in whole or in part, of any shares acquired upon exercise of the option, (iii) the operation of any law or regulation providing for the imputation of interest, or (iv) the lapsing of any restriction with respect to any shares acquired upon exercise of the option. No shares of Common Stock will be issued until the Company has received a definitive agreement or other documentation satisfactory to the Company, in its sole discretion, that all such obligations have been or will be satisfied by you. Regardless of whether the Company properly withholds the full amount of such obligations, you hereby acknowledge and agree that that all such obligations shall transfer in their entirety from the Company to you and that such liability shall be ultimately your responsibility and liability.

(b) You hereby authorize withholding from payroll and any other amounts payable to you and otherwise agree to make adequate provision for any sums required to satisfy the federal, state, local and foreign tax obligations, if any, which are owed by you in connection with the option.

(c) The Company may, in its discretion, permit or require you to satisfy all or any portion of the tax obligations described in this Section 10 by deducting from the shares of Common Stock otherwise deliverable to you in settlement of the option a number of shares of Common Stock having a fair market value, as determined by the Company as of the date on which the tax obligations arise, not in excess of the amount of such tax obligations determined by the applicable withholding rates. In the event that the Company determines that the tax obligations will not be satisfied by the methods described above, you authorize the designated plan administrator or any successor plan administrator, to sell a number of shares of Common Stock that are exercised under the option, which the Company determines is sufficient to generate an amount that meets the tax obligations plus additional shares of Common Stock, as necessary, to account for rounding and market fluctuation, and to pay such tax withholding amounts to the Company. The shares may be sold as part of a block trade with other Participants of the Plan in which all Participants receive an average price. Any adverse consequences to you resulting from the procedure permitted under this Section 10, including, without limitation, tax consequences, shall be your sole responsibility.

(d) You hereby acknowledge that you understand that you may suffer adverse tax consequences as a result of the exercise of the option or disposition of the shares. You hereby represent that you have consulted with any tax consultants the you deem advisable in connection with the exercise of the option or disposition of the shares and that you are not relying on the Company for any tax advice.

11. Employment Conditions. In accepting the option, you acknowledge that:

(a) Any notice period mandated under the applicable laws shall not be treated as service for the purpose of determining the vesting of the option; and your right to receive shares of Common Stock in settlement of the option after termination as an Employee, if any, will be measured by the date of your termination as an Employee and will not be extended by any notice period mandated under the applicable law. Subject to the foregoing and the provisions of the Plan, the Company, in its sole discretion, shall determine whether your status as an Employee has terminated and the effective date of such termination.

(b) The vesting of the option shall cease upon, and no portion of the option shall become vested following, your termination as an Employee for any reason except as may be explicitly provided by the Plan or this Stock Option Agreement. Unless otherwise provided in the Plan or this Stock Option Agreement, the unvested portion of the option at the time of your termination as an Employee will be forfeited.

(c) The Plan is established voluntarily by the Company. It is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, unless otherwise provided in the Plan and this Stock Option Agreement.

(d) The grant of the option is voluntary and occasional and does not create any contractual or other right to receive future grants of options, or benefits in lieu of options, even if options have been granted repeatedly in the past.

(e) All decisions with respect to future option grants, if any, will be at the sole discretion of the Company.

(f) You are voluntarily participating in the Plan.

(g) The option is an extraordinary item that does not constitute compensation of any kind for service rendered to the Company (or any Affiliate), and which is outside the scope of your employment contract, if any. In addition, the option is not part of normal or expected compensation or salary for any purpose, including, but not limited to, calculating any severance, resignation, termination, redundancy, end-of-service payments, bonuses, long-service awards, pension or retirement benefits or similar payments.

(h) The future value of the underlying shares of Common Stock is unknown and cannot be predicted with certainty. If you obtain shares upon settlement of the option, the value of those shares may increase or decrease.

(i) No claim or entitlement to compensation or damages arises from termination of the option or diminution in value of the option or shares of Common Stock acquired upon settlement of the option resulting from your termination as an Employee (for any reason whether or not in breach of the local law) and you irrevocably release the Company and each Affiliate from any such claim that may arise. If, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen then, by signing this Stock Option Agreement, you shall be deemed irrevocably to have waived your entitlement to pursue such a claim.

12. **General Provisions**.

(a) Successors and Assigns. Except as provided herein to the contrary, this Stock Option Agreement shall be binding upon and inure to the benefit of the parties to this Stock Option Agreement, their respective successors and permitted assigns.

(b) No Assignment. Except as otherwise provided in this Stock Option Agreement, you shall not assign any of your under this Stock Option Agreement without the prior written consent of the Company, which consent may be withheld in its sole discretion. The Company shall be permitted to assign its rights or obligations under this Stock Option Agreement, but no such assignment shall release the Company of any obligations pursuant to this Stock Option Agreement.

(c) Severability. The validity, legality or enforceability of the remainder of this Stock Option Agreement shall not be affected even if one or more of the provisions of this Stock Option Agreement shall be held to be invalid, illegal or unenforceable in any respect.

(d) Administration. Any determination by the Administrator in connection with any question or issue arising under the Plan or this Stock Option Agreement shall be final, conclusive, and binding on you, the Company, and all other persons.

(e) Headings. The section headings in this Stock Option Agreement are inserted only as a matter of convenience, and in no way define, limit or interpret the scope of this Stock Option Agreement or of any particular section.

(f) Delivery of Documents and Notices. Any document relating to participation in the Plan, or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Stock Option Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery through electronic delivery at the e-mail address, if any, provided for you by the Company, or, upon deposit in the local postal service, by registered or certified mail, or with a nationally recognized overnight courier service with postage and fees prepaid, addressed to the other party at the address of such party set forth in this Stock Option Agreement or at such other address as such party may designate in writing from time to time to the other party.

(i) Description of Electronic Delivery. The Plan documents, which may include but do not necessarily include: the Plan, the Option Notice, this Stock Option Agreement, and any reports of the Company provided generally to the Company's shareholders, may be delivered to you electronically. In addition, if permitted by the Company, you may deliver electronically this Stock Option Agreement and Exercise Notice called for by Section 7(a) to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(ii) Consent to Electronic Delivery. You acknowledge that you have read Section 12(f)(i) of this Stock Option Agreement and consent to the electronic delivery of the Plan documents and, if permitted by the Company, the delivery of this Stock Option Agreement and exercise notice, as described in Section 12(f)(i) You acknowledge that you may receive from the Company a paper copy of any documents delivered electronically at no cost to you by contacting the Company by telephone or in writing. You further acknowledge that you will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, you understand that you must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. You may revoke your consent to the electronic delivery of documents described in Section 12(f)(i) or may change the electronic mail address to which such documents are to be delivered (if you have provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, you understand that you are not required to consent to electronic delivery of documents described in Section 12(f)(i).

14. 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. This Stock Option Agreement is governed by the laws of the State of Delaware.

Exhibit 10.22

NEKTAR THERAPEUTICS
2008 EQUITY INCENTIVE PLAN

RESTRICTED STOCK UNIT GRANT NOTICE
(US PARTICIPANTS)

Nektar Therapeutics (the ***"Company"***), pursuant to its 2008 Equity Incentive Plan (the ***"Plan"***), hereby awards to you, the Participant, the number of Restricted Stock Units set forth below (***"Award"***). This Award is subject to all of the terms and conditions as set forth herein and in the Restricted Stock Unit Agreement and the Plan, both of which are attached hereto and incorporated herein in their entirety.

Participant: _____
Date of Grant: _____
Number of Restricted Stock Units: _____

Vesting Schedule: Subject to the limitations contained herein, the Restricted Stock Units subject to this Award shall vest as follows: (i) _____% of the Restricted Stock Units shall vest on [date], (ii) _____% of the Restricted Stock Units shall vest on [date], (iii) _____% of the Restricted Stock Units shall vest on [date], and (iv) _____% of the Restricted Stock Units shall vest on [date].

Additional Terms/Acknowledgements: You acknowledge receipt of, and understand and agree to, this Restricted Stock Unit Grant Notice, the Restricted Stock Unit Agreement and the Plan. You further acknowledge that as of the Date of Grant, this Restricted Stock Unit Grant Notice, the Restricted Stock Unit Agreement and the Plan set forth the entire understanding between you and the Company regarding the acquisition of Restricted Stock Units of the Company and supersede all prior oral and written agreements on that subject with the exception of (i) Awards previously granted and delivered to you under the Plan, and (ii) the following agreements only:

OTHER AGREEMENTS: _____
_____

NEKTAR THERAPEUTICS:

By: _____
Signature
Name: _____
Print
Title: _____
Date: _____

PARTICIPANT:

_____
Signature
Date: _____

ATTACHMENTS: Restricted Stock Unit Agreement, 2008 Equity Incentive Plan

NEKTAR THERAPEUTICS
2008 EQUITY INCENTIVE PLAN

RESTRICTED STOCK UNIT AGREEMENT
(US PARTICIPANTS)

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 2008 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.

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 on 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.

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. **Tax Obligations**.

(a) At the time the Grant Notice is executed, 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, any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company, if any, which arise in connection with the Award or the issuance of shares of Common Stock in settlement thereof. The Company shall have no obligation to deliver shares of Common Stock until the tax withholding obligations of the Company have been satisfied by you.

(b) The Company may, in its sole discretion, permit or require you to satisfy all or any portion of the tax obligations by deducting from the shares of Common Stock otherwise deliverable to you in settlement of the Award a number of shares of Common Stock having a fair market value, as determined by the Company as of the date on which the tax obligations arise, not in excess of the amount of such tax obligations determined by the applicable withholding rates. In the event that the Company determines that the tax obligations will not be satisfied by the method described above, you authorize the designated plan administrator, or any successor plan administrator, to sell a number of shares of Common Stock that are issued under the Award, which the Company determines is sufficient to generate an amount that meets the tax obligations plus additional shares, as necessary, to account for rounding and market fluctuations, and to pay such tax withholding amounts to the Company. The shares of Common Stock may be sold as part of a block trade with other Participants of the Plan in which all Participants receive an average price. Any adverse consequences to you resulting from the procedure permitted under this Section 11, including, without limitation, tax consequences, shall be your sole responsibility.

(c) You hereby acknowledge that you understand that you may suffer adverse tax consequences as a result of your participation in the Plan. You hereby represent that you have consulted with any tax consultants you deem advisable in connection with the Award or disposition of the shares of Common Stock received under the Award and that you are not relying on the Company for any tax advice.

(d) Payments contemplated with respect to the Award are intended to comply with the short-term deferral exemption under Section 409A of the Code. Notwithstanding any contrary provision in the Plan or in the Agreement, if any provision of the Plan or the Agreement contravenes any regulations or guidance promulgated under Section 409A of the Code or could cause the Awards to be subject to additional taxes, accelerated taxation, interest or penalties under Section 409A of the Code, the Company may, in its sole discretion and without your consent, modify the Plan and/or the Agreement: (i) to comply with, or avoid being subject to, Section 409A of the Code, or to avoid the imposition of any taxes, accelerated taxation, interest or penalties under Section 409A of the Code, and (ii) to maintain, to the maximum extent practicable, the original intent of the applicable provision without contravening the provisions of Section 409A of the Code. This Section 11(d) does not create an obligation on the part of the Company to modify the Plan or the Agreement and does not guarantee that the Award will not be subject to interest or penalties under Section 409A of the Code.

12. Employment Conditions. In accepting the Award, you acknowledge that:

(a) Any notice period mandated under the laws of the local jurisdiction shall not be treated as service for the purpose of determining the vesting of the Award; and your right to receive shares of Common Stock in settlement of the Award after termination of service, if any, will be measured by the date of termination of your status as an Employee and will not be extended by any notice period mandated under the local law. Subject to the foregoing and the provisions of the Plan, the Company, in its sole discretion, shall determine whether your status as an Employee has terminated and the effective date of such termination.

(b) The vesting of the Award shall cease upon, and no portion of the Award shall become vested following, your termination as an Employee for any reason except as may be explicitly provided by the Plan or this Agreement.

(c) The Plan is established voluntarily by the Company. It is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, unless otherwise provided in the Plan and this Agreement. Unless otherwise provided by the Plan or this Agreement, the unvested portion of the Award at the time of your termination as an Employee will be forfeited.

(d) The grant of the Award is voluntary and occasional and does not create any contractual or other right to receive future grants of Awards, or benefits in lieu of Awards, even if Awards have been granted repeatedly in the past.

(e) All decisions with respect to future Award grants, if any, will be at the sole discretion of the Company.

(f) You are voluntarily participating in the Plan.

(g) The Award is an extraordinary item that does not constitute compensation of any kind for service of any kind rendered to the Company (or any Affiliate), and which is outside the scope of your employment contract, if any. In addition, the Award is not part of normal or expected compensation or salary for any purpose, including, but not limited to, calculating any severance, resignation, termination, redundancy, end-of-service payments, bonuses, long-service awards, pension or retirement benefits or similar payments.

(h) The future value of the underlying shares of Common Stock is unknown and cannot be predicted with certainty. If you obtain shares upon settlement of the Award, the value of those shares may increase or decrease.

(i) No claim or entitlement to compensation or damages arises from termination of the Award or diminution in value of the Award or shares of Common Stock acquired upon settlement of the Award resulting from termination of your status as an Employee (for any reason whether or not in breach of the local law) and you irrevocably release the Company and each Affiliate from any such claim that may arise. If, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen then, by signing this Agreement, you shall be deemed irrevocably to have waived your entitlement to pursue such a claim.

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. Delivery of Documents and Notices. Any document relating to participation in the Plan, or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery electronic delivery at the e-mail address, if any, provided for you by the Company, or, upon deposit in the local postal service, by registered or certified mail, or with a nationally recognized overnight courier service with postage and fees prepaid, addressed to the other party at the address of such party set forth in the Grant Notice or at such other address as such party may designate in writing from time to time to the other party.

(a) The Plan documents, which may include but do not necessarily include: the Plan, this Agreement, and any reports of the Company provided generally to the Company's shareholders, may be delivered to you electronically. In addition, if permitted by the Company, you may deliver electronically the notices called for under the Agreement or the Plan to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(b) You acknowledge that you have read this Section 16 of this Agreement and consent to the electronic delivery of the Plan documents and, if permitted by the Company, the delivery of the notices, as described in the Agreement or the Plan. You acknowledge that you may receive from the Company a paper copy of any documents delivered electronically at no cost to you by contacting the Company by telephone or in writing. You further acknowledge that you will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, you understand that you must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. You may revoke your consent to the electronic delivery of documents described in this Section 16 or may change the electronic mail address to which such documents are to be delivered (if you have provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, you understand that you are not required to consent to electronic delivery of documents described in this Section 16.

17. 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.

18. 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.

19. Choice of Law. The interpretation, performance and enforcement of this Agreement shall be governed by the law of the state of Delaware without regard to such state's conflicts of laws rules.

Exhibit 10.26

Nektar Therapeutics
201 Industrial Road
San Carlos, California 94070

December 1, 2008

Mr. Howard W. Robin
c/o Nektar Therapeutics
201 Industrial Road
San Carlos, California 94070

Dear Howard,

This letter agreement supersedes the offer letter agreement you entered into with Nektar Therapeutics ("Nektar" or the "Company") on January 5, 2007 and any other understandings and agreements, written or oral, between you and the Company with respect to the subject matter herein and is made effective as of the date set forth above. Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Company's Change of Control Severance Benefit Plan, as it may be amended from time to time (the "COC Plan" a copy of which is included herein).

As President and Chief Executive Officer, you shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation of the size and nature of Nektar. You shall report directly to the Board. The Chairman of the Board shall be a non-executive chairman. Your principal place of employment will be 201 Industrial Road, San Carlos, CA.

Your annual cash compensation will consist of two components: base salary and an annual performance bonus. Your base salary will be $680,000 on an annual basis and paid in accordance with Nektar's regular payroll schedule. Your annual performance bonus target each year will be at least 65% of your annual base salary ("Target Annual Bonus"). Your base salary and Target Annual Bonus shall be subject to an annual performance review by the Board for appropriate upward adjustment. The actual amount of your annual performance bonus will range from 0% to 200% of the Target Annual Bonus based on the Board's assessment of your achievement of a combination of corporate and personal objectives agreed upon by you and the Board at the beginning of each annual performance period. Your annual performance bonus for a particular year will be paid not later than March 15 of the following year.

You will be eligible for annual equity awards, in the sole discretion of the Board, based on the Board's review of your individual performance and annual equity compensation levels of non-founder chief executive officers of comparator companies as analyzed by a reputable, nationally-recognized, independent compensation consultancy firm.

You will also be eligible to participate in Nektar's executive benefits program including medical, dental and vision insurance, term life insurance, 401(k), the flexible health spending plan, short & long-term disability upon the terms specified in those plans, and the COC Plan.

Your employment is by continued mutual agreement and may be terminated at will with or without cause by either you or Nektar at any time with or without advanced notice.

In the event that your employment terminates due to your death or Disability (as defined in the Company's 2000 Equity Incentive Plan), (a) 50% of the then-unvested portion of any outstanding stock options granted to you by the Company will automatically vest in the event of your Disability (with the remainder of such unvested portion terminating immediately thereafter), and 100% of the then-unvested portion of any outstanding stock options granted to you by the Company shall automatically vest in the event of your death, (b) Nektar will pay to you or your estate, as applicable, all unreimbursed expenses, all of your then accrued but unpaid base salary, and your target bonus prorated for the portion of the last year in which you were employed by Nektar prior to death or Disability, and (c) you and your dependents shall be entitled to continued medical, dental, and vision insurance, at your or their expense, at the same level of coverage as was provided to you and your dependents under Nektar's insurance and benefits plans immediately prior to the termination by electing COBRA continuation coverage in accordance with applicable law.

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 you and the Company will meet in good faith to discuss the terms of an appropriate separation. In any event, at a minimum, the Company will enter into a severance arrangement with you which will include the following: (i) a fully effective mutual waiver and release in such form as the Company may reasonably require, (ii) a cash severance payment equal to your total annual cash compensation target (defined as your current monthly base salary annualized for 12 months, plus your then effective bonus target multiplied by the expected pay-out percentage used by the Company for its GAAP financial statements in the previous calendar quarter, but not to exceed 100%), payable in accordance with the severance payment schedule described in Section 4.2 of the COC Plan (including, without limitation and as applicable, the six-month delay for payments to "specified employees" as set forth in such section), (iii) the exercise period for any stock options granted to you by the Company that are outstanding and vested as of your termination date shall be 18 months following the termination date (subject to earlier termination at the end of the option term or in connection with a change in control of the Company in accordance with the applicable option plan and agreement), and (iv) the Company shall pay all applicable COBRA payments for you and your family for one year after the termination date (such payments shall cease in the event that you become eligible for comparable benefits with another employer).

Any reimbursements pursuant to the foregoing provisions of this offer letter shall be made in accordance with the Company's reimbursement policies, practices and procedures in effect from time to time and shall be paid as soon as reasonably practicable and in all events not later than the end of the calendar year following the year in which the related expense was incurred. Your rights to reimbursement hereunder are not subject to liquidation or exchange for another benefit and the amount of expenses eligible for reimbursement in one calendar year shall not affect the amount of expenses eligible for reimbursement in any other year.

The terms, compensation and benefits set forth in this letter, which 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 the Nektar. Any such person or entity shall be deemed substituted for the Nektar under this letter for all purposes.

Howard, on behalf of the Board, I am delighted at the prospect of your continued leadership at Nektar as the President and Chief Executive Officer.

Sincerely,

/s/ Michael A. Brown
Michael A. Brown
Chairman, Organization and Compensation Committee of the Board of Directors

AGREED AND ACCEPTED:

/s/ Howard W. Robin
Howard W. Robin

Exhibit 10.27

Nektar Therapeutics
201 Industrial Road
San Carlos, California 94070

December 1, 2008

John Nicholson
c/o Nektar Therapeutics
201 Industrial Road
San Carlos, California 94070

Dear John:

I present you with this amended and restated version of your offer letter agreement setting forth certain terms and conditions of your continued employment in the position of Senior Vice President and Chief Financial Officer at Nektar Therapeutics ("Nektar" or the "Company") reporting directly to me. Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Company's Change of Control Severance Benefit Plan, as it may be amended from time to time (the "COC Plan" a copy of which is enclosed herewith). This offer letter agreement supersedes the offer letter agreement you entered into with Nektar on December 10, 2007 and any other understandings and agreements, written or oral, between you and the Company with respect to the subject matter herein and is made effective as of the first date set forth above.

Your annual cash compensation will consist of two components: base salary and an annual performance bonus. Your base salary will be $425,000 on an annual basis and paid in accordance with Nektar's regular payroll schedule. Your annual performance bonus target each year will be at least 50% of your annual base salary for each annual period ("Target Annual Bonus"). Your base salary and Target Annual Bonus shall be subject to annual performance review by the Compensation Committee of the Board of Directors ("Compensation Committee") in consultation with me for appropriate upward adjustment. The actual amount of your annual performance bonus will range from 0% to 200% of the Target Annual Bonus based on the Compensation Committee's assessment in consultation with me of the achievement of a combination of annual corporate objectives and your achievement of personal objectives agreed upon by you and me at the beginning of each annual performance period. Your annual performance bonus for a particular year will be paid not later than March 15 of the following year.

You will be eligible for annual equity awards, in the sole discretion of the Compensation Committee, based on the Compensation Committee's review, in consultation with me, of your individual performance and annual equity compensation levels of senior executive officers with similar roles at comparator companies as analyzed by a reputable, nationally-recognized, independent compensation consultancy firm.

Commencing with your first day of employment, you and your family will be eligible to participate in Nektar's executive benefits program including medical, dental and vision insurance, term life insurance, 401(k), the flexible health spending plan, short & long-term disability upon the terms specified in those plans, and the COC Plan. There will be no restrictions that will limit you or your family's participation in Nektar's medical insurance plan.

Nektar will also provide you with the following additional benefits related to your relocation to the San Francisco Bay Area from your current home in Parsippany, New Jersey ("New Jersey Home"):

(1) Reimbursement for normal and customary closing costs actually incurred on the sale of your New Jersey Home including but not limited to up to a 6% real estate sales commission. Closing costs not considered deductible by you for tax purposes will be "grossed up" and added to those costs that are considered deductible (which will be subject to standard withholding).

(2) Reimbursement for normal and customary closing costs actually incurred in connection with the purchase of a home in the San Francisco Bay Area ("California Home") including but not limited to up to 3% of the loan amount for points/commission etc. Closing costs not considered deductible by you for tax purposes will be "grossed up" and added to those costs that are considered deductible (which will be subject to standard withholding).

(3) Reimbursement for shipment of your household goods from your New Jersey Home to your California Home.

(4) Reimbursement for temporary housing for you in the San Francisco Bay Area and reasonable expenses incurred in connection therewith through December 31, 2009, and this benefit will be provided to you on a "grossed up" basis if determined to be taxable to you.

(5) Nektar will reimburse you for your reasonable travel expenses to and from Northern California and your New Jersey Home prior to your family's relocation to your California Home.

(6) Following your relocation to California, you will then be entitled to a one-time relocation bonus of $75,000 on "grossed up" basis (i.e. the total you receive after applicable withholding will be $75,000).

Your employment is by continued mutual agreement and may be terminated at will with or without cause by either you or Nektar at any time with or without advanced notice. You have also entered into Nektar's standard Employment Agreement and such agreement contains certain terms and conditions of your employment with Nektar other than those set forth herein.

In the event that your employment terminates due to your death or Disability (as defined in the Company's 2000 Equity Incentive Plan), (a) 50% of the then-unvested portion of any outstanding stock options granted to you by the Company will automatically vest in the event of your Disability (with the remainder of such unvested portion terminating immediately thereafter), and 100% of the then-unvested portion of any outstanding stock options granted to you by the Company shall automatically vest in the event of your death, (b) Nektar will pay to you or your estate, as applicable, all unreimbursed expenses, all of your then accrued but unpaid base salary, and your target bonus prorated for the portion of the last year in which you were employed by Nektar prior to death or Disability, and (c) you and your dependents shall be entitled to continued medical, dental, and vision insurance, at your or their expense, at the same level of coverage as was provided to you and your dependents under Nektar's insurance and benefits plans immediately prior to the termination by electing COBRA continuation coverage in accordance with applicable law.

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 you and the Company will meet in good faith to discuss the terms of an appropriate separation. In any event, at a minimum, the Company will enter into a severance arrangement with you which will include the following: (i) a fully-effective mutual waiver and release in such form as the Company may reasonably require, (ii) a cash severance payment equal to your total annual cash compensation target (defined as your current monthly base salary annualized for 12 months, plus your bonus target multiplied by the expected pay-out percentage used by the Company for its GAAP financial statements in the previous calendar quarter, but not to exceed 100%), payable in accordance with the severance payment schedule described in Section 4.2 of the COC Plan (including, without limitation and as applicable, the six-month delay for payments to "specified employees" as set forth in such section), (iii) if the termination of your employment occurs prior to the first anniversary of your employment commencement date (the "Start Date"), pro-rata vesting credit on your stock option granted by the Company on your Start Date through the date of termination, based on the number of months of employment with the Company completed since your Start Date, (iv) the exercise period for the portion of your outstanding stock options that are vested as of your termination date shall be 12 months following the termination date (subject to earlier termination at the end of the option term or in connection with a change in control of the Company in accordance with the applicable option plan and agreement), and (v) the Company shall pay all applicable COBRA payments for you and your family for one year after the termination date (such payments shall cease in the event that you become eligible for comparable benefits with another employer).

Any reimbursements pursuant to the foregoing provisions of this offer letter shall be made in accordance with the Company's reimbursement policies, practices and procedures in effect from time to time and shall be paid as soon as reasonably practicable and in all events not later than the end of the calendar year following the year in which the related expense was incurred. Your rights to reimbursement hereunder are not subject to liquidation or exchange for another benefit and the amount of expenses eligible for reimbursement in one calendar year shall not affect the amount of expenses eligible for reimbursement in any other year. Any tax gross-up payments made pursuant to the foregoing provisions of this offer letter shall be made as soon as practicable and in all events not later than the end of the calendar year following the year in which you remit the related taxes.

The terms, compensation and benefits set forth in this letter, which 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 for all purposes.

John, I am delighted at the prospect of your continued leadership at Nektar as Senior Vice President and Chief Financial Officer.

Sincerely,

/s/ Howard W. Robin
Howard W. Robin
President and Chief Executive Officer

ACCEPTED:

/s/ John Nicholson
John Nicholson

Exhibit 10.28

Nektar Therapeutics
201 Industrial Road
San Carlos, California 94070

December 1, 2008

Bharatt M. Chowrira. Ph.D., J.D.
c/o Nektar Therapeutics
201 Industrial Road
San Carlos, California 94070

Dear Bharatt:

I present you with this amended and restated version of your offer letter agreement setting forth certain terms and conditions of your continued employment in the position of Senior Vice President and Chief Operating Officer at Nektar Therapeutics ("Nektar" or the "Company") reporting directly to me and in the position of Chairman of Nektar India. Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Company's Change of Control Severance Benefit Plan, as it may be amended from time to time (the "COC Plan" a copy of which is enclosed herewith). This offer letter agreement supersedes the offer letter agreement you entered into with Nektar on May 13, 2008, and any other understandings and agreements, written or oral, between you and the Company with respect to the subject matter herein and is made effective as of the date set forth above.

As Chief Operating Officer, you shall have the general powers and duties of management usually vested in the office of chief operating officer of a corporation of the size and nature of Nektar. Your principal place of employment will be 201 Industrial Road, San Carlos, California.

Your annual cash compensation will consist of two components: base salary and an annual performance bonus. Your base salary will be $475,000 on an annual basis and paid in accordance with Nektar's regular payroll schedule. Your annual performance bonus target each year will be at least 60% of your annual base salary for each annual period and shall be $285,000 in 2008 and not pro-rated for your partial period of service in 2008 ("Target Annual Bonus"). Your base salary and Target Annual Bonus shall be subject to annual performance review by the Compensation Committee of the Board of Directors ("Compensation Committee") in consultation with me for appropriate upward adjustment. The actual amount of your annual performance bonus will range from 0% to 200% of the Target Annual Bonus based on the Compensation Committee's assessment in consultation with me of the achievement of a combination of annual corporate objectives and your achievement of personal objectives agreed upon by you and me at the beginning of each annual performance period; provided that your objectives for your partial period of service in 2008 will be agreed upon by you and I as soon as practicable following your first day of full-time employment with the Company (the "Start Date"). Your annual performance bonus for a particular year will be paid not later than March 15 of the following year.

You will be eligible for annual equity awards, in the sole discretion of the Compensation Committee, based on the Compensation Committee's review, in consultation with me, of your individual performance and annual equity compensation levels of senior executive officers with similar roles at comparator companies as analyzed by a reputable, nationally-recognized, independent compensation consultancy firm.

You will be eligible to participate in Nektar's executive benefits program including medical, dental and vision insurance, term life insurance, 401(k), the flexible health spending plan, short & long-term disability upon the terms specified in those plans, and the COC Plan in accordance with the terms of those programs.

Your employment is by continued mutual agreement and may be terminated at will with or without cause by either you or Nektar at any time with or without advanced notice. You have also entered into Nektar's standard Employment Agreement and such agreement contains certain terms and conditions of your employment with Nektar other than those set forth herein.

In the event that your employment terminates due to your death or Disability (as defined in the Company's 2000 Equity Incentive Plan), (a) 50% of the then-unvested portion of any outstanding stock options granted to you by the Company will automatically vest in the event of your Disability (with the remainder of such unvested portion terminating immediately thereafter), and 100% of the then-unvested portion of any outstanding stock options granted to you by the Company shall automatically vest in the event of your death, (b) Nektar will pay to you or your estate, as applicable, all unreimbursed expenses, all of your then accrued but unpaid base salary, and your target bonus prorated for the portion of the last year in which you were employed by Nektar prior to death or Disability, and (c) you and your dependents shall be entitled to continued medical, dental, and vision insurance, at your or their expense, at the same level of coverage as was provided to you and your dependents under Nektar's insurance and benefits plans immediately prior to the termination by electing COBRA continuation coverage in accordance with applicable law.

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 you and the Company will meet in good faith to discuss the terms of an appropriate separation. In any event, at a minimum, 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 reasonably require, (ii) a cash severance payment equal to your total annual cash compensation target (defined as your current monthly base salary annualized for 12 months, plus your bonus target multiplied by the expected pay-out percentage used by the Company for its GAAP financial statements in the previous calendar quarter, but not to exceed 100%), payable in accordance with the severance payment schedule described in Section 4.2 of the COC Plan (including, without limitation and as applicable, the six-month delay for payments to "specified employees" as set forth in such section), (iii) if the termination of your employment occurs prior to the first anniversary of your Start Date, pro-rata vesting credit on your stock option granted by the Company on your Start Date through the date of termination, based on the number of months of employment with the Company completed since your Start Date, (iv) the exercise period for the portion of your outstanding stock options that are vested as of your termination date shall be 18 months following the termination date (subject to earlier termination at the end of the option term or in connection with a change in control of the Company in accordance with the applicable option plan and agreement), and (v) the Company shall pay all applicable COBRA payments for you and your family for one year after the termination date (such payments shall cease in the event that you become eligible for comparable benefits with another employer).

Any reimbursements pursuant to the foregoing provisions of this offer letter shall be made in accordance with the Company's reimbursement policies, practices and procedures in effect from time to time and shall be paid as soon as reasonably practicable and in all events not later than the end of the calendar year following the year in which the related expense was incurred. Your rights to reimbursement hereunder are not subject to liquidation or exchange for another benefit and the amount of expenses eligible for reimbursement in one calendar year shall not affect the amount of expenses eligible for reimbursement in any other year.

The terms, compensation and benefits set forth in this letter, which 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 the Nektar. Any such person or entity shall be deemed substituted for the Nektar under this letter for all purposes.

Bharatt, I am delighted at the prospect of your continued leadership at Nektar as Chief Operating Officer and Head of the PEGylation Business Unit.

Sincerely,

/s/ Howard W. Robin
Howard W. Robin
President and Chief Executive Officer

ACCEPTED:

/s/ Bharatt M. Chowrira
Bharatt M. Chowrira

Exhibit 10.29

Nektar Therapeutics
201 Industrial Road
San Carlos, California 94070

December 1, 2008

Randall W. Moreadith, M.D.
c/o Nektar Therapeutics
201 Industrial Road
San Carlos, California 94070

Dear Randall,

I present you with this amended and restated version of your offer letter agreement (the "Letter Agreement") setting forth certain terms and conditions of your continued employment in the position of Senior Vice President, Drug Development and Chief Development Officer at Nektar Therapeutics ("Nektar" or the "Company"), reporting to me. Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Company's Change of Control Severance Benefit Plan, as it may be amended from time to time (the "COC Plan" a copy of which is enclosed herewith). This Letter Agreement supersedes the offer letter agreement you entered into with Nektar on July 28, 2008 and any other understandings and agreements, written or oral, between you and the Company with respect to the subject matter herein and is made effective as of the date set forth above.

Your annual cash compensation will consist of two components: base salary and an annual performance bonus. Your base salary will be $425,000 on an annual basis and paid in accordance with Nektar's regular payroll schedule. Your annual performance bonus target each year will be at least 60% of your annual base salary for each annual period and shall be $255,000 in 2008 and not pro-rated for your partial period of service in 2008 ("Target Annual Bonus"). Your base salary and Target Annual Bonus shall be subject to annual performance review by the Compensation Committee of the Board of Directors ("Compensation Committee") in consultation with me. The actual amount of your annual performance bonus will range from 0% to 200% of the Target Annual Bonus based on the Compensation Committee's assessment in consultation with me of the achievement of a combination of annual corporate objectives and your achievement of personal objectives agreed upon by you and me at the beginning of each annual performance period; provided that your objectives for your partial period of service in 2008 will be agreed upon by you and I as soon as practicable following your first day of full time employment (the "Start Date"). Your annual performance bonus for a particular year will be paid not later than March 15 of the following year.

In connection with your commencing employment with the Company, the Company agreed to pay you a sign-on bonus of $35,000, payable to you in your first paycheck following your Start Date and such amount has been paid to you. We also agreed to pay the ordinary income taxes due on the sign-on bonus, payable directly to the appropriate taxing authorities as and when these amounts become due, but in no event later than April 15 of the year following the year in which the sign-on bonus was paid. If, before the first anniversary of your Start Date, your employment is terminated by the Company for Cause or if you resign other than for a Good Reason Resignation, then you agree to reimburse Nektar for the full amount of this sign-on bonus within 30 days.

You are also eligible to participate in Nektar's standard employee benefits programs including Medical, Dental and Vision Insurance, Term Life Insurance, 401(k), ESPP, Flexible Health Spending Account, Short & Long Term Disability, COC Plan and the terms specified in those plans.

Nektar also agreed to reimburse you for reasonable expenses incurred in connection with the following (collectively, the "Relocation Expenses"):

- Shipment of your household goods from Solano Beach, California to the San Francisco Bay Area.
- Subject to your continued employment through the first anniversary of your Start Date, we will pay you $5,000 per month (subject to applicable tax withholdings) for the first 12 months of your employment to cover the cost of housing in the San Francisco Bay Area, such amount to be paid to you each pay period (15th and 30th of the month) on a prorata basis. (The cost of this housing is taxable to you and will be included in your total W-2 income).
- Travel expenses for you to the San Francisco Bay Area.
- Use of a rental car for up to 14 days after your Start Date or until your car arrives.

The Company has also agreed that you would receive a relocation allowance of $10,000 ("Relocation Allowance"), to paid to you in your first paycheck and such amount has already been paid to you. This amount is subject to standard payroll withholding and deductions. If, before the first anniversary of your Start Date, your employment is terminated by the Company for Cause or if you resign other than for a Good Reason Resignation, you agree to reimburse the Company for the full amount of the Relocation Expenses and Relocation Allowance within 30 days of your temployment termination date.

The Company also agreed to provide you with the following relocation assistance benefits if you purchase a home in the San Francisco Bay Area before the first anniversary of your Start Date (collectively, the "Housing Transaction Costs"):

- Provide normal and customary closing costs on the sale of your home. Those items considered not deductible for income tax purposes will be "grossed up" and added to those costs considered deductible (this portion is subject to standard payroll withholding and deductions). In no event will we reimburse you for more than 6% of the sale price.
- Provide normal and customary single-family home purchase closing costs and loan discount points (not to exceed 1%). Those items considered not deductible for income tax purposes will be "grossed up" and added to those costs considered deductible (this portion is subject to standard payroll withholding and deductions). In no event will we reimburse you for more than 3% of the purchase price.

If, before your first anniversary of your Start Date, your employment is terminated by the Company for Cause or if you resign other than for a Good Reason Resignation, you agree to reimburse Nektar for the full amount of the Housing Transaction Costs within 30 days.

Your employment is by continued mutual agreement and may be terminated at will with or without cause by either you or Nektar at any time with or without advanced notice. You have also entered into Nektar's standard Employment Agreement and such agreement contains certain terms and conditions of your employment with Nektar other than those set forth herein.

In the event that your employment terminates due to your death or Disability (as defined in the Company's 2000 Equity Incentive Plan), (a) 50% of the then-unvested portion of any outstanding stock options granted to you by the Company will automatically vest in the event of your Disability (with the remainder of such unvested portion terminating immediately thereafter), and 100% of the then-unvested portion of any outstanding stock options granted to you by the Company shall automatically vest in the event of your death, (b) Nektar will pay to you or your estate, as applicable, all unreimbursed expenses, all of your then accrued but unpaid base salary, and your target bonus prorated for the portion of the last year in which you were employed by Nektar prior to death or Disability, and (c) you and your dependents shall be entitled to continued medical, dental, and vision insurance, at your or their expense, at the same level of coverage as was provided to you and your dependents under Nektar's insurance and benefits plans immediately prior to the termination by electing COBRA continuation coverage in accordance with applicable law.

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 you and the Company will meet in good faith to discuss the terms of an appropriate separation. In any event, at a minimum, 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 reasonably require, (ii) a cash severance payment equal to your total annual cash compensation target (defined as your current monthly base salary annualized for 12 months, plus your bonus target multiplied by the expected pay-out percentage used by the Company for its GAAP financial statements in the previous calendar quarter, but not to exceed 100%), payable in accordance with the severance payment schedule described in Section 4.2 of the COC Plan (including, without limitation and as applicable, the six-month delay for payments to "specified employees" as set forth in such section), (iii) the exercise period for the portion of your outstanding stock options that are vested as of your termination date shall be 12 months following the termination date (subject to earlier termination at the end of the option term or in connection with a change in control of the Company in accordance with the applicable option plan and agreement), and (iv) the Company shall pay all applicable COBRA payments for you and your family for one year after the termination date (such payments shall cease in the event that you become eligible for comparable benefits with another employer).

Any reimbursements pursuant to the foregoing provisions of this Letter Agreement shall be made in accordance with the Company's reimbursement policies, practices and procedures in effect from time to time and shall be paid as soon as reasonably practicable and in all events not later than the end of the calendar year following the year in which the related expense was incurred. Your rights to reimbursement hereunder are not subject to liquidation or exchange for another benefit and the amount of expenses eligible for reimbursement in one calendar year shall not affect the amount of expenses eligible for reimbursement in any other year. Any tax gross-up payments made pursuant to the foregoing provisions of this Letter Agreement shall be made as soon as practicable and in all events not later than the end of the calendar year following the year in which you remit the related taxes.

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.

The compensation and benefits payable hereunder are intended to either be exempt from or comply with Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), so as not to subject you to payment of any additional tax, penalty or interest imposed under Section 409A. The provisions of this offer letter shall be construed and interpreted to avoid the imputation of any such additional tax, penalty or interest under Section 409A yet preserve (to the nearest extent reasonably possible) the intended benefit payable you.

Randall, we are delighted at the prospect of your continued leadership as a key member of Nektar's executive team.

Sincerely,

/s/ Howard W. Robin
Howard W. Robin
President and Chief Executive Officer

ACCEPTED:

/s/ Randall W. Moreadith
Randall W. Moreadith

Exhibit 10.34

FOIA CONFIDENTIAL TREATMENT REQUESTED

EXCLUSIVE RESEARCH, DEVELOPMENT, LICENSE AND MANUFACTURING AND SUPPLY AGREEMENT

BY AND AMONG

NEKTAR THERAPEUTICS AL, CORPORATION

AND

BAXTER HEALTHCARE SA

AND

BAXTER HEALTHCARE CORPORATION

DATED SEPTEMBER 26, 2005

[***] 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.

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(continued)

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EXCLUSIVE RESEARCH, DEVELOPMENT, AND LICENSE AGREEMENT

This Agreement (this "AGREEMENT") is made and entered into as of September 26, 2005 (the "EFFECTIVE DATE") by and among Nektar Therapeutics AL, Corporation, an Alabama corporation, having its principal place of business at 490 Discovery Drive, Huntsville, AL 35806 ("NEKTAR AL"), Baxter Healthcare SA ("BHSA"), a corporation organized and existing under the laws of Switzerland, and Baxter Healthcare Corporation ("BHC"), a Delaware corporation, having its principal place of business at One Baxter Parkway, Deerfield, Illinois 60015 (BHSA and BHC collectively referred to as "BAXTER"). NEKTAR AL and BAXTER may be referred to herein individually as a "PARTY" and collectively as the "PARTIES."

RECITALS

WHEREAS, BAXTER is in the business of developing, making, marketing and selling biopharmaceutical products for the treatment of bleeding disorders;

WHEREAS, NEKTAR AL has proprietary technology useful for attaching poly(ethylene) glycol-based molecules to pharmaceutical compounds, and is engaged in the business of performing research in relation to REAGENTS and CONJUGATES and manufacturing bulk quantities of REAGENTS used in the manufacture of pharmaceutical products;

WHEREAS, BAXTER has developed proprietary technology concerning FACTOR VIII and [***], including the [***] for improving the half-life of FACTOR VIII, and desires to continue such development by entering into an exclusive research and development agreement with NEKTAR AL for the purpose of determining whether NEKTAR AL's proprietary technology can improve the same, and NEKTAR AL desires to exclusively partner with BAXTER to perform such continued development for extending the half-life of FACTOR VIII using its proprietary technology directly with FACTOR VIII or [***];

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WHEREAS, BAXTER desires to provide NEKTAR AL with recombinant FACTOR VIII and [***] to use in developing SELECTED REAGENTS and CONJUGATES, and NEKTAR AL desires to, as provided for in this AGREEMENT, provide BAXTER with CONJUGATES and SELECTED REAGENTS for BAXTER's evaluation and potential pre-clinical, clinical and/or commercial development;

WHEREAS, BAXTER shall bear all costs associated with the research and development of NEKTAR AL's CONJUGATES and REAGENTS into POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS, and shall have ultimate control over all product development decisions;

WHEREAS, NEKTAR AL desires to manufacture and supply BAXTER with all of its SELECTED REAGENT requirements (including pre-clinical, clinical trial, POTENTIAL PRODUCT and COMMERCIAL PRODUCT requirements) and BAXTER desires to satisfy all of its SELECTED REAGENT requirements from NEKTAR AL; and

WHEREAS, BAXTER shall have an exclusive license to any POTENTIAL PRODUCTS or COMMERCIAL PRODUCTS developed in the course of this AGREEMENT.

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises contained in this AGREEMENT and in accordance with and subject to the terms and conditions specified below, the PARTIES agree as follows:

AGREEMENT 1.
Definitions

1.1 "AFFILIATE" means, with respect to any person or entity, any other person or entity that directly or indirectly controls, is controlled by, or is under common control with, such person or entity. For purposes of this definition only, "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 stock or partnership interest, by contract or otherwise. In the case of a corporation, the direct or indirect ownership of fifty percent (50%) or more 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 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.

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1.2 “BAXTER CORE TECHNOLOGY” means:

(i) [***];

(ii) a composition of a [***] as disclosed in any of the examples of the [***] on the EFFECTIVE DATE, or [***] shall not fall within the BAXTER CORE TECHNOLOGY and shall instead be considered JOINTLY OWNED TECHNOLOGY;

(iii) a method of: (a) [***]; provided that in each case none of such methods employs a NEKTAR PROPRIETARY METHOD on the EFFECTIVE DATE.

(iv) methods of [***];

(v) methods of [***];

(vi) methods of [***];

(vii) [***];

(viii) methods of [***];

(ix) the methods [***];

(x) [***].

[***] 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.

1.3 “BAXTER CORE TECHNOLOGY INVENTIONS” has the meaning set forth in Section 16.5.

1.4 “BAXTER INDEMNITEE” has the meaning set forth in Section 15.1.1.

1.5 “BAXTER KNOW-HOW” means all KNOW-HOW [***]. For the avoidance of doubt, [***] are excluded from the definition of BAXTER KNOW-HOW.

1.6 “BAXTER MATERIALS” has the meaning set forth in Section 2.4.2.

1.7 “BAXTER PATENT RIGHTS” means all claims in those PATENTS and PATENT APPLICATIONS (i) [***] and (ii) that [***].

1.8 “BAXTER PROPRIETARY CONJUGATE” means a CONJUGATE, the composition of matter, manufacture, use, offer for sale, sale or import of which is covered by a claim of the [***].

1.9 [***] means BAXTER’s provisional patent applications [***] (the “PROVISIONALS”), and any U.S. or other patent applications claiming priority therefrom, including any continuation, divisional, reissue, reexamination or substitution (and in each case any foreign counterpart thereto), and any extension, renewal or supplemental protection certificate; provided that the only additional information that may be added after the EFFECTIVE DATE to the disclosure of the PROVISIONALS (“ADDITIONAL INFORMATION”) in the preparation of a U.S. or other patent application claiming priority from the PROVISIONALS shall be [***]. For avoidance of doubt, BAXTER agrees that (a) [***].

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1.10 “BLA” means a Biologics License Application filed with the FDA pursuant to 21 C.F.R. § 601.2 et seq., or any foreign equivalent filed with the regulatory authorities in a country or territory to obtain MARKETING AUTHORIZATION for a COMMERCIAL PRODUCT in such country or territory.

1.11 “CLAIMS” has the meaning set forth in Section 15.1.1.

1.12 “COMMERCIAL DILIGENCE THRESHOLD” has the meaning set forth in Section 9.4.

1.13 “COMMERCIAL PRODUCT” means any POTENTIAL PRODUCT that has received MARKETING AUTHORIZATION which BAXTER, its AFFILIATES and/or SUBLICENSEES market and/or sell for administration to or use by humans or animals.

1.14 “CONFIDENTIAL INFORMATION” has the meaning set forth in Section 11.2.

1.15 “CONJUGATE(S)” means any chemical entity obtained by the PEGYLATION of a REAGENT to a therapeutic agent (including a THERAPEUTIC AGENT).

1.16 “CONTRACT MANUFACTURER” means a THIRD PARTY who (a) manufactures POTENTIAL PRODUCT or COMMERCIAL PRODUCT on behalf of BAXTER as permitted herein, or (b) manufactures SELECTED REAGENT as permitted under and pursuant to Schedule V.

1.17 “CONTROL(LED)” means the ability to grant a license or sublicense as provided for herein without violating the terms of any agreement or other arrangement with any THIRD PARTY and, with respect to KNOW-HOW, also means that which is not known to the other PARTY prior to disclosure thereto (whether under this AGREEMENT or the NON-DISCLOSURE AGREEMENT), nor freely available from the public domain or THIRD PARTIES.

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1.18 “DEVELOPMENT AND PRODUCTION COMMITTEE” means the committee described in Section 3.3.

1.19 “DISCLOSING PARTY” means the PARTY disclosing CONFIDENTIAL INFORMATION to the other PARTY hereunder.

1.20 “DOLLAR(S)” means United States dollars.

1.21 “EMEA” means the European Medicines Evaluation Agency, and any successor agency thereto having the administrative authority to regulate the marketing of human pharmaceutical products, biological therapeutic products and delivery systems in the European Union.

1.22 “ESTIMATED COST” has the meaning set forth in Schedule VI.

1.23 [***] means a compound that is a [***]. For clarity, [***].

1.24 “FACTOR VIII” means a compound that is a Factor VIII molecule [***]. For clarity, [***].

1.25 “FDA” means the United States Food and Drug Administration or any successor entity that may be established hereafter which has substantially the same authority or responsibility currently vested in the United States Food and Drug Administration.

1.26 “FIELD” means [***], either for use alone for the treatment of [***], in the treatment of Hemophilia A, or PEGYLATED FACTOR VIII or [***] for the treatment of Hemophilia A.

1.27 “FIRST COMMERCIAL SALE” means, with respect to a COMMERCIAL PRODUCT, the first sale by BAXTER or its AFFILIATES or SUBLICENSEES to a THIRD PARTY following receipt of MARKETING AUTHORIZATION for such COMMERCIAL PRODUCT in the country of sale.

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1.28 “FTE” means the equivalent of an employee working [***] labor hours per year.

1.29 “FTE RATE” has the meaning set forth in Section 2.2. 1.30 “GAAP” has the meaning set forth in Schedule VI.

1.31 “INITIAL ROYALTY TERM” has the meaning set forth in Section 9.2.

1.32 “INVENTIONS” means any and all ideas, concepts, methods, procedures, processes, improvements, inventions and discoveries, whether or not patentable, that are conceived or first reduced to practice during and in the course of the performance of activities conducted in connection with this AGREEMENT, including the development or manufacture of a POTENTIAL PRODUCT or a COMMERCIAL PRODUCT.

1.33 “JOINT INVENTION” has the meaning set forth in Section 16.3.

1.34 “JOINT PATENT APPLICATIONS” and “JOINT PATENT” have the meanings set forth in Section 16.7.

1.35 “JOINT STEERING COMMITTEE” means the committee described in Section 3.1.

1.36 “JOINTLY OWNED TECHNOLOGY” means an INVENTION covering the composition of [***].

1.37 “KNOW-HOW” means all technical, scientific and other know-how, data, materials, information, trade secrets, ideas, formulae, inventions, discoveries, processes, machines, compositions of matter, improvements, protocols, techniques, works of authorship, and results of experimentation and testing (whether or not patentable) in written, electronic, oral or any other form that is not known to the other PARTY prior to disclosure thereto (whether under this AGREEMENT or the NON-DISCLOSURE AGREEMENT), nor freely available from the public domain or from THIRD PARTIES.

[***] 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.

1.38 "LAW(S)" means any local, state or federal rule, regulation, statute or law in any jurisdiction relevant to the activities undertaken pursuant to this AGREEMENT or applicable to either of the PARTIES with respect to any matters set forth herein.

1.39 "MAJOR MARKETS" has the meaning set forth in Section 9.2.1.

1.40 "MANUFACTURING COST" has the meaning set forth in Schedule VI.

1.41 "MARKETING AUTHORIZATION" means the requisite governmental approval for the marketing and sale of a COMMERCIAL PRODUCT in a given country.

1.42 "MILESTONE" means the milestone payments set forth in Schedule II.

1.43 "NEKTAR AL CORE TECHNOLOGY" means:

(i) [***];

(ii) methods of [***];

(iii) methods of [***];

(iv) methods of [***];

(v) methods of [***];

(vi) [***];

(vii) methods of [***].

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1.44 "NEKTAR AL CORE TECHNOLOGY INVENTIONS" has the meaning set forth in Section 16.4.

1.45 "NEKTAR AL INDEMNITEE" has the meaning set forth in Section 15.1.2.

1.46 "NEKTAR AL KNOW-HOW" means all KNOW-HOW [***].

1.47 "NEKTAR AL LICENSED TECHNOLOGY" means, collectively, the NEKTAR AL PATENT RIGHTS and NEKTAR AL KNOW-HOW.

1.48 "NEKTAR AL MATERIALS" has the meaning set forth in Section 2.4.1.

1.49 "NEKTAR AL PATENT RIGHTS" means all of the claims in those PATENTS and PATENT APPLICATIONS CONTROLLED by NEKTAR AL which (i) pertain to [***].

1.50 "NEKTAR PROPRIETARY METHODS" means (i) [***].

1.51 "NEKTAR PROPRIETARY REAGENT" means a REAGENT, the composition of matter, manufacture, use, offer for sale, sale or import of which is covered by [***].

1.52 "NET SALES" means the amount invoiced by BAXTER, its AFFILIATES or SUBLICENSEES for the sale to THIRD PARTIES of COMMERCIAL PRODUCT commencing with the FIRST COMMERCIAL SALE. [***]:

(i) [***];

(ii) [***];

(iii) [***];

(iv) [***];

(v) [***].

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In addition to the foregoing [***], BAXTER may [***] of the aggregate gross amount invoiced on account of sales of a COMMERCIAL PRODUCT by BAXTER, its AFFILIATES or SUBLICENSEES to THIRD PARTIES in the relevant country during the relevant calendar quarter in respect of which royalties are being calculated or (b) [***] during the relevant calendar quarter in respect of which royalties are being calculated.

[***]. In addition, BAXTER'S NET SALES hereunder are subject to the following:

(A) [***];

(B) [***];

(C) [***].

1.53 "NONCONFORMING REAGENTS" has the meaning set forth in Section 6.3.

1.54 "NON-DISCLOSURE AGREEMENT" means that agreement entered into between the PARTIES on [***], providing for confidential treatment of the PARTIES' information.

1.55 "PATENT" means any claim in a patent including any extension, substitution, registration, confirmation, reissue, supplemental protection certificate, re-examination or renewal of such patent, to the extent valid and enforceable rights are granted by a governmental authority thereunder (and in each case any foreign counterpart thereto).

1.56 "PATENT APPLICATION" means any claim in an application for letters patent, including a provisional application, converted provisional application, continuation application, a continued prosecution application, a continuation-in-part application, a divisional application, a re-examination application, and a reissue application (and in each case any foreign counterpart thereto).

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1.57 “PEG” means poly(ethylene) glycol.

1.58 “PEGYLATION,” with correlative meanings “PEGYLATED” or to “PEGYLATE”, means covalent chemical bonding of any REAGENT (including a SELECTED REAGENT and including covalent chemical bonding through linking groups), with or to another material or materials. Such materials include, without limitation, proteins, peptides, polymers, oligomers, oligonucleotides, other biomolecules, small molecules, therapeutic agents (including a THERAPEUTIC AGENT), diagnostic agents, imaging agents and detectable labels. Additional materials that may be PEGYLATED include, without limitation, polymers, liposomes, films, chemical separation and purification surfaces, solid supports, metal/metal oxide surfaces and other surfaces such as, by way of example but not limitation, those on implanted devices, and equipment, where a REAGENT is covalently chemically bonded to one or more reactive molecules on the surface of such device or equipment. “PEGYLATION” shall include the synthesis, derivatization, characterization, and modification of PEG for such purposes, together with the synthesis, derivatization, characterization, and modification of the raw materials and intermediates for the manufacture of REAGENTS (including SELECTED REAGENTS) or products (including POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS) incorporating such REAGENT by means of covalent chemical bonding, and all methods of making and using each and all of the foregoing.

1.59 “PHASE 1 CLINICAL TRIAL” means the first lawful study in humans, conducted in accordance with 21 C.F.R. §312.21(a) (or the equivalent LAWS and regulations in jurisdictions outside the United States).

[***] 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.

1.60 "PHASE 2 CLINICAL TRIAL" means a controlled clinical trial, conducted in accordance with 21 C.F.R. §312.21(b) (or the equivalent LAWS and regulations in jurisdictions outside the United States).

1.61 "PIVOTAL TRIAL," also known as a Phase 3 clinical trial, means a controlled or uncontrolled clinical trial, conducted in accordance with § 21 C.F.R. 312.21(c) (or the equivalent LAWS and regulations in jurisdictions outside the United States).

1.62 "POTENTIAL PRODUCT" means (i) any chemical entity resulting from attachment of any THERAPEUTIC AGENT to a SELECTED REAGENT by means of PEGYLATION that is selected by the RESEARCH COMMITTEE or (ii) any product using PEGYLATION to extend or otherwise improve the half-life of [***] FACTOR VIII, whether by using PEGYLATION technology directly with [***] FACTOR VIII, or by means of the PEGYLATION of [***].

1.63 "PURCHASE PRICE" has the meaning set forth in Section 8.6.1

1.64 "QUALITY AGREEMENT(S)" shall include:

(i) the quality agreement governing the manufacture and supply of [***], which shall be negotiated by the PARTIES [***]; and

(ii) the quality agreement governing the manufacture and supply of [***], which shall be negotiated by the PARTIES [***].

The QUALITY AGREEMENT(S) shall be in substantially the same form as Schedule III hereto. For purposes hereof, [***].

1.65 "REAGENT" means a PEG derivative used in the manufacture of a pharmaceutical or diagnostic product or medical device, including a SELECTED REAGENT.

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1.66 "RECIPIENT" means the PARTY receiving CONFIDENTIAL INFORMATION hereunder.

1.67 "RESEARCH COMMITTEE" means the committee described in Section 3.2.

1.68 "RESEARCH PLAN" means the PARTIES' respective activities and responsibilities as set forth in the RESEARCH PLAN attached hereto as Schedule I, as amended and revised by the RESEARCH COMMITTEE from time to time.

1.69 "RESPONSIBLE PARTY" has the meaning set forth in Section 16.7.

1.70 "ROYALTY RATE" means the following:

(i) [***] NET SALES of all COMMERCIAL PRODUCTS sold in a calendar year;

(ii) [***] NET SALES of all COMMERCIAL PRODUCTS sold in such calendar year; and

(iii) [***] NET SALES of all COMMERCIAL PRODUCTS sold in such calendar year [***].

By way of example but not limitation, if NET SALES of all COMMERCIAL PRODUCTS sold in a calendar year are [***] then BAXTER shall pay to NEKTAR AL a royalty of [***] on the [***] of such NET SALES, [***] on the portion of such NET SALES between [***] and [***] and [***] on the portion of such NET SALES [***]. For clarity, the ROYALTY RATE shall be applied to the aggregate annual worldwide NET SALES of all COMMERCIAL PRODUCTS, and [***]. By way of example but not limitation, if during any one calendar year, there are two (2) COMMERCIAL PRODUCTS being sold by or on behalf of BAXTER or its AFFILIATES or SUBLICENSEES, and NET SALES of one COMMERCIAL PRODUCT sold in such calendar year are [***], and NET SALES of the other COMMERCIAL PRODUCT sold in the same calendar year are [***] then, for the purposes hereof, the aggregate annual NET SALES of all COMMERCIAL PRODUCTS will be deemed to be [***] for such calendar year, and BAXTER shall pay to NEKTAR AL a royalty of [***] on the [***] of such NET SALES, [***] on the portion of such NET SALES between [***] and [***], and [***] on the portion of such NET SALES in excess of [***], for total payments by BAXTER of [***].

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1.71 “SCIENTIFIC ADVISORS” has the meaning set forth in Section 3.1.

1.72 “SCIENTIFIC AND TECHNICAL ADVISORY BOARD” means the board described in Section 3.1.

1.73 “SELECTED REAGENT” means a REAGENT that is attached to a THERAPEUTIC AGENT by means of PEGYLATION in a POTENTIAL PRODUCT or COMMERCIAL PRODUCT, as selected by the RESEARCH COMMITTEE.

1.74 “SOLE INVENTION” has the meaning set forth in Section 16.3.

1.75 “SPECIFICATIONS” means the specifications for a SELECTED REAGENT to be used in a POTENTIAL PRODUCT or COMMERCIAL PRODUCT determined based upon definitive testing criteria that are agreed in writing by the DEVELOPMENT AND PRODUCTION COMMITTEE and which will be set forth in the applicable QUALITY AGREEMENT.

1.76 “SUBLICENSEE” means any person or entity, including AFFILIATES, to which BAXTER grants a sublicense (i) to research and/or develop POTENTIAL PRODUCTS or COMMERCIAL PRODUCTS or (ii) to make, have made, use, sell, have sold, offer for sale and/or import POTENTIAL PRODUCTS or COMMERCIAL PRODUCTS (which for the purposes hereof will include the right to distribute, market or promote).

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1.77 “SUPPLY AGREEMENT” means the supply agreement to be entered into by the PARTIES in accordance with Section 5.3.

1.78 “TERM” has the meaning set forth in Section 19.1.

1.79 “TERRITORY” means the world.

1.80 “THERAPEUTIC AGENT” means [***] FACTOR VIII [***] of each of the foregoing. For clarity, THERAPEUTIC AGENT does not include [***].

1.81 “THIRD PARTY” means any entity other than NEKTAR AL, BAXTER, a SUBLICENSEE of BAXTER or their respective AFFILIATES, whether such THIRD PARTY is a person, company, corporation, limited liability company, partnership or other such legal entity, or a division or operating or business unit of such legal entity.

1.82 “VALID PATENT CLAIM” means a claim of an issued and unexpired PATENT within the [***] covering the manufacture, use, sale, offer for sale or import of a SELECTED REAGENT or a COMMERCIAL PRODUCT, which PATENT is owned or CONTROLLED by NEKTAR AL or jointly by the PARTIES and has not (a) expired or been canceled, (b) been declared invalid by an unreversed and unappealable decision of a court or other appropriate body of competent jurisdiction, (c) been admitted to be invalid or unenforceable through reissue, disclaimer, or otherwise or (d) been abandoned.

1.83 [***] means the [***].

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2. RESEARCH AND DEVELOPMENT ACTIVITIES

2.1 OVERVIEW. The PARTIES' research and development responsibilities are set forth in the RESEARCH PLAN, which shall be an evolving document that is updated and revised from time to time in writing by the RESEARCH COMMITTEE.

As decided by the RESEARCH COMMITTEE provided for in Section 3.2, and provided that BAXTER provides NEKTAR AL with [***] in a timely manner in accordance with the time frames set forth in the RESEARCH PLAN as provided for herein, NEKTAR AL shall, in a timely manner in accordance with the time frames set forth in the RESEARCH PLAN, provide BAXTER with [***] in its research and development activities to extend the half-life of FACTOR VIII using PEGYLATION directly with FACTOR VIII [***]. BAXTER shall, in a timely manner in accordance with the time frames set forth in the RESEARCH PLAN, provide NEKTAR AL with [***] to use in developing REAGENTS and CONJUGATES.

NEKTAR AL shall use commercially reasonable efforts to collaborate and cooperate with BAXTER in researching and developing CONJUGATES and REAGENTS (including SELECTED REAGENTS) to be utilized in developing POTENTIAL PRODUCTS pursuant to the RESEARCH PLAN, as amended from time to time. [***] After the RESEARCH COMMITTEE selects one or more CONJUGATES to develop into POTENTIAL PRODUCTS, the REAGENT that is used to make each such CONJUGATE shall be deemed a SELECTED REAGENT hereunder, and [***].

[***], in accordance with the RESEARCH PLAN, and for all costs and expenses associated therewith (subject to the approval requirements set forth herein).

For clarity, [***]. During such clinical trials, or in the event of the cancellation or failure of any such clinical trials, [***], in accordance with Section 3.2.

[***] 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.

2.2 NEKTAR AL PAYMENTS. In addition to the MILESTONES and royalties to be paid by BAXTER to NEKTAR AL hereunder, BAXTER shall pay NEKTAR AL for all [***] directly incurred and solely associated with the development and manufacture of such CONJUGATES and REAGENTS (including SELECTED REAGENTS). NEKTAR AL's [***], subject to the following increases: NEKTAR AL shall adjust the [***] for each calendar year commencing with the year 2006 to reflect any year-to-year increase in the Consumer Price Index (CPI) (based on a cumulative index of CPI numbers starting on the EFFECTIVE DATE to the date of the calculation of such [***]).

[***], which materials shall be equipment purchased by NEKTAR AL that is required for the performance of its activities under the RESEARCH PLAN. The cost of such additional materials shall not exceed [***]. BAXTER shall respond to such a request by NEKTAR AL promptly, and in no event later than thirty (30) days after its receipt of such request.

NEKTAR AL shall not bill BAXTER, and BAXTER shall not be required to pay NEKTAR AL, for the first [***] expended by NEKTAR AL in performing activities under the RESEARCH PLAN.

NEKTAR AL shall invoice such [***] to BAXTER on a [***], pursuant to Section 10.2. For clarity, BAXTER shall pay for [***], which shall be calculated by multiplying (i) [***] pursuant to this AGREEMENT by (ii) the quotient of (a) the [***] divided by (b) [***]. BAXTER shall pay the amounts set forth in each such invoice within [***] after the date thereof.

For clarity, BAXTER shall pay NEKTAR AL as provided for under this Section 2.2 for so long as NEKTAR AL is performing activities under the RESEARCH PLAN; provided, however, that on a POTENTIAL PRODUCT-by-POTENTIAL PRODUCT basis, [***] and, thereafter, the costs and expenses to be paid by [***].

[***] 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.

2.3 MARKETING AUTHORIZATION. As between the PARTIES, BAXTER shall be responsible for all development activities under the RESEARCH PLAN, all manufacturing activities associated with the manufacture of POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS, all activities associated with the [***], and for the [***] for COMMERCIAL PRODUCTS. [***].

2.4 MATERIALS.

2.4.1 NEKTAR AL MATERIALS. Any samples of SELECTED REAGENTS or CONJUGATES that are provided by NEKTAR AL to BAXTER in the course of the RESEARCH PLAN (collectively, the "NEKTAR AL MATERIALS") are owned exclusively by NEKTAR AL and provided solely for the performance of the RESEARCH PLAN, or to otherwise extend the half-life of a THERAPEUTIC AGENT, and for no other purpose. Without limitation, BAXTER will not:

(i) [***];

(ii) [***];

(iii) [***];

(iv) [***];

(v) [***],

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except in each case, to extend the half-life of a THERAPEUTIC AGENT or otherwise in conjunction with the RESEARCH PLAN. For clarity, BAXTER understands and agrees that any activities (and the results thereof) that are carried out by or on behalf of BAXTER outside of the RESEARCH PLAN, which utilize any NEKTAR AL MATERIALS or CONFIDENTIAL INFORMATION of NEKTAR AL (including those activities to extend the half-life of a THERAPEUTIC AGENT utilizing any NEKTAR AL MATERIALS or any CONFIDENTIAL INFORMATION OF NEKTAR AL), are subject to and governed by the terms and conditions of this AGREEMENT. For avoidance of doubt, [***].

2.4.2 BAXTER MATERIALS. Any samples of [***] FACTOR VIII [***] provided by BAXTER to NEKTAR AL (collectively, the "BAXTER MATERIALS") are owned exclusively by BAXTER and provided solely for the development of CONJUGATES and REAGENTS to extend the half-life of a THERAPEUTIC AGENT in conjunction with the RESEARCH PLAN, and for no other purpose. Without limitation, NEKTAR AL will not:

(i) [***];

(ii) [***];

(iii) [***];

(iv) [***]; or

(v) [***],

except in each case, to extend the half-life of a THERAPEUTIC AGENT in conjunction with the RESEARCH PLAN.

[***] 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.

2.5 HANDLING. The PARTIES understand and agree the BAXTER MATERIALS and NEKTAR AL MATERIALS may have unpredictable and unknown biological and/or chemical properties and that they are to be handled and used with caution. The PARTIES will handle and use such materials and conduct their respective activities under the RESEARCH PLAN in compliance with all applicable LAWS. Each PARTY will maintain reasonable security measures, no less strict than it maintains to protect its own valuable tangible property, to protect the other PARTY'S materials against loss, theft or destruction. Other than in connection with the performance of its obligations under this AGREEMENT, neither PARTY will sell, lease, license, copy, transfer, disclose or otherwise provide access to the other PARTY's materials to any person, entity or location without the prior written consent of the other PARTY, such consent not to be unreasonably withheld or delayed. This provision shall not prevent BAXTER from sublicensing (to the extent provided for in Article 4) or outsourcing some or all if its research or development activities. In such case, BAXTER shall require any SUBLICENSEE or THIRD PARTY performing such obligations to be bound by similar security, handling, confidentiality and assignment of INVENTIONS obligations as are set forth in this AGREEMENT, including without limitation, under Sections 2.4.1, 2.5 and 4.4 and Articles 11 and 16.

2.6 SELECTION OF POTENTIAL PRODUCTS AND [***]. The RESEARCH COMMITTEE shall select POTENTIAL PRODUCT(S) from the CONJUGATES and SELECTED REAGENTS provided by NEKTAR AL and, following such selection, [***].

2.7 DISCLAIMER OF WARRANTY WITH RESPECT TO BAXTER MATERIALS. BAXTER HEREBY ACKNOWLEDGES THE EXPERIMENTAL NATURE OF THE RESEARCH AND THAT NEKTAR AL CANNOT GUARANTEE OR PROVIDE ANY WARRANTIES REGARDING THE QUANTITY OF BAXTER MATERIALS REQUIRED TO CONDUCT THE RESEARCH OR TO BE CONSUMED IN THE PERFORMANCE OF THE RESEARCH. EXCEPT IN THE CASE OF NEKTAR AL'S NEGLIGENCE OR WILLFUL MISCONDUCT, NEKTAR AL SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES SUFFERED BY BAXTER ARISING FROM THE USE, CONSUMPTION OR LOSS OF BAXTER MATERIALS IN THE PERFORMANCE OF THE RESEARCH PURSUANT TO THIS AGREEMENT.

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3. GOVERNANCE

3.1 JOINT STEERING COMMITTEE. To facilitate communication between the PARTIES, implement the RESEARCH PLAN and oversee development of POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS (all during the TERM), the PARTIES shall appoint a JOINT STEERING COMMITTEE consisting of [***] representatives from each of NEKTAR AL and BAXTER. The initial representatives are:

BAXTER: [***]

NEKTAR AL: [***]

and the initial meeting of the JOINT STEERING COMMITTEE shall take place no later than [***] after the EFFECTIVE DATE. Each PARTY may replace its representatives on the JOINT STEERING COMMITTEE by prior written notice to the other PARTY. The JOINT STEERING COMMITTEE shall supervise the activities of the RESEARCH COMMITTEE and the DEVELOPMENT AND PRODUCTION COMMITTEE; resolve issues referred by members of the RESEARCH COMMITTEE and the DEVELOPMENT AND PRODUCTION COMMITTEE; make strategic decisions related to research and development activities in connection with POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS; review the progress of research and development activities in connection with POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS with respect to BAXTER's progress in pre-clinical studies, clinical trials, and meeting the Development Diligence Timeline set forth in Schedule IV; and review progress in seeking MARKETING AUTHORIZATIONS. The JOINT STEERING COMMITTEE shall also be responsible for sharing certain data and information relating to the PARTIES' respective research and development, manufacturing and commercialization activities in connection with the POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS, which data and information shall include, without limitation, the following: (i) any delays in meeting the Development Diligence milestone dates set forth in Schedule IV; (ii) any failure in any pre-clinical or clinical trials; (iii) any termination of active development of any POTENTIAL PRODUCT or SELECTED REAGENT; (iv) commencing any clinical trial and completing any clinical trial; and (v) summary data demonstrating whether the milestone success criteria set forth in Schedule II (including endpoints) have been met. [***].

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The JOINT STEERING COMMITTEE shall meet at such times and places, in person or by telephone conferencing, web-conferencing, video conferencing or other electronic communication, as it shall determine to carry out its responsibilities. The JOINT STEERING COMMITTEE shall operate [***]. If a dispute arises regarding matters within the scope of responsibilities of the JOINT STEERING COMMITTEE (other than disputes referred to the JOINT STEERING COMMITTEE by the RESEARCH COMMITTEE for resolution in accordance with Section 3.2), and the JOINT STEERING COMMITTEE fails to reach a consensus on its resolution [***], then the dispute shall be referred to the senior management representatives of each PARTY. For purposes of the JOINT STEERING COMMITTEE, BAXTER'S senior management representative shall be its [***].

The PARTIES to the JOINT STEERING COMMITTEE shall create a SCIENTIFIC AND TECHNICAL ADVISORY BOARD for the purpose of reviewing results and decisions occurring from the development of a POTENTIAL PRODUCT. The SCIENTIFIC AND TECHNICAL ADVISORY BOARD shall consist of [***]. The SCIENTIFIC AND TECHNICAL ADVISORY BOARD should bring their expertise to support matters referred to it by the RESEARCH COMMITTEE or the DEVELOPMENT AND PRODUCTION COMMITTEE. Any representative on the RESEARCH COMMITTEE or the DEVELOPMENT AND PRODUCTION COMMITTEE may refer matters to the SCIENTIFIC AND TECHNICAL ADVISORY BOARD for its input and advice. The input and advice of the SCIENTIFIC AND TECHNICAL ADVISORY BOARD shall be for informational purposes only and shall not be binding on the PARTIES.

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3.2 RESEARCH COMMITTEE. The RESEARCH COMMITTEE shall be comprised of appropriate representatives of both PARTIES, initially consisting of [***] representatives from each of NEKTAR AL and BAXTER. Each PARTY shall appoint a RESEARCH PLAN team leader (and other key contacts, as necessary) to serve as principal RESEARCH COMMITTEE liaisons for the PARTIES. Employees of each PARTY who are not on the RESEARCH COMMITTEE may attend meetings of the RESEARCH COMMITTEE, as required to further the research and development of POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS. The initial team leader and PARTY representatives are:

BAXTER: (1) [***]

NEKTAR AL: (1) [***]

Any representative of the RESEARCH COMMITTEE may designate another individual from such representative's PARTY to attend a meeting of the RESEARCH COMMITTEE in his or her place. In such case, the representative shall notify the other PARTY's representative in writing prior to the applicable meeting.

The RESEARCH COMMITTEE shall plan and manage the research and development activities to be conducted in connection with CONJUGATES, POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS and to facilitate communication on research and development issues between the PARTIES. The RESEARCH COMMITTEE shall also be responsible for the sharing of certain data relating to the PARTIES' respective research and development activities in connection with the RESEARCH PLAN and data related to CONJUGATES and POTENTIAL PRODUCTS, including the results [***].

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Modification to, and implementation of, the RESEARCH PLAN and other day-to-day research and development activities shall be managed by the RESEARCH COMMITTEE, subject to oversight by the JOINT STEERING COMMITTEE. The RESEARCH COMMITTEE shall meet no less frequently than [***] in person, by teleconference, web-conference or video conference as agreed upon by the PARTIES.

Notwithstanding anything herein to the contrary, the RESEARCH COMMITTEE shall operate by consensus with representatives of NEKTAR AL having [***] and representatives of BAXTER having [***]. In the event of any disagreements between the PARTIES' representatives at the RESEARCH COMMITTEE level (including, without limitation, with respect to selection of a SELECTED REAGENT), the disagreement shall be referred to the JOINT STEERING COMMITTEE for resolution and, if the JOINT STEERING COMMITTEE is unable to resolve the disagreement within [***] after the matter is referred to the JOINT STEERING COMMITTEE, [***].

In order to enable NEKTAR AL to plan its [***] beyond those already contemplated by the RESEARCH PLAN, the RESEARCH COMMITTEE shall notify NEKTAR AL in writing no less than [***] in advance of any additional requirements for REAGENTS (including SELECTED REAGENTS) and CONJUGATES that are to be developed under the RESEARCH PLAN, or the conduct of studies or the performance of other related services under the RESEARCH PLAN.

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3.3 DEVELOPMENT AND PRODUCTION COMMITTEE. Within [***] after a POTENTIAL PRODUCT has been selected by the RESEARCH COMMITTEE, the JOINT STEERING COMMITTEE shall appoint a DEVELOPMENT AND PRODUCTION COMMITTEE to plan and manage the manufacturing and supply activities to be performed under this AGREEMENT with respect to the SELECTED REAGENT for such POTENTIAL PRODUCT, and facilitate communication between the PARTIES during such time as NEKTAR AL supplies BAXTER with such SELECTED REAGENT hereunder. The DEVELOPMENT AND PRODUCTION COMMITTEE shall be responsible for discussing in good faith and agreeing on issues relating to forecasting and contingency planning. The DEVELOPMENT AND PRODUCTION COMMITTEE shall operate by consensus with representatives of NEKTAR AL having [***] and representatives of BAXTER having [***]. In the event of any disagreements between the PARTIES' representatives at the DEVELOPMENT AND PRODUCTION COMMITTEE level, the disagreement shall first be referred to the JOINT STEERING COMMITTEE for resolution. If the disagreement is not resolved by the JOINT STEERING COMMITTEE within [***] after the matter is referred to it for resolution, then the matter shall be referred to the senior management representatives of each PARTY for resolution, which senior management representatives shall be for Baxter [***] and for Nektar AL [***].

3.4 AMENDMENT; WAIVER. Notwithstanding anything to the contrary herein, neither the JOINT STEERING COMMITTEE, the RESEARCH COMMITTEE nor the DEVELOPMENT AND PRODUCTION COMMITTEE shall have the right or power to amend the terms of this AGREEMENT or waive rights or obligations of the PARTIES hereunder, or take any action that would conflict with any provision of this AGREEMENT, the SUPPLY AGREEMENT or a QUALITY AGREEMENT.

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4. LICENSES TO NEKTAR AL LICENSED TECHNOLOGY AND BAXTER TECHNOLOGY

4.1 LICENSE TO BAXTER. Subject to the terms and conditions of this AGREEMENT, NEKTAR AL hereby grants to BAXTER a worldwide, exclusive, royalty-bearing license, with the right to grant sublicenses as provided in Section 4.2, under the NEKTAR AL LICENSED TECHNOLOGY to develop, make, have made, import, export, use, sell, offer for sale and have sold POTENTIAL PRODUCTS and COMMERCIAL PRODUCT(S) in the FIELD. For clarity, [***].

4.2 TERMS OF SUBLICENSE. The terms of each sublicense under the license granted to BAXTER in Section 4.1 of this AGREEMENT shall provide that any SUBLICENSEE shall be subject to and consistent with the terms and conditions of this AGREEMENT; provided, however, that:

(i) All royalties or other amounts due to NEKTAR AL with respect to such SUBLICENSEE'S development and/or commercialization of POTENTIAL PRODUCT or COMMERCIAL PRODUCT shall be collected by BAXTER and transmitted to NEKTAR AL in accordance with the payment terms set forth in Article 9;

(ii) BAXTER'S grant of any sublicense shall not relieve BAXTER from any of its obligations under this AGREEMENT; and

(iii) BAXTER shall remain jointly and severally liable for any breach of a sublicense by a SUBLICENSEE.

Notwithstanding the foregoing, [***].

[***] 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.

4.3 NEKTAR AL RESEARCH RIGHTS AND LIMITATIONS. Notwithstanding anything to the contrary in this AGREEMENT and without limiting any other retained rights, the license granted under Section 4.1 shall be subject to the retained right of NEKTAR AL and its AFFILIATES:

(i) to practice the NEKTAR AL LICENSED TECHNOLOGY for the conduct of research and development of products that it is developing itself;

(ii) to practice the NEKTAR AL LICENSED TECHNOLOGY for any purposes, including the research, development, manufacture and commercialization of products, whether itself or with or for others, outside of the FIELD;

(iii) to sell REAGENTS (including SELECTED REAGENTS) through NEKTAR AL'S "catalog" for research purposes (subject to the limitations set forth below); and

(iv) to perform their respective obligations to THIRD PARTIES set forth in agreements existing as of the EFFECTIVE DATE, [***].

NEKTAR AL covenants that during the TERM, [***]. NEKTAR AL further covenants that during the TERM, [***].

NEKTAR AL covenants that during the TERM, [***]. BAXTER understands and agrees that neither NEKTAR AL nor its AFFILIATES will have an obligation to [***].

For clarification, nothing in this Agreement, including any retained rights of NEKTAR AL and its AFFILIATES, grants NEKTAR AL or its AFFILIATES any rights under BAXTER PATENT RIGHTS, [***], other than for the purposes of performing any obligations under this AGREEMENT, including, without limitation, NEKTAR AL's obligations under the RESEARCH PLAN, for the research and development for BAXTER of CONJUGATES, POTENTIAL PRODUCTS OR COMMERCIAL PRODUCTS.

[***] 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.

4.4 NO IMPLIED RIGHTS OR LICENSES. Neither PARTY grants to the other any rights or licenses, including to any BAXTER PATENT RIGHTS or BAXTER KNOW HOW, or NEKTAR AL PATENT RIGHTS or NEKTAR AL KNOW HOW or other intellectual property rights, whether by implication, estoppel or otherwise, except to the extent expressly provided for under this AGREEMENT. Other than as expressly provided for herein, neither BAXTER nor its AFFILIATES, SUBLICENSEES or its or their contractors, may [***].

4.5 LICENSE TO NEKTAR AL. BAXTER hereby grants to NEKTAR AL a non-exclusive, non-sublicensable, non-assignable, non-transferable, worldwide, royalty-free license, under BAXTER KNOW-HOW and BAXTER PATENT RIGHTS, and the NEKTAR AL LICENSED TECHNOLOGY that is licensed exclusively to BAXTER hereunder, for the sole purpose of performing NEKTAR AL's obligations under this AGREEMENT, including the RESEARCH PLAN. This provision shall not prevent NEKTAR AL from [***]. BAXTER shall respond within [***] of receipt of such a request by NEKTAR AL. [***].

4.6 MUTUAL COVENANT. Each PARTY covenants and agrees that it and its AFFILIATES shall not use or practice the intellectual property rights licensed under this AGREEMENT except as expressly permitted by this AGREEMENT. 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 this AGREEMENT. Each PARTY covenants and agrees to cease any non-permitted use and to take all actions necessary to assign to the other PARTY any inventions made through use or practice of such PARTY'S intellectual property rights outside the scope of the license rights granted hereunder.

[***] 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.

5. MANUFACTURE AND SUPPLY OF SELECTED REAGENTS

5.1 [***]. NEKTAR AL shall manufacture and supply and BAXTER shall purchase from NEKTAR AL, [***] of BAXTER'S and BAXTER'S AFFILIATES' and SUBLICENSEES' requirements of SELECTED REAGENTS, for the sole purpose of developing and manufacturing POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS pursuant to the license granted hereunder.

5.2 SUPPLY PRIOR TO PIVOTAL TRIAL/SUPPLY AGREEMENT.

(i) FORECAST. No later than [***] after selection of a POTENTIAL PRODUCT by the RESEARCH COMMITTEE, BAXTER shall provide NEKTAR AL with a [***] rolling forecast of its estimated requirements of the SELECTED REAGENT for such POTENTIAL PRODUCT for research, pre-clinical development and clinical development. BAXTER shall update such estimated forecast within thirty (30) days following the start of each calendar quarter. BAXTER shall issue purchase orders to NEKTAR AL [***] prior to the start of the calendar quarter (such time period to be negotiated by the PARTIES in good faith after the applicable SELECTED REAGENT is selected by the RESEARCH COMMITTEE) during which BAXTER wishes to receive supplies of SELECTED REAGENT for use in pre-clinical and Phase 1 and Phase 2 clinical development, until such time as the PARTIES execute the SUPPLY AGREEMENT.

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(ii) PRICE. The price of each SELECTED REAGENT shall be the PURCHASE PRICE, as set forth in Section 8.6.1.

(iii) DELIVERY AND SHIPMENT; TITLE AND RISK OF LOSS. NEKTAR AL shall deliver all SELECTED REAGENT to BAXTER, and [***].

5.3 PIVOTAL TRIAL AND COMMERCIAL PRODUCT SUPPLY AGREEMENT. At least [***] prior to the anticipated date of commencement of the first PIVOTAL TRIAL for a POTENTIAL PRODUCT, the parties shall negotiate and execute a SUPPLY AGREEMENT for the manufacture and supply of SELECTED REAGENT for such POTENTIAL PRODUCT. The SUPPLY AGREEMENT shall be negotiated in good faith after the PARTIES have gained insight into the attributes of the SELECTED REAGENT, including quality requirements, testing requirements, production cycles and production costs. For purposes of this AGREEMENT, commencement of a clinical trial shall be deemed to occur on the date on which POTENTIAL PRODUCT is first administered to the first patient or subject in such trial.

The SUPPLY AGREEMENT shall include the essential terms and conditions set forth in Schedule V and such other terms and conditions that are usual and customary for agreements of this type.

[***] 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.

6. SPECIFICATIONS AND MANUFACTURING WARRANTY FOR SELECTED REAGENTS

6.1 SPECIFICATIONS. The SPECIFICATIONS for SELECTED REAGENTS to be supplied pursuant to Article 5 will be set forth in the applicable QUALITY AGREEMENT. Any modifications of the SPECIFICATIONS shall require prior written approval of BAXTER and NEKTAR AL, not to be unreasonably withheld or delayed. Prior to entering into the SUPPLY AGREEMENT, BAXTER shall reimburse NEKTAR AL for its reasonable costs associated with implementing any agreed upon modifications to the SPECIFICATIONS, including without limitation any increases in MANUFACTURING COSTS. NEKTAR AL shall be responsible for any changes to SPECIFICATIONS initiated by NEKTAR AL to accommodate its business needs that do not directly relate to the development or improvement of SELECTED REAGENTS. For clarity, a change in regulatory requirements that is unique to a SELECTED REAGENT is not a NEKTAR AL business need. For example, if NEKTAR AL requests relocating the SELECTED REAGENT manufacturing operations from Alabama to California to accommodate the closure of its Alabama facility, NEKTAR AL shall be responsible for all costs related to such relocation.

6.2 COMPLIANCE AUDITS. BAXTER will have the right to perform compliance/quality audits, as set forth in the QUALITY AGREEMENTS.

6.3 WARRANTY. NEKTAR AL warrants that each shipment of SELECTED REAGENT shall, upon delivery, be in compliance/conformity with:

(i) All applicable SPECIFICATIONS,

(ii) The applicable QUALITY AGREEMENT, and

(iii) ICH Q7A GUIDELINES and LAWS, as they apply to critical raw materials, in each case with respect to those SELECTED REAGENTS used in the manufacture of (a) POTENTIAL PRODUCTS for human clinical trials and (b) for COMMERCIAL PRODUCTS.

SELECTED REAGENTS that do not meet the foregoing warranties shall be deemed "NONCONFORMING REAGENTS" for the purposes hereof.

[***] 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.

6.4 DISCLAIMER OF WARRANTY.

6.4.1 EXCEPT AS PROVIDED IN SECTION 6.3, NEKTAR AL PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY SELECTED REAGENT, POTENTIAL PRODUCT OR COMMERCIAL PRODUCT, OR NEKTAR AL LICENSED TECHNOLOGY, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. BAXTER ACKNOWLEDGES THAT NEKTAR AL CANNOT GUARANTEE THE SAFETY, NON-TOXICITY, FITNESS OR EFFICACY OF SELECTED REAGENTS, POTENTIAL PRODUCTS OR COMMERCIAL PRODUCTS, AND BAXTER ACCEPTS ANY AND ALL RISK RESULTING FROM ITS USE OF CONJUGATES, REAGENTS, SELECTED REAGENTS, POTENTIAL PRODUCTS OR COMMERCIAL PRODUCTS.

6.4.2 EXCEPT AS PROVIDED IN SECTION 6.3, NEITHER PARTY PROVIDES ANY WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE RESEARCH PLAN OR ANY REAGENT, CONJUGATE, PRODUCT (INCLUDING THE SUCCESSFUL DEVELOPMENT, REGISTRATION, MANUFACTURE OR COMMERCIALIZATION OF ANY POTENTIAL PRODUCT) OR DELIVERABLE PROVIDED PURSUANT TO THE RESEARCH PLAN, AND EACH PARTY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. FOR CLARITY, THE FOREGOING SHALL NOT DIMINISH NEKTAR AL'S OBLIGATIONS PURSUANT TO SECTION 15.1.1.

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7. EXCLUSIVITY; [***]

7.1 NEKTAR AL. In consideration of the MILESTONES, royalties and other consideration set forth herein, NEKTAR AL agrees to partner exclusively with BAXTER in the FIELD. Specifically, during the TERM, other than as provided for in this AGREEMENT or under the RESEARCH PLAN, [***].

Nothing set forth in this Section 7.1 shall prohibit NEKTAR AL from owning not in excess of 5% in the aggregate of any class of capital stock of any corporation if such stock is publicly traded and listed on any national or regional stock exchange or on the NASDAQ national market system or the NASDAQ Small Cap Market.

7.2 BAXTER. For good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by BAXTER), BAXTER agrees to partner exclusively with NEKTAR AL in the FIELD. Specifically, during the TERM, [***].

NEKTAR AL acknowledges that, [***].

Nothing set forth in this Section 7.2 shall prohibit BAXTER from owning not in excess of 5% in the aggregate of any class of capital stock of any corporation if such stock is publicly traded and listed on any national or regional stock exchange or on the NASDAQ national market system or the NASDAQ Small Cap Market.

In the event that the provisions of Sections 7.1 or 7.2 should ever be deemed to exceed the limitation provided by applicable law, then the PARTIES agree that such provisions shall be reformed to set forth the maximum limitations permitted.

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8. QUALITY AND COMPLAINTS

8.1 ANALYSIS. After the RESEARCH COMMITTEE'S designation of a POTENTIAL PRODUCT or a SELECTED REAGENT, the PARTIES shall cooperate and work in good faith to establish written evaluation procedures and evaluation time lines in which to analyze shipments of SELECTED REAGENTS and verify SELECTED REAGENT quality (including meeting SPECIFICATIONS) using methods consistent with test procedures set forth in the applicable QUALITY AGREEMENT. In the event the PARTIES are not able to agree upon such procedures and timelines within [***] prior to the first PHASE 1 CLINICAL TRIAL of such POTENTIAL PRODUCT, (i) the matter shall first be referred to the DEVELOPMENT AND PRODUCTION COMMITTEE for resolution in accordance with Section 3.3; (ii) if within [***] the DEVELOPMENT AND PRODUCTION COMMITTEE is unable to reach resolution, either PARTY may elect to have a mutually acceptable laboratory or consultant establish such procedures and time lines, whose determination thereof shall be binding; and (iii) if within [***] the PARTIES are unable to select a mutually acceptable laboratory or consultant, each PARTY shall select an independent consultant within [***] and such consultants shall within [***] thereof select a mutually acceptable laboratory or consultant to establish such time lines and procedures, whose determination thereof shall be binding.

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8.2 ACCEPTANCE AND REJECTION. BAXTER shall notify NEKTAR AL in writing if BAXTER believes that a shipment of SELECTED REAGENT does not comply with the testing criteria identified pursuant to Section 8.1 above within [***] after BAXTER'S receipt of the relevant shipment of SELECTED REAGENT at BAXTER'S designated destination facility ("NOTICE OF NON-CONFORMITY"), which notice shall include the basis for its assertion of such noncompliance (including, at NEKTAR AL'S request, supporting data) for purposes of consideration and verification by NEKTAR AL. Unless otherwise set forth in the SUPPLY AGREEMENT for the applicable SELECTED REAGENT, if no such written NOTICE OF NON-CONFORMITY is received by NEKTAR AL within the above [***] period, BAXTER shall be deemed to have accepted the applicable shipment of SELECTED REAGENT as meeting SPECIFICATIONS and any other quality requirements which were verified using the agreed-upon evaluation procedures set forth in the QUALITY AGREEMENT, which shall thereafter conclusively be presumed to meet the SPECIFICATIONS and such quality requirements. If NEKTAR AL receives such NOTICE OF NON-CONFORMITY within such [***] period, then NEKTAR AL will evaluate BAXTER'S NOTICE OF NON-CONFORMITY within [***] of receipt thereof and provide a written response ("RESPONSE TO NOTICE OF NON-CONFORMITY"). If NEKTAR AL fails to provide to BAXTER a RESPONSE TO NOTICE OF NON-CONFORMITY within the [***] period, then NEKTAR AL shall be deemed to have accepted BAXTER'S conclusion that the SELECTED REAGENTS are non-conforming and waived its right to object to such conclusion.

If NEKTAR AL disagrees with such NOTICE OF NON-CONFORMITY, then (i) the matter shall first be referred to the DEVELOPMENT AND PRODUCTION COMMITTEE for resolution in accordance with Section 3.3; (ii) if the DEVELOPMENT AND PRODUCTION COMMITTEE is not able to agree on such matter within [***], SELECTED REAGENT samples or documentation will be supplied to a mutually acceptable laboratory or consultant for resolution, whose determination of conformity or non-conformity shall be binding; provided that in the event the PARTIES do not select a mutually acceptable laboratory or consultant within [***], each PARTY shall select an independent testing consultant within [***] and such consultants shall select a mutually acceptable or laboratory within [***] thereof. If the SELECTED REAGENT is determined to be non-conforming, then [***]. If the SELECTED REAGENT is determined to be conforming, then [***].

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8.3 REPLACEMENT OF NONCONFORMING REAGENT. NEKTAR AL shall [***], supply BAXTER with a replacement quantity of SELECTED REAGENT in an amount equal to that which, pursuant to the agreed upon procedures set forth herein and in the applicable QUALITY AGREEMENT, is determined to be NONCONFORMING REAGENT. [***], BAXTER shall promptly return all NONCONFORMING REAGENT to NEKTAR AL. Unless otherwise specified in the applicable SUPPLY AGREEMENT, such replacement shipment shall be made within a reasonable period of time not to exceed [***], which period of time shall be agreed upon once the "production cycle time" for the applicable SELECTED REAGENT has been established.

8.4 LIABILITY TO BAXTER FOR NONCONFORMING REAGENT.

8.4.1 NONCONFORMING REAGENT DETECTABLE BY TESTING. With respect to SELECTED REAGENT that was determined to be NONCONFORMING REAGENT through testing in accordance with the agreed-upon evaluation procedures for the applicable SELECTED REAGENT established pursuant to Section 8.1 and the applicable QUALITY AGREEMENT and for which BAXTER gave to NEKTAR AL a NOTICE OF NONCONFORMITY in accordance with the requirements of Section 8.2, [***]. For clarity, if BAXTER does not comply with the procedures set forth in Section 8.2 with respect to SELECTED REAGENT and BAXTER could reasonably have detected that such SELECTED REAGENT was NONCONFORMING REAGENT through testing in accordance with the agreed-upon evaluation procedures for the applicable SELECTED REAGENT established pursuant to Section 8.1 and the applicable QUALITY AGREEMENT, or if BAXTER otherwise failed to comply with the notice requirements in Section 8.2 for NONCONFORMING REAGENT, [***].

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8.4.2 NONCONFORMING REAGENT NOT DETECTABLE BY TESTING. With respect to (a) NEKTAR AL'S negligence or willful misconduct regarding SELECTED REAGENT or (b) SELECTED REAGENT that is NONCONFORMING REAGENT because of breaches of the warranties set forth in Sections 6.3(ii) or (iii) that could not reasonably have been detected through testing in accordance with the agreed-upon evaluation procedures for the applicable SELECTED REAGENT established pursuant to Section 8.1 and the applicable QUALITY AGREEMENT, [***].

8.5 [INTENTIONALLY OMITTED.]

8.6 FEES FOR MANUFACTURING AND SUPPLY OF SELECTED REAGENTS PRIOR TO PIVOTAL TRIAL.

8.6.1 From the date of selection of SELECTED REAGENT until the earlier of the date of commencement of a PIVOTAL TRIAL or the date on which the PARTIES enter into the SUPPLY AGREEMENT, BAXTER shall pay NEKTAR AL its MANUFACTURING COST plus [***] for each SELECTED REAGENT supplied to BAXTER, [***] ("PURCHASE PRICE"). BAXTER shall be entitled to audit such MANUFACTURING COST pursuant to Section 10.2.

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8.6.2 In addition to the PURCHASE PRICE, BAXTER shall [***] as described herein. [***]. To the extent available, NEKTAR AL shall [***]:

A. [***];

B. [***];

C. [***];

D. [***].

BAXTER [***] and NEKTAR AL shall provide invoices for such fees and services, as incurred. BAXTER shall also reimburse NEKTAR AL for NEKTAR AL'S reasonable pre-approved expenses incurred in connection with travel at BAXTER'S request.

BAXTER shall be entitled to audit such fees pursuant to Section 10.2. However, NEKTAR AL shall not be required to produce records that are not maintained in the normal course of business. For example, if NEKTAR AL [***].

8.6.3 BAXTER shall pay for or reimburse NEKTAR AL (as the case may be) for such [***] services or expenses within [***] after the date of NEKTAR AL'S invoice therefor. For clarity, BAXTER shall not be responsible for any fees, services, or travel that: (i) expand NEKTAR AL's capacity to develop or produce PEG reagents for other customers; or (ii) do not directly or uniquely relate to this AGREEMENT or otherwise directly benefit BAXTER.

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9. MILESTONES; ROYALTY PAYMENTS; ROYALTY REPORTS

9.1 MILESTONE PAYMENTS. BAXTER shall pay to NEKTAR AL MILESTONES in accordance with and pursuant to the events described in Schedule II hereto for POTENTIAL PRODUCT and/or COMMERCIAL PRODUCT, as the case may be. Each such MILESTONE shall be payable at the time the corresponding event occurs, and due within [***] of the event triggering such MILESTONE. All milestones payments shall not be advance payments against any royalties or other payments due and payable hereunder, but shall be in addition to any royalty or other payments due under this AGREEMENT. In the event BAXTER [***].

(i) SKIPPED MILESTONE EVENT. If, for whatever reason, a particular milestone activity or event for which a MILESTONE is due is not carried out, then in such case the MILESTONE that NEKTAR AL would have received upon the occurrence of such milestone event for the POTENTIAL PRODUCT or COMMERCIAL PRODUCT had the particular milestone event been carried out shall be paid [***]. For example, [***].

(ii) [***].

(iii) NON-REFUNDABLE. Once a MILESTONE is due and payable hereunder or once a MILESTONE is paid, BAXTER shall not have any basis for claiming that such MILESTONE is not to be paid or is to be refunded (as the case may be). This provision shall not preclude BAXTER from seeking to recover damages from NEKTAR AL for the breach of this AGREEMENT.

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(iv) MARKETING AUTHORIZATION OUTSIDE OF THE FIELD. For clarity BAXTER shall have no rights whatsoever with respect to the development, manufacture, use, sale or importation of POTENTIAL PRODUCTS or COMMERCIAL PRODUCTS outside of the FIELD. For clarification, BAXTER [***]. If BAXTER desires to develop, manufacture, have manufactured, use, sell, offer for sale or import any POTENTIAL PRODUCT or COMMERCIAL PRODUCT outside of the FIELD, including without limitation obtaining MARKETING AUTHORIZATION for the addition of label claims that are outside of the FIELD for then-existing COMMERCIAL PRODUCT(S), BAXTER shall discuss the matter with NEKTAR AL. If NEKTAR AL (in its discretion) wishes to grant such additional rights to BAXTER, the PARTIES shall negotiate in good faith the terms and conditions (which may include, among other things, the payment of additional milestone payments) applicable to the grant of such rights.

9.1.1 [***] MILESTONES FOR THE DEVELOPMENT AND COMMERCIALIZATION OF ONE COMMERCIAL PRODUCT FOR THE TREATMENT OF HEMOPHILIA A. The MILESTONES that are provided for under Schedule II shall apply with respect to the first POTENTIAL PRODUCT being developed for the treatment of Hemophilia A that achieves each such MILESTONE, and the first COMMERCIAL PRODUCT receiving MARKETING AUTHORIZATION having a label indication for the treatment of Hemophilia A. Such POTENTIAL PRODUCT and COMMERCIAL PRODUCT may be the same, but in the event they are not, [***].

For clarity, BAXTER or its AFFILIATE or SUBLICENSEE, at BAXTER'S discretion, shall be [***]. In the event BAXTER or its AFFILIATE or SUBLICENSEE [***].

For example, [***], BAXTER shall [***].

NEKTAR AL shall not be entitled to additional MILESTONES for additional label claims that are obtained by BAXTER or its AFFILIATE or SUBLICENSEE for then-existing COMMERCIAL PRODUCT(S) for the treatment of Hemophilia A. For example, [***].

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9.1.2 ADDITIONAL MILESTONES FOR THE COMMERCIALIZATION OF MORE THAN ONE COMMERCIAL PRODUCT FOR THE TREATMENT OF HEMOPHILIA A. After the receipt of MARKETING AUTHORIZATION for the first COMMERCIAL PRODUCT, NEKTAR AL shall be entitled to receive milestone payments in addition to the MILESTONES provided for in Schedule II, for each additional POTENTIAL PRODUCT with a label indication for the treatment of Hemophilia A, for which BAXTER or its AFFILIATE or SUBLICENSEE receives a new MARKETING AUTHORIZATION in the United States and/or European Union. With respect to any additional POTENTIAL PRODUCTS [***]. The amounts of such payments will be negotiated by the PARTIES in good faith and agreed upon in a formal written amendment hereto [***], provided that the additional milestone payments for each such additional POTENTIAL PRODUCT [***].

For clarity, [***].

9.1.3 POTENTIAL PRODUCTS FOR [***]. If BAXTER elects to develop a POTENTIAL PRODUCT to treat [***], BAXTER shall pay to NEKTAR AL milestone payments in addition to the MILESTONES that are set forth in Schedule II, which additional milestone payments will be negotiated by the PARTIES in good faith and agreed upon in a formal written amendment hereto. The additional milestone payments for such POTENTIAL PRODUCT to treat [***] shall be agreed upon in advance but no later than [***].

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9.1.4 INDICATIONS FOR [***]. While NEKTAR AL shall not be entitled to additional milestone payments for additional label claims that are obtained by BAXTER or its AFFILIATE or SUBLICENSEE for then-existing COMMERCIAL PRODUCT(S) within the FIELD, if BAXTER or its AFFILIATE or SUBLICENSEE seeks to obtain [***] are for a then-existing COMMERCIAL PRODUCT with a label indication for the [***], then in such case, additional milestone payments shall be due. The provisions of Section 9.1.2, as they pertain to [***], shall apply such that clinical development of COMMERCIAL PRODUCT(S) associated with obtaining label claims for the treatment of [***] shall be deemed to constitute development of an additional POTENTIAL PRODUCT.

9.2 ROYALTIES. BAXTER shall pay NEKTAR AL royalties in an amount equal to the product of the ROYALTY RATE and the annual aggregate NET SALES of all COMMERCIAL PRODUCTS on a COMMERCIAL PRODUCT-by-COMMERCIAL PRODUCT and country-by-country basis for an initial period of ten (10) years from the FIRST COMMERCIAL SALE of the applicable COMMERCIAL PRODUCT in the applicable country (the "INITIAL ROYALTY TERM"). Royalties shall be paid during the INITIAL ROYALTY TERM in each and every country where COMMERCIAL PRODUCT is sold, without regard to whether a VALID PATENT CLAIM covers the manufacture, use, sale, offer for sale or import of the COMMERCIAL PRODUCT or the SELECTED REAGENT contained in such COMMERCIAL PRODUCT.

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9.2.1 After the expiration of the INITIAL ROYALTY TERM for a particular COMMERCIAL PRODUCT in a particular country, BAXTER shall continue to pay such royalties on NET SALES of such COMMERCIAL PRODUCT on a world-wide basis provided that there exists, in each of the following major markets in which MARKETING AUTHORIZATION is received for such COMMERCIAL PRODUCT, a VALID PATENT CLAIM which would be infringed by the making, using, having made, offering for sale, sale or importation of such COMMERCIAL PRODUCT or the SELECTED REAGENT contained in such COMMERCIAL PRODUCT: [***] (collectively, "MAJOR MARKETS"). Such royalties shall be paid on NET SALES of COMMERCIAL PRODUCTS in those countries where the manufacture, import, use, offer for sale or sale of the applicable COMMERCIAL PRODUCT or the SELECTED REAGENT contained in such COMMERCIAL PRODUCT is not covered by a VALID PATENT CLAIM, provided that the manufacture, import, use, offer for sale or sale of such applicable COMMERCIAL PRODUCT or such SELECTED REAGENT is covered by a VALID PATENT CLAIM in each of the MAJOR MARKETS. [***].

9.2.2 If, at the time of sale of a COMMERCIAL PRODUCT in a particular country after the expiration of the INITIAL ROYALTY TERM in such country, there is no VALID PATENT CLAIM covering the manufacture, use, import, offer for sale or sale of such COMMERCIAL PRODUCT or the SELECTED REAGENT contained in such COMMERCIAL PRODUCT in each of the MAJOR MARKETS, then BAXTER shall only owe royalties with respect to NET SALES of COMMERCIAL PRODUCTS in those countries in which a VALID PATENT CLAIM covers the manufacture, use, import, offer for sale or sale of such COMMERCIAL PRODUCTS or the SELECTED REAGENT contained in such COMMERCIAL PRODUCTS in such countries. For example, after the expiration of the INITIAL ROYALTY TERM [***].

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9.2.3 The PARTIES agree that a VALID PATENT CLAIM exists, for purposes of determining whether royalties are payable after the expiration of the INITIAL ROYALTY TERM, even if components of a COMMERCIAL PRODUCT are sold separately as more fully described in Section 9.3 below, and the only VALID PATENT CLAIM covers the manufacture, use, sale, offer for sale or import of only one component of such COMMERCIAL PRODUCT ([***]).

9.2.4 BAXTER shall [***].

9.2.5 Neither PARTY shall contest the accuracy of any royalty, including the overpayment or underpayment of any royalty, after [***] from the end of the calendar year in which such royalties are due and payable. For clarity, prior to the expiration of such [***] period, BAXTER may allege the overpayment of such royalties (and if determined that overpayment was made, be entitled to a refund payable within [***] of NEKTAR AL'S receipt of an invoice for the overpaid amount) and NEKTAR AL may allege the underpayment of royalties (and if determined that underpayment was made, be entitled to such shortfall). Thereafter, the accuracy of the payment of such royalties shall be deemed conclusively binding.

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9.3 SEPARATE COMPONENTS. If components of a COMMERCIAL PRODUCT are sold separately, the NET SALES of such COMMERCIAL PRODUCT shall be calculated as if the components of the COMMERCIAL PRODUCT were not sold separately; provided that no provision of this AGREEMENT shall be construed as [***]. For example, if a COMMERCIAL PRODUCT consists of [***] which is intended to be used with and to improve the half-life of FACTOR VIII, the NET SALES of such COMMERCIAL PRODUCT shall be deemed to include the amount invoiced ([***]) by BAXTER, its SUBLICENSEES and/or their respective AFFILIATES for the FACTOR VIII with which such product is intended to be used and the [***], it being understood and agreed that, for purposes of calculating royalties, the [***] and the FACTOR VIII are the COMMERCIAL PRODUCT.

9.4 COMMERCIAL DILIGENCE. If, during the TERM, BAXTER sells or markets another FACTOR VIII extended half-life product using a non-PEGYLATION technology which is used to treat Hemophilia A, then BAXTER must meet the COMMERCIAL DILIGENCE THRESHOLD, as set forth below. No later than [***] after the FIRST COMMERCIAL SALE of a COMMERCIAL PRODUCT in each MAJOR MARKET in which MARKETING AUTHORIZATION has been obtained, the sales of all COMMERCIAL PRODUCTS in the aggregate shall constitute at least [***] of the total sales of all FACTOR VIII extended half-life products used to treat Hemophilia A in such MAJOR MARKET (the "COMMERCIAL DILIGENCE THRESHOLD"). If sales of such COMMERCIAL PRODUCTS, in the aggregate, do not meet the COMMERCIAL DILIGENCE THRESHOLD in such MAJOR MARKET within such timeframe, then [***]. In the event [***], the ROYALTY RATE to which NEKTAR AL is otherwise entitled shall be [***]. For example, [***]. The terms of any such [***] shall be negotiated in good faith by the PARTIES, and shall include minimum [***] and shall provide that [***].

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9.5 REPORTS, EXCHANGE RATES. BAXTER shall notify NEKTAR AL in writing promptly upon the FIRST COMMERCIAL SALE of each COMMERCIAL PRODUCT in each country in which BAXTER elects to pursue commercialization. Commencing upon the FIRST COMMERCIAL SALE of a COMMERCIAL PRODUCT, BAXTER shall furnish to NEKTAR AL a [***] showing, on a country-by-country basis, according to the volume of units of such COMMERCIAL PRODUCT sold in each such country (by SKU) during the reporting period: (a) the gross invoiced sales of the COMMERCIAL PRODUCT sold in each country during the reporting period, and the amounts deducted therefrom to determine NET SALES from such gross invoiced sales detailed in accordance with those deductions provided for in the definition of NET SALES; (b) the royalties payable in DOLLARS, if any, which shall have accrued hereunder based upon the NET SALES of the COMMERCIAL PRODUCT; (c) the withholding taxes, if any, required by LAW to be deducted in respect of such sales; and (d) the date of the FIRST COMMERCIAL SALE of the COMMERCIAL PRODUCT in each country during the reporting period. With respect to sales of COMMERCIAL PRODUCT invoiced in DOLLARS, the gross invoiced sales, NET SALES, and royalties payable shall be expressed in the report in DOLLARS. With respect to sales of COMMERCIAL PRODUCT invoiced in a currency other than DOLLARS, the gross invoiced sales, NET SALES and royalties payable shall be expressed in the report provided hereunder in the domestic currency of the PARTY making the sale as well as in the DOLLAR equivalent of the royalty payable and the exchange rate used in determining the amount of DOLLARS. The DOLLAR equivalent shall be calculated using the average exchange rate (local currency per DOLLAR) published in The Wall Street Journal, Western Edition, under the heading "Currency Trading," on the last business day of each month during the applicable calendar quarter. Reports shall be due hereunder on the forty-fifth (45th) day following the close of each calendar quarter.

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9.6 THIRD PARTY ROYALTIES, ETC. If either PARTY is required to pay royalties or any other payments to a THIRD PARTY because the composition of matter or method of manufacture of a SELECTED REAGENT contained in a POTENTIAL PRODUCT or COMMERCIAL PRODUCT used, manufactured, imported, sold or offered for sale in a particular country infringes a PATENT of such THIRD PARTY in that country or misappropriates know-how of such THIRD PARTY in that country, then [***] for a license under such PATENT or know-how necessary to use, manufacture, import, sell or offer for sale such POTENTIAL PRODUCT or COMMERCIAL PRODUCT in such country. In such event, BAXTER [***]. For example, [***] as a result of the manufacture, use, import, export, offer for sale or sale of a SELECTED REAGENT, POTENTIAL PRODUCT or COMMERCIAL PRODUCT, and shall be in addition to BAXTER's obligations under Sections 15.1.2 and 17.1. In no event shall the royalties due to NEKTAR AL on the NET SALES of COMMERCIAL PRODUCT in a country on account of [***] pursuant to this Section 9.6 [***], except in the case where BAXTER is [***], in which event the royalties due to NEKTAR AL on the NET SALES of COMMERCIAL PRODUCT may be [***].

10. RECORDS; AUDITS; SHIPMENT TERMS; PAYMENT TERMS

10.1 RECORDS. The PARTIES shall keep complete and accurate records in sufficient detail to make the reports required hereunder, to confirm their respective compliance with the provisions of this AGREEMENT, to properly reflect all amounts billed, owed or reported and to verify the determination of all amounts payable hereunder. Without limiting the foregoing, BAXTER shall include in each sublicense granted by it pursuant to this AGREEMENT a provision requiring the SUBLICENSEE to make reports to BAXTER consistent with those BAXTER is required to provide hereunder, to keep and maintain records of sales made and deductions taken in calculating royalties due to NEKTAR AL with respect to such sublicense, and to grant access to such records by NEKTAR AL'S independent accountant pursuant to Section 10.2 below to the same extent required of BAXTER under this AGREEMENT.

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10.2 AUDITS. Upon the written request of a PARTY, the other PARTY shall permit an independent certified public accounting firm of recognized national standing in the United States, selected by the requesting PARTY and reasonably acceptable to the other PARTY, at the requesting PARTY'S expense, to have access to such PARTY'S records as may be reasonably necessary to verify (i) the accuracy of any amounts reported, actually paid or payable under this AGREEMENT, and (ii) in the case of NEKTAR AL, BAXTER's compliance with Section 5.1, for any year ending not more than [***] prior to the date of such request. Such audits shall be conducted under conditions of confidentiality and may be made no more than once each calendar year, during normal business hours at reasonable times mutually agreed by the PARTIES, and shall not be conducted on a contingent fee basis.

The accounting firm shall provide each PARTY with a draft of its preliminary findings and allow each PARTY [***] to review and comment on such preliminary report. During such period, either PARTY is free to provide the accounting firm with additional information, which shall be considered by the accounting firm. The accounting firm may ask for additional information and/or perform additional procedures it deems appropriate to ensure the accuracy of its final report. Copies of the accounting firm's final report will be issued to both PARTIES.

If such accounting firm concludes that additional amounts were owed to the requesting PARTY during such period, or if the requesting PARTY overpaid for any rates or fees for products, the other PARTY shall pay such additional amounts or credit such overpayment ([***]) within [***] of the date the requesting PARTY delivers to the other PARTY such accounting firm's written report so concluding. The fees charged by such accounting firm shall be paid by the requesting PARTY; provided however, that if the audit discloses that the amounts payable by the audited PARTY for the audited period are more than [***] of the amounts actually paid for such period, or if the audit discloses that the audited PARTY has overcharged the requesting PARTY for rates or fees for products by [***], then the audited PARTY shall pay the reasonable fees and expenses charged by such accounting firm. Upon the expiration of [***] following the end of any calendar year, the calculation of any amounts payable with respect to such calendar year, or rates or fees charged for such year shall be binding and conclusive upon the PARTIES.

[***] 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.

10.3 INVOICING; PAYMENT TERMS. NEKTAR AL shall send invoices to BAXTER for any SELECTED REAGENT shipped to BAXTER no earlier than the date of shipment. All invoices shall be in DOLLARS. Other than as provided for in Section 9.5 with respect to royalty payments, which shall be made within [***] after the end of each calendar quarter as provided for therein, all payments due under this AGREEMENT shall be due and payable [***] from date of invoice. Royalties shown to have accrued to NEKTAR AL as set forth in each royalty report to be provided under Section 9.5 shall be due and payable on the date such royalty report is due. Any and all amounts past due under this AGREEMENT shall [***].

10.4 PAYMENT METHOD. Except as otherwise provided for herein, all payments by BAXTER under this AGREEMENT shall be paid in DOLLARS, and all such payments shall be made by electronic funds transfer in immediately available funds to such account as NEKTAR AL shall designate before such payment is due. If at any time legal restrictions prevent the prompt remittance of part or all royalties due with respect to sales of any COMMERCIAL PRODUCT in any country where such COMMERCIAL PRODUCT is sold, payment shall be made through such lawful means or methods as BAXTER shall reasonably determine.

10.5 TAXES. All amounts due hereunder shall be paid net of any deduction for withholding for any taxes or similar governmental charges imposed by any applicable jurisdiction, and BAXTER shall provide NEKTAR AL evidence of its payment of any such withholdings that may be required. BAXTER agrees to cooperate with and provide reasonable assistance to NEKTAR AL in order to facilitate NEKTAR AL's recovery of any withholdings that NEKTAR AL is due.

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11. CONFIDENTIALITY

11.1 TERMINATION OF NON-DISCLOSURE AGREEMENT. All provisions of, rights granted and covenants made in the NON-DISCLOSURE AGREEMENT are hereby terminated and of no further force and effect and are superseded in their entirety by the provisions of, rights granted and covenants made in this AGREEMENT. The PARTIES acknowledge and agree that any disclosure made pursuant to the NON-DISCLOSURE AGREEMENT shall be subject to and governed by the terms and conditions of this Article 11.

11.2 IN GENERAL. For the TERM and for a period of [***] thereafter, each PARTY shall maintain in confidence all information and materials of the other PARTY (including, but not limited to, KNOW-HOW and samples of THERAPEUTIC AGENT, CONJUGATES, REAGENT, SELECTED REAGENT, POTENTIAL PRODUCT and COMMERCIAL PRODUCT) disclosed or provided to it by the other PARTY (either pursuant to this AGREEMENT or the NON-DISCLOSURE AGREEMENT). CONFIDENTIAL INFORMATION shall be identified as confidential in writing or, if disclosed verbally or by observation, summarized in writing and submitted to RECIPIENT within [***] of the oral or visual disclosure thereof (together with all embodiments thereof, the "CONFIDENTIAL INFORMATION"). CONFIDENTIAL INFORMATION shall include both BAXTER MATERIALS and NEKTAR AL MATERIALS. It may also include information regarding intellectual property and confidential or proprietary information of AFFILIATES and THIRD PARTIES. The terms and conditions of this AGREEMENT and the NON-DISCLOSURE AGREEMENT also shall be deemed CONFIDENTIAL INFORMATION of both PARTIES.

[***] 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.

Notwithstanding the foregoing, CONFIDENTIAL INFORMATION shall not include that portion of information or materials that the RECIPIENT can demonstrate by contemporaneous written records was:

(i) known to the general public at the time of its disclosure to the RECIPIENT, or thereafter became generally known to the general public, other than as a result of actions or omissions of the RECIPIENT in violation of this AGREEMENT or the NONDISCLOSURE AGREEMENT;

(ii) known by the RECIPIENT prior to the date of disclosure by the DISCLOSING PARTY;

(iii) disclosed to the RECIPIENT on an unrestricted basis from a source unrelated to the DISCLOSING PARTY and not known to be under a duty of confidentiality to the DISCLOSING PARTY; or

(iv) independently developed by the RECIPIENT without the 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 RECIPIENT 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 RECIPIENT.

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11.3 ADDITIONAL PROTECTIONS. 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 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. All CONFIDENTIAL INFORMATION of a PARTY, including 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 (including CONTRACT MANUFACTURERS), SUBLICENSEES, assignees, agents and external advisors directly concerned with the carrying out of this AGREEMENT, on a strictly applied "need to know" basis. Other than as expressly permitted herein, RECIPIENT may not use CONFIDENTIAL INFORMATION of the DISCLOSING PARTY in applying for PATENTS or securing other intellectual property rights.

11.4 PERMITTED DISCLOSURES. The obligations of Sections 11.1 and 11.2 shall not apply to the extent that RECIPIENT is required to disclose information by LAW, judicial order by a court of competent jurisdiction, or rules of a securities exchange or requirement of a governmental agency for purposes of obtaining approval to test or market POTENTIAL PRODUCT or COMMERCIAL PRODUCT (provided that the RECIPIENT 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), or discloses information to a patent office for the purposes of filing or maintaining a PATENT APPLICATION or PATENT as permitted in this AGREEMENT.

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11.5 IRREPARABLE INJURY. The PARTIES acknowledge that either PARTY'S breach of this Article 11 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 shall be entitled to injunctive relief in addition to any other remedies it may have at LAW or in equity, without necessity of posting a bond.

12. REGULATORY MATTERS

12.1 COMPLAINTS/ADVERSE EVENTS. Each PARTY shall promptly notify the other in writing of any information that comes to its attention concerning the safety or efficacy of any SELECTED REAGENT, POTENTIAL PRODUCT and/or COMMERCIAL PRODUCT, including, without limitation, any threatened or pending action by any regulatory authority with respect thereto, in accordance with the applicable QUALITY AGREEMENT.

12.2 SPECIFIC REQUIREMENTS. Without limiting the generality of Section 12.1, BAXTER shall [***].

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13. REPRESENTATIONS & WARRANTIES; COVENANTS

13.1 REPRESENTATIONS AND WARRANTIES. Each PARTY represents and warrants to the other that as of the EFFECTIVE DATE to the best of its knowledge and belief: (a) it has the full corporate power to enter into and perform this AGREEMENT; (b) this AGREEMENT constitutes its legal, valid and binding obligation; (c) it has sufficient legal and/or beneficial title or other rights under its intellectual property rights to grant the licenses contained in this AGREEMENT; (d) each PARTY'S professional employees, officers, contractors (including any CONTRACT MANUFACTURERS) and consultants that will be involved with this AGREEMENT and the RESEARCH PLAN (and in the case of BAXTER, its AFFILIATES and SUBLICENSEES), has executed or will execute an agreement that requires such person or entity, to the extent permitted by LAW, to assign all INVENTIONS, PATENTS, and KNOW-HOW made during the course of and as a result of the performance of such PARTY'S obligations under this AGREEMENT, to such PARTY; and (e) each of such PARTY'S employees, officers, contractors (including any CONTRACT MANUFACTURERS) and consultants (and in the case of BAXTER, its AFFILIATES and SUBLICENSEES) are or will be subject to written confidentiality obligations no less restrictive than those provided for in this AGREEMENT. If the obligation to assign under subsection 13.1(d) is not permitted in a particular country, then such person or entity will be required to grant an exclusive, worldwide, perpetual, royalty-free license to all such INVENTIONS, PATENTS, and KNOW-HOW to the PARTY to whom such assignment was to be made, with the right to sublicense.

13.2 COMPLIANCE WITH LAWS. Each PARTY will comply with all LAWS in performing its obligations and exercising its rights hereunder. Nothing in this AGREEMENT shall be deemed to permit BAXTER or its SUBLICENSEES to export, re-export or otherwise transfer any information or materials (including SELECTED REAGENT or CONJUGATES) transferred hereunder or POTENTIAL PRODUCT or COMMERCIAL PRODUCT manufactured therefrom without complying with LAWS.

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14. LIMITATION OF LIABILITY; EXCLUSION OF DAMAGES

14.1 LIMITATION OF LIABILITY. EXCEPT (I) FOR THE PARTIES' OBLIGATIONS FOR THIRD PARTY CLAIMS UNDER ARTICLE 15 AND (II) IN THE CASE OF A BREACH OF ARTICLE 7 OR 11:

14.1.1 IN NO EVENT SHALL NEKTAR AL'S LIABILITY ARISING OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION AS A RESULT OF THE RESEARCH, DEVELOPMENT, MANUFACTURE, SUPPLY, USE OR SALE OF CONJUGATES, SELECTED REAGENTS, POTENTIAL PRODUCTS OR COMMERCIAL PRODUCTS, EXCEED IN THE AGGREGATE, AN AMOUNT THAT IS [***]. FOR CLARITY, [***] ARE NOT SUBJECT TO THE FOREGOING.

14.1.2 IN NO EVENT SHALL A PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES OR SUBLICENSEES FOR ANY 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. THIS REPRESENTS AN EXPRESS ALLOCATION OF RISK BETWEEN THE PARTIES.

14.2 REMEDIES. Notwithstanding anything herein to the contrary, the PARTIES acknowledge that either PARTY'S breach of Articles 7 and 11 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 shall be entitled to injunctive relief in addition to any other remedies it may have at LAW or in equity, without necessity of posting a bond.

[***] 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.

14.3 APPLICABILITY, EXCLUSIVITY OF REMEDIES. The limitations on liability and exclusion of damages under this AGREEMENT: (i) apply even if a PARTY had or should have had knowledge, actual or constructive, of the possibility of such damages; (ii) are a fundamental element of the basis of the bargain between the PARTIES and this AGREEMENT would not be entered into without such limitations and exclusions and (iii) other than as set forth in this Article 14, shall apply whether a claim is based on breach of contract, breach of warranty, tort (including negligence), product liability, strict liability or otherwise, and notwithstanding any failure of essential purpose of any limited remedy herein. Moreover, the remedies under this AGREEMENT are intended to be exclusive, and, other than as set forth in this Article 14, the limitations on liability and exclusion of damages under this AGREEMENT are intended to apply even if there is a total and fundamental breach of this AGREEMENT, and the essential purpose of these provisions is to limit the PARTIES' respective liabilities hereunder.

15. INDEMNIFICATION; INSURANCE

15.1 INDEMNITY.

15.1.1 BY NEKTAR AL. NEKTAR AL shall defend, indemnify and hold BAXTER, BAXTER'S SUBLICENSEES and their respective shareholders, directors, officers, employees and agents (each, a "BAXTER INDEMNITEE") harmless from and against all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs of investigation and litigation, regardless of outcome) resulting from all claims, demands, actions and other proceedings by or on behalf of any THIRD PARTY (including any governmental authority) (collectively, "CLAIMS") to the extent arising from: (a) the breach of any representation, warranty, covenant or material obligation of NEKTAR AL under this AGREEMENT; [***].

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15.1.2 BY BAXTER. BAXTER shall defend, indemnify and hold NEKTAR AL, NEKTAR AL AFFILIATES, and their respective shareholders, directors, officers, employees and agents (each, a "NEKTAR AL INDEMNITEE") harmless from and against all CLAIMS to the extent arising from: (a) the breach of any representation, warranty, covenant or material obligation of BAXTER under this AGREEMENT; [***].

15.2 INSURANCE. Each PARTY shall, at its own expense, maintain comprehensive general liability insurance, including product liability insurance, in the minimum amount of [***] per occurrence, and [***] in the aggregate. BAXTER has the right to self-insure. Any independent insurance carriers must be rated A-, VII or better by A.M. Best Company. The PARTIES shall maintain such insurance for so long as they continue to research or develop or manufacture or commercialize POTENTIAL PRODUCTS or COMMERCIAL PRODUCTS, and shall from time to time provide copies of certificates of such insurance to each other upon request. If the insurance policy is written on a claims-made basis, then the coverage must be kept in place for at least [***] after the termination of this AGREEMENT.

15.3 PROCEDURES. If any CLAIM covered by Section 15.1 is brought, the indemnifying PARTY'S obligations are conditioned upon the following:

(i) the indemnified PARTY shall promptly notify the indemnifying PARTY in writing of such CLAIM, provided, however, the failure to provide such notice within a reasonable period of time shall not relieve the indemnifying PARTY of any of its obligations hereunder except if the indemnifying PARTY is prejudiced by such failure or delay;

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(ii) the indemnifying PARTY shall assume, at its cost and expense, the sole defense of such CLAIM through counsel selected by the indemnifying PARTY, except that those indemnified may at their option and expense select and be represented by separate counsel;

(iii) the indemnifying PARTY shall maintain control of such defense and/or the settlement of such CLAIM, and the indemnified PARTY shall cooperate with the indemnifying PARTY;

(iv) those indemnified may, at their option and expense, participate in such defense, and if they so participate, the indemnifying PARTY and those indemnified shall cooperate with one another in such defense;

(v) the indemnifying PARTY will have authority to consent to the entry of any monetary judgment, to enter into any settlement or otherwise to dispose of such CLAIM (provided and only to the extent that an indemnified PARTY does not have to admit liability and such judgment does not involve equitable relief), and an indemnified PARTY may not consent to the entry of any judgment, enter into any settlement or otherwise to dispose of such CLAIM without the prior written consent of the indemnifying PARTY; and

(vi) the indemnifying PARTY shall pay the full amount of any judgment, award or settlement with respect to such CLAIM and all other costs, fees and expenses related to the resolution thereof; provided that such other costs, fees and expenses have been incurred or agreed, as the case may be, by the indemnifying PARTY in its defense or settlement of the CLAIM.

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16. INVENTIONS, KNOW-HOW and PATENTS

16.1 EXISTING INTELLECTUAL PROPERTY. Other than as expressly provided in this AGREEMENT, neither PARTY grants nor shall be deemed to grant any right, title or interest to the other PARTY in any PATENT, PATENT APPLICATION, KNOW-HOW or other intellectual property right CONTROLLED by such PARTY as of the EFFECTIVE DATE.

16.2 DISCLOSURE. Each PARTY shall promptly disclose in writing to the other all INVENTIONS arising from the joint or separate activities (including any INVENTIONS conceived or first reduced to practice as a result of such activities) of the PARTIES or their agents, employees, SUBLICENSEES or independent contractors (including CONTRACT MANUFACTURERS) during and in connection with the performance of their obligations or activities under this AGREEMENT (including in carrying out its activities under the RESEARCH PLAN and the development or manufacture of POTENTIAL PRODUCT or COMMERCIAL PRODUCT); provided, however, that [***].

16.3 OWNERSHIP OF INVENTIONS. Except as otherwise set forth in Sections 16.4 or 16.5, all INVENTIONS conceived or first reduced to practice solely by employees, agents, SUBLICENSEES or independent contractors (including CONTRACT MANUFACTURERS) of a PARTY during the course and in the performance of this AGREEMENT (including in carrying out its activities under the RESEARCH PLAN and the development or manufacture of POTENTIAL PRODUCT or COMMERCIAL PRODUCT) (each, a "SOLE INVENTION") shall be the exclusive property of such PARTY. Except as otherwise set forth in Sections 16.4 or 16.5, if employees, agents, SUBLICENSEES or independent contractors (including CONTRACT MANUFACTURERS) of each of NEKTAR AL and BAXTER jointly, conceive or first reduce to practice any INVENTION during the course and in the performance of activities conducted in connection with this AGREEMENT (including in carrying out its activities

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under the RESEARCH PLAN and the development or manufacture of POTENTIAL PRODUCT or COMMERCIAL PRODUCT) (each, a "JOINT INVENTION") then such JOINT INVENTION, and any PATENT APPLICATION or PATENT claiming the same shall be [***] JOINT INVENTION, and any PATENT APPLICATION or PATENT claiming the same, [***]. For the avoidance of doubt, the determination as to whether an INVENTION has been "solely" or "jointly" made shall be based upon whether employees, agents, SUBLICENSEES or independent contractors (including CONTRACT MANUFACTURERS) of a PARTY would be or are properly named as an inventor on a corresponding PATENT APPLICATION under United States inventorship LAWS. Any JOINTLY OWNED TECHNOLOGY, regardless of whether such INVENTION is conceived or first reduced to practice solely or jointly by employees, agents, SUBLICENSEES or independent contractors (including CONTRACT MANUFACTURERS) of each of NEKTAR AL and BAXTER, shall be considered a JOINT INVENTION for the purposes of this AGREEMENT.

16.4 NEKTAR AL CORE TECHNOLOGY INVENTIONS. Any and all rights, title and interest in and to all SOLE INVENTIONS and JOINT INVENTIONS (except those JOINT INVENTIONS that are JOINTLY OWNED TECHNOLOGY), which fall solely within the scope of NEKTAR AL CORE TECHNOLOGY, shall belong solely to NEKTAR AL ("NEKTAR AL CORE TECHNOLOGY INVENTIONS"). BAXTER hereby agrees to and hereby does, and shall, without additional consideration transfer and assign to NEKTAR AL all of its right, title and interest in and to such NEKTAR AL CORE TECHNOLOGY INVENTIONS and all intellectual property rights therein including enforcement rights, and shall require its employees, agents, SUBLICENSEES and independent contractors (including CONTRACT MANUFACTURERS) to so assign their right, title and interest therein to NEKTAR AL. NEKTAR AL shall be responsible, [***], for the filing, prosecution and maintenance of foreign and domestic PATENT APPLICATIONS and PATENTS covering such NEKTAR AL CORE TECHNOLOGY INVENTIONS.

[***] 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.

16.5 BAXTER CORE TECHNOLOGY INVENTIONS. Any and all rights, title and interest in and to all SOLE INVENTIONS and JOINT INVENTIONS (except those JOINT INVENTIONS that are JOINTLY OWNED TECHNOLOGY), which fall solely within the scope of BAXTER CORE TECHNOLOGY, shall belong solely to BAXTER ("BAXTER CORE TECHNOLOGY INVENTIONS"). NEKTAR AL hereby agrees to and hereby does, and shall, without additional consideration assign to BAXTER all of its right, title and interest in and to any BAXTER CORE TECHNOLOGY INVENTIONS and all intellectual property rights therein including enforcement rights, and shall require its employees, agents or independent contractors (including CONTRACT MANUFACTURERS) to so assign their right, title and interest therein to BAXTER. BAXTER shall be responsible, [***], for the filing, prosecution and maintenance of foreign and domestic PATENT APPLICATIONS and PATENTS covering such BAXTER CORE TECHNOLOGY INVENTIONS.

16.6 INDIVIDUAL PATENT FILINGS. Each PARTY shall have sole discretion and right to prepare, file, prosecute, maintain and defend PATENT APPLICATIONS or PATENTS for INVENTIONS it solely owns under this AGREEMENT, and shall be responsible for related interference proceedings. [***]. Costs incurred with respect to PATENT APPLICATIONS shall be borne by the PARTY with the right to prosecute each such PATENT APPLICATION.

[***] 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.

16.7 JOINT PATENT FILINGS. With respect to all PATENT APPLICATIONS on JOINT INVENTIONS that are jointly owned by the PARTIES (i.e., JOINT INVENTIONS that have not been assigned nor are assignable to the other PARTY pursuant to Sections 16.4 and 16.5) (the "JOINT PATENT APPLICATIONS"), the PARTIES shall determine which PARTY shall be responsible for filing, prosecuting and maintaining PATENT APPLICATIONS and PATENTS on behalf of both PARTIES (the "RESPONSIBLE PARTY") [***]. All PATENTS issuing from such PATENT APPLICATIONS shall be defined as "JOINT PATENTS". It is understood that BAXTER shall have the preferential right to prosecute those JOINT INVENTIONS directed solely at POTENTIAL or COMMERCIAL PRODUCTS. At least [***] prior to the contemplated filing of such PATENT APPLICATION, the RESPONSIBLE PARTY shall submit a substantially completed draft of the JOINT PATENT APPLICATION to the other PARTY's patent attorneys only for its approval, which shall not be unreasonably withheld or delayed. Except as set forth below, [***] of the preparation, filing, prosecution and maintenance of all JOINT PATENT APPLICATIONS. [***] of preparing, filing, prosecuting and maintaining all of the foreign and domestic JOINT PATENT APPLICATIONS that cover INVENTIONS within the scope of JOINTLY OWNED TECHNOLOGY, and the JOINT PATENTS that issue therefrom.

16.8 DISPOSITION OF INVENTIONS. It is understood and agreed that for the purposes of this AGREEMENT, even if an employee, agent, SUBLICENSEE or contractor of a PARTY is an inventor of an INVENTION that is claimed in a PATENT or PATENT APPLICATION, the PARTY who owns said INVENTION as a result of the operation of Article 16 shall not assign, transfer, license or otherwise dispose of any other claim in such PATENT or PATENT APPLICATION, unless such PARTY solely or jointly owns or otherwise has the right to license rights with respect to said other claim (in each case as expressly provided for in this AGREEMENT).

[***] 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.

16.9 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 16.

16.10 PATENT MARKING AND POTENTIAL PRODUCT AND COMMERCIAL PRODUCT MARKING.

(i) BAXTER shall place appropriate NEKTAR AL patent and/or patent pending markings on each POTENTIAL PRODUCT and COMMERCIAL PRODUCT or the packaging therefor. The content, form, size, location and language of such markings shall be in accordance with the LAWS and practices of the country in which the applicable units of each POTENTIAL PRODUCT or COMMERCIAL PRODUCT are distributed.

(ii) BAXTER shall be responsible for all packaging (non-commercial and commercial) and labeling of POTENTIAL PRODUCT or COMMERCIAL PRODUCT. To the extent allowed by LAWS, all POTENTIAL PRODUCT or COMMERCIAL PRODUCT labeling, packaging and package inserts and any promotional materials associated with the POTENTIAL PRODUCT or COMMERCIAL PRODUCT shall carry, in a conspicuous location, the trademark of NEKTAR AL, the identity and style of which shall be at NEKTAR AL'S sole discretion. NEKTAR AL authorizes the use of its trademark pursuant to this Section 16.10(ii).

16.11 SUPPLEMENTAL PATENT PROTECTION. [***]. Such protection shall include the listing of any requested [***] in any book, or book equivalent, of any country necessary for extending the term of such [***].

[***] 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.

17. INFRINGEMENT

17.1 INFRINGEMENT OF THIRD PARTY RIGHTS.

17.1.1 NOTICE. If the development, manufacture, use, import, sale or offer for sale of a POTENTIAL PRODUCT or a COMMERCIAL PRODUCT results in a claim for PATENT infringement by a THIRD PARTY, the PARTY to this AGREEMENT first having notice shall promptly notify the other PARTY in writing. The notice shall set forth the facts of the claim in reasonable detail.

17.1.2 LITIGATION UNRELATED TO SELECTED REAGENT. Except to the extent any infringement of patents or misappropriation of know-how results solely from the composition of matter or the method of manufacture of a SELECTED REAGENT, [***] from and against all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs of investigation and litigation, regardless of outcome) resulting from any claim that the development, manufacture, use, import, offer for sale or sale of a POTENTIAL PRODUCT or a COMMERCIAL PRODUCT infringes a THIRD PARTY patent or misappropriates THIRD PARTY know-how, and the provisions of Sections 15.1.2 and 15.3 shall apply with respect to any such claim to the same extent as though it were a CLAIM [***]. In the event of a conflict between the provisions of Article 15 and this Section 17.1.2, [***].

17.1.3 LITIGATION RELATED TO SELECTED REAGENT. If infringement of a THIRD PARTY patent or misappropriation of THIRD PARTY know-how is alleged solely because the composition of the SELECTED REAGENT or the method of making the same, is used in the development, manufacture, use, offer for sale, sale, or import of a POTENTIAL PRODUCT or COMMERCIAL PRODUCT, [***], any such action taken by such THIRD PARTY against either PARTY or both PARTIES, including the costs and expenses (including reasonable attorney's fees and costs of investigation and litigation, regardless of outcome) resulting from such defense. [***].

[***] 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.

17.2 INFRINGEMENT BY THIRD PARTIES.

17.2.1 NOTICE OF INFRINGEMENT. If any VALID PATENT CLAIM is infringed by a THIRD PARTY, or any KNOW-HOW utilized in the manufacture, use, import, offer for sale or sale of SELECTED REAGENT or POTENTIAL PRODUCT or COMMERCIAL PRODUCT is misappropriated by a THIRD PARTY, the PARTY first having knowledge of such infringement or misappropriation shall promptly notify the other PARTY in writing. The notice shall set forth the facts of such infringement or misappropriation in reasonable detail.

17.2.2 PROSECUTION OF ACTIONS RELATED TO SELECTED REAGENT.

A. NEKTAR AL shall have the right, but not the obligation, to carry out actions against THIRD PARTIES arising from such THIRD PARTIES' infringement or misappropriation of NEKTAR AL LICENSED TECHNOLOGY covering the manufacture, use, import, offer for sale or sale of a SELECTED REAGENT. [***].

B. If NEKTAR AL fails to bring an action or proceeding within a period of [***] after receiving written notice from BAXTER of the possibility of a claim, or otherwise having knowledge of a claim described in Section 17.2.2(A), BAXTER shall have the right, but not the obligation, to bring and control any such action using counsel of its own choice, [***].

[***] 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.

C. AWARDS. If either PARTY brings an action for infringement or misappropriation by a THIRD PARTY under this Section 17.2.2 any damages or other monetary awards or payments in settlement recovered by such PARTY shall be applied first to defray the costs and expenses incurred by both PARTIES in the action. Any remainder shall be shared by the PARTIES as follows: [***], when the action for infringement or misappropriation relates to a COMMERCIAL PRODUCT; and [***].

17.2.3 PROSECUTION OF ACTIONS RELATED TO THE FIELD.

A. Except as set forth in Section 17.2.2, BAXTER shall have the primary right, but not the obligation, to carry out actions against THIRD PARTIES arising from such THIRD PARTIES' infringement or misappropriation of NEKTAR AL LICENSED TECHNOLOGY in the FIELD, including the manufacture, use, import, offer for sale or sale of a POTENTIAL PRODUCT or COMMERCIAL PRODUCT. [***].

B. If BAXTER fails to bring an action or proceeding within a period of sixty (60) days after receiving written notice from NEKTAR AL of the possibility of a claim, or otherwise having knowledge of a claim described in Section 17.2.3(A), NEKTAR AL shall have the right, but not the obligation, to bring and control any such action using counsel of its own choice, [***].

C. AWARDS. If either PARTY brings an action for infringement or misappropriation by a THIRD PARTY under this Section 17.2.3 any damages or other monetary awards or payments in settlement recovered by such PARTY shall be applied first to defray the costs and expenses incurred by both PARTIES in the action. Any remainder shall be shared by the PARTIES as follows: [***].

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18. [INTENTIONALLY OMITTED]

19. TERM AND TERMINATION

19.1 EXPIRATION. The term of this AGREEMENT (the "TERM") shall commence on the EFFECTIVE DATE and shall continue until terminated as set forth herein. Once a POTENTIAL PRODUCT is a COMMERCIAL PRODUCT and has been commercialized, this AGREEMENT shall expire on a country-by-country basis upon the expiration of all royalty obligations with respect to such COMMERCIAL PRODUCT in the applicable country, unless earlier terminated as provided herein. Upon the expiration of royalty obligations with respect to a COMMERCIAL PRODUCT in any applicable country, BAXTER is hereby granted by NEKTAR AL a paid-up, exclusive, royalty-free, perpetual, non-cancelable, license, with rights to sublicense, in the FIELD under the NEKTAR AL LICENSED TECHNOLOGY to make, have made, use, sell, offer for sale and import such COMMERCIAL PRODUCT in such country, [***]. The terms and conditions of such manufacture and supply of SELECTED REAGENT shall be negotiated in good faith by the PARTIES.

19.2 DISCRETIONARY TERMINATION. [***], other than pursuant to any other provision of this AGREEMENT, [***], payable in accordance with Section 19.7.5, upon [***].

[***] 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.

19.3 TERMINATION FOR CAUSE. Each PARTY shall have the right to terminate this AGREEMENT by written notice to the other PARTY for a failure to comply with the material terms of this AGREEMENT by the other PARTY, provided such failure to comply is not corrected by the failing PARTY within: (i) [***] of written notice of any failure to make timely payment of royalties or any other amount that is not in dispute, when due hereunder, or (ii) [***] of receipt of written notice of any other failure from the non-failing PARTY.

19.4 TERMINATION FOR INSOLVENCY. Either PARTY may terminate this AGREEMENT immediately by written notice in the event: (i) the other PARTY voluntarily enters into bankruptcy proceedings; (ii) the other PARTY makes an assignment for the benefit of creditors; (iii) a petition is filed against the other party under a bankruptcy law, a corporate reorganization law, or any other law for relief of debtors or similar law analogous in purpose or effect, which petition is not stayed or dismissed within [***] of filing thereof; or (iv) the other PARTY enters into liquidation or dissolution proceedings or a receiver is appointed with respect to any assets of the other PARTY, which appointment is not vacated within [***] (herein a BANKRUPTCY PROCEEDING).

19.5 TERMINATION/[***] FOR LACK OF DILIGENCE. In the event [***]. In the event [***] provided for herein shall continue to apply, except as otherwise set forth in Section 19.5.2. Notwithstanding the foregoing, before [***] may provide notice of termination of the AGREEMENT or termination of [***] shall call a special meeting of the JOINT STEERING COMMITTEE for the sole purpose of discussing the reasons for [***]. Such special meeting of the JOINT STEERING COMMITTEE shall be held [***]. At any time during the period commencing on the conclusion of such meeting up through the date that is [***].

[***] 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.

19.5.1 An "ACCEPTABLE DELAY" shall be the failure to meet a Development Diligence milestone event due to:

A. an event of force majeure as described in Section 22.1;

B. any breach by NEKTAR AL, or NEKTAR AL delay, that materially adversely affects BAXTER's ability to meet a relevant Development Diligence milestone event;

C. a dispute or disagreement in one or more of the governance committees (JOINT STEERING COMMITTEE, RESEARCH COMMITTEE, DEVELOPMENT AND PRODUCTION COMMITTEE) which is [***];

D. a regulatory requirement that comes into effect after the EFFECTIVE DATE;

E. a development issue involving safety, toxicity, efficacy or pharmacokinetics, or the ability to scale up to commercial manufacturing (including the inability to obtain commercially viable yields);

F. any other delay deemed to be an ACCEPTABLE DELAY by both PARTIES in writing, the intent of which is to be inclusive of unanticipated delays outside of the control of BAXTER; or

G. [***] in accordance with the timelines set forth in the RESEARCH PLAN, [***].

[***] 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 the event the PARTIES cannot agree whether a delay is outside the control of BAXTER and deemed an ACCEPTABLE DELAY, (i) either PARTY may refer the matter to the JOINT STEERING COMMITTEE for resolution, (ii) if the JOINT STEERING COMMITTEE cannot resolve such matter within [***], then the matter shall be sent to the PARTIES' [***] for resolutions, (iii) if [***], then the PARTIES shall refer the matter to a [***] and/or significant professional experience with respect to the specific subject matter under dispute, such professional shall make a determination within [***] of being selected by the PARTIES and such professional's determination shall be conclusive and binding on the PARTIES.

In the case of an ACCEPTABLE DELAY, and except as otherwise set forth in Section 19.5.1(G), the [***]. In the event [***] due to one or more of these events, the [***].

(i) [***];

(ii) [***];

(iii) [***];

(iv) [***].

19.5.2 If, at the time that [***] elects to exercise its rights to terminate this AGREEMENT [***] solely for the treatment of [***]. In such event, the following shall occur:

(i) The definition of "FIELD" in Section 1.26 shall automatically be narrowed to consist only of [***] for use alone for the treatment of [***];

(ii) The definition of "THERAPEUTIC AGENT" shall automatically be limited to [***];

(iii) [***]; and

(iv) All royalty and milestone provisions applicable to such POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS shall remain in effect.

[***] 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.

19.6 TERMINATION ON CHALLENGE. [***] may terminate this AGREEMENT by giving written notice to [***] challenging the validity of any of the [***]; provided that [***] may not exercise such termination rights if [***] (whether under contract or other legal theory) [***] allege in defense of such claim or action that the COMMERCIAL PRODUCT does not infringe a VALID PATENT CLAIM.

19.7 EFFECT OF TERMINATION.

19.7.1 The provisions of Articles [***] (and in each case together with any defined terms applicable to such provisions) shall survive expiration or termination of this AGREEMENT for any reason whatsoever.

19.7.2 Notwithstanding anything in this AGREEMENT to the contrary, if this AGREEMENT is terminated for any reason other than for cause [***]:

A. [***];

B. [***];

C. BAXTER shall pay NEKTAR AL all earned milestone payments and accrued royalties in accordance with the terms of this AGREEMENT;

D. [***] Subject to the foregoing, if this AGREEMENT is terminated for any reason whatsoever, any licenses and sublicenses granted under this AGREEMENT shall automatically terminate and all licensed rights shall revert in their entirety to the respective licensor; and

E. Termination of this AGREEMENT 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, subject to the limitations and exclusions that are provided for in this AGREEMENT.

[***] 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.

19.7.3 If this AGREEMENT is terminated by [***], then on the effective date of such termination, [***], including any of the intellectual property rights therein, including any JOINT PATENT APPLICATIONS and JOINT PATENTS covering such JOINTLY OWNED TECHNOLOGY. As of the effective date of such termination, [***] shall have the sole right, as between NEKTAR AL and BAXTER, to bring actions against THIRD PARTIES arising from such THIRD PARTIES' infringement or misappropriation of JOINTLY OWNED TECHNOLOGY. [***].

19.7.4 In the event of a BANKRUPTCY PROCEEDING, NEKTAR AL hereby agrees to grant and hereby grants to BAXTER and its AFFILIATES, and the PARTIES agree that this AGREEMENT shall be deemed an executory contract and that BAXTER and its AFFILIATES shall be deemed to retain, an exclusive, perpetual, non-cancelable, license, with rights to sublicense as provided for herein, in the FIELD under the NEKTAR AL LICENSED TECHNOLOGY to develop, make, have made, import, export, use, sell and have sold POTENTIAL PRODUCTS and COMMERCIAL PRODUCT(S) in the FIELD; provided that BAXTER shall continue to fulfill its MILESTONES and royalty payment obligations under this AGREEMENT. BAXTER agrees to pay NEKTAR AL, or any trustee, in such BANKRUPTCY PROCEEDING a royalty for such a license equivalent to the license royalty provision provided in this AGREEMENT. In addition to the surviving Sections in Section 19.7.1, Sections 9.2, 9.3, 9.5 and 9.6 shall survive termination or expiration of this Agreement.

[***] 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.

19.7.5 TERMINATION FEE. If this AGREEMENT is terminated by BAXTER under Section 19.2, BAXTER shall pay to NEKTAR AL a termination fee ("TERMINATION FEE") within [***] after the effective date of such termination as follows: (i) if such termination occurs prior to the payment to NEKTAR AL of all of the [***], then the TERMINATION FEE shall be equal to [***], (ii) if such termination occurs after payment to NEKTAR AL of all of the [***], then the TERMINATION FEE shall be [***]; (iii) if such termination occurs after the successful completion of the [***], then the TERMINATION FEE shall be [***]; and (iv) if such termination occurs after the successful completion of the [***], then the TERMINATION FEE shall be [***]. In addition to the foregoing and, if applicable, if a COMMERCIAL PRODUCT is not launched within [***] after the date on which [***]. Notwithstanding the foregoing, if BAXTER terminates the AGREEMENT under Section 19.2 due to a COMMERCIAL FAILURE, the TERMINATION FEE [***]. "COMMERCIAL FAILURE" means:

(i) [***];

(ii) [***];

(iii) [***];

(iv) [***];

(v) [***];

(vi) [***].

For clarity, if this AGREEMENT is terminated by BAXTER in connection with a COMMERCIAL FAILURE, there shall be [***].

[***] 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.

20. ASSIGNMENT

Unless otherwise expressly permitted hereunder, neither PARTY may assign any of its rights or delegate any of its duties under this AGREEMENT without the prior written consent of the other PARTY, except that either PARTY may assign any or all of its rights and/or responsibilities hereunder without the other PARTY'S consent as part of: (i) the sale of all or substantially all of the assets or the entire business to which this AGREEMENT relates, (ii) a merger, consolidation, reorganization or other combination with or into another person or entity; or (iii) the transfer or assignment to an AFFILIATE, in each case, pursuant to which the surviving entity or assignee assumes the assigning or merging PARTY'S obligations hereunder. Any assignment made in violation of this Article 20 shall be null and void.

21. NOTICES

Wherever notice is required or permitted hereunder, it shall be by personal delivery, first class mail, overnight delivery service, or sent by facsimile transmission, with electronic confirmation, properly directed to the PARTY at its address and contact information listed below. Said address and contact information may be changed from time to time by similar written notice.

If to BAXTER, addressed to:
Baxter Healthcare Corporation One
Baxter Parkway
Deerfield, Illinois 60015
Attention: [***]
Telephone: [***]
Facsimile: [***]

[***] 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.

Baxter Healthcare SA
CH-8304 Wallisellen
Zurich, Switzerland
Attention: [***]
Telephone: [***]
Facsimile: [***]

With copies to:

Baxter Healthcare Corporation
One Baxter Parkway
Deerfield Illinois 60015
Attention: [***]
Telephone: [***]
Facsimile: [***]

Baxter Healthcare SA
CH-8304 Wallisellen
Zurich, Switzerland
Attention: [***]
Telephone: [***]
Facsimile: [***]

If to NEKTAR AL, addressed to:

NEKTAR Therapeutics AL, Corporation
1112 Church Street
Huntsville, AL 35801
Attention: [***]
Facsimile: [***]

With a copy to: [***]

Nektar Therapeutics
150 Industrial Road
San Carlos, CA 94070-6256
Attention: [***]
Facsimile: [***]

[***] 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.

22. MISCELLANEOUS

22.1 FORCE MAJEURE. Except for each PARTY's confidentiality and indemnity obligations, the obligations of either PARTY under this AGREEMENT shall be excused during each period of delay caused by matters such as acts of God, strikes, supplier delays, failure of utilities or common carriers, shortages of raw materials, government orders, sufferance of or voluntary compliance with acts of government or governmental regulation, or acts of war or terrorism, which are reasonably beyond the control of the PARTY obligated to perform. Force majeure shall not include a lack of funds, bankruptcy or other financial cause or disadvantage, and force majeure shall not excuse or delay any PARTY'S payment obligations under this AGREEMENT. Nothing contained in this AGREEMENT shall affect either PARTY's ability or discretion regarding any strike or other employee dispute or disturbance and all such strikes, disputes or disturbances shall be deemed to be beyond the control of such PARTY. A condition of force majeure shall be deemed to continue only so long as the affected PARTY shall be taking all reasonable actions necessary to overcome such condition. If either PARTY shall be affected by a condition of force majeure, such PARTY shall give the other PARTY prompt notice thereof, which notice shall contain the affected PARTY'S estimate of the duration of such condition and a description of the steps being taken or proposed to be taken to overcome such condition of force majeure. Any delay occasioned by any such cause shall not constitute a default, breach or failure under this AGREEMENT, and the obligations of the PARTIES shall be suspended during the period of delay so occasioned. During any period of force majeure, the PARTY that is not directly affected by such condition of force majeure may take any reasonable action necessary to mitigate the effects of such condition of force majeure.

[***] 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.

22.2 SEVERABILITY. All the terms and provisions of this AGREEMENT are distinct and severable, and if any term or provision is held unenforceable, illegal or void in whole or in part by any court, regulatory authority or other competent authority it shall to that extent be deemed not to form part of this AGREEMENT, and the enforceability, legality and validity of the remainder of this AGREEMENT shall not be affected thereby.

22.3 VARIATION. This AGREEMENT may not be amended, varied or modified in any manner except by an instrument in writing signed by a duly authorized officer or representative of each PARTY hereto.

22.4 FORBEARANCE AND WAIVER. No waiver by a PARTY in respect of any breach shall operate as a waiver in respect of any subsequent breach. No forbearance, failure or delay by a PARTY in exercising any right or remedy shall operate as a waiver thereof, nor shall any single or partial forbearance, exercise or waiver of any right or remedy prejudice its further exercise of any right or remedy under this AGREEMENT or at LAW.

22.5 COUNTERPARTS; FACSIMILE. This AGREEMENT may be executed in more than one counterpart, each of which constitutes an original and all of which together shall constitute one enforceable agreement. For purposes of this AGREEMENT and any other document required to be delivered pursuant to this AGREEMENT, facsimiles of signatures shall be deemed to be original signatures. In addition, if any of the PARTIES sign facsimile copies of this AGREEMENT, such copies shall be deemed originals.

[***] 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.

22.6 NO PARTNERSHIP. The relationship of the PARTIES is that of independent contractors and this AGREEMENT shall not operate so as to create a partnership or joint venture of any kind between the PARTIES.

22.7 CONSTRUCTION. The PARTIES have participated jointly in the negotiation and drafting of this AGREEMENT. In the event that an ambiguity or question of intent or interpretation arises, this AGREEMENT shall be construed as if drafted jointly by the PARTIES and no presumption or burden of proof shall arise favoring or disfavoring any PARTY by virtue of the authorship of any of the provisions of this AGREEMENT. Except where the context otherwise requires, where used, the singular shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders and the word "or" is used in the inclusive sense (and/or). The captions of this AGREEMENT are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this AGREEMENT or the intent of any provision contained in this AGREEMENT. The term "includes" and "including" as used herein means including, but not limited to.

22.8 ENTIRE AGREEMENT. This AGREEMENT and the Schedules and Exhibit attached hereto constitute the entire understanding between the PARTIES and supersedes any prior or contemporaneous written or oral understanding, negotiations or agreements between and among them respecting the subject matter hereof. This AGREEMENT may not be modified or amended other than by a writing signed by both PARTIES' duly authorized officers. This AGREEMENT shall be binding upon, and inure to the benefit of, the PARTIES and their respective successors and assigns.

[***] 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.

22.9 GOVERNING LAW. This AGREEMENT shall be governed by and construed in accordance with the LAWS of the State of California 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 California. The PARTIES submit to the personal jurisdiction of such courts for any such action, agree that such courts provide a convenient forum for any such action, and waive any objections or challenges to venue with respect to such courts.

22.10 PUBLICITY. Neither PARTY shall make any public announcement concerning this AGREEMENT without the prior written consent of the other PARTY, unless counsel to such PARTY advises that such announcement or statement may be required by LAW (including applicable stock exchange rule). In the case of an announcement required by LAW, the other PARTY shall be advised in advance and both PARTIES shall use good faith efforts to cause a mutually agreeable announcement to be issued in a timely basis. Notwithstanding the foregoing, NEKTAR AL and BAXTER shall prepare and issue a joint press release acceptable to both PARTIES announcing the relationship created under this AGREEMENT.

[Signature Page Follows.]

[***] 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 their authorized representatives to execute this AGREEMENT by signing below:

Signed:

For and on behalf of:
NEKTAR Therapeutics AL, Corporation

Signature [***]
Name: [***]
Title: [***]

For and on behalf of:
Baxter Healthcare Corporation

Signature [***]
Name: [***]
Title: [***]

For and on behalf of:
Baxter Healthcare SA

Signature [***]
Name: [***]
Title: [***]

[***] 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.

AMENDMENT NO. 1 TO EXCLUSIVE RESEARCH, DEVELOPMENT, LICENSE AND MANUFACTURING AND SUPPLY AGREEMENT

This Amendment No. 1 to Exclusive Research, Development, License and Manufacturing and Supply Agreement (the "Amendment") is made and entered into effective as of October 19, 2005 (the "Effective Date of the Amendment"), by and between Nektar Therapeutics AL, Corporation, ("Nektar") and Baxter Healthcare SA and Baxter Healthcare Corporation (collectively, "Baxter"). Nektar and Baxter may be referred to herein as a "Party" or, collectively, as "Parties."

RECITALS

WHEREAS, Nektar and Baxter are parties to an Exclusive Research, Development, License and Manufacturing and Supply Agreement dated September 26, 2005 (the "Agreement"); and

WHEREAS, the Parties desire to amend the Agreement;

NOW, THEREFORE, the Parties agree as follows:

Amendment of the Agreement

The Parties hereby agree to amend the Agreement as of the Effective Date of the Amendment as provided below. Capitalized terms used in this Amendment that are not otherwise defined herein shall have the meanings provided in the Agreement.

1. The first sentence of Section 3.1 of the Agreement is hereby amended and restated in its entirety to read as follows: "To facilitate communication between the PARTIES, implement the RESEARCH PLAN and oversee development of POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS (all during the TERM), the PARTIES shall appoint a JOINT STEERING COMMITTEE consisting of [***] representatives from each of NEKTAR AL and BAXTER. The initial representatives are:

BAXTER: [***]

NEKTAR AL: [***]

and the initial meeting of the JOINT STEERING COMMITTEE shall take place no later than [***] after the EFFECTIVE DATE."

[***] 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.

2. For clarification purposes only, [***] to the Agreement is hereby amended by the addition of the following language to the introductory paragraph thereof:

"[***] defined below as [***] shall be a [***], as provided for in the [***] of this Agreement."

2. Miscellaneous

a. **Full Force and Effect.** Except as expressly amended by this Amendment, the Agreement shall remain unchanged and continue in full force and effect as provided therein.

b. **Entire Agreement of the Parties.** This Amendment and the Agreement constitute the complete final and exclusive understanding and agreement of the Parties with respect to the subject matter of the Agreement, and supersede any and all prior or contemporaneous negotiations, correspondence, understandings and agreements, whether oral or written, between the Parties respecting the subject matter of the Agreement.

c. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment in duplicate originals by their authorized officers as of the Effective Date of the Amendment.

ACCEPTED AND AGREED,

NEKTAR THERAPEUTICS AL, CORPORATION

By: [***]

Name: [***]

Title: [***]

BAXTER HEALTHCARE CORPORATION

By: [***]

Name: [***]

Title: [***]

BAXTER HEALTHCARE SA

By: [***]

Name: [***]

Title: [***]

[***] 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.

AMENDMENT NO. 2 TO EXCLUSIVE RESEARCH, DEVELOPMENT, LICENSE AND MANUFACTURING AND SUPPLY AGREEMENT

This Amendment No. 2 to Exclusive Research, Development, License and Manufacturing and Supply Agreement (the "Amendment") is made and entered into effective as of December 14, 2005 (the "Effective Date of the Amendment"), by and between Nektar Therapeutics AL, Corp., an Alabama corporation ("NEKTAR") and Baxter Healthcare SA and Baxter Healthcare Corp., (collectively, "BAXTER"). NEKTAR and BAXTER may be referred to herein as a "Party" or, collectively, as "Parties."

RECITALS

WHEREAS, NEKTAR and BAXTER are parties to an Exclusive Research, Development, License and Manufacturing and Supply Agreement dated September 26, 2005, as amended (the "Agreement"); and

WHEREAS, the Parties desire to further amend the Agreement;

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

Amendment of the Agreement

The Parties hereby agree to amend the Agreement as of the Effective Date of the Amendment as provided below. Capitalized terms used in this Amendment that are not otherwise defined herein shall have the meanings provided in the Agreement.

1. A new Section 2.8 is hereby added to the Agreement as follows:

"The PARTIES have agreed to amend the RESEARCH PLAN attached to the Agreement as Schedule 1, [***] (the "Amended Research Plan"). As more fully described in the Amended Research Plan, the RESEARCH COMMITTEE is expanding the RESEARCH PLAN [***]. [***] have been approved [***] and will provide [***] without affecting the RESEARCH PLAN that has already been agreed to by the Parties and attached to the Agreement as Schedule 1, [***], as set forth hereinbelow, solely for the purpose [***] shall, for purposes of this Amendment, be referred to as the [***].

Prior to initiating the [***], BAXTER will evaluate the [***]. As already provided for in the RESEARCH PLAN that has already been agreed to by the Parties and attached to the Agreement as Schedule 1, [***], will also proceed with [***]. If agreed by the RESEARCH COMMITTEE, [***].

[***] 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.

Pursuant to the Amended Research Plan, (i) NEKTAR has agreed to and shall [***]; (ii) BAXTER shall use such [***] for the sole purpose of making a [***]; and (iii) BAXTER shall use such [***] for the sole purpose of conducting [***] as provided for in the Amended Research Plan. In view of the foregoing, it is further agreed that:

(a) [***] under the Agreement;

(b) [***] of the Agreement; and

(c) [***] as of the EFFECTIVE DATE of the Agreement.

In addition to the foregoing, it is understood and agreed that [***] as provided for in the Amended Research Plan.

BAXTER further agrees to disclose in writing to NEKTAR all INVENTIONS arising from its activities under the Amended Research Plan (including those activities relating to manufacture and/or use of the [***]) as required by and pursuant to Section 16.2 of the Agreement. Moreover, through the RESEARCH COMMITTEE, BAXTER shall share with NEKTAR data relating to such activities under the Amended Research Plan as required by and pursuant to Section 3.2 of the Agreement.

It is understood and agreed that other than as specifically provided for in the Agreement, and herein and in the Amended Research Plan, [***], and carried out under and in accordance with the RESEARCH PLAN and the Agreement.

Notwithstanding anything herein to the contrary, [***] pursuant to the Agreement.

2. Miscellaneous

a. **Full Force and Effect.** Except as expressly amended by this Amendment, the Agreement shall remain unchanged and continue in full force and effect as provided therein.

b. **Entire Agreement of the Parties.** This Amendment and the Agreement constitute the complete final and exclusive understanding and agreement of the Parties with respect to the subject matter of the Agreement, and supersede any and all prior or contemporaneous negotiations, correspondence, understandings and agreements, whether oral or written, between the Parties respecting the subject matter of the Agreement.

c. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[***] 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 executed this Amendment in duplicate originals by their authorized officers as of the Effective Date of the Amendment.

ACCEPTED AND AGREED,

NEKTAR THERAPEUTICS, AL

By: [***]

Name: [***]

Title: [***]

BAXTER HEALTHCARE CORPORATION

By: [***]

Name: [***]

Title: [***]

BAXTER HEALTHCARE SA

By: [***]

Name: [***]

Title: [***]

By: [***]

Name: [***]

Title: [***]

[***] 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.

AMENDMENT NO. 3 TO EXCLUSIVE RESEARCH, DEVELOPMENT, LICENSE AND MANUFACTURING AND SUPPLY AGREEMENT

This Amendment No. 3 to Exclusive Research, Development, License and Manufacturing and Supply Agreement (the "Amendment") is made and entered into effective as of December 17, 2007 (the "Effective Date of the Amendment"), by and between Nektar Therapeutics AL, Corp., an Alabama corporation ("Nektar AL") and Baxter Healthcare SA and Baxter Healthcare Corp., (collectively, "Baxter"). NEKTAR and BAXTER may be referred to herein as a "Party" or, collectively, as "Parties."

RECITALS

WHEREAS, NEKTAR AL and BAXTER are parties to an Exclusive Research, Development, License and Manufacturing and Supply Agreement dated September 26, 2005, as amended (the "Agreement"); and

WHEREAS, the Parties desire to further amend the Agreement;

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Amendment and in accordance with and subject to the terms and conditions specified below the Parties agree as follows:

Amendment of the Agreement

The Parties hereby agree to amend the Agreement as of the Effective Date of the Amendment as provided below. Capitalized terms used in this Amendment that are not otherwise defined herein shall have the meanings provided in the Agreement.

Any references to [***] up to but not including the sentence that begins with the words "[***], shall (as applicable) include the [***].

[***] 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.

All references to 'the Agreement' contained in any Section or subsection of the Agreement shall mean 'the Agreement (as amended)'.

Section 1.26 is hereby deleted in its entirety and replaced by the following:

""FIELD" means [***], either for use alone for the treatment of [***], in the treatment of [***]; PEGYLATED FACTOR VIII for the treatment of Hemophilia A; [***] for the treatment of [***] and/or [***]; and/or PEGYLATED FACTOR IX for the treatment of Hemophilia B."

Section 1.46 is hereby deleted in its entirety and replaced by the following:

""NEKTAR AL KNOW-HOW" means all [***]."

Section 1.54 is hereby deleted in its entirety and replaced by the following:

"NON-DISCLOSURE AGREEMENTS" means that agreement entered into between the PARTIES on [***], providing for confidential treatment of the PARTIES' information, and those agreements entered into between the PARTIES on [***], providing for confidential treatment of the PARTES' information."

Section 1.62 is hereby deleted in its entirety and replaced by the following:

"POTENTIAL PRODUCT" means [***] FACTOR VIII or FACTOR IX, [***] FACTOR VIII or FACTOR IX, [***]."

A new Section 1.68.A. is hereby added as follows:

"PEG-FIX RESEARCH PLAN" means the PARTIES' respective activities and responsibilities as set forth in the research plan attached hereto as Schedule I-A, as amended and revised by the RESEARCH COMMITTEE from time to time".

The first sentence of Section 1.70 is hereby amended as follows:

"ROYALTY RATE" for COMMERCIAL PRODUCTS [***] means the following:

(i) [***] of all COMMERCIAL PRODUCTS sold in the TERRITORY in a calendar year;

(ii) [***] of all COMMERCIAL PRODUCTS sold in the TERRITORY in such calendar year; and

(iii) [***] of all COMMERCIAL PRODUCTS sold in the TERRITORY in such calendar year [***]."

[***] 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.

Section 1.80 is hereby deleted in its entirety and replaced by the following:

"THERAPEUTIC AGENT" means [***],FACTOR VIII OR FACTOR IX [***]."

Section 1.82 is hereby deleted in its entirety and replaced by the following:

"VALID PATENT CLAIM" means [***]."

A new Section 1.84 is hereby added as follows:

""FACTOR IX" means a compound that is a Factor IX [***]."

A new Section 1.85 is hereby added as follows:

"ROYALTY RATE" for COMMERCIAL PRODUCTS [***], means the following:

(i) [***] of the [***] of all COMMERCIAL PRODUCTS sold in the TERRITORY in such calendar year;

(ii) [***] of the [***] of all COMMERCIAL PRODUCTS sold in the TERRITORY in such calendar year; and

(iii) [***] of all COMMERCIAL PRODUCTS sold in the TERRITORY in such calendar year [***]."

Section 2.1 is hereby deleted in its entirety and replaced by the following:

"OVERVIEW. The PARTIES' research and development responsibilities are set forth in the RESEARCH PLAN and/or the PEG-FIX RESEARCH PLAN (as applicable) each of which shall be an evolving document that is updated and revised from time to time in writing by the RESEARCH COMMITTEE.

[***] 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.

As decided by the RESEARCH COMMITTEE provided for in Section 3.2, and provided that [***] (with respect to the PEG-FIX RESEARCH PLAN) each in a timely manner in accordance with the time frames set forth in the RESEARCH PLAN or the PEG-FIX RESEARCH PLAN (as applicable) as provided for herein, NEKTAR AL shall, in a timely manner in accordance with the time frames set forth in the RESEARCH PLAN or the PEG-FIX RESEARCH PLAN (as applicable), [***]. BAXTER shall, in a timely manner in accordance with the time frames set forth in the RESEARCH PLAN and the PEG-FIX RESEARCH PLAN (as applicable), provide NEKTAR AL with [***].

NEKTAR AL shall use commercially reasonable efforts to collaborate and cooperate with BAXTER in researching and developing CONJUGATES and REAGENTS (including SELECTED REAGENTS) to be utilized in developing POTENTIAL PRODUCTS pursuant to the RESEARCH PLAN and the PEG-FIX RESEARCH PLAN, as each may be amended from time to time. Initially, [***]. After the RESEARCH COMMITTEE selects one or more CONJUGATES to develop into POTENTIAL PRODUCTS, the REAGENT that is used to make each such CONJUGATE shall be deemed a SELECTED REAGENT hereunder, and [***], as set forth in [***] below.

BAXTER is responsible for the development of POTENTIAL PRODUCTS after receipt of the CONJUGATES and SELECTED REAGENTS, in accordance with the RESEARCH PLAN and/or the PEG-FIX RESEARCH PLAN (as applicable), and [***].

For clarity, [***]. During such clinical trials, or in the event of the cancellation or failure of any such clinical trials, [***]."

A new Section 2.2.1 is hereby added as follows:

"NEKTAR AL PAYMENTS. For clarity, Section 2.2 shall apply only with respect to NEKTAR AL'S activities in relation to [***] PEGYLATED FACTOR VIII [***] and this Section 2.2.1 shall apply only with respect to NEKTAR AL'S activities in relation to PEGYLATED FACTOR IX. Accordingly, in addition to the MILESTONES and royalties to be paid by BAXTER to NEKTAR AL under the AGREEMENT, BAXTER shall reimburse NEKTAR AL for those activities directly incurred and solely associated with the research, development and/or manufacture of CONJUGATES and REAGENTS (including SELECTED REAGENTS) for PEGYLATED FACTOR IX at the applicable FTE rate as described in the immediately following paragraph.

The applicable FTE rate (which includes time, standard supplies and material) shall be charged and invoiced at [***] for each FTE per year ("PEG-FIX FTE RATE"), subject to the following increases: the PEG-FIX FTE RATE shall be adjusted each calendar year commencing with calendar year 2009 to reflect any year-to-year increase in the Consumer Price Index (CPI) (based on a cumulative index of CPI numbers starting on the Effective Date of the Amendment to the date of the calculation of such PEG-FIX FTE RATE). Moreover, for purposes of work performed by NEKTAR AL in relation to PEGYLATED FACTOR IX, one (1) FTE will equal [***].

[***] 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 addition to the foregoing, BAXTER shall reimburse NEKTAR AL for additional materials purchased by NEKTAR AL to perform its activities under the PEG-FIX RESEARCH PLAN, [***], which materials shall be equipment purchased by NEKTAR AL that is required for the performance of its activities under the PEG-FIX RESEARCH PLAN. The cost of such materials shall not exceed [***]. BAXTER shall respond to such a request by NEKTAR AL promptly, and in no event later than [***] after its receipt of such request.

NEKTAR AL shall invoice FTE costs (which includes time at the PEG-FIX FTE RATE, standard supplies and material) and costs of additional materials to BAXTER [***], which BAXTER may audit, pursuant to Section 10.2 of the AGREEMENT. For clarity, BAXTER shall pay for [***], which shall be calculated by multiplying (i) [***] pursuant to this Amendment by (ii) the quotient of (a) the PEG-FIX FTE RATE divided by (b) [***]. BAXTER shall pay the amounts set forth in each such invoice within [***] after the date thereof.

For clarity, BAXTER shall pay NEKTAR AL as provided for under this Section 2.2.1 for so long as NEKTAR AL is performing activities under the PEG-FIX RESEARCH PLAN; provided, however, that on a POTENTIAL PRODUCT-by-POTENTIAL PRODUCT basis, such [***], at which point the [***] and, thereafter, the [***] used in such POTENTIAL PRODUCT [***] of the AGREEMENT and the SUPPLY AGREEMENT.

For the avoidance of doubt, the PARTIES acknowledge that the [***] that is required to be paid by BAXTER to NEKTAR AL within [***], as set forth on Schedule II-A, is an [***] by BAXTER of the FTE costs (which includes time at the PEG-FIX FTE RATE, standard supplies and material) to be paid by BAXTER pursuant to this Section 2.2.1. Notwithstanding the foregoing, NEKTAR AL shall provide an invoice to BAXTER as required above which invoice shall set forth a calculation of the FTE costs totaling [***] and a corresponding credit for the [***]; provided, however, that such calculation shall only include a total [***].”

The first sentence of Section 2.4.2 is hereby deleted in its entirety and shall be replaced by the following:

“Any samples of [***] (collectively, the “BAXTER MATERIALS”) are owned exclusively by BAXTER and provided solely for the development of CONJUGATES and REAGENTS to extend the half-life of a particular THERAPEUTIC AGENT in conjunction with the RESEARCH PLAN or the PEG-FIX RESEARCH PLAN (as applicable), and for no other purpose.”

[***] 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.

A new Section 2.6.1 is hereby added as follows:

"SELECTION OF PEGYLATED FACTOR IX POTENTIAL PRODUCTS AND [***]. The RESEARCH COMMITTEE shall select PEGYLATED FACTOR IX POTENTIAL PRODUCT(S) from the CONJUGATES and SELECTED REAGENTS provided by NEKTAR AL under the PEG-FIX RESEARCH PLAN and, [***]."

The first paragraph of Section 3.2 is hereby deleted in its entirety and replaced by the following:

"RESEARCH COMMITTEE. The RESEARCH COMMITTEE shall be comprised of appropriate representatives of both PARTIES, initially consisting of [***] representatives from each of NEKTAR AL and BAXTER. Each PARTY shall appoint a RESEARCH PLAN team leader (and other key contacts, as necessary) to serve as principal RESEARCH COMMITTEE liaisons for the PARTIES. Employees of each PARTY who are not on the RESEARCH COMMITTEE may attend meetings of the RESEARCH COMMITTEE, as required to further the research and development of POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS. The initial team leader and PARTY representatives are:

BAXTER: (1) [***]

NEKTAR AL: (1) [***]."

A new Section 3.6 is hereby added as follows:

"3.6.1 [***].

3.6.2 Disbanding of Committees. [***], the PARTIES shall have the right to disband any committee upon mutual agreement. Additionally, to the extent the applicable committee is not disbanded, such committees shall be automatically disbanded, as applicable, as set forth below:

(i) The JOINT STEERING COMMITTEE shall be automatically disbanded upon [***].

(ii) The DEVELOPMENT AND PRODUCTION COMMITTEE shall be automatically disbanded when [***].

(iii) The RESEARCH COMMITTEE shall be automatically disbanded upon [***].

[***] 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.

3.6.3 Decision Making After [***] or Disbanding of Committees. If [***], or if a committee is disbanded pursuant to Section 3.6.2, then after such [***] disbanding, the following shall apply to decisions formerly within the jurisdiction of the committee(s) [***] or that has been disbanded:

(a) Decisions formerly within the jurisdiction of the JOINT STEERING COMMITTEE shall be submitted for resolution by senior officers of each PARTY, subject to the decision making processes and principles set forth in Section 3.1 applied to decisions to be made by such senior officers rather than to decisions to be made by the JOINT STEERING COMMITTEE.

(b) Decisions formerly within the jurisdiction of the DEVELOPMENT AND PRODUCTION COMMITTEE shall be submitted for resolution by the JOINT STEERING COMMITTEE, if it then exists, or otherwise by senior officers appointed by each PARTY as described in Section 3.6.3(a).

(c) Decisions formerly within the jurisdiction of the RESEARCH COMMITTEE shall be submitted for resolution by the JOINT STEERING COMMITTEE, if it then exists, or otherwise by senior officers appointed by each PARTY as described in Section 3.6.3(a).

Notwithstanding the amendments to the decision making structure as set forth in this Section 3.6.3, with respect to all decisions that would have been within the jurisdiction of the Research Committee BAXTER shall retain the deciding vote pursuant to Section 3.2 of the Agreement."

Section 4.2 is hereby amended by deleting the first paragraph through subsection (iii) and replacing it with the following:

"TERMS OF SUBLICENSE. The terms of each sublicense under the license granted to BAXTER in Section 4.1 of this AGREEMENT shall provide that any sublicense shall be subject to and consistent with the terms and conditions of this AGREEMENT; provided, however, that:

(i) all royalties or other amounts due to NEKTAR AL with respect to such SUBLICENSEE'S development and/or commercialization of POTENTIAL PRODUCTS or COMMERCIAL PRODUCTS shall be collected by BAXTER and transmitted to NEKTAR AL in accordance with the payment terms set forth in Article 9.

[***] 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.

(ii) BAXTER'S grant of any sublicense shall not relieve BAXTER from any of its obligations under this AGREEMENT; and

(iii) BAXTER shall remain jointly and severally liable for any breach of a sublicense by a SUBLICENSEE."

Section 4.3 is hereby amended by deleting subsection (iii) of the first paragraph and deleting the second and third full paragraphs.

A new Section 7.2.1 is hereby added as follows:

"For clarity, Section 7.2 shall apply with respect to the activities of BAXTER, its AFFILIATES or SUBLICENSEES in relation to the development, manufacture or commercialization of POTENTIAL PRODUCTS and/or COMMERCIAL PRODUCTS utilizing (directly or indirectly) [***]. For good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by BAXTER), with respect to the activities of BAXTER, its AFFILIATES and SUBLICENSEES in relation to the development, manufacture or commercialization of [***], BAXTER agrees to partner exclusively with NEKTAR AL in the FIELD. Specifically, during the TERM, [***] other than as provided for in this Amendment or [***], anywhere in the TERRITORY. [***].

Nothing set forth in this Section 7.2.1 shall prohibit BAXTER from owning not in excess of 5% in the aggregate of any class of capital stock of any corporation if such stock is publicly traded and listed on any national or regional stock exchange or on the NASDAQ national market system or the NASDAQ Small Cap Market.

In the event that the provisions of Sections 7.1, 7.2 or 7.2.1 should ever be deemed to exceed the limitation provided by applicable law, then the PARTIES agree that such provisions shall be reformed to set forth the maximum limitations permitted."

Section 8.6.1 is hereby amended as follows:

"From the date of selection of a SELECTED REAGENT until the earlier of the date of commencement of a PIVOTAL TRIAL or the date on which the PARTIES enter into the SUPPLY AGREEMENT for such SELECTED REAGENT, BAXTER shall pay NEKTAR AL its MANUFACTURING COST [***] for each SELECTED REAGENT supplied to BAXTER [***] ("PURCHASE PRICE"). BAXTER shall be entitled to audit such MANUFACTURING COST pursuant to Section 10.2."

[***] 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.

The first paragraph of Section 9.1 (up to but excluding subsection (i)) is hereby deleted in its entirety and is replaced with the following:

"BAXTER shall pay to NEKTAR AL MILESTONES in accordance with and pursuant to the events described in Schedule II (with respect to POTENTIAL PRODUCT and/or COMMERCIAL PRODUCT ([***]) and in Schedule II-A (with respect to [***], each as the case may be. Each such applicable MILESTONE shall be payable at the time the corresponding event occurs, and due within [***] of the event triggering such MILESTONE. Except as set forth in the last paragraph of Section 2.2.1, MILESTONE payments shall not be advance payments against any royalties or other payments due and payable hereunder, but shall be in addition to any royalty or other payments due under the AGREEMENT and this Amendment. In the event BAXTER [***]."

A new Section 9.1.5 is hereby added as follows:

"[***] MILESTONES FOR THE DEVELOPMENT AND COMMERCIALIZATION OF ONE COMMERCIAL PRODUCT FOR THE TREATMENT OF HEMOPHILIA B. The MILESTONES that are provided for under Schedule II-A shall apply with respect to the first POTENTIAL PRODUCT being developed for Hemophilia B using FACTOR IX as the THERAPEUTIC AGENT that achieves each such MILESTONE, and the first COMMERCIAL PRODUCT receiving MARKETING AUTHORIZATION having a label indication for the treatment of Hemophilia B using FACTOR IX as the THERAPEUTIC AGENT. Such POTENTIAL PRODUCT and COMMERCIAL PRODUCT for the treatment of Hemophilia B using FACTOR IX as the THERAPEUTIC AGENT may be the same, but in the event they are not, [***]. For clarity, additional milestone payments may be payable by BAXTER in accordance with the provisions of Section 9.1.6.

For clarity, BAXTER or its AFFILIATE or SUBLICENSEE, at BAXTER'S discretion, shall be [***].

NEKTAR AL shall not be entitled to additional MILESTONES for additional label claims that are obtained by BAXTER or its AFFILIATE or SUBLICENSEE for then-existing COMMERCIAL PRODUCTS for the treatment of Hemophilia B using FACTOR IX as the THERAPEUTIC AGENT. [***].

For the avoidance of doubt, NEKTAR AL shall not be entitled to the payment of any MILESTONES with respect to any POTENTIAL PRODUCT or COMMERCIAL PRODUCT developed for [***] as the THERAPEUTIC AGENT, unless those milestones to be negotiated under Section 9.1.2 have not yet been paid when the MILESTONE events occur with [***]".

[***] 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.

A new Section 9.1.6 is hereby added as follows:

"ADDITIONAL MILESTONES FOR THE COMMERCIALIZATION OF MORE THAN ONE COMMERCIAL PRODUCT FOR THE TREATMENT OF HEMOPHILIA B. After the receipt of MARKETING AUTHORIZATION for the first FACTOR IX COMMERCIAL PRODUCT for the treatment of Hemophilia B (using FACTOR IX as the THERAPEUTIC AGENT), NEKTAR AL shall be entitled to receive milestone payments in addition to the MILESTONES provided for in Schedule II-A, for each additional POTENTIAL PRODUCT with a label indication for the treatment of Hemophilia B using FACTOR IX as the THERAPEUTIC AGENT, for which BAXTER or its AFFILIATE or SUBLICENSEE receives a new MARKETING AUTHORIZATION in the United States and/or European Union. With respect to any additional POTENTIAL PRODUCTS that are FACTOR IX half-life extension products, additional milestone payments shall be made upon the successful completion of a PIVOTAL TRIAL in adults for each such additional POTENTIAL PRODUCT and for each MARKETING AUTHORIZATION received in the United States and/or European Union for each such additional POTENTIAL PRODUCT. [***] for each such additional POTENTIAL PRODUCT, provided that the [***] for each such additional POTENTIAL PRODUCT [***] per POTENTIAL PRODUCT.

[***].

For the avoidance of doubt, a modified COMMERCIAL PRODUCT (including, but not limited to, modified with respect to formulation, presentation, packaging or dosage strength) shall not be considered an additional COMMERCIAL PRODUCT and NEKTAR AL shall not be entitled to any additional milestone payments pursuant to Section 9.1.2 or pursuant to Section 9.1.6 upon the commercialization of any such modified COMMERCIAL PRODUCT if such COMMERCIAL PRODUCT uses the same THERAPEUTIC AGENT and SELECTED REAGENT as the unmodified COMMERCIAL PRODUCT."

[***] 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.

The first paragraph of Section 9.2 (up to but excluding Section 9.2.1) is hereby deleted in its entirety and replaced with the following:

"ROYALTIES. With respect to COMMERCIAL PRODUCTS that either (a) contain a chemical entity resulting from attachment of [***] to a SELECTED REAGENT by means of PEGYLATION that is selected by the RESEARCH COMMITTEE, or (ii) use PEGYLATION to [***], whether by using PEGYLATION technology [***], BAXTER shall pay NEKTAR AL royalties in an amount equal to the product of the applicable ROYALTY RATE and the annual aggregate NET SALES of all such COMMERCIAL PRODUCTS on a COMMERCIAL PRODUCT-by-COMMERCIAL PRODUCT and country-by-country basis for an initial period of [***] from the FIRST COMMERCIAL SALE of the applicable COMMERCIAL PRODUCT in the applicable country (the "INITIAL ROYALTY TERM"). Royalties shall be paid during the INITIAL ROYALTY TERM in each and every country where such COMMERCIAL PRODUCT is sold, without regard to whether a VALID PATENT CLAIM covers the composition, manufacture, use, sale, offer for sale or import of the COMMERCIAL PRODUCT or the SELECTED REAGENT contained in such COMMERCIAL PRODUCT.

With respect to COMMERCIAL PRODUCTS that either (a) contain a chemical entity resulting from attachment of FACTOR IX to a SELECTED REAGENT by means of PEGYLATION that is selected by the RESEARCH COMMITTEE, or (b) use PEGYLATION to extend or otherwise improve the half-life of FACTOR IX, BAXTER shall pay NEKTAR AL royalties in an amount equal to the product of the applicable ROYALTY RATE and the annual aggregate NET SALES of all such COMMERCIAL PRODUCTS on a COMMERCIAL PRODUCT-by-COMMERCIAL PRODUCT and country-by-country basis for an initial period of [***] from the FIRST COMMERCIAL SALE of the applicable COMMERCIAL PRODUCT in the applicable country (the "PEG-FIX INITIAL ROYALTY TERM"). Royalties shall be paid during the PEG-FIX INITIAL ROYALTY TERM in each and every country where such COMMERCIAL PRODUCT is sold, without regard to whether a VALID PATENT CLAIM covers the composition, manufacture, use, sale, offer for sale or import of the COMMERCIAL PRODUCT or the SELECTED REAGENT contained in such COMMERCIAL PRODUCT."

[***] 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.

Section 9.2.1 is hereby deleted in its entirety and replaced by the following:

"After the expiration of the INITIAL ROYALTY TERM or PEG-FIX INITIAL ROYALTY TERM, as the case may be, for a particular COMMERCIAL PRODUCT in a particular country, BAXTER shall continue to pay such royalties on NET SALES of such COMMERCIAL PRODUCT on a world-wide basis provided that there exists, in each of the following major markets in which MARKETING AUTHORIZATION is received for such COMMERCIAL PRODUCT, a VALID PATENT CLAIM which would be infringed by the composition, making, using, having made, offering for sale, sale or importation of such COMMERCIAL PRODUCT or the SELECTED REAGENT contained in such COMMERCIAL PRODUCT: [***] (collectively, "MAJOR MARKETS"). Such royalties shall be paid on NET SALES of COMMERCIAL PRODUCTS in those countries where the composition, manufacture, import, use, offer for sale or sale of the applicable COMMERCIAL PRODUCT or the SELECTED REAGENT contained in such COMMERCIAL PRODUCT is not covered by a VALID PATENT CLAIM, provided that the composition, manufacture, import, use, offer for sale or sale of such applicable COMMERCIAL PRODUCT or such SELECTED REAGENT is covered by a VALID PATENT CLAIM in each of the MAJOR MARKETS. [***]."

Section 9.2.2 is hereby deleted in its entirety and replaced by the following:

"If, at the time of sale of a COMMERCIAL PRODUCT in a particular country after the expiration of the INITIAL ROYALTY TERM or PEG-FIX INITIAL ROYALTY TERM, as the case may be, in such country, there is no VALID PATENT CLAIM covering the composition, manufacture, use, import, offer for sale or sale of such COMMERCIAL PRODUCT or the SELECTED REAGENT contained in such COMMERCIAL PRODUCT in each of the MAJOR MARKETS, then BAXTER shall only owe royalties with respect to NET SALES of COMMERCIAL PRODUCTS in those countries in which a VALID PATENT CLAIM covers the composition, manufacture, use, import, offer for sale or sale of such COMMERCIAL PRODUCTS or the SELECTED REAGENT contained in such COMMERCIAL PRODUCTS in such countries. [***]."

Section 9.2.3 is hereby deleted in its entirety and replaced by the following:

"The PARTIES agree that a VALID PATENT CLAIM exists, for purposes of determining whether royalties are payable after the expiration of the INITIAL ROYALTY TERM or PEG-FIX INITIAL ROYALTY TERM, as the case may be, even if components of a COMMERCIAL PRODUCT are sold separately as more fully described in Section 9.3 below, and the only VALID PATENT CLAIM covers the composition, manufacture, use, sale, offer for sale or import of only one component of such COMMERCIAL PRODUCT ([***])."

[***] 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.

Section 9.4 is hereby deleted in its entirety and replaced by the following:

"COMMERCIAL DILIGENCE FOR COMMERCIAL PRODUCTS FOR THE TREATMENT OF HEMOPHILIA A. If, during the TERM, BAXTER sells or markets another FACTOR VIII extended half-life product using a non-PEGYLATION technology which is used to treat Hemophilia A, then BAXTER must meet the COMMERCIAL DILIGENCE THRESHOLD, as set forth below. No later than [***] after the FIRST COMMERCIAL SALE of a COMMERCIAL PRODUCT for the treatment of Hemophilia A, where [***] is the THERAPEUTIC AGENT, in each MAJOR MARKET in which MARKETING AUTHORIZATION has been obtained, the sales ([***]) of all such COMMERCIAL PRODUCTS in the aggregate shall constitute [***] of the total sales ([***]) of all FACTOR VIII extended half-life products used to treat Hemophilia A in such MAJOR MARKET (the "COMMERCIAL DILIGENCE THRESHOLD"). If sales ([***]) of such COMMERCIAL PRODUCTS, in the aggregate, do not meet the COMMERCIAL DILIGENCE THRESHOLD in such MAJOR MARKET within such timeframe, then NEKTAR AL may, [***], upon written notice to BAXTER, [***]. In the event NEKTAR AL [***], the ROYALTY RATE to which NEKTAR AL is otherwise entitled shall be [***] for all NET SALES of all COMMERCIAL PRODUCTS [***]. The terms of any such co-promotion agreement shall be negotiated in good faith by the PARTIES, and shall include minimum co-promotion requirements and shall provide that [***]."

A new Section 9.4.1 is hereby added as follows:

"COMMERCIAL DILIGENCE FOR COMMERICAL PRODUCTS FOR THE TREATMENT OF HEMOPHILIA B. If, during the TERM, BAXTER sells or markets another FACTOR IX extended half-life product using a non-PEGYLATION technology which is used to treat Hemophilia B, then BAXTER must meet the COMMERCIAL DILIGENCE THRESHOLD, as set forth below. No later than [***] after the FIRST COMMERCIAL SALE of a COMMERCIAL PRODUCT for the treatment of Hemophilia B using FACTOR IX as the THERAPEUTIC AGENT, in each MAJOR MARKET in which MARKETING AUTHORIZATION has been obtained, the sales ([***]) of all such COMMERCIAL PRODUCTS in the aggregate shall constitute [***] of the total sales ([***]) of all FACTOR IX extended half-life products used to treat Hemophilia B in such MAJOR MARKET (the "COMMERCIAL DILIGENCE THRESHOLD"). If sales ([***]) of such COMMERCIAL PRODUCTS, in the aggregate, do not meet the COMMERCIAL DILIGENCE THRESHOLD in such MAJOR MARKET within such timeframe, then NEKTAR AL may, [***], upon written notice to BAXTER, [***]. In the event NEKTAR AL [***] such FACTOR IX COMMERCIAL PRODUCTS, the ROYALTY RATE to which NEKTAR AL is otherwise entitled shall be [***] for all NET SALES of all COMMERCIAL PRODUCTS [***]. The terms of any such co-promotion agreement shall be negotiated in good faith by the PARTIES, and shall include minimum co-promotion requirements and shall provide that [***]."

[***] 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.

A new Section 9.4.2 is hereby added as follows:

"COMMERCIAL DILIGENCE FOR COMMERICIAL PRODUCTS FOR THE TREATMENT OF HEMOPHILIA A AND/OR B. If, during the TERM, BAXTER sells or markets another [***] extended half-life product [***] which is used to treat Hemophilia A and/or Hemophilia B, then BAXTER must meet the COMMERCIAL DILIGENCE THRESHOLD, as set forth below. No later than [***] after the FIRST COMMERCIAL SALE of a COMMERCIAL PRODUCT for the treatment of Hemophilia A or Hemophilia B using [***] as the THERAPEUTIC AGENT, in each MAJOR MARKET in which MARKETING AUTHORIZATION has been obtained, the sales ([***]) of all such COMMERCIAL PRODUCTS in the aggregate shall constitute [***] of the total sales ([***]) of all [***] extended half-life products used to treat Hemophilia A and/or Hemophilia B in such MAJOR MARKET (the "COMMERCIAL DILIGENCE THRESHOLD"). If sales ([***]) of such COMMERCIAL PRODUCTS, in the aggregate, do not meet the COMMERCIAL DILIGENCE THRESHOLD in such MAJOR MARKET within such timeframe, then NEKTAR AL may, [***], upon written notice to BAXTER, [***] COMMERCIAL PRODUCTS in such MAJOR MARKET. In the event NEKTAR AL [***] COMMERCIAL PRODUCTS, the ROYALTY RATE to which NEKTAR AL is otherwise entitled shall be [***] for all NET SALES of all COMMERCIAL PRODUCTS [***]. The terms of any such co-promotion agreement shall be negotiated in good faith by the PARTIES, and shall include minimum co-promotion requirements and shall provide that [***]."

A new Section 9.7 is hereby added as follows:

"OPTION TO ACQUIRE ADDITONAL LICENSE. In addition to the license granted by NEKTAR AL to BAXTER under Section 4.1, BAXTER may wish to exercise an option to enter into negotiations with NEKTAR AL to acquire an additional license (the "OPTION"). The conditions under which such OPTION may be exercised, and certain of the terms of such license, [***]. The PARTIES acknowledge and agree that the [***]."

References to NON-DISCLOSURE AGREEMENT in Article 11 are hereby made plural. Any reference to BAXTER MATERIALS and NEKTAR AL MATERIALS in Article 11 includes BAXTER FIX MATERIALS and NEKTAR AL PEG-FIX MATERIALS.

The first sentence of Section 17.2.2A. is hereby deleted in its entirety and replaced by the following:

"NEKTAR AL shall have the right, but not the obligation, to carry out actions against THIRD PARTIES arising from such THIRD PARTIES' infringement or misappropriation of NEKTAR AL LICENSED TECHNOLOGY covering the composition, manufacture, use, import, offer for sale or sale of a SELECTED REAGENT."

[***] 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.

Section 19.2 is hereby deleted in its entirety and replaced by the following:

"DISCRETIONARY TERMINATION. BAXTER may terminate this AGREEMENT

(i) in its entirety, other than pursuant to any other provision of this AGREEMENT, at any time, without any liability other than payment of the TERMINATION FEES, if applicable, payable in accordance with both Sections 19.7.5 and 19.7.6, upon [***] to NEKTAR AL;

(ii) in part, upon [***] to NEKTAR AL, with respect to the development and/or commercialization of POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS utilizing (directly or indirectly) [***], other than pursuant to any other provision of this AGREEMENT, at any time, without any liability other than payment of the TERMINATION FEE, if applicable, payable in accordance with Section 19.7.5; or

(iii) in part, upon [***] to NEKTAR AL, with respect to the development and/or commercialization of POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS utilizing (directly or indirectly) [***], other than pursuant to any other provision of this AGREEMENT, at any time, without any liability other than payment of the TERMINATION FEE, if applicable, payable in accordance with Section 19.7.6."

Section 19.3 is hereby amended by adding the following to the end of the existing text:

"Notwithstanding the foregoing, if the failure to comply relates [***], the non-breaching party may only terminate the AGREEMENT in part with respect to all of the THERAPEUTIC AGENTS specified in (a), ***or*** with respect to the THERAPETIC AGENT specified in (b). If the failure to comply relates to ***both*** (c) [***], the non-breaching party [***]."

The first two paragraphs of Section 19.5 are hereby deleted in their entirety and replaced by the following:

"In the event [***] (each such failure to meet and lack of extension hereinafter referred to as a "DILIGENCE DEFECT"), then [***]:

(i) at its option, terminate this AGREEMENT in part with respect to [***], if the DILIGENCE DEFECT relates to a Development Diligence milestone set forth in Schedule IV;

[***] 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.

(ii) at its option, terminate this AGREEMENT in part with respect to [***], if the DILIGENCE DEFECT relates to a Development Diligence milestone set forth in Schedule IV-A; or

(iii) at its option, terminate this AGREEMENT [***] DILIGENCE DEFECT relating to a Development Diligence milestone set forth in Schedule IV and a DILIGENCE DEFECT relating to a Development Diligence milestone set forth in Schedule IV-A.

In the event [***], Section 7.1 shall no longer apply with respect to that portion of the AGREEMENT and those THERAPEUTIC AGENTS that have been so [***], but the royalties and MILESTONES provided for herein shall continue to apply except as otherwise set forth in Section 19.5.2. Notwithstanding the foregoing, before [***] under this Section 19.5, [***] shall call a special meeting of the JOINT STEERING COMMITTEE for the [***]. Such special meeting of the JOINT STEERING COMMITTEE shall be held as soon as practicable, but in no event later than [***] from the date on which [***] requests such meeting. At any time during the period commencing on the conclusion of such meeting up through the date that is [***] and [***] after the applicable milestone date, [***]. Thereafter, [***] to either cure (by meeting such Development Diligence milestone event) or to extend the milestone date by the duration of the applicable extension period set forth in Schedule IV or Schedule IV-A (as applicable), by providing written notice of its intent to extend and by paying the applicable extension payment within [***] thereafter. For clarity, the extension period shall commence at the end of the [***]."

Subsection G. of Section 19.5.1 is hereby deleted its entirety and replaced by the following:

"G. [***]."

A new Section 19.7.6 is hereby added as follows:

"For clarity, Section 19.7.5 shall apply with respect to termination of the AGREEMENT by BAXTER in its entirety pursuant to Section 19.2(i) or in part under Section 19.2(ii). If BAXTER terminates the AGREEMENT in its entirety pursuant to Section 19.2(i) or in part under Section 19.2(iii), or if NEKTAR AL terminates the AGREEMENT in its entirety or in part (with respect to FACTOR IX) under Section 19.3(b), or if NEKTAR AL terminates the AGREEMENT in part ([***], then BAXTER shall pay to NEKTAR AL a termination fee ("PEG-FIX TERMINATION FEE") within [***] after the effective date of such termination as follows:

(a) If termination occurs after the [***], BAXTER shall pay NEKTAR AL a PEG-FIX TERMINATION FEE of [***];

[***] 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.

(b) If termination occurs after the [***], BAXTER shall pay NEKTAR AL a PEG-FIX TERMINATION FEE of [***]; and

(c) If termination occurs after the [***], BAXTER shall pay NEKTAR AL a PEG-FIX TERMINATION FEE of [***].

If BAXTER terminates the AGREEMENT in its entirety under Section 19.2(i), BAXTER shall pay NEKTAR AL both the TERMINATION FEE due and owing to NEKTAR AL under Section 19.7.5, and the PEG-FIX TERMINATION FEE due and owing to NEKTAR AL under this Section 19.7.6. If NEKTAR AL terminates the AGREEMENT in its entirety under Section 19.3, BAXTER shall pay NEKTAR AL [***]. If NEKTAR AL terminates the AGREEMENT in part under Section 19.3(a) ([***]), BAXTER shall pay NEKTAR AL [***]. If NEKTAR AL terminates the AGREEMENT in part under Section 19.3(b) ([***]), BAXTER shall pay NEKTAR AL [***].

Notwithstanding the foregoing, if BAXTER terminates the AGREEMENT in part under Section 19.2(iii) due to a COMMERCIAL FAILURE, the TERMINATION FEE set forth in this Section 19.7.6 [***]. "COMMERCIAL FAILURE" means:

(i) [***], as defined by the RESEARCH COMMITTEE;

(ii) [***];

(iii) [***];

(iv) [***];

(v) [***];

(vi) [***].

For clarity, if the AGREEMENT is terminated by BAXTER in part under Section 19.2(iii) due to a COMMERCIAL FAILURE, there shall be [***]."

[***] 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.

Miscellaneous

a. **Full Force and Effect.** Except as expressly amended by this Amendment, the AGREEMENT shall remain unchanged and continue in full force and effect as provided therein.

b. **Entire Agreement of the Parties.** This Amendment and the AGREEMENT constitute the complete final and exclusive understanding and agreement of the PARTIES with respect to the subject matter of the AGREEMENT, and supersede any and all prior or contemporaneous negotiations, correspondence, understandings and agreements, whether oral or written, between the PARTIES respecting the subject matter of the AGREEMENT.

c. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. One or more counterparts of this Amendment may be executed my facsimile or other electronic means.

[Signature Page Follows]

[***] 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.

[Signature Page to Amendment No. 3]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate originals by their authorized officers as of the Effective Date of the Amendment.

ACCEPTED AND AGREED,

NEKTAR THERAPEUTICS AL, CORP.

By: [***]
Signature
Name: [***]
Printed
Title: [***]

BAXTER HEALTHCARE SA

By: [***]
Signature
Name: [***]
Printed
Title: [***]

BAXTER HEALTHCARE CORPORATION

By: [***]
Signature
Name: [***]
Printed
Title: [***]

By: [***]
Signature
Name: [***]
Printed
Title: [***]

[***] 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.

*****Text Omitted and Filed Separately with the Securities and Exchange Commission. Confidential Treatment Requested Under 17 C.F.R. Sections 200.80(b)(4) and 240.24b-2**

Execution Copy

AMENDMENT NO. 4 TO EXCLUSIVE RESEARCH, DEVELOPMENT, LICENSE AND MANUFACTURING AND SUPPLY AGREEMENT

This Amendment No. 4 to Exclusive Research, Development, License and Manufacturing and Supply Agreement (the "Amendment") is made and entered into and is effective as of 11:59 pm on December 31, 2008 (the "Effective Date of Amendment No. 4), by and between Nektar Therapeutics AL, Corp., an Alabama corporation ("Nektar AL") and Baxter Healthcare SA and Baxter Healthcare Corp., (collectively, "Baxter"). NEKTAR and BAXTER may be referred to herein as a "Party" or, collectively, as "Parties."

RECITALS

WHEREAS, NEKTAR AL and BAXTER are parties to an Exclusive Research, Development, License and Manufacturing and Supply Agreement dated as of September 26, 2005, and amended as of October 19, 2005, December 14, 2005, and December 17, 2007 (the "Agreement"); and

WHEREAS, the Parties desire to further amend the Agreement;

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Amendment and in accordance with and subject to the terms and conditions specified below the Parties agree as follows:

Amendment of the Agreement

The Parties hereby agree to amend the Agreement as of the Effective Date of Amendment No. 4 as provided below. Capitalized terms used in this Amendment that are not otherwise defined herein shall have the meanings provided in the Agreement.

1. All references to 'the Agreement' contained in any Section or subsection of the Agreement shall mean 'the Agreement (as amended)'.

2. New Section 1.86 is added to the Agreement, as follows:

   "1.86 'EXCLUSIVE LICENSE AGREEMENT' shall mean that certain Exclusive License Agreement dated as of December 31, 2008, by and among Nektar and Baxter."

3. The Parties agree to add a new Section 2.2.2 to the Agreement, as follows;

   "[***]. BAXTER agrees that as of [***], BAXTER shall have expended an aggregate amount of at least [***] in actual cash payments to NEKTAR AL for research and development costs directly incurred and solely associated with the development of [***]. BAXTER's obligation to pay any remaining unpaid portion of the [***] shall terminate in the event of [***]."

4. The Parties agree to amend Section 36 of Amendment No. 3 of the Agreement, amending Section 19.2(ii) of the Agreement by deleting the present Section 19.2(ii) in its entirety and replacing it with the following:

   "(ii) Subject to the limitation on termination in part of this AGREEMENT by BAXTER set forth in Section 19.2(iv), upon [***] to NEKTAR AL, with respect to the development and/or commercialization of POTENTIAL PRODUCTS and COMMERCIAL PRODUCTS utilizing (directly or indirectly) [***], other than pursuant to any other provision of this AGREEMENT, which termination may be effected in whole or in part for any one or more of [***], at any time, without any liability other than payment of the [***], if applicable, payable in accordance with Section 19.7.5 (which [***] otherwise due and payable to NEKTER AL in the event of a termination effected in whole shall be prorated in the case of a termination in part on the following basis: [***];"

5. The Parties agree to amend Section 36 of Amendment No. 3 of the Agreement to add the following Subsection (iv) to Section 19.2 of the Agreement:

   "Notwithstanding anything in this AGREEMENT seemingly to the contrary, BAXTER agrees that it will not terminate this AGREEMENT in whole or in part pursuant to Section 19.2 prior to [***], except for [***]."

6. The Parties agree to add a new Section 23 to the Agreement, as follows:

   "23. ALTERNATIVE DISPUTE RESOLUTION.

   a. Mediation. The PARTIES agree that any and all disputes, claims or controversies arising out of or relating to this AGREEMENT shall be submitted to [***] for mediation, and if the matter is not resolved through mediation, then it shall be submitted to [***] for final and binding arbitration pursuant to the arbitration clause set forth in Section 23(b) below; provided, however, that either PARTY may apply to any court of appropriate jurisdiction to seek equitable relief without the requirement of pursuing arbitration pursuant to Section 23(b).

   b. Arbitration.

      i. The PARTIES shall attempt to resolve any and all disputes, claims or controversies arising out of or relating to this AGREEMENT promptly by negotiation between executives who have authority to settle the controversy. If such disputes, claims or controversies are not resolved through such negotiation, then they shall be submitted for final and binding arbitration pursuant to the arbitration clause set forth below. Either PARTY may initiate arbitration with respect to the matters submitted to negotiation by filing a written demand for arbitration at any time following the initial negotiation session.

ii. To the extent not resolved by mediation, any dispute, claim or controversy arising out of or relating to this AGREEMENT or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this AGREEMENT to arbitrate, shall be determined by arbitration conducted in the English language. The arbitration shall take place in [***]. The arbitration shall be administered by [***] pursuant to its Arbitration Rules and Procedures. References herein to any arbitration rules or procedures mean such rules or procedures as amended from time to time, including any successor rules or procedures, and references herein to the [***] include any successor thereto. The arbitration shall be before [***] arbitrators. [***]. All [***] arbitrators shall have experience in the area under dispute. This arbitration provision, and the arbitration itself, shall be governed by the laws of the [***], and [***] the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

iii. Consistent with the expedited nature of arbitration, each PARTY will, upon the written request of the other PARTY, promptly provide the other with copies of documents on which the producing PARTY may rely in support of or in opposition to any claim or defense. At the request of a PARTY, the arbitrators shall have the discretion to order examination by deposition of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of [***] per PARTY and shall be held within [***] days of the grant of a request. Additional depositions may be scheduled only with the permission of the arbitrators, and for good cause shown. Each deposition shall be limited to a maximum of [***] duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information. The PARTIES shall not utilize any other discovery mechanisms, including international processes and U.S. federal statutes, to obtain additional evidence for use in the arbitration. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators, which determination shall be conclusive. All discovery shall be completed within [***] days following the appointment of the arbitrators. All costs and/or fees relating to the retrieval, review and production of electronic discovery shall be paid by the PARTY requesting such discovery.

iv. The panel of arbitrators shall have no power to award non-monetary or equitable relief of any sort. [***]. The arbitrators shall have no power or authority, under the [***] or otherwise, to relieve the PARTIES from their agreement hereunder to arbitrate or otherwise to amend or disregard any provision of this AGREEMENT. Subject to the provisions set forth in Section 23(b)(v) below, the award of the arbitrators shall be final, binding and the sole and exclusive remedy to the PARTIES. Either PARTY may seek to confirm and enforce any final award entered in arbitration, in any court of competent jurisdiction. The cost of the arbitration, including the fees of the arbitrators, shall be borne by the PARTY the arbitrator determines has not prevailed in the arbitration.

v. If an arbitral award does not contain an award of money damages in excess of [***], then the arbitral award shall not be appealable and shall only be subject to such challenges as would otherwise be permissible under the Federal Arbitration Act, 9 U.S.C. §§ 1-16. In the event that the arbitration results in an arbitral award, which imposes a monetary award in excess of [***], such award may be appealed to a tribunal of appellate arbitrators via the [***] Appeal Procedure.

vi. Except as may be required by law, and except to the extent necessary for either PARTY to seek to confirm and enforce any final award entered in arbitration in a court of competent jurisdiction, neither a PARTY nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both PARTIES.

c. [***].

7. Miscellaneous

a. **Full Force and Effect.** Except as expressly amended by this Amendment, the AGREEMENT shall remain unchanged and continue in full force and effect as provided therein.

b. **Entire Agreement of the Parties.** This Amendment and the AGREEMENT constitute the complete final and exclusive understanding and agreement of the PARTIES with respect to the subject matter of the AGREEMENT, and supersede any and all prior or contemporaneous negotiations, correspondence, understandings and agreements, whether oral or written, between the PARTIES respecting the subject matter of the AGREEMENT.

c. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. One or more counterparts of this Amendment may be executed by facsimile, electronic reproductions of signatures or other electronic means, all of which shall be deemed originals.

[Signature Page Follows]

[Signature Page to Amendment No. 4]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment in duplicate originals by their authorized officers as of the Effective Date of Amendment No. 4.

ACCEPTED AND AGREED,

NEKTAR THERAPEUTICS AL, CORP

By: [***]
Signature
Name: [***]
Printed
Title: [***]

BAXTER HEALTHCARE CORPORATION

By: [***]
Signature
Name: [***]
Printed
Title: [***]

BAXTER HEALTHCARE SA

By: [***]
Signature
Name: [***]
Printed
Title: [***]

By: [***]
Signature
Name: [***]
Printed
Title: [***]

Exhibit 10.35

*****Text Omitted and Filed Separately with the Securities and Exchange Commission. Confidential Treatment Requested Under 17 C.F.R. Sections 200.80(b)(4) and 240.24b-2**

EXECUTION COPY

EXCLUSIVE LICENSE AGREEMENT

This **EXCLUSIVE LICENSE AGREEMENT** (this "**Agreement**") dated as of December 31, 2008 is entered into by and between Novartis Pharma AG, a corporation organized under the laws of Switzerland, having a place of business at Lichtstrasse 35, 4056, Basel, Switzerland ("**Licensor**"), and Nektar Therapeutics, a Delaware corporation, having a place of business at 201 Industrial Road, San Carlos, CA 94070 (the "**Company**"). Licensor and Company are each referred to herein as a "**Party**", and collectively, as the "**Parties**".

RECITALS

WHEREAS, Novartis Pharmaceuticals Corporation, Licensor and Company have entered into an Asset Purchase Agreement (the "**APA**") for the sale and purchase of the Transferred Assets related to the Business (each as defined in the APA); and

WHEREAS, as a condition to Closing under the APA, Licensor will grant Company certain exclusive license under Intellectual Property included in the Transferred Assets in certain Licensed Fields (as defined below) and Company will assign and license rights to certain Improvements (as defined below) [***], on the terms and conditions set forth herein.

NOW, **THEREFORE**, in consideration of the foregoing and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

ARTICLE I

DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings. All other capitalized terms used herein and not defined in this Article shall be as defined in the body of this Agreement or the APA.

"[***]" means [***].

"[***]" means [***].

"[***]" means [***].

"[***]" means [***].

"**Collaborators**" means, with respect to an Existing Agreement, the Third Party(ies) who are parties to such Existing Agreement with the Company or its Affiliate.

"**Company Group**" means, collectively, Company and each of its Affiliates.

"**Company Improvements"** means [***].

"**Controlled**" means, with respect to specific Intellectual Property, that Intellectual Property which the applicable Party owns or has a license such that it can grant a license or sublicense thereto as contemplated under this Agreement without violating the terms of any then-existing agreement or other arrangement with, or the rights of, any Third Party and without additional payment or obligation to such Third Party.

"**Effective Date**" means the date set forth in the Preamble.

"**Existing Agreements**" means [***].

"Future Collaborators" means Third Parties to whom the Company or Licensor or the respective Affiliates, licenses or sublicenses, as applicable, rights granted hereunder, to the extent permitted hereby.

"**Improvements**" means any improvement, modification, derivative, analogue, mutation, alteration, enhancement, translation, adaptation, addition, new version or new invention, Controlled by either Party (including, in the case of the Company, Controlled by any Future Collaborator of the Company), solely or jointly, in or to any processes, products or materials that are part of or related to the Business or the Licensed Intellectual Property.

"[***]" means [***].

"[***]" means [***].

"**Intellectual Property**" shall have the meaning set forth in the APA.

"**Know-How**" shall have the meaning set forth in the APA.

"**Licensed Field**" means [***].

"Licensed Intellectual Property" means [***].

"**Licensed Improvements**" means [***].

"**Licensor Group**" means, collectively, Licensor and each of its Affiliates.

"**Patent Right**" means any of the following, whether existing now or in the future anywhere in the Territory: (a) any issued patent, including inventor's certificates, utility model, substitutions, extensions, confirmations, reissues, re-examination, renewal or any like governmental grant for protection of inventions; and (b) any pending application for any of the foregoing, including any continuation, divisional, substitution, additions, continuations-in-part, provisional and converted provisional applications.

"Product" means, with respect to a Licensed Field, products or services that may be developed, manufactured or commercialized within such Licensed Field.

"**Regulatory Approval**" means all approvals necessary, including price approval, for the commercial sale of a therapeutic product in a given country or regulatory jurisdiction.

"[***]" means [***].

"[***]" means [***].

"**Select Patent Rights**" means the list of Patent Rights transferred to Licensor or its Affiliates as part of the Transferred Assets under the APA described on Exhibit D.

"**Services Agreement**" means the Services Agreement attached hereto in Exhibit C, under which Licensor or an Affiliate thereof will provide Company certain services as specified therein.

"**Territory**" means worldwide.

"**Third Party**" means any Person other than the Licensor Group and the Company Group.

"[***]" means [***].

ARTICLE II

LICENSES AND ASSIGNMENT

2.1 Licenses.

(a) License to Company. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Company, with the right to sublicense pursuant to Section 2.2, an exclusive (even as to Licensor) irrevocable, perpetual, non-transferable (except pursuant to Section 7.9), royalty-free, fully paid-up license in the Territory under the Licensed Intellectual Property and Licensed Improvements to develop, manufacture, have manufactured, use, import, export, sell, offer to sell or otherwise commercialize Products within the Licensed Field.

(b) License to Licensor. Subject to the terms and conditions of this Agreement, Company hereby grants to Licensor, with the right to sublicense pursuant to Section 2.2, an exclusive (even as to Company) irrevocable, perpetual, non-transferable (except pursuant to Section 7.9), royalty-free, fully paid-up license in the Territory under the Company Improvements to develop, manufacture, have manufactured, use, import, export, sell, offer to sell or otherwise commercialize products or services outside the Licensed Field. The foregoing shall not limit Licensor's rights under Section 2.1(c).

(c) Assignment to Licensor. [***].

2.2 Sublicenses. Subject to the terms and conditions of this Agreement, each Party shall have the right to grant sublicenses (to multiple tiers of sublicensees) under the licenses granted under this Agreement to any Affiliate or Third Party; provided that each such sublicensee shall be subject to a written agreement with terms and condition that are consistent with, and no less protective of, the other Party than the terms and conditions hereunder.

2.3 No Implied Licenses. Any Intellectual Property rights of a Party not expressly granted to the other Party under the provisions of this Agreement shall be retained by such Party. Except as expressly provided in this Agreement, Party does not grant to the other Party any right or license in any Intellectual Property right, whether by implication, estoppel or otherwise.

2.4 Consideration. The rights and obligations provided under this Agreement are being provided as a condition to Closing under the APA. As such, no further consideration, financial or otherwise, will be due under this Agreement, except as expressly provided herein.

2.5 Representations and Warranties. The Company represents and warrants that it has provided true, correct and complete copies of the Existing Agreements to Licensor. Licensor represents and warrants that it has reviewed the Existing Agreements and understands the terms thereof.

ARTICLE III

SERVICES

3.1 Services. Licensor shall perform or have performed certain services in connection with the Company's or its Affiliate's obligations under the Existing Agreements as and to the extent and for the consideration provided in the Services Agreement.

ARTICLE IV

PATENT PROSECUTION AND ENFORCEMENT; DMFs

4.1 Invention Disclosures.

(a) [***].

(b) [***].

4.2 Ownership. [***].

4.3 Patent Prosecution.

(a) [***]. Licensor shall file, prosecute and maintain the [***] in manner consistent with the standards it applies with respect to the filing, prosecution and maintenance of its own patents and patent applications. With respect to all other Patent Rights included in the Licensed Intellectual Property and all other Patent Rights included in Improvements owned by Licensor or its Affiliates, Licensor will be solely responsible for filing, prosecuting and maintaining such Patent Rights in its sole discretion.

(b) [***].

(c) Patent Term Extensions. Company shall provide written notice to Licensor of any applicable Regulatory Approval obtained by or on behalf of the Company ("**Company Approval**") that can provide a basis for a patent term extension of Patent Rights or Licensor Patent Rights (as defined below) within ten (10) days of receiving such Regulatory Approval. The Parties shall cooperate, if necessary and appropriate, with each other in gaining patent term extension based on such Company Approval wherever applicable to Patent Rights included in the Licensed Intellectual Property or any Patent Rights to Improvements owned by Licensor that are applicable to the Licensed Fields ("**Licensor Patent Rights**"). The Parties shall, if necessary and appropriate, agree upon a joint strategy relating to patent term extensions based on a Company Approval, but, in the absence of mutual agreement with respect to any extension issue, if Licensor does not wish to file for an extension of any Patent Rights included in the Licensed Intellectual Property and any Patent Rights to Improvements owned by Licensor that are applicable to the Licensed Fields, then Licensor shall timely let Company know sufficiently in advance so as to permit Company to request Licensor to file for such extension, in which case, Licensor shall file such extension at Company's expense.

(d) Select Patent Rights. [***].

4.4 Third Party Infringement.

(a) Notice. Company shall promptly report in writing to Licensor any actual or potential infringement that it becomes aware of related to any Licensed Intellectual Property or Improvements related thereto, and shall provide Licensor with all available evidence supporting such infringement or unauthorized use. Licensor shall promptly report in writing to Company any actual infringement that it becomes aware of related to [***].

(b) Licensor Rights. [***].

(c) Company Rights. [***].

(d) Conduct of Certain Actions; Costs. [***].

(e) Recoveries. [***].

(f) Patent Invalidity Claim. [***].

4.5 Drug Master Files. The provisions set forth in Schedule 4.5 attached hereto are hereby incorporated by reference as if fully set forth herein.

ARTICLE V

CONFIDENTIAL INFORMATION

5.1 Treatment of Confidential Information. In carrying out its obligations under this Agreement, the Services Agreement or the Transition Services Agreement, each Party or its Affiliates will be sharing confidential and proprietary data and information ("**Confidential Information**") with the other Party or its Affiliates, with such Confidential Information including, without limitation, any information generated under this Agreement or the confidential or proprietary information of Third Parties (including without limitation Collaborators and Future Collaborators). For the avoidance of doubt, all such data and information relating to the Business or the Transferred Assets, other than those related to the Retained Assets, (collectively, "**Business Confidential Information**") is Confidential Information of Licensor. As between the Parties, all such data and information relating to the Retained Assets is Confidential Information of Company. Except as expressly permitted by this Agreement, each Party shall, and shall cause its Affiliates to, treat Confidential Information received from the other Party (the "**Disclosing Party**") or its Affiliates as it treats its own proprietary information of like nature and importance to maintain the confidentiality of such Confidential Information, but in no event less than reasonable care. During the term of this Agreement and for a period of [***] thereafter, the Party in receipt of the Disclosing Party's Confidential Information (the "**Receiving Party**") shall not disclose, divulge or otherwise communicate such Confidential Information to any Third Party, or use it for any purpose except pursuant to and in order to carry out its obligations under this Agreement, the Services Agreement or the Transition Services Agreement. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information of the Disclosing Party to the Receiving Party's directors, officers, employees, Affiliates, consultants, subcontractors, sublicensees, agents or external advisors on a "need to know" basis, and solely to the extent reasonably necessary to carry out its obligations under this Agreement, the Services Agreement or the Transition Services Agreement, provided that such directors, officers, employees, Affiliates, consultants, subcontractors, sublicensees, agents or external advisors have been advised of the confidential nature of such information and have agreed to maintain such information as confidential and comply with non-use obligations to the same extent required by, and as stringent as, this Article V.

5.2 Exceptions to Definition of Confidential Information. Confidential Information shall not include information that the Receiving Party can demonstrate:

(a) was known by the Receiving Party or its Affiliates prior to the date it was disclosed to the Receiving Party or its Affiliates by the Disclosing Party or its Affiliates, as evidenced by the prior written records of the Receiving Party or its Affiliates, provided that this exception will not apply, in the case of the Company, to any Business Confidential Information;

(b) is lawfully disclosed to the Receiving Party or its Affiliates by a Third Party rightfully in possession of such information without an obligation of confidentiality after the date of the disclosure to the Receiving Party or the Affiliates;

(c) becomes generally known to the public through no act or omission on the part of the Receiving Party or its Affiliates, either before or after the date of the disclosure to the Receiving Party or its Affiliates; or

(d) is independently developed by the Receiving Party or its Affiliates without reference or access to, or reliance upon, any Confidential Information of the Disclosing Party or its Affiliates as demonstrated by the Receiving Party's written records.

5.3 Permitted Disclosures. The restrictions set forth in this Article V shall not prevent either Party from (i) disclosing Confidential Information in connection with preparing, filing, prosecuting or maintaining the Licensed Intellectual Property in accordance with Article IV, (ii) disclosing Confidential Information to governmental agencies to the extent required by applicable Laws or desirable to obtain a Regulatory Approval, (iii) disclosing Confidential Information to potential private financial institution investors (under a confidentiality agreement at least as restrictive as the provisions of this Article V) in connection with fundraising activities, (iv) disclosing Confidential Information to underwriters and financial advisors (under an obligation of confidentiality at least as restrictive as the provisions of this Article V) in connection with the public offering of securities, (v) disclosing Confidential Information that is reasonably determined is required to be disclosed by the Receiving Party pursuant to a judicial or governmental order, or to public investors or governmental agencies (to comply with applicable securities or other laws) in connection with the public offering of securities or (vi) disclosing Confidential Information as required pursuant to the exercise by each Party of its rights granted to it under this Agreement or its retained rights (under an obligation of confidentiality at least as restrictive as the provisions of this Article V), provided that in the cases of (i), (ii) and (v) above, the Party disclosing Confidential Information of the Disclosing Party shall use all reasonable efforts to provide prior written notice of such disclosure to the Disclosing Party and to take reasonable and lawful actions to avoid or limit such disclosure (such as seeking a protective order) or to assist the Disclosing Party in avoiding or limiting such disclosure. The existence and terms of this Agreement, the Services Agreement and the Transition Services Agreement shall constitute Confidential Information of both Parties, provided, however, that each Party may disclose the existence and terms of such agreements to (i) [***], (ii) to its attorneys and advisors with a need to know, (iii) potential acquirers in connection with a potential change of control or sale of all or substantially all of the assets to which this Agreement relates (provided that such disclosure is limited solely to principal financial terms disclosed to potential acquirers' financial advisers and otherwise solely to potential acquirers counsel on an "attorneys only" basis) as part of their due diligence investigation, (iv) to potential financial institutional investors or lenders of such Party, as a part of their due diligence investigations, and (v) subject to the foregoing, to Assignees, provided, that in each of the foregoing cases referenced in clauses (i)-(v) above, such disclosure is made under an agreement to keep the terms of this Agreement, the Services Agreement and the Transition Services Agreement confidential under an obligation of confidentiality at least as restrictive as the provisions of this Article V.

ARTICLE VI

TERM AND TERMINATION

6.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until the expiration of the last to expire of the Patent Rights included in the Licensed Intellectual Property and the Licensed Improvements, unless sooner terminated as specifically provided in this Agreement.

6.2 Bankruptcy. Any licenses granted under or pursuant to this Agreement by either Party to the other Party are, and shall otherwise be deemed to be, for purposes of Section 365(n) of Title 11, US Code (the "**Bankruptcy Code**"), licenses of rights to "intellectual property" as defined under Section 101(35A) of the Bankruptcy Code. The Parties agree that during the term of this Agreement, each Party, as a licensee of rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code, subject to the continued performance of its obligations under this Agreement.

6.3 Survival of Obligations. Sections [***] and any definitions used in any such Sections and Articles shall survive the termination of this Agreement in accordance with their terms. Termination or expiration of this Agreement shall not relieve either Party from any accrued obligations prior to such termination or expiration. Termination is not intended to be an exclusive remedy and is without prejudice to any other rights and remedies of the Parties under this Agreement at law or in equity.

ARTICLE VII

MISCELLANEOUS

7.1 Disclaimer of Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT OR THE APA, NEITHER PARTY MAKES ANY REPRESENTATIONS AND GRANTS NO WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE RELATED TO THE LICENSED INTELLECTUAL PROPERTY AND LICENSED IMPROVEMENTS, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS, STATUTORY OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

7.2 Governing Law. This Agreement (and any claims or disputes arising out of or related hereto or to the transactions contemplated hereby or to the inducement of any party to enter herein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance, in each case without reference to any conflict of law rules that might lead to the application of the laws of any other jurisdiction.

7.3 Force Majeure. Neither Party shall be responsible to the other Party for nonperformance or delay in performance of the terms or conditions of this Agreement due to acts of God, acts of governments, war (declared or undeclared), acts of terrorism, riots, strikes, accidents in transportation, or other causes beyond the reasonable control of such Party, but such force majeure shall toll any and all obligations and time periods for so long as such force majeure continues. Upon the occurrence of an event of force majeure, the Party whose performance is affected thereby shall notify the other Party promptly of such event. Upon the cessation of such event, such Party shall take all reasonable steps within its power to resume with the least possible delay compliance with its obligations hereunder.

7.4 Waiver. The waiver by a Party of a breach or a default of any provision of this Agreement by the other Party shall not be construed as a waiver of any subsequent breach of the same or any other provision hereof, nor shall any delay or omission on the part of a Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of that or any other right, power or privilege of such Party hereunder.

7.5 Notices. Any notice or other communication required or permitted to be given in connection with this Agreement must be in writing and may be given by any of the following methods: (i) personal delivery with a signed acknowledgement of receipt; (ii) registered or certified mail, postage prepaid, return receipt requested; or (iii) by overnight delivery service with a signed acknowledgement of receipt. Notice shall be effective when delivered to the addressee at the address listed below or such other address as the addressee shall have specified in a written notice actually received by the addresser.

(a) if to the Company, to it at:

Nektar Therapeutics
201 Industrial Road
San Carlos, California 94070
Attention: Gil M. Labrucherie
Facsimile: (650) 620-5360

with copies to:

O'Melveny & Myers LLP
2765 Sand Hill Road
Menlo Park, California 94025
Attention: Sam Zucker
Facsimile: (650) 473-2601

(b) if to the Licensor, to it at:

Novartis Pharma AG
Lichtstrasse 35
CH-4056 Basel
Switzerland
Attention: General Counsel

Facsimile: + (41) (61) 324-6859

and

with copies to:

Novartis International AG
Lichtstrasse 35
CH-4056 Basel
Switzerland
Attention: Global Head Legal M&A and Antitrust
Facsimile: + (41) (61) 324-7476

and

Novartis International AG
Lichtstrasse 35
CH-4056 Basel
Switzerland
Attention: Head Corporate Intellectual Property
Facsimile: + (41) (61) 324-7424

and

Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
Attention: Adam Golden
Facsimile: +1 (212) 836-8689

7.6 (a) Relationship of the Parties. The Parties are independent contractors. Nothing herein is intended, or shall be deemed, to constitute a partnership, agency, joint venture or employment relationship between the Parties. Neither Party shall be responsible for the other Party's acts or omissions [***]; and neither Party shall have authority to speak for, represent or obligate the other Party in any way without prior written authority from the other Party. Subject to the terms of this Agreement, the activities and resources of each Party shall be managed by such Party, acting independently and in its individual capacity.

(b) Subcontractor Status. [***].

(c) No Amendments. [***].

(d) Indemnification; Limitation of Liability. In connection with performing its obligations under Article IV hereof, Licensor and its Affiliates will be entitled to the benefit of the indemnity and limitation of liability provisions set forth in Article IV of the Services Agreement, as if fully set forth herein.

(e) Standard of Performance. [***].

7.7 Entire Agreement. This Agreement and the Exhibits attached hereto (which Exhibits are incorporated herein by reference and are deemed to be a part of this Agreement for all purposes) constitute the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior understandings and writings between the Parties relating thereto; provided that the terms of this Agreement should be interpreted to be consistent with the terms of the APA and are not intended to modify the Parties' respective rights and obligations under the APA. No amendment, waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless made in writing and signed by the Parties.

7.8 Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions of this Agreement shall not be affected thereby, and the Parties shall negotiate a substitute provision that, to the extent possible, accomplishes the original business purpose of the unenforceable provision. During the period of such negotiation, and thereafter if no substituted provision is agreed upon in writing by the Parties, any such provision which is enforceable in part but not in whole shall be enforced to the maximum extent permitted by law.

7.9 Assignment and Transfer.

(a) Neither this Agreement nor any right or obligation hereunder may be assigned or otherwise transferred by the Company without the prior written consent of the Licensor, except the Company may, without consent of the Licensor, assign or otherwise transfer this Agreement and its rights and obligations hereunder in whole or in part: (i) to any Affiliate; (ii) in connection with a merger, reorganization or a sale or transfer of all or substantially all of the assets to which this Agreement relates or (iii) as part of the transfer of all or one or more programs inside the Licensed Field. Licensor shall be entitled to freely assign its rights or obligations hereunder. Any attempted assignment or other transfer not in accordance with this Section 7.9 shall be void. Any permitted assignee shall assume in writing all assigned obligations of its assignor under this Agreement. The Party making any assignment or other transfer permitted under this Section 7.9 shall provide prompt written notice to the other Party of such assignment or transfer. The assignor shall remain jointly and severally liable with any such assignee(s) with respect to all obligations and liabilities of the assignor hereunder.

(b) Successors and Assigns. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns.

7.10 Interpretation. Unless the context of this Agreement otherwise requires, (a) words of one gender include the other gender; and (b) words using the singular or plural number also include the plural or singular number, respectively. Reference to days are to calendar days unless specified otherwise. References to any statute, act, or regulation are to that statute, act, or regulation as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. The headings contained in this Agreement are for convenience of reference only and shall not be considered in interpreting this Agreement. Any capitalized terms used in any Exhibit but not otherwise defined therein, shall have the meaning as defined in this Agreement. The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. This Agreement is a negotiated document between the two Parties and shall not be construed against the drafter of any particular provision.

7.11 Counterparts. This Agreement may be executed manually, electronically in Adobe® PDF file format, or by facsimile by the Parties, in any number of counterparts, each of which shall be considered one and the same agreement and shall become effective when a counterpart hereof shall have been signed by each of the Parties and delivered to the other Party.

7.12 Further Actions. Each Party will duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, as may be reasonably necessary or as the other Party may reasonably request in connection with this Agreement in order to carry out more effectively the provisions and purposes hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

NEKTAR THERAPEUTICS

By: /s/ Gil M. Labrucherie
Name: Gil M. Labrucherie
Title: SVP & General Counsel

NOVARTIS PHARMA AG

By: /s/ Jörg Walther
Name: Jörg Walther
Title: Authorized Signatory

By: /s/ Cristina Ruggeberg
Name: Cristina Ruggeberg
Title: Authorized Signatory

Exhibit 21.1

Subsidiaries of Nektar Therapeutics*

Name	Jurisdiction of Incorporation or Organization
Nektar Therapeutics AL, Corporation	Alabama
Nektar Therapeutics UK, Ltd.	United Kingdom
Inhale Therapeutic Systems Deutschland GmbH	Germany
Nektar Therapeutics (India) Pvt. Ltd	India
Aerogen, Inc.	Delaware

* Includes subsidiaries that do not fall under the definition of "Significant Subsidiary" as defined under Rule 1-02(w) of Regulation S-X.

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements (Form S-8 Nos. 333-07969, 333-59735, 333-65919, 333-74669, 333-32788, 333-54078, 333-55032, 333-67342, 333-71936, 333-76638, 333-98321, 333-103040, 333-117975, 333-136498, 333-145259 and 333-153106) pertaining to the amended and restated 1994 Equity Incentive Plan, the 1998 Non-Officer Equity Incentive Plan, the 2000 Non-Officer Equity Incentive Plan, the 401(k) Retirement Plan, the Employee Stock Purchase Plan, the 2000 Equity Incentive Plan, the 2008 Equity Incentive Plan, the Bradford Particle Design plc Share Option Schemes, the Shearwater Corporation 1996 Nonqualified Stock Option Plan, and in the Registration Statements (Form S-3 Nos. 333-54080, 333-108859, 333-120009, 333-67340, 333-130591) of Nektar Therapeutics, and in the related Prospectuses, of our reports dated March 4, 2009, with respect to the consolidated financial statements and schedule of Nektar Therapeutics, and the effectiveness of internal control over financial reporting of Nektar Therapeutics included in this Annual Report Form 10-K for the year ended December 31, 2008.

/s/ Ernst & Young LLP

San Jose, California
March 4, 2009

Exhibit 31.1

CERTIFICATIONS

I, Howard W. Robin, certify that:

1. I have reviewed this Annual Report on Form 10-K of Nektar Therapeutics for the year ended December 31, 2008;

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: March 6, 2009

/s/ Howard W. Robin

Howard W. Robin
Chief Executive Officer, President and Director

Exhibit 31.2

CERTIFICATIONS

I, John Nicholson, certify that:

1. I have reviewed this Annual Report on Form 10-K of Nektar Therapeutics for the year ended December 31, 2008;

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: March 6, 2009

/s/ JOHN NICHOLSON

John Nicholson
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 John Nicholson, Senior Vice President and Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Annual Report on Form 10-K, for the year ended December 31, 2008, to which this Certification is attached as Exhibit 32.1 (the "Annual Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the period covered by the Annual Report.

Dated: March 6, 2009

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

/s/ John Nicholson
John Nicholson
Senior Vice President and Chief Financial Officer

* This certification accompanies the Annual Report on Form 10-K, 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-K), irrespective of any general incorporation language contained in such filing.