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

FORM 8-K/A

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of Earliest Event Reported): March 14, 2018

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

DELAWARE
(State or other jurisdiction
of incorporation)

001-35405
(Commission
File Number)

45-4440364
(I.R.S. Employer
Identification No.)

300 George Street, Suite 301, New Haven, CT
(Address of principal executive offices)

06511
(Zip Code)

Registrant's telephone number, including area code (312) 767-0291

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

EXPLANATORY NOTE

This Amendment No. 1 (this “Amendment”) to the Form 8-K of Melinta Therapeutics, Inc. (the “Company”), originally filed on March 14, 2018 (the “Form 8-K”), is being filed solely to re-file Exhibits 10.14 and 10.17 to the Form 8-K in response to comments from the Securities and Exchange Commission (the “SEC”) regarding a confidential treatment request submitted to the SEC with respect to Exhibits 10.14 and 10.17 of Item 9.01 of the Form 8-K, which is hereby amended to include a revised redacted version of Exhibits 10.14 and 10.17.

No other changes have been made to the Form 8-K. This Amendment speaks as of the original filing date of the Form 8-K and does not reflect any events that occurred at a date subsequent to the filing of the Form 8-K or modify or update those disclosures therein in any way. Accordingly, this Amendment No. 1 should be read in conjunction with the Company’s filings made with the SEC subsequent to the filing of the Form 8-K.

Item 9.01 Financial Statements and Exhibits

(a) Exhibits.

Exhibit No.	Description
10.14*	<u>Amended and Restated License Agreement, dated May 1, 2017, between Melinta Therapeutics, Inc. and Wakunaga Pharmaceutical Co. Ltd.</u>
10.17*	<u>License and Supply Agreement, dated November 30, 2010, by and between Melinta Therapeutics, Inc. and Cydex Pharmaceuticals, Inc. (a wholly owned subsidiary of Ligand Pharmaceuticals Incorporated), incorporated by reference to Exhibit 10.29 of the S-1/A filed by Rib-X Pharmaceuticals, Inc. on March 13, 2012.</u>

* The Company has requested confidential treatment with respect to portions of this exhibit. Those portions have been omitted and filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request.

SIGNATURES

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

Melinta Therapeutics, Inc.

Date: June 8, 2018

By: /s/ Paul Estrem
Paul Estrem
Chief Financial Officer

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AMENDED AND RESTATED LICENSE AGREEMENT

This Amended and Restated License Agreement (this "Agreement") is made this first of May, 2017 (the "Amendment Effective Date"), by and between Wakunaga Pharmaceutical Co., Ltd. (hereinafter referred to as "WAKUNAGA"), a corporation duly organized and existing under the laws of Japan and having its principal office at 5-36, Miyahara 4-chome, Yodogawa-Ku, Osaka, Japan and Melinta Therapeutics, Inc. (formerly known as Rib-X Pharmaceuticals, Inc. and hereinafter referred to as "MELINTA"), a corporation duly organized and existing under the laws of Delaware, U.S.A. and having its principal office at 300 George Street, Suite 301, New Haven, Conn., 06511 U.S.A., and amends and restates in its entirety the License Agreement dated May 12, 2006 by and between WAKUNAGA and MELINTA, as previously amended (the "2006 Agreement").

WHEREAS, WAKUNAGA has developed the Compound as hereinafter defined and owns or has rights to certain patents, technologies, trade secrets including know-how and other valuable proprietary information relating thereto, and

WHEREAS, WAKUNAGA and Abbott Laboratories (hereinafter referred to as "Abbott"), an Illinois corporation having its principal place of business at 100 Abbott Park Road, Abbott Park, IL. 60064-3500, U.S.A., for the causes from changing Abbott's business policy with respect to the pharmaceutical field, terminated the license agreement dated 1st December, 1999, under which Abbott was granted by WAKUNAGA the exclusive license to develop, make, use, sell and import the Compound and pharmaceutical products containing such Compound in a certain territory under WAKUNAGA's patents and proprietary information; and

WHEREAS, Abbott has transferred to WAKUNAGA certain technical information including governmental permits for the Compound and related pharmaceutical product candidates, accompanied by documentation, data and other information related to the Compound and the pharmaceutical product candidates, which have been developed, acquired and/or used by Abbott during the term of the Abbott Agreement and Abbott has granted to WAKUNAGA a perpetual and exclusive license, with a right for WAKUNAGA to sublicense to any third party, to all technologies and intellectual property of Abbott relevant to the Compound and related Products, and

WHEREAS, MELINTA has, under the Option Agreement executed between WAKUNAGA and MELINTA on October 31, 2005, gained access to patents, trade secrets and proprietary information, which are owned and/or licensed by WAKUNAGA and/or Abbott, for studying the possibility of the development and manufacture of the Compound and the development, manufacture and sale of certain pharmaceutical products containing the Compound, and

WHEREAS, MELINTA has exercised its option right and obtained from WAKUNAGA the exclusive licenses and rights in the Territory as hereinafter defined under certain patents and other proprietary rights for the purpose of developing and commercializing the Compound and the Products as hereinafter defined pursuant to the 2006 Agreement, and

WHEREAS, subject to all the terms and conditions of the 2006 Agreement, WAKUNAGA granted to MELINTA the exclusive licenses and rights with respect to the Compound, patents, technologies, trade secrets, data and other proprietary information relating thereto for the research, development, manufacture, use and sale of the Compound and the Products, and

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WHEREAS, AbbVie Inc. (“AbbVie”), having its principal place of business at 1 North Waukegan Road, North Chicago, IL 60064 is the successor-in-interest to Abbott’s rights and obligations with respect to the Abbott Patents and Abbott Proprietary Information, and

WHEREAS, the Parties desire to amend and restate the 2006 Agreement in its entirety and to enter into this Agreement, pursuant to which the rights and obligations of the Parties shall be set forth and agreed upon as of the date hereof.

Now, therefore, it is agreed as follows:

Article 1. Definitions

For the purposes of this License Agreement the following definitions shall apply:

- 1.1 Abbott Agreement: shall mean the license agreement between WAKUNAGA and Abbott regarding the license of the development, manufacture, use, sale and import of the Compound and the pharmaceutical preparations containing the Compound, effective as of 1st December, 1999, as amended by the parties and as terminated as of January 27, 2006 pursuant to the Termination Agreement.
- 1.2 Abbott Patents: shall mean Abbott’s patents and/or patent applications (including without limitation, patents or patent applications constituting divisions, continuations, continuations-in-part, reissues, reexaminations, substitutions, extensions or renewals of the patents or applications aforesaid or additions or supplementary protection certificates with respect thereto, and any and all foreign counterparts of any of the foregoing) only to the extent that such patents cover the Compound and/or Product as hereinafter defined, as to which Abbott has granted to WAKUNAGA a license (or similar rights), with the right to grant sublicenses, to research, have researched, develop, have developed, make, have made, use, have used, import, have imported, market, have marketed, offer for sale, sell and have sold the Compound and/or Product in any countries of the world. The Abbott Patents filed by Abbott as of the Effective Date are listed and attached hereto as Appendix 1 hereof, which Appendix 1 shall be updated and/or corrected by WAKUNAGA from time to time, as appropriate, and provided to MELINTA. Abbott Patents shall not include the scope of any such patent right that extends beyond the Compounds or Products.
- 1.3 Abbott Proprietary Information: shall mean technical know-how and regulatory documents including but not limited to any Abbott Permits, specifically acquired or developed by Abbott for use solely with the Compound and/or Products generated by or available at Abbott (but which does not include any Abbott Proprietary Information that, in Abbott’s sole determination, has application outside the Compound or Products), and as to which Abbott has granted to WAKUNAGA a license (or similar rights), with the right to grant sublicenses, to research, have researched, develop, have developed, make, have made, use, have used, import, have imported, market, have marketed, offer for sale, sell and have sold the Compound and/or Products in any countries of the world.

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- 1.4 Additional Wakunaga Patents: shall mean all patents and/or patent applications other than Wakunaga Patents (including without limitation, patents or patent applications constituting divisions, continuations, continuations-in-part, reissues, reexaminations, substitutions, extensions or renewals of the patents or applications aforesaid or additions or supplementary protection certificates with respect thereto, and any and all foreign counterparts of any of the foregoing) acquired or owned by WAKUNAGA before or during the term of this Agreement that include subject matter necessary for the development or commercialization of the Compound and/or Products contemplated in the license grant provided in Section 2.1. The Additional Wakunaga Patents as of the Effective Date are listed and attached hereto as Appendix 3, which Appendix 3 will be updated and/or corrected from time to time by WAKUNAGA, as appropriate, and provided to MELINTA.
- 1.5 Affiliate: shall mean (a) any Person which directly or indirectly owns, is owned by or is under common ownership with a Party to the extent of at least fifty percent (50%) of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction or such lesser percentage provided the operational control is held by such Party) having the power to vote on or direct the affairs of the relevant Party or Person, and (b) any Person actually controlled by, controlling or under common control with a Party. For the avoidance of doubt, neither of the Parties shall be deemed to be an Affiliate of the other.
- 1.6 Cost of Goods Sold or COGS: shall mean, with respect to any Product, the fully burdened cost of all resources and operations carried out by or on behalf of MELINTA, including internal and external costs, in order to manufacture, distribute, handle and process such Product, fully packaged and labeled for sale in the applicable country within the Territory, such cost to be established in accordance with generally accepted accounting principles as applied by MELINTA on a consistent basis. For clarity, with respect to any Product or component thereof purchased by MELINTA from a Third Party, "Cost of Goods Sold" or "COGS" for such Product or component shall be the amount actually paid therefor by MELINTA for such Product or component to such Third Party.
- 1.7 Commercially Reasonable Efforts: shall mean, with respect to a Party, the efforts and resources which would be used by that Party consistent with its normal business practices, which shall be at least equivalent to the practices of the pharmaceutical industry for companies of similar size and scope as such Party, in each case with respect to a product or potential product at a similar stage in its development or product life and of similar market potential, taking into account efficacy, safety, the anticipated Regulatory Authority approved labeling, the competitiveness of alternative products in the market place or under development, the patent and other proprietary position of the product, the likelihood of Regulatory Approval, the commercial value of the product and other relevant factors.
- 1.8 Compound: shall mean the quinolone compound, designated by WAKUNAGA's code name as WQ-3034, designated by Abbott's code name as ABT-492, and which is known by the chemical name, including inter alia, 1-(6-amino-3,5-difluoro-2-pyridiny1)-8-chloro-6-fluoro-1,4-dihydro-7-(3-hydroxy-1-azetidiny1)-4-oxo-3-quinolinecarboxylic acid, including any salts, hydrates, prodrugs, polymorphs, solvates and other forms thereof

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- 1.9 Confidential Information: shall mean all secret, confidential or proprietary information or data, whether provided in written, oral, graphic, video, computer or other form, provided by or on behalf of one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) pursuant to this Agreement or generated pursuant to this Agreement, including information relating to the Disclosing Party’s existing or proposed research, development efforts, patent applications, business or products, the terms of this Agreement and any other materials that have not been made available by the Disclosing Party to the general public. Notwithstanding the foregoing sentence, Confidential Information shall not include any information or materials that:
- (a) were already known to the Receiving Party (other than under an obligation of confidentiality), at the time of disclosure by the Disclosing Party to the extent such Receiving Party has documentary evidence to that effect;
 - (b) were generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;
 - (c) became generally available to the public or otherwise part of the public domain after its disclosure or development, as the case may be, and other than through any act or omission of the Receiving Party in breach of such Receiving Party’s confidentiality obligations under this Agreement;
 - (d) were subsequently lawfully disclosed to the Receiving Party by a Third Party who had no obligation to the Disclosing Party not to disclose such information to others;
 - (e) were independently discovered or developed by or on behalf of the Receiving Party without the use of the Confidential Information belonging to the other Party and the Receiving Party has documentary evidence to that effect; or
 - (f) is approved for release by the Disclosing Party in writing.
- 1.10 Drug Sales Revenue: shall mean, with respect to any Product purchased from MELINTA by a Sublicensee, (i) the aggregate purchase price received by MELINTA from such Sublicensee for such Product minus (ii) MELINTA’s Cost of Goods Sold of manufacturing, distributing, handling and processing such Product for such Sublicensee.
- 1.11 Effective Date: shall mean May 12, 2006.
- 1.12 FDA: shall mean the United States Food and Drug Administration, or any successor agency thereof.
- 1.13 First Commercial Sale: shall mean the first sale by MELINTA or its Affiliates or Sublicensees of a Product to a Third Party for end use or consumption of such Product in a country in the Territory after the relevant Regulatory Authorities in such country have granted Regulatory Approval of such Product.

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- 1.14 Force Majeure: shall mean any occurrence beyond the reasonable control of a Party that prevents or substantially interferes with the performance by the Party of any of its obligations hereunder, if such occurs by reason of any act of God, flood, fire, explosion, earthquake, strike, lockout, labor dispute, casualty or accident; or war, revolution, civil commotion, acts of public enemies, terrorist attack, blockage or embargo; or any injunction, law, order, proclamation, regulation, ordinance, demand or requirement of any government (to the extent such government has ruling authority over such Party) or of any subdivision, authority or representative of any such government; or other similar event, beyond the reasonable control of such Party, if and only if the Party affected shall have used reasonable efforts to avoid such occurrence.
- 1.15 Indications: shall mean indications for the human and/or veterinary uses of the Products.
- 1.16 Menarini Territory: shall mean Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Italy, Kazakhstan, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Moldova, Monaco, Montenegro, the Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, Romania, Russia, San Marin Republic, Serbia, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, Tajikistan, Thailand, Turkey, Turkmenistan, Ukraine, United Kingdom, Uzbekistan, Vatican City and Vietnam, as their boundaries are defined as of the Effective Date, and any successors thereto.
- 1.17 NDA: shall mean a New Drug Application pursuant to Section 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. Section 355) submitted to the FDA, or any successor application or procedure required for Regulatory Approval to commence sale of a Product.
- 1.18 Net Sales: shall mean the respective gross amounts invoiced by MELINTA, including its Affiliates or Subcontractors, or Sublicensees on account of respective sales of Products by MELINTA or such Sublicensees, less the total of:
- (a) trade, cash and/or quantity discounts actually allowed or accrued which are not already reflected in the amount invoiced;
 - (b) excise, sales, value-added and other consumption taxes, tariffs and custom duties to the extent included in the invoice price and to the extent such taxes are remitted to the applicable taxing authority;
 - (c) freight, insurance and other transportation charges to the extent included in the invoice price and separately identified on the invoice or other documentation maintained in the ordinary course of business;

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- (d) amounts repaid, credited or accrued by reason of returns, rejections, defects or recalls or because of chargebacks, retroactive price reductions, refunds or billing errors; and
 - (e) amounts equal to actual write-offs for relevant uncollectible accounts.
- 1.19 Permits: shall mean any and all permits, approvals and licenses from the appropriate authorities, including but not limited to the U.S. FDA, related to the Compound and/or Products and held by Abbott, including, but not limited to, any registration dossiers developed, acquired and/or used by Abbott as of the Effective Date.
- 1.20 Person or person: shall mean any individual, firm, corporation, partnership, limited liability company, trust, unincorporated organization or other entity or a government agency or political subdivision thereto, and shall include any successor (by merger or otherwise) of such Person.
- 1.21 Phase I Clinical Trial: shall mean a controlled clinical trial designed to determine metabolism and pharmacologic actions of the Products in humans, the side effects associated with increasing dosage and early evidence of effectiveness, as more fully described in 21 C.F.R. §312.21(a).
- 1.22 Phase II Clinical Trial: shall mean a controlled clinical trial designed to evaluate clinical efficacy and safety of the Products as well as to obtain an indication of the dosage regimen required, as more fully described in 21 C.F.R. §312.21(b).
- 1.23 Phase III Clinical Trial: shall mean a controlled or uncontrolled clinical trial intended to gather the considerable information about effectiveness and safety of the Products in order to evaluate the overall benefit-risk relationship of the Products and to provide an adequate basis for physician labeling, as more fully described in 21 C.F.R. §312.21(c).
- 1.24 Product or Products: shall mean one or more pharmaceutical preparations for the Indications containing the Compound.
- 1.25 Proprietary Information: shall mean Wakunaga Proprietary Information and/or Abbott Proprietary Information.
- 1.26 Prosecution: shall mean the preparation, filing, prosecution, issuance and maintenance (including interference, opposition and similar Third Party proceedings before the relevant patent office) of any patent applications and patents.
- 1.27 Regulatory Approval: shall mean the technical, medical, scientific and other licenses, registrations, authorizations and approvals (including approvals of NDAs, and foreign equivalents, supplements and amendments, pre- and post-approvals, pricing and Third Party reimbursement approvals, and labeling approvals) of any national, supra-national, regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity in the Territory, necessary for the development (including the conduct of clinical trials), manufacture, distribution, marketing, promotion, offer for sale, use, import, reimbursement, export and sale of the Products in a regulatory jurisdiction.

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- 1.28 Regulatory Authority: shall mean any national (e.g., the FDA), supra-national, regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity involved in the granting of Regulatory Approval in any country in the Territory.
- 1.29 Rest of World Territory or ROW Territory: shall mean all countries in the Territory other than: (a) the U.S.; and (b) the Menarini Territory.
- 1.30 Melinta Proprietary Information: shall mean any information developed by MELINTA or acquired by MELINTA from a Third Party after the Effective Date, in either case, in the course of developing or commercializing Compounds and/or Products pursuant to the licenses granted to MELINTA by WAKUNAGA hereunder and to the extent relating specifically to the Compound or Products and/or development and commercialization plans associated with the same.
- 1.31 Royalties: shall mean the royalties including running royalties, initial payments, milestone payments or other payments similar thereto, to be paid by MELINTA and received by WAKUNAGA under this Agreement regarding the Wakunaga Patents, the Abbott Patents and/or the Proprietary Information, based upon MELINTA's and/or Sublicensee's sales of the Products and in consideration for the grant of the license to MELINTA hereunder.
- 1.32 Subcontractor: shall mean a Person doing the activities contemplated herein on behalf of a Party, at full cost, account and responsibility of such Party.
- 1.33 Sublicense: shall mean an agreement by which MELINTA sublicenses all or any part of its rights under the license granted in this Agreement to a Party who is not a Subcontractor.
- 1.34 Sublicense Agreement: shall mean an agreement by which MELINTA grants a Sublicense to a Third Party (a "Sublicensee") under the license to the Wakunaga Patents, Additional Wakunaga Patents and/or Abbott Patents granted to MELINTA by WAKUNAGA herein.
- 1.35 Sublicensee: shall mean any Third Party to which MELINTA grants a Sublicense.
- 1.36 Sublicense Income: shall mean all payments received by MELINTA from a Sublicensee as consideration for the grant or exercise of rights under a Sublicense of the rights granted to MELINTA under this Agreement, including upfront payments, down payments, initial payments, milestone payments and other payments similar thereto for Sublicenses but excluding the running royalties and sponsored research payments, amounts paid in reimbursement of research and development costs (including without limitation, patent expenses and fees) incurred by MELINTA, and amounts paid by such Sublicensee for equity in MELINTA.

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- 1.37 Termination Agreement: shall mean the written agreement dated as of January 27, 2006 between Abbott and WAKUNAGA terminating the Abbott Agreement.
- 1.38 Territory: shall mean all countries in the world.
- 1.39 Third Party: shall mean any Person other than WAKUNAGA, MELINTA and their respective Affiliates.
- 1.40 Valid Claim shall mean a claim in any unexpired, issued patent which has not been irrevocably abandoned or held to be invalid or unenforceable by a non-appealed or unappealable decision of a court or other authority of competent jurisdiction, and which is not admitted to be invalid through disclaimer or dedication to the public.
- 1.41 Wakunaga Patents: shall mean all patents and/or patent applications (including without limitation, patents or patent applications constituting divisions, continuations, continuations-in-part, reissues, reexaminations, substitutions, extensions or renewals of the patents or applications aforesaid or additions or supplementary protection certificates with respect thereto, and any and all foreign counterparts of any of the foregoing) acquired or owned by WAKUNAGA before or during the term of this Agreement relating to the Compound and/or the Products. The Wakunaga Patents as of the Effective Date are listed and attached hereto as Appendix 2, which Appendix 2 shall be updated and/or corrected by WAKUNAGA from time to time, as appropriate, and provided to MELINTA.
- 1.42 Wakunaga Proprietary Information: shall mean (i) the technologies, trade secrets including know-how, and (ii) data and documentation relating to the Compound and/or the Products, which WAKUNAGA acquired, owned and/or possessed prior to or during the term of this Agreement.

Article 2. Grant of License

2.1 Exclusive Right and License

As of the Effective Date, WAKUNAGA hereby grants to MELINTA an exclusive right and license, with the right to grant Sublicenses (subject to Section 2.5.) under the Wakunaga Patents and the Wakunaga Proprietary Information to research, have researched, develop, have developed, make, have made, use, have used, import, have imported, export, have exported, market, have marketed, offer for sale, sell and have sold the Compound and/or the Products for the Indications throughout the Territory.

2.2 Non-exclusive Right and License

As of the Effective Date, WAKUNAGA hereby grants to MELINTA a non-exclusive right and license with the right to grant Sublicenses (subject to Section 2.5.) to the Additional Wakunaga Patents to the extent they include subject matter necessary for the development or commercialization of the Compound and/or the Products contemplated in the license described above in Section 2.1, and only within the scope of the license relating to the Compound and/or the Products granted to MELINTA in Section 2.1. This

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non-exclusive license shall include the right to research, have researched, develop, have developed, make, have made, use, have used, import, have imported, export, have exported, market, have marketed, offer for sale, sell, and have sold the Compound and/or the Products for the Indications throughout the Territory

2.3 License to Abbott Patents and Abbott Proprietary Information

As of the Effective Date, WAKUNAGA hereby grants to MELINTA an exclusive right and license, with the right to grant Sublicenses (subject to Section 2.5.) under the Abbott Patents and the Abbott Proprietary Information, within the scope that Abbott, under the Termination Agreement, grants a right and license to WAKUNAGA, to research, have researched, have developed, make, have made, use, have used, import, have imported, market, have marketed, offer for sale, sell and have sold the Compound and/or the Products for the Indications throughout the Territory. As soon as possible following the Effective Date, WAKUNAGA shall transmit all appropriate letters to the FDA and other Regulatory Authorities in the Territory advising of the grant of rights herein, which have been transferred, on an as is basis, by Abbott to WAKUNAGA.

2.4 Use of Sublicensees and Subcontractors

The licenses granted under Sections 2.1, 2.2 and 2.3 shall be deemed to include the right of MELINTA to use its Subcontractors in exercising such rights and in carrying out its obligations under this Agreement and to sublicense such rights, in whole or in part, to one or more Third Parties; provided, that MELINTA shall not grant a Sublicense to market or sell the Compound and/or the Products before MELINTA starts the first Phase III Clinical Trial without the consent of WAKUNAGA, which consent shall not be unreasonably withheld or delayed. MELINTA acknowledges that the grant of a Sublicense shall not relieve MELINTA from its obligations under this Agreement.

2.5 Sublicense by MELINTA

MELINTA has, within the scope of the licenses granted by WAKUNAGA as set forth in Sections 2.1., 2.2. and 2.3., an exclusive right to grant to any Third Party a Sublicense to develop, make, use, sell, export, import and market the Compound and/or Products, under the Wakunaga Patents, Abbott Patents, Proprietary Information and other technical and/or proprietary information, provided that MELINTA shall notify WAKUNAGA and AbbVie of the material aspects of such proposed Sublicense Agreement prior to or promptly after the execution of such Sublicense Agreement. In any Sublicense granted pursuant to this Section 2.5., MELINTA shall further require that the Sublicensee shall notify WAKUNAGA and AbbVie of the material aspects of any proposed Sublicense Agreement prior to or promptly after the execution of such Sublicense Agreement.

Article 3. Technology Transfer

3.1 WAKUNAGA shall transfer as promptly after the Effective Date as possible to MELINTA on an “as is” basis (i) complete copies of all of its files relating to the Wakunaga Patents, (ii) copies of written documentation relating to the Wakunaga Proprietary Information that is reasonably necessary or useful for MELINTA to perform its obligations or exercise its rights under this Agreement, and, to the extent that Abbott transfers same to WAKUNAGA with the right to disclose to MELINTA, (iii) copies of all files relating to the Abbott Patents, and (iv) copies of all Abbott Proprietary Information received pursuant to the Termination Agreement.

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- 3.2 WAKUNAGA shall, to the extent within the scope of the Wakunaga Patents, Wakunaga Proprietary Information, Abbott Patents and/or Abbott Proprietary Information, provide MELINTA with technical support during the term of this Agreement under the conditions set forth in this Section 3.2. WAKUNAGA personnel shall not be required to provide MELINTA or any Sublicensee of MELINTA in excess of ten (10) days of support with respect to the subject matter of this Agreement which may occur at any time following the Effective Date. In the event that, subject to WAKUNAGA's prior consent after negotiation between the Parties, which consent shall not be unreasonably withheld, WAKUNAGA will provide support in excess of ten (10) days of support, MELINTA hereby agrees to pay or have MELINTA Sublicensee pay WAKUNAGA at the rate of [***] (or such other reasonable rate as notified by WAKUNAGA upon thirty (30) days' prior written notice) for time spent by WAKUNAGA personnel in connection with any support services requested by MELINTA or any MELINTA Sublicensee. WAKUNAGA personnel for the foregoing technical support may include up to forty (40) hours of time of AbbVie personnel at WAKUNAGA's sole discretion, or such other amount as agreed by AbbVie, and all such personnel shall sign reasonable and customary confidentiality agreements as reasonably agreed by the Parties.
- 3.3 WAKUNAGA shall, and shall use reasonable efforts to cause AbbVie to, take all commercially reasonable steps necessary to provide declarations, consents and signatures, as well as perform all other activities reasonably required for the transfer of Proprietary Information as per Sections 3.1 and 3.2 above. The Parties recognize that WAKUNAGA cannot assure MELINTA that AbbVie will comply with all such requests.

Article 4. Coordination of Communications

4.1 Contact Persons

Promptly, but in no event later than sixty (60) days, following the Effective Date, each of MELINTA and WAKUNAGA shall appoint a person who shall act as a representative (and each Party may replace or temporarily substitute such representative at its sole discretion) who possesses a general understanding of the project contemplated herein and who shall act as its contact person (a "Contact Person") hereunder. Each Contact Person shall be charged with serving as a contact point for the other Party and coordinating and maintaining a collaborative work environment within and among the Parties to the extent required by this Agreement.

- 4.2 During the Term of this Agreement, MELINTA and WAKUNAGA may hold joint scientific meetings as described in Section 4.3 for the purpose of exchanging opinions, explanation of current states of the Parties and discussion on technical results, progress, and arrangement of matters regarding MELINTA's development of Products hereunder.

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4.3 Meetings

Both or either of the Contact Persons may call meetings for the purpose set forth in Section 4.2. as reasonably requested by one of the Parties but no more frequently than once every six (6) months unless otherwise mutually agreed. Meetings may be held in person, by telephone or by video conference call, and the location of each meeting shall be as agreed to by the Parties. Each Party is entitled, subject to advance notice to the other Party and no reasonable objection by such Party, to invite a reasonable number of representatives and/or consultants reasonably acceptable to the other Party to attend meetings where appropriate, subject to written agreement by such Persons to be bound by the confidentiality provisions of this Agreement. Each Party shall be responsible for all travel and related costs and expenses for its representatives to participate in or attend meetings pursuant to this Section 4.3.

Article 5. Development

5.1 MELINTA Responsibilities

MELINTA shall be solely responsible for, and shall use Commercially Reasonable Efforts in conducting, all research, pre-clinical and clinical studies, and other development and commercialization activities for the Compound and/or the Products in the Territory. MELINTA shall have sole discretion in determining which Products it will submit for Regulatory Approval, in which countries it will file for Regulatory Approvals of the Products and in which countries it will commercialize such Products.

5.2 Reports

During the Term of this Agreement, every six (6) months following the Effective Date, MELINTA shall provide WAKUNAGA with a written report describing in reasonable detail the current development status of the Compound and the Products, including a summary of all significant new clinical trial results since that last such report and a timetable of anticipated future development activities and milestones which has been or will be conducted by MELINTA, its Affiliates and its Sublicensees.

5.3 Regulatory Matters

5.3.1 All Regulatory Approvals with respect to the Products in the Territory shall be in MELINTA's, its Affiliate's or Sublicensee's name; provided, however, that MELINTA may have Sublicensees obtain all or any of such Regulatory Approvals with respect to the Products pursuant to valid Sublicense Agreements, but MELINTA shall be responsible for any Sublicensee's activities regarding application for and obtainment of such Regulatory Approvals. MELINTA shall have exclusive control over, and authority and responsibility for, the regulatory strategies relating to the development and commercialization of all Products in the Territory, including: (a) the preparation of all documents submitted to Regulatory

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Authorities and the filing of all submissions relating to Regulatory Approval of Products; and (b) all regulatory actions, communications and meetings with any Regulatory Authority with respect to any Product. Upon the request of MELINTA, WAKUNAGA shall provide to MELINTA such information in its possession relating to the Compound as may be required for the foregoing regulatory activities. Such information shall be provided by WAKUNAGA on an “as is” basis to MELINTA and WAKUNAGA is not responsible for the use of such information by MELINTA, which shall be in MELINTA’s sole discretion.

- 5.3.2 MELINTA shall be responsible for interfacing, corresponding and meeting with all Regulatory Authorities in the Territory with respect to all Products. Except as required by applicable law, WAKUNAGA shall not communicate directly with the FDA or any other Regulatory Authority or governmental entity in the Territory relating to any Product without the prior written consent of MELINTA. In furtherance thereof, WAKUNAGA shall refer all FDA and other Regulatory Authority and governmental entity communications relating to any Product in the Territory to MELINTA. WAKUNAGA shall cooperate with MELINTA to provide all reasonable assistance and take all actions reasonably requested by MELINTA that are necessary to comply with any law applicable to any Product, including reporting of adverse drug experience reports (and serious adverse drug experiences) to Regulatory Authorities in the Territory.

Article 6. Procurement of Compound

If WAKUNAGA and MELINTA agree that WAKUNAGA will supply Compound, MELINTA will purchase such Compound from WAKUNAGA under terms of a supply agreement that will be negotiated by the Parties in good faith.

Article 7. Consideration

- 7.1 Milestone Payments. In consideration of the rights, licenses, Wakunaga Patents, Abbott Patents, Proprietary Information, assistance and service to be granted and provided by WAKUNAGA to MELINTA hereunder, MELINTA shall pay the following milestone payments (the “Milestone Payments”) within ten (10) calendar days following the first occurrence, and only the first occurrence of the specified event (whether the applicable milestone is achieved by MELINTA or any of its Sublicensees). For avoidance of doubt, each of the following Milestone Payments shall only be payable one time:
- 7.1.1 Intentionally Omitted.
 - 7.1.2 Intentionally Omitted.
 - 7.1.3 Intentionally Omitted.
 - 7.1.4 Intentionally Omitted.

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7.1.5 Approval of the first Product: Nine Million U.S. Dollars (\$9,000,000) upon MELINTA's or its Sublicensees' receipt of the Regulatory Approval for First Commercial Sale of the first Product as follows:

(a) Regulatory Approval in the U.S: \$6,000,000, payable as follows:

Event #	Event	Milestone Payment
1	The date upon which MELINTA or its Sublicensees receive Regulatory Approval for the first Product in the U.S.	Two million U.S. Dollars (US\$2,000,000)
2	The date six (6) months following the date upon which Event 1 occurred	Two million U.S. Dollars (US\$2,000,000) (the "Second Installment"), plus interest at the rate of four percent (4%) per annum to accrue from Event 1 through the date of payment of the Second Installment.
3	The date twelve (12) months following the date upon which Event 1 occurred	Two million U.S. Dollars (US\$2,000,000) (the "Third Installment"), plus interest at the rate of four percent (4%) per annum to accrue from Event 1 through the date of payment of the Third Installment.

(b) Regulatory Approval in the first country other than U.S. \$3,000,000

7.1.6 Sales Milestones:

- (a) First time attainment of sales greater than or equal to [***]: one-time payment of [***] to be paid when aggregate annual worldwide Net Sales of such Products, for a calendar year, by MELINTA and/or by its Sublicensees are first greater than or equal to [***].
- (b) First time attainment of sales greater than or equal to [***]: one-time payment of [***] to be paid when aggregate annual worldwide Net Sales of such Products, for a calendar year, by MELINTA and/or by its Sublicensees are first greater than or equal to [***].
- (c) First time attainment of sales greater than or equal to [***]: one-time payment of [***] to be paid when aggregate annual worldwide Net Sales of such Products, for a calendar year, by MELINTA and/or by its Sublicensees are first greater than or equal to [***].

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7.2 Running Royalties

In consideration of the rights, licenses, Proprietary Information, assistance and services to be granted and provided by WAKUNAGA to MELINTA hereunder, MELINTA shall, in addition to the Milestone Payments set forth in Section 7.1., pay to WAKUNAGA the following:

7.2.1 U.S and Rest of World Territory

- A. During the period that the manufacture, use or sale of a Product in a country is covered by a Valid Claim within any of the Wakunaga Patents or Abbott Patents in such country: Running royalties (a) at the rate of [***] of the aggregate annual Net Sales of such Products by MELINTA and/or Sublicensees in the U.S.; and (b) [***] of the aggregate annual Net Sales of such Products by MELINTA and/or Sublicensees in the ROW Territory, in each case, calculated on a calendar year basis.
- B. On and after the expiration of the last Valid Claim of the Wakunaga Patents and the Abbott Patents in the U.S. or a country within the ROW Territory covering the manufacture, use or sale of a Product in such country, until fifteen (15) years following the date of the First Commercial Sale in such country: Running royalties at the rate of [***] of the relevant percentages set forth in Section 7.2.1A of Net Sales of the relevant Products sold in such country.

7.2.2 Menarini Territory

- A. In the case where MELINTA (and not a Sublicensee) is selling a Product in a country in the Menarini Territory:
 - (ii) During the period that the manufacture, use or sale of a Product in a country in the Menarini Territory is covered by a Valid Claim within any of the Wakunaga Patents or Abbott Patents in such country: Running royalties at the rate of [***] of the aggregate annual Net Sales of such Product by MELINTA in such country, in each case, calculated on a calendar year basis.
 - (iii) On and after the expiration of the last Valid Claim of the Wakunaga Patents and the Abbott Patents in a country in the Menarini Territory covering the manufacture, use or sale of a Product in such country, until fifteen (15) years following the date of the First Commercial Sale in such country: Running royalties at the rate of [***] of the relevant percentage set forth in Section 7.2.2A(i) of Net Sales of the relevant Products sold in such country.

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B. In the case where a Sublicensee is selling a Product in a country in the Menarini Territory:

Running royalties at the rate of [***] of the aggregate annual Net Sales of such Product by such Sublicensee in such country, provided, that in the event that the sum of Drug Sales Revenue and running royalties paid by such Sublicensee to MELINTA in respect of sales of such Product in such country (“Menarini Country Income”) is less than [***] of the aggregate annual Net Sales of such Product in such country, in lieu of running royalties, MELINTA shall pay WAKUNAGA [***] of the Menarini Country Income received with respect to such country, in each case, calculated on a calendar year basis. This Section 7.2.2B shall apply on a country-by-country basis in the Menarini Territory indefinitely, irrespective of whether there is a Valid Claim of the Wakunaga Patents or Abbott Patents in such country.

7.3 Sublicense Income Sharing

MELINTA shall pay to WAKUNAGA the greater of [***] of the Sublicense Income it receives during the term of this Agreement relevant to a given Sublicense Agreement or the cumulative relevant Milestone Payments due under Section 7.1.5 with respect to the subject matter of such Sublicense Agreement. MELINTA shall make payments to WAKUNAGA of such percentage of the Sublicense Income within [***] after MELINTA receives the Sublicense Income, and MELINTA shall pay such relevant Milestone Payments as and when provided under Section 7.1.5 as applicable, unless in either case such amount is not due because it is already covered by a credit resulting from the prior payment of a sufficient amount under this Section 7.3 to satisfy the obligations hereunder. An Example of this calculation is attached as Appendix 4.

Article 8. Payments and Report

8.1 Accounting period

The accounting period for determining running royalty and Menarini Country Income, if any, payments due hereunder shall be every calendar quarter and each such accounting period shall be closed at the end of each March, June, September and December, and within forty (40) days after the end of each accounting period, MELINTA shall pay WAKUNAGA such amounts together with an English language report thereon as provided in Section 8.2 below.

8.2 Statements and Payment

MELINTA shall deliver to WAKUNAGA, within forty (40) days after the end of each calendar quarter, the report setting forth for such calendar quarter the following information for the Products: (i) the Net Sales and, if applicable, Menarini Country Income of such Products on a country-by-country basis; (ii) the basis for any adjustments to the running royalties due to WAKUNAGA on account of the Net Sales of such

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Products in any country; (iii) the running royalties and portion, if applicable, of Menarini Country Income due to WAKUNAGA on account of the Net Sales of such Products; and (iv) the exchange rates used in calculating any of the foregoing. The total running royalties and portion, if applicable, of Menarini Country Income due to WAKUNAGA in respect of such calendar quarter, less the amount payable to AbbVie as provided below, shall be remitted at the time such report is made. MELINTA shall make all payments due to WAKUNAGA hereunder by telegraphic transfer in U.S. dollars to the credit of such bank account as WAKUNAGA shall designate to MELINTA in writing at least ten (10) days in advance of any payment. WAKUNAGA acknowledges and agrees that [***] of the running royalties and portion, if applicable, of Menarini Country Income due to WAKUNAGA hereunder are payable to AbbVie pursuant to the Abbott Agreement and hereby authorizes that such payments be paid directly by MELINTA to AbbVie pursuant to a direction letter from AbbVie, by telegraphic transfer in U.S. dollars to the credit of such bank account as AbbVie shall designate to MELINTA in such direction letter at least ten (10) days in advance of any such payment. WAKUNAGA further acknowledges and agrees that, upon MELINTA's payment of such amount to AbbVie in accordance with such direction letter from AbbVie, MELINTA shall have no further obligation to WAKUNAGA for such amount hereunder and shall be released from any and all liability or other obligation hereunder with respect thereto.

8.3 Taxes and Withholding

Any payments made by MELINTA to WAKUNAGA under this Agreement shall be reduced by the amount required to be paid or withheld pursuant to any applicable law, including United States federal, state or local tax law ("Withholding Taxes"). Any such Withholding Taxes shall be borne solely by WAKUNAGA. MELINTA, as applicable, shall submit to WAKUNAGA reasonable proof of payment of the Withholding Taxes, together with an accounting of the calculations of such taxes, within thirty (30) days after such Withholding Taxes are remitted to the proper authority. The Parties will cooperate reasonably (i) in completing and filing documents required under the provisions of any applicable tax laws or under any other applicable law in connection with the making of any required tax payment or withholding payment, (ii) in connection with any claim to a refund of or credit for any such payment and (iii) in connection with working with tax authorities to avoid or minimize, to the extent legally possible under applicable tax laws, regulations, treaties and the like, any double taxation.

8.4 Currency Exchange

With respect to the Net Sales invoiced or expenses incurred in U.S. Dollars, the Net Sales or expense amounts and the amounts due to WAKUNAGA hereunder shall be expressed in U.S. Dollars. With respect to the Net Sales invoiced or expenses incurred in a currency other than U.S. Dollars, the Net Sales or expense shall be expressed in the domestic currency of the Person making the sale or incurring the expense, together with the U.S. Dollar equivalent, calculated using the official rate of exchange of the currency of such country as quoted by The Wall Street Journal, New York edition, for the last day of the calendar quarter for which the payment is made. If the transfer or the conversion into U.S.

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Dollars in any such instance is not lawful or possible, the payment of such part of the royalties as is necessary shall be made by the deposit thereof, in whatever currency is allowable and acceptable by WAKUNAGA, to the credit and account of WAKUNAGA or its nominees in any commercial bank or trust company of its choice located in that country. Prompt notice of any such deposit shall be given by MELINTA to WAKUNAGA.

Article 9. Maintenance of Records

9.1 Maintenance

During the term of this Agreement and for a period of five (5) years thereafter, MELINTA shall maintain, and shall require its respective Affiliates and Sublicensees to maintain, complete and accurate books and records in connection with the sale of the Products for a period of five (5) years from the date of any relevant transaction, as necessary to allow the accurate calculation of the amounts due to WAKUNAGA hereunder, including any records required to calculate any adjustments hereunder. WAKUNAGA shall have the right, no more than once in any calendar year, to engage an independent accounting firm reasonably acceptable to MELINTA and/or the Sublicensee, which shall have the right to examine in confidence the relevant MELINTA and/or Sublicensee records as may be reasonably necessary to determine and/or verify the payments of the Royalties due to WAKUNAGA hereunder as further provided below.

9.2 Audit

Any examination permitted under Section 9.1 shall be conducted by WAKUNAGA or any designee (including AbbVie) reasonably acceptable to MELINTA, and MELINTA and Sublicensees shall make their records available, during normal business hours, after at least fifteen (15) days' prior written notice to MELINTA or the Sublicensee, as applicable, and such examination shall take place at the facility where such records are maintained. Each such examination shall be limited to pertinent books and records for a period of five (5) years prior to the date of the audit request. Before permitting any independent accounting firm or party other than WAKUNAGA to have access to such books and records, MELINTA may require such independent accounting firm and its personnel involved in such audit to sign a confidentiality agreement (in form and substance reasonably acceptable to MELINTA) as to any confidential information which is to be provided to such accounting firm or to which such accounting firm will have access while conducting the audit under this Section 9.2. The reviewing independent accounting firm will prepare and provide to MELINTA a written report stating whether the reports submitted, if applicable, and amounts paid or charged, as the case may be, are correct or incorrect. WAKUNAGA agrees to hold in strict confidence all information disclosed to it pursuant to this Section 9.2., except to the extent necessary for WAKUNAGA to enforce its rights under this Agreement or if disclosure is required by law. In the event there was an underpayment by MELINTA, hereunder, then MELINTA shall promptly (but in no event later than thirty (30) days after MELINTA's receipt of the independent auditor's report so correctly concluding) make payment to WAKUNAGA of any shortfall. WAKUNAGA shall bear the full cost of such audit unless such audit

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discloses an underreporting by MELINTA, or an overcharge by WAKUNAGA of more than three percent (3%) of the aggregate amount due WAKUNAGA or charged to MELINTA, respectively, in any twelve (12) month period, and which aggregate incorrect amount is not less than fifty thousand U.S. dollars (US\$50,000), in which case, MELINTA shall bear the full cost of such audit.

9.3 Interest on Late Payments

Any failure by a Party to make a payment of any undisputed amount when due hereunder shall obligate such Party to pay interest to the other Party at a rate equal to [***] per month (or the maximum allowed by law, if less), calculated on the basis of a three hundred sixty (360) day year, the interest period commencing on the due date and ending on the payment date.

Article 10. Representations, Warranties and Covenants

10.1 Mutual Representations and Warranties

Each Party hereby represents, warrants and covenants to the other Party as of the Effective Date that:

- 10.1.1 such Party is a corporation or entity duly organized, validly existing and in good standing under the laws of the country (or applicable subdivision thereof) of incorporation and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof;
- 10.1.2 such Party is duly authorized, by all requisite corporate action, to execute and deliver this Agreement and the execution, delivery and performance of this Agreement by such Party does not require any shareholder action or approval, and the Person executing this Agreement on behalf of such Party is duly authorized to do so by all requisite corporate action;
- 10.1.3 no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority or any Third Party is required on the part of such Party in connection with the valid execution, delivery and performance of this Agreement, except where the failure to obtain any of the foregoing would not have a material adverse impact on the ability of such Party to fulfill its obligations hereunder;
- 10.1.4 this Agreement is a legal and valid obligation binding upon such Party and enforceable in accordance with its terms except as enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights and (ii) equitable principles, in each case of general applicability;

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- 10.1.5 the execution, delivery and performance by such Party of this Agreement and its compliance with the terms and provisions of this Agreement does not and will not conflict with or result in a breach of any of the terms or provisions of (i) any contractual or other obligations of such Party, (ii) the provisions of its charter, bylaws or other organizational documents, or (iii) any order, writ, injunction or decree of any court or governmental authority entered against it or by which it or any of its property is bound, except where such breach or conflict would not have a material adverse impact on the ability of such Party to fulfill its obligations hereunder; and
 - 10.1.6 such Party shall comply in all material respects with all laws, rules and regulations applicable to its performance under this Agreement.
- 10.2 Additional WAKUNAGA representations, Warranties and Covenants
- WAKUNAGA additionally represents, warrants and covenants to MELINTA as of the Effective Date that:
- 10.2.1 WAKUNAGA has the full right, power and authority to grant, and is not prohibited by the terms of any agreement to which it is a party from granting, the licenses granted to MELINTA under Article 2. hereof;
 - 10.2.2 the Termination Agreement is in full force and effect as of the Effective Date and WAKUNAGA shall not take any action or fail to take any action which would cause such agreement to be modified in any manner that would adversely affect MELINTA's rights hereunder; and MELINTA shall have no liability to make any payments or perform any acts other than as expressly set forth herein as a result of any obligations of WAKUNAGA under the Abbott Agreement or the Termination Agreement;
 - 10.2.3 WAKUNAGA has not granted and will not grant any rights inconsistent with the rights and licenses granted herein;
 - 10.2.4 to the best of WAKUNAGA's knowledge, as of the Effective Date, the Wakunaga Patents, Additional Wakunaga Patents and Abbott Patents are valid and enforceable;
 - 10.2.5 to the best of WAKUNAGA's knowledge, as of the Effective Date, WAKUNAGA holds good title to and is the legal and beneficial owner of the Wakunaga Patents, the Additional Wakunaga Patents and the Wakunaga Proprietary Information, free and clear of all liens, security interests, charges and other encumbrances of any kind, and no Third Party has any right, title or interest in the Wakunaga Patents or the Wakunaga Proprietary Information;
 - 10.2.6 to the best of WAKUNAGA's knowledge, as of the Effective Date, there are no pending claims, judgments or settlements against or owed by WAKUNAGA pending with respect to the Wakunaga Patents, Additional Wakunaga Patents or the Wakunaga Proprietary Information, and, WAKUNAGA has not received written notice of any threatened claims or litigation seeking to invalidate or render unenforceable any of the Wakunaga Patents. During the Term, WAKUNAGA shall promptly notify MELINTA in writing upon learning of any such actual or threatened claim, judgment or settlement;

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- 10.2.7 to the best of WAKUNAGA's knowledge, as of the Effective Date, there are no inquiries, actions or other proceedings pending before or, threatened by any Regulatory Authority or other government agency with respect to the Wakunaga Proprietary Information or the Compound or any Product, and WAKUNAGA has not received written notice threatening any such inquiry, action or other proceeding; and
- 10.2.8 as of the Effective Date, WAKUNAGA has no knowledge that the exercise of the licenses granted herein would infringe the patent rights of any Third Party, nor does it have knowledge that any Third Party is infringing any of the Wakunaga Patents or the Abbott Patents.
- 10.2A As of the Amendment Effective Date, WAKUNAGA has received from AbbVie all consents and approvals necessary to execute this Agreement.
- 10.3 Additional MELINTA representations, Warranties and Covenants
MELINTA additionally represents, warrants and covenants to WAKUNAGA as of the Effective Date that:
 - 10.3.1 MELINTA has the full right, power and authority to be granted, and is not prohibited by the terms of any agreement to which it is a party from being granted the licenses and rights granted by WAKUNAGA hereunder;
 - 10.3.2 MELINTA has not been previously granted and will not grant any rights inconsistent with the rights and licenses granted by WAKUNAGA to MELINTA herein;
 - 10.3.3 to the best of MELINTA's knowledge as of the Effective Date, MELINTA has not made any commitment or undertaken any obligation which is reasonably expected to interfere with the full and complete performance of its obligations hereunder, and will not make any such commitment or undertake any such obligation during the term hereof;
 - 10.3.4 as of the Effective Date, there is not any claim or litigation pending or, to the best of MELINTA's knowledge, threatened against MELINTA, or any lien or encumbrance of any kind that would reasonably be expected to interfere with MELINTA's complete enjoyment of the rights in the business contemplated herein and under this Agreement;
 - 10.3.5 MELINTA will use Commercially Reasonable Efforts to procure and keep adequate funding so as to fully perform its contractual obligations set forth herein.

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10.4 No-Warranty

In no event shall WAKUNAGA be deemed to represent or warrant to MELINTA that approvals or registrations for a Product will be obtained in all or any part of the Territory or that a Product may be commercially or legally marketed in the future.

10.5 Disclaimer of Warranties

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, CONCERNING THE SUCCESS OR POTENTIAL SUCCESS OF THE DEVELOPMENT, COMMERCIALIZATION, MARKETING OR SALE OF ANY PRODUCT. EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Article 11. Intellectual Property

11.1 WAKUNAGA's Intellectual Property

WAKUNAGA shall solely own the Wakunaga Patents, the Additional Wakunaga Patents and the Wakunaga Proprietary Information. WAKUNAGA shall use reasonable efforts to prosecute and maintain the Additional Wakunaga Patents.

11.2 MELINTA's Intellectual Property

MELINTA shall solely own all right, title and interest in the Melinta Proprietary Information, together with all patent rights and other intellectual property rights therein and, subject only to any express provisions of this Agreement granting rights therein to WAKUNAGA, shall have the right to freely exploit, transfer, license, or encumber its rights thereto.

11.3 Abbott's Intellectual Property

Both WAKUNAGA and MELINTA hereby confirm that AbbVie shall solely own the Abbott Patents and the Abbott Proprietary Information. WAKUNAGA shall use Commercially Reasonable Efforts to obtain information from AbbVie regarding the status of the prosecution and maintenance of the Abbott Patents and shall provide any such information it receives to MELINTA in a timely manner.

11.4 Prosecution of Wakunaga Patents

In the Territory, MELINTA shall have the right to Prosecute, at its own cost, the Wakunaga Patents, through patent counsel selected by MELINTA and reasonably acceptable to WAKUNAGA. MELINTA shall have the right to credit maintenance fees for such Wakunaga Patents against any fees due WAKUNAGA hereunder. WAKUNAGA and MELINTA shall consult and cooperate with each other regarding the Prosecution of the Wakunaga Patents. If MELINTA does not elect to assume such responsibility, WAKUNAGA shall have the right to continue Prosecution of the Wakunaga Patents at WAKUNAGA's expense, with input from MELINTA as provided in Sections 11.5 and 11.6, *mutatis mutandis*.

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11.5 Right to Consult

During the Term of this Agreement, in the case of the Prosecution of the Wakunaga Patents by MELINTA, MELINTA shall copy WAKUNAGA, or have WAKUNAGA copied, on all substantive documents relating to Wakunaga Patents received from or to be filed in any patent office in the Territory, within fifteen (15) days of receipt from the patent office and at least fifteen (15) days prior to filing with the patent office, respectively, including copies of each patent application, official action, response to official action, declaration, information disclosure statement, request for terminal disclaimer, request for patent term extension, and request for reexamination. WAKUNAGA may comment on the Prosecution of the Wakunaga Patents and provide such comments to MELINTA patent counsel, and MELINTA shall require its patent counsel to consider in good faith such comments from WAKUNAGA. If WAKUNAGA does not provide its comments with respect to the Prosecution of a patent application and/or patent within the Wakunaga Patents within ten (10) days of receipt of the relevant documents and in no event later than fifteen (15) days prior to the deadline for filing or otherwise responding to the relevant paper in the relevant patent office, MELINTA shall be free to act without consideration of WAKUNAGA's comments but in good faith.

11.6 Abandonment of Prosecution by MELINTA

In the event that the Wakunaga Patents are being Prosecuted by MELINTA, MELINTA shall notify WAKUNAGA in the event it is unable or unwilling for any reason to Prosecute all or any of the Wakunaga Patents pursuant to Section 11.5. Such notification shall be given within a reasonable period (i.e., with sufficient time for WAKUNAGA to take whatever action may be necessary or desired) prior to the date on which such patent application(s) or patent(s) will lapse or go abandoned, and, in such event, WAKUNAGA shall have the right, but not the obligation, to Prosecute at its own cost the patent rights within such Wakunaga Patents, through patent counsel selected by WAKUNAGA and reasonably acceptable to MELINTA, to the extent such Wakunaga Patents are being Prosecuted in the United States and/or such other countries as the Parties may agree in writing. In the event WAKUNAGA is Prosecuting any Wakunaga Patents pursuant to this Section 11.6, the provisions of Section 11.5 shall apply in favor of MELINTA, *mutatis mutandis*.

11.7 Patent Term Extensions

To the extent that MELINTA is then Prosecuting the relevant Wakunaga Patents, WAKUNAGA shall have the right to request that MELINTA shall (at WAKUNAGA's cost and expense and with WAKUNAGA's cooperation) file all applications and take actions necessary to obtain patent extension pursuant to 35 U.S.C. §156 or like foreign statutes for the Wakunaga Patents in the Territory, which extensions shall be owned by WAKUNAGA. MELINTA shall also have the right to initiate any such action, at

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WAKUNAGA's cost and expense and with WAKUNAGA's cooperation. If MELINTA declines to pursue such patent extensions, then WAKUNAGA may file all such applications and take all such actions necessary to obtain such patent extensions. MELINTA agrees to sign such further documents and take such further actions as may be requested by WAKUNAGA in this regard.

11.8 Suits for Infringement of the Wakunaga Patents

If WAKUNAGA or MELINTA becomes aware of infringement of any patent included in the Wakunaga Patents by a Third Party in the Territory, such Party shall promptly notify the other Party in writing to that effect and provide a summary of the relevant facts and circumstances known to such Party relating to such infringement ("Infringement Notice"), MELINTA shall have the right, at its sole discretion, on its own behalf, to institute, prosecute and control any action or proceeding to restrain infringement of any Wakunaga Patents in the Territory. WAKUNAGA shall have the right, but not the obligation, to be joined as a party plaintiff if necessary to prosecute the action or proceeding and shall provide all reasonable cooperation, including any necessary use of its name, required to prosecute such litigation. MELINTA shall have sole control of any such suit and all negotiations for its settlement or compromise; provided, that MELINTA shall not settle or compromise any such suit or enter into any consent order for the settlement or compromise thereof without the prior written consent of WAKUNAGA, which consent shall not be unreasonably withheld or delayed.

11.9 Step-in Right for WAKUNAGA

If, prior to the expiration of six (6) months from said Infringement Notice, MELINTA is not engaged in active negotiations with such Third Party or has not obtained a discontinuance of an alleged infringement by a Third Party or brought an infringement action or proceeding or otherwise taken appropriate action to abate such infringement, or if MELINTA shall notify WAKUNAGA at any time prior thereto of its intention not to bring suit against an alleged infringer and such infringement is relevant to the Compound and/or the Product in the Territory, then, and in those events only, WAKUNAGA shall have the right, but not be obligated, to institute, prosecute and control any action or proceeding to restrain such infringement. MELINTA agrees to be joined as a party plaintiff if necessary to prosecute the action or proceeding and shall provide all reasonable cooperation, including any necessary use of its name, required to prosecute such litigation. WAKUNAGA shall have sole control of any such suit and all negotiations for its settlement or compromise; provided, that WAKUNAGA shall not settle or compromise any such suit or enter into any consent order for the settlement or compromise thereof without the prior written consent of MELINTA, which consent shall not be unreasonably withheld or delayed.

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11.10 Costs and Recoveries from Infringement Action

Each Party shall assume and pay all of its own out-of-pocket costs incurred in connection with any litigation or proceedings described in Sections 11.8. and 11.9., including the fees and expenses of that Party's counsel. Any recovery obtained by any Party as a result of any proceeding described in Sections 11.8. and 11.9., by settlement or otherwise, shall be applied in the following order of priority: (i) first, to reimburse the instituting Party for all litigation costs in connection with such proceeding paid by that Party and not otherwise recovered; (ii) second, to reimburse the other Party for all litigation costs in connection with such proceeding paid by that Party and not otherwise recovered; and (iii) third, the remainder of the recovery shall be shared 85% to the instituting Party and 15% to the other Party.

11.11 Infringement of Third Party Rights

With respect to any and all Third Party Claims instituted against MELINTA or WAKUNAGA or any of their respective Affiliates or Sublicensees for patent infringement involving the use, sale, license or marketing of the Products in the Territory by MELINTA, its Affiliates or Sublicensees during the Term, MELINTA shall defend and control any action or proceeding with respect to such claim. WAKUNAGA may be represented by its own counsel in any such action and WAKUNAGA may be joined as a party if necessary to defend the action or proceeding and shall provide all reasonable cooperation, including any necessary use of its name, required to defend such litigation. MELINTA shall act as the party in any such suit and all negotiations for its settlement or compromise; provided, that MELINTA shall not settle or compromise any such suit or enter into any consent order for the settlement or compromise thereof without the prior written consent of WAKUNAGA, which consent shall not be unreasonably withheld or delayed.

11.12 Costs and Expenses from Defending an Infringement Action

All out-of-pocket costs and expenses incurred in connection with any litigation or proceedings described in Section 11.11., including the fees and expenses of counsel, shall be borne by the Party taking the action.

11.13 No Warranty by WAKUNAGA

EXCEPT AS EXPRESSLY SET FORTH HEREIN, NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS A WARRANTY OR REPRESENTATION BY WAKUNAGA AS TO THE VALIDITY OR SCOPE OF ANY WAKUNAGA PATENTS OR WAKUNAGA PROPRIETARY INFORMATION.

11.14 Abbott Property

With respect to Abbott properties such as Abbott Patents and/or Abbott Proprietary Information, whenever anything in relation to this Agreement occurs, both Parties shall discuss any matter with AbbVie in good faith and find a proper solution so as to reach the satisfaction of AbbVie, MELINTA and WAKUNAGA.

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Article 12. Indemnification

12.1 Indemnification by WAKUNAGA

WAKUNAGA shall defend, indemnify and hold harmless MELINTA and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all claims of Third Parties (a “Third Party Claim”), and all associated losses, to the extent arising out of (i) WAKUNAGA’s negligence or willful misconduct in performing any of its obligations under this Agreement, (ii) a breach by WAKUNAGA of any of its representations, warranties, covenants or agreements under this Agreement, or (iii) any claim by AbbVie or its Affiliates for any unpaid running royalties or other amounts due to AbbVie hereunder, to the extent that MELINTA shall have paid such amounts to AbbVie pursuant to a direction letter from AbbVie in accordance with Section 8.2 above; provided, that in all cases referred to in this Section 12.1., WAKUNAGA shall have no liability to MELINTA for any losses of MELINTA to the extent that such losses are caused by (a) the negligence or willful misconduct of MELINTA or its Affiliates or (b) any breach by MELINTA of its representations, warranties, covenants or agreements hereunder, including without limitation as provided in Section 12.2 below.

12.2 Indemnification by MELINTA

MELINTA shall defend, indemnify and hold harmless WAKUNAGA and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all Third Party Claims, and all associated losses, to the extent arising out of (i) MELINTA’s and/or its Sublicensee’s negligence or willful misconduct in performing any of its obligations under this Agreement, (ii) a breach by MELINTA of any of its representations, warranties, covenants or agreements under this Agreement, or (iii) the development, commercialization, manufacture, sale and any other disposition of the Products by MELINTA, its Affiliates, Subcontractors or its Sublicensees; provided, that in all cases referred to in this Section 12.2., MELINTA shall have no liability to WAKUNAGA for any losses of WAKUNAGA to the extent such losses were caused by (a) the negligence or willful misconduct of WAKUNAGA or its Affiliates or (b) any breach by WAKUNAGA of its representations, warranties, covenants or agreements hereunder.

12.3 Procedure for Indemnification

Each Party will notify promptly the other if it becomes aware of a Third Party Claim for which indemnification may be sought hereunder and will give such information with respect thereto as the other Party shall reasonably request and as is reasonably available to such Party. If any proceeding (including any governmental investigation) is instituted involving any Party regarding which indemnity may be sought pursuant to Section 12.1. or 12.2., such Party (the “Indemnified Party”) shall not make any admission concerning such claim, but shall promptly notify the other Party (the “Indemnifying Party”) in writing and the Indemnifying Party and Indemnified Party shall meet to discuss how to respond to any claims that are the subject matter of such proceeding. The Indemnifying Party shall not be obligated to indemnify the Indemnified Party to the extent any admission made by the Indemnified Party or any failure by such Party to notify the Indemnifying Party of the Third Party Claim materially prejudices the defense of such claim.

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12.4 Defense of Claim

If the Indemnifying Party elects to defend a claim from Third Party, it shall give notice to the Indemnified Party within thirty (30) days after the receipt of the notice from the Indemnified Party of the potential indemnifiable claim which involves (and continues to involve) solely monetary damages; provided, that the Indemnifying Party expressly agrees in such notice that, as between the Indemnifying Party and the Indemnified Party, the Indemnifying Party shall be solely obligated to satisfy and discharge the Third Party claim, subject to the terms, conditions and limitations of this Agreement (the "Litigation Conditions"). Subject to compliance with the Litigation Conditions, the Indemnifying Party shall retain counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party and shall pay the fees and expenses of such counsel related to such proceeding. In any such proceeding, the Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party unless: (i) the Indemnifying Party and the Indemnified Party shall have agreed to the retention of such counsel, or (ii) the named parties to any such proceeding include both the Indemnifying Party and the Indemnified Party and representation of both Parties by the same counsel would be inappropriate due to actual or potential differing interests between them. All such fees and expenses shall be reimbursed as they are incurred. If the litigation conditions are not satisfied within thirty (30) days after notice of the Third Party claim was provided to the Indemnifying Party, then the Indemnified Party shall have the right to control the defense of such Third Party claim and the Indemnifying Party shall have the right to participate in such defense at the Indemnifying Party's own expense. The Indemnified Party shall not settle any claim for which it is seeking indemnification without the prior consent of the Indemnifying Party which consent shall not be unreasonably withheld. The Indemnified Party shall, if requested by the Indemnifying Party, cooperate in all reasonable respects in the defense of such claim that is being managed and controlled by the Indemnifying Party. The Indemnifying Party shall not, without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), effect any settlement of any pending or threatened proceeding in respect of which the Indemnified Party is a Party and indemnity could have been sought hereunder by the Indemnified Party, unless such settlement includes an unconditional release of the Indemnified Party from all liability on claims that are the subject matter of such proceeding.

Article 13. Insurance

13.1 Insurance to be Effected by MELINTA

Immediately upon commencing a clinical trial for any Product during the Term and thereafter for (i) a period of five (5) years after the termination or expiration of this Agreement or (ii) for so long as sales of Product are continuing, whichever is longer, MELINTA shall obtain and/or maintain, respectively, at its sole cost and expense, product liability insurance (including any self-insured arrangements) covering all Third Party claims with respect to the Product developed, manufactured and sold by MELINTA, its Affiliates, Sublicensees and/or Subcontractors, in amounts which are reasonable and customary in the United States pharmaceutical and biotechnology industry for companies of comparable size and activities at the place of business of MELINTA. MELINTA shall provide written proof of the existence of such insurance to WAKUNAGA upon reasonable request.

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13.2 Insurance to be Effected by Sublicensees

MELINTA shall cause its Sublicensees, if any, to obtain and maintain product liability insurance with the same manner and effect as set forth in Section 13.1., as applicable.

13.3 Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OF ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, BUSINESS OR GOODWILL) SUFFERED OR INCURRED BY SUCH OTHER PARTY OR ITS AFFILIATES IN CONNECTION WITH A BREACH OR ALLEGED BREACH OF THIS AGREEMENT. THE FOREGOING SENTENCE SHALL NOT LIMIT THE OBLIGATIONS OF EITHER PARTY TO INDEMNIFY THE OTHER PARTY FROM AND AGAINST THIRD PARTY CLAIMS UNDER ARTICLE 12.

Article 14. Confidentiality, Publication and Public Announcements

14.1 Confidentiality

Except to the extent expressly authorized by this Agreement or otherwise expressly agreed in writing, MELINTA and WAKUNAGA agree that, until the later of (a) the termination or expiration of this Agreement or (b) five (5) years after the date of disclosure, each of MELINTA or WAKUNAGA, upon receiving or learning of any Confidential Information of the Disclosing Party, shall keep such Confidential Information confidential and otherwise shall not disclose or use such Confidential Information for any purpose other than as provided for in this Agreement. The Receiving Party shall advise its employees and consultants who might have access to the Disclosing Party's Confidential Information of the confidential nature thereof and agrees that its employees and consultants shall be bound by the terms of this Agreement. The Receiving Party shall not disclose any Confidential Information of the Disclosing Party to any employee who does not have a reasonable need for such information.

14.2 Authorized Disclosure

Notwithstanding the foregoing, each of MELINTA and WAKUNAGA may disclose Confidential Information of the Disclosing Party to a Third Party to the extent such disclosure is reasonably necessary to exercise the rights granted to or retained by it under this Agreement, or to conduct clinical trials as permitted hereunder with respect to Products or in prosecuting patent applications, or prosecuting or defending litigation, or to the extent required to comply with applicable governmental regulations, the requirements of a tax authority, Regulatory Authority or other governmental entity; provided, that if a Party is required by law to make any such disclosure of the Disclosing Party's Confidential Information, to the extent it may legally do so, it will give

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reasonable (under the circumstances) advance notice to the Disclosing Party of such disclosure so as to permit the Disclosing Party to secure, if it so desires, confidential treatment of such Confidential Information prior to its disclosure (whether through protective orders or otherwise). If the Disclosing Party has not filed a patent application with respect to such Confidential Information, it may require the Receiving Party to delay the proposed disclosure (to the extent the Disclosing Party may legally do so), for up to ninety (90) days, to allow for the filing of such an application; provided, that if a disclosure is required by law or order and such a delay is not possible, the Parties shall cooperate to restrict or delay disclosure to the extent possible in order to allow for the filing of such an application or the securing of other protection for such Confidential Information. Further, WAKUNAGA retains a right to disclose to AbbVie any part of Confidential Information including contents of this Agreement, but within and to the extent of necessity to obtain AbbVie's consent as set forth in Section 2.5 hereof or as otherwise required by the Termination Agreement, subject to AbbVie's agreement to maintain such information as confidential, and provided that MELINTA shall be given prior notice of the nature and content of any such disclosure to AbbVie.

14.3 Return of Confidential Information

Except as otherwise set forth herein, upon termination (but not expiration) of this Agreement, the Receiving Party shall promptly return all of the Disclosing Party's Confidential Information, including all reproductions and copies thereof in any medium, except that the Receiving Party may retain one copy for its legal files.

14.4 Unauthorized Use

If a Receiving Party becomes aware or has knowledge of any unauthorized use or disclosure of the Disclosing Party's Confidential Information, it shall promptly notify the Disclosing Party of such unauthorized use or disclosure.

14.5 Public Announcements

Except as required by applicable laws, treaties and agreements (including securities laws), the Parties agree that the material terms of this Agreement will be considered Confidential Information of both Parties. Notwithstanding the foregoing, (a) either Party may disclose such terms as are required to be disclosed in any publicly-filed financial statements or other public statements, pursuant to applicable laws, regulations and stock exchange rules (e.g., the rules of the U.S. Securities and Exchange Commission, NASDAQ, NYSE or any other stock exchange on which securities issued by either party may be listed); provided, such Party shall provide the other Party with a copy of the proposed text of such statements or disclosure (including any exhibits containing this Agreement) sufficiently in advance of the scheduled release or publication thereof to afford such other Party a reasonable opportunity to review and comment upon the proposed text (including redacted versions of this Agreement), (b) either Party shall have the further right to disclose the material financial terms of this Agreement under a confidentiality obligation no less protective than as set forth in this Agreement, to any potential acquirer, merger partner or potential providers of financing and their advisors,

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(c) either Party shall have the further right to disclose the material terms of this Agreement to institutional investors, investment bankers, industry analysts and other providers of financing, provided that such Party shall use all reasonable efforts to protect the confidentiality of such terms, and (d) MELINTA shall have the right to disclose information regarding the development or commercialization status of Products in the Territory to the extent such disclosure is deemed reasonably necessary or desirable by MELINTA or required by applicable laws or stock exchange rules. Neither Party shall make any other statement to the public regarding the execution and/or any other aspect of the subject matter of this Agreement, except: (i) where a Party reasonably believes disclosure is required under applicable laws or ethical commercial practice, (ii) either Party may use the text of a statement previously approved by the other Party and (iii) except as provided above, neither Party may make statements pertaining to this Agreement and the subject matter hereof including without limitation information on development or commercialization status of Products without the prior review and consent of the CEO or president of the other Party or an individual designated by such person.

The Parties shall discuss and agree (such agreement not to be unreasonably withheld, conditioned or delayed) upon the content and timing of a press release announcing the execution of this Agreement, and neither Party shall issue a press release until such time as the Parties have agreed to such content and timing.

Article 15. Term and Termination

15.1 Term

This Agreement shall become effective on the Effective Date and, unless earlier terminated by mutual agreement of the Parties in writing or pursuant to the relative provisions of this Article, this Agreement shall continue in full force and effect on a country-by-country and product-by-product basis from the Effective Date until the expiration or termination of any obligation of MELINTA to pay any royalties to WAKUNAGA pursuant to Section 7.2 hereof (the "Term"). After any such date in any country, MELINTA shall have a perpetual, fully paid-up license to the relevant rights granted hereunder in such country.

15.2 Acquisition of MELINTA

In the event (a) of a transfer or sale of all or substantially all of MELINTA's business (whether by asset sale, merger, consolidation, or similar transaction) and (b) the successor or potential successor requires MELINTA to terminate a substantial part of development or commercialization activities hereunder, then WAKUNAGA may terminate this Agreement in its entirety upon ten (10) business days' advance written notice to MELINTA if MELINTA, its successor or potential successor does not cure such failure within sixty (60) days following such notice.

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15.3 Material Breach

Upon a material breach of this Agreement by MELINTA on the one hand, or WAKUNAGA on the other hand (in such capacity, the “Breaching Party”), the other Party (in such capacity, the “Non-Breaching Party”) may provide written notice (a “Breach Notice”) to the Breaching Party specifying the material breach. If (a) such breach is capable of cure and the Breaching Party fails to cure such material breach during the ninety (90) day period (or, if applicable, such longer period, but not to exceed one hundred and eighty (180) days, as would be reasonably necessary for a diligent party to cure such material breach, provided the Breaching Party has commenced and continues its diligent efforts to cure during the initial ninety (90) day period following the date on which the Breach Notice is provided), or (b) if such breach is not capable of cure, then upon expiration of a period of ninety (90) days after the Breach Notice, in such event the Non-Breaching Party may terminate this Agreement on a Product-by-Product and country-by-country basis with respect to the Product and country to which the breach relates. For the purposes of this Section 15.3., material breach shall mean a breach which materially adversely affects the rights under this Agreement of the other Party with respect to the applicable Products and in the applicable country taken in their entirety

15.4 Bankruptcy

Either Party may, subject to the provisions set forth herein, terminate this Agreement without further action by such Party if, at any time, the other Party shall: (a) file in any court pursuant to any statute a petition for bankruptcy or insolvency, or for reorganization in bankruptcy, or for an arrangement or for the appointment of a receiver, trustee or administrator of the other Party or of its assets; (b) be served with an involuntary petition against it, filed in any insolvency proceeding, and such petition shall not be dismissed within sixty (60) days after the filing thereof; (c) propose or be a party to any dissolution; or (d) make an assignment for the benefit of its creditors.

15.5 Termination with cause by MELINTA

MELINTA shall have the right to terminate this Agreement on a country-by-country basis and/or Product-by-Product basis or in its entirety at any time upon six (6) months prior written notice to WAKUNAGA with reasonable cause based upon scientific, medical, regulatory or commercial feasibility reasons such as inadequate medical efficacy, safety concerns, restrictions in approved labeling or insufficient price reimbursement, as specifically described by MELINTA in such notice. Notwithstanding any provision of this Agreement to the contrary, in the event that an irrevocable notice of termination of this Agreement, in its entirety, is given by MELINTA to WAKUNAGA pursuant to this Section 15.5, within either the six (6) week period referenced in Section 7.1.2 or the eight (8) month period referenced in Section 7.1.3, MELINTA may tentatively suspend the relevant milestone payment regardless of the effective date of such termination, provided that MELINTA shall not suspend the milestone payment unless WAKUNAGA agrees in writing to the justification of termination by MELINTA at which time, such payments shall no longer be due by MELINTA to WAKUNAGA.

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15.6 Continuing Rights of Sublicensees

Upon any termination of this Agreement, each Sublicense previously granted by MELINTA or any of its Affiliates to any Sublicensee shall, at WAKUNAGA's option, remain in effect and shall become a direct license or sublicense, as the case may be, of such rights by WAKUNAGA to such Sublicensee, subject to the Sublicensee agreeing in writing to assume MELINTA's terms, conditions and obligations to WAKUNAGA under this Agreement as they pertain to the sublicensed rights, including the payment of the Sublicense Income and/or the Royalties, if any, to WAKUNAGA in respect of Net Sales for sales of Products by such Sublicensee anywhere in the Territory. For avoidance of doubt, in the event this Agreement is terminated and any such Sublicense is assumed by WAKUNAGA, MELINTA shall be deemed to waive the right to receive Sublicense Income from such Sublicensee solely to the extent directly related to the Wakunaga Patents, Additional Wakunaga Patents, Wakunaga Proprietary Information, Abbott Patents and/or Proprietary Information and to transfer or revert such right to WAKUNAGA, and WAKUNAGA shall be entitled to succeed to such right.

15.7 Effect of Expiration or Termination

Upon the expiration of this Agreement or the termination of this Agreement (or relevant portion thereof, if termination is only as to a certain Product and/or country) as provided above:

15.7.1 Expiration

Where the Agreement expires in accordance with Section 15.1., then, in addition to any obligations expressly set forth elsewhere in this Agreement, the licenses granted to MELINTA by WAKUNAGA hereunder shall become fully paid-up, royalty-free, perpetual and irrevocable.

15.7.2 Breach by, Acquisition of or Insolvency of MELINTA or Termination by MELINTA

Where termination is by WAKUNAGA pursuant to Section 15.2., 15.3. or 15.4., or by MELINTA pursuant to Section 15.5., then, in addition to any obligations expressly set forth elsewhere in this Agreement:

- (a) the licenses granted to MELINTA by WAKUNAGA hereunder shall terminate;
- (b) MELINTA and its Sublicensees may, for a period of six (6) months following termination, continue to sell existing inventory of Products provided that royalties on such Products are paid to WAKUNAGA as provided herein;
- (c) MELINTA shall pay any Milestone Payments due for events which are achieved prior to the effective date of termination;
- (d) MELINTA shall transfer to WAKUNAGA without any payment all governmental approvals and licenses for the Compound and the Products, including any Regulatory Approvals, and the registration dossiers developed, acquired and/or used by MELINTA in the Territory during the Term of this Agreement, and

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MELINTA shall take all necessary procedures, including preparation of official documents, for such transfer at governmental authorities in the Territory by itself or its Sublicensees together with WAKUNAGA or WAKUNAGA's designee. Such transfer shall be accompanied by documentation, data and information related to the Compound and the Products that can be transferred by MELINTA; and

- (e) MELINTA shall grant WAKUNAGA a perpetual, non-royalty bearing, exclusive license, with the right to grant sublicenses, to all Melinta Proprietary Information reasonably necessary for WAKUNAGA, alone or in conjunction with a Third Party to develop and commercialize the Compound and the Products.

15.7.3 Breach by or Insolvency of WAKUNAGA

Where termination is by MELINTA pursuant to Section 15.3. or 15.4., then, in addition to any obligations expressly set forth elsewhere in this Agreement, the licenses granted by WAKUNAGA to MELINTA shall become fully-paid, royalty-free, perpetual and irrevocable; and MELINTA shall be entitled to retain copies of all Wakunaga Proprietary Information and Abbott Proprietary Information as is necessary for MELINTA to exercise its rights hereunder.

15.7.4 Accrued Rights

Expiration or termination of this Agreement pursuant to Article 15 shall not (i) relieve a Party of any obligation accruing to such Party prior to such termination, including without limitation any obligation to make payment, or (ii) result in the waiver of any right or remedy by a Party accruing to such Party prior to such termination.

15.7.5 Confidential Information

Upon any termination or expiration of this Agreement each Party shall promptly return and/or destroy all Confidential Information of the other Party in its possession; provided that each Party shall be entitled to retain any such Confidential Information reasonably necessary to practice any surviving rights hereunder, and that one copy of any such Confidential Information may be retained in the recipient's legal files for purposes of determining such Party's obligations hereunder.

Article 16. Miscellaneous

16.1 Assignment

This Agreement may not be assigned or otherwise transferred (in whole or in part, whether voluntarily, by operation of law or otherwise) by either Party without the prior written consent of the other Party (which consent shall not be unreasonably withheld); provided, however, that either Party may assign this Agreement to any Affiliate or to any successor of all or substantially all of its business to which this Agreement relates without such prior written consent, provided further that such successor has existing expertise in the development and/or commercialization of pharmaceutical products. This Agreement shall be binding upon the permitted successors and assigns of the Parties.

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16.2 Further Actions

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

16.3 Force Majeure

Neither Party shall be liable to the other Party for loss or damages, or shall have any right to terminate this Agreement for any default or delay attributable to any Force Majeure; provided, that the Party affected gives prompt notice of any such cause to the other Party. The Party giving such notice shall thereupon be excused from such of its obligations hereunder for so long as it is thereby disabled from performing such obligations; provided, that such affected Party promptly commences and continues to use its Commercially Reasonable Efforts to cure such disablement as soon as practicable.

16.4 Notices

Notices to WAKUNAGA shall be addressed to:

Wakunaga Pharmaceutical Co., Ltd.
Address: 1624 Shimokotachi, Akitakata, Hiroshima 739-1195, Japan
Attention: Senior Vice President, Head of Research and Development Division
Facsimile No.: +81-826-45-2334
Email: wakunaga_h@wakunaga.co.jp

Notices to MELINTA shall be addressed to:

Melinta Therapeutics, Inc.
Address: 300 George Street, Suite 301, New Haven, Conn., 06511 U.S.A.
Attention: CEO
Facsimile No.: 203 624-5627

Notices to AbbVie pursuant to Section 2.5 shall be addressed to:

AbbVie Inc.
Address: 1 North Waukegan Road, North Chicago, IL 60064, U.S.A.
Attention: Vice President, Legal

Either Party may change the address to which notices shall be sent by giving notice to the other Party in the manner herein provided. WAKUNAGA shall be responsible for notifying MELINTA of any changes to the AbbVie notice address, and shall hold MELINTA harmless from any failure to do so. Any notice required or provided for by the

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terms of this Agreement shall be in writing and shall be (a) sent by registered or certified mail, return receipt requested, postage prepaid, (b) sent via a reputable overnight courier service providing evidence, of receipt, or (c) sent by facsimile or email transmission if receipt is confirmed in writing by the recipient, in each case properly addressed in accordance with the paragraphs above. The effective date of any notice shall be the actual date of receipt by the Party receiving the same.

16.5 Amendment

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

16.6 Waiver

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

16.7 Counterparts

This Agreement may be executed in counterparts and such counterparts taken together shall constitute one and the same agreement.

16.8 Descriptive Headings; Certain Conventions

The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement. Unless otherwise expressly provided herein or the context of this Agreement otherwise requires, (a) words of any gender include each other gender, (b) words such as “herein”, “hereof, and “hereunder” refer to this Agreement as a whole and not merely to the particular provision in which such words appear, (c) words using the singular shall include the plural, and vice versa, (d) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “but not limited to”, “without limitation”, “inter alia” or words of similar import, (e) the word “or” shall be deemed to include the word “and” (e.g., “and/or”), (f) the words “Party” and “Parties” shall mean either singularly or collectively WAKUNAGA and/or MELINTA, the use of these words being a convenience of drafting and their intent and meaning being apparent from their context; and (g) references to “Article,” “Section,” or other subdivision, or to an Appendix, without reference to a document are to the specified provision, Appendix of this Agreement.

16.9 Choice of Law and Jurisdiction

16.9.1 This Agreement shall be interpreted, construed and governed by the laws of the country or the state where arbitration is to be held pursuant to Section 16.9.2.

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16.9.2 All disputes or discords which may arise from or in connection with this Agreement which cannot be settled amicably shall be finally settled by arbitration by three arbitrators. One arbitrator shall be appointed by MELINTA, one by WAKUNAGA and together such two arbitrators shall appoint a third arbitrator. If the defendant in such dispute or discord is WAKUNAGA, the arbitration shall take place in Tokyo, Japan in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association. If the defendant is MELINTA, in Hartford, Conn., U.S.A. in accordance with the Commercial Arbitration Rules of American Arbitration Association. The decision of such arbitration shall be conclusive and binding on both Parties. The language to be used in the arbitral proceedings shall be English and Japanese. The costs of such arbitration shall be borne equally by the Parties.

16.9.3 Notwithstanding the foregoing, both Parties shall be entitled to petition a competent court of Japan or of U.S.A for interim or interlocutory relief; such as temporary restraining orders and preliminary injunctions to protect its right hereunder, then the other Party shall be entitled to file an action, in a competent court of Japan or of the U.S.A., for equitable relief; including without limitation, for specific enforcement of this Agreement, to protect its rights hereunder.

16.10 Severability

If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, the Parties hereto shall substitute, by mutual consent, valid provisions for such invalid, illegal or unenforceable provisions which valid provisions in their economic effect are sufficiently similar to the invalid, illegal or unenforceable provisions that it can be reasonably assumed that the Parties would have entered into this Agreement with such valid provisions. In case such valid provisions cannot be agreed upon, the invalid, illegal or unenforceable provisions of this Agreement shall not affect the validity of this Agreement as a whole, unless the invalid, illegal or unenforceable provisions are of such essential importance to this Agreement that it is to be reasonably assumed that the Parties would not have entered into this Agreement without the invalid, illegal or unenforceable provisions.

16.11 Entire Agreement of the Parties

This Agreement, together with the Appendices hereto, constitutes and contains the complete, final and exclusive understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, understandings and agreements whether oral or written, between the Parties respecting the subject matter hereof.

16.12 Construction

The Parties have participated jointly in the negotiation and drafting of this Agreement in the English language in consultation with advisors proficient in English. 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.

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16.13 Independent Contractors

The relationship between the Parties created by this Agreement is one of independent contractors and neither Party shall have the power or authority to bind or obligate the other except as expressly set forth in this Agreement.

16.14 Accrued Rights; Surviving Obligations

Unless explicitly provided otherwise in this Agreement, termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights, which shall have accrued to the benefit to any Party prior to such termination, relinquishment or expiration, including damages arising from any breach hereunder. Such termination, relinquishment or expiration shall not relieve any Party from obligations which are expressly indicated to survive termination or expiration of the Agreement, including those obligations set forth in Articles 1., 8., 9., 12., 13., 14. and 16., and Sections 15.6. and 15.7.

16.15 Rights in Bankruptcy

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

16.16 Compliance with Export Regulations

None of the Parties shall export any technology licensed to it by the other Party under this Agreement, except in compliance with Japanese or United States, as applicable, export laws and regulations.

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16.17 Expenses

Unless otherwise provided herein, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party which shall have incurred the same and the other Party shall have no liability relating thereto.

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IN WITNESS WHEREOF, each Party hereto has caused this Agreement in English and in duplicate to be executed by its duly authorized officers or representatives as of the date first above written.

WAKUNAGA: Wakunaga Pharmaceutical Co.,

Ltd. Signature: /s/ Kanji Wakunaga

Name: Kanji Wakunaga

Title: President

MELINTA: MELINTA Pharmaceuticals,

Inc. Signature: /s/ Eugene Sun, MD

Name: Eugene Sun, MD

Title: Chief Executive Officer

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LICENSE AND SUPPLY AGREEMENT

THIS LICENSE AND SUPPLY AGREEMENT (this “**Agreement**”) is made this 30th day of November, 2010 (the “**Effective Date**”) between:
CYDEX PHARMACEUTICALS, INC., a Delaware corporation with offices at 10513 W. 84th Terrace, Lenexa, Kansas 66214 (“**CyDex**”); and
RIB-X PHARMACEUTICALS, INC., a Delaware corporation with offices at 300 George Street, Suite 301, New Haven, CT 06511 (“**Company**”).

RECITALS

WHEREAS, CyDex is engaged in the business of developing and commercializing novel drug delivery technologies designed to enhance the solubility and effectiveness of existing and development-stage drugs;

WHEREAS, CyDex is the exclusive worldwide licensee of Captisol®, a patented drug formulation system designed to enhance the solubility and stability of drugs;

WHEREAS, Company desires to obtain a license to use such patented drug formulation system in connection with its development and commercialization of the Compound (defined below) and CyDex is willing to grant such license to Company under the terms and conditions set forth herein; and

WHEREAS, CyDex desires to sell Captisol® to Company, and Company desires to purchase Captisol® from CyDex, in accordance with the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the following mutual promises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties, intending to be legally bound, agree as follows:

1. DEFINITIONS.

For the purposes of this Agreement, the following terms shall have the meanings as defined below:

1.1 “Affiliate” means, with respect to any party, any entity controlling, controlled by, or under common control with such party, during and for such time as such control exists. For these purposes, “control” shall refer to the ownership, directly or indirectly, of at least fifty percent (50%) of the voting securities or other ownership interest of the relevant entity.

1.2 “Captisol” means Captisol®, also known scientifically as sulfobutylether β(beta) cyclodextrm, sodium salt.

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1.3 “Captisol Data Package” means (a) all toxicology/safety and other relevant scientific safety data owned, licensed or developed by CyDex and its Affiliates; and (b) all toxicology/safety and other relevant scientific safety data owned, licensed or developed by the licensees or sublicensees of CyDex or its Affiliates or other third parties (to the extent permitted in the applicable license or other agreements between CyDex and/or its Affiliates and such licensees, sublicensees or other third parties), in each case on Captisol alone (and not in conjunction with a product formulation).

1.4 “Captisol Improvement” means any technology or improvement related to Captisol alone, whether or not patentable, that is developed by Company or its Affiliates or Sublicensees, solely or jointly with a third party.

1.5 “Claim” has the meaning specified in **Section 10.1**.

1.6 “Clinical Grade Captisol” means Captisol which (a) has been manufactured under GMP conditions, (b) is intended for use in humans, and (c) is intended for clinical trials for the Licensed Product.

1.7 “Commercial Grade Captisol” means Captisol which (a) has been manufactured under GMP conditions, (b) is intended for use in humans, and (c) is intended for commercial sale of the Licensed Product.

1.8 “Commercial Launch Date” means, in any particular country, the first sale by Company, its Affiliates or Sublicensees of the Licensed Product.

1.9 “Compound” means that certain pharmaceutical compound known as RX-3341 with the United States Adopted Name delafloxacin meglumine, a quinolone antibiotic, and any other pharmaceutically acceptable salt version of the foregoing compound.

1.10 “Confidential Information” has the meaning specified in **Section 8.1**.

1.11 “Detailed Forecast” has the meaning specified in **Section 3.2(b)**.

1.12 “Disclosing Party” has the meaning specified in **Section 8.1** hereof.

1.13 “DMF” means a Drug Master File for Captisol, as on file as of the Effective Date, and as hereafter updated from time to time during the Term, by CyDex with the FDA or an equivalent filing made outside the United States.

1.14 “FDA” means the United States Food and Drug Administration, or any successor thereto.

1.15 “Field” means the treatment of bacterial infections and all other therapeutic, prophylactic and palliative uses other than anti-fungal and ophthalmic uses.

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1.16 “GMP” means the current good manufacturing practices for bulk excipients as set forth in:

- (i) 21 C.F.R. parts 210 and 211 of the U.S. Code of Federal Regulations;
- (ii) the International Conference on Harmonization (ICH) Guide Q7; and
- (iii) U.S. Pharmacopoeia <1078>;

as of the Effective Date or as may be amended or re-enacted from time to time and as interpreted in accordance with then-current industry standards and FDA policies.

1.17 “IND” means an Investigational New Drug application, as defined in the United States Federal Food, Drug and Cosmetic Act and the regulations promulgated thereunder, or similar application filed with an equivalent regulatory body in another country.

1.18 “Indemnitee” has the meaning specified in **Section 10.4**.

1.19 “Indemnitor” has the meaning specified in **Section 10.4**.

1.20 “Licensed Patents” means all patents and patent applications in the Territory which cover Captisol, or its composition, manufacture, import, sale or use, or the composition, manufacture, import, sale or use of Licensed Product, and which now or at any time during the Term are owned by CyDex or any Affiliate of CyDex or licensed to CyDex or any CyDex Affiliate with the right to sublicense, including any and all extensions, renewals, continuations, substitutions, continuations-in-part, divisions, patents-of-addition, reissues, reexaminations and/or supplementary protection certificates to any such patent applications and patents. Set forth in *Exhibit A* attached hereto is a list of the Licensed Patents as of the Effective Date. Such *Exhibit A* may be updated or corrected by CyDex from time to time during the Term as necessary to make the list complete, provided a failure to so update or correct the list shall not have any effect on the scope of the definition.

1.21 “Licensed Product” means the Compound combined with or formulated using Captisol in an intravenous dosage form/formulation, or a form/formulation intended to be reconstituted for intravenous administration, for ultimate use in humans. For clarity, the Licensed Product shall not include any product which is a combination product incorporating the Compound with any other active pharmaceutical ingredient.

1.22 “Losses” has the meaning set forth in **Section 10.1**.

1.23 “Manufacturing Standards” means Captisol delivered by CyDex under this Agreement:

- (i) meets Specifications;
- (ii) has been manufactured in accordance with the processes set forth in the DMF;

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(iii) has been manufactured in accordance with GMP and all other applicable laws and regulations; and

(iv) is not adulterated within the meaning of the United States Food, Drug and Cosmetic Act, as amended (the "Act"), and shall not be an article which may not, under the provisions of the Act, be introduced into interstate commerce.

1.24 "Marketing Approval" means final approval of an NDA by the FDA, or final approval of a comparable document filed with an equivalent health regulatory authority in any other country or in the European Union (using the centralized process or mutual recognition), including all required marketing, pricing or reimbursement approvals.

1.25 "NDA" means a New Drug Application, as defined in the United States Federal Food, Drug and Cosmetic Act and the regulations promulgated thereunder, or similar application filed with an equivalent regulatory body in another country.

1.26 "Net Sales" means gross amounts invoiced by Company, its Affiliates and Sublicensees for sales of the Licensed Product, less the following: (a) normal and customary trade, quantity and/or cash discounts, allowances and rebates actually allowed or given; (b) returns, refunds and credits actually allowed for rejections, defects or recalls of Licensed Product, outdated or returned Licensed Product; (c) government mandated rebates and other compulsory payments, credits, adjustments and rebates actually paid or deducted; (d) other price adjustments, allowances, credits, chargeback payments, discounts, and rebates, which are reasonable and consistent with industry practices; (e) normal and customary wholesaler's discounts; (f) distributor commissions and fees paid to third party wholesalers for distribution of Licensed Product which are reasonable and consistent with industry practice, not to exceed [***] percent ([***] %); (g) amounts previously included in Net Sales of Licensed Product that are written-off by Company or any of its Affiliates or Sublicensees, as the case may be, as uncollectible, in accordance with commercially reasonable practices; (h) freight, postage, shipping insurance and other transportation expenses (if separately identified on the invoice); and (i) sales, value-added, excise or use taxes, tariffs, duties and customs fees and other taxes imposed with respect to specific sales. In addition, in the event industry practices change such that an item substantially similar in character or substance to any of the foregoing but not specifically included in clauses (a) through (i) becomes a customary deduction in the calculation of "Net Sales", CyDex shall not unreasonably withhold its agreement to amend the foregoing definition to include such item as a deduction for purposes of calculating "Net Sales". In the case of a sale of Licensed Product between or among Company and/or its Affiliates and Sublicensees for resale, Net Sales shall be calculated as above only on the gross amount invoiced on the first arm's length sale.

1.27 "Notice of Default" has the meaning specified in **Section 13.2**.

1.28 "Notice of Termination" has the meaning specified in **Section 13.2**.

1.29 "[*]"** has the meaning specified in **Section 8.5**.

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1.30 “Purchase Volume Limitations” has the meaning specified in Section 3.2(c).

1.31 “Receiving Party” has the meaning specified in Section 8.1.

1.32 “Q1”, “Q2”, “Q3”, and “Q4” have the meanings specified in Section 3.2(b).

1.33 “Research Grade Captisol” means Captisol which has not been manufactured under GMP conditions and is not suitable for use in humans, but which meets CyDex’s specifications for Research Grade Captisol.

1.34 “SEC” has the meaning specified in Section 8.3.

1.35 “Specifications” means the specifications for Captisol set forth in *Exhibit B* hereto, as such may be amended from time to time pursuant to Section 3.4.

1.36 “Study” has the meaning specified in Section 6.3.

1.37 “Sublicensees” has the meaning specified in Section 2.3, but shall not include wholesalers and other third party distributors who solely purchase Licensed Product in final finished form from Company or any of its Affiliates or Sublicensees for re-sale in such form or for re-sale after completion of final packaging and labeling.

1.38 “Term” has the meaning specified in Section 13.1.

1.39 “Testing Methods” has the meaning specified in Section 3.5(a).

1.40 “Third-Party Manufacturer” has the meaning specified in Section 3.6.

1.41 “Territory” means the entire world.

1.42 “Valid Claim” means a claim in any unexpired, issued patent which has not been irrevocably abandoned or held to be invalid or unenforceable by a non-appealed or unappealable decision of a court or other authority of competent jurisdiction, and which is not admitted to be invalid through disclaimer or dedication to the public.

1.43 “Volume Threshold” has the meaning specified in Section 3.1.

2. GRANT OF RIGHTS.

2.1 License Grants from CyDex to Company.

(a) **Licensed Patents.** Subject to the terms and conditions of this Agreement, including but not limited to payment of the amounts set forth in Section 4.1 below, CyDex hereby grants to Company an exclusive, nontransferable (except with respect to the assignment provision in Section 14.15 and the sublicensing provisions of Sections 2.3 and 2.4) license during the Term under the Licensed Patents, solely to research, develop, make, have made, use,

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market, distribute, sell, have sold, export, offer for sale and import the Licensed Product in the Territory in the Field. Notwithstanding the foregoing, to the extent that any Licensed Patents are licensed to CyDex or its Affiliates by a third party on a non-exclusive basis, the license granted to Company in the foregoing sentence shall be exclusive as to CyDex and non-exclusive as to any third party. Company shall not, and shall not have the right under the foregoing license to, make, use, sell, offer for sale, or import the Licensed Product for any other purposes. Company may not sublicense the Licensed Patents, except as expressly set forth in **Sections 2.3 and 2.4** below.

(b) Captisol Data Package. Subject to the terms and conditions of this Agreement, including but not limited to payment of the amounts set forth in **Section 4.1** below, CyDex hereby grants to Company a non-exclusive, nontransferable (except with respect to the assignment provision in **Section 14.15** and sublicensing provisions of **Sections 2.3 and 2.4**) license during the Term under the rights of CyDex and any of its Affiliates in and to the Captisol Data Package, solely to research, develop, make, have made, use, market, distribute, sell, have sold, export, offer for sale and import the Licensed Product in the Territory in the Field. Company may not sublicense its rights to the Captisol Data Package, except as expressly set forth in **Sections 2.3 and 2.4** below.

(c) Scope of Licenses. Without limiting the generality of the foregoing, CyDex grants no rights to Company to manufacture, import, sell or offer for sale bulk Captisol, except as set forth in Section 3.7(d). Licensee acknowledges that not all rights of CyDex related to Captisol are included within the rights licensed under this **Section 2.1**, given that CyDex shall supply Company's requirements of Captisol for the Licensed Product, subject to **Section 3.7(d)**. Company shall not attempt to reverse engineer, deconstruct or in any way determine the structure or composition of Captisol. CyDex shall not be liable to Company for violation of Company's exclusive rights hereunder by parties which are not Affiliates of CyDex, provided that if a third party is infringing any Licensed Patents in a manner that is in violation of Company's exclusive rights, and CyDex is not taking steps to stop such infringement either directly against the infringer or against the infringer's source of the infringing product, then the royalty payable by CyDex will be reduced by [***] percent ([***]%) during any period in which such infringement continues. Company acknowledges and agrees that (i) CyDex shall not be required to obtain or maintain patent rights in the Territory for the Licensed Patents, (ii) except as provided in this Agreement with respect to the Licensed Product, CyDex shall not be restricted in making sales of Captisol or licensing rights to other parties, and (iii) CyDex does not warrant or indemnify Licensee or its Affiliates and Sublicensees against the Licensed Product infringing third party rights.

2.2 Grant of License from Company to CyDex. Company hereby grants to CyDex a nonexclusive, transferable, perpetual, worldwide and royalty-free license, with the right to grant sublicenses (through multiple tiers of sublicensees), under Company's and its Affiliates' and Sublicensees' rights in and to Captisol Improvements to develop, make, have made, use, market, distribute, import, export, sell and offer for sale Captisol or any Captisol Improvement (other than for use with Compound) and products formulated with Captisol or any Captisol Improvement (other than the Licensed Product in the Field). If, during the Term, any of (a)

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Company, (b) Affiliates to whom Company has provided rights under the licenses granted to Company by CyDex pursuant to **Section 2.1**, or (c) Sublicensees pursuant to the practice of their respective sublicenses from Company under **Section 2.3**, file any patent application claiming Captisol anywhere in the world, CyDex shall be deemed automatically to have a nonexclusive, transferable, perpetual, worldwide and royalty-free license, with the right to grant sublicenses (through multiple tiers of sublicensees), under the claims relating specifically to Captisol to make, have made, use, market, distribute, import, sell, and offer for sale Captisol (other than for use with Compound) and all products formulated with Captisol (other than the Licensed Product in the Field). Company shall provide prompt notice to CyDex of any Captisol Improvement, and shall notify and consult with CyDex at least thirty (30) days prior to the filing of any patent application claiming Captisol or any Captisol Improvement.

2.3 Sublicensing. Company shall have the right to grant sublicenses to its Affiliates and licensees of the Licensed Product (collectively “Sublicensees”) under the licenses granted to Company pursuant to **Section 2.1**; *provided* that Company warrants that each such Sublicensee shall first be advised of the restrictions set forth in this Agreement with respect to the transfer of the rights sublicensed to such Sublicensee and such Sublicensee shall enter into an agreement (in substantially the form of **Exhibit E** hereto or such other form as CyDex shall approve, such approval to not be unreasonably withheld, conditioned or delayed) with Company pursuant to which such Sublicensee shall acknowledge and agree to observe and be bound by the applicable restrictions set forth in this Agreement. Other than as specifically provided in and this **Section 2.3** and **Section 2.4**, Company shall not have the right to grant sublicenses to any third party under the licenses granted pursuant to **Section 2.1**.

2.4 Contracting. Company may manufacture the Licensed Product (but, except as set forth in **Section 3.7(d)**, not the bulk Captisol) or contract the manufacture of the Licensed Product (but, except as set forth in **Section 3.7(d)**, not the manufacture of bulk Captisol) with reputable FDA-inspected third party manufacturers upon notification to CyDex in writing of Company’s intent to do so (such notice to include the identity and location of the proposed third party manufacturers). To the extent necessary to engage a third party manufacturer for the Licensed Product, Company shall be permitted under this Agreement to grant any such third party manufacturer a sublicense under the licenses granted to Company pursuant to **Section 2.1** solely for such purposes; *provided* that Company warrants and shall procure, as a condition precedent thereto, that (a) any such third party manufacturer shall first be advised of the restrictions set forth in this Agreement with respect to the transfer of the rights licensed to Company and its Sublicensees hereunder and (b) any such third party manufacturer shall enter into an agreement (in substantially the form of **Exhibit E** hereto) with Company pursuant to which such third party manufacturer shall acknowledge and agree to observe and be bound by the applicable restrictions set forth in this Agreement.

3. MANUFACTURE AND SUPPLY OF CAPTISOL.

3.1 Purchase of Captisol. Company agrees that, subject to **Section 3.7**, Company and its Affiliates and Sublicensees shall purchase Captisol for use in the formulation of Licensed Product exclusively from CyDex and that, except as set forth in **Section 3.7(d)**, this Agreement

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does not grant Company, its Affiliates or Sublicensees the right to manufacture (or have manufactured on their behalf) Captisol without CyDex's prior written consent. CyDex agrees that CyDex shall produce (or have produced for it) and sell to Company one hundred percent (100%) of Company's and its Affiliates' and Sublicensees' requirements for Captisol for use in the formulation of Licensed Product, during the Term and subject to the provisions of this Agreement and *provided that*, and notwithstanding anything to the contrary in this Agreement, in no event shall CyDex be obligated to supply to Company or its Affiliates or Sublicensees more than an aggregate quantity of [***] ([***]) kilograms of Captisol per year (the "**Volume Threshold**"). Purchases of Captisol may include Research Grade Captisol, Clinical Grade Captisol and/or Commercial Grade Captisol. Company may place orders for Captisol on behalf of its Affiliates and Sublicensees; *provided, however* that: (a) Company shall instruct CyDex as to the location for the shipment thereof; (b) Company shall guarantee payment to CyDex of all amounts payable with respect thereto; and (c) if Company requests that CyDex deliver such orders to Company for re-delivery thereof by Company to its Affiliates or Sublicensees, Company shall comply with all applicable laws, rules and regulations applicable to the transportation of Captisol from Company to its Affiliates and Sublicensees.

3.2 Supply Terms.

(a) Long-term Forecast. No later than [***] ([***]) months prior to the anticipated Commercial Launch Date by Company or its Affiliates or Sublicensees of a Licensed Product in any particular country, Company shall provide CyDex with a forecast setting forth Company's nonbinding estimate of the required quantities of Commercial Grade Captisol for each of the following [***] ([***]) years. Such long-term nonbinding forecast shall thereafter be updated by Company at least once every [***] ([***]) months.

(b) Binding Detailed Forecast. At least [***] ([***]) [***] prior to the first order of Commercial Grade Captisol, Company shall deliver to CyDex a detailed rolling forecast setting forth Company's requirements and anticipated delivery schedules for Commercial Grade Captisol for each calendar quarter during the succeeding twelve (12) month period (the "**Detailed Forecast**"). For purposes of this Agreement, a calendar quarter means the consecutive three (3) month period ending March 31, June 30, September 30, and December 31, respectively. The parties acknowledge and agree that the first calendar quarter covered in the Detailed Forecast may be for a period less than the full three (3) month period but that each subsequent calendar quarter shall be for a full three (3) month period. The Detailed Forecast shall thereafter be updated by Company quarterly on a rolling basis, no later than the [***] of each calendar quarter, so that each calendar quarter CyDex shall have been provided with a rolling Detailed Forecast for each calendar quarter during the twelve (12) month period commencing on the first day of the next calendar quarter following the date on which such Detailed Forecast is submitted. The Detailed Forecast shall be [***] Company, subject to the permissible variances set forth in **Section 3.2(c)** below, with respect to the first, second, and third calendar quarters covered by such updated Detailed Forecast ("**Q1**", "**Q2**", "**Q3**", respectively, and where the fourth calendar quarter shall be "**Q4**"). If Company fails to provide any updated Detailed Forecast in accordance with this **Section 3.2(b)**, [***].

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(c) Detailed Forecast Variances. Each updated Detailed Forecast may modify the amount of Commercial Grade Captisol estimated in the previous Detailed Forecast in accordance with the following limitations (the “**Purchase Volume Limitations**”):

(i) for the Q1 covered by such updated Detailed Forecast, no change may be made to the forecast provided for the Q2 in the immediately preceding Detailed Forecast without the prior express written consent of CyDex;

(ii) for the Q2 covered by such updated Detailed Forecast, no change in excess of a [***] percent ([***]%) volume increase or decrease may be made to the forecast provided for the Q3 in the immediately preceding Detailed Forecast without the prior express written consent of CyDex; and

(iii) for the Q3 covered by such updated Detailed Forecast, no change in excess of a [***] percent ([***]%) volume increase or decrease may be made to the forecast provided for the Q4 in the immediately preceding Detailed Forecast without the prior express written consent of CyDex.

In each case CyDex’s consent may be conditioned on such payment or other terms as CyDex may require.

(d) Purchase Orders. Together with each Detailed Forecast provided under **Section 3.2(b)**, Company shall place a firm purchase order with CyDex in a form mutually agreed upon by the parties, for Company’s order of Commercial Grade Captisol for Q1 delivery consistent with the Detailed Forecast. Each purchase order, for all grades of Captisol, shall specify: (i) the grade of Captisol ordered (*i.e.*, Commercial Grade Captisol, Clinical Grade Captisol or Research Grade Captisol); (ii) quantities; (iii) delivery dates; and (iv) reasonable shipping instructions. CyDex shall deliver orders of Captisol to Company on or within five (5) business days of Company’s requested delivery dates; *provided, however*, that the purchase order is received by CyDex at least ninety (90) days prior to the stipulated delivery date. No purchase order shall be binding upon CyDex until accepted by CyDex in writing; provided that CyDex (x) shall accept in writing within ten (10) days after CyDex’s receipt of each purchase order for Clinical Grade Captisol or Research Grade Captisol, (y) shall accept in writing within ten (10) days after CyDex’s receipt of each purchase order for Commercial Grade Captisol from Company with respect to the quantities of Captisol ordered that do not exceed the Purchase Volume Limitations, and (z) shall notify Company of CyDex’s ability to fill any quantities of such purchase order for Commercial Grade Captisol that are in excess of the Purchase Volume Limitations (but under the Volume Threshold) within thirty (30) days after CyDex’s receipt of such purchase order. CyDex shall not be obligated to accept such orders to the extent that the quantities of Commercial Grade Captisol ordered exceed the Purchase Volume Limitations, but CyDex shall use good faith efforts to fill such orders for such excess quantities (provided that such quantities are less than the Volume Threshold) from available supplies. If CyDex, despite the use of good faith efforts, is unable to supply such quantities that exceed the Purchase Volume Limitations to Company, such inability to supply shall not be deemed to be a breach of this Agreement by CyDex or a failure by CyDex to supply for any purpose. If any purchase order or

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other document submitted by Company hereunder or any invoice or other document passing between the parties contains terms or conditions in addition to or inconsistent with the terms of this Agreement, the terms of this Agreement shall control and prevail and such additional or inconsistent terms are hereby expressly rejected.

3.3 Delivery. CyDex shall deliver to Company or Company's designee each order of Captisol, packed for shipment in accordance with CyDex's customary practices and the Specifications, EXW (Incoterms 2000) CyDex's production point or storage facilities. Title and risk of loss and/or damage to Captisol shall pass to Company upon delivery of Captisol to Company or Company's designee at CyDex's production point or storage facilities. Company agrees, after Commercial Launch Date, to maintain an inventory of Captisol sufficient to supply at least [***] ([***)] days' worth of Company's requirements. Quantities actually delivered to Company or Company's designee pursuant to an accepted purchase order may vary from the quantities reflected in such purchase order by up to [***] percent ([***)% and still be deemed to be in compliance with such purchase order; *provided, however*, that Company shall only be invoiced and required to pay for the quantities of Captisol that CyDex actually delivers to Company or Company's designee. CyDex will use commercially reasonable efforts to include, in the next shipment of Captisol to Company, any quantities ordered pursuant to an accepted purchase order but not delivered.

3.4 Modified Specifications. CyDex may change the Specifications during the Term with written notification to Company. In such event, CyDex shall give Company at least [***] ([***)] days to respond to such notice of change. Company and CyDex shall cooperate regarding initiating any changes to the Specifications and to have such change approved by all regulatory agencies having jurisdiction. In addition, if any regulatory agency having jurisdiction requires CyDex to implement any changes to the Specifications, CyDex shall use all reasonable efforts to make such changes. If a regulatory agency requires a change to the Specifications where such change is specific to Captisol as implemented in the Licensed Product, then [***] shall be responsible for the costs incurred to generate such unique, modified Specifications, provided that the parties will mutually agree on such costs prior to CyDex's commencement of implementation of such change. In the event of a change initiated by CyDex, if requested by Company, CyDex shall provide to Company the right to purchase an amount of Captisol not greater than a [***] ([***)] [***] supply prior to such change in Specifications in order to allow the Company to maintain supply of Licensed Product until the new Specifications are validated with Licensed Product.

3.5 Quality Control; Acceptance and Rejection.

(a) Quality Control. CyDex shall conduct or have conducted quality control testing of Captisol prior to shipment in accordance with the Specifications and other CyDex-approved quality control testing procedures (the "**Testing Methods**"). CyDex shall retain or have retained accurate and complete records pertaining to such testing. Each shipment of Captisol hereunder shall be accompanied by a certificate of analysis for each lot of Captisol therein.

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(b) Acceptance Testing. Company shall have a period of [***] ([***]) days from the date of receipt to test or cause to be tested Captisol supplied under this Agreement. Company or its designee shall have the right to reject any shipment of Captisol that does not conform with the Specifications at the time of delivery pursuant to **Section 3.3** hereof when tested in accordance with the Testing Methods or that otherwise does not meet the Manufacturing Standards. All shipments of Captisol shall be deemed accepted by Company unless CyDex receives written notice of rejection from Company within such [***] ([***]) day period describing the reasons for the rejection in reasonable detail. Once a delivery of Captisol is accepted or deemed accepted hereunder, Company shall have no recourse against CyDex in the event Captisol is subsequently deemed unsuitable for use for any reason, except as provided in Section 10 below.

(c) Confirmation. After its receipt of a notice of rejection from Company pursuant to **Section 3.5(b)** above, CyDex shall notify Company as soon as reasonably practical but no later than [***] ([***]) days whether it accepts Company's basis for rejection and Company shall cooperate with CyDex in determining whether such rejection was necessary or justified. If the parties are unable to agree as to whether a shipment of Captisol supplied by CyDex or its Third-Party Manufacturer hereunder meets the Specifications, such question shall be submitted to an independent quality control laboratory mutually agreed upon by the parties. The findings of such independent laboratory shall be binding upon the parties. The cost of the independent quality control laboratory shall be borne by the party whose results are shown by such laboratory to have been incorrect.

(d) Return or Destruction of Rejected Shipments. Company may not return or destroy any batch of Captisol until it receives written notification from CyDex that CyDex does not dispute that the batch fails to meet the Specifications. CyDex will indicate in its notice either that Company is authorized to destroy the rejected batch of Captisol or that CyDex requires return of the rejected Captisol. Upon written authorization from CyDex to do so, Company shall promptly destroy the rejected batch of Captisol and provide CyDex with written certification of such destruction. Upon receipt of CyDex's request for return, Company shall promptly return the rejected batch of Captisol to CyDex. In each case, CyDex will reimburse Company for the documented, reasonable costs associated with the destruction or return of the rejected Captisol within thirty (30) days.

(e) Refund or Replacement. Company shall not be required to pay any invoice with respect to any shipment of Captisol properly rejected pursuant to this **Section 3.5**. Notwithstanding the foregoing, Company shall be obligated to pay in full for any rejected shipment of Captisol that is subsequently determined to meet the Specifications in all material respects, irrespective of whether Company has already paid CyDex for a replacement shipment. If Company pays in full for a shipment of Captisol and subsequently properly rejects such shipment in accordance with this **Section 3.5**, Company shall be entitled, upon confirmation that such shipment failed to meet the Specifications in all material respects, either: (i) to a refund or credit equal to the purchase price paid with respect to such rejected shipment; or (ii) to require CyDex to replace such rejected shipment at no additional cost to Company. Company acknowledges and agrees that, except for the indemnification obligations set forth in **Section 10** below, Company's rights to a refund or credit for or to receive replacement of properly rejected shipments of Captisol hereunder shall be Company's sole and exclusive remedy, and CyDex's sole obligation, with respect to non-conforming Captisol delivered hereunder.

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(f) Exceptions. Company's rights of rejection, return, refund and replacement set forth in this **Section 3.5** shall not apply to any Captisol that is non-conforming due to damage (i) caused by Company, its Affiliates or Sublicensees or their respective employees or agents, including but not limited to, misuse, neglect, improper storage, transportation or use beyond any dating provided or (ii) that occurs subsequent to delivery of such Captisol to the carrier at the point of origin, including but not limited to any damage caused thereafter by accident, fire or other hazard and CyDex shall have no liability or responsibility to Company with respect thereto.

3.6 Facilities and Inspections. Without limiting CyDex's responsibility under this Agreement, CyDex shall have the right at any time to satisfy its supply obligations to Company hereunder either in whole or in part through arrangements with third parties engaged to perform services or supply facilities or goods in connection with the manufacture or testing of Captisol (each, a "**Third-Party Manufacturer**"). CyDex shall give Company at least sixty (60) days prior written notice of any such arrangement. The parties hereby agree that [***] is a Third-Party Manufacturer as of the Effective Date of this Agreement. CyDex shall permit no more than two (2) of Company's authorized representatives, during normal working hours and upon reasonable prior notice to CyDex but in no event less than sixty (60) days' prior notice, to inspect that portion of all CyDex facilities utilized for the manufacture, preparation, processing, storage or quality control of Captisol or such facilities of any Third-Party Manufacturer, once per calendar year per facility for existing facilities (unless the inspection reveals material deficiencies or concerns which require additional follow-up inspections, including without limitation, noncompliance with GMP, Specifications or any applicable law). In addition, CyDex shall permit any such inspection of a new facility (one time per new facility) upon not less than sixty (60) days' prior notice and such initial inspection shall not count as a yearly inspection under the preceding sentence. If any such inspection is of a facility of a Third Party Manufacturer, Company shall pay, on a pass through basis, the amount charged to CyDex by its Third Party Manufacturer specifically by reason of Company's participation in such inspection. Company's authorized representatives shall be accompanied by CyDex personnel at all times, shall be qualified to conduct such manufacturing audits, shall comply with all applicable rules and regulations relating to facility security, health and safety, and shall execute a written confidentiality agreement with terms at least as restrictive as those set forth in **Section 8** hereof. In no event shall any such manufacturing audit exceed two (2) days in duration. Company shall ensure that its authorized representatives conduct each manufacturing audit in such a manner as to not interfere with the normal and ordinary operations of CyDex or its Third-Party Manufacturer. CyDex shall inform Company of any regulatory inspection that may impact Captisol or the Licensed Product and shall provide Company with a summary of the outcome of such inspection and a copy of any Form 483 or other letter of deficiency received from a regulatory agency inspection, subject to confidentiality obligations of CyDex to Third Parties related to matters other than Captisol alone. Except as expressly set forth in this Section 3.6, neither Company nor its Affiliates, Sublicensees or their respective employees or representatives shall have access to CyDex's facilities or the facilities of any Third-Party Manufacturer.

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3.7 Inability to Supply.

(a) Notice. CyDex shall notify Company if CyDex is unable to supply the quantity of (i) Commercial Grade Captisol ordered by Company in accordance with the Purchase Volume Limitations set forth in **Section 3.2(c)** or (ii) Research Grade Captisol or Clinical Grade Captisol ordered by Company as set forth in **Section 3.2(d)** above: (1) within twenty (20) days after CyDex's receipt of a purchase order from Company as provided in **Section 3.2(d)**; or (2) immediately upon becoming aware of an event of *force majeure* or any other event that would render CyDex unable to supply to Company the quantity of Captisol that CyDex is required to supply hereunder.

(b) Allocation. If CyDex is unable to supply to Company the quantity of Captisol that CyDex is required to supply hereunder, CyDex (i) shall allocate its available Captisol among Company and any other purchasers of Captisol with which CyDex then has an on-going contractual relationship, in proportion to the quantity of Captisol for which each of them has orders pending at such time and (ii) shall take all reasonable steps necessary to minimize supply delays. The supply allocation provided in this **Section 3.7(b)** shall be CyDex's sole obligation and Company's sole and exclusive remedy for any supply shortage.

(c) Shortage of Supply and Back-Up Manufacturing Rights. If (1) CyDex fails to timely supply to Company at least [***] percent ([***]%) of the quantities of Captisol properly forecasted and ordered by Company (and provided such order was within the Purchase Volume Limitations) that conform to the Specifications for [***] ([***]) [***] or (2) CyDex is unable to supply or to timely supply to Company the quantity of Captisol that CyDex is required to deliver to Company pursuant to accepted purchase orders due to an event of *Force Majeure* that actually lasts, or is expected to last, for more than [***] ([***]) days (each, a "**Failure to Supply**"), then the following provisions shall be applicable:

(i) Alternate Facility. First, at Company's written request, CyDex shall use commercially reasonable efforts to procure that its Third Party Manufacturer validate and qualify a backup manufacturing facility for the manufacture of Captisol.

(ii) Alternate Supplier. Second, at Company's written request, if the Third Party Manufacturer is unable to validate and qualify an alternate facility pursuant to clause (i) above, CyDex shall use commercially reasonable efforts to qualify one or more alternate suppliers for the manufacture of Captisol, including without limitation, obtaining Third-Party Manufacturer's reasonable cooperation with CyDex to qualify such alternate supplier.

(iii) Transfer of Manufacturing Technology. Third, if CyDex is unable to procure an alternate facility pursuant to clause (i) above or alternate supplier pursuant to clause (ii) above within [***] ([***]) days of the first occurrence of the Failure to Supply event, Company may, by providing written notice of the occurrence of such Failure to Supply,

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elect to assume manufacturing of Captisol under its Manufacturing License (as defined in paragraph (d)). In the event Company elects to use another supplier to manufacture and supply Captisol pursuant to this **Section 3.7(c)**, CyDex, within sixty (60) days of receipt of Company's written notice, shall provide Company with the documentation, know-how and technical information that is necessary to make and have made Captisol, and shall fully cooperate with Company in the implementation of the manufacturing process. Company shall pay for (i) CyDex's reasonable actual out of pocket costs related to such activities, and (ii) the reasonable costs of the time of CyDex's employees and contractors incurred for such transfer of the manufacturing process at the rate of \$[***] per person per hour. To the extent practicable, CyDex shall continue to supply Company with its needs of Captisol under the terms of this Agreement until Company is capable of doing so.

(d) Manufacturing License. CyDex hereby grants to Company a non exclusive, non-transferable license (without the right to sublicense other than to its contract manufacturers designated under **Section 3.7(c)(iii)**) under all intellectual property rights owned or licensed by CyDex and its Affiliates solely to make, or to have made, Captisol for the purpose of meeting Company's requirements of Captisol for use in the manufacture of the Licensed Product in the Territory ("**Manufacturing License**") for the remainder of the Term; provided that such Manufacturing License shall not be exercised until the occurrence of a Failure to Supply. For clarity, the Manufacturing License shall not include the right to make Captisol for any other product or for any third party other than Company's Affiliates and Sublicensees, and Company's exercise of the Manufacturing License and back-up manufacturing right pursuant to **Section 3.7(c)** hereof shall not be deemed a violation of this Agreement. Notwithstanding anything in this Agreement to the contrary, upon exercise of its Manufacturing License, Company shall thereafter no longer be required to purchase any of its requirements of Captisol from CyDex under this Agreement to the extent Company has become obligated to purchase its requirements for Captisol from the back-up manufacturer under this Section.

4. COMPENSATION.

4.1 Payments and Royalties for Licenses.

(a) One-Time Fee. Company shall pay to CyDex a non-refundable, one-time fee of three hundred thousand dollars (\$300,000) in partial consideration of the rights granted Company under this License and Supply Agreement, which amount shall be due and payable in full upon the Effective Date.

(b) Milestone Payments. Within ten (10) days following the first occurrence of each of the milestone events listed below with respect to Licensed Product, Company shall provide written notice to CyDex of the achievement of such milestone event, and within thirty (30) days of the occurrence of each of the milestone events, pay to CyDex the applicable non-refundable milestone fee listed next to each such event in further consideration of the rights granted Company hereunder. The milestone payments are as follows:

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MILESTONE	MILESTONE PAYMENT
Upon the commencement of first Phase II clinical trial	US\$ 150,000
Upon the commencement of Phase III clinical trial	US\$ 500,000
Upon filing of first NDA with the FDA	US\$ 1,500,000
Upon receipt of the first Marketing Approval in the United States	US\$ 1,500,000
Upon receipt of the [***]	US\$ [***]
Upon the [***]	US\$ [***]

(c) Royalties.

(i) In addition to amounts payable pursuant to **Sections 4.1(a)** and **4.1(b)** above, Company shall, subject to the adjustments set forth in this Section, make royalty payments to CyDex during the Term on a calendar quarterly basis, in an amount equal to [***] ([**%]) of the applicable Net Sales during such quarter arising from the sale of the Licensed Product in the Territory, commencing on the first Commercial Launch Date of the Licensed Product in the Territory. All royalties payable to CyDex pursuant to this **Section 4.1(c)(i)** shall be due and payable within thirty (30) days after the conclusion of each calendar quarter.

(ii) Following the expiration of the last Valid Claim of the Licensed Patent to expire in the country of sale, on a country-by-country basis, Company shall have the right to reduce by [***] percent ([**%]) the royalty payments owed pursuant to **Section 4.1(c)(i)** with respect to Net Sales arising from the sale of Licensed Product in such country. All royalties payable to CyDex pursuant to this **Section 4.1(c)** shall be due and payable within thirty (30) days after the conclusion of each calendar quarter. Company's obligation to pay royalties pursuant to this **Section 4.1(c)** shall continue, on a country-by-country basis, in the country of sale until the tenth (10th) anniversary of the expiration date of the last Valid Claim of a Licensed Patent to expire in such country, provided that, if there has never been a Valid Claim of a Licensed Product in the country of sale, then the royalty obligation will terminate on the tenth anniversary of first Commercial Launch Date in such country.

(iii) CyDex will be responsible for all amounts due to third parties on the manufacturing, use or sale of bulk Captisol under agreements to which CyDex is a party. In the event Company requires a license to any third party intellectual property covering the manufacture or composition of bulk Captisol (but not the use of bulk Captisol within the Licensed Product):

- (A) CyDex shall have the [***] to seek to acquire, using commercially reasonable efforts, such license at [***]. If CyDex is successful, such rights shall be included within the license granted to Company pursuant to **Section 2.1 (a) or (b)** above [***] hereunder.
- (B) If after [***] ([**]) days CyDex has not acquired such license, then Company may seek to acquire, using commercially reasonable efforts, such license at [***], *provided* that Company may offset [***] ([**%]) of any upfront payments, milestones,

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royalties and other amounts paid to such third party under such license against amounts due to CyDex under this Agreement. Amounts available for offset under this Section and not used as a credit against payments due to CyDex in the period incurred may be carried over to future periods until fully utilized.

(iv) In establishing the royalty structure hereunder, the parties recognize, and Company acknowledges, the substantial value of the various obligations being undertaken by CyDex under this Agreement, in addition to the grant of the licenses under the Licensed Patents and Captisol Data Package, to enable the rapid and effective market introduction of the Licensed Product in the Territory. The parties have agreed to the payment structure set forth herein as a convenient and fair mechanism to compensate CyDex for these obligations.

4.2 Pricing for Captisol.

(a) **Pricing.** The purchase prices for Captisol are as specified in *Exhibit C* attached hereto. CyDex reserves the right to increase the purchase prices set forth on *Exhibit C* on [***] during the Term, by written notice to Company, by a percentage equal to the aggregate percentage increase, if any, in the Producer Price Index, Pharmaceutical Preparation Mfg—pcu325412325412 PCU as reported by the Bureau of Labor Statistics, U.S. Department of Labor, for the 12-month period ending October 31 of the prior year. The minimum order for Commercial Grade Captisol shall be in [***] ([***) [***] increments. Notwithstanding the foregoing, if Company fails to order for any Q1 a quantity of Commercial Grade Captisol to be delivered during such Q1 that is equal to or greater than the quantity of Commercial Grade Captisol Company is obligated to purchase pursuant to the applicable Detailed Forecast (the difference between the quantity of Commercial Grade Captisol Company is obligated to purchase in Q1 pursuant to the applicable Detailed Forecast and the amount of Commercial Grade Captisol that Company actually orders in Q1, the “**Shortfall**”), then provided that (i) CyDex has used commercially reasonable efforts to mitigate and (ii) CyDex is not in breach of its supply obligation under this Agreement, Company agrees to reimburse CyDex for the cost of any raw materials and supplies acquired or used in anticipation of supplying Company with such Shortfall to the extent that such raw materials and supplies cannot be redeployed to other projects and any resulting Commercial Grade Captisol cannot be resold to other customers or utilized by Company in the next [***] ([***) day period.

(b) **Invoicing; Payment.** CyDex shall invoice Company upon shipment of each order of Captisol. All invoices shall be sent to the address specified in the applicable purchase order, and each invoice shall state the purchase price for Captisol in such shipment, plus any insurance, taxes, shipping costs or other costs incidental to such purchase or shipment initially paid by CyDex but to be borne by Company hereunder; *provided, however*, that if such insurance, taxes, shipping costs or other costs incidental to such purchase or shipment initially paid by CyDex but to be borne by Company are not known at the time CyDex invoices Company for the purchase price for the Captisol ordered by Company, CyDex may invoice such costs at a later date. Payment of such invoices shall be made within thirty (30) days after the date thereof.

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4.3 Currency. All amounts due hereunder are stated in, and shall be paid in, U.S. dollars. Net Sales based on foreign revenue will be converted to U.S. dollars at the average rate of exchange over the thirty (30) days preceding the date payment is due based on the exchange rates published in *The Wall Street Journal*, Eastern U.S. Edition. Company shall provide CyDex, together with each royalty payment owed pursuant to **Section 4.1(c)** above, a schedule detailing the calculation of Net Sales resulting from the conversion of foreign revenue to U.S. dollars as set forth herein.

4.4 Taxes. All amounts due hereunder exclude all applicable sales, use, and other taxes, and Company will be responsible for payment of all such taxes (other than taxes based on CyDex's income), fees, duties, and charges, and any related penalties and interest, arising from the payment of amounts due hereunder or the sublicense or license, as the case may be, under the Licensed Patents and Captisol Data Package hereunder. Company shall make all payments to CyDex hereunder free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of amounts to CyDex hereunder will be Company's sole responsibility, and Company will provide CyDex with official receipts issued by the appropriate taxing authority, or such other evidence as the CyDex may reasonably request, to establish that such taxes have been paid. Company shall indemnify and hold CyDex harmless from any and all such taxes and any actions brought against CyDex by any taxing authority with respect to such taxes.

4.5 Late Payments. Unpaid balances shall accrue interest, from due date until paid, at a rate equal to the lesser of (i) the prime rate, as reported in *The Wall Street Journal*, Eastern U.S. Edition, on the date such payment is due, plus an additional two percent (2%) or (ii) the maximum rate permitted under applicable law. If any amount due hereunder and not subject to a reasonable, good-faith dispute by Company remains outstanding for more than forty-five (45) days after its due date, CyDex may, in addition to any other rights or remedies it may have, refuse to ship Captisol hereunder except upon payment by Company in advance.

5. RECORDS; REPORTS; AUDIT.

5.1 Records. During the Term and for a period of three (3) years thereafter, Company shall, and shall require its Affiliates and Sublicensees to, maintain complete and accurate records relating to Net Sales of Licensed Product, provided that records for any given calendar year shall not be required to be retained for more than three (3) years after the end of such calendar year.

5.2 Reports.

(a) Quarterly Reports. Within thirty (30) calendar days following the conclusion of each calendar quarter during the Term after the date of first commercial sale of Licensed Product, Company shall provide CyDex with written reports with respect to such calendar quarter that set forth in reasonable detail complete and accurate records of Company's, its Affiliates' and Sublicensees' Net Sales of the Licensed Product on a country-by-country basis in the Territory during such period and showing the currency calculation for such period as specified in Section 4.3.

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(b) Annual Reports. Annually, by December 31st of each calendar year during the Term, Company shall provide CyDex with written reports that: (i) describe in reasonable detail Company's progress made toward achievement of the milestones specified in **Section 4.1(b)** above during such calendar year; (ii) summarize in reasonable detail Company's communications and meetings involving the FDA related to Captisol during such calendar year; (iii) detail a non-binding estimate Company's anticipated preclinical and clinical use of Captisol for the next calendar year; (iv) provide CyDex with Company's non-binding, reasonable, estimated rolling projection for sales of the Licensed Product in the Territory, in terms of volume quantities and Net Sales values for the next [***] ([***]) [***]; and (v) set forth such other information regarding Captisol as mutually agreed upon by the parties.

5.3 Audit. During the Term and for a period of [***] ([***]) years thereafter, CyDex shall have the right, no more frequently than once per year and only during normal business hours and upon reasonable notice, to inspect and audit Company's and its Affiliates' and Sublicensees' records required to be maintained under **Section 5.1** relevant to Net Sales. No calendar year may be audited more than once or more than three years after the end of such year. The costs of such audits shall be borne solely by CyDex; *provided, however*, that in the event such an audit reveals either a failure by Company to pay any applicable milestone payment due or an underpayment by Company of royalties owed hereunder, Company shall immediately (i) pay CyDex all amounts by which Company has underpaid CyDex as revealed by the audit, plus interest accrued thereon (from the applicable original due date) at the rate set forth in **Section 4.5** above and (ii) reimburse CyDex for the costs of such audit if such underpayment is more than [***] percent ([***]%) of the total due for the relevant period. In the event the audit report shows an overpayment by Company, CyDex shall refund the amount of the overpayment to Company within thirty (30) days of receipt of the audit report. All information concerning royalty payments and reports, and any information learned in the course of any audit or inspection under this **Section 5.3**, shall be deemed to be Confidential Information of Company, subject to the terms and provisions of **Section 8** below, except to the extent necessary for CyDex to enforce its rights under this Agreement.

6. DEVELOPMENT AND COMMERCIALIZATION BY COMPANY.

6.1 Diligence. Company agrees that, during the Term, it will (i) use, and shall require its Affiliates and Sublicensees to use, commercially reasonable efforts to obtain Marketing Approval in at least one of the US, EU and Japan (the "Major Markets") and to market, promote, and sell Licensed Product thereafter in each country in which Marketing Approval is obtained, in an effort to maximize Net Sales and royalties payable under this Agreement, and (ii) comply with the requirements set forth in **Exhibit D** hereto. For clarity, in the event that Company fails to use commercially reasonable efforts to meet the requirements of the foregoing sentence, CyDex shall, as its sole remedy, have the right to terminate this Agreement pursuant to **Section 13.2** hereof.

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6.2 Costs and Expenses. Company shall be solely responsible for all costs and expenses related to its development and commercialization of the Licensed Product, including without limitation costs and expenses associated with all preclinical activities and clinical trials, and all regulatory filings and proceedings relating to the Licensed Product.

6.3 In Vivo Studies. If Company wishes to conduct any in vivo study (preclinical or clinical, in animals or in humans, each a “Study”) of the Licensed Product utilizing Captisol, then Company shall notify CyDex of any such Study and the name of the protocol therefor in writing at least fourteen (14) days prior to commencing such Study for pre-clinical studies, and at least thirty (30) days prior to commencing such Study for clinical studies, and the following provisions shall apply:

(a) **Dosing.** Company shall not exceed the maximum allowable dosing levels of Captisol specified in **Exhibit E** hereto without the written consent of CyDex.

(b) **Review of Protocol.** Company shall provide information regarding each protocol for each Study and agrees to allow CyDex to review and comment upon the aspects of such protocol which pertain solely to the use and administration of Captisol. Company shall give due consideration and reasonably incorporate any input that CyDex provides regarding such protocol to the extent it pertains solely to the use and administration of Captisol.

(c) **Evaluation.** If CyDex reasonably determines that such study would generate data related to Captisol alone that would materially adversely affect use of Captisol, CyDex shall notify Company within the above-specified review periods, and the parties shall discuss and attempt to resolve the matter in good faith. If the parties cannot resolve such matter within fifteen (15) days after CyDex notifies Company of such determination, then the dispute shall be presented to the Chief Executive Officer of each party, or his or her respective designee, for resolution. If the parties’ Chief Executive Officers, or their respective designees, cannot resolve the dispute within thirty (30) days of being requested by a party to resolve such dispute, either party may initiate a short-form arbitration proceeding pursuant to **Section 14.4(b)** below.

(d) **Compliance with Laws.** Company represents and warrants that each Study will be performed in accordance with all applicable laws, regulations and requirements. Company will provide or cause to be provided all appropriate warnings to participants enrolled in each Study and obtain or cause to be obtained appropriate documentation of informed consent from all participants in each such Study.

(e) **Adverse Events.** Company agrees to immediately inform CyDex if any adverse effects are observed and ascribed to Captisol in any Study in accordance with **Section 7.3** hereof. To accurately track adverse events and preserve the validity of each Study involving Captisol, Company shall only use Captisol supplied by CyDex for each such Study, and shall not use and any other cyclodextrin product supplied by a third party in the same Study unless a Failure to Supply event has occurred.

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(f) Reporting and Study Data. Within three (3) months after the completion of the Final Study Report for the relevant Study, Company shall provide to CyDex a summary of the data and results of each Study that pertain solely to Captisol, and Company hereby grants to CyDex a non-exclusive, royalty-free license (with the right to sublicense) to use and disclose such data, including without limitation to update the DMF for Captisol.

(g) Review of Regulatory Filings and Publications. At least fourteen (14) days prior to a submission of any proposed written publication material or regulatory submission (which shall be subject to the restrictions of **Section 8** hereof) reporting the results of a Study, Company shall provide to CyDex for CyDex's review and comment a copy of the portion of such proposed written publication, material or regulatory submission reporting results of a Study that refers to Captisol alone. Company shall give due consideration to and reasonably incorporate any input that CyDex provides regarding the portion of any publication that refers to Captisol alone.

6.4 Right of Reference. Company shall have the right to reference the DMF solely in connection Company's regulatory filings submitted in connection with INDs or equivalent filings or obtaining Marketing Approval for the Licensed Product.

6.5 Access to Company's Data. CyDex shall have the right to reference and utilize all toxicology/safety and other relevant scientific data developed on Captisol alone (and not in conjunction with a product formulation) by Company, its Sublicensees or Affiliates in connection with CyDex's development and commercialization of Captisol or compounds, at no cost to CyDex. Upon request by CyDex, Company shall either provide CyDex with a copy of all such data or shall make such data accessible to CyDex at such times and locations mutually agreed upon by the parties.

7. REGULATORY MATTERS.

7.1 Captisol Information Submitted for Regulatory Review. Except as otherwise set forth herein, Company shall be solely responsible for all communications with regulatory agencies in connection with the Licensed Product. Notwithstanding the foregoing, Company shall provide CyDex with copies of the portions of all regulatory submissions related to Captisol data alone (and not in conjunction with any product formulation) thirty (30) days prior to submission and shall allow CyDex to review and comment upon said submissions. If CyDex reasonably determines that any data on Captisol alone included in such submission would materially adversely affect another product utilizing Captisol, CyDex shall notify Company within thirty (30) days of receipt of such submission, and the parties shall discuss and attempt to resolve the matter in good faith. If the parties cannot resolve such matter within thirty (30) days after CyDex notifies Company of such a determination, then the dispute shall be presented to the Chief Executive Officer of each party, or his or her respective designee, for resolution. If the parties' Chief Executive Officers, or their respective designees, cannot resolve the dispute within thirty (30) days of being requested by a party to resolve such dispute, either party may initiate a short-form arbitration proceeding pursuant to **Section 14.4(b)** below. Company shall inform CyDex of meetings with the FDA (or other regulatory agencies in the Territory) regarding the

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Licensed Product, a reasonable period of time prior to such event (with reasonableness determined by how much notice Company has of such meeting) and shall allow CyDex to participate in any FDA (or other regulatory agency) review that might reasonably include inquiries regarding Captisol. If Company submits written responses to the FDA that include data on Captisol alone, CyDex shall be permitted to review such written materials prior to submission. If CyDex reasonably objects to the contents of such written responses relating to Captisol alone, the parties agree to cooperate in working toward a reasonable and mutually agreeable response.

7.2 Material Safety. CyDex shall promptly provide Company, in writing, from time to time, with (a) relevant information currently known to it regarding handling precautions, toxicity and hazards with respect to Captisol, and (b) the then-current material safety data sheet for Captisol. Notwithstanding the foregoing or anything in this Agreement to the contrary, Company is solely responsible for (i) use of all documentation provided by CyDex, including without limitation, use in any regulatory submission to the FDA or any other regulatory agency in the Territory, (ii) document control and retention, and (iii) determining the suitability of any documentation provided by CyDex hereunder for use in any regulatory submission.

7.3 Adverse Event Reporting.

(a) By Company. Company shall adhere, and shall require that its Affiliates, Sublicensees, co-marketers and distributors adhere, to all requirements of applicable law and regulations that relate to the reporting and investigation of any adverse event, including without limitation an unfavorable and unintended diagnosis, symptom, sign (including an abnormal laboratory finding), syndrome or disease, whether or not considered Captisol or Licensed Product-related, which occurs or worsens following administration of Captisol or Licensed Product. Company shall provide CyDex with copies of all reports of any such adverse event which is serious (any such adverse event involving Captisol or the Licensed Product that results in death, is life-threatening, requires or prolongs inpatient hospitalization, results in disability, congenital anomaly or is medically important (i.e., may require other medical or surgical intervention to prevent other serious criteria from occurring)) which Company has reason to believe is associated with Captisol within ten (10) business days following (i) Company's submission of any such report to any regulatory agency, or (ii) receipt from Company's Sublicensee, co-marketer or distributor of any such report submitted to any regulatory agency. Company shall also advise CyDex regarding any proposed labeling or registration dossier changes affecting Captisol. Reports from Company shall be delivered to the attention of Vice President, Chief Scientific Officer, CyDex, with a copy to Chief Executive Officer, CyDex, at the address set forth in Section 14.7. The parties shall mutually cooperate with regard to investigation of any such serious adverse event, whether experienced by Company, CyDex or any Affiliate, Sublicensee, co-marketer or distributor of Company.

(b) By CyDex. For products being developed by CyDex of its Affiliate (for which CyDex or its Affiliate holds the relevant IND) CyDex shall adhere, and shall require that its Affiliates adhere, to all requirements of applicable law and regulations that relate to the reporting and investigation of any adverse event, including without limitation an unfavorable and

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unintended diagnosis, symptom, sign (including an abnormal laboratory finding), syndrome or disease attributed to Captisol. CyDex shall provide Company with copies of all reports of any such adverse event which is serious (any such adverse event attributed to Captisol that results in death, is life-threatening, requires or prolongs inpatient hospitalization, results in disability, congenital anomaly or is medically important (i.e., may require other medical or surgical intervention to prevent other serious criteria from occurring)) which CyDex has reason to believe are associated with Captisol within two (2) business days following (i) CyDex's submission of any such report to any regulatory agency, or (ii) receipt from CyDex of any such report. CyDex shall also advise Company regarding any proposed labeling or registration dossier changes affecting Captisol. Reports from CyDex shall be delivered to the attention of Vice President, Chief Scientific Officer, Company, with a copy to Chief Executive Officer, Company, at the address set forth in Section 14.7.

7.4 Product Recalls. If any Captisol should be alleged or proven not to meet the Specifications, Company shall notify CyDex immediately, and both parties shall cooperate fully regarding the investigation and disposition of any such matter. If (i) Company and CyDex agree in writing that it is appropriate to recall any Licensed Product, or (ii) the FDA requires the recall of any Licensed Product, and in either case such recall is due to the failure of Captisol to conform to the relevant Specifications or to otherwise meet the Manufacturing Standards at the time of delivery by CyDex, then CyDex agrees, upon substantiation thereof, to refund the purchase price for such Captisol and to pay the out-of-pocket costs of Company and its Affiliates and Sublicensees related to such recall, *provided* that such obligations shall be (i) the sole remedy of Company regarding such recall, and (ii) subject to **Section 11** (Limitation of Liability) below, provided that the foregoing limitations will not apply to CyDex's indemnification obligation with respect to third party personal injury or death products liability claims under **Section 10.1**. Company shall maintain records of all sales of Licensed Product and customers sufficient to adequately administer any such recall, for a period of [***] ([***)] years after expiration or termination of this Agreement.

8. CONFIDENTIALITY.

8.1 Definition. Company and CyDex each recognizes that during the Term, it may be necessary for a party (the "**Disclosing Party**") to provide Confidential Information (as defined herein) to the other party (the "**Receiving Party**") that is highly valuable, the disclosure of which would be highly prejudicial to such party. The disclosure and use of Confidential Information will be governed by the provisions of this **Section 8**. Neither Company nor CyDex shall use the other's Confidential Information except as expressly permitted in this Agreement. For purposes of this Agreement, "**Confidential Information**" means all information disclosed by the Disclosing Party to the Receiving Party and designated in writing by the Disclosing Party as "Confidential" (or equivalent), and all material disclosed orally which is declared to be confidential by the Disclosing Party and confirmed in writing delivered to the Receiving Party within thirty (30) days of such disclosure, including but not limited to product specifications, data, know-how, formulations, product concepts, sample materials, business and technical information, financial data, batch records, trade secrets, processes, techniques, algorithms, programs, designs, drawings, and any other information related to a party's present or future

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products, sales, suppliers, customers, employees, investors or business. Without limiting the generality of the foregoing, CyDex's Confidential Information includes all materials provided as part of the Captisol Data Package. Notwithstanding anything in this Agreement to the contrary other than Section 8.3 (Exceptions), Company's Confidential Information includes all information and materials provided to CyDex under this Agreement related to Licensed Product; Net Sales; the status of development activities; Studies; and regulatory filings, in each case whether or not marked or identified as confidential.

8.2 Obligation. CyDex and Company agree that they will disclose the other's Confidential Information to its own officers, employees, consultants and agents only if and to the extent necessary to carry out their respective responsibilities under this Agreement or in accordance with the exercise of their rights under this Agreement, and such disclosure shall be limited to the maximum extent possible consistent with such responsibilities and rights. Neither party shall disclose Confidential Information of the other to any third party without the other's prior written consent, and any such disclosure to a third party shall be pursuant to the terms of a non-disclosure agreement no less restrictive than this Section 8 provided Company shall not require such consent for disclosure of Confidential Information of CyDex to Company's Affiliates and Sublicensees. Each party shall take such action to preserve the confidentiality of each other's Confidential Information as it would customarily take to preserve the confidentiality of its own Confidential Information (but in no event less than a reasonable standard of care). Each party will return all the Confidential Information disclosed to the other party pursuant to this Agreement, including all copies and extracts of documents, within sixty (60) days of the request, promptly following the expiration or termination of this Agreement, except as required by law to be retained and provided that neither party shall be required to return or destroy Confidential Information included in regulatory filings or submissions or maintained on automatically created system back-up media.

8.3 Exceptions. The use and non-disclosure obligations set forth in this **Section 8** shall not apply to any Confidential Information, or portion thereof, that the Receiving Party can demonstrate:

- (i) at the time of disclosure is in the public domain;
- (ii) after disclosure, becomes part of the public domain, by publication or otherwise, through no fault of the Receiving Party;
- (iii) at the time of disclosure is already in the Receiving Party's possession, and such prior possession can be properly demonstrated by the Receiving Party, with the exception of Confidential Information exchanged between parties prior to the execution of this Agreement; or
- (iv) is made available to the Receiving Party by an independent third party, provided, however, that to the Receiving Party's knowledge, such information was not obtained by said third party, directly or indirectly, from the Disclosing Party hereunder.

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In addition, the Receiving Party may disclose information that is required to be disclosed by law, by a valid order of a court or by order or regulation of a governmental agency including but not limited to, regulations of the United States Securities and Exchange Commission (the “SEC”), or in the course of litigation, *provided* that in all cases the Receiving Party shall give the other party prompt notice of the pending disclosure and makes a reasonable effort to obtain, or to assist the Disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

8.4 Injunction. Each party agrees that should it breach or threaten to breach any provisions of this **Section 8**, the Disclosing Party will suffer irreparable damages and its remedy at law will be inadequate. Upon any breach or threatened breach by the Receiving Party of this **Section 8**, the Disclosing Party shall be entitled to seek injunctive relief in addition to any other remedy which it may have, without need to post any bond or security.

8.5 Third Party Information. Company acknowledges that CyDex’s Confidential Information includes information developed by [***] (“[***]”) that is confidential to both CyDex and [***]. In so far as Confidential Information of [***] is disclosed, [***] is a third-party beneficiary of this Section 8 of this Agreement and may enforce it or seek remedies pursuant to it in accordance with its terms.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Mutual Representations and Warranties. Each party represents and warrants to the other as follows:

- (i) it is a corporation duly organized and validly existing under the laws of the state or country of its incorporation;
- (ii) it has the complete and unrestricted power and right to enter into this Agreement and to perform its obligations hereunder;
- (iii) this Agreement has been duly authorized, executed and delivered by such party and constitutes a legal, valid and binding obligation of such party enforceable against such party in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent transfer, or other similar laws affecting the rights and remedies of creditors generally and by general principles of equity;
- (iv) the execution, delivery and performance of this Agreement by such party do not conflict with any agreement, instrument or understanding, oral or written, to which such party is a party or by which such party may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over such party;

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(v) all consents, approvals and authorizations from all governmental authorities or other third parties required to be obtained by such party in connection with the execution and delivery of this Agreement have been obtained;

(vi) no person or entity has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or valid claim against or upon such party for any commission, fee or other compensation as a finder or broker because of any act by such party or its agents, or, with respect to Company, because of any act by its Affiliates or Sublicensees;

(vii) it has not entered into any agreement with any third party that is in conflict with the rights granted to the other party pursuant to this Agreement; and

(viii) neither it nor its Affiliates has been debarred or is subject to debarment, and such party will not use in any capacity in connection with this Agreement any person or entity who has been debarred pursuant to Section 306 of the United States Federal Food, Drug and Cosmetic Act.

9.2 Additional CyDex representations, Warranties, and Covenants. CyDex represents, warrants, and covenants to Company as of the Effective Date that:

(i) CyDex has the full right, power, and authority to grant, and is not prohibited by the terms of any agreement to which it is a party from granting, the licenses granted to Company under this Agreement.

(ii) CyDex has not granted and will not grant to any third party any rights inconsistent with the rights and licenses granted herein.

(iii) CyDex holds good title to and is the legal and beneficial owner of, or otherwise has the right to license to Company, the Licensed Patents.

(iv) There are no pending claims, judgments, or settlements against or owed by CyDex or pending with respect to the Licensed Patents, and CyDex has not received written notice of any threatened claims or litigation seeking to invalidate or render unenforceable any of the Licensed Patents. During the term of this Agreement, CyDex shall promptly notify Company in writing upon learning of any such actual or threatened claim, judgment, or settlement.

(v) CyDex has not received any notice of termination or breach under any of the existing agreements pursuant to which CyDex has rights or licenses to Licensed Patents, and is not aware of any circumstances that could, with the passage of time, result in any claim of breach. CyDex covenants that it will take any and all action required to maintain such agreements in effect, and will notify Company in writing within one week of receipt of any notice of termination or breach.

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(vi) To CyDex's knowledge, the manufacture and delivery of bulk Captisol, and its composition of matter, does not infringe or misappropriate the intellectual property rights of any third party, and CyDex has not received any notice alleging that the manufacture, delivery or composition of bulk Captisol infringes any intellectual property rights of a third party.

9.3 Limited Warranty. CyDex warrants solely to Company that all Captisol sold to Company shall (i) conform to the respective Specifications (as applicable for Research Grade Captisol, Clinical Grade Captisol or Commercial Grade Captisol) in all material respects at the time of delivery; (ii) shall have been manufactured in accordance with the process described in the DMF; and (iii) shall meet the other Manufacturing Standards. CyDex's sole obligation, and Company's sole and exclusive remedy, for any breach of such warranty shall be as set forth in **Sections 3.5(e)** (Refund or Replacement) and **10.1** (Indemnification by CyDex) hereof.

9.4 Disclaimer. THE WARRANTIES SET FORTH IN THIS **SECTION 9** ABOVE ARE PROVIDED IN LIEU OF, AND EACH PARTY HEREBY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, CAPTISOL, THE LICENSED PATENTS OR THE CAPTISOL DATA PACKAGE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CYDEX'S WARRANTIES UNDER THIS AGREEMENT ARE SOLELY FOR THE BENEFIT OF COMPANY AND MAY BE ASSERTED ONLY BY COMPANY AND ANY ASSIGNEE OF COMPANY'S RIGHTS UNDER THIS AGREEMENT PURSUANT TO **SECTION 14.15** BELOW AND NOT BY ANY AFFILIATE, SUBLICENSEE OR ANY CUSTOMER OF COMPANY, ITS AFFILIATES OR SUBLICENSEES. COMPANY, ITS AFFILIATES AND SUBLICENSEES SHALL BE SOLELY RESPONSIBLE FOR ALL REPRESENTATIONS AND WARRANTIES THAT COMPANY, ITS AFFILIATES OR SUBLICENSEES MAKE TO ANY CUSTOMER OF COMPANY, ITS AFFILIATES OR SUBLICENSEES.

10. INDEMNIFICATION.

10.1 By CyDex. CyDex shall defend, indemnify and hold Company and its Affiliates and Sublicensees, and each of their respective directors, officers and employees, harmless from and against any and all damages, liabilities, costs and expenses (including the reasonable costs and expenses of attorneys and other professionals) (collectively "**Losses**") incurred by Company in connection with any claim, demand, action or other proceeding (each, a "**Claim**") by a third party, to the extent such Losses arise out of (a) failure of Captisol delivered under this Agreement to conform to the Manufacturing Standards; (b) CyDex's breach of this Agreement, including without limitation any failure of its representations and warranties set forth in **Section 9.1** or **9.2** to have been accurate when made or any breach of the covenants set forth in this Agreement; or (c) the negligence or intentional misconduct of CyDex or any of its Affiliates, or any of their respective directors, officers, employees or Third Party Manufacturers, provided CyDex will not have an indemnification obligation with respect to any Claim to the extent that Company has an indemnification obligation under Section 10.2.

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10.2 By Company. Company shall defend, indemnify and hold CyDex and its Affiliates, and each of their respective directors, officers and employees, harmless from and against any and all Losses incurred by CyDex in connection with of any Claim by a third party, to the extent such Losses arise out of: (a) the use or sale of the Licensed Product by Company, its Affiliates, Sublicensees, distributors, agents or other parties; (b) the manufacture, use, handling, promotion, marketing, distribution, importation, sale or offering for sale of Licensed Products; (c) interactions and communications with governmental authorities, physicians or other third parties; or (d) Company's breach of this Agreement, including without limitation any of its representations and warranties set forth in **Section 9.1**, provided Company will not have an indemnification obligation with respect to any Claim to the extent that CyDex has an indemnification obligation under Section 10.1.

10.3 Expenses. As the parties intend complete indemnification, all costs and expenses of enforcing any provision of this **Section 10** shall also be reimbursed by the Indemnitor.

10.4 Procedure. The party intending to claim indemnification under this **Section 10** (an "**Indemnitee**") shall promptly notify the other party (the "**Indemnitor**") of any Claim in respect of which the Indemnitee intends to claim such indemnification, and the Indemnitor shall assume the defense thereof whether or not such Claim is rightfully brought; *provided, however*, that an Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnitee, unless Indemnitor does not assume the defense, in which case the reasonable fees and expenses of counsel retained by the Indemnitee shall be paid by the Indemnitor. The Indemnitee, and its employees and agents, shall cooperate fully with the Indemnitor and its legal representatives in the investigations of any Claim. The Indemnitor shall not be liable for the indemnification of any Claim settled or compromised by the Indemnitee without the written consent of the Indemnitor.

11. LIMITATION OF LIABILITY.

EXCEPT FOR DAMAGES FOR WHICH A PARTY IS RESPONSIBLE PURSUANT TO ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN **SECTION 10** ABOVE, EACH PARTY SPECIFICALLY DISCLAIMS ALL LIABILITY FOR AND SHALL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EXPENSES, LOST PROFITS, LOST SAVINGS, INTERRUPTIONS OF BUSINESS OR OTHER DAMAGES OF ANY KIND OR CHARACTER WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR RESULTING FROM THE MANUFACTURE, HANDLING MARKETING, SALE, DISTRIBUTION OR USE OF LICENSED PRODUCT OR USE OF THE LICENSED PATENTS AND CAPTISOL DATA PACKAGE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY SHALL HAVE NO REMEDY, AND CYDEX SHALL HAVE NO LIABILITY, OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT. EXCEPT WITH RESPECT TO THE INDEMNIFICATION SPECIFICALLY PROVIDED IN **SECTION 10** ABOVE, IN NO EVENT SHALL CYDEX'S TOTAL AGGREGATE LIABILITY FOR ALL

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CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE GREATER OF (1) THE TOTAL AMOUNT OF THE UPFRONT PAYMENTS AND MILESTONES PAID TO CYDEX BY COMPANY AS OF SUCH DATE, OR (2) THE TOTAL AMOUNTS PAID BY COMPANY TO CYDEX PURSUANT TO SECTION 4 OF THIS AGREEMENT DURING THE TWENTY-FOUR (24) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY. EXCEPT FOR DAMAGES FOR WHICH A PARTY IS RESPONSIBLE PURSUANT TO ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 10 ABOVE, NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR RELATED TO THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO (2) YEARS AFTER SUCH PARTY HAS KNOWLEDGE OF THE OCCURRENCE THAT GAVE RISE TO THE CAUSE OF SUCH ACTION.

12. MANAGEMENT OF LICENSED PATENTS.

12.1 Prosecution and Maintenance. CyDex shall maintain, at its sole cost and expense and using reasonable discretion, the Licensed Patents set forth on *Exhibit A*. CyDex shall have the sole right to control the prosecution and maintenance of patent applications and the selection of countries where patent applications are filed related to the Licensed Patents.

12.2 Infringement by Third Parties. If Company becomes aware that a third party may be infringing a Licensed Patent, it will promptly notify CyDex in writing, providing all information available to Company regarding the potential infringement. CyDex shall take whatever, if any, action it deems appropriate, in its sole discretion, against the alleged infringer. If CyDex elects to take action, Company shall, at CyDex's request and expense, cooperate and shall cause its employees to cooperate with CyDex in taking any such action, including but not limited to, cooperating with the prosecution of any infringement suit by CyDex. Company shall not take any such action against the alleged infringer without the written consent of CyDex, provided that if CyDex fails to pursue action regarding a potential infringement under this Section in a given country, and does not give its consent and cooperation to Company in pursuing any such action, Company's royalty obligation with respect to sales of Licensed Product in such country shall cease as if the applicable royalty term had ended.

13. TERM AND TERMINATION.

13.1 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue in effect thereafter until the expiration of Company's obligation to pay royalties under Section 4.1(c), unless terminated earlier as set forth herein. Upon expiration of this Agreement at the end of the Term, the licenses granted to Company under Section 2.1 shall convert to fully paid-up licenses, subject to Sections 13.2 and 13.5 hereof.

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13.2 Termination by CyDex. If Company should violate or fail to perform in any material respect any term or covenant of this Agreement, then CyDex may give written notice of such default (a “**Notice of Default**”) to Company. If Company should fail to cure such default within thirty (30) days (or fifteen (15) days with respect to any payment obligation) of the date of such notice or prior to the natural expiration date of this Agreement, whichever is shorter in duration, CyDex shall have the right to terminate this Agreement by a second written notice (a “**Notice of Termination**”) to Company. If Notice of Termination is sent to Company, this Agreement shall automatically terminate on the effective date of such notice. Notwithstanding the above, failure to pay milestones or royalties as described in **Section 4** above will result in termination of this Agreement immediately upon delivery of a Notice of Termination to Company. In addition, CyDex may terminate this Agreement immediately upon written notice to Company in the event Company makes an assignment for the benefit of creditors or has a petition in bankruptcy filed for or against it that is not dismissed within ninety (90) days of such filing.

13.3 Termination by Company. Company shall have the right at any time to terminate this Agreement in whole by giving CyDex at least ninety (90) days prior written notice.

13.4 Effect of Termination. Following the early termination of this Agreement, all rights granted to Company herein shall immediately terminate and each party shall, at the request of the other Party, promptly return or destroy all relevant records and materials in its possession or control containing the other party’s Confidential Information with respect to which the former party does not retain rights hereunder; *provided, however*, that (i) each party may retain one archival copy of such records and materials solely to be able to monitor its obligations that survive under this Agreement; and (ii) neither party shall be required to return or destroy any records included in regulatory filings or maintained on automatically created system back-up media.

13.5 Survival. Notwithstanding any other provisions of this Agreement, any liability or obligation of either party to the other for acts or omissions prior to the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Such termination or expiration shall not relieve either party from obligations that are expressly indicated to survive termination or expiration of this Agreement, nor shall any termination or expiration of this Agreement relieve Company of its obligation to pay CyDex (a) royalties for all Licensed Product sold by Company, its Affiliates or Sublicensees prior to the effective date of such expiration or termination consistent with the terms of **Sections 4.1, 4.3 and 4.5**, or (b) sums due in respect of Captisol shipped prior to termination or expiration of this Agreement. Notwithstanding anything in this Agreement to the contrary, **Sections 2.2** (Grant of License from Company to CyDex) with respect to Captisol Improvement developed during the Term, **3.5** (Quality Control; Acceptance and Rejection), **4.3** (Currency), **4.4** (Taxes), **4.5** (Late Payments), **5** (Records; Reports; Audits), **6.3(f)** (Reporting and Study Data), **6.5** (Access to Company’s Data), **7.3** (Adverse Event Reporting), **7.4** (Product Recalls), **8** (Confidentiality), **9.3** (Disclaimer), **10** (Indemnification), **11** (Limitation of Liability), **13.4** (Effect of Termination), **13.5** (Survival), and **14** (General Provisions) shall survive termination or expiration of this Agreement.

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14. GENERAL PROVISIONS.

14.1 Non-Solicitation. During the Term and for a period of [***] ([***]) [***] thereafter, neither party shall solicit, induce, encourage or attempt to induce or encourage any employee of the other party with whom such party has had direct contact to terminate his or her employment with such other party or to breach any other obligation to such other party. This section is not meant to encompass general solicitations such as may be found in newspaper advertisements and the like and the interviewing or hiring of any person who responds to a general solicitation.

14.2 Relationship of Parties. Each of the parties hereto is an independent contractor and nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee or joint venture relationship between the parties. No party shall incur any debts or make any commitments for the other.

14.3 Compliance with Law. Each Party agrees to comply, and to require its Affiliates and Sublicensees to comply with all applicable international, federal, state and local laws, rules and regulations, including, but not limited to, import/export restrictions, laws, rules and regulations governing use and patent, copyright and trade secret protection, in the performance of its activities as contemplated by this Agreement.

14.4 Arbitration.

(a) Procedure. Except as otherwise expressly set forth in **Section 14.4(b)** below, any and all disputes or controversies arising out of or relating to this Agreement shall be exclusively and finally resolved by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association (“AAA”) then in effect, in Chicago, Illinois. The arbitration shall be conducted by an arbitrator reasonably knowledgeable about the pharmaceutical industry and acceptable to CyDex and Company. If CyDex and Company cannot agree on a single arbitrator within thirty (30) days after a demand for arbitration has been made, CyDex shall appoint an arbitrator, Company shall appoint an arbitrator, the two (2) arbitrators shall appoint a third arbitrator, and the three (3) arbitrators shall hear and decide the issue in controversy. If either party fails to appoint an arbitrator within forty five (45) days after service of the demand for arbitration, then the arbitrator will be appointed by the AAA. Except as to the selection of arbitrators, the arbitration proceedings shall be conducted promptly and in accordance with the rules of the AAA then in effect. The expenses of any arbitration, including the reasonable attorney fees of the prevailing party, shall be borne by the party deemed to be at fault or on a pro-rata basis should the arbitration conclude in a finding of mutual fault.

(b) Short-Form Arbitration. Any dispute subject to short-form arbitration as provided in this Agreement shall be exclusively and finally resolved by binding arbitration in accordance with the commercial arbitration rules of the AAA then in effect, in Chicago, Illinois by a single arbitrator reasonably knowledgeable about the pharmaceutical industry and appointed in accordance with such rules. Such arbitrator shall make his or her determination on the basis of “baseball arbitration” principles. THE FORGOING REMEDY SHALL BE EACH PARTY’S SOLE AND

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EXCLUSIVE REMEDY WITH RESPECT TO ANY SUCH DISPUTE. The expenses of any arbitration, including the reasonable attorney fees of the prevailing party, shall be borne by the party deemed to be at fault or on a pro-rata basis should the arbitration conclude in a finding of mutual fault. In each case, the parties and arbitrator shall use all diligent efforts to complete such arbitration within thirty (30) days of appointment of the arbitrator.

(c) Confidentiality of Proceedings. All arbitration proceedings hereunder shall be confidential and the arbitrator(s) shall issue appropriate protective orders to safeguard each party's Confidential Information. Except as required by law, no party shall make (or instruct the arbitrator(s) to make) any public announcement with respect to the proceedings or decision of the arbitrator(s) without prior written consent of the other party, except as required by law to be disclosed.

(d) Interim Equitable Relief. Each party shall, in addition to all other remedies accorded by law and permitted by this Agreement, be entitled to equitable relief (including but not limited to interim injunctive relief) in any court having jurisdiction to protect its interests. Neither party shall commence any court proceeding or action against the other to resolve any dispute, except (i) to enforce an arbitral award rendered pursuant to this **Section 14.4**, or (ii) for such interim injunctive relief.

(e) Binding Effect. The provisions of this **Section 14.4** shall survive any expiration or termination of this Agreement, and shall be severable and binding on the parties hereto, notwithstanding that any other provision of this Agreement may be held or declared to be invalid, illegal or unenforceable.

14.5 Costs and Expenses. Except as otherwise expressly provided in this Agreement, each party shall bear all costs and expenses associated with the performance of such party's obligations under this Agreement.

14.6 Force Majeure. Neither party shall be liable for failure to perform, or delay in the performance of, its obligations under this Agreement (other than payment obligations) when such failure or delay is caused by an event of *force majeure*. For purposes of this Agreement, an event of *force majeure* means any event or circumstance beyond the reasonable control of the affected party, including but not limited to, war, insurrection, riot, fire, flood or other unusual weather condition, explosion, act of God, peril of the sea, strike, lockout or other industrial disturbance, sabotage, accident, embargo, breakage of machinery or apparatus, injunction, act of governmental authority, compliance with governmental order on national defense requirements, or inability to obtain fuel, power, raw materials, labor or transportation facilities. If, due to any event of *force majeure*, either party shall be unable to fulfill its obligations under this Agreement (other than payment obligations), the affected party shall immediately notify the other party of such inability and of the period during which such inability is expected to continue and shall use commercially reasonable efforts to mitigate the length and effect of such force majeure event.

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14.7 Notices. Any notice, request, or communication under this Agreement shall be effective only if it is in writing and personally delivered; sent by certified mail, postage pre-paid; facsimile with receipt confirmed and a copy sent by mail or courier; or by nationally recognized overnight courier with signature required, addressed to the parties at the addresses stated below or such other persons and/or addresses as shall be furnished in writing by any party in accordance with this **Section 14.7**. Unless otherwise provided, all notices shall be sent:

If to CyDex, to:

CyDex Pharmaceuticals, Inc.
10513 W. 84th Terrace
Lenexa, KS 66214
Attention: President
Fax: (913) 685-8856

If to Company, to:

Rib-X Pharmaceuticals, Inc.
300 George Street, Suite 301
New Haven, CT 06511
Attention: Chief Executive Officer
Fax: (203) 624-5627

If sent by facsimile transmission, the date of transmission shall be deemed to be the date on which such notice, request or communication was given and confirmed, provided the confirmation copy is also sent by mail or courier. If sent by overnight courier, the next business day after the date of deposit with such courier shall be deemed to be the date on which such notice, request or communication was given. If sent by certified mail, the third business day after the date of mailing shall be deemed the date on which such notice, request or communication was given.

14.8 Use of Name. Commencing upon receiving regulatory approval in the United States for the Licensed Product, or upon use by Company, its Affiliate or Sublicensee of the name CyDex or Captisol pursuant to the following sentence, Company hereby grants CyDex a non-exclusive, non-transferable license during the Term to use Company's name, logo and other trademarks solely to identify Licensed Product as a product incorporating Captisol in marketing and other materials for customers, investors and potential customers and investors, including but not limited to use in connection with materials filed with the SEC or other regulatory agencies. CyDex hereby grants to Company and its Affiliates and Sublicensees the right to use the name CyDex and Captisol and associated logos and trademarks in connection with any and all descriptions of Licensed Product or related to Licensed Product. Except as otherwise provided herein, neither party shall have any right, express or implied, to use in any manner the name, logos, trademarks or other designation of the other party or any other trade name or trademark of the other party for any purpose, except as may be required by applicable law or regulation.

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14.9 Public Announcements. Except for such disclosure as is deemed necessary, in the reasonable judgment of a party, to comply with applicable laws or regulations, securities filings or the rules of the NYSE or NASDAQ, no announcement, news release, public statement, publication, or presentation relating to the existence of this Agreement, or the terms hereof, will be made without the other party's prior written approval, which approval shall not be unreasonably withheld. Notwithstanding the above, once the content and timing of a public announcement of the fact that the parties have entered into this Agreement has been agreed to between the parties and such announcement has been made, either Party shall be free to disclose to third parties the fact that it has entered into the Agreement with the other party (including a description of the field of use of the Licensed Product, but without disclosing the economic terms thereof), as well as any other information contained in said public announcement. In the event of a required public announcement under the first sentence of this paragraph, the party making such announcement shall provide the other party with a copy of the proposed text prior to such announcement sufficiently in advance of the scheduled release of such announcement to afford such other party a reasonable opportunity to review and comment upon the proposed text and the timing of such disclosure and the other party shall consider in good faith such comments. Notwithstanding anything in this Agreement to the contrary, in no event will CyDex have a right to make any disclosure or give any presentation of the results of clinical testing of Licensed Product without Company's prior written consent.

14.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to any conflicts of law principles that require the application of the law of a different state).

14.11 Entire Agreement; Amendment. This Agreement and all Exhibits attached hereto or thereto contain the entire agreement of the parties relating to the subject matter hereof and supersede any and all prior agreements, written or oral, between CyDex and Company relating to the subject matter of this Agreement. This Agreement may not be amended unless agreed to in writing by both parties.

14.12 Binding Effect. This Agreement shall be binding upon, and the rights and obligations hereof shall apply to the CyDex and Company and any successor(s) and permitted assigns. The name of a party appearing herein shall be deemed to include the names of such party's successors and permitted assigns to the extent necessary to carry out the intent of this Agreement.

14.13 Waiver. The rights of either party under this Agreement may be waived from time to time, singularly or in combination, and the waiver of one or more such rights shall not be deemed to be a waiver of any one or more of the others. No waiver of any breach of a term, provision or condition of this Agreement shall be deemed to have been made by either party unless such waiver is addressed in writing and signed by an authorized representative of that party. The failure of either party to insist upon the strict performance of any of the terms, provisions or conditions of this Agreement, or to waive any right contained in this Agreement, shall not be construed as a waiver or relinquishment for the future of any such term, provision, condition or option or the waiver or relinquishment of any other term, provision, condition or option.

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14.14 Severability. If a final judicial determination is made that any provision of this Agreement is unenforceable, this Agreement shall be rendered void only to the extent that such judicial determination finds such provisions unenforceable, and such unenforceable provisions shall be automatically reconstituted and become a part of this Agreement, effective as of the date first written above, to the maximum extent they are lawfully enforceable.

14.15 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement, in whole or in part, by operation of law or otherwise, to any third party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign its rights and delegate its obligations under this Agreement to an Affiliate or to a third party successor, whether by way of merger, sale of all or substantially all of its assets, sale of stock or otherwise, without the other party's prior written consent. As a condition to any permitted assignment hereunder, the assignor must guarantee the performance of any assignee to the terms and obligations of this Agreement. Any assignment not in accordance with this **Section 14.15** shall be void.

14.16 Headings. The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

14.17 Counterparts. This Agreement may be executed in two counterparts, each of which shall constitute an original document, but both of which shall constitute one and the same instrument.

[Remainder of this page left blank intentionally]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CYDEX PHARMACEUTICALS, INC.

By: /s/ Allen K. Roberson

Name: Allen K. Roberson

Title: CFO

RIB-X PHARMACEUTICALS, INC.

By: /s/ Mark Leuchtenberger

Name: Mark Leuchtenberger

Title: CEO

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EXHIBIT A

LICENSED PATENTS

Country	Filing Date	Serial No.	Patent No.	Expiration Date
United States	***	***	***	***
Australia	***	***	***	***
EPO	***	***	***	***
Austria	***	***	***	***
Belgium	***	***	***	***
France	***	***	***	***
Germany	***	***	***	***
Great Britain (UK)	***	***	***	***
Greece	***	***	***	***
Italy	***	***	***	***
Luxembourg	***	***	***	***
Netherlands	***	***	***	***
Sweden	***	***	***	***
Switzerland	***	***	***	***
Korea	***	***	***	***
Canada	***	***	***	***
Russia	***	***	***	***
Japan	***	***	***	***

LICENSE AND SUPPLY AGREEMENT

PAGE A-1

Portions of this Exhibit, indicated by the mark “***,” were omitted and have been filed separately with the Secretary of the Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 406 of the Securities Act of 1933, as amended.

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Country	Filing Date	Serial No.	Patent No.	Expiration Date
United States	***	***	***	***
***	***	***	***	***
Australia	***	***	***	***
EPO	***	***	***	***
Austria	***	***	***	***
Belgium	***	***	***	***
Denmark	***	***	***	***
Djibouti	***	***	***	***
France	***	***	***	***
Germany	***	***	***	***
Great Britain (UK)	***	***	***	***
Greece	***	***	***	***
Ireland	***	***	***	***
Italy	***	***	***	***
Luxembourg	***	***	***	***
Monaco	***	***	***	***
Netherlands	***	***	***	***
Portugal	***	***	***	***
Spain	***	***	***	***
Sweden	***	***	***	***
Switzerland	***	***	***	***
Korea	***	***	***	***
Canada	***	***	***	***
Japan	***	***	***	***
Russia	***	***	***	***
Georgia	***	***	***	***
Armenia	***	***	***	***
Kyrgyzstan	***	***	***	***
Moldova	***	***	***	***
Tajikistan	***	***	***	***
Turkmenistan	***	***	***	***
Uzbekistan	***	***	***	***

LICENSE AND SUPPLY AGREEMENT

PAGE A-2

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Country		Filing Date	Serial No.	Patent No.	Expiration Date
United States		***	***	***	***
	EPO				
		Belgium	***	***	
		Denmark	***	***	
		Djibouti	***	***	
		France	***	***	
		Germany	***	***	
		Great Britain (UK)	***	***	
		Greece	***	***	
		Ireland	***	***	
		Italy	***	***	
		Luxembourg	***	***	
Brazil		***	***		
Canada		***	***		
China		***	***		
Austria		***	***		
India		***	***		
Israel		***	***		
Japan		***	***		
Korea		***	***		
Mexico		***	***		
Russian Federation		***	***		

LICENSE AND SUPPLY AGREEMENT

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Country	Filing Date	Serial No.	Patent No.	Expiration Date
United States	***	***	***	***
United States CON	***	application		
EPO	***			
Austria	***	application		
Belgium	***	application		
France	***	application		
Germany	***	application		
Great Britain (UK)	***	application		
Greece	***	application		
Italy	***	application		
Luxembourg	***	application		
Netherlands	***	application		
Sweden	***	application		
Switzerland	***	application		
Canada	***	application		
China	***	application		
Japan	***	application		
Brazil	***	application		
Mexico	***	application		
Eurasia	***			
Turkmenistan	***	application		
Republic of Belarus	***	application		
Republic of Tajikistan	***	application		
Russia	***	application		
Azerbaijan Republic	***	application		
Republic of Kazakhstan	***	application		
Kyrgyzstan	***	application		
Republic of Armenia	***	application		
Republic of Moldova	***	application		

LICENSE AND SUPPLY AGREEMENT

PAGE A-4

Portions of this Exhibit, indicated by the mark “***,” were omitted and have been filed separately with the Secretary of the Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 406 of the Securities Act of 1933, as amended.

*****] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE RULES APPLICABLE TO SUCH CONFIDENTIAL TREATMENT REQUEST.**

EXHIBIT B

SPECIFICATIONS

LICENSE AND SUPPLY AGREEMENT

PAGE B-1

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LICENSE AND SUPPLY AGREEMENT

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EXHIBIT C
PURCHASE PRICE FOR CAPTISOL
CLINICAL GRADE MATERIAL

<u>Individual Order Quantity</u>	<u>Price</u>
***	\$/***/kg
***	\$/***/kg

COMMERCIAL PRICE FOR MATERIAL

<u>Annual Order Quantity</u>	<u>Price</u>
***	\$/***/ per kg
***	\$/***/kg
***	\$/***/kg
***	\$/***/kg

* * * * *

LICENSE AND SUPPLY AGREEMENT

PAGE C-1

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EXHIBIT D

SPECIFIED DILIGENCE REQUIREMENTS

[***].

* * * * *

LICENSE AND SUPPLY AGREEMENT

PAGE D-1

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EXHIBIT E

FORM OF UNDERTAKING

THIS AGREEMENT (this "Agreement") is made this day of , 20 (the "Effective Date"), by and between **RIB-X PHARMACEUTICALS, INC.**, a Delaware corporation with offices at 300 George Street, Suite 301, New Haven, CT 06511 ("Rib-X"), and [*NAME OF COMPANY*], a
with offices at ("Company").

RECITALS

WHEREAS, Rib-X and **CYDEX PHARMACEUTICALS, INC.**, a Delaware corporation with offices at 10513 W. 84th Terrace, Lenexa, Kansas 66214 USA ("CyDex") are parties to that certain License and Supply Agreement dated as of , 2010 (the "L&SA") related to the license of certain rights and the supply by CyDex to Rib-X of CAPTISOL[®], also known scientifically as sulfobutylether β(beta) cyclodextrin, sodium salt, which is a patented drug formulation system designed to enhance the solubility and stability of drugs ("CAPTISOL");

WHEREAS, defined terms which are used but not defined in this Agreement shall have the meanings given to them in the L&SA;

WHEREAS, Rib-X and Company are parties to that certain [*Name of Agreement*] dated as of , 20 (the "Contract"), which requires the execution and delivery of this Agreement by Rib-X and Company [*for the following territory: (the "Sublicense Territory")*]; and

WHEREAS, Company desires to obtain a sublicense from Rib-X, pursuant and subject to the terms and conditions of the L&SA and the Contract, [*to use CAPTISOL as follows: 'Note: To be inserted upon execution of undertaking].

NOW, THEREFORE, in consideration of the following mutual promises and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties, intending to be legally bound, agree as follows:

1. L&SA Undertaking. Company undertakes and agrees to observe and perform the following obligations to the same extent as Rib-X is obligated to CyDex pursuant to the L&SA, but, in each case, solely with respect to activities of Company and its Affiliates: [**Note: Agreement to include at a minimum the following provisions:** Sections 2.2 (Grant of License from Company to CyDex); [if Company is purchasing CAPTISOL directly from CyDex, Section 3 (Manufacture and Supply of CAPTISOL), 4.2 (Pricing for CAPTISOL), 4.3 (Currency), 4.4 (Taxes), and 4.5 (Late Payments)], 5 (Records; Reports; Audit)]; [if Sublicensee is assuming Rib-X's development obligations, 6 (Development and Commercialization by Company), and 7 (Regulatory Matters)], 8 (Confidentiality), 10 (Indemnification), 11 (Limitation of Liability), 12 (Management of Licensed Patents), 13.5 (Survival), and 14 (General Provisions).] For clarity, Company acknowledges and agrees that CyDex may directly enforce, as an intended third-party beneficiary of this Agreement, such obligations under the L&SA against Company.

LICENSE AND SUPPLY AGREEMENT

PAGE E-1

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2. Contract Undertaking. Company undertakes and agrees for the benefit of CyDex to observe and perform Company's obligations under the Contract that relate to the L&SA. For clarity, Company acknowledges and agrees that CyDex may directly enforce, as an intended third-party beneficiary of this Agreement, such obligations under the Contract against Company. Rib-X and Company agree that a full copy of the executed Contract shall be provided to CyDex within thirty (30) days after the Effective Date which may be redacted to delete confidential provisions not relevant to the L&SA.

3. No CyDex Liability. Company acknowledges and agrees that CyDex shall have no liability to Company under the L&SA (as Company is not a party to the L&SA) or the Contract (as CyDex is not a party to the Contract). The enforcement of any obligation of CyDex under the L&SA shall only be pursued by Rib-X pursuant to the L&SA.

4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to any conflicts of law principles that require the application of the law of a different state).

5. Counterparts. This Agreement may be executed in two counterparts, each of which shall constitute an original document, but both of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

RIB-X PHARMACEUTICALS, INC.

[*NAME OF COMPANY*]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

LICENSE AND SUPPLY AGREEMENT

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