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

Form 10/A

(Amendment No. 1)

CymaBay Therapeutics, Inc.

(Exact name of Registrant as specified in its charter)

Delaware	**94-3103561**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**

3876 Bay Center Place
Hayward, California 94545
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (510) 293-8800

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

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

Common Stock, $0.0001 Par Value Per Share

(Title of class)

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

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

We are an "emerging growth company" as defined under the federal securities laws. For implications of our status as an emerging growth company, please see "Business" in Item 1, "Risk Factors" in Item 1A and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Item 2 of this registration statement.

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CymaBay Therapeutics, Inc.

FORM 10

INFORMATION REQUIRED IN REGISTRATION STATEMENT

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DISCLOSURE REGARDING FORWARD LOOKING STATEMENTS

This Form 10 contains forward-looking statements regarding future events and our future results that are based on current expectations, estimates, forecasts, and projections about the industries in which we operate and the beliefs and assumptions of our management. Words such as "expects," "will," "anticipates," "targets," "goals," "projects," "intends," "plans," "believes," "seeks," "estimates," "potential," "should," "could," variations of such words, and similar expressions are intended to identify forward-looking statements. In addition, any statements which refer to projections of our future financial performance, our anticipated growth and trends in our business, and other characterizations of future events or circumstances, are forward-looking statements, including, but not limited to: statements regarding the steps, timing and costs of our development programs; the availability of additional financing and access to capital; the formation of a trading market for our common stock; discussions and approvals of regulatory agencies; and the period of time for which we will be able to fund our operations. These forward-looking statements are based on management's beliefs and assumptions and on information currently available to our management and involve significant elements of subjective judgment and analysis. Readers are cautioned that these forward-looking statements are only predictions and are subject to risks, uncertainties, and assumptions that are difficult to predict, including, but not limited to, the ability to obtain substantial additional funding, obtain and maintain all necessary patents or licenses, demonstrate the safety and efficacy of product candidates at each stage of development, meet applicable regulatory standards and receive required regulatory approvals, meet obligations and required milestones under agreements, manufacture and distribute any product candidates or products that we may develop in commercial quantities at reasonable costs, compete successfully against other products and market products in a profitable manner. Therefore, actual results may differ materially and adversely from those expressed in any forward-looking statements. Readers are directed to the risks and uncertainties identified below, under "Item 1A. Risk Factors" and elsewhere herein, for additional factors that may cause actual results to be different from those expressed in these forward-looking statements. Any forward-looking statement speaks only as of the date on which it is made, and except as required by law, we undertake no obligation to revise or update publicly any forward-looking statements for any reason.

For convenience in this Form 10, "CymaBay," "we," "us," and "our" refer to CymaBay Therapeutics, Inc. and its subsidiaries taken as a whole. The word trademark "CymaBay" is registered on the Principal Register of the United States Patent and Trademark Office. This document also contains trademarks and trade names of other companies, and those trademarks and trade names are the property of their respective owners. We do not intend our use or display of other companies' trademarks or trade names to imply a relationship with, or endorsement or sponsorship of us by, any other companies or products.

ITEM 1. BUSINESS.

CymaBay Overview

CymaBay Therapeutics Inc., formerly Metabolex, Inc., is focused on developing therapies to treat metabolic diseases. Arhalofenate, our lead product candidate, is being developed for the treatment of gout. Arhalofenate has demonstrated two therapeutic actions: the prevention of painful attacks of gout in joints (flares) and the lowering of serum uric acid (sUA) by promoting excretion of uric acid by the kidney. In addition, arhalofenate provides physicians with what they identified in a recent survey (TreatmentTrends®: Gout U.S. August 2011) as the most important attributes when selecting a gout therapy: no serious safety issues, well tolerated, minimize frequency of flares and use in patients with a broad range of comorbidities, (other diseases that individual patients have in addition to gout).

CymaBay has completed three Phase 2 studies of arhalofenate in gout patients in which it demonstrated a consistent pattern of reduction of flare incidence and duration and lowering of serum uric acid (sUA). Arhalofenate has established a safety profile in toxicology studies in animals and in clinical studies involving nearly 1,000 patients exposed to arhalofenate. One additional Phase 2b clinical study of 12 weeks duration is planned to confirm the safety and efficacy of a higher dose prior to initiating Phase 3 studies. Due to its safety profile and ability to both reduce flares and lower sUA, we believe that arhalofenate has a differentiated profile

that is attractive for use in a large population, with significant advantages over marketed and emerging agents which have limitations in their efficacy, tolerability, and use in patients with common comorbidities. CymaBay is poised to follow arhalofenate with two additional clinical stage product candidates, one in diabetes and one that has potential utility in high unmet need (no existing or limited therapies) and/or orphan diseases (rare diseases).

CymaBay has had net losses of $11.1 million, $23.9 million and $17.1 million for the six months ended June 30, 2013, and the twelve months ended December 31, 2012 and 2011, respectively. Our cash balance as of June 30, 2013, was $3.6 million. Our average monthly cash usage for the six months ending June 30, 2013, was $0.7 million which, given our available cash, will allow us to continue operation through October 2013. We estimate that we need to raise approximately $25 million in new financing to complete our Phase 2b clinical study of arhalofenate. As set forth in the notes to our financial statements, our auditors have expressed substantial doubt as to our ability to continue as a going concern if we are unable to raise additional capital.

Implications of Being an "Emerging Growth Company"

We qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. As an "emerging growth company," we may take advantage of specified reduced disclosure and other requirements that are otherwise applicable generally to public companies. These provisions include:

- only two years of audited financial statements in addition to any required unaudited interim financial statements with correspondingly reduced "Management's Discussion and Analysis of Financial Condition and Results of Operations" disclosure;
- reduced disclosure about our executive compensation arrangements;
- no requirement that we solicit non-binding advisory votes on executive compensation or golden parachute arrangements; and
- exemption from the auditor attestation requirement in the assessment of our internal control over financial reporting.

CymaBay intends to take advantage of the reduced disclosure obligations. Section 107 of the JOBS Act also provides that an emerging growth company can take advantage of the extended transition period provided in the Securities Act of 1933 as amended, or the Securities Act, for complying with new or revised accounting standards. In other words, an emerging growth company can elect to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. CymaBay has elected to avail itself of this exemption to take advantage of the extended transition period for complying with new or revised accounting standards.

CymaBay could remain an emerging growth company for up to five years, or until the earliest of (i) the last day of the first fiscal year in which CymaBay's annual gross revenues exceed $1 billion, (ii) the date that CymaBay becomes a "large accelerated filer" as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended, or the Exchange Act, which would occur if the market value of CymaBay's common stock that are held by non-affiliates exceeds $700 million as of the last business day of CymaBay's most recently completed second fiscal quarter, (iii) the date on which CymaBay has issued more than $1 billion in non-convertible debt during the preceding three-year period and (iv) the last day of the fiscal year following the fifth anniversary of the date of the first sale of our common equity securities pursuant to an effective registration statement under the Securities Act. At this time CymaBay expects to remain an "emerging growth company" for the foreseeable future.

CymaBay also will qualify as a "smaller reporting company" and thus have the advantage of not being required to provide the same level of disclosure as larger public companies.

CymaBay Strategy

Our goal is to become a leading biopharmaceutical company focused on developing and commercializing proprietary new medicines for metabolic diseases. Key elements of our strategy are to:

- develop arhalofenate as a treatment for gout, including through a near-term Phase 2b study;
- obtain U.S. Food and Drug Administration (FDA) approval for arhalofenate as a treatment for gout;
- pursue partnerships to broadly commercialize arhalofenate;
- develop our other product candidates subject to availability of resources; and
- strengthen our patent portfolio and other means of protecting exclusivity.

CymaBay Pipeline Overview

Our pipeline includes three unpartnered clinical stage programs and a number of partnered and unpartnered preclinical programs. Across this portfolio, a total of 21 clinical studies, including nine Phase 2 studies, have been completed. An investigational new drug application (IND) has been filed with the FDA for each clinical stage program. An IND for arhalofenate in gout was filed in April 2011. An IND for MBX-2982 in diabetes was filed in January 2008. The IND for MBX-8025 was filed by Johnson & Johnson Pharmaceutical Research & Development in July 2005 and transferred to CymaBay in March 2007.

Program	Indication	Partner	Research	Preclinical	P1	P2
Arhalofenate	Gout					
MBX-2982	Diabetes					
MBX-8025	Orphan Disease					
Target	Diabetes	Johnson & Johnson Company				
Targets	Diabetes	Johnson & Johnson Company				
GPR131	Diabetes					

Arhalofenate—Gout

Gouty arthritis, or simply gout, is the most common form of inflammatory arthritis in men and affects more than 8 million people in the United States (U.S.) (Zhu et. al., 2011 Arth Rheum 63:3136-3141). The hallmark symptom of gout is a flare, characterized by debilitating pain, along with tenderness and inflammation of affected joints. Gout has a significant impact on patients' quality of life and health care utilization. Patients experiencing gout flares miss an average of 4.6 more days of work per year than those without gout. Gout flares also result in increased health care utilization with approximately 35% of moderate and 50% of severe gout patients who experience a flare having at least one acute care visit per year.

Gout flares are recurring and excruciatingly painful episodes of joint inflammation that are triggered by the presence of monosodium urate (MSU) crystals. MSU crystals are formed when the concentration of uric acid in tissues exceeds its solubility limit, approximately 6.8 milligrams per deciliter (mg/dL). Elevated levels of circulating uric acid, or hyperuricemia, most commonly results from the under excretion of uric acid in the kidney. This is caused by its reabsorption from urine and transport back to the blood by specialized urate

transporters/exchangers in the proximal renal tubule. Long term accumulation of MSU crystals in the body leads to the progression of gout with an increase in the frequency of flares, the involvement of multiple joints, the formation of visible masses of MSU crystals (tophi) and the debilitation that results from deformation of joints.

Many scientific surveys (Fuldeore, et. al., 2011 BMC Nephrology 12:36-44; Riedel, et. al, 2004 J Clin Rheumatol 10:308-314; Stamp, et. al. 2013 Rheumatology 52:34-44; Wu, et. al., 2012 Am J Therapeutics 19:e157-e166) and large clinical studies in gout (Rilonacept Briefing Package FDA Advisory Committee Meeting May 8, 2012; Febuxostat Briefing Package FDA Advisory Committee Meeting November 24, 2008) indicate that gout patients have a high incidence of cardiovascular and metabolic comorbidities, such as hypertension (50% or more), coronary artery disease (>35%), chronic kidney disease (~40%), and diabetes (~20%). Managing patients with these comorbidities is challenging because many of them are contraindicated in the medication currently used to treat gout. Examples include corticosteroids which can cause hypertension and worsening of dysglycemia and non-steroidal anti-inflammatory drugs (NSAIDs) which have renal toxicity.

Market Opportunity

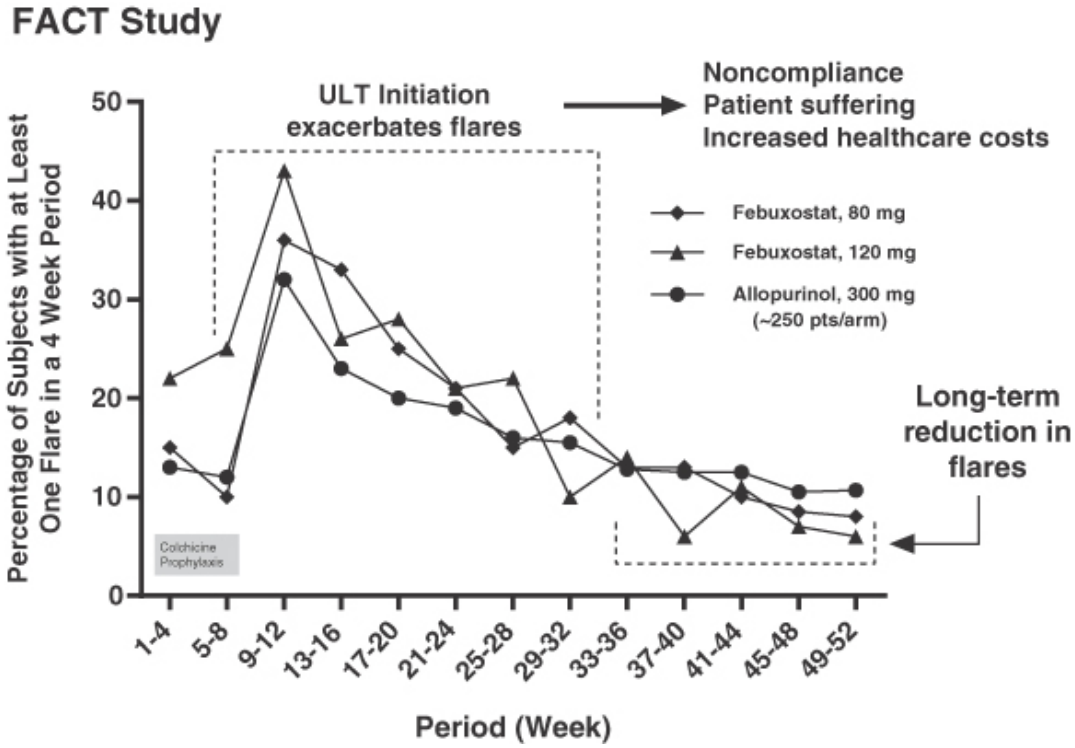
Unmet Needs in the Treatment of Gout

Of the 8 million patients with gout in the U.S., we estimate that over 3 million are on urate lowering therapy (ULT) and of these patients on ULTs, about 1 million will continue to experience 3 or more flares per year, with significant impact to patient quality of life and the health care system. According to a 2012 study (Wu, et. al., 2012 Comorbidity Burden, Healthcare Resource Utilization, and Costs in Chronic Gout Patients Refractory to Conventional Urate Lowering Therapy Am J Therapeutics 19:e157-e166), patients having 3 or more flares per year typically incur $10,000 more in annual health care costs than patients without gout. In order to halt the progression of the disease and provide long term reduction in flares, MSU crystals must be eliminated from the body. Therefore, the two major goals of gout treatment are to prevent flares and lower sUA to below 6 mg/dL in order to dissolve MSU crystals from tissue. The most important limitation in achieving these goals is that all existing ULTs paradoxically cause an increase in flares upon initiation of treatment, leading many patients to discontinue or avoid therapy. Non-adherence to therapy is a significant problem. In one long term study, only about 40% of allopurinol patients reached the goal of sUA < 6 mg/dL (Febuxostat Briefing Package FDA Advisory Committee Meeting November 24, 2008). Failure to get to goal results in progression of the disease and continued flaring.

Limitations of Current Therapies

Allopurinol and febuxostat (marketed by Takeda Pharmaceutical Company Limited as Uloric®), the most common drugs prescribed to lower sUA, substantially increase flares for up to 6 – 12 months following initiation of treatment (see figure from Takeda's Phase 3 Febuxostat Versus Allopurinol Control Trial in Subjects with

Gout (FACT) study below). The ULT-initiated flare phenomenon is common to all ULTs and leads to increased health care utilization and high patient discontinuation with progression of disease.



Becker, et. al., 2005 N Engl J Med. 353(23):2450-61.

To address the increase in flare rate associated with initiation of ULT therapy, anti-inflammatory drugs such as colchicine and NSAIDs are co-prescribed with ULTs. However, use of these agents carries a risk for causing adverse effects. Some known adverse effects of colchicine include diarrhea, nausea, vomiting, destruction of skeletal muscle, neuromuscular toxicity, and decreased blood cell production. Chronic use of NSAIDs, which only provide symptom relief, is associated with increased risk of renal toxicity, gastrointestinal (GI) bleeding and cardiovascular events. Similarly, steroids are linked to hypertension and a worsening of blood glucose, which is problematic for diabetics and patients with hypertension and/or heart disease, respectively. Given the prevalence of cardiovascular and metabolic comorbidities in gout patients, the use of these agents can be problematic in a significant number of gout patients.

Anti-Flare Competition

The largest selling branded gout drug in the U.S. is Colcrys® (branded colchicine), prescribed for the prevention and treatment of gout flares. Despite the availability of low cost generic NSAIDs and steroids, Takeda reported U.S. sales of $496 million for Colcrys in 2012 (Takeda Pharmaceutical Company Presentation, May 9, 2013) highlighting the importance of preventing and treating gout flares effectively. While colchicine has been shown to reduce the percentage of patients experiencing flares by 57% (Borstad, et. al., 2004 J Rheumatol 31:2429-2432), it carries significant limitations in terms of safety and tolerability.

Emerging therapies for treating gout flares include the interleukin-1 beta (IL-1ß) neutralizing therapies rilonacept (Arcalyst®) and canakinumab (Ilaris®). These biologics, agents produced by biological rather than

chemical processes, have demonstrated in well controlled clinical trials that this class can reduce ULT-initiated flares by up to ~80% (Rilonacept Briefing Package FDA Advisory Committee Meeting May 8, 2012). These agents have validated the blockade of IL-1ß as an approach to flare control. However, only Ilaris is approved for flares and it is administered by injection, has a high cost, and carries a warning for increased risk of serious infections. Ilaris is specifically indicated for the symptomatic treatment of adult patients with frequent gouty arthritis attacks (at least 3 attacks in the previous 12 months) for whom NSAIDs and colchicine are contraindicated, are not tolerated, or do not provide an adequate response, and for whom repeated courses of corticosteroids are not appropriate.

Serum Uric Acid Lowering Competition

Xanthine oxidase (XO) inhibitors (allopurinol and febuxostat) dominate the ULT market with generic allopurinol up to 300 mg accounting for about 90% of ULT prescriptions in the U.S. (Sarawate, et. al., 2006 Mayo Clin Proc 81:925-934). Allopurinol may potentially lead to undertreatment because of the occurrence of skin rash and a rare but serious hypersensitivity reaction which can be fatal. In addition, it must be used with caution in renally impaired patients (a common comorbidity in gout) and is recommended to undergo dose escalation. Febuxostat, approved by the Food and Drug Administration (FDA) in 2009 and marketed in the U.S. as Uloric, is the first new treatment approved for gout in more than 40 years. We estimate that its market penetration was 6.2% in 2012. Its wholesale price is approximately $7 per tablet compared to less than $1 per tablet for generic allopurinol.

Lesinurad is a drug in Phase 3 development, which was recently acquired by AstraZeneca PLC in its purchase of Ardea Biosciences, Inc. for $1.26 billion. Like arhalofenate, it lowers sUA by promoting the excretion of uric acid by the kidney. Lesinurad, like all other ULTs, increases flares upon initiation of treatment, whereas arhalofenate is expected to reduce flares. Lesinurad is being studied as an add-on treatment to allopurinol patients not reaching target sUA levels, as an add-on to febuxostat in tophaceous gout patients and as monotherapy (given as a single drug) for patients who are intolerant to XO inhibitors. The reported percentage of patients that achieve sUA < 6 mg/dL for the combination of lesinurad and allopurinol at 44 weeks was 78% (Ardea Study 203 Safety Extension 2012 Ann Rheum Dis 71(Suppl3):439) which is similar to the 74% reported for febuxostat at 80 mg in the FACT trial which was one of a similar duration and with a similar patient population.

While medically important, the case for sUA lowering alone is not sufficient to ensure success in the market because hyperuricemia is asymptomatic and patients usually seek treatment for their flares. This is evident by the modest sales of Uloric, which in spite of greater sUA reduction compared to the most common dose of generic allopurinol, has only generated about $216 million in 2012 sales (Takeda Pharmaceutical Company Presentation May 9, 2013). Lesinurad (in development by AstraZeneca), a novel uricosuric drug (a substance that increases the excretion of uric acid into the urine) intended to add to allopurinol in order to provide additional sUA lowering, has sUA lowering comparable to 80 mg Uloric.

Arhalofenate Addresses the Unmet Needs in Gout

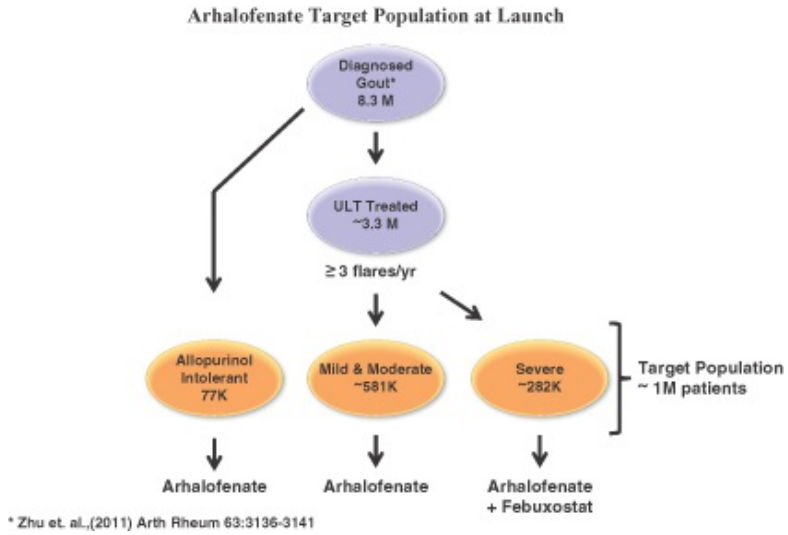
CymaBay believes that a significant opportunity exists for arhalofenate as a result of its combined anti-flare and sUA lowering profile for the treatment of gout. It addresses key unmet needs by preventing flares and achieving sUA target goals as monotherapy. In patients who need additional sUA lowering, it can be combined with other ULTs to significantly reduce sUA without the induction of flares seen with all other ULTs.

CymaBay has undertaken an analysis of the gout market expected at the time of arhalofenate's launch. Arhalofenate has dual pharmacology, whereas all of the gout drugs discussed above are limited to one of either anti-flare or sUA lowering. Given arhalofenate reduces and prevents flares while also lowering sUA, we believe it will be the preferred alternative for the approximately 1 million patients who flare 3 or more times per year despite being on ULT. The poor compliance of patients treated with existing ULTs also leads to more than

1 million discontinuations and restarts of therapy every year. The cycling of patients on and off ULTs offers opportunities for physicians to prescribe arhalofenate for its many advantages over other therapies.

As a monotherapy, we believe arhalofenate will be a single, safe, easy-to-use replacement for the combination of allopurinol and Colcrys, which is the current standard of care.

For those patients needing additional sUA reduction, our clinical trial data have demonstrated that arhalofenate can be combined with febuxostat to provide large (~60%) reductions in sUA, but without the large increases in the incidence of flares seen with all other ULTs.



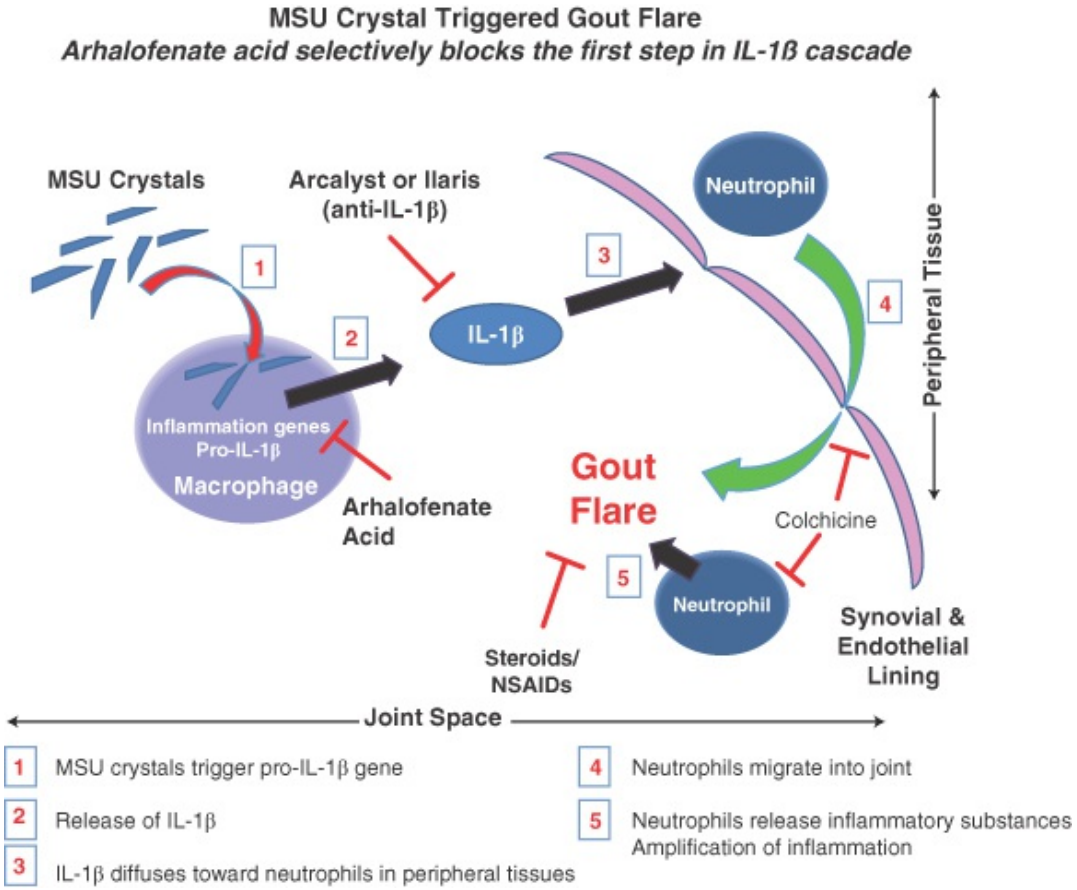
Arhalofenate Overview

Scientific Rationale

Arhalofenate is a prodrug which upon absorption is converted to its active form, arhalofenate acid. Arhalofenate acid's dual actions are to block the MSU crystal-stimulated production of IL-1ß by macrophages (white blood cells that play an important role in the body's defense against pathogens and foreign matter) in joints and to inhibit uric acid reabsorption by urate transporters in the kidney.

Anti-Inflammatory Activity

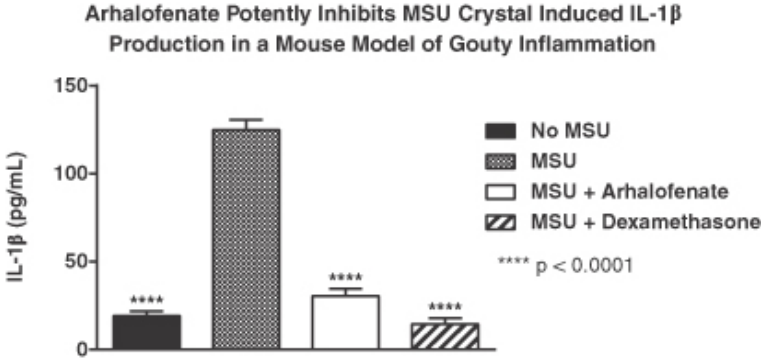
A simplified model of gouty inflammation which reflects many of the important features of the IL-1ß mediated inflammatory cascade, a sequence of biochemical events that produces inflammatory proteins, caused by MSU crystals is depicted below. Arhalofenate (through arhalofenate acid) is unique among available anti-inflammatory drugs because it prevents the initiation of the inflammatory cascade and acts upstream from other therapies. The anti-inflammatory action comes from a unique trans-repression (a type of inhibition) of peroxisome proliferator-activated receptor-gamma (PPARγ) which blocks the production of IL-1ß and other inflammatory proteins by macrophages that produce a flare. Neutralization of IL-1ß has been shown in clinical trials to reduce flares by about 70%. Because arhalofenate acid acts upstream of colchicine, it may be able to replace colchicine.



The anti-inflammatory mechanism of arhalofenate acid has been elucidated in preclinical models. In experiments with isolated macrophages, arhalofenate acid is able to suppress MSU crystal-stimulated release of IL-1ß protein by blocking expression of the precursor pro-IL-1ß gene. Importantly, this activity is seen at concentrations that are achieved in humans.

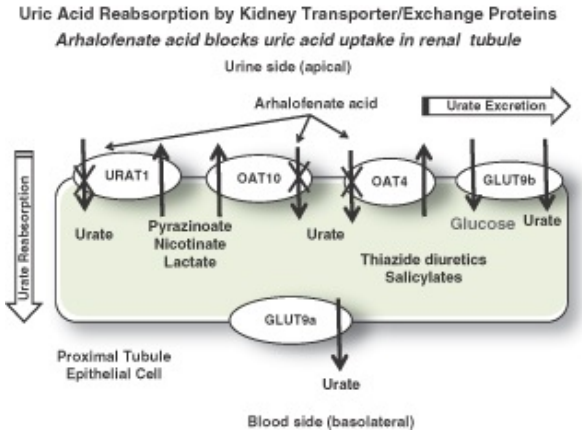
In vivo confirmation of this effect was seen in a mouse model of gouty inflammation. Injecting MSU crystals into mice produces many of the molecular and cellular steps involved in a gout flare. As shown below, administration of arhalofenate at doses that produce clinically relevant exposures was able to suppress the release of IL-1ß in response to MSU crystals to a degree similar to that of dexamethasone, a potent anti-inflammatory steroid drug. Importantly, it also suppresses other important inflammatory mediators that colchicine does not.

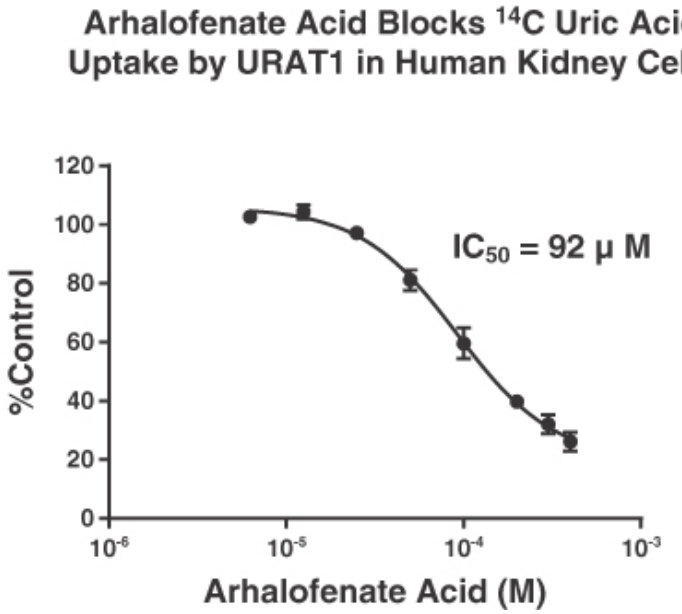
This suggests arhalofenate could be superior to colchicine in being able to suppress additional inflammatory pathways caused by MSU crystals.



Uric Acid Lowering Activity

Uric acid is an anionic, or negatively charged, molecule that is removed from the body by filtration through the kidney into urine. For about 80-90% of patients, hyperuricemia is a result of under excretion of uric acid due to its reabsorption by organic anion transporters (OAT) in the proximal renal tubule. As depicted in the figure below, arhalofenate acid blocks ^{14}C-uric acid uptake in an embryonic kidney cell line that expresses human urate transporter 1 (URAT1), one of the predominant renal transporters of urate. The inhibition is pharmacologically relevant because it occurs at concentrations that are less than those seen in human urine in clinical trials. Arhalofenate acid was shown to inhibit uric acid uptake by URAT1, OAT4 and OAT10, three of the transporters that play a critical role in uric acid reabsorption. The pattern of attenuation of uric acid transport is similar to that of other uricosuric drugs such as lesinurad. This mechanism is consistent with the clinical pharmacology in which arhalofenate was shown to dose-dependently increase urate clearance into urine in gout patients.





The available preclinical evidence provides an explanation for the dual mode-of-action observed for arhalofenate in treating gout patients. CymaBay has completed three clinical studies in gout patients which have shown that arhalofenate has the potential for both decreasing the incidence, severity and duration of gout flares, including those that often occur upon initiation of ULT, and reducing sUA. This profile would seem well suited to the treatment of gout.

CymaBay has completed a robust nonclinical program for arhalofenate, including genotoxicity, chronic repeat dose toxicology in rats and monkeys, safety pharmacology, reproductive toxicology and 2-year rodent carcinogenicity studies. The results of these studies have all been submitted to the FDA.

CymaBay has developed a manufacturing process for arhalofenate and ~200 kg of drug substance is available to initiate the Phase 3 program. Tablets for the Phase 2b study have already been manufactured. Both the drug substance and tablet manufacturing processes will be scaled up to support the registration and commercial chemistry, manufacturing and controls program.

Clinical Studies with Arhalofenate

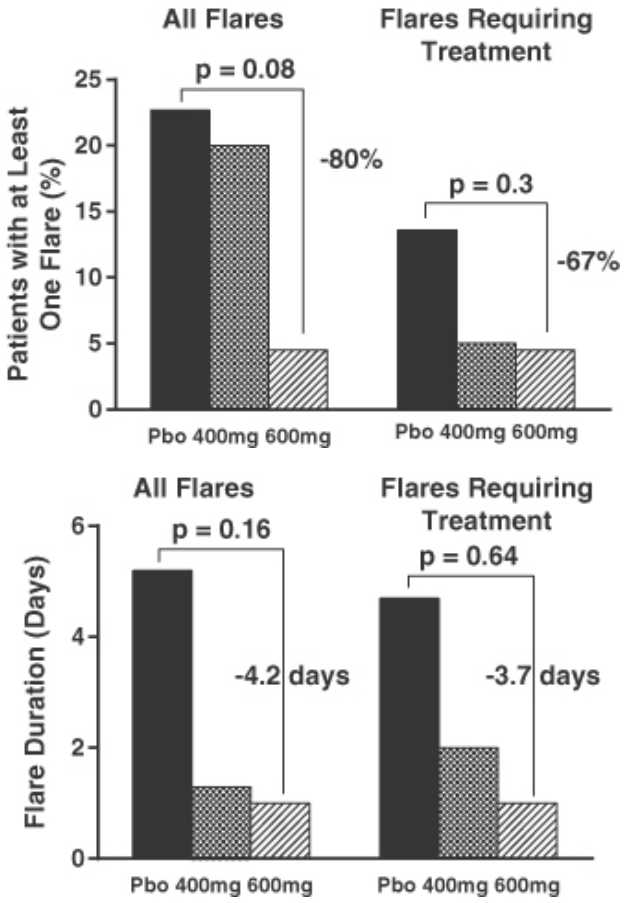
The Gout Development Program

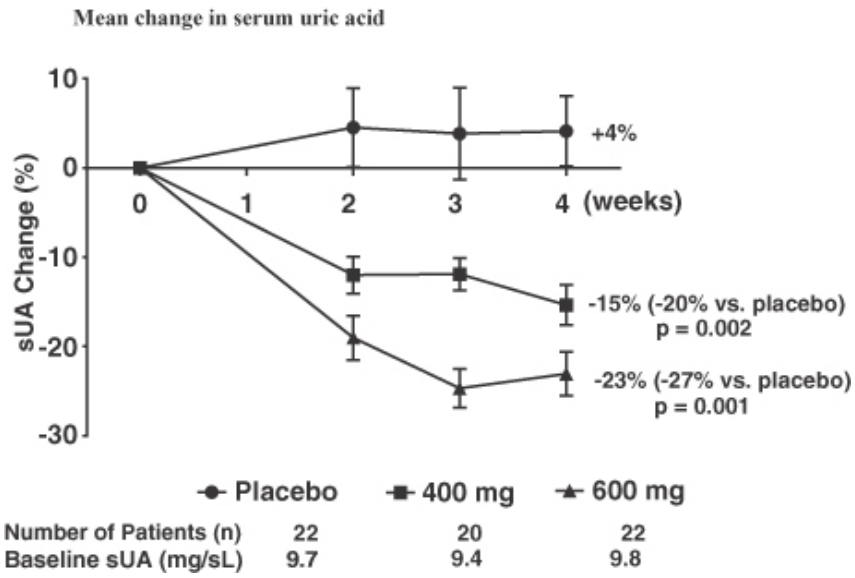
Arhalofenate has been studied in three Phase 2 gout clinical trials including a monotherapy study, febuxostat combination study and an allopurinol combination study.

Monotherapy Study

The monotherapy study was a randomized, double-blind, placebo-controlled study evaluating the safety and efficacy of arhalofenate for the treatment of hyperuricemia in patients with gout. Arhalofenate was given daily at doses of 400 mg and 600 mg for four weeks. A total of 64 patients completed the treatment phase: 22 received placebo, 20 received arhalofenate 400 mg, and 22 received arhalofenate 600 mg. All randomized patients also received colchicine 0.6 mg daily as flare prophylaxis, a preventive treatment for flares. Compared to placebo, patients treated with arhalofenate demonstrated dose-dependent reductions in gout flare and sUA, as shown

below. The proportion of patients reporting at least one flare during the treatment phase was 23% (5 of 22), 20% (4 of 20), and 5% (1 of 22) in the placebo, 400 mg, and 600 mg groups, respectively. In addition to flare frequency, both severity and duration of flare were less in arhalofenate-treated patients.



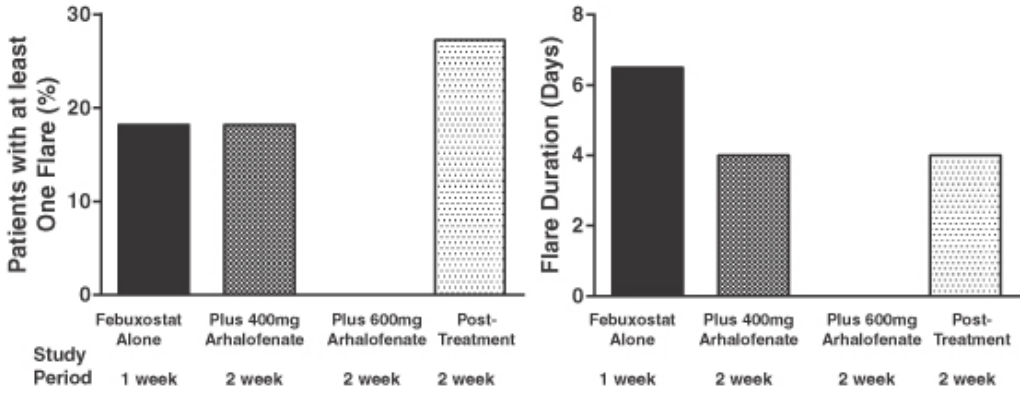


Overall, adverse events (AEs) were similar among the placebo and arhalofenate-treated groups. There were no severe or serious AEs, discontinuations due to AEs, or deaths during the study. Overall, the types and frequencies of AEs were similar among patients receiving placebo or arhalofenate 400 mg or 600 mg and there were no clinically meaningful differences observed in safety laboratory test results.

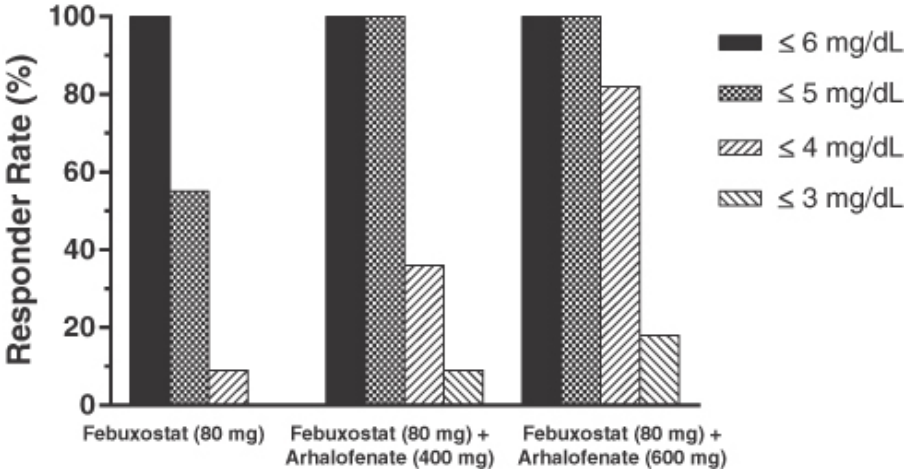
Febuxostat Combination Study

In the febuxostat combination study, arhalofenate up to 600 mg daily was added to febuxostat 80 mg in an open-label, in-patient study to determine the efficacy, safety, and tolerability of arhalofenate in combination with 80 mg febuxostat once daily. A total of 11 patients were dosed with 80 mg febuxostat during Week 1, 80 mg febuxostat plus 400 mg arhalofenate during Weeks 2-3 and 80 mg febuxostat plus 600 mg arhalofenate during Weeks 4-5. All patients also received 0.6 mg colchicine daily as prophylaxis for gout flare.

The proportion of these patients reporting at least one flare was 18% (2 of 11 patients) during Week 1 (febuxostat 80 mg) and 18% (2 of 11 patients) during Weeks 2-3 (febuxostat 80 mg plus arhalofenate 400 mg), respectively. No patient reported the initiation of a flare during Weeks 4-5 (febuxostat 80 mg plus arhalofenate 600 mg). The proportion of patients reporting at least one flare in the two-week follow-up period was 27% (3 of 11 patients).



Mean sUA reductions were -48% at Day 8 (febuxostat 80 mg), -54% at Day 22 (febuxostat 80 mg plus arhalofenate 400 mg), and -60% at Day 36 (febuxostat 80 mg plus arhalofenate 600 mg). Historically, one week of dosing with febuxostat 80 mg has been shown to give the full effect of sUA reduction, and the mean reductions in this study at Day 8 are consistent with other reported study results. The proportion of patients who achieved various sUA target levels during treatment is shown below. Patients with advanced gout have large stores of MSU crystals in the body, and driving sUA levels to lower values (eg, < 4 mg/dL) has been shown with other ULTs to accelerate clinical benefits such as the reduction of tophi (masses of MSU crystals).



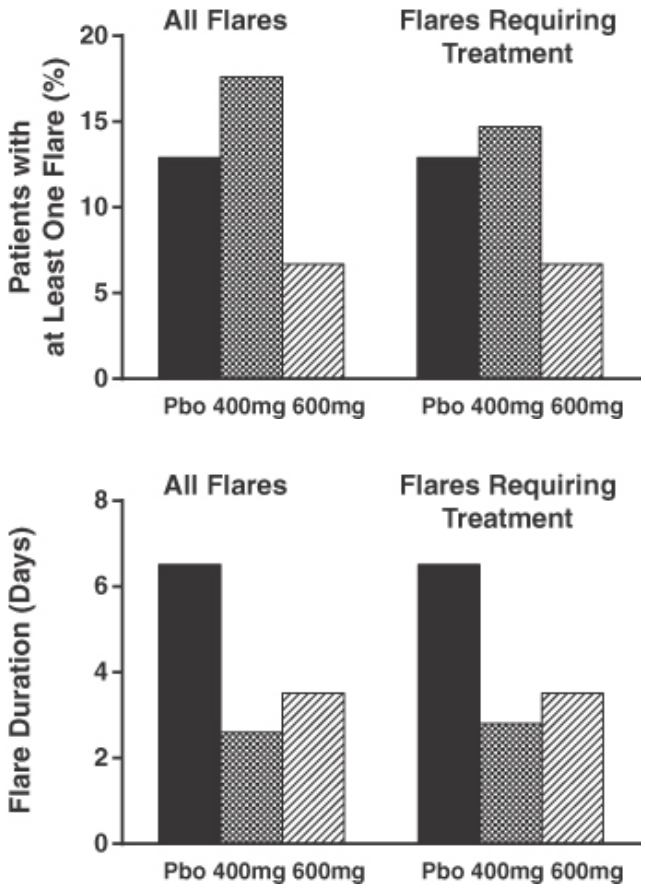
No patients experienced severe or serious AEs or deaths, and there were no discontinuations because of AEs. No clinically meaningful differences were observed among the study treatments in safety laboratory test results.

Allopurinol Combination Study

This study was a randomized, double-blind, placebo-controlled clinical trial designed to evaluate the efficacy, safety and tolerability of arhalofenate 400 mg and 600 mg when given in combination with allopurinol 300 mg and also to evaluate the effect of arhalofenate on the pharmacokinetics (PK, drug levels in the blood) of allopurinol and its active metabolite, oxypurinol, that forms in the body after ingestion of allopurinol. Arhalofenate (or placebo) was given once daily at doses of 400 mg and 600 mg, in addition to allopurinol 300 mg, for four weeks to patients who had failed to reach the sUA target of <6 mg/dL with allopurinol 300 mg. All randomized patients also received colchicine 0.6 mg daily as flare prophylaxis. A reduction in gout flares was observed in the arhalofenate plus allopurinol groups compared to the allopurinol only group. The proportion of patients in a pre-specified per protocol population reporting at least one flare during the 4-week treatment phase was 13% (4 of 31) in the allopurinol 300 mg only group, 18% (6 of 34) in the allopurinol 300 mg plus arhalofenate 400 mg group, and 7% (2 of 32) in the allopurinol 300 mg plus arhalofenate 600 mg group. The mean duration of flares was longer in the allopurinol plus placebo group (6.5 days) than in either the allopurinol plus 400 mg arhalofenate group (2.6 days) or the allopurinol plus 600 mg arhalofenate group (3.5 days).

There was no statistically significant difference in sUA reduction in the arhalofenate plus allopurinol groups compared to the allopurinol only group. In the per protocol population, the proportion of patients who reached a sUA target of <6 mg/dL at the end of the treatment phase was 35.5%, 52.9%, and 43.3% in the allopurinol plus placebo group, the allopurinol plus 400 mg arhalofenate group, and the allopurinol plus 600 mg arhalofenate group, respectively. The modest additional sUA reduction observed in the arhalofenate plus allopurinol groups in this study is attributable to an interaction in which arhalofenate reduces the concentration of oxypurinol, the active metabolite of allopurinol. Specifically, arhalofenate promotes the excretion of uric acid as well as

oxypurinol given both are typically reabsorbed into the blood stream through the same renal transporters arhalofenate is responsible for blocking.



No severe or serious AEs were reported. Two patients discontinued from the study due to moderate AEs. Overall, the types and frequencies of AEs were similar among the treatment groups and there were no clinically meaningful differences observed among the study treatments in safety laboratory test results.

Prior Clinical Experience with Arhalofenate

Prior to the Phase 2 trials in gout described above, eight Phase 1 studies and four Phase 2 studies in type 2 diabetes mellitus (T2DM) were conducted with arhalofenate. In these studies a total of 873 subjects were studied. Daily treatment with arhalofenate up to 600 mg for up to 24 weeks in T2DM patients was found to be safe and well tolerated.

In these T2DM studies, daily treatment with arhalofenate up to 600 mg for up to 24 weeks in T2DM patients also showed improvements in glucose parameters (hemoglobin A1c [HbA1c] and fasting plasma glucose), as well as a lowering of serum triglycerides in patients with elevated levels at baseline. Arhalofenate was found to be safe and well tolerated with no meaningful treatment group differences in laboratory safety values and AEs including special interest AEs (edema, weight gain, and upper GI AEs), discontinuation due to AEs, serious AEs, and death. There were no reports of urinary tract stones in any of these studies.

A pooled analysis of sUA data from these diabetes studies showed statistically significant dose dependent reductions from baseline in mean sUA with arhalofenate: +2% in the placebo group (n=252), -11% in the 200 mg group (n=125), -20% in the 400 mg group (n=174), and -27% in the 600 mg group (n=159); p<0.0001 for each active group vs. placebo comparison. A p-value is a statistical measure of the probability that the difference in two values could have occurred by chance. The smaller the p-value the greater the confidence that the results are significant. For example, in the preceding studies, there is less than a 0.01% probability that the difference between two values is due to chance and, conversely there is a 99.99% probability that the observed difference was not due to chance. Similar sUA reduction was observed in patients with mild to moderate renal impairment and without additional worsening of renal function. Comparable sUA reduction was also achieved with arhalofenate in patients on concomitant low-dose aspirin (up to 325 mg daily) and on diuretics (blood pressure lowering agents).

Conclusions of Arhalofenate's Clinical Experience

Arhalofenate has been studied in a total of 15 clinical trials with nearly a thousand subjects. These include Phase 1 studies of safety, tolerability and PK, Phase 2 studies of blood glucose effects in diabetics, and Phase 2 studies of sUA and flare effects in gout patients. Arhalofenate has had a consistent pattern of good safety and tolerability. Despite having differing objectives across these studies, arhalofenate demonstrated comparable dose-dependent reductions in sUA.

In addition to its primary characteristics for reduction of flare incidence and duration and in sUA lowering, arhalofenate also has additional features which are important in the gout population. It has shown an ability to lower triglycerides in subsets of patients with elevated serum triglycerides and to improve blood glucose parameters in diabetics, which are common comorbidities in gout patients. In an exploratory analysis, it retained its ability to lower sUA in patients with impaired renal function, another highly prevalent comorbidity in gout patients. In addition, arhalofenate gave comparable reductions in sUA whether or not patients were on low dose aspirin or thiazide diuretic therapies, these latter agents being known to exacerbate hyperuricemia and to sometimes trigger flares when their treatment is initiated.

In the treatment of over a hundred patients with hyperuricemia and a diagnosis of gout, arhalofenate was safe and well tolerated and produced a consistent reduction in flare incidence and duration and in lowering sUA whether administered alone or in combination with allopurinol 300 mg or febuxostat 80 mg. The time-course of reductions in sUA was gradual and favorable for those of a drug intended to treat gout in which rapid fluctuations in sUA levels are inadvisable. It was shown as a single agent to dose-dependently increase urate excretion and fractional urate clearance, establishing that its sUA mechanism is uricosuria (i.e., it is a uricosuric).

Future Clinical Development of Arhalofenate for Treatment of Gout

Planned Phase 2b Study

The goal of our planned Phase 2b study will be to investigate the full potential benefit of arhalofenate monotherapy with regard to flare prevention and sUA lowering in a more robust, longer trial. Importantly, we intend to investigate the benefits of two doses of arhalofenate monotherapy, including a higher dose than we studied in previous gout studies, without colchicine. The study includes the most common dose of allopurinol (300 mg) with and without colchicine for flare prophylaxis in order to assess treatment effects for sUA and flares against standard of care.

This randomized, double-blind, placebo-controlled Phase 2b study is designed to evaluate the efficacy of each of two dose levels of arhalofenate for the prevention of flares, without concomitant use of colchicine, and the reduction of sUA in approximately 225 gout patients with hyperuricemia and a history of frequent flares. Arhalofenate 600 mg and 800 mg will be administered once daily for up to 12 weeks. Allopurinol 300 mg once daily will also be included as an active control treatment.

In the multiple ascending dose study of healthy volunteers, a sUA reduction of 33% was observed from baseline following 8 days of arhalofenate 800 mg daily. A similar level of sUA lowering is expected in gout

patients and would be comparable to the most commonly used dosages of marketed ULTs (e.g. allopurinol 300 mg or febuxostat 40 mg).

Based on seven completed Phase 2 studies, including three studies in gout patients with arhalofenate up to 600 mg daily for up to 24 weeks, it is expected that a 12-week study in gout patients with arhalofenate 600 mg and 800 mg should be safe and well tolerated.

The Phase 2b study is designed to be conducted to a research standard that would support the consideration of this trial, if positive, as a registration study. If this Phase 2b study is successful, an appropriate Phase 3 dose of arhalofenate will be selected based on efficacy, safety, and tolerability, and Phase 3 pivotal studies, similar in design and endpoints, will be initiated.

Phase 3 Gout Program

The details (design, size, duration, etc.) of the Phase 3 program will be the subject of discussion at an End-of-Phase 2 meeting with the FDA, and will be designed to support an indication for both arhalofenate monotherapy and combination treatment with febuxostat.

In order to support this indication, and the broad use of arhalofenate to both prevent flares and reduce sUA, the Phase 3 clinical program is currently planned to include two pivotal gout studies: one arhalofenate monotherapy study, and one study of arhalofenate in combination with febuxostat. These will both be randomized, double-blind studies, with appropriate controls and statistical power. The program will also include a single arm, open label safety study to accumulate additional longer term safety data needed for the New Drug Application (at least 100 patients dosed for 1 year). A small number of Phase 1 studies, including necessary drug-drug interaction studies, or special population studies, will also be conducted during Phase 3.

MBX-8025

MBX-8025 has potential therapeutic application for disorders linked to deficits in lipid storage, handling and utilization, many of which result in metabolic disorders. To date, it has been in development as a first-in-class treatment that effectively addresses all three lipid disorders associated with mixed dyslipidemia (abnormal lipid levels in the blood) as well as a majority of the cardiovascular risk factors that define metabolic syndrome. The future development program will focus on high unmet need indications in dyslipidemia as well as in high unmet need specialty and orphan diseases.

Scientific Rationale/Nonclinical Overview

MBX-8025 is a selective agonist (a substance that stimulates a response by binding to a receptor) for the peroxisome proliferator-activated receptor delta (PPARδ), a nuclear receptor that regulates genes involved in lipid storage and transport (particularly in fatty acid oxidation) and insulin signaling and sensitivity. In preclinical studies in rodents, dogs and primates, MBX-8025 demonstrated a variety of beneficial effects on the lipid profile and other metabolic parameters. MBX-8025 treatment increased peripheral oxidation of fatty acids leading to reduced levels of triglycerides (TGs) and low-density lipoprotein (LDL), while raising high-density lipoprotein (HDL). MBX-8025 inhibited fat mass accumulation, resulting in attenuation of body weight gain in rodent models of obesity.

Three-month toxicology studies in rodents (alone and in combination with atorvastatin, the generic name of the cholesterol lowering drug Lipitor®) and in monkeys have been completed. In addition, the 2-year carcinogenicity studies in mice and rats have been completed. Johnson & Johnson Pharmaceutical Research & Development filed an IND for this compound with the FDA in July 2005 and subsequently transferred the application to CymaBay in March 2007.

The multiple beneficial actions of MBX-8025 support continued clinical development.

Clinical Studies with MBX-8025

Five Phase 1 clinical studies and one Phase 2 clinical study with MBX-8025 have been completed. The 8-week Phase 2 study investigated MBX-8025 at doses of 50 or 100 mg/day in moderately obese patients with mixed dyslipidemia. The study demonstrated that treatment with MBX-8025 led to significant reductions in total LDL (~20%) and selective depletion of the small dense atherogenic (promotion of arterial plaque formation) LDL particles, resulting in an exceptional improvement in the LDL particle size profile. It also decreased TGs (~30%) and raised HDL (~12%). This unique combination of effects significantly decreased the atherogenic risk of patients' lipid profile. When administered in combination with atorvastatin (Lipitor®), MBX-8025 provided a comprehensive improvement in all lipid and cardiovascular risk parameters without side effects seen in other combination lipid therapies. The beneficial effects demonstrated in the Phase 2 study have been published in the peer-reviewed journals *Atherosclerosis* and *Journal of Clinical Endocrinology & Metabolism*.

In addition, MBX-8025 addressed other aspects of metabolic syndrome, including improvements in insulin sensitivity and trends toward decreased waist circumference and body fat. Over half of the patients that entered the Phase 2 study meeting the criteria for metabolic syndrome no longer met the criteria at the end of the study. MBX-8025 demonstrated potent anti-inflammatory activity resulting in 43-72% reductions of high-sensitivity C-reactive protein. MBX-8025 also improved surrogate markers of liver health, suggesting the possibility that it may reduce abnormal fat accumulation in the liver. All of these effects provide potential benefits to patients in multiple high unmet need diseases.

Next Steps in Development

The pharmacological action of MBX-8025 has been established in the setting of mixed dyslipidemia, but because this indication does have other therapies available, its greatest benefit to patients is likely to be in orphan or other high unmet need indications. CymaBay is actively engaged in a selection process that involves using the scientific literature together with scientific experts and regulatory authorities to prioritize among the therapeutic opportunities that have a rational connection to PPARδ's role in human health and disease.

MBX-2982

Type 2 diabetes is a chronic debilitating disease characterized by a progressive loss of the normal control of glucose levels in the blood and other tissues. The normal handling by the body of sugar, fat and protein in the diet becomes deranged in diabetics through the loss of the ability by the body to appropriately regulate the secretion and action of key hormones such as insulin and glucagon. Chronic exposure of diabetics to elevated glucose levels (hyperglycemia) leads to loss of sensitivity of tissues to the action of insulin and to the eventual destruction of pancreatic islets, the body's source of insulin. It also results over time in microvessel disease, a broad term in which the deterioration of the structure and function of peripheral vasculature results in diminished delivery of blood, oxygen and nutrients to tissue. The ultimate consequences of microvessel disease include increased risk for the deterioration of kidney function, for the possibility of infection and limb amputation, for the deterioration of peripheral nerves in limb extremities leading to chronic pain and loss of feeling with a heightened risk of unintended self-injury, and for the loss of function in the retina with diminished visual acuity including blindness. Another important consequence of chronic hyperglycemia is the strong association with increased cardiovascular and cerebrovascular disease including hypertension and atherosclerosis, which are associated with untoward consequences that include angina, myocardial infarction, heart failure, and stroke. An assessment by the U.S. CDC (2011 National Diabetes Fact Sheet) reported that heart disease (68%) and stroke (15%) are commonly listed on diabetes-related death certificates among people 65 or older.

According to the International Diabetes Federation (IDF), approximately 371 million people, over 8% of the world's population, had diabetes in 2012. In North America, IDF estimated that 10.5% of the adult population (38 million) have diabetes of which 29% are undiagnosed. The American Diabetes Association (ADA) concluded that in 2011 there were 79 million Americans with pre-diabetic state of impaired glucose tolerance. Cost

estimates (IDF, 2012) are that the 24 million diabetics in the U.S. spend on average $8,478 while the ADA states that 12% of national pharmacy costs are for drugs and diabetic supplies.

There are several established and emerging classes of drug therapies for diabetes. In the end stage of the disease, patients become dependent on various forms of injectable insulin to manage their blood glucose. A major goal of the development of oral anti–diabetic drugs is to regulate glucose without the risk for hypoglycemia (potentially life threatening) and/or cause an increase in other cardiovascular risk factors such as weight gain or hypertension. Diabetes is managed with a combination of diet, exercise and other lifestyle changes, and when glucose is inadequately controlled, metformin (generic) is the most-common first-line therapy. Other common oral anti-diabetics include the insulin sensitizer pioglitizone and dipeptidyl peptidase-4 inhibitors that include sitagliptin. Older drugs such as sulfonylureas are still widely used, but less so in developed countries due to their increased risk for hypoglycemia and the lack of durability in response for many patients. It is quite common for patients to take more than one class of drugs in order to get to the goal of reducing HbA1c, an integrated laboratory marker of blood glucose levels, to below 7%.

Canagliflozin is the first of a new class of drugs called the inhibitors of the sodium glucose co-transporter 2 (SGLT2). This drug promotes excretion of glucose into urine by preventing its reabsorption in the kidney thereby lowering blood glucose. It has a secondary benefit of providing weight loss.

Over the last decade, injectable drugs have emerged as competing drugs with significant benefits in glucose control as well as effects on weight loss and the potential to protect the pancreas from the damage wrought by the progression of diabetes. These drugs are primarily analogs of the natural hormone glucagon-like 1 peptide (GLP-1), and include exenatide, liraglitide and lixisenatide among others. These drugs are given by subcutaneous injection once or twice daily. Their action is to provide glucose-regulated insulin secretion with weight loss and the potential to preserve function of pancreatic islets. New members of this class with once weekly to once monthly dose schedules have been approved or are in late stage development. In spite of the variety of drugs available for the treatment of diabetes, the medications used to manage diabetes have not led to optimal control of hyperglycemia and many are associated with dose-limiting side effects. MBX-2982 is an oral, G-protein coupled receptor (GPR119) agonist being evaluated as a novel therapeutic agent for patients with T2DM, with a dual mechanism including direct effects and indirect effects mediated by gastrointestinal hormones known as incretins on glucose-dependent insulin secretion, as well as potentially beneficial effects on islet health.

GPR119 is expressed in pancreatic islet cells and gastrointestinal hormone secreting cells (enteroendocrine cells). Activation of GPR119 by its natural (endogenous) ligands or GPR119 agonists in pancreatic ß-islets results in direct stimulation of glucose-dependent insulin secretion *in vitro*. Activation of GPR119 by endogenous ligand or GPR119 agonists in enteroendocrine cells results in stimulation of glucagon-like peptide 1 (GLP-1) and gastrointestinal inhibitory peptide release, and subsequent enhanced glucose-dependent insulin secretion and suppression of glucagon, leading to improved acute glucose tolerance, both *in vitro* and *in vivo*. MBX-2982 was synthesized and screened as a GPR119 agonist, and is capable of activating endogenous GPR119 in a cell line over-expressing the receptor. MBX-2982 has been shown to increase glucose-dependent insulin secretion in both *in vitro* and in animal models. MBX-2982 also increases incretin hormone levels in animals, which may contribute to its glucose lowering effects.

Nonclinical studies show that MBX-2982 has desirable effects on blood glucose levels, and this effect is additive to the effect of the dipeptidyl peptidase-4 (DPP-4) inhibitor, sitagliptin. Based on these results, there may be an important role for MBX-2982 as a novel therapeutic agent in the treatment of T2DM, alone or in combination with other anti-diabetic agents, including the DPP-4 inhibitors. Presently, there are no other agents approved in the U.S. within this pharmacologic class for the treatment of T2DM.

Extensive preclinical toxicological (up to 6 months in rats and dogs) have been completed, and PK profiling of MBX-2982 has shown low potential for safety risk. We filed an IND for MBX-2982 with the FDA in January 2008.

Clinical Studies with MBX-2982

Four Phase 1 clinical studies and one Phase 2 clinical study with MBX-2982 have been completed and the safety and PK review showed no safety or tolerability concerns with MBX-2982 administered in escalating doses (25, 100, and 300 mg/day) tested for up to 4 weeks of dosing. A four-week study in type 2 diabetics can be summarized as follows:

- MBX-2982 generally lowered mean weighted glucose and post-meal glucose during an extended mixed-meal tolerance test (MMTT), although not always to a statistically significant degree and not to the extent of sitagliptin. The effect at the 300 mg dose may have been mitigated by the inclusion of a very small number of patients who experienced extreme worsening of glucose to the degree of being statistical outliers. Decreases in fasting glucose were generally not observed with MBX-2982.
- Four weeks of treatment with MBX-2982 tended to increase insulin, active GLP-1, and total GLP-1 during an extended MMTT. Decreases in glucagon were not as consistently observed. Changes in active GLP-1 were not as robust as those observed with sitagliptin. Four weeks of treatment with MBX-2982 also tended to increase fasting insulin and c-peptide, and decrease fasting triglycerides.
- Overall, the data suggest that MBX-2982 may decrease glucose, potentially through effects on GLP-1, glucagon, and insulin. Changes in HbA1c are difficult to assess over a 4-week treatment period, but trended in the downward direction. Glucose-lowering effects and mechanism of action will need to be explored more robustly in longer duration trials of MBX-2982.
- The PK results observed in this study are similar to those seen in the completed Phase 1 study that used the same formulation, demonstrating dose-dependent increases in drug exposure and a profile supporting once daily oral dosing.
- MBX-2982 at doses of 25, 100, and 300 mg was safe and well tolerated.

Based on these results, further testing with MBX-2982 in combination with sitagliptin and/or metformin for the treatment of diabetes is warranted.

Future Clinical Development of MBX-2982: Summary and Conclusions

A proof-of-concept study has been designed to determine the effects of MBX-2982 on fasting and post-challenge blood glucose in patients with T2DM either as dual therapy in combination with either metformin or sitagliptin, or as triple therapy in combination with metformin and sitagliptin. Secondary goals would be to determine the effects of MBX-2982 on islet beta-cell function as assessed using a MMTT and a graded glucose infusion, and to determine the effects of MBX-2982 on circulating levels of GLP-1.

The study design is a double-blind, randomized, placebo-controlled, parallel group study enrolling approximately 75 patients in order to ensure 64 completers for the 14-day treatment period. Subjects will be type 2 diabetics treated with medical nutritional therapy alone for > 2 weeks, and either treatment naïve or washed off of metformin or sulfonylurea. Other criteria are typical for diabetics in a study of this type. Successful achievement of study goals would position the drug for a Phase 2b study, followed by a Phase 3 program.

CymaBay does not anticipate conducting this study until a suitable partner is found to contribute funding or resources for the project, or until sometime in the future when the goals and capital needs of arhalofenate are fully met.

Preclinical Programs

The most advanced preclinical program is one developing agonists of the GPR131 receptor, also known as TGR5 or the bile acid receptor. GPR131 agonists have utility in the treatment of T2DM by acting as an oral therapy that causes GLP-1 secretion with clinical features that mimic those of the injectable drug liraglutide (Victoza®). In preclinical models it causes potent release of GLP-1 that is amplified by co-treatment with

sitagliptin. It has the potential to stimulate fat-restricted energy metabolism. Among its features supported by its scientific rationale are the potential for anti-inflammatory activity with insulin sensitization effects, and robust glucose control with no hypoglycemia, favorable weight effects, and improvement in beta cell function.

CymaBay has discovered three novel chemical series from which it has prepared more than 750 compounds with leads possessing good pharmaceutical properties. Two patent applications are pending. The compounds have demonstrated robust *in vivo* GLP-1 secretion and glucose lowering activities. The next step in the lead optimization phase is to improve their metabolic stability and other key drug-like features, as well as to document their effects in combination with sitagliptin (or other DPP-4 inhibitors).

CymaBay is seeking a partner to assume further development of the lead chemical series leading to the identification of a clinical candidate in order to establish proof-of-pharmacology in humans.

License Agreements and Intellectual Property

General

CymaBay actively seeks to obtain, where appropriate, patent protection and regulatory exclusivity for the proprietary technology that it considers important to its business, including compounds, compositions and formulations, their methods of use and processes for their manufacture both in the United States and other countries. CymaBay also relies on trade secrets, know-how, continuing technological innovation and in-licensing to develop and maintain its proprietary position. Our success depends in part on our ability to obtain, maintain and enforce proprietary protection for our product candidates, technology and know–how, to operate without infringing the proprietary rights of others, and to exclude others from infringing our proprietary rights. However, patent protection may not afford CymaBay complete protection against competitors who seek to circumvent CymaBay's patents.

CymaBay also depends upon the skills, knowledge, experience and know-how of its management, research and development personnel, as well as that of its advisors, consultants and other contractors. To help protect its proprietary know-how, which is not patentable, and for inventions for which patents may be difficult to enforce, CymaBay currently relies and will in the future rely on trade secret protection and confidentiality agreements to protect its interests. To this end, CymaBay requires all of its employees, consultants, advisors and other contractors to enter into confidentiality agreements that prohibit the disclosure of confidential information and, where applicable, require disclosure and assignment to it of the ideas, developments, discoveries and inventions important to its business.

Collaborations and Licensing Agreements

CymaBay has entered into various arrangements with licensors and licensees. The current collaborations are summarized below.

Ortho: In August 2006, CymaBay entered into a strategic alliance with Ortho-McNeil, Inc., a Johnson & Johnson Company. As part of the alliance, Janssen Pharmaceutical NV, an affiliate of Ortho-McNeil, granted to CymaBay an exclusive worldwide, royalty-bearing license to MBX-8025 and certain other PPARδ compounds (the "PPARδ Products") with the right to grant sublicenses to third parties to make, use and sell such PPARδ Products. Under the terms of the agreement, CymaBay has full control and responsibility over the research, development and registration of any PPARδ Products and is required to use diligent efforts to conduct all such activities. Janssen has the sole responsibility for the preparation, filing, prosecution, maintenance of, and defense of the patents with respect to, the PPARδ Products. Janssen has a right of first negotiation under the agreement to license a particular PPARδ Product from CymaBay in the event that CymaBay elects to seek a third party corporate partner for the research, development, promotion, and/or commercialization of such PPARδ Products. Under the terms of the agreement Janssen is entitled to receive up to an 8% royalty on sales of PPARδ Products.

In June 2010, CymaBay entered into two development and license agreements with Ortho-McNeil-Janssen Pharmaceuticals, Inc. (OMJPI) to further develop and discover undisclosed metabolic disease target agonists for the treatment of T2DM and other disorders and received a one-time nonrefundable technology access fee related to the agreements. CymaBay is also eligible to receive up to $330 million in contingent payments if certain development and commercial events are achieved as well as royalties on worldwide product sales. No such payments have been made to date. Under the terms of the agreements, OMJPI has full control and responsibility over the research, development and registration of any products developed and/or discovered from the metabolic disease targets and is required to use diligent efforts to conduct all such activities. A joint steering committee with equal representation from each party will oversee the development of products. Following June 2012, all decisions of the joint steering committee will be made by OMJPI. CymaBay has the sole responsibility, for the preparation, filing, prosecution, maintenance of, and defense of the CymaBay patents with respect to, metabolic disease target agonists.

DiaTex: On June 30, 1998, we entered into a License and Development Agreement with DiaTex, Inc. Under the agreement, DiaTex granted us an exclusive license to develop and commercialize therapeutic products containing halofenate its enantiomers (mirror images, including arhalofenate), derivatives, and analogs (the licensed products) for the treatment of diseases. Under terms of the agreement, DiaTex will work cooperatively and assist us in conducting a program for the research and development of halofenate and its enantiomers including the right to sublicense, to use and to practice all patents controlled by DiaTex that claim halofenate and its enantiomers, and all information, data, know-how, trade secrets, inventions, developments, results, techniques and materials, whether or not patentable, that are necessary or useful towards such commercialization. Under the agreement, we are obligated to use diligent efforts to conduct preclinical and clinical testing of halofenate and its enantiomers in order to determine its efficacy for use in the treatment or prevention of human diseases or conditions. On April 15, 1999 the agreement was amended by the parties to allow DiaTex to transfer to us their interest in an IND application that they filed with the FDA. The amendment also provided for DiaTex to indemnify us against any and all losses resulting or arising from any third party claims, actions or proceedings under the IND application, any negligent or wrongful acts or omissions of DiaTex in connection with the IND application, and any misrepresentations by DiaTex relating to the license agreement. Under the amendment, we will provide the same indemnifications to DiaTex with respect to any third party claims, actions, or proceedings in connection with negligent or wrongful conduct of clinical trials relating to the license agreement, provided the claims are not related to negligent or wrongful acts or omissions committed by DiaTex.

The license agreement contains a $2,000 per month license fee as well as a requirement to make additional payments for development achievements and royalty payments on any sales of licensed products. DiaTex is entitled to up to $0.8 million for the future development of arhalofenate, as well as a 2% royalty payment on any sales of products containing arhalofenate. A $50,000 milestone payment was made in May 2005 but no other milestone or royalty payments have been made since then. The agreement will expire upon the expiration of the last of DiaTex's patents related to the license granted, or, if later, the expiration of all payment obligations under the agreement. The agreement may also terminate upon a material breach by DiaTex or us, if written notice of such breach is delivered to the breaching party, and the breaching party has not (i) cured the breach or (ii) initiated good faith efforts to cure the breach within a specified time period. We may terminate the agreement at any time if we determine we are no longer interested in DiaTex's license grant, provided we provide sufficient written notice within a specified time period.

Intellectual Property

CymaBay owns a total of 37 United States patents, 124 foreign patents, as well as 17 United States patent applications and 178 foreign and Patent Cooperation Treaty applications which are counterparts to certain United States patents and patent applications. In addition, we license from third parties a total of 3 United States patents and 1 United States patent application, 60 foreign patents and 9 foreign and Patent Cooperation Treaty applications which are counterparts to certain United States patents and patent applications. These patents and

patent applications include claims covering various aspects of our product pipeline and research and development strategies, including: arhalofenate crystal forms, methods of use both alone and in combination with other drugs and methods of manufacture, certain PPAR delta agonists, their compositions and uses, certain GPR119 agonist compositions and uses and undisclosed metabolic disease target agonist compositions and uses.

Patent and trade secret protection is critical to our business. Our success will depend in large part on our ability to obtain, maintain, defend and enforce patents and other intellectual property to extend the life of patents covering our product candidates, to preserve trade secrets and proprietary know-how, and to operate without infringing the patents and proprietary rights of third parties we actively seek patent protection in the U.S.

Arhalofenate

The patent portfolio on arhalofenate (MBX-102) includes 13 issued U.S. and 107 foreign patents and 8 pending U.S. and 38 foreign patent applications covering crystal forms of the chemical compound, methods of treating hyperuricemia, methods of treating and preventing flares and other methods of using the compound, and methods of manufacture. Patent term expiration 2019-2028.

MBX-2982

The patent portfolio on MBX-2982 and second generation compounds includes 5 issued U.S. and 5 foreign patents and 6 pending U.S. and 44 foreign patent applications covering chemical compositions, crystal forms of the chemical compound, methods of treating diabetes, methods of treating diabetes in combination with other drugs, formulation and methods of manufacture. Patent term expiration 2027-2031.

MBX-8025

The patent portfolio on MBX-8025 and second generation compounds includes 3 issued U.S. and 60 foreign patents and 2 pending U.S. and 19 foreign patent applications covering chemical compositions, salt forms of the chemical compound and methods of treating dyslipidemia. Patent term expiration 2024-2026.

Manufacturing

CymaBay does not currently own or operate manufacturing facilities for the production or testing of arhalofenate or other product candidates that it develops, nor does it have plans to develop its own manufacturing operations in the foreseeable future. CymaBay presently depends on third party contract manufacturers to obtain all of its required raw materials, Active Pharmaceutical Ingredients (APIs) and finished products for its clinical studies for arhalofenate. CymaBay has executed manufacturing agreements for its API and tablet supplies of arhalofenate with established manufacturing firms which are responsible for sourcing and obtaining the raw materials necessary for the finished products. The raw materials necessary to manufacture the API for arhalofenate, MBX-8025 and MBX-2982 are available from more than one source and CymaBay has also executed manufacturing agreements for the APIs and products for MBX-8025 and MBX-2982.

Siegfried AG

On April 30, 2012, CymaBay entered into a Development and Clinical Manufacture Agreement with Siegfried AG for the manufacturing of the API necessary for the tablet form of arhalofenate. Under the agreement, CymaBay shall deliver or Siegfried shall obtain the raw materials necessary for the API. CymaBay owns the rights, title and interest to the deliverables and intellectual property covering the deliverables generated under the agreement and under certain circumstances. Siegfried shall grant a non-exclusive license to CymaBay to use Siegfried intellectual property to exploit any product or service based or derived from the deliverables under the agreement. Both Siegfried and CymaBay have agreed to indemnify the other party with respect to losses due to the breach of a covenant or obligation under the agreement or the gross negligence, recklessness or

intentional misconduct of the other party. CymaBay may terminate the agreement at anytime with written notice and Siegfried may terminate the agreement in the event CymaBay discontinues its activities related to the development or commercialization of the API for arhalofenate. In addition, either party may terminate the agreement at any time for material breach under the agreement or in the case of insolvency of the other party.

Patheon Inc.

On June 5, 2012, CymaBay entered into a Development and Clinical Manufacture Agreement with Patheon Inc. for the manufacturing of the tablet form of arhalofenate. Under the agreement, CymaBay shall deliver the API or Patheon shall obtain the API from a qualified vendor. CymaBay owns the rights, title and interest to the deliverables and intellectual property generated by Patheon in connection with the performance of the services for CymaBay under the agreement. Both Patheon and CymaBay have agreed to indemnify the other party with respect to losses due to the breach of a covenant or obligation under the agreement or the gross negligence, recklessness or intentional misconduct of the other party. CymaBay may terminate the agreement at anytime with written notice provided however that CymaBay terminates the agreement within certain times in advance of the start date of certain services. In addition, either party may terminate the agreement at any time for material breach under the agreement.

Metrics Inc.

On October 31, 2006, CymaBay entered into a Standard Development Agreement with Metrics, Inc. Under the agreement, Metrics will provide CymaBay with pharmaceutical development, formulation and analytical services in consideration of which CymaBay will provide appropriate compensation as outlined in the agreement. CymaBay owns the rights, title and interest to the intellectual property relating to all pharmaceutical products developed or manufactured for CymaBay by Metrics, as well as any active pharmaceutical ingredient provided to Metrics by CymaBay. CymaBay has agreed to indemnify Metrics against third party claims that involve the breach by CymaBay of any of its obligations, warranties or representations under the agreement, and Metrics has agreed to indemnify CymaBay against third party claims that involve (i) the negligence, gross negligence, or intentional misconduct on the part of Metrics, (ii) a failure by Metrics to comply with the law in their performance of the agreement, or (iii) a breach of Metrics' obligations, covenants, representations, or warranties under the agreement. Either party may terminate the agreement at any time with advance written notice.

Research & Development Costs

Research and development costs for the six months ended June 30, 2013 and 2012, and years ended December 31, 2012 and 2011 were $2.5 million, $5.3 million, $9.3 million and $14.4 million, respectively.

Government Regulation and Product Approval

Government authorities in the United States, at the federal, state and local level, and other countries extensively regulate, among other things, the research, development, testing, manufacture, quality control, approval, labeling, packaging, storage, record-keeping, promotion, advertising, distribution, post-approval monitoring and reporting, marketing and export and import of products such as those CymaBay is developing. The pharmaceutical drug product candidates that CymaBay develops must be approved by the Food and Drug Administration (FDA) before they may be legally marketed in the United States.

United States Pharmaceutical Product Development Process

In the United States, the FDA regulates pharmaceutical products under the Federal Food, Drug and Cosmetic Act, and implementing regulations. Pharmaceutical products are also subject to other federal, state and local statutes and regulations. The process of obtaining regulatory approvals and the subsequent compliance with appropriate federal, state, local and foreign statutes and regulations require the expenditure of substantial time

and financial resources. Failure to comply with the applicable United States requirements at any time during the product development process, approval process or after approval, may subject an applicant to administrative or judicial sanctions. FDA sanctions could include refusal to approve pending applications, withdrawal of an approval, a clinical hold, warning letters, product recalls, product seizures, total or partial suspension of production or distribution injunctions, fines, refusals of government contracts, restitution, disgorgement or civil or criminal penalties. Any agency or judicial enforcement action could have a material adverse effect on CymaBay. The process required by the FDA before a non-biological pharmaceutical product may be marketed in the United States generally involves the following:

- Completion of preclinical laboratory tests, animal studies and formulation studies according to Good Laboratory Practices (GLP) or other applicable regulations;
- Submission to the FDA of an Investigational New Drug application (IND), which must become effective before human clinical studies may begin;
- Performance of adequate and well-controlled human clinical studies according to the FDA's current Good Clinical Practices (GCP), to establish the safety and efficacy of the proposed pharmaceutical product for its intended use;
- Submission to the FDA of a New Drug Application (NDA) for a new pharmaceutical product;
- Satisfactory completion of an FDA inspection of the manufacturing facility or facilities where the pharmaceutical product is produced to assess compliance with the FDA's current Good Manufacturing Practice standards (cGMP), to assure that the facilities, methods and controls are adequate to preserve the pharmaceutical product's identity, strength, quality and purity;
- Potential FDA audit of the preclinical and clinical study sites that generated the data in support of the NDA; and
- FDA review and approval of the NDA.

The lengthy process of seeking required approvals and the continuing need for compliance with applicable statutes and regulations require the expenditure of substantial resources and approvals are inherently uncertain.

Before testing any compounds with potential therapeutic value in humans, the pharmaceutical product candidate enters the preclinical testing stage. Preclinical tests include laboratory evaluations of product chemistry, toxicity and formulation, as well as animal studies to assess the potential safety and activity of the pharmaceutical product candidate. These early proof-of-principle studies are done using sound scientific procedures and thorough documentation. The conduct of the single and repeat dose toxicology and toxicokinetic studies in animals must comply with federal regulations and requirements including Good Laboratory Practices. The sponsor must submit the results of the preclinical tests, together with manufacturing information, analytical data, any available clinical data or literature and a proposed clinical protocol, to the FDA as part of the IND. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA has concerns and notifies the sponsor. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical study can begin. If resolution cannot be reached within the 30-day review period, either the FDA places the IND on clinical hold or the sponsor withdraws the application. The FDA may also impose clinical holds on a pharmaceutical product candidate at any time before or during clinical studies due to safety concerns or non-compliance. Accordingly, CymaBay cannot be sure that submission of an IND will result in the FDA allowing clinical studies to begin, or that, once begun, issues will not arise that suspend or terminate such clinical study.

During the development of a new drug, sponsors are given opportunities to meet with the FDA at certain points. These points may be prior to submission of an IND, at the end of Phase 2, and before an NDA is submitted. Meetings at other times may be requested. These meetings can provide an opportunity for the sponsor to share information about the data gathered to date, for the FDA to provide advice, and for the sponsor and FDA to reach agreement on the next phase of development. Sponsors typically use the End-of-Phase 2 meeting to

discuss their Phase 2 clinical results and present their plans for the pivotal Phase 3 clinical trial that they believe will support approval of the new drug. If this type of discussion occurred, a sponsor may be able to request a Special Protocol Assessment, or SPA, the purpose of which is to reach agreement with the FDA on the design of the Phase 3 clinical trial protocol design and analysis that will form the primary basis of an efficacy claim.

According to FDA guidance for industry on the SPA process, a sponsor which meets the prerequisites may make a specific request for a SPA and provide information regarding the design and size of the proposed clinical trial. The FDA is supposed to evaluate the protocol within 45 days of the request to assess whether the proposed trial is adequate, and that evaluation may result in discussions and a request for additional information. A SPA request must be made before the proposed trial begins, and all open issues must be resolved before the trial begins. If a written agreement is reached, it will be documented and made part of the record. The agreement will be binding on the FDA and may not be changed by the sponsor or the FDA after the trial begins except with the written agreement of the sponsor and the FDA or if the FDA determines that a substantial scientific issue essential to determining the safety or efficacy of the drug was identified after the testing began.

Clinical studies involve the administration of the pharmaceutical product candidate to healthy volunteers or patients under the supervision of qualified investigators, generally physicians not employed by or under the clinical study sponsor's control. Clinical studies are conducted under protocols detailing, among other things, the objectives of the clinical study, dosing procedures, subject selection and exclusion criteria, how the results will be analyzed and presented and the parameters to be used to monitor subject safety. Each protocol must be submitted to the FDA as part of the IND. Clinical studies must be conducted in accordance with GCP. Further, each clinical study must be reviewed and approved by an independent institutional review board (IRB) at, or servicing, each institution at which the clinical study will be conducted. An IRB is charged with protecting the welfare and rights of study participants and considers such items as whether the risks to individuals participating in the clinical studies are minimized and are reasonable in relation to anticipated benefits. The IRB also approves the informed consent form that must be provided to each clinical study subject or his or her legal representative and must monitor the clinical study until completed.

Human clinical studies are typically conducted in three sequential phases that may overlap or be combined:

- Phase 1. The pharmaceutical product is initially introduced into healthy human subjects and tested for safety, dosage tolerance, absorption, metabolism, distribution and excretion.
- Phase 2. The pharmaceutical product is evaluated in a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted diseases, to determine dosage tolerance, optimal dosage and dosing schedule and to identify patient populations with specific characteristics where the pharmaceutical product may be more effective.
- Phase 3. Clinical studies are undertaken to further evaluate dosage, clinical efficacy and safety in an expanded patient population at geographically dispersed clinical study sites. These clinical studies are intended to establish the overall risk/benefit ratio of the product and provide an adequate basis for product labeling. The studies must be well-controlled and usually include a control arm for comparison. One or two Phase 3 studies are required by the FDA for an NDA approval, depending on the disease severity and other available treatment options.
- Post-approval studies, or Phase 4 clinical studies, may be conducted after initial marketing approval. These studies are used to gain additional experience from the treatment of patients in the intended therapeutic indication.
- Progress reports detailing the results of the clinical studies must be submitted at least annually to the FDA and written IND safety reports must be submitted to the FDA and the investigators for serious and unexpected adverse events or any finding from tests in laboratory animals that suggests a significant risk for human subjects. Phase 1, Phase 2 and Phase 3 clinical studies may not be completed successfully within any specified period, if at all. The FDA or the sponsor or its data safety monitoring

board may suspend a clinical study at any time on various grounds, including a finding that the research subjects or patients are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical study at its institution if the clinical study is not being conducted in accordance with the IRB's requirements or if the pharmaceutical product has been associated with unexpected serious harm to patients.

Concurrent with clinical studies, companies usually complete additional animal studies and must also develop additional information about the chemistry and physical characteristics of the pharmaceutical product as well as finalize a process for manufacturing the product in commercial quantities in accordance with cGMP requirements. The manufacturing process must be capable of consistently producing quality batches of the pharmaceutical product candidate and, among other things, must develop methods for testing the identity, strength, quality and purity of the final pharmaceutical product. Additionally, appropriate packaging must be selected and tested and stability studies must be conducted to demonstrate that the pharmaceutical product candidate does not undergo unacceptable deterioration over its shelf life.

United States Review and Approval Processes

The results of product development, preclinical studies and clinical studies, along with descriptions of the manufacturing process, analytical tests conducted on the chemistry of the pharmaceutical product, proposed labeling and other relevant information are submitted to the FDA as part of an NDA requesting approval to market the product. The submission of an NDA is subject to the payment of substantial user fees; a waiver of such fees may be obtained under certain limited circumstances.

In addition, under the Pediatric Research Equity Act (PREA), an NDA or supplement to an NDA must contain data to assess the safety and effectiveness of the pharmaceutical product for the claimed indications in all relevant pediatric subpopulations and to support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The FDA may grant deferrals for submission of data or full or partial waivers. Unless otherwise required by regulation, PREA does not apply to any pharmaceutical product for an indication for which orphan designation has been granted.

The FDA reviews all NDAs submitted before it accepts them for filing and may request additional information rather than accepting an NDA for filing. Once the submission is accepted for filing, the FDA begins an in-depth review of the NDA. Under the goals and policies agreed to by the FDA under the Prescription Drug User Fee Act (PDUFA), the FDA has 10 months in which to complete its initial review of a standard NDA and respond to the applicant, and six months for a priority NDA. The FDA does not always meet its PDUFA goal dates for standard and priority NDAs. The review process and the PDUFA goal date may be extended by three months if the FDA requests or if the NDA sponsor otherwise provides additional information or clarification regarding information already provided in the submission within the last three months before the PDUFA goal date.

After the NDA submission is accepted for filing, the FDA reviews the NDA application to determine, among other things, whether the proposed product is safe and effective for its intended use, and whether the product is being manufactured in accordance with cGMP to assure and preserve the product's identity, strength, quality and purity. The FDA may refer applications for novel pharmaceutical products or pharmaceutical products which present difficult questions of safety or efficacy to an advisory committee, typically a panel that includes clinicians and other experts, for review, evaluation and a recommendation as to whether the application should be approved and under what conditions. The FDA is not bound by the recommendations of an advisory committee, but it considers such recommendations carefully when making decisions. During the pharmaceutical product approval process, the FDA also will determine whether a risk evaluation and mitigation strategy (REMS) is necessary to assure the safe use of the pharmaceutical product. If the FDA concludes that a REMS is needed, the sponsor of the NDA must submit a proposed REMS; the FDA will not approve the NDA without a REMS, if required.

Before approving an NDA, the FDA will inspect the facilities at which the product is manufactured. The FDA will not approve the product unless it determines that the manufacturing processes and facilities are in compliance with cGMP requirements and adequate to assure consistent production of the product within required specifications. Additionally, before approving an NDA, the FDA will typically inspect one or more clinical sites as well as the site where the pharmaceutical product is manufactured to assure compliance with GCP and cGMP. If the FDA determines the application, manufacturing process or manufacturing facilities are not acceptable, it will outline the deficiencies in the submission and often will request additional testing or information. In addition, the FDA will require the review and approval of product labeling.

The NDA review and approval process is lengthy and difficult and the FDA may refuse to approve an NDA if the applicable regulatory criteria are not satisfied or may require additional clinical data or other data and information. Even if such data and information is submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. Data obtained from clinical studies are not always conclusive and the FDA may interpret data differently than CymaBay interprets the same data. The FDA will issue a complete response letter if the agency decides not to approve the NDA. The complete response letter usually describes all of the specific deficiencies in the NDA identified by the FDA. The deficiencies identified may be minor, for example, requiring labeling changes, or major, for example, requiring additional clinical studies. Additionally, the complete response letter may include recommended actions that the applicant might take to place the application in a condition for approval. If a complete response letter is issued, the applicant may either resubmit the NDA, addressing all of the deficiencies identified in the letter, or withdraw the application.

If a product receives regulatory approval, the approval may be significantly limited to specific diseases and dosages or the indications for use may otherwise be limited, which could restrict the commercial value of the product. Further, the FDA may require that certain contraindications, warnings or precautions be included in the product labeling. In addition, the FDA may require Phase 4 testing which involves clinical studies designed to further assess pharmaceutical product safety and effectiveness and may require testing and surveillance programs to monitor the safety of approved products that have been commercialized.

Expedited Development and Review Programs

The FDA has a Fast Track program that is intended to expedite or facilitate the process for reviewing new pharmaceutical products that meet certain criteria. Specifically, new pharmaceutical products are eligible for Fast Track designation if they are intended to treat a serious or life-threatening condition and demonstrate the potential to address unmet medical needs for the condition. Fast Track designation applies to the combination of the product and the specific indication for which it is being studied. Unique to a Fast Track product, the FDA may consider for review sections of the NDA on a rolling basis before the complete application is submitted, if the sponsor provides a schedule for the submission of the sections of the NDA, if the FDA agrees to accept sections of the NDA and determines that the schedule is acceptable and if the sponsor pays any required user fees upon submission of the first section of the NDA.

Any product submitted to the FDA for market, including a Fast Track program, may also be eligible for other types of FDA programs intended to expedite development and review, such as priority review and accelerated approval. Any product is eligible for priority review if it has the potential to provide safe and effective therapy where no satisfactory alternative therapy exists or a significant improvement in the treatment, diagnosis or prevention of a disease compared to marketed products. The FDA will attempt to direct additional resources to the evaluation of an application for a new pharmaceutical product designated for priority review in an effort to facilitate the review. Additionally, a product may be eligible for accelerated approval. Pharmaceutical products studied for their safety and effectiveness in treating serious or life-threatening illnesses and that provide meaningful therapeutic benefit over existing treatments may receive accelerated approval, which means that the products may be approved on the basis of adequate and well-controlled clinical studies establishing that the product has an effect on a surrogate endpoint that is reasonably likely to predict a clinical benefit, or on the basis of an effect on a clinical endpoint other than survival or irreversible morbidity. As a condition of approval, the

FDA may require that a sponsor of a pharmaceutical product receiving accelerated approval perform adequate and well-controlled post-marketing clinical studies. In addition, the FDA currently requires as a condition for accelerated approval pre-approval of promotional materials, which could adversely impact the timing of the commercial launch of the product. Fast Track designation, priority review and accelerated approval do not change the standards for approval but may expedite the development or approval process.

Post-Approval Requirements

Any pharmaceutical products for which CymaBay receives FDA approvals are subject to continuing regulation by the FDA, including, among other things, record-keeping requirements, reporting of adverse experiences with the product, providing the FDA with updated safety and efficacy information, product sampling and distribution requirements, complying with certain electronic records and signature requirements and complying with FDA promotion and advertising requirements, which include, among others, standards for direct-to-consumer advertising, prohibitions on promoting pharmaceutical products for uses or in patient populations that are not described in the pharmaceutical product's approved labeling (known as "off-label use"), industry-sponsored scientific and educational activities and promotional activities involving the internet. Failure to comply with FDA requirements can have negative consequences, including adverse publicity, enforcement letters from the FDA, actions by the United States Department of Justice and/or United States Department of Health and Human Services Office of Inspector General, mandated corrective advertising or communications with doctors, and civil or criminal penalties. Although physicians may prescribe legally available pharmaceutical products for off-label uses, manufacturers may not directly or indirectly market or promote such off-label uses.

CymaBay relies, and expects to continue to rely, on third parties for the production of clinical and commercial quantities of CymaBay's products. Manufacturers of CymaBay's products are required to comply with applicable FDA manufacturing requirements contained in the FDA's cGMP regulations. cGMP regulations require, among other things, quality control and quality assurance, as well as the corresponding maintenance of records and documentation. Pharmaceutical product manufacturers and other entities involved in the manufacture and distribution of approved pharmaceutical products are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMP and other laws. Accordingly, manufacturers must continue to expend time, money and effort in the area of production and quality control to maintain cGMP compliance. Discovery of problems with a product after approval may result in restrictions on a product, manufacturer or holder of an approved NDA, including withdrawal of the product from the market. In addition, changes to the manufacturing process generally require prior FDA approval before being implemented and other types of changes to the approved product, such as adding new indications and additional labeling claims, are also subject to further FDA review and approval.

The FDA also may require post-marketing testing, known as Phase 4 testing, risk minimization action plans and surveillance to monitor the effects of an approved product or place conditions on an approval that could restrict the distribution or use of the product.

U.S. Foreign Corrupt Practices Act

The U.S. Foreign Corrupt Practices Act, or FCPA, prohibits certain individuals and entities, including CymaBay, from promising, paying, offering to pay, or authorizing the payment of anything of value to any foreign government official, directly or indirectly, to obtain or retain business or an improper advantage. The U.S. Department of Justice and the U.S. Securities and Exchange Commission, or SEC, have increased their enforcement efforts with respect to the FCPA. Violations of the FCPA may result in large civil and criminal penalties and could result in an adverse effect on a company's reputation, operations, and financial condition. A company may also face collateral consequences such as debarment and the loss of export privileges.

Federal and state fraud and abuse laws

In addition to FDA restrictions on marketing of pharmaceutical products, several other types of state and federal laws have been applied to restrict certain business practices in the biopharmaceutical industry in recent years. These laws include anti-kickback statutes and false claims statutes. The federal Anti-Kickback Statute prohibits, among other things, knowingly and willfully offering, paying, soliciting, or receiving remuneration to induce or in return for purchasing, leasing, ordering, or arranging for the purchase, lease, or order of any healthcare item or service reimbursable under Medicare, Medicaid, or other federally financed healthcare programs. The term "remuneration" has been broadly interpreted to include anything of value, including for example, gifts, discounts, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payment, ownership interests and providing anything at less than its fair market value. The Anti-Kickback Statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on one hand and prescribers, purchasers, and formulary managers on the other. Although there are a number of statutory exemptions and regulatory safe harbors protecting certain common activities from prosecution, the exemptions and safe harbors are drawn narrowly, and CymaBay's practices may not in all cases meet all of the criteria for statutory exemptions or safe harbor protection. Practices that involve remuneration that may be alleged to be intended to induce prescribing, purchases, or recommendations may be subject to scrutiny if they do not qualify for an exemption or safe harbor. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated. The reach of the Anti-Kickback Statute was also broadened by the Patient Protection and Affordable Health Care Act, as amended by the Health Care and Education Affordability Reconciliation Act, or collectively the PPACA, which, among other things, amends the intent requirement of the federal Anti-Kickback Statute. Pursuant to the statutory amendment, a person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it in order to have committed a violation. In addition, the PPACA provides that the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the civil False Claims Act (discussed below) or the civil monetary penalties statute, which imposes penalties against any person who is determined to have presented or caused to be presented a claim to a federal health program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent.

The federal False Claims Act prohibits any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government. Recently, several pharmaceutical and other healthcare companies have been prosecuted under these laws for allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product. Other companies have been prosecuted for causing false claims to be submitted because of the companies' marketing of the product for unapproved, and thus non-reimbursable, uses. Many states also have statutes or regulations similar to the federal Anti-Kickback Statute and False Claims Act, which state laws apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payer. Also, the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, created new federal criminal statutes that prohibit knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private third-party payers and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Because of the breadth of these laws and the narrowness of the federal Anti-Kickback Statute's safe harbors, it is possible that some of our business activities could be subject to challenge under one or more of such laws. Such a challenge could have a material adverse effect on our business, financial condition and results of operations. If CymaBay obtains FDA approval for any of our product candidates and begin commercializing those products in the United States, CymaBay's operations may be directly, or indirectly through our customers, distributors, or other business partners, subject to various federal and state fraud and abuse laws, including, without limitation, anti-kickback statutes and false claims statutes. These laws may impact, among other things, our proposed sales, marketing and education programs. In addition, we may be subject to data privacy and security regulation by both the federal government and the states in which we conduct our business. HIPAA, as amended by the Health Information Technology and Clinical Health Act, or

HITECH, and its implementing regulations, imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information. Among other things, HITECH makes HIPAA's privacy and security standards directly applicable to "business associates"—independent contractors or agents of covered entities that receive or obtain protected health information in connection with providing a service on behalf of a covered entity. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney's fees and costs associated with pursuing federal civil actions. In addition, state laws govern the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

If CymaBay's operations are found to be in violation of any of the federal and state laws described above or any other governmental regulations that apply to CymaBay, CymaBay may be subject to penalties, including criminal and significant civil monetary penalties, damages, fines, imprisonment, exclusion from participation in government healthcare programs, and the curtailment or restructuring of CymaBay's operations, any of which could adversely affect CymaBay's ability to operate its business and CymaBay's results of operations. To the extent that any of CymaBay's product candidates are ultimately sold in a foreign country, we may be subject to similar foreign laws and regulations, which may include, for instance, applicable post-marketing requirements, including safety surveillance, anti-fraud and abuse laws, and implementation of corporate compliance programs and reporting of payments or transfers of value to healthcare professionals.

In the United States and foreign jurisdictions, there have been a number of legislative and regulatory changes to the healthcare system that could affect our future results of operations. In particular, there have been and continue to be a number of initiatives at the United States federal and state levels that seek to reduce healthcare costs. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or the MMA, imposed new requirements for the distribution and pricing of prescription drugs for Medicare beneficiaries. Under Part D, Medicare beneficiaries may enroll in prescription drug plans offered by private entities which will provide coverage of outpatient prescription drugs. Part D plans include both stand-alone prescription drug benefit plans and prescription drug coverage as a supplement to Medicare Advantage plans. Unlike Medicare Part A and B, Part D coverage is not standardized. Part D prescription drug plan sponsors are not required to pay for all covered Part D drugs, and each drug plan can develop its own drug formulary that identifies which drugs it will cover and at what tier or level. However, Part D prescription drug formularies must include drugs within each therapeutic category and class of covered Part D drugs, though not necessarily all the drugs in each category or class. Any formulary used by a Part D prescription drug plan must be developed and reviewed by a pharmacy and therapeutic committee. Government payment for some of the costs of prescription drugs may increase demand for CymaBay's products for which CymaBay receives marketing approval. However, any negotiated prices for CymaBay's products covered by a Part D prescription drug plan will likely be lower than the prices CymaBay might otherwise obtain. Moreover, while the MMA applies only to drug benefits for Medicare beneficiaries, private payors often follow Medicare coverage policy and payment limitations in setting their own payment rates. Any reduction in payment that results from Medicare Part D may result in a similar reduction in payments from non-governmental payors.

The American Recovery and Reinvestment Act of 2009 provides funding for the federal government to compare the effectiveness of different treatments for the same illness. A plan for the research will be developed by the Department of Health and Human Services, the Agency for Healthcare Research and Quality and the National Institutes for Health, and periodic reports on the status of the research and related expenditures will be made to Congress. Although the results of the comparative effectiveness studies are not intended to mandate coverage policies for public or private payors, it is not clear what effect, if any, the research will have on the sales of any product, if any such product or the condition that it is intended to treat is the subject of a study. It is also possible that comparative effectiveness research demonstrating benefits in a competitor's product could adversely affect the sales of our product candidates. If third-party payors do not consider CymaBay's products to be cost-effective

compared to other available therapies, they may not cover our products as a benefit under their plans or, if they do, the level of payment may not be sufficient to allow CymaBay to sell its products on a profitable basis.

In March 2010 the PPACA was enacted, which includes measures to significantly change the way healthcare is financed by both governmental and private insurers. Among the provisions of the PPACA of importance to the pharmaceutical and biotechnology industry are the following:

- an annual, nondeductible fee on any entity that manufactures or imports certain branded prescription drugs and biologic agents, apportioned among these entities according to their market share in certain government healthcare programs, that began in 2011;
- an increase in the rebates a manufacturer must pay under the Medicaid Drug Rebate Program to 23.1% and 13% of the average manufacturer price for branded and generic drugs, respectively;
- a new Medicare Part D coverage gap discount program, in which manufacturers must agree to offer 50% point-of-sale discounts to negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D;
- extension of manufacturers' Medicaid rebate liability to covered drugs dispensed to individuals who are enrolled in Medicaid managed care organizations;
- expansion of eligibility criteria for Medicaid programs by, among other things, allowing states to offer Medicaid coverage to additional individuals and by adding new mandatory eligibility categories for certain individuals with income at or below 133% of the Federal Poverty Level beginning in 2014, thereby potentially increasing manufacturers' Medicaid rebate liability;
- expansion of the entities eligible for discounts under the Public Health Service pharmaceutical pricing program;
- new requirements under the federal Open Payments program, created under Section 6002 of the PPACA and its implementing regulations, that manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) report annually to the U.S. Department of Health and Human Services, or HHS, information related to "payments or other transfers of value" made or distributed to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and teaching hospitals, and that applicable manufacturers and applicable group purchasing organizations report annually to HHS ownership and investment interests held by physicians (as defined above) and their immediate family members, with data collection required beginning August 1, 2013 and reporting to the Centers for Medicare & Medicaid Services, or CMS, required by March 31, 2014 and by the 90th day of each subsequent calendar year;
- a requirement to annually report drug samples that manufacturers and distributors provide to physicians, effective April 1, 2012;
- expansion of health care fraud and abuse laws, including the False Claims Act and the Anti-Kickback Statute, new government investigative powers, and enhanced penalties for noncompliance;
- a licensure framework for follow-on biologic products;
- a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research;
- creation of the Independent Payment Advisory Board which, beginning in 2014, will have authority to recommend certain changes to the Medicare program that could result in reduced payments for prescription drugs and those recommendations could have the effect of law even if Congress does not act on the recommendations; and
- establishment of a Center for Medicare Innovation at CMS to test innovative payment and service delivery models to lower Medicare and Medicaid spending, potentially including prescription drug spending that began on January 1, 2011.

In addition, other legislative changes have been proposed and adopted since the PPACA was enacted. In August 2011, the president signed into law the Budget Control Act of 2011, which, among other things, created the Joint Select Committee on Deficit Reduction, or joint committee, to recommend proposals in spending reductions to Congress. The joint committee did not achieve its targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, triggering automatic reductions to several government programs. These reductions include aggregate reductions to Medicare payments to providers of up to 2% per fiscal year, starting in 2013. In January 2013, the president signed into law the American Taxpayer Relief Act of 2012, which, among other things, reduced Medicare payments to several providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. These new laws may result in additional reductions in Medicare and other healthcare funding, which could have a material adverse effect on our financial operations.

Patent Term Restoration and Marketing Exclusivity

Depending upon the timing, duration and specifics of the FDA approval of the use of CymaBay's pharmaceutical product candidates, some of CymaBay's products to be licensed under United States patents may be eligible for limited patent term extension under the Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Hatch-Waxman Amendments. The Hatch-Waxman Amendments permits a patent restoration term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, patent term restoration cannot extend the remaining term of a patent beyond a total of 14 years from the product's approval date. The patent term restoration period is generally one-half the time between the effective date of an IND and the submission date of an NDA plus the time between the submission date of an NDA and the approval of that application. Only one patent applicable to an approved pharmaceutical product is eligible for the extension and the application for the extension must be submitted prior to the expiration of the patent. The United States Patent and Trademark Office, in consultation with the FDA, reviews and approves the application for any patent term extension or restoration. In the future, CymaBay may intend to apply for restoration of patent term for one of its currently owned or licensed patents to add patent life beyond its current expiration date, depending upon the expected length of the clinical studies and other factors involved in the filing of the relevant NDA.

Market exclusivity provisions under the U.S. Food, Drug, and Cosmetic Act can also delay the submission or the approval of certain applications of other companies seeking to reference another company's NDA. Currently seven years of reference product exclusivity are available to pharmaceutical products designated as Orphan Drugs, during which the FDA may not approve generic products relying upon the reference product's data. Pediatric exclusivity is another type of regulatory market exclusivity in the United States. Pediatric exclusivity, if granted, adds six months to existing exclusivity periods and patent terms. This six-month exclusivity, which runs from the end of other exclusivity protection or patent term, may be granted based on the voluntary completion of a pediatric clinical study in accordance with an FDA-issued "Written Request" for such a clinical study.

Pharmaceutical Coverage, Pricing and Reimbursement

Significant uncertainty exists as to the coverage and reimbursement status of any pharmaceutical product candidates for which CymaBay obtains regulatory approval. In the United States and markets in other countries, sales of any products for which CymaBay receives regulatory approval for commercial sale will depend in part upon the availability of reimbursement from third-party payors. Third-party payors include government payors such as Medicare and Medicaid, managed care providers, private health insurers and other organizations. The process for determining whether a payor will provide coverage for a pharmaceutical product may be separate from the process for setting the price or reimbursement rate that the payor will pay for the pharmaceutical product. Third-party payors may limit coverage to specific pharmaceutical products on an approved list, or formulary, which might not include all of the FDA-approved pharmaceutical products for a particular indication. Third-party payors are increasingly challenging the price and examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy. CymaBay may need to conduct expensive pharmaco-economic studies in order to demonstrate the medical necessity and cost-effectiveness of its products, in addition to the costs required to obtain the FDA approvals. CymaBay's

pharmaceutical product candidates may not be considered medically necessary or cost-effective. A payor's decision to provide coverage for a pharmaceutical product does not imply that an adequate reimbursement rate will be approved. Adequate third-party reimbursement may not be available to enable CymaBay to maintain price levels sufficient to realize an appropriate return on CymaBay's investment in product development. In addition, in the United States there is a growing emphasis on comparative effectiveness research, both by private payors and by government agencies. To the extent other drugs or therapies are found to be more effective than CymaBay's products, payors may elect to cover such therapies in lieu of CymaBay's products and/or reimburse CymaBay's products at a lower rate.

In 2003, the United States government enacted legislation providing a partial prescription drug benefit for Medicare recipients, which became effective at the beginning of 2006. Government payment for some of the costs of prescription drugs may increase demand for any products for which CymaBay receives marketing approval. However, to obtain payments under this program, CymaBay would be required to sell products to Medicare recipients through prescription drug plans operating pursuant to this legislation. As part of their participation in the Medicare prescription drug program, these plans negotiate discounted prices for prescription drugs and will likely do so for CymaBay's products. Federal, state and local governments in the United States continue to consider legislation to limit the growth of health care costs, including the cost of prescription drugs. Future legislation and regulations could limit payments for pharmaceuticals such as the drug candidates that CymaBay is developing.

Different pricing and reimbursement schemes exist in other countries. In the European Community, governments influence the price of pharmaceutical products through their pricing and reimbursement rules and control of national health care systems that fund a large part of the cost of those products to consumers. Some jurisdictions operate positive and negative list systems under which products may only be marketed once a reimbursement price has been agreed upon. To obtain reimbursement or pricing approval, some of these countries may require the completion of clinical studies that compare the cost-effectiveness of a particular pharmaceutical product candidate to currently available therapies. Other member states allow companies to fix their own prices for medicines, but monitor and control company profits. The downward pressure on health care costs in general, particularly prescription drugs, has become very intense. As a result, increasingly high barriers are being erected to the entry of new products. In addition, in some countries, cross-border imports from low-priced markets exert a commercial pressure on pricing within a country.

The marketability of any pharmaceutical product candidates for which CymaBay receives regulatory approval for commercial sale may suffer if the government and third-party payors fail to provide adequate coverage and reimbursement. In addition, emphasis on managed care in the United States has increased and CymaBay expects this will continue to increase the pressure on pharmaceutical pricing. Coverage policies and third-party reimbursement rates may change at any time. Even if favorable coverage and reimbursement status is attained for one or more products for which CymaBay receives regulatory approval, less favorable coverage policies and reimbursement rates may be implemented in the future.

International Regulation

In addition to regulations in the United States, there are a variety of foreign regulations governing clinical studies and commercial sales and distribution of CymaBay's future product candidates. Whether or not FDA approval is obtained for a product, approval of a product must be obtained by the comparable regulatory authorities of foreign countries before clinical studies or marketing of the product can commence in those countries. The approval process varies from country to country, and the time may be longer or shorter than that required for FDA approval. The requirements governing the conduct of clinical studies, product licensing, pricing and reimbursement vary greatly from country to country. In addition, certain regulatory authorities in select countries may require CymaBay to repeat previously conducted preclinical and/or clinical studies under specific criteria for approval in their respective country which may delay and/or greatly increase the cost of approval in certain markets targeted for approval by CymaBay.

Under European Union regulatory systems, marketing applications for pharmaceutical products must be submitted under a centralized procedure to the European Medicines Agency ("EMA"). The centralized procedure provides for the grant of a single marketing authorization that is valid for all European Union member states. The EMA also has designations for Orphan Drugs which, if applicable, can provide for faster review, lower fees and more access to advice during drug development. While the marketing authorization in the European Union is centralized, the system for clinical studies (application, review and requirements) is handled by each individual country. Approval to run a clinical study in one country does not guarantee approval in any other country.

The pharmaceutical industry in Canada is regulated by Health Canada. A New Drug Submission (NOS) is the equivalent of a United States NDA and must be filed to obtain approval to market a pharmaceutical product in Canada. Marketing regulations and reimbursement are subject to national and provincial laws.

In Japan, applications for approval to manufacture and market new drugs must be approved by the Ministry of Health, Labor and Welfare. Nonclinical and clinical studies must meet the requirements of Japanese laws. Results from clinical studies conducted outside of Japan must be supplemented with at least a bridging clinical study conducted in Japan.

In addition to regulations in Europe, Canada, Japan and the United States, there are a variety of foreign regulations governing clinical studies, commercial distribution and reimbursement of future product candidates which CymaBay may be subject to as it pursues regulatory approval and commercialization of arhalofenate or any future product candidates internationally.

Corporate Information

CymaBay Therapeutics, Inc., formerly Metabolex, Inc., was incorporated under the laws of the State of Delaware on October 5, 1988, originally under the name Transtech Corporation. Our executive offices are located at 3876 Bay Center Place, Hayward, California 94545. The telephone number at our executive office is (510) 293-8800. Our corporate website address is www.cymabay.com. We do not incorporate the information contained on, or accessible through, our website into this Form 10, and you should not consider it part of this Form 10.

Employees

As of August 1, 2013, CymaBay has twelve full-time employees, seven of whom hold Ph.D.s and one of whom holds a Masters degree in relevant areas of expertise, and three consultants.

ITEM 1A. RISK FACTORS.

An investment in our common stock involves a high degree of risk. A prospective investor should carefully consider the following information about these risks, together with the other information appearing elsewhere in this Form 10, before deciding to invest in our common stock. The occurrence of any of the following risks could have a material adverse effect on CymaBay's business, financial condition, results of operations and future prospects. In these circumstances, the value of our common stock could decline, and the investor may lose all or part of the money paid to acquire our common stock.

Risks Related to Our Financial Condition and Capital Requirements

If we fail to obtain additional financing, we could be forced to delay, reduce or eliminate our product development programs, seek corporate partners for the development of our product development programs or relinquish or license on unfavorable terms, our rights to technologies or product candidates.

As of June 30, 2013, we had net cash on hand of approximately $3.6 million. CymaBay believes that its cash on hand will sustain its operations through October 2013. Our monthly spending levels vary based on new and ongoing development and corporate activities. As a result, CymaBay will need to raise additional capital to continue its operations beyond October 2013 and estimates it will need to raise up to $25 million in additional capital to complete our Phase 2b study. As set forth in the notes to our financial statements, our registered independent auditor has raised substantial doubt about CymaBay's ability to continue as a going concern without additional financing.

Developing pharmaceutical products, including conducting preclinical studies and clinical trials, is a time-consuming, expensive and uncertain process that takes years to complete. We expect our research and development expenses to substantially increase in connection with our ongoing activities, particularly as we advance development of our lead clinical product candidate, arhalofenate, for the prevention of gout flares and the treatment of hyperuricemia in patients with gout.

In the event CymaBay does not successfully raise sufficient funds in financing(s), its product development activities, particularly related to the development of arhalofenate, will necessarily be curtailed commensurate with the magnitude of the shortfall or may cease altogether. To the extent that the costs of the planned Phase 2b study of arhalofenate in patients with gout exceed current estimates and CymaBay is unable to raise sufficient additional capital to cover such additional costs, CymaBay will need to reduce operating expenses, enter into a collaboration or other similar arrangement with respect to development and/or commercialization rights to arhalofenate, outlicense intellectual property rights to arhalofenate, sell assets or effect a combination of the above. No assurance can be given that CymaBay will be able to effect any of such transactions on acceptable terms, if at all. Failure to progress the development of arhalofenate will have a negative effect on CymaBay's business, future prospects and ability to obtain further financing on acceptable terms (if at all).

Beyond the plan of operations outlined above, CymaBay's future funding requirements and sources will depend on many factors, including but not limited to the following:

- the rate of progress and cost of its clinical studies, including in particular the Phase 3 studies of arhalofenate;
- the need for additional or expanded clinical studies;
- the rate of progress and cost of its Chemistry, Manufacturing and Control registration and validation program;
- the timing, economic and other terms of any licensing, collaboration or other similar arrangement into which CymaBay may enter;

- the costs and timing of seeking and obtaining FDA and other regulatory approvals;
- the extent of CymaBay's other development activities;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights; and
- the effect of competing products and market developments.

If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we will be prevented from pursuing development and commercialization efforts, which will have a material adverse effect on our business, operating results and prospects and on our ability to develop our product candidates.

We have incurred significant losses since our inception. We anticipate that we will continue to incur significant losses for the foreseeable future, and we may never achieve or maintain profitability.

We are a biopharmaceutical company focused primarily on developing our lead product candidate, arhalofenate. We have incurred significant net losses in each year since our inception, including net losses of approximately $11.3 million and $4.5 million for the fiscal years ended 2012 and 2011, respectively. As of December 31, 2012, we had an accumulated deficit of $329.5 million.

To date, we have financed our operations primarily through the sale of equity securities, licensing fees, issuance of debt and collaborations with third parties. We have devoted most of our financial resources to research and development, including our preclinical development activities and clinical trials. We have not completed development of any product candidates. We expect to continue to incur significant and increasing losses and negative cash flows for the foreseeable future. The size of our losses will depend, in part, on the rate of future expenditures and our ability to generate revenues. In particular, we expect to incur substantial and increased expenses as we:

- continue the development of our lead product candidate, arhalofenate, for the prevention of flares and treatment of hyperuricemia in patients with gout;
- seek to obtain regulatory approvals for arhalofenate;
- prepare for the potential commercialization of arhalofenate;
- scale up manufacturing capabilities to commercialize arhalofenate for any indications for which we receive regulatory approval;
- begin outsourcing of the commercial manufacturing of arhalofenate for any indications for which we receive regulatory approval;
- establish an infrastructure for the sales, marketing and distribution of arhalofenate for any indications for which we receive regulatory approval;
- expand our research and development activities and advance our clinical programs;
- maintain, expand and protect our intellectual property portfolio;
- continue our research and development efforts and seek to discover additional product candidates; and
- add operational, financial and management information systems and personnel, including personnel to support our product development and commercialization efforts and operations as a public company.

CymaBay does not anticipate that it will generate revenue from the sale of products for the foreseeable future. CymaBay's ability to become profitable depends upon its ability to generate significant continuing revenues.

In the absence of additional sources of capital, which may not be available to CymaBay on acceptable terms, or at all, the development of arhalofenate or future product candidates may be reduced in scope, delayed or

terminated. If CymaBay's product candidates or those of its collaborators fail in clinical studies or do not gain regulatory approval, or if its future products, if any, do not achieve market acceptance, CymaBay may never become profitable.

Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable would depress the value of our company and could impair our ability to raise capital, expand our business, diversify our product offerings or continue our operations.

Our ability to generate future revenues from product sales is uncertain and depends upon our ability to successfully develop, obtain regulatory approval for, and commercialize our product candidates.

Our ability to generate revenue and achieve profitability depends on our ability, alone or with collaborators, to successfully complete the development, obtain the necessary regulatory approvals and commercialize our product candidates. We do not anticipate generating revenues from sales of our product candidates for the foreseeable future, if ever. Our ability to generate future revenues from product sales depends heavily on our success in:

- obtaining favorable results for and advancing the development of arhalofenate, including successfully initiating and completing our Phase 2b and Phase 3 clinical development;
- obtaining United States (U.S.) and foreign regulatory approvals for arhalofenate;
- launching and commercializing arhalofenate, either on our own or with a partner, including building a sales force and collaborating with third parties;
- achieving broad market acceptance of arhalofenate in the medical community and by third-party payors and patients; and
- generating a pipeline of product candidates.

Conducting preclinical testing and clinical trials is a time-consuming, expensive and uncertain process that takes years to complete, and we may never generate the necessary data required to obtain regulatory approval and achieve product sales. Our anticipated development costs would likely increase if we do not obtain favorable results or if development of our product candidates is delayed. In particular, we would likely incur higher costs than we currently anticipate if development of our product candidates is delayed because we are required by the U.S. FDA to perform studies or trials in addition to those that we currently anticipate. Because of the numerous risks and uncertainties associated with pharmaceutical product development, we are unable to predict the timing or amount of any increase in our anticipated development costs.

In addition, our product candidates, if approved, may not achieve commercial success. Our commercial revenues, if any, will be derived from sales of products that we do not expect to be commercially available for several years, if at all. Even if one or more of our product candidates is approved for commercial sale, we anticipate incurring significant costs in connection with commercialization. As a result, we cannot assure you that we will be able to generate revenues from sales of any approved product candidates, or that we will achieve or maintain profitability even if we do generate sales.

Raising additional capital may cause dilution to our existing stockholders, restrict our operations or require us to relinquish rights to our technologies or product candidates.

Until such time, if ever, as we can generate substantial product revenues, we expect to finance our cash needs through a combination of equity offerings, debt financings, collaborations, strategic alliances, licensing arrangements and other marketing and distribution arrangements. We do not have any committed external source of funds.

In order to raise additional funds to support our operations, we may sell additional equity or debt securities, enter into collaborations, strategic alliances, or licensing arrangements or other marketing or distribution arrangements. To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a stockholder. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures, and declaring dividends, and will impose limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business.

If we raise additional funds through collaborations, strategic alliances, or licensing arrangements or other marketing or distribution arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates, or grant licenses on terms that may not be favorable to us. If we are unable to expand our operations or otherwise capitalize on our business opportunities, our business, financial condition and results of operations could be materially adversely affected and we may not be able to meet our debt service obligations. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or commercialization efforts, or grant others rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

We are an emerging growth company and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our common stock less attractive to investors.

We are an emerging growth company. Under the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We plan to avail ourselves of this exemption from new or revised accounting standards and, therefore, we may not be subject to the same new or revised accounting standards as other public companies that are not "emerging growth companies."

For as long as we continue to be an emerging growth company, we also intend to take advantage of certain other exemptions from various reporting requirements that are applicable to other public companies including, but not limited to, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, exemptions from the requirements of holding a nonbinding advisory stockholder vote on executive compensation and any golden parachute payments not previously approved, exemption from the requirement of auditor attestation in the assessment of our internal control over financial reporting and exemption from any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements (auditor discussion and analysis). If we do, the information that we provide stockholders may be different than what is available with respect to other public companies. We cannot predict if investors will find our common stock less attractive because we will rely on these exemptions. If investors find our common stock less attractive as a result of our status as an emerging growth company, there may be less liquidity for our common stock and our stock price may be more volatile.

We will remain an emerging growth company until the earliest of (i) the end of the fiscal year in which the market value of our common stock that is held by non-affiliates exceeds $700 million as of the end of the second fiscal quarter, (ii) the end of the fiscal year in which we have total annual gross revenues of $1 billion or more during such fiscal year, (iii) the date on which we issue more than $1 billion in non-convertible debt in a three-year period or (iv) the end of the fiscal year following the fifth anniversary of the date of the first sale of our common stock pursuant to an effective registration statement filed under the Securities Act.

Risks Related to Clinical Development and Regulatory Approval

We depend on the success of our lead product candidate, arhalofenate, which is still under clinical development, and may not obtain regulatory approval or be successfully commercialized.

We have not marketed, distributed or sold any products. The success of our business depends upon our ability to develop and commercialize our lead product candidate, arhalofenate, which has completed seven Phase 1 and seven Phase 2 clinical trials, including three Phase 2 studies in gout. We plan to conduct a Phase 2b clinical trial for arhalofenate in preventing flares and reducing serum uric acid in gout patients prior to initiation of a Phase 3 program. There is no guarantee that our clinical trials will be completed or, if completed, will be successful. The success of arhalofenate will depend on several factors, including the following:

- successful enrollment and completion of clinical trials;
- receipt of marketing approvals from the FDA and regulatory authorities outside the U.S. for our product candidate;
- establishing commercial manufacturing capabilities by making arrangements with third-party manufacturers;
- launching commercial sales of the product, whether alone or in collaboration with others;
- acceptance of the product by patients, the medical community and third-party payors;
- effectively competing with other therapies;
- a continued acceptable safety profile of the product following approval; and
- obtaining, maintaining, enforcing and defending intellectual property rights and claims.

If we do not achieve one or more of these factors in a timely manner or at all, we could experience significant delays or an inability to successfully commercialize arhalofenate, which would materially harm our business.

We have never obtained regulatory approval for a drug and we may be unable to obtain, or may be delayed in obtaining, regulatory approval for arhalofenate.

We have never obtained regulatory approval for a drug. In the U.S. it is possible that the FDA may refuse to accept our New Drug Application (NDA) for substantive review or may conclude after review of our data that our application is insufficient to obtain regulatory approval of arhalofenate. If the FDA does not accept or approve our NDA, it may require that we conduct additional clinical, nonclinical or manufacturing validation studies and submit that data before it will reconsider our application. Depending on the extent of these or any other FDA required studies, approval of any NDA or application that we submit may be delayed by several years, or may require us to expend more resources than we have available. It is also possible that additional studies, if performed and completed, may not be considered sufficient by the FDA to approve our NDA.

In the event we raise sufficient funds to conduct our Phase 2b study, we anticipate completing the study in Q2 2015. We currently do not know when we might commence our Phase 3 study of arhalofenate or achieve FDA approval of arhalofenate. We currently do not have the capital necessary to conduct or complete either our planned Phase 2b study or Phase 3 study of arhalofenate and we may not be able to raise sufficient funds necessary to conduct either study. Even if we are successful in raising capital in the near term, we believe that capital will only be sufficient to enable us to complete our Phase 2b study, after which we will need to raise additional capital.

Any delay in obtaining, or an inability to obtain, regulatory approvals would prevent us from commercializing arhalofenate, generating revenues and achieving and sustaining profitability. If any of these outcomes occur, we may be forced to abandon our development efforts for arhalofenate, which would have a material adverse effect on our business and could potentially cause us to cease operations.

We depend on the successful completion of clinical trials for our product candidates, including arhalofenate. The positive clinical results obtained for our product candidates in prior clinical studies may not be repeated in future clinical studies.

Before obtaining regulatory approval for the sale of our product candidates, including arhalofenate, we must conduct additional clinical trials to demonstrate the safety and efficacy of our product candidates in humans. Clinical testing is expensive, difficult to design and implement, can take many years to complete and is uncertain as to outcome. A failure of one or more of our clinical trials can occur at any stage of testing. The outcome of preclinical testing and early clinical trials may not be predictive of the success of later clinical trials, and interim results of a clinical trial do not necessarily predict final results. Moreover, preclinical and clinical data are often susceptible to varying interpretations and analyses, and many companies that have believed their product candidates performed satisfactorily in preclinical studies and clinical trials have nonetheless failed to obtain marketing approval for their products.

We have completed three Phase 2 clinical studies of arhalofenate in gout. In addition, six clinical studies with MBX-8025 and five clinical studies with MBX-2982 have been completed. However, we have never conducted a Phase 3 clinical trial. The positive results we have seen to date in our Phase 2 clinical trials of arhalofenate for gout do not ensure that later clinical trials will demonstrate similar results. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy characteristics despite having progressed satisfactorily through preclinical studies and initial clinical testing. A number of companies in the pharmaceutical and biotechnology industries, including those with greater resources and experience, have suffered significant setbacks in Phase 3 clinical development, even after seeing promising results in earlier clinical trials.

We may experience a number of unforeseen events during clinical trials for our product candidates, including arhalofenate, that could delay or prevent the commencement and/or completion of our clinical trials, including the following:

- regulators or institutional review boards may not authorize us or our investigators to commence a clinical trial or conduct a clinical trial at a prospective trial site;
- the clinical study protocol may require one or more amendments delaying study completion;
- clinical trials of our product candidates may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or abandon product development programs;
- the number of subjects required for clinical trials of our product candidates may be larger than we anticipate, enrollment in these clinical trials may be insufficient or slower than we anticipate or subjects may drop out of these clinical trials at a higher rate than we anticipate;
- clinical investigators or study subjects fail to comply with clinical study protocols;
- trial conduct and data analysis errors may occur, including, but not limited to, data entry and/or labeling errors;
- our third-party contractors may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- we might have to suspend or terminate clinical trials of our product candidates for various reasons, including a finding that the subjects are being exposed to unacceptable health risks;
- regulators or institutional review boards may require that we or our investigators suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements;
- the cost of clinical trials of our product candidates may be greater than we anticipate;

- the supply or quality of our clinical trial materials or other materials necessary to conduct clinical trials of our product candidates may be insufficient or inadequate; and
- our product candidates may have undesirable side effects or other unexpected characteristics, causing us or our investigators to suspend or terminate the trials.

We expect our research and development expenses to increase in connection with our ongoing activities, particularly if we commence a Phase 3 clinical trial with arhalofenate and undertake additional clinical trials of our other product candidates MBX-8025 and MBX-2982. Before we commence a Phase 3 clinical trial for arhalofenate, we will need to raise substantial additional capital. We also will need to raise substantial additional capital in the future to complete the development and commercialization of MBX-8025 and MBX-2982, for which we currently have no planned clinical trials. Because successful development of our product candidates is uncertain, we are unable to estimate the actual funds required to complete research and development and commercialize our products under development.

Negative or inconclusive results of our future clinical trials of arhalofenate, or any other clinical trial we conduct, could cause the FDA to require that we repeat or conduct additional clinical studies. Despite the results reported in earlier clinical trials for arhalofenate, we do not know whether any clinical trials we may conduct will demonstrate adequate efficacy and safety to result in regulatory approval to market our product candidates, including arhalofenate. If later stage clinical trials do not produce favorable results, our ability to obtain regulatory approval for our product candidates, including arhalofenate, may be adversely impacted.

We have never conducted a clinical trial of arhalofenate as a monotherapy for the treatment of gout flares. If arhalofenate does not demonstrate efficacy in the treatment of such flares in our planned Phase 2b clinical trial, our ability to successfully commercialize arhalofenate may be adversely affected.

We have not previously conducted a clinical trial of arhalofenate for the purpose of measuring its effect on flare reduction and control without the use of colchicine. We plan to conduct a Phase 2b clinical trial to investigate the potential benefit of arhalofenate monotherapy with regard to flare prevention and serum uric acid (sUA) lowering. In addition, our Phase 2b study will investigate the benefits of two doses of arhalofenate monotherapy, including a higher dose than we studied in previous gout studies, without colchicine. If we do not obtain favorable efficacy and safety results in the Phase 2b trial, our ability to successfully market arhalofenate could be adversely affected.

Delays in clinical trials are common and have many causes, and any delay could result in increased costs to us and jeopardize or delay our ability to obtain regulatory approval and commence product sales.

Clinical testing is expensive, difficult to design and implement, can take many years to complete, and is uncertain as to outcome. We may experience delays in clinical trials at any stage of development and testing of our product candidates. Our planned clinical trials may not begin on time, have an effective design, enroll a sufficient number of subjects, or be completed on schedule, if at all.

Events which may result in delays or unsuccessful completion of clinical trials, including our future clinical trials for arhalofenate, include the following:

- inability to raise funding necessary to initiate or continue a trial;
- delays in obtaining regulatory approval to commence a trial;
- delays in reaching agreement with the FDA on final trial design;
- imposition of a clinical hold following an inspection of our clinical trial operations or trial sites by the FDA or other regulatory authorities;

- delays in reaching agreement on acceptable terms with prospective contract research organizations (CROs) and clinical trial sites;
- delays in obtaining required institutional review board (IRB) approval at each site;
- delays in recruiting suitable patients to participate in a trial;
- delays in having subjects complete participation in a trial or return for post-treatment follow-up;
- delays caused by subjects dropping out of a trial due to side effects or otherwise;
- delays caused by clinical sites dropping out of a trial;
- time required to add new clinical sites; and
- delays by our contract manufacturers to produce and deliver sufficient supply of clinical trial materials.

If initiation or completion of any of our clinical trials for our product candidates, including arhalofenate, are delayed for any of the above reasons, our development costs may increase, the approval process could be delayed, any periods during which we may have the exclusive right to commercialize our product candidates may be reduced and our competitors may bring products to market before us. Any of these events could impair our ability to generate revenues from product sales and impair our ability to generate regulatory and commercialization milestones and royalties, all of which could have a material adverse effect on our business.

Our product candidates may cause adverse effects or have other properties that could delay or prevent their regulatory approval or limit the scope of any approved label or market acceptance.

Arhalofenate has been studied in a total of 15 clinical trials with nearly a thousand subjects. Arhalofenate was found to be safe and well tolerated with no meaningful treatment group differences in laboratory safety values and AEs including special interest AEs (edema, weight gain, and upper GI AEs), discontinuation due to AEs, serious AEs, and death. The emergence of adverse events (AEs) caused by arhalofenate in future studies could cause us, other reviewing entities, clinical study sites or regulatory authorities to interrupt, delay or halt clinical studies and could result in the denial of regulatory approval. There is also a risk that our other product candidates may induce AEs, many of which may be unknown at this time. If an unacceptable frequency and/or severity of AEs are reported in our clinical trials for our product candidates, our ability to obtain regulatory approval for product candidates, including arhalofenate, may be negatively impacted.

Furthermore, if any of our approved products cause serious or unexpected side effects after receiving market approval, a number of potentially significant negative consequences could result, including the following:

- regulatory authorities may withdraw their approval of the product or impose restrictions on its distribution in a form of a modified risk evaluation and mitigation strategy;
- regulatory authorities may require the addition of labeling statements, such as warnings or contraindications that could diminish the usage of the product or otherwise limit the commercial success of the affected product;
- we may be required to change the way the product is administered or to conduct additional clinical studies;
- we may choose to discontinue sale of the product;
- we could be sued and held liable for harm caused to patients; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the affected product candidate and could substantially increase the costs of commercializing our product candidates.

If any product candidate that CymaBay successfully develops does not achieve broad market acceptance among physicians, patients, health care payors and the medical community, the revenues that it generates from its sales will be limited.

Even if arhalofenate or any other product candidates receive regulatory approval, the products may not gain market acceptance among physicians, patients, health care payors and the medical community. Coverage and reimbursement of CymaBay's product candidates by third-party payors, including government payors, generally is also necessary for commercial success. The degree of market acceptance of any of CymaBay's approved products will depend upon a number of factors, including:

- the efficacy and safety, as demonstrated in clinical studies;
- the risk/benefit profile of CymaBay's products such as arhalofenate;
- the prevalence and severity of any side effects;
- the clinical indications for which the product is approved;
- acceptance of the product by physicians, other health care providers and patients as a safe and effective treatment;
- the potential and perceived advantages of product candidates over alternative treatments;
- the safety of product candidates seen in a broader patient group, including its use outside the approved indications;
- the cost of treatment in relation to alternative treatments;
- the timing of market introduction of competitive products;
- the availability of adequate reimbursement and pricing by third parties and government authorities;
- relative convenience and ease of administration; and
- the effectiveness of CymaBay's or its partners' sales, marketing and distribution efforts.

If any product candidate is approved but does not achieve an adequate level of acceptance by physicians, hospitals, health care payors and patients, CymaBay may not generate sufficient revenue from these products and CymaBay may not become or remain profitable.

Potential conflicts of interest arising from relationships and any related compensation with respect to clinical studies could adversely affect the process.

Principal investigators for CymaBay's clinical studies may serve as scientific advisors or consultants to CymaBay from time to time and receive cash compensation in connection with such services. If these relationships and any related compensation result in perceived or actual conflicts of interest, the integrity of the data generated at the applicable clinical study site may be questioned or jeopardized.

CymaBay may be subject to costly claims related to its clinical studies and may not be able to obtain adequate insurance.

Because CymaBay conducts clinical studies in humans, CymaBay faces the risk that the use of arhalofenate or future product candidates, will result in adverse side effects. CymaBay cannot predict the possible harms or side effects that may result from its clinical studies. Although CymaBay has clinical study liability insurance, CymaBay's insurance may be insufficient to cover any such events. There is also a risk that CymaBay may not be able to continue to obtain clinical study coverage on acceptable terms. In addition, CymaBay may not have sufficient resources to pay for any liabilities resulting from a claim excluded from, or beyond the limit of, CymaBay's insurance coverage. There is also a risk that third parties that CymaBay has agreed to indemnify could incur liability. Any litigation arising from its clinical studies, even if CymaBay is ultimately successful, would consume substantial amounts of CymaBay's financial and managerial resources and may create adverse publicity.

After the completion of our clinical trials, we cannot predict whether or when we will obtain regulatory approval to commercialize arhalofenate and we cannot, therefore, predict the timing of any future revenue from arhalofenate. Regulatory approval of an NDA is not guaranteed, and the approval process is expensive, uncertain and lengthy.

We cannot commercialize our product candidates, including arhalofenate until the appropriate regulatory authorities, such as the FDA, have reviewed and approved the product candidate. The regulatory agencies may not complete their review processes in a timely manner, or we may not be able to obtain regulatory approval for arhalofenate. Additional delays may result if arhalofenate is brought before an FDA advisory committee, which could recommend restrictions on approval or recommend non-approval of the product candidate. In addition, we may experience delays or rejections based upon additional government regulation from future legislation or administrative action, or changes in regulatory agency policy during the period of product development, clinical studies and the review process. As a result, we cannot predict when, if at all, we will receive any future revenue from commercialization of any of our product candidates, including arhalofenate. The FDA has substantial discretion in the drug approval process, including the ability to delay, limit or deny approval of a product candidate for many reasons, including the following:

- CymaBay may be unable to demonstrate to the satisfaction of regulatory authorities that a product candidate is safe and effective for any indication;
- regulatory authorities may not find the data from nonclinical studies and clinical studies sufficient or may differ in the interpretation of the data;
- regulatory authorities may require additional nonclinical or clinical studies;
- the FDA or foreign regulatory authority might not approve CymaBay's third party manufacturers' processes or facilities for clinical or commercial product;
- the FDA or foreign regulatory authority may change its approval policies or adopt new regulations;
- the FDA or foreign regulatory authorities may disagree with the design or implementation of CymaBay's clinical studies;
- the FDA or foreign regulatory authority may not accept clinical data from studies that are conducted in countries where the standard of care is potentially different from that in the U.S.;
- the results of clinical studies may not meet the level of statistical significance required by the FDA or foreign regulatory authorities for approval;
- CymaBay may be unable to demonstrate that a product candidate's clinical and other benefits outweigh its safety risks; and
- the data collection from clinical studies of CymaBay's product candidates may not be sufficient to support the submission of a NDA or other submission or to obtain regulatory approval in the U.S. or elsewhere.

In addition, events raising questions about the safety of certain marketed pharmaceuticals may result in increased caution by the FDA and other regulatory authorities in reviewing new pharmaceuticals based on safety, efficacy or other regulatory considerations and may result in significant delays in obtaining regulatory approvals.

Even if we obtain regulatory approval for arhalofenate and our other product candidates, we will still face extensive regulatory requirements and our products may face future development and regulatory difficulties.

Even if we obtain regulatory approval in the U.S., the FDA may still impose significant restrictions on the indicated uses or marketing of our product candidates, including arhalofenate, or impose ongoing requirements for potentially costly post-approval studies or post-market surveillance. For example, the labeling ultimately approved for our product candidates, including arhalofenate, may include restrictions on use due to the specific patient population and manner of use in which the drug was evaluated and the safety and efficacy data obtained in those evaluations.

Arhalofenate and our other product candidates will also be subject to additional ongoing FDA requirements governing the labeling, packaging, storage, distribution, safety surveillance, advertising, promotion, record-keeping and reporting of safety and other post-market information. The holder of an approved NDA is obligated to monitor and report AEs and any failure of a product to meet the specifications in the NDA. The holder of an approved NDA must also submit new or supplemental applications and obtain FDA approval for certain changes to the approved product, product labeling or manufacturing process. Advertising and promotional materials must comply with FDA rules and are subject to FDA review, in addition to other potentially applicable federal and state laws. Furthermore, promotional materials must be approved by the FDA prior to use for any drug receiving accelerated approval, the pathway we are pursuing for arhalofenate in the U.S.

In addition, manufacturers of drug products and their facilities are subject to payment of user fees and continual review and periodic inspections by the FDA and other regulatory authorities for compliance with current Good Manufacturing Practices (cGMP), and adherence to commitments made in the NDA. If we, or a regulatory agency, discover previously unknown problems with a product, such as quality issues or AEs of unanticipated severity or frequency, or problems with the facility where the product is manufactured, a regulatory agency may impose restrictions relative to that product or the manufacturing facility, including requiring recall or withdrawal of the product from the market or suspension of manufacturing.

If we, or our third party contractors, fail to comply with applicable regulatory requirements following approval of our product candidate, a regulatory agency may:

- issue an untitled or warning letter asserting violation of the law;
- seek an injunction or impose civil or criminal penalties or monetary fines;
- suspend or withdraw regulatory approval;
- suspend any ongoing clinical trials;
- refuse to approve a pending NDA or supplements to an NDA; or
- recall and/or seize product.

Any government investigation of alleged violations of law could require us to expend significant time and resources in response and could generate negative publicity. The occurrence of any event or penalty described above may inhibit our ability to commercialize arhalofenate and our other product candidates and inhibit our ability to generate revenues.

Even if we obtain FDA approval for arhalofenate or any of our other products in the U.S., we may never obtain approval for or commercialize arhalofenate or any of our other products outside of the U.S., which would limit our ability to realize their full market potential.

In order to market any products outside of the U.S., we must establish and comply with numerous and varying regulatory requirements on a country-by-country basis regarding safety and efficacy. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions. In addition, clinical trials conducted in one country may not be accepted by regulatory authorities in other countries, and regulatory approval in one country does not guarantee regulatory approval in any other country. Approval processes vary among countries and can involve additional product testing and validation and additional administrative review periods. Seeking foreign regulatory approval could result in difficulties and costs for us and require additional preclinical studies or clinical trials which could be costly and time consuming. Regulatory requirements can vary widely from country to country and could delay or prevent the introduction of our products in those countries. We do not have any product candidates approved for sale in any jurisdiction, including international markets, and we do not have experience in obtaining regulatory approval in international markets. If we fail to comply with regulatory requirements in international markets or to obtain and maintain required approvals, or if regulatory approvals in international markets are delayed, our target market will be reduced and our ability to realize the full market potential of our products will be unrealized.

Our relationships with customers and payors will be subject to applicable anti-kickback, fraud and abuse and other health care laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm and diminished profits and future earnings.

Health care providers, physicians and others play a primary role in the recommendation and prescription of any products for which we obtain marketing approval. Our future arrangements with third-party payors and customers may expose us to broadly applicable fraud and abuse and other health care laws and regulations that may constrain the business or financial arrangements and relationships through which we market, sell and distribute our products for which we obtain marketing approval. Restrictions under applicable federal and state health care laws and regulations, include the following:

- the federal health care anti-kickback statute prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward either the referral of an individual for, or the purchase, order or recommendation of, any good or service, for which payment may be made under federal health care programs such as Medicare and Medicaid;
- the federal False Claims Act imposes criminal and civil penalties, including civil whistleblower or qui tam actions, against individuals or entities for knowingly presenting, or causing to be presented, to the federal government, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government;
- the federal Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, imposes criminal and civil liability for executing a scheme to defraud any health care benefit program and also imposes obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;
- the federal false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement in connection with the delivery of or payment for health care benefits, items or services;
- the federal transparency requirements under the Health Care and Education Reconciliation Act of 2010 (Health Care Reform Law) require manufacturers of drugs, devices, biologics and medical supplies to report to the Department of Health and Human Services information related to physician payments and other transfers of value and physician ownership and investment interests; and
- analogous state laws and regulations, such as state anti-kickback and false claims laws, may apply to sales or marketing arrangements and claims involving health care items or services reimbursed by non-governmental third-party payors, including private insurers, and some state laws require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government in addition to requiring manufacturers to report information related to payments to physicians and other health care providers or marketing expenditures.

Efforts to ensure that our business arrangements with third parties will comply with applicable health care laws and regulations will involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other health care laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, exclusion from government funded health care programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations. If any of the physicians or other providers or entities with whom we expect to do business are found to be not in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusions from government funded health care programs.

Recently enacted and future legislation may increase the difficulty and cost for us to obtain marketing approval of and commercialize our product candidates and affect the prices we may obtain.

In the U.S. and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the health care system that could prevent or delay marketing approval of our product candidates, restrict or regulate post-approval activities and affect our ability to profitably sell any products for which we obtain marketing approval.

In the U.S., the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Medicare Modernization Act) changed the way Medicare covers and pays for pharmaceutical products. The legislation expanded Medicare coverage for drug purchases by the elderly and introduced a new reimbursement methodology based on average sales prices for physician administered drugs. In addition, this legislation provided authority for limiting the number of drugs that will be covered in any therapeutic class. Cost reduction initiatives and other provisions of this legislation could decrease the coverage and price that we receive for any approved products. While the Medicare Modernization Act applies only to drug benefits for Medicare beneficiaries, private payors often follow Medicare coverage policy and payment limitations in setting their own reimbursement rates. Therefore, any reduction in reimbursement that results from the Medicare Modernization Act may result in a similar reduction in payments from private payors.

More recently, in March 2010, the Health Care Reform Law was enacted to broaden access to health insurance, reduce or constrain the growth of health care spending, enhance remedies against fraud and abuse, add new transparency requirements for health care and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. The Health Care Reform Law revises the definition of "average manufacturer price" for reporting purposes, which could increase the amount of Medicaid drug rebates to states. Further, the new law imposes a significant annual fee on companies that manufacture or import branded prescription drug products. New provisions affecting compliance have also been enacted, which may affect our business practices with health care practitioners. We will not know the full effects of the Health Care Reform Law until applicable federal and state agencies issue regulations or guidance under the new law. Although it is too early to determine the effect of the Health Care Reform Law, the new law appears likely to continue the pressure on pharmaceutical pricing, especially under the Medicare program, and may also increase our regulatory burdens and operating costs.

Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for pharmaceutical products. We are not sure whether additional legislative changes will be enacted, or whether the FDA regulations, guidance or interpretations will be changed, or what the impact of such changes on the marketing approvals of our product candidates, if any, may be.

Risks Related to Our Reliance on Third Parties

We rely on third-party manufacturers to produce our preclinical and clinical drug supplies, and we intend to rely on third parties to produce commercial supplies of any approved product candidates.

We do not own or operate, and we do not expect to own or operate, facilities for product manufacturing, storage and distribution, or testing. In the past we have relied on third-party manufacturers for supply of our preclinical and clinical drug supplies. We expect that in the future we will continue to rely on such manufacturers for drug supplies that will be used in clinical trials of our product candidates, including arhalofenate, and for commercialization of any of our product candidates that receive regulatory approval.

The facilities used by our contract manufacturers to manufacture the product candidates must be approved by the FDA pursuant to inspections that will be conducted only after we submit an NDA to the FDA, if at all. We do not control the manufacturing process of our product candidates and are completely dependent on our contract

manufacturing partners for compliance with the FDA's requirements for manufacture of finished pharmaceutical products. If our contract manufacturers cannot successfully manufacture material that conforms to our specifications and the FDA's strict regulatory requirements of safety, purity and potency, we will not be able to secure and/or maintain FDA approval for our product candidates. In addition, we have no direct control over the ability of the contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If our contract manufacturers cannot meet FDA standards, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop, obtain regulatory approval for or market our product candidates. No assurance can be given that our manufacturers can continue to make clinical and commercial supplies of arhalofenate, or future product candidates, at an appropriate scale and cost to make it commercially feasible.

In addition, we do not have the capability to package and distribute finished products to pharmacies and other customers. Prior to commercial launch, we will enter into agreements with one or more pharmaceutical product packager/distributor to ensure proper supply chain management once we are authorized to make commercial sales of our product candidates. If we receive marketing approval from the FDA, we intend to sell pharmaceutical product packaged and distributed by such suppliers. Although we have entered into agreements with our current contract manufacturers and packager/distributor for clinical trial material, we may be unable to maintain an agreement on commercially reasonable terms, which could have a material adverse impact upon our business.

We rely on limited sources of supply for the drug substance for our lead product candidate, arhalofenate, and any disruption in the chain of supply may cause delay in developing and commercializing arhalofenate.

We are currently transferring the drug substance manufacturing process to our selected contractor that will produce the supplies needed to meet clinical development, registration and forecasted commercial demand. It is our expectation that only one supplier of drug substance and one supplier of drug product will be qualified by the FDA. If supply from an approved vendor is interrupted, there could be a significant disruption in commercial supply of arhalofenate. An alternative vendor would need to be qualified through an NDA supplement which would be expensive and could result in further delay. The FDA or other regulatory agencies outside of the U.S. may also require additional studies if a new drug substance or drug product supplier is relied upon for commercial production. These factors could cause the delay of clinical trials, regulatory submissions, required approvals or commercialization of arhalofenate, and cause us to incur additional costs. Furthermore, if our suppliers fail to deliver the required commercial quantities of active pharmaceutical ingredient on a timely basis and at commercially reasonable prices, and we are unable to secure one or more replacement suppliers capable of production at a substantially equivalent cost, our supply chain for arhalofenate may be delayed, which could inhibit our ability to generate revenues.

Manufacturing issues may arise that could increase product and regulatory approval costs or delay commercialization of arhalofenate.

We are modifying the drug substance production process for arhalofenate at the selected commercial manufacturer to cost effectively remove impurities. As the modified process is scaled up it may reveal previously unknown impurities which could require resolution in order to proceed with our planned clinical trials and obtain regulatory approval for the commercial marketing of arhalofenate. In the future, we may identify impurities, which could result in increased scrutiny by the regulatory agencies, delays in the clinical program and regulatory approval for arhalofenate, increases in our operating expenses, or failure to obtain or maintain approval for arhalofenate.

Our reliance on third-party manufacturers entails risks, including the following:

- the inability to meet our product specifications and quality requirements consistently;
- a delay or inability to procure or expand sufficient manufacturing capacity;
- manufacturing and product quality issues related to scale-up of manufacturing;

- costs and validation of new equipment and facilities required for scale-up;
- a failure to comply with cGMP and similar foreign standards;
- the inability to negotiate manufacturing agreements with third parties under commercially reasonable terms;
- termination or nonrenewal of manufacturing agreements with third parties in a manner or at a time that is costly or damaging to us;
- the reliance on a limited number of sources, and in some cases, single sources for key materials, such that if we are unable to secure a sufficient supply of these key materials, we will be unable to manufacture and sell our product candidates in a timely fashion, in sufficient quantities or under acceptable terms;
- the lack of qualified backup suppliers for those materials that are currently purchased from a sole or single source supplier;
- operations of our third-party manufacturers or suppliers could be disrupted by conditions unrelated to our business or operations, including the bankruptcy of the manufacturer or supplier;
- carrier disruptions or increased costs that are beyond our control; and
- the failure to deliver our products under specified storage conditions and in a timely manner.

Any of these events could lead to clinical study delays, failure to obtain regulatory approval or impact our ability to successfully commercialize our products. Some of these events could be the basis for FDA or other regulatory authorities' action, including injunction, recall, seizure, or total or partial suspension of production.

We rely on third parties to conduct, supervise and monitor our clinical studies, and if those third parties perform in an unsatisfactory manner, it may harm our business.

We rely on contract service providers (CSPs) including clinical research organizations, clinical trial sites, central laboratories and other service providers to ensure the proper and timely conduct of our clinical trials. While we have agreements governing their activities, we have limited influence over their actual performance. We have relied and plan to continue to rely upon CSPs to monitor and manage data for our ongoing clinical programs for arhalofenate and our other product candidates, as well as the execution of nonclinical studies. We control only certain aspects of our CSPs' activities. Nevertheless, we are responsible for ensuring that each of our studies is conducted in accordance with the applicable protocol, legal, regulatory and scientific standards and our reliance on the CSPs does not relieve us of our regulatory responsibilities.

We and our CSPs are required to comply with the FDA's guidance, which follows the International Conference on Harmonization Good Clinical Practice (ICH GCP), which are regulations and guidelines enforced by the FDA for all of our product candidates in clinical development. The FDA enforces the ICH GCP through periodic inspections of trial sponsors, principal investigators and clinical trial sites. If we or our CSPs fail to comply with the ICH GCP, the clinical data generated in our clinical trials may be deemed unreliable and the FDA may require us to perform additional clinical trials before approving our marketing applications. For example, upon inspection, the FDA may determine that our Phase 3 clinical trial for arhalofenate, does not comply with the ICH GCP. In addition, our Phase 3 clinical trials for arhalofenate will require a sufficiently large number of test subjects to evaluate the safety and effectiveness of arhalofenate. Accordingly, if our CSPs fail to comply with these regulations or fail to recruit a sufficient number of subjects, we may be required to repeat these Phase 3 clinical trials, which would delay the regulatory approval process.

Our CSPs are not our employees, and we cannot control whether or not they devote sufficient time and resources to our ongoing clinical and nonclinical programs. These CSPs may also have relationships with other entities, including our competitors, for whom they may also be conducting clinical studies, or other drug

development activities which could harm our competitive position. We face the risk of potential unauthorized disclosure or misappropriation of our intellectual property by CSPs, which may reduce our trade secret protection and allow our potential competitors to access and exploit our proprietary technology. If our CSPs do not successfully carry out their contractual duties or obligations, fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols or regulatory requirements or for any other reasons, our clinical trials may be extended, delayed or terminated, and we may not be able to obtain regulatory approval for, or successfully commercialize arhalofenate or our other product candidates. As a result, our financial results and the commercial prospects for arhalofenate and any other product candidates that we develop would be harmed, our costs could increase, and our ability to generate revenues could be delayed.

Risks Related to Commercialization of Our Product Candidates

The commercial success of arhalofenate and our other product candidates will depend upon the acceptance of these products by the medical community, including physicians, patients and health care payors.

If any of our product candidates, including arhalofenate, receive marketing approval, they may nonetheless not gain sufficient market acceptance by physicians, patients, health care payors and others in the medical community. If these products do not achieve an adequate level of acceptance, we may not generate significant product revenues and we may not become profitable. The degree of market acceptance of any of our product candidates, including arhalofenate, will depend on a number of factors, including the following:

- demonstration of clinical safety and efficacy in our clinical trials;
- the risk/benefit profile of our products such as arhalofenate;
- the relative convenience, ease of administration and acceptance by physicians, patients and health care payors;
- the prevalence and severity of any side effects;
- the safety of product candidates seen in a broader patient group, including its use outside the approved indications;
- limitations or warnings contained in the FDA and other regulatory authorities approved label for the relevant product candidate;
- acceptance of the product by physicians, other health care providers and patients as a safe and effective treatment;
- the potential and perceived advantages of product candidates over alternative treatments;
- the timing of market introduction of competitive products;
- pricing and cost-effectiveness;
- the effectiveness of our or any future collaborators' sales and marketing strategies;
- our ability to obtain formulary approval;
- our ability to obtain and maintain sufficient third-party coverage or reimbursement, which may vary from country to country; and
- the effectiveness of our or any future collaborators' sales, marketing and distribution efforts.

If any of our product candidates, including arhalofenate, is approved but does not achieve an adequate level of acceptance by physicians, patients and health care payors, we may not generate sufficient revenue and we may not become or remain profitable.

If we are unable to establish sales and marketing capabilities or enter into agreements with third parties to market and sell our product candidates, we may be unable to generate any revenue.

We currently do not have an organization for the sales, marketing and distribution of pharmaceutical products and the cost of establishing and maintaining such an organization may exceed the cost-effectiveness of doing so. In order to market any products that may be approved, including arhalofenate, we must build our sales, marketing, managerial and other non-technical capabilities or make arrangements with third parties to perform these services. We may enter into strategic partnerships with third parties to commercialize our product candidates, including arhalofenate.

If we are unable to build our own sales force or negotiate a strategic partnership for the commercialization of arhalofenate, we may be forced to delay the potential commercialization of arhalofenate, or reduce the scope of our sales or marketing activities for arhalofenate. If we elect to increase our expenditures to fund commercialization activities ourselves, we will need to obtain additional capital, which may not be available to us on acceptable terms, or at all. If we do not have sufficient funds, we will not be able to bring arhalofenate to market or generate product revenue.

If we are unable to establish adequate sales, marketing and distribution capabilities, whether independently or with third parties, we may not be able to generate sufficient product revenue and may not become profitable. We will be competing with companies that currently have extensive and well-funded marketing and sales operations. Without an internal team or the support of a third party to perform marketing and sales functions, we may be unable to compete successfully against these more established companies.

In addition, there are risks involved with both establishing our own sales and marketing capabilities and entering into arrangements with third parties to perform these services. For example, recruiting and training a sales force is expensive and time-consuming and could delay any product launch. If the commercial launch of a product candidate for which we recruit a sales force and establish marketing capabilities is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization expenses. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel.

If we obtain approval to commercialize any products outside of the U.S., a variety of risks associated with international operations could materially adversely affect our business.

If our product candidates are approved for commercialization, we intend to enter into agreements with third parties to market those product candidates outside the U.S., including for arhalofenate. We expect that we will be subject to additional risks related to international operations, including the following:

- different regulatory requirements for drug approvals in foreign countries;
- reduced protection for intellectual property rights;
- unexpected changes in tariffs, trade barriers and regulatory requirements;
- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- foreign taxes, including withholding of payroll taxes;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenues, and other obligations incident to doing business in another country;
- workforce uncertainty in countries where labor unrest is more common than in the U.S.;

- production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad; and
- business interruptions resulting from geopolitical actions, including war and terrorism, pandemics, or natural disasters including earthquakes, typhoons, volcanic eruptions, floods and fires.

We have no prior experience in these areas. In addition, there are complex regulatory, tax, labor and other legal requirements imposed by both the European Union and many of the individual countries in Europe with which we will need to comply. Many U.S.-based biopharmaceutical companies have found the process of marketing their own products in Europe to be very challenging.

If our competitors develop and market products that are more effective, safer or less expensive than arhalofenate, our commercial opportunities will be negatively impacted.

The life sciences industry is highly competitive, and we face significant competition from other pharmaceutical, biopharmaceutical and biotechnology companies and possibly from academic institutions, government agencies and private and public research institutions that are researching, developing and marketing products designed to address the treatment of gout. Our competitors may have significantly greater financial, manufacturing, marketing and drug development resources. Large pharmaceutical companies, in particular, have extensive experience in the clinical testing of, obtaining regulatory approvals for, and marketing of, drugs. New developments, including the development of other pharmaceutical technologies and methods of treating disease, occur in the pharmaceutical and life sciences industries at a rapid pace.

These developments may render our product candidates obsolete or noncompetitive. Compared to us, potential competitors may have substantially greater:

- research and development resources, including personnel and technology;
- regulatory experience;
- experience in pharmaceutical development and commercialization;
- ability to negotiate competitive pricing and reimbursement with third-party payors;
- experience and expertise in exploitation of intellectual property rights; and
- capital resources.

As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we do or may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize our product candidates. The competitors may also develop products that are more effective, better tolerated, more useful and less costly than our products and they may also be more successful in manufacturing and marketing their products.

Formulary approval and reimbursement may not be available for arhalofenate and our other product candidates, which could make it difficult for us to sell our products profitably.

Obtaining formulary approval can be an expensive and time consuming process. We cannot be certain if and when we will obtain formulary approval to allow us to promote our product candidates, including arhalofenate, into our target markets. Failure to obtain timely formulary approval will limit our commercial success.

Furthermore, market acceptance and sales of arhalofenate, or any other product candidates that we develop, will depend in part on the extent to which reimbursement for these products and related treatments will be available from government health administration authorities, private health insurers and other organizations. Government authorities and third-party payors, such as private health insurers and health maintenance

organizations, decide which medications they will pay for and establish reimbursement levels. A prevailing trend in the U.S. health care industry and elsewhere is cost containment. Government authorities and these third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications. Increasingly, third-party payors are requiring that companies provide them with predetermined discounts from list prices and are challenging the prices charged for medical products. We cannot be sure that reimbursement will be available for any product that we commercialize and, if reimbursement is available, what the level of reimbursement will be. Reimbursement may impact the demand for, or the price of, any product for which we obtain marketing approval. We cannot be sure that reimbursement will be available for arhalofenate, or any other product candidates. Also, reimbursement amounts may reduce the demand for, or the price of, our products. If reimbursement is not available, or is available only to limited levels, we may not be able to successfully commercialize arhalofenate, or any other product candidates that we develop.

There have been a number of legislative and regulatory proposals to change the health care system in the U.S. and in some foreign jurisdictions that could affect our ability to sell any future products profitably. These legislative and regulatory changes may negatively impact the reimbursement for any future products, following approval. The availability of generic treatments may also substantially reduce the likelihood of reimbursement for any future products, including arhalofenate. The application of user fees to generic drug products will likely expedite the approval of additional generic drug treatments. We expect to experience pricing pressures in connection with the sale of arhalofenate and any other product candidate that we develop, due to the trend toward managed health care, the increasing influence of health maintenance organizations and additional legislative changes.

In addition, there may be significant delays in obtaining reimbursement for approved products, and coverage may be more limited than the purposes for which the product is approved by the FDA or health authorities in other countries. Moreover, eligibility for reimbursement does not imply that any product will be paid for in all cases or at a rate that covers our costs, including research, development, manufacture, sale and distribution. Interim payments for new products, if applicable, may also not be sufficient to cover our costs and may not be made permanent. Payment rates may vary according to the use of the product and the clinical setting in which it is used, may be based on payments allowed for lower cost products that are already reimbursed, and may be incorporated into existing payments for other services. Net prices for products may be reduced by mandatory discounts or rebates required by government health care programs or private payors and by any future relaxation of laws that presently restrict imports of products from countries where they may be sold at lower prices than in the U.S. Third-party payors often rely upon Medicare coverage policy and payment limitations in setting their own reimbursement policies.

If we are unable to promptly obtain coverage and profitable payment rates from both government funded and private payors for any of our product candidates, including arhalofenate, it could have a material adverse effect on our operating results, our ability to raise capital needed to commercialize products and our overall financial condition.

Even if we receive regulatory approval for arhalofenate, we will be subject to ongoing FDA and other regulatory obligations and continued regulatory review, which may result in significant additional expense and limit our ability to commercialize arhalofenate.

Any regulatory approvals that we or potential collaboration partners receive for arhalofenate or future product candidates, may also be subject to limitations on the indicated uses for which the product may be marketed or contain requirements for potentially costly post-marketing studies. In addition, even if approved, the labeling, packaging, adverse event reporting, storage, advertising, promotion and recordkeeping for any product will be subject to extensive and ongoing regulatory requirements. The subsequent discovery of previously unknown problems with a product, including AEs of unanticipated severity or frequency, may result in restrictions on the marketing of the product, and could include withdrawal of the product from the market.

Regulatory policies may change and additional government regulations may be enacted that could prevent or delay regulatory approval of our product candidates. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the U.S. or abroad. If we are not able to maintain regulatory compliance, we might not be permitted to market arhalofenate or future products, if any, and we may not achieve or sustain profitability.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our product candidates.

We face an inherent risk of product liability exposure related to the testing of our product candidates in human clinical studies, and will face an even greater risk if we sell our product candidates commercially. An individual may bring a liability claim against us if one of our product candidates causes, or merely appears to have caused, an injury. If we cannot successfully defend ourselves against product liability claims, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in the following:

- decreased demand for our product candidates;
- impairment to our business reputation;
- withdrawal of clinical study participants;
- distraction of management's attention from our primary business;
- substantial monetary awards to patients or other claimants;
- the inability to commercialize our product candidates; and
- loss of revenues.

We do carry product liability insurance for our clinical studies. Further, we intend to expand our insurance coverage to include the sale of commercial products if marketing approval is obtained for any of our product candidates. However, we may be unable to obtain this product liability insurance on commercially reasonable terms and with insurance coverage that will be adequate to satisfy any liability that may arise. On occasion, large judgments have been awarded in class action or individual lawsuits relating to marketed pharmaceuticals. A successful product liability claim or series of claims brought against us could cause our stock price to decline and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

We may expend our limited resources to pursue a particular product candidate or indication and fail to capitalize on product candidates or indications that may be more profitable or for which there is a greater likelihood of success.

The success of our business depends primarily upon our ability to identify, develop and commercialize product candidates. Because we have limited financial and managerial resources, we focus on product candidates for specific indications. As a result, we may forego or delay pursuit of opportunities with other product candidates or other indications that later prove to have greater commercial potential. We may focus our efforts and resources on product candidates that ultimately prove to be unsuccessful.

If we do not accurately evaluate the commercial potential or target market for a particular product candidate, we may relinquish valuable rights to that product candidate through collaboration, licensing or other royalty arrangements in cases in which it would have been advantageous for us to retain sole development and commercialization rights.

Risks Related to Our Intellectual Property

If we are unable to obtain or protect intellectual property rights related to our products and product candidates, we may not be able to compete effectively in our market.

We rely upon a combination of patents, trade secret protection and confidentiality agreements to protect the intellectual property related to our products and product candidates. The strength of patents in the biotechnology and pharmaceutical field involves complex legal and scientific questions and can be uncertain. The patent applications that we own or in-license may fail to result in issued patents with claims that cover the products in the U.S. or in other countries. If this were to occur, early generic competition could be expected against arhalofenate and other product candidates in development. There is no assurance that all of the potentially relevant prior art relating to our patents and patent applications has been found, which can invalidate a patent or prevent a patent from issuing based on a pending patent application. Even if patents do successfully issue, third parties may challenge their validity, enforceability, scope or ownership, which may result in such patents, or our rights to such patents, being narrowed or invalidated. Furthermore, even if they are unchallenged, our patents and patent applications may not adequately protect our intellectual property or prevent others from designing around our claims. If the patent applications we hold or license with respect to arhalofenate fail to issue or if their breadth or strength of protection is threatened, it could dissuade companies from collaborating with us and threaten our ability to commercialize our products. We cannot offer any assurances about which, if any, patents will issue or whether any issued patents will be found invalid or unenforceable, will be challenged by third parties or will adequately protect our products and product candidates. Further, if we encounter delays in development or regulatory approvals, the period of time during which we could market arhalofenate under patent protection could be reduced. Since patent applications in the U.S. and most other countries are confidential for a period of time after filing, and some remain so until issued, we cannot be certain that we or our licensors were the first to file any patent application related to arhalofenate or our other product candidates. Furthermore, if third parties have filed such patent applications, an interference proceeding in the U.S. can be provoked by a third party or instituted by us to determine who was the first to invent any of the subject matter covered by the patent claims of our applications. An unfavorable outcome could require us to cease using the related technology or to attempt to license it from the prevailing party, which may not be available on commercially reasonable terms or at all.

In addition to the protection afforded by patents, we rely on trade secret protection and confidentiality agreements to protect proprietary know-how that is not patentable, processes for which patents are difficult to enforce and other elements of our drug discovery and development processes that involve proprietary know-how, information or technology that is not covered by patents. Although we expect all of our employees to assign their inventions to us, and all of our employees, consultants, advisors and any third parties who have access to our proprietary know-how, information or technology to enter into confidentiality agreements, we cannot provide any assurances that all such agreements have been duly executed, that such agreements provide adequate protection and will not be breached, that our trade secrets and other confidential proprietary information will not otherwise be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. If we are unable to prevent material disclosure of the non-patented intellectual property related to our technologies to third parties, and there is no guarantee that we will have any such enforceable trade secret protection, we may not be able to establish or maintain a competitive advantage in our market, which could materially adversely affect our business, results of operations and financial condition.

Further, the laws of some foreign countries do not protect patents and other proprietary rights to the same extent or in the same manner as the laws of the U.S. As a result, we may encounter significant problems in protecting and defending our intellectual property abroad. We may also fail to pursue or obtain patents and other intellectual property protection relating to our products and product candidates in all foreign countries.

Third-party claims of intellectual property infringement may prevent or delay our development and commercialization efforts or otherwise affect our business.

Our commercial success depends in part on our avoiding infringement and other violations of the patents and proprietary rights of third parties. There is a substantial amount of litigation, both within and outside the U.S., involving patent and other intellectual property rights in the biotechnology and pharmaceutical industries, including patent infringement lawsuits, interferences, oppositions and inter party re-examination proceedings before the U.S. Patent and Trademark Office (U.S. PTO) and its foreign counterparts. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we and our collaborators are developing product candidates. As the biotechnology and pharmaceutical industries expand and more patents are issued, and as we gain greater visibility and market exposure as a public company, the risk increases that our product candidates or other business activities may be subject to claims of infringement of the patent and other proprietary rights of third parties.

Third parties may assert that we are employing their proprietary technology without authorization. There may be third-party patents or patent applications with claims to materials, formulations, methods of manufacture or methods for treatment related to the use or manufacture of arhalofenate and/or our other product candidates. Because patent applications can take many years to issue, there may be currently pending patent applications which may later result in issued patents that our product candidates may infringe. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. If any third-party patents were held by a court of competent jurisdiction to cover the manufacturing process of any of our product candidates, any molecules formed during the manufacturing process or any final product itself, the holders of any such patents may be able to block our ability to commercialize such product candidate unless we obtained a license under the applicable patents, or until such patents expire. Similarly, if any third-party patent were held by a court of competent jurisdiction to cover aspects of our formulations, processes for manufacture or methods of use, including combination therapy, the holders of any such patent may be able to block our ability to develop and commercialize the applicable product candidate unless we obtained a license or until such patent expires. In either case, such a license may not be available on commercially reasonable terms or at all. In addition, we may be subject to claims that we are infringing other intellectual property rights, such as trademarks or copyrights, or misappropriating the trade secrets of others, and to the extent that our employees, consultants or contractors use intellectual property or proprietary information owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions.

Parties making claims against us may obtain injunctive or other equitable relief, which could effectively block our ability to further develop and commercialize one or more of our product candidates. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful infringement or other intellectual property claim against us, we may have to pay substantial damages, including treble damages and attorneys' fees for willful infringement, obtain one or more licenses from third parties, pay royalties or redesign our affected products, which may be impossible or require substantial time and monetary expenditure. We cannot predict whether any such license would be available at all or whether it would be available on commercially reasonable terms. Furthermore, even in the absence of litigation, we may need to obtain licenses from third parties to advance our research or allow commercialization of our product candidates, and we have done so from time to time. We may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. In that event, we would be unable to further develop and commercialize one or more of our product candidates, which could harm our business significantly. We cannot provide any assurances that third-party patents do not exist which might be enforced against our products or product candidates, resulting in either an injunction prohibiting our sales, or, with respect to our sales, an obligation on our part to pay royalties and/or other forms of compensation to third parties.

We license certain key intellectual property from third parties, and the loss of our license rights could have a materially adverse effect on our business.

We are a party to a number of technology licenses that are important to our business and expect to enter into additional licenses in the future. For example, we rely on an exclusive license to certain patents, proprietary technology and know-how from DiaTex, which include arhalofenate. During the term of the exclusive license with DiaTex we may perform research and development of compounds and products for the treatment of human disease based on the patents, proprietary technology and know-how from DiaTex. If we fail to comply with our obligations under our agreement with DiaTex, including our obligations to pay royalty payments during the development and commercialization of arhalofenate, or our other license agreements, or if we are subject to a bankruptcy, the licensor may have the right to terminate the license, in which event we would not be able to develop or market products covered by the license, including in the case of the DiaTex license, arhalofenate, which would have a materially adverse effect on our business.

We may be involved in lawsuits to protect or enforce our patents, the patents of our licensors or our other intellectual property rights, which could be expensive, time consuming and unsuccessful.

Competitors may infringe or otherwise violate our patents, the patents of our licensors or our other intellectual property rights. To counter infringement or unauthorized use, we may be required to file legal claims, which can be expensive and time-consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours or our licensors is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly and could put our patent applications at risk of not issuing. The initiation of a claim against a third party may also cause the third party to bring counter-claims against us.

We may not be able to prevent, alone or with our licensors, misappropriation of our intellectual property rights, particularly in countries where the laws may not protect those rights as fully as in the U.S. Our business could be harmed if in a litigation if the prevailing party does not offer us a license on commercially reasonable terms. Any litigation or other proceedings to enforce our intellectual property rights may fail, and even if successful, may result in substantial costs and distract our management and other employees.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. There could also be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of our common stock.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

Periodic maintenance fees on any issued patent are due to be paid to the U.S. PTO and foreign patent agencies in several stages over the lifetime of the patent. The U.S. PTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. While an inadvertent lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Non-compliance events that could result in abandonment or lapse of a patent or patent application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. If we or our licensors that control the prosecution and maintenance of our licensed patents fail to maintain the patents and patent applications covering our product candidates, we may lose our rights and our competitors might be able to enter the market, which would have a material adverse effect on our business.

Risks Related to Our Business Operations and Industry

Our future success depends on our ability to retain key executives and to attract, retain and motivate qualified personnel.

We are highly dependent on principal members of our executive team listed under "Management." While we have entered into employment agreements or offer letters with each of our executive officers, any of them could leave our employment at any time, as all of our employees are "at will" employees. We do not maintain "key person" insurance for any of our executives or other employees. Recruiting and retaining other qualified employees for our business, including scientific and technical personnel, will also be critical to our success. There is currently a shortage of skilled executives in our industry, which is likely to continue. We also experience competition from universities and research institutions for the hiring of scientific and clinical personnel. As a result, competition for skilled personnel is intense and the turnover rate can be high. We may not be able to attract and retain personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel. In addition, failure of any of our clinical studies may make it more challenging to recruit and retain qualified personnel. Dr. Urbanski, our former Chief Medical Officer, left the company in June 2012. If we are unable to successfully recruit key employees or replace the loss of services of any executive or key employee, it may adversely affect the progress of our research, development and commercialization objectives.

In addition, we rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us, which could also adversely affect the progress of our research, development and commercialization objectives.

We will need to expand our organization, and we may experience difficulties in managing this growth, which could disrupt our operations.

As of August 1, 2013, we had 12 full-time employees and three consultants. As our company matures, we expect to expand our employee base to increase our managerial, clinical, scientific and engineering, operational, sales, and marketing teams. Future growth would impose significant additional responsibilities on our management, including the need to identify, recruit, maintain, motivate and integrate additional employees, consultants and contractors. Also, our management may need to divert a disproportionate amount of its attention away from our day-to-day activities and devote a substantial amount of time to managing these growth activities. We may not be able to effectively manage the expansion of our operations, which may result in weaknesses in our infrastructure, give rise to operational mistakes, loss of business opportunities, loss of employees and reduced productivity among remaining employees. Our expected growth could require significant capital expenditures and may divert financial resources from other projects, such as the development of product candidates. If our management is unable to effectively manage our growth, our expenses may increase more than expected, our ability to generate and/or grow revenues could be reduced, and we may not be able to implement our business strategy. Our future financial performance and our ability to commercialize arhalofenate and our other product candidates and compete effectively will depend, in part, on our ability to effectively manage any future growth.

ITEM 2. FINANCIAL INFORMATION.

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

Forward-Looking Statements

Some of the statements under in this "Management's Discussion and Analysis of Financial Condition and Results of Operations" are forward-looking statements. These forward-looking statements are based on management's beliefs and assumptions and on information currently available to our management and involve significant elements of subjective judgment and analysis. Words such as "expects," "will," "anticipates," "targets," "goals," "projects," "intends," "plans," "believes," "seeks," "estimates," "potential," "should," "could," variations of such words, and similar expressions are intended to identify forward-looking statements. Our actual results and the timing of events may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such a difference include those discussed under the caption "Disclosure Regarding Forward Looking Statements" at the beginning of this Form 10, and in "Item 1A. Risk Factors" and elsewhere in this Form 10. These and many other factors could affect our future financial and operating results. We undertake no obligation to update any forward-looking statement to reflect events after the date of this Form 10.

Overview

CymaBay Therapeutics is a clinical-stage biopharmaceutical company that is focused on the development and commercialization of proprietary new medicines for the treatment of metabolic diseases. Arhalofenate, CymaBay's lead product candidate, has completed three Phase 2 studies for the treatment of gout. Arhalofenate possesses two therapeutic actions: in gout patients it is intended to prevent painful attacks in joints while promoting excretion of uric acid by the kidney. CymaBay intends to initiate a Phase 2b study for arhalofenate in 225 patients. CymaBay is also developing a pipeline of product candidates for the treatment of diabetes and dyslipidemia.

We are an emerging growth company. Under the JOBS Act emerging growth companies can delay adopting new or revised accounting standards until such time of those standards apply to private companies. We plan to avail ourselves of this exemption from new or revised accounting standards, and therefore, we may not be subject to the same new or revised accounting standards as other public companies that are not "emerging growth companies".

Critical Accounting Policies and Use of Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues and expenses during the reporting periods. We base our estimates on historical experience and on various other factors that we believe to be materially reasonable under the circumstances and review our estimates on an ongoing basis. Actual results may materially differ from these estimates under different assumptions or conditions.

While our significant accounting policies are described in more detail in Note 2 of our financial statements included in this Form 10, we believe the following accounting policies to be critical to the judgments and estimates used in the preparation of our financial statements.

Revenue Recognition

Our contract revenues are generated primarily through research and development collaboration agreements, which may include nonrefundable, non-creditable upfront fees, funding for research and development efforts, and milestone or other contingent payments for achievements with regards to our licensed products. We have not materially modified any previous collaboration agreements or entered into any new agreements in 2012, nor have we received any milestone payments in 2012. Therefore, all collaboration agreements have been accounted for in accordance with the accounting guidance applicable to such arrangements prior to the adoption of Accounting Standards Update (ASU) 2009-13, Multiple-Deliverable Revenue Arrangements, and ASU 2010-17, Revenue Recognition – Milestone Method.

We recognize revenue when pervasive evidence of an arrangement exists, transfer of technology has been completed, services are performed or products have been delivered, the fee is fixed and determinable, and collection is reasonably assured.

Upfront payments for licensing our intellectual property to date have not been separable from the activity of providing research and development services because the license has not been assessed to have stand-alone value separate from the research and development services provided. Such upfront payments are recorded as deferred revenue in the balance sheet and are recognized as contract revenue over the contractual or estimated substantive performance period, which is consistent with the term of the research and development obligations contained in the research and development collaboration agreement.

Payments resulting from our research and development efforts under license agreements are recognized as the activities are performed.

Substantive, at-risk milestone payments are recognized as revenue when the milestone is achieved and collectability is reasonably assured. When contingent payments are not for substantive and at-risk milestones, revenue is recognized over the estimated remaining term of the related service period or, if there are no continuing performance obligations under the arrangement, upon receipt provided that collection is reasonably assured and other revenue recognition criteria have been satisfied.

Research and Development Expenses

As part of the process of preparing our financial statements, we are required to estimate our accrued research and development expenses. This process involves reviewing contracts, reviewing the terms of our license agreements, communicating with our applicable personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of actual cost. The majority of our service providers invoice us monthly in arrears for services performed. We make estimates of our accrued expenses as of each balance sheet date in our financial statements based on facts and circumstances known to us at that time. We periodically confirm the accuracy of our estimates with the service providers and make adjustments if necessary. Examples of estimated accrued research and development expenses include fees to:

- contract research organizations and other service providers in connection with clinical studies;
- contract manufacturers in connection with the production of clinical trial materials; and
- vendors in connection with preclinical development activities.

We base our expenses related to clinical studies on our estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and contract research organizations that conduct and manage clinical studies on our behalf. The financial terms of these agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows and expense recognition. Payments under some of these contracts depend on factors such as the successful enrollment of patients and the

completion of clinical trial milestones. In accruing service fees, we estimate the time period over which services will be performed and the level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from our estimate, we adjust the accrual accordingly. Our understanding of the status and timing of services performed relative to the actual status and timing of services performed may vary and may result in our reporting changes in estimates in any particular period. Adjustments to prior period estimates have not been material for the years ended December 31, 2011 and 2012, and for the six months ended June 30, 2013 and 2012.

Stock-Based Compensation

We expense stock-based compensation to employees over the requisite service period based on the estimated grant-date fair value-based measurement of the awards and considering estimated forfeiture rates. For stock-based compensation awards to non-employees, we re-measure the fair value-based measurement of the non-employee awards at each reporting period prior to vesting and finally at the vesting date of the award. Changes in the estimated fair value-based measurement of these non-employee awards are recognized as compensation expense in the period of change.

Determining the appropriate fair value-based measurement of stock-based awards requires the use of subjective assumptions. In the absence of a public trading market for our common stock, we conducted periodic assessments of the valuation of our common stock. These valuations were performed concurrently with the achievement of significant milestones, with major financing transactions or when prior valuations became stale under Section 409A of the Internal Revenue Code. The determination of the fair value-based measurement of options using an option-pricing model is affected by our estimated common stock fair value as well as assumptions regarding a number of other subjective variables. These other variables include the expected term of the options, our expected stock price volatility over the expected term of the options, stock option exercise and cancellation behaviors, risk-free interest rates, and expected dividends, which are estimated as follows:

- Fair Value of our Common Stock: Because our stock is not publicly traded, we must estimate its fair value, as discussed in "Common Stock Valuations" below.
- Expected Term: We do not believe we are able to rely on our historical exercise and post-vesting termination activity to provide accurate data for estimating the expected term for use in determining the fair value-based measurement of our options. Therefore, we have opted to use the "simplified method" for estimating the expected term of options.
- Volatility: As we do not have a trading history for our common stock, the expected stock price volatility for our common stock was estimated by taking an average weighted historic price volatility for industry peers based on daily price observations over a period equivalent to the expected term of the stock option grants. Industry peers consist of several public companies in the biopharmaceutical industry similar in size, stage of life cycle and financial leverage. We did not rely on implied volatilities of traded options in our industry peers' common stock because the volume of activity was relatively low. We intend to continue to consistently apply this process using the same or similar public companies until a sufficient amount of historical information regarding the volatility of our own common stock share price becomes available, or unless circumstances change such that the identified companies are no longer similar to us, in which case, more suitable companies whose share prices are publicly available would be utilized in the calculation.
- Risk-free Rate: The risk-free interest rate is based on the yields of U.S. Treasury securities with maturities similar to the expected term of the options for each option group.
- Dividend Yield: We have never declared or paid any cash dividends and do not presently plan to pay cash dividends in the foreseeable future. Consequently, we used an expected dividend yield of zero.

The estimation of the number of stock awards that will ultimately vest requires judgment, and to the extent actual results or updated estimates differ from our current estimates, such amounts will be recorded as a

cumulative adjustment in the period in which estimates are revised. Forfeitures are estimated such that we only recognize expense for those shares expected to vest, and adjustments are made if actual forfeitures differ from those estimates.

For the years ended December 31, 2012 and 2011, stock-based compensation expense was $0.1 million, and $0.8 million, respectively. For the six month periods ended June 30, 2013 and 2012 stock-based compensation expense was $34,000 and $42,000, respectively. As of June 30, 2013 and December 31, 2012, we had $37,000 and $91,000 of total unrecognized compensation expense, net of related forfeiture estimates, which we expect to recognize over a weighted-average period of approximately 2.2 years and 2.8 years, respectively.

If any of the assumptions used in a Black-Scholes model changes significantly, stock-based compensation for future awards may differ materially compared with the awards granted previously.

Common Stock Valuations

The fair value of the common stock underlying our stock options and restricted stock was determined by our board of directors, which intended all options granted to be exercisable at a price per share not less than the per share fair value of our common stock underlying those options on the date of grant. All stock awards previously granted or to be granted in the future were or are expected to be granted at the grant date fair value of the award. The valuations of our common stock were determined in accordance with the guidelines outlined in the American Institute of Certified Public Accountants Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. Valuation analysis of our common stock was performed on our behalf by third party valuation specialists. The methodology used by the third party valuation specialists to determine the fair value of our common stock included estimating the fair value of the enterprise, subtracting the fair value of debt from this enterprise value, and then allocating this value using the Option Pricing Method to all of the equity interests. The assumptions used in the valuation model to determine the fair value of our common stock as of the date of each option and restricted stock award, are based on numerous objective and subjective factors combined with management judgment including the following:

- progress of research and development activities;
- our operating and financial performance;
- market conditions;
- developmental milestones achieved;
- sales of our convertible preferred stock in arms-length transactions;
- business risks; and
- management and board of director experience.

We have granted stock options during the period from January 1, 2011, through June 30, 2013, as summarized below:

Date of Issuance	Number of Shares Subject to Options Granted	Exercise Price per Share	Fair Value Estimate per Common Share	Estimated Total Fair Value-Based Measurement of Options Granted (In thousands)
January 25, 2012	1,200,000	$ 0.06	$ 0.05	$ 58

Management and our board of directors performed valuation analyses with the assistance of independent valuation specialists to determine the then current fair value of our common stock. To facilitate these valuation analyses, we developed projections of our future revenues and operating expenses. Key assumptions reflected in

the income approach calculations included the anticipated timing of a potential liquidity event, the estimated volatility of our common stock, and the discount for lack of marketability of our common stock. These income approach assumptions are set forth below for each of the valuations performed as of December 31, 2012 and 2011:

	December 31,	
	2011	2012
Common Stock Value per Share	$0.06	$0.01
Time to Liquidity (in years)	1.5	2.0
Volatility	92.7%	94.7%
Risk-Free Interest Rate	0.20%	0.30%
Marketability Discount Rate	42.8%	49.2%

For grants of stock awards made on dates for which there was no valuation performed by an independent valuation specialist, our board of directors determined the fair value of our common stock on the date of grant based upon the immediately preceding valuation and other pertinent information available to it at the time of grant.

Results of Operations

General

To date, we have not generated any net income from operations. Since our date of incorporation through June 30, 2013, we have an accumulated deficit of $340.6 million, primarily as a result of expenditures for research and development and general and administrative expenses. While we may in the future generate revenue from a variety of sources, including license fees and milestone payments in connection with strategic partnerships, our product candidates are at a mid-level stage of development and may never be successfully developed or commercialized. Accordingly, we expect to continue to incur substantial losses from operations for the foreseeable future and there can be no assurance that we will ever generate sufficient revenue to achieve and sustain profitability.

Contract Revenue

Our recent revenue comprises primarily collaboration agreement-related revenue. Collaboration agreement-related revenue has included license fees, payments for research and development services and milestone and other contingent payments. For the six months ended June 30, 2013 there were no collaboration revenues.

Research & Development Expenses

Conducting research and development is central to our business model. For the years ended December 31, 2012 and 2011, and the six months ended June 30, 2013 and 2012, research and development expenses were $9.3 million, $14.4 million, $2.5 million, and $5.3 million, respectively. Research and development expenses are detailed in the table below:

	(In thousands)			
	Six months ended June 30,		Year ended December 31,	
	2013	2012	2012	2011
	(unaudited)			
MBX-102 Clinical and Non-Clinical	$ 20	$ 10	$ 39	$ 123
MBX-102 Gout – Three Phase 2 Randomized Studies	560	2,395	3,741	5,774
MBX-8025	—	4	21	48
MBX-2982	25	70	118	394
Other Projects	1	—	—	202
Total Project Costs	606	2,479	3,919	6,541
Internal Research and Development Costs	1,853	2,799	5,361	7,850
Total Research and Development	$2,459	$5,279	$9,280	$14,391

Our external research and development costs consist primarily of:

- expenses incurred under agreements with contract research organizations, investigative sites and consultants that conduct our clinical trials and a substantial portion of our preclinical activities;
- the cost of acquiring and manufacturing clinical trial and other materials; and
- other costs associated with development activities, including additional studies

Internal research and development costs consist primarily of salaries and related fringe benefits costs for our employees (such as workers compensation and health insurance premiums), stock-based compensation charges, travel costs, lab supplies and overhead expenses. Internal costs generally benefit multiple projects and are not separately tracked per project.

We expect to continue to incur substantial expenses related to our development activities for the foreseeable future as we continue product development and initiate our next clinical study for arhalofenate. Since product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later stage clinical trials, we expect that our research and development expenses will increase in the future. In addition, if our product development efforts are successful, we expect to incur substantial costs to prepare for potential Phase 3 clinical trials and activities.

General and Administrative Expenses

General and administrative expenses consist principally of personnel-related costs, professional fees for legal, consulting, audit services, rent and other general operating expenses not otherwise included in research and development. For the years ended December 31, 2012 and 2011, and the six months ended June 30, 2013 and 2012, general and administrative expenses were $4.2 million, $4.7 million, $2.1 million, and $2.4 million, respectively. We anticipate general and administrative expenses will increase in future periods, reflecting an expanding infrastructure and increased professional fees associated with being a public reporting company under the Exchange Act.

Comparison of Six Months Ended June 30, 2013 and 2012

	For the Six Months Ended June 30,		
	2013	2012	Variance
	(unaudited)		
($ in thousands)			
Contract revenue	$ —	$ 125	$ (125)
Operating expenses:			
Research and development	2,459	5,279	(2,820)
General and administrative	2,097	2,418	(321)
Loss from operations	(4,556)	(7,572)	3,016
Interest income (expense), net	(419)	(383)	(37)
Other income (expense), net	124	2	122
Net loss from operations	$(4,851)	$(7,953)	$ 3,101

Contract revenue as of June 30, 2012, was related to specific research and development funding with Takeda San Francisco, Inc. ("Takeda"). The decrease in contract revenue from the six months ended June 30, 2012, to the six months ended June 30, 2013, was due to the termination of the agreement effective March 31, 2013.

Research and development expenses decreased $2.8 million, from $5.3 million to $2.5 million for the six months ended June 30, 2012 and 2013, respectively. The reduction in costs primarily arose due to the completion of several clinical trials in early 2012 and reduction in labor costs due to the voluntary attrition of eight people from June 30, 2012 to June 30, 2013.

General and administrative expenses decreased $0.3 million from $2.4 million for the six months ended June 30, 2012, to $2.1 million for the six months ended June 30, 2013. The decrease in general and administrative expenses was primarily due to a reduction of $0.3 million in labor costs from the voluntary attrition of four people and a reduction in travel and entertainment costs of $0.1 million due to cost cutting measures. This was offset by an increase of $0.1 million in professional costs primarily associated with an increase in audit fees due to reviews associated with filing of our Form-10 with the SEC.

Interest income (expense), net, decreased by approximately $37,000 for the six months ended June 30, 2013 compared to June 30, 2012 due to the recognition of interest expense being calculated on the principal debt balance and increasing cumulative interest due.

Comparison of Years Ended December 31, 2012 and 2011

	For the Year Ended December 31,		
($ in thousands)	2012	2011	Variance
Contract revenue	$ 3,050	$15,147	$(12,097)
Operating expenses:			
Research and development	9,280	14,391	(5,111)
General and administrative	4,208	4,654	(446)
Loss from operations	(10,438)	(3,898)	(6,540)
Interest income (expense), net	(819)	(627)	(192)
Other income (expense), net	2	28	(26)
Net loss	$(11,255)	$ (4,497)	$ (6,758)

Contract revenue in each period related to our arrangement with Takeda for an annual license fee and research and development services totaled $0.1 million and $0.2 million for the years ended December 31, 2011 and 2012, respectively. We recognized approximately $2.9 million in contract revenue in 2012, which was received as a final payment of contract revenue associated with termination of a collaboration agreement with Sanofi-Aventis. Contract revenue decreased by $12.1 million from the year ended December 31, 2011, to the year ended December 31, 2012. This decrease was primarily attributable to the termination of the collaboration agreement with Sanofi-Aventis.

Research and development expenses decreased by $5.1 million from the year ended December 31, 2011, to the year ended December 31, 2012. This decrease was attributable to a decrease in clinical trial cost of $2.6 million in 2012 and decreases in consulting and personnel related expenses, including salaries, travel and supplies of $1.4 million. Stock compensation expense, depreciation and overhead allocations totaling $0.7 million accounts for the remainder of the decrease. The decrease in clinical trial costs is primarily related to the completion of three small Phase 2 clinical trials. The decrease in personnel related expenses was primarily attributed to a reduction of six employees in our research and development organization which also impacted stock compensation expense.

General and administrative expenses decreased $0.4 million from the year ended December 31, 2011, to the year ended December 31, 2012. This decrease is primarily attributable to a decrease in personnel related expenses, including stock compensation, and facility and office costs, and bank service charges of $0.7 million. This was partially offset by an increase in travel related to obtaining financing and professional costs of $0.4 million.

Interest expense increased $0.1 million in 2012 from $0.7 million for the year ended December 31, 2011, due to interest expense being calculated on the principal balance and an increasing cumulative interest balance due. Also in 2012, the interest rate on the convertible debt was increased by 0.5% due to several amendments in which the maturity dates of the note were extended to March 31, 2013 and then August 1, 2013. Also as a result of these amendments, a conversion option which increased the convertible debt by $70,000 was recognized in 2012. Sixty thousand of the conversion option was amortized to interest expense as of December 31, 2012. Interest income was $22,000 for the year ended December 31, 2012 and $78,000 for the year ended December 31, 2011. The decrease was attributable to reduced yields from lower investment balances in our portfolio which consisted primarily of government securities and money market funds.

Income Taxes

As of December 31, 2012, we had federal and state net operating loss carryforwards of approximately $156.0 million to offset future federal income taxes which will expire beginning in 2024 through 2032 and the state income taxes which will expire beginning in 2014 through 2032. Current federal and state tax laws include substantial restrictions on the utilization of net operating losses and tax credits in the event of an ownership change. Even if the carryforwards are available, they may be subject to annual limitations, lack of future taxable income, or future ownership changes that could result in the expiration of the carryforwards before they are utilized. At December 31, 2012, we recorded a 100% valuation allowance against our deferred assets of approximately $1.7 million as our management believes it is uncertain that they will be fully realized. If we determine in the future that we will be able to realize all or a portion of our net operating loss carryforwards, an adjustment to our net operating loss carryforwards would increase net income in the period in which we make such a determination.

Liquidity and Capital Resources

To date, we have funded our operations through the sale of equity securities, licensing fees, issuance of debt and collaborations with third parties. At June 30, 2013, we had cash and cash equivalents of $3.6 million. We will need to continue to raise capital to complete our ongoing and planned clinical trials.

The following table summarizes our equity funding sources as of August 1, 2013:

Series *($ millions)*	Year	Number of Shares	Net Proceeds
A-1 Convertible Preferred Stock, net	1990 - 2001	1,012,389	$ 73.2
B-1 Convertible Preferred Stock, net	2003 - 2008	29,671,222	85.8
C-1 Convertible Preferred Stock, net	2006	2,173,913	10.0
D-1 Convertible Preferred Stock, net	2007	7,974,997	28.7
E-1 Convertible Preferred Stock, net	2009 - 2010	3,121,593	9.1
E-3 Convertible Preferred Stock, net	2010	5,687,700	26.1
TOTAL		49,641,814	$ 232.9

Cash Flows for the Six Months Ended June 30, 2013 and 2012 and the Years Ended December 31, 2012 and 2011

Operating Activities

Cash used in operating activities decreased $3.2 million for the six months ended June 30, 2013, compared to the six months ended June 30, 2012, primarily due to a $3.1 million decrease in net loss. Cash used in operating activities decreased $6.6 million for the year ended December 31, 2012 as compared to the year ended December 31, 2011 primarily due to an increase in the net loss of $6.8 million and a decrease in recognized deferred revenue of $14.7 million.

Investing Activities

Cash used in and provided by investing activities for the six months ended June 30, 2013 and 2012, and the years ended December 31, 2012 and 2011 decreased by $7.4 million and $8.2 million, respectively, primarily due to decreases in purchases of marketable securities and proceeds from maturities of marketable securities.

Financing Activities

Cash used in financing activities decreased $0.2 million for the twelve months ended December 31, 2012, compared to the twelve months ended December 31, 2011, primarily due to principal payments on equipment loans.

Management believes that cash and cash equivalents as of June 30, 2013, are insufficient to sustain the operations of the company beyond the end of October 2013. We expect to incur substantial expenditures in the foreseeable future for the development and potential commercialization of our product candidates. We will continue to require additional financing to develop our products and fund operating losses. We will seek funds through equity financings, collaborative or other arrangements with corporate sources, or through other sources of financing, including a public offering. Adequate additional funding may not be available to us on acceptable terms or at all. Our failure to raise capital as and when needed could have a negative impact on our financial condition and our ability to pursue our business strategies. If adequate funds are not available to us, we may be required to close our business.

Contractual Obligations and Commitments

We have lease obligations consisting of an operating lease for our operating facility that commenced in July 2010 and expires April 2014, for approximately 41,600 square feet in Hayward, CA.

Preferred stockholders are entitled to receive cumulative dividends of $92.1 million as of June 30, 2013 when and as declared by the board of directors but only out of funds that are legally available. All such dividends

shall accrue automatically on a daily basis and all accrued and unpaid dividends shall be fully paid prior to payment of any other dividend on shares of the Company's common stock. As of June 30, 2013, no dividends have been declared by the board.

Off-Balance Sheet Arrangements

We do not currently have, nor have we ever had, any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not engage in trading activities involving non-exchange traded contracts.

ITEM 3. PROPERTIES.

CymaBay leases its corporate office located in Hayward, California, under a lease that expires in April 2014, with an option to renew for a two-year term. CymaBay believes that its existing facilities are adequate to meet its current requirements.

ITEM 4. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.

Beneficial Ownership of Common Stock

The following table (the "Fully Diluted Table") sets forth information regarding the beneficial ownership of CymaBay common stock as of August 1, 2013, by (1) each of its directors and named executive officers, (2) each person that beneficially owns more than 5% of the outstanding shares of CymaBay common stock and (3) all of CymaBay's executive officers and directors as a group. Unless otherwise indicated, the address for each of the beneficial owners in the table below is c/o CymaBay Therapeutics, Inc., 3876 Bay Center Place, Hayward, California 94545.

Name of Beneficial Owner (1)	Amount and Nature of Beneficial Ownership	Percentage of Class
Harold Van Wart, Ph.D. (2)	2,603,407	4.7%
Charles A. McWherter, Ph.D. (3)	680,208	1.3%
Bonnie A. Charpentier, Ph.D. (4)	368,304	*
Robert L. Martin, Ph.D. (5)	345,746	*
Patrick J. O'Mara (6)	381,679	*
Diana Petty (7)	278,612	*
Louis G. Lange, M.D., Ph.D. (8)	447,459	*
Eric Converse (9)	4,436,869	8.4%
Anthony B. Evnin, Ph.D. (10)	4,672,862	8.8%
Carl Goldfischer, M.D. (11)	3,715,303	7.0%
Hari Kumar, Ph.D. (12)	4,672,861	8.8%
Edward E. Penhoet, Ph.D. (13)	4,672,862	8.8%
Kurt von Emster, CFA (14)	159,198	*
Entities Associated With Alta BioPharma (15)	4,672,862	8.8%
Biotech Turnaround Fund (BTF) B.V. (16)	4,436,869	8.4%
Johnson & Johnson Development Corporation (17)	8,630,540	16.3%
Entities Associated With The Bay City Capital Funds (18)	3,715,303	7.0%
Entities Associated With Venrock Associates (19)	4,672,862	8.8%
Entities Associated With Versant Venture Capital (20)	4,672,861	8.8%
Entities Associated with VantagePoint (21)	3,828,373	7.2%
Entities Associated with The KBC Funds (22)	3,148,588	5.9%
Novo A/S (23)	2,811,008	5.3%
Directors and officers as a group (total of 13 persons) (24)	32,494,000	55.9%

* Less than 1%.

(1) Beneficial ownership is calculated based on 53,020,963 shares of common stock issued and outstanding, including shares issuable upon conversion of preferred stock, as of August 1, 2013. The number of shares of preferred stock are included as they are immediately convertible into shares of common stock and vote together with the common stock on matters put to vote of the holders of common stock on an as-if-converted basis; there are currently only 466,681 shares of common stock outstanding excluding shares issuable upon conversion of the preferred stock. The number of shares beneficially owned by a person also includes shares of common stock underlying options or warrants held by that person that are currently exercisable or exercisable within 60 days of August 1, 2013. The shares issuable pursuant to the exercise of those options or warrants are deemed outstanding for computing the percentage ownership of the person holding those options and warrants but are not deemed outstanding for the purposes of computing the percentage ownership of any other person. Unless otherwise indicated, the persons and entities named in the table have sole voting and sole investment power with respect to the shares set forth opposite that person's name, subject to community property laws, where applicable.

(2) Consists of shares issuable upon conversion of 36,460 shares of Series E-1 preferred stock, and shares issuable upon options to acquire 2,566,947 shares of common stock exercisable within 60 days of August 1, 2013.

(3) Includes shares issuable upon options to acquire 680,208 shares of common stock exercisable within 60 days of August 1, 2013.

(4) Includes shares issuable upon options to acquire 368,304 shares of common stock exercisable within 60 days of August 1, 2013.

(5) Includes shares issuable upon options to acquire 345,746 shares of common stock exercisable within 60 days of August 1, 2013.

(6) Consists of 1,750 shares of common stock outstanding and includes shares issuable upon options to acquire 381,679 shares of common stock exercisable within 60 days of August 1, 2013.

(7) Includes shares issuable upon options to acquire 278,612 shares of common stock exercisable within 60 days of August 1, 2013.

(8) Consists of 115,000 shares of common stock outstanding and includes shares issuable upon options to acquire 332,459 shares of common stock exercisable within 60 days of August 1, 2013.

(9) Includes shares held by Biotech Turnaround Fund (BTF) B.V. See Note 16. Mr. Converse disclaims beneficial ownership of the shares held by Biotech Turnaround Fund (BTF) B.V., except to the extent of his ability to direct the voting or disposition of such shares or his pecuniary interest therein.

(10) Includes shares held by the Venrock Funds. See Note 19. Mr. Evnin disclaims beneficial ownership of the shares held by the Venrock Funds, except to the extent of his ability to direct the voting or disposition of such shares or his pecuniary interest therein

(11) Includes shares held by the Bay City Capital Funds. See Note 18. Mr. Goldfischer disclaims beneficial ownership of the shares held by the Bay City Capital Funds, except to the extent of his ability to direct the voting or disposition of such shares or his pecuniary interest therein.

(12) Includes shares held by the Versant Funds. See Note 20. Mr. Kumar disclaims beneficial ownership of the shares held by the Versant Funds, except to the extent of his pecuniary interest therein.

(13) Includes shares held by the Alta BioPharma. See Note 15. Mr. Penhoet disclaims beneficial ownership of the shares held by the Alta BioPharma, except to the extent of his ability to direct the voting or disposition of such shares or his pecuniary interest therein.

(14) Consists of shares issuable upon conversion of 12,077 shares of Series D-1 preferred stock held by The Konrad Hans von Emster III and Elizabeth F. von Emster Revocable Trust dated January 18, 2005 and 36,460 shares issuable upon conversion of Series E-1 preferred stock and shares issuable upon options to acquire 106,350 shares of common stock exercisable within 60 days of August 1, 2013.

(15) Consists of shares issuable upon conversion of 209,939 shares of Series B-1 preferred stock, 35,411 shares of Series D-1 preferred stock and 29,156 shares of Series E-1 preferred stock held by Alta BioPharma Partners III GmbH & Co. Beteiligungs KG, shares issuable upon conversion of 3,125,993 shares of Series B-1 preferred stock, 527,264 shares of Series D-1 preferred stock, and 434,135 shares of Series E-1 preferred stock, held by Alta BioPharma Partners III, L.P., shares issuable upon conversion of 77,038 shares of Series B-1 preferred stock, 12,994 shares of Series D-1 preferred stock and 10,698 shares of Series E-1 preferred stock held by Alta

Embarcadero BioPharma Partners III, LLC. Alta Partners III, Inc. provides investment advisory services to several venture capital funds including, Alta BioPharma Partners III, L.P., Alta BioPharma Partners III GmbH & Co. Beteiligungs KG and Alta Embarcadero BioPharma Partners III, LLC. The respective general partners, directors and managers of Alta BioPharma Partners III, L.P., Alta BioPharma Partners III GmbH & Co. Beteiligungs KG, and Alta Embarcadero BioPharma Partners III, LLC exercise sole voting and investment power with respect to the shares owned by such funds. Farah Champsi, Edward Penhoet and Edward Hurwitz (collectively known as "the Principals") are directors of Alta BioPharma Management III, LLC (which is the general partner of Alta BioPharma Partners III, L.P. and the managing limited partner of Alta BioPharma Partners III GmbH & Co. Beteiligungs KG), and managers of Alta Embarcadero BioPharma Partners III, LLC. As directors and managers of such funds, they may be deemed to share voting and investment powers for the shares held by the foregoing funds. The principals of Alta Partners III, Inc. disclaim beneficial ownership of all such shares held by the foregoing funds, except to the extent of their proportionate pecuniary interests therein. Alta Partners III, Inc. is a venture capital firm with an office in San Francisco. Alta Partners III, Inc. is a California Corporation. Alta BioPharma Partners III, L.P. is a Delaware Limited Partnership. Alta BioPharma Partners III GmbH & Co. Beteiligungs KG is a German Limited Partnership, and Alta Embarcadero BioPharma Partners III, LLC is a California Limited Liability Company. The address of the Alta BioPharma entities is: One Embarcadero Center, Suite 3700, San Francisco, CA 94111.

(16) Consists of shares issuable upon conversion of 3,412,969 shares of Series B-1 preferred stock and 750,000 shares of Series D-1 preferred stock. The address of Biotech Turnaround Fund (BTF) B.V. is: 2011 MP Haarlem, Netherlands.

(17) Consists of shares issuable upon conversion of 2,173,913 shares of Series C-1 preferred stock, 563,234 shares of Series D-1 preferred stock and 5,687,700 shares of Series E-3 preferred stock. Linda M. Vogel, Manager, Operations of Johnson & Johnson Development Corporation ("JJDC") exercises voting and dispositive power over the shares held by JJDC. The address of JJDC is: 410 George St., New Brunswick, NJ 08901.

(18) Consists of 3,325 shares held by Bay City Capital LLC and shares issuable upon conversion of 558 shares of Series A-1 preferred stock, 183,532 shares of Series B-1 preferred stock, 15,346 shares of Series D-1 preferred stock, and 22,814 shares of Series E-1 preferred stock, held by The Bay City Capital Fund II, Co-Investment Fund, L.P., and shares issuable upon conversion of 8,532 shares of Series A-1 preferred stock, 2,806,387 shares of Series B-1 preferred stock, 234,654 shares of Series D-1 preferred stock, and 348,855 shares of Series E-1 preferred stock, held by The Bay City Capital Fund II, L.P. Bay City Management II, LLC (BCCM) is the general partner of The Bay City Capital Fund II, L.P. and the Bay City Capital Fund II Co-Investment Fund., (Fund II). Bay City Capital LLC (BCC) is the manager of BCCM. BCC and BCCM have sole voting and investment control over the shares owned by Fund II. Frederick B. Craves and Carl Goldfischer are the managing directors of BCC and are deemed to have voting and investment control over the shares owned by Fund II. The managing directors disclaim beneficial ownership of the shares owned by Fund II except to the extent of their respective pecuniary interest therein. The address of The Bay City Capital Funds is: 750 Battery St., Suite 400, San Francisco, CA 94111.

(19) Consists of shares issuable upon conversion of 2,778,157 shares of Series B-1 preferred stock, 468,595 shares of Series D-1 preferred stock, and 385,828 shares of Series E-1 preferred stock, held by Venrock Associates IV, L.P. (Venrock IV), shares issuable upon conversion of 68,259 shares of Series B-1 preferred stock, 11,513 shares of Series D-1 preferred stock, and 9,479 shares of Series E-1 preferred stock, held by Venrock Entrepreneurs Fund IV, L.P. (Venrock Entrepreneurs), and shares issuable upon conversion of 566,553 shares of Series B-1 preferred stock, 95,561 shares of Series D-1 preferred stock, and 78,682 shares of Series E-1 preferred stock, held by Venrock Partners, L.P. (Venrock Partners). The sole general partner of Venrock IV is Venrock Management IV, LLC (VM4). The sole general partner of Venrock Partners is Venrock Partners Management, LLC (VPM). The sole general partner of Venrock Entrepreneurs is VEF Management IV, LLC (VEFM4). VM4, VPM and VEFM4 disclaim beneficial ownership over all shares held by the Venrock Entities, except to the extent of their indirect pecuniary interests therein. Anthony B. Evnin, Ph.D., a director of CymaBay, is a member of VM4, VPM and VEFM4 and as such, he may be deemed to have voting and investment power with respect to these shares. Dr. Evnin disclaims beneficial ownership of these shares except to the extent of his indirect pecuniary interest therein. The address of The Venrock Funds is: 5340 Hillview Avenue, Palo Alto, CA 94304.

(20) Consists of shares issuable upon conversion of 63,010 shares of Series B-1 preferred stock, 10,628 shares of Series D-1 preferred stock, and 8,750 shares of Series E-1 preferred stock, held by Versant Affiliates Fund II-A, L.P., shares issuable upon conversion of 29,675 shares of Series B-1 preferred stock, 5,005 shares of Series D-1 preferred stock, and 4,121 shares of Series E-1 preferred stock, held by Versant Side Fund II, L.P., and shares issuable upon conversion of 3,320,284 shares of Series B-1 preferred stock, 560,036 shares of Series D-1 preferred stock, and 461,118 shares of Series E-1 preferred stock, held by Versant Venture Capital II, L.P. Versant Ventures II, LLC, the general partner of Versant Venture Capital II, L.P., Versant Side Fund II, L.P. and Versant Affiliates Fund II-A (collectively, the "Versant Funds"), has the authority to vote for or dispose of the CymaBay stock held by the Versant Funds. The managing directors of the general partners are Brian Atwood, Sam Colella, Ross Jaffe, Bill Link, Barbara Lubash, Don Milder, Rebecca Robertson, Charles Warden and Brad Bolzon, who share voting and signing authority with respect to the general partner. The address of The Versant Funds is: 3000 Sand Hill Rd., Building 4, Suite 210, Menlo Park, CA 94025.

(21) Consists of shares issuable upon conversion of 2,329,306 shares of Series B-1 preferred stock, 355,262 shares of Series D-1 preferred stock and 296,243 shares of Series E-1 preferred stock held by VantagePoint CDP Partners, LP, 153,573 shares of Series B-1 preferred stock held by CDP Capital Technology US Ventures Fund 2002 and 383,959 shares of Series B-1 preferred stock, 81,984 shares of Series D-1 preferred stock and 68,363 shares of Series E-1 preferred stock held by CDP Capital-Technology Ventures U.S. Fund 2002 L.P. The address of VantagePoint is: 1001 Bayhill Dr., Suite 300, San Bruno, CA 94066.

(22) Consists of shares issuable upon conversion of 238,903 shares of Series B-1 preferred stock held by KBC Equity Fund-Biotechnology, 477,806 shares of Series B-1 preferred stock held by KBC Equity Fund-Pharma and 1,672,321 shares of Series B-1 preferred stock held by KBC Private Equity NV. The address of The KBC Funds is: Havenlaan 121, Brussels, Belgium 1080.

(23) Consists of shares issuable upon conversion of 2,047,781 shares of Series B-1 preferred stock, 345,401 shares of Series D-1 preferred stock and 291,686 shares of Series E-1 preferred stock. Henrik Gurtler, the Chief Executive Officer of Novo A/S has the sole authority to vote or dispose of the shares of CymaBay capital stock held by Novo A/S. The address of Novo A/S is: 2880 Bagsvaerd, Denmark.

(24) Consists of shares held by each executive officer and director including the shares described in footnotes 2 through 14 above.

Beneficial Ownership of Series A-1 Preferred Stock

The following table sets forth information regarding the beneficial ownership of CymaBay Series A-1 preferred stock as of August 1, 2013, by (1) each of its directors and executive officers, (2) each person that beneficially owns more than 5% of the outstanding shares of CymaBay Series A-1 preferred stock and (3) all of CymaBay's directors as a group. No executive officers own any Series A-1 preferred stock. Unless otherwise indicated, the address for each of the beneficial owners in the table below is c/o CymaBay Therapeutics, Inc., 3876 Bay Center Place, Hayward, California 94545.

Name of Beneficial Owner (1)	Amount and Nature of Beneficial Ownership	Percentage of Class
Booth & Co. (2)	263,194	26.0%
Charter Legacy LLC (3)	534,563	52.8%
Warner Lambert Co. (4)	52,571	5.2%
Directors and officers as a group (total of 0 persons)	0	0%

(1) Beneficial ownership is calculated based on 1,012,389 shares of Series A-1 preferred stock issued and outstanding. Unless otherwise indicated, the persons and entities named in the table have sole voting and sole investment power with respect to the shares set forth opposite that person's name, subject to community property laws, where applicable.

(2) The address of Booth & Co. is: c/o Northern Trust Company, P.O. Box 92303, Chicago, Il 60675.

(3) The address of Charter Legacy LLC is: 525 University Ave., Suite 1400, Palo Alto, CA 94301.

(4) The address of Warner Lambert Co. is: 201 Tabor Rd., Morris Plains, NJ 07950.

Beneficial Ownership of Series B-1 Preferred Stock

The following table sets forth information regarding the beneficial ownership of CymaBay Series B-1 preferred stock as of August 1, 2013, by (1) each of its directors and executive officers, (2) each person that beneficially owns more than 5% of the outstanding shares of CymaBay Series B-1 preferred stock and (3) all of CymaBay's directors as a group. No executive officers own any Series B-1 preferred stock. Unless otherwise indicated, the address for each of the beneficial owners in the table below is c/o CymaBay Therapeutics, Inc., 3876 Bay Center Place, Hayward, California 94545.

Name of Beneficial Owner (1)	Amount and Nature of Beneficial Ownership	Percentage of Class
Entities Associated With Alta BioPharma (2)	3,412,970	11.5%
Biotech Turnaround Fund (BTF) B.V. (3)	3,412,969	11.5%
Charter Legacy, LLC (4)	1,626,758	5.5%
Entities Associated with The KBC Fund (5)	2,389,030	8.1%
Novo A/S (6)	2,047,781	6.9%
Pictet Funds – (LUX) (7)	1,535,835	5.2%
Entities Associated with The Bay City Capital Funds (8)	2,989,919	10.1%
Entities Associated with VantagePoint (9)	2,866,838	9.7%
Entities Associated With Venrock Associates (10)	3,412,969	11.5%
Entities Associated With Versant Venture Capital (11)	3,412,969	11.5%
Anthony B. Evnin, Ph.D. (12)	3,412,969	11.5%
Edward E. Penhoet, Ph.D. (13)	3,412,970	11.5%
Eric Converse (14)	3,412,969	11.5%
Carl Goldfischer, M.D. (15)	2,989,919	10.1%
Hari Kumar, Ph.D. (16)	3,412,969	11.5%
Directors and officers as a group (total of 5 persons) (17)	16,641,796	56.1%

(1) Beneficial ownership is calculated based on 29,671,222 shares of Series B-1 preferred stock issued and outstanding. Unless otherwise indicated, the persons and entities named in the table have sole voting and sole investment power with respect to the shares set forth opposite that person's name, subject to community property laws, where applicable.

(2) Consists of 209,939 shares held by Alta BioPharma Partners III GmbH & Co. Beteiligungs KG, 3,125,993 shares held by Alta BioPharma Partners III, L.P., and 77,038 shares held by Alta Embarcadero BioPharma Partners III, LLC. The persons holding voting or dispositive power over the shares of Series B-1 preferred stock held by the Alta BioPharama entities is as set forth in footnote 15 to the Fully Diluted Table. The address of the Alta BioPharma entities is: One Embarcadero Center, Suite 3700, San Francisco, CA 94111

(3) The address of Biotech Turnaround Fund (BTF) B.V. is: 2011 MP Haarlem, Netherlands.

(4) The address of Charter Legacy, LLC is: 525 University Ave., Suite 1400, Palo Alto, CA 94301

(5) Consists of 238,903 shares held by KBC Equity Fund-Biotechnology, 447,806 shares held by KBC Equity Fund-Pharma, 1,672,321 shares held by KBC Private Equity NV. The address of The KBC Fund entities is: Havenlaan 121, Brussels, Belgium 1080.

(6) The persons holding voting or dispositive power over the shares of the Series B-1 preferred stock held by Novo A/S is as set forth in footnote 23 to the Fully Diluted Table. The address of Novo A/S is: 2880 Bagsvaerd, Denmark.

(7) The address of Pictet Funds – (LUX) is: 60, route des Acacias,CH-1211, Geneva 73, Switzerland.

(8) Consists of 183,532 shares held by The Bay City Capital Fund II, Co-Investment Fund, L.P., and 2,806,387 shares held by The Bay City Capital Fund II, L.P. The persons holding voting or dispositive power over the

shares of the Series B-1 preferred stock held by The Bay City Capital Fund entities is as set forth in footnote 18 to the Fully Diluted Table. The address of The Bay City Capital Fund entities is: 750 Battery St., Suite 400, San Francisco, CA 94111.

(9) Consists of 2,329,306 shares held by VantagePoint CDP Partners, LP, 153,573 shares held by CDP Capital Technology US Ventures Fund 2002 and 383,959 shares held by CDP Capital-Technology Ventures U.S. Fund 2002 L.P. The address of VantagePoint is: 1001 Bayhill Dr., Suite 300, San Bruno, CA 94066.

(10) Consists of 2,778,157 shares held by Venrock Associates IV, L.P., 68,259 shares held by Venrock Entrepreneurs Fund IV, L.P., and 566,553 shares held by Venrock Partners, L.P. The persons holding voting or dispositive power over the shares of Series B-1 preferred stock held by the Venrock Funds is as set forth in footnote 19 to the Fully Diluted Table. The address of The Venrock Funds is: 3340 Hillview Avenue, Palo Alto, CA. 94304.

(11) Consists of 63,010 shares held by Versant Affiliates Fund II-A, L.P., 29,675 shares held by Versant Side Fund II, L.P., and 3,320,284 shares held by Versant Venture Capital II, L.P. The persons holding voting or dispositive power over the shares of Series B-1 preferred stock held by The Versant Funds is as set forth in footnote 20 to the Fully Diluted Table. The address of The Versant Funds is: 3000 Sand Hill Rd., Building 4, Suite 210, Menlo Park, CA 94025.

(12) Includes the shares held by the Venrock Funds. See Note 10.

(13) Includes the shares held by Alta BioPharma. See footnote 2.

(14) Includes the shares held by Biotech Turnaround Fund (BTF) B.V. See footnote 3.

(15) Includes the shares held by The Bay City Capital Fund. See footnote 8.

(16) Includes the shares held by The Versant Funds. See footnote 11.

(17) Includes the shares deemed beneficially owned by the directors listed in footnotes 12-16.

Beneficial Ownership of Series C-1 Preferred Stock

The following table sets forth information regarding the beneficial ownership of CymaBay Series C-1 preferred stock as of August 1, 2013, by (1) each of its directors and executive officers, (2) each person that beneficially owns more than 5% of the outstanding shares of CymaBay Series C-1 preferred stock and (3) all of CymaBay's directors as a group. No executive officers own any Series C-1 preferred stock. Unless otherwise indicated, the address for each of the beneficial owners in the table below is c/o CymaBay Therapeutics, Inc., 3876 Bay Center Place, Hayward, California 94545.

Name of Beneficial Owner (1)	Amount and Nature of Beneficial Ownership	Percentage of Class
Johnson & Johnson Development Corporation (2)	2,173,913	100%

(1) Beneficial ownership is calculated based on 2,173,913 shares of Series C-1 preferred stock issued and outstanding. Unless otherwise indicated, the persons and entities named in the table have sole voting and sole investment power with respect to the shares set forth opposite that person's name, subject to community property laws, where applicable.

(2) The persons holding voting or dispositive power over the shares of Series C-1 preferred stock held by the Johnson & Johnson Development Corporation is as set forth in footnote 17 to the Fully Diluted Table. The address of Johnson & Johnson Development Corporation is: 410 George St., New Brunswick, NJ 08901.

Beneficial Ownership of Series D-1 Preferred Stock

The following table sets forth information regarding the beneficial ownership of CymaBay Series D-1 preferred stock as of August 1, 2013, by (1) each of its directors and executive officers, (2) each person that beneficially owns more than 5% of the outstanding shares of CymaBay Series D-1 preferred stock and (3) all of CymaBay's directors as a group. No executive officers own any Series D-1 preferred stock. Unless otherwise indicated, the address for each of the beneficial owners in the table below is c/o CymaBay Therapeutics, Inc., 3876 Bay Center Place, Hayward, California 94545.

Name of Beneficial Owner (1)	Amount and Nature of Beneficial Ownership	Percentage of Class
AllianceBernstein Venture Fund I, L.P. (2)	1,000,000	12.5%
Entities Associated With Alta BioPharma (3)	575,669	7.2%
Biotech Turnaround Fund (BTF) B.V. (4)	750,000	9.4%
Entities Associated With Deerfield (5)	750,000	9.4%
Entities Associated with The DGAM Funds (6)	466,006	5.8%
Johnson & Johnson Development Corporation (7)	563,234	7.1%
Lobstercrew & Co. (8)	500,000	6.3%
Entities Associated with VantagePoint (9)	437,246	5.5%
Entities Associated With Venrock Associates (10)	575,669	7.2%
Entities Associated With Versant Venture Capital (11)	575,669	7.2%
Kurt von Emster, CFA (12)	12,077	*
Anthony B. Evnin, Ph.D. (13)	575,669	7.2%
Edward E. Penhoet, Ph.D. (14)	575,669	7.2%
Eric Converse (15)	750,000	9.4%
Hari Kumar, Ph.D. (16)	575,669	7.2%
Directors and officers as a group (total of 5 persons) (17)	2,489,084	31.2%

* Less than 1%.

(1) Beneficial ownership is calculated based on 7,974,997 shares of Series D-1 preferred stock issued and outstanding. Unless otherwise indicated, the persons and entities named in the table have sole voting and sole investment power with respect to the shares set forth opposite that person's name, subject to community property laws, where applicable.

(2) The address of AllianceBernstein Venture Fund I, L.P. is: 1345 Avenue of the Americas, New York, NY 10105

(3) Consists of 35,411 shares held by Alta BioPharma Partners III GmbH & Co. Beteiligungs KG, 527,264 shares held by Alta BioPharma Partners III, L.P., and 12,994 shares held by Alta Embarcadero BioPharma Partners III, LLC. The persons holding voting or dispositive power over the shares of Series D-1 preferred stock held by the Alta BioPharama entities is as set forth in footnote 15 to the Fully Diluted Table. The address of the Alta BioPharma entities is: One Embarcadero Center, Suite 3700, San Francisco, CA 94111

(4) The address of Biotech Turnaround Fund (BTF) B.V. is: 2011 MP Haarlem, Netherlands.

(5) Consists of 250,000 shares held by Deerfield Special Situations Fund, LP, and 500,000 shares held by Deerfield Special Situations International Master Fund, L.P. Deerfield MGMT, L.P. ("Deerfield MGMT") is the general partner, and Deerfield Management Company, L.P. ("Deerfield Management") is the investment advisor, of Deerfield Special Situations Fund, L.P. ("Deerfield SS Fund") and Deerfield Special Situations International Master Fund, L.P. ("Deerfield SS International"). James E. Flynn, president of the general partners of Deerfield MGMT and Deerfield Management, holds, directly or indirectly, voting and dispositive power over the shares held by Deerfield SS Fund and Deerfield SS International. The address of the Deerfield entities is: 780 Third Ave., 37th Floor, New York, NY 10017.

(6) Consists of 395,674 shares held by DGAM Alternative Strategy Fund II SPC CELL A, and 70,332 shares held by DGAM Alternative Strategy Fund LP. The address of The DGAM Funds is: c/o Desjardins Global Asset Management, Florent Salmon, 1 Complexe Desjardins, South Tower, 25th floor, Montreal, Quebec QCH5B183.

(7) The persons holding voting or dispositive power over the shares of Series D-1 preferred stock held by the Johnson & Johnson Development Corporation is as set forth in footnote 17 to the Fully Diluted Table. The address of Johnson & Johnson Development Corporation is: 410 George St., New Brunswick, NJ 08901.

(8) T. Rowe Price Associates, Inc. serves as investment adviser with power to direct investments and/or sole power to vote the securities owned by Lobstercrew & Co., Nominee for T. Rowe Price Health Sciences Fund, Inc. The T. Rowe Price Proxy Committee develops the firm's positions on all major proxy voting issues, creates guidelines, and oversees the voting process. The Proxy Committee, comprised of portfolio managers, investment analysts, operations managers and internal legal counsel, analyzes proxy policies based on whether they would adversely affect shareholders' interests and make a company less attractive to own. Once the Proxy Committee establishes its recommendations, they are distributed to the firm's portfolio managers as voting guidelines. Ultimately, the portfolio managers decide how to vote on the proxy proposals of companies in their portfolios. The portfolio manager of the T. Rowe Price Health Sciences Fund, Inc. is Taymour Tamaddon. T. Rowe Price Investment Services, Inc., ("TRPIS"), a registered broker-dealer, is a subsidiary of T. Rowe Price Associates, Inc. TRPIS was formed primarily for the limited purpose of acting as the principal distributor of shares of the funds in the T. Rowe Price fund family. TRPIS does not engage in underwriting or market-making activities involving individual securities. T. Rowe Price provides brokerage services through this subsidiary primarily to complement the other services provided to shareholders of the T. Rowe Price funds. For purposes of reporting requirements of the Securities Exchange Act of 1934, T. Rowe Price Associates, Inc. may be deemed to be the beneficial owner of all of the shares listed herein; however, T. Rowe Price Associates, Inc. expressly disclaims that it is, in fact, the beneficial owner of such securities. T. Rowe Price Associates, Inc. is a wholly-owned subsidiary of T. Rowe Price Group, Inc., which is a publicly-traded financial services holding company. The principal address of Lobstercrew & co. is c/o T. Rowe Price Associates, Inc., 100 East Pratt Street, Baltimore, Maryland 21202.

(9) Consists of 355,262 shares held by VantagePoint CDP Partners, LP and 81,984 shares held by CDP Capital-Technology Ventures U.S. Fund 2002 L.P. The address of VantagePoint is: 1001 Bayhill Dr., Suite 300, San Bruno, CA 94066.

(10) Consists of 468,595 shares held by Venrock Associates IV, L.P., 11,513 held by Venrock Entrepreneurs Fund IV, L.P., and 95,561 shares held by Venrock Partners, L.P. The persons holding voting or dispositive power over the shares of Series D-1 preferred stock held by The Venrock Funds is as set forth in footnote 19 to the Fully Diluted Table. The address of The Venrock Funds is: 3340 Hillview Avenue, Palo Alto, CA 94304.

(11) Consists of 10,628 shares held by Versant Affiliates Fund II-A, L.P., 5,005 shares held by Versant Side Fund II, L.P., and 560,036 shares held by Versant Venture Capital II, L.P. The persons holding voting or dispositive power over the shares of Series D-1 preferred stock held by The Versant Funds is as set forth in footnote 20 to the Fully Diluted Table. The address of The Versant Funds is: 3000 Sand Hill Rd., Building 4, Suite 210, Menlo Park, CA 94025.

(12) Consists of 12,077 shares held by The Konrad Hans von Emster III and Elizabeth F. von Emster Revocable Trust dated January 18, 2005 for which Mr. von Emster serves as trustee with sole power of voting and disposition. The address for The Konrad Hans von Emster III and Elizabeth F. von Emster Revocable Trust dated January 18, 2005 is: 1647 Ralston Ave. Belmont CA 94002.

(13) Includes the shares held by The Venrock Funds. See footnote 10.

(14) Includes the shares held by Alta BioPharma. See footnote 3.

(15) Includes the shares held by Biotech Turnaround Fund (BTF) B.V. See footnote 4.

(16) Includes the shares held by The Versant Funds. See footnote 11.

(17) Includes the shares deemed beneficially owned by the directors listed in footnotes 12-16.

Beneficial Ownership of Series E-1 Preferred Stock

The following table sets forth information regarding the beneficial ownership of CymaBay Series E-1 preferred stock as of August 1, 2013, by (1) each of its directors and executive officers, (2) each person that beneficially owns more than 5% of the outstanding shares of CymaBay Series E-1 preferred stock and (3) all of CymaBay's directors as a group. No executive officers own any Series E-1 preferred stock. Unless otherwise indicated, the address for each of the beneficial owners in the table below is c/o CymaBay Therapeutics, Inc., 3876 Bay Center Place, Hayward, California 94545.

Name of Beneficial Owner (1)	Amount and Nature of Beneficial Ownership	Percentage of Class
Harold Van Wart, Ph.D.	36,460	*
Entities Associated With Alta BioPharma (2)	473,989	15.2%
KBC Private Equity NV (3)	262,119	8.4%
Novo A/S (4)	291,686	9.3%
Pictet Funds – (LUX) (5)	170,648	5.5%
Entities Associated with The Bay City Capital Funds (6)	371,669	11.9%
Entities Associated with VantagePoint (7)	364,606	11.7%
Entities Associated With Venrock Associates (8)	473,989	15.2%
Entities Associated With Versant Venture Capital (9)	473,989	15.2%
Kurt von Emster, CFA (10)	36,460	*
Anthony B. Evnin, Ph.D. (11)	473,989	15.2%
Edward E. Penhoet, Ph.D. (12)	473,989	15.2%
Carl Goldfischer, M.D. (13)	371,669	11.9%
Hari Kumar, Ph. D. (14)	473,989	15.2%
Directors and officers as a group (total of 5 persons) (15)	1,866,556	59.8%

* Less than 1%.

(1) Beneficial ownership is calculated based on 3,121,953 shares of Series E-1 preferred stock issued and outstanding. Unless otherwise indicated, the persons and entities named in the table have sole voting and sole investment power with respect to the shares set forth opposite that person's name, subject to community property laws, where applicable.

(2) Consists of 29,156 shares held by Alta BioPharma Partners III GmbH & Co. Beteiligungs KG, 434,135 shares held by Alta BioPharma Partners III, L.P., and 10,698 shares held by Alta BioPharma Partners III, LLC. The persons holding voting or dispositive power over the shares of Series E-1 preferred stock held by the Alta BioPharama entities is as set forth in footnote 15 to the Fully Diluted Table. The address of the Alta BioPharma entities is: One Embarcadero Center, Suite 3700, San Francisco, CA 94111.

(3) The address of KBC Private Equity NV is: Havenlaan 121, Brussels, Belgium 1080.

(4) The persons holding voting or dispositive power over the shares of the Series E-1 preferred stock held by Novo A/S is as set forth in footnote 23 to the Fully Diluted Table. The address of Novo A/S is: 2880 Bagsvaerd, Denmark.

(5) The address of Pictet Funds – (LUX) is: 60, route des Acacias,CH-1211, Geneva 73, Switzerland.

(6) Consists of 22,814 shares held by The Bay City Capital Fund II, Co-Investment Fund, L.P., and 348,855 shares held by The Bay City Capital Fund II, L.P. The persons holding voting or dispositive power over the shares of Series E-1 preferred stock held by The Bay City Capital Fund entities is as set forth in footnote 18 to the Fully Diluted Table. The address of The Bay City Capital Fund entities is: 750 Battery St., Suite 400, San Francisco, CA 94111.

(7) Consists of 296,243 shares held by VantagePoint CDP Partners, LP and 68,363 shares held by CDP Capital-Technology Ventures U.S. Fund 2002 L.P. The address of VantagePoint is: 1001 Bayhill Dr., Suite 300, San Bruno, CA 94066.

(8) Consists of 385,828 held by Venrock Associates IV, L.P., 9,479 held by Venrock Enterpreneurs Fund IV, L.P., and 78,682 shares held by Venrock Partners, L.P. The persons holding voting or dispositive power over the shares of Series E-1 preferred stock held by The Venrock Funds is as set forth in footnote 19 to the Fully Diluted Table. The address of The Venrock Funds is: 30 Rockefeller Plaza, Room 5508, New York, NY 10112.

(9) Consists of 8,750 shares held by Versant Affiliates Fund II-A, L.P., 4,121 shares held by Versant Side Fund II, L.P., and 461,118 shares held by Versant Venture Capital II, L.P. The persons holding voting or dispositive power over the shares of Series E-1 preferred stock held by The Versant Funds is as set forth in footnote 20 to the Fully Diluted Table. The address of The Versant Funds is: 3000 Sand Hill Rd., Building 4, Suite 210, Menlo Park, CA 94025.

(10) Consists of 36,460 shares held by The Konrad Hans von Emster Trust for which Mr. von Emster serves as trustee with sole power of voting and disposition. The address for The Konrad Hans von Emster Trust is: 1647 Ralston Ave. Belmont CA 94002.

(11) Includes the shares held by the Venrock Funds. See footnote 8.

(12) Includes the shares held by Alta BioPharma. See footnote 2.

(13) Includes the shares held by The Bay City Capital Fund. See footnote 6.

(14) Includes the shares held by The Versant Funds. See footnote 9.

(15) Includes the shares deemed beneficially owned by the directors listed in footnotes 10-14.

Beneficial Ownership of Series E-3 Preferred Stock

The following table sets forth information regarding the beneficial ownership of CymaBay Series E-3 preferred stock as of August 1, 2013, by (1) each of its directors and executive officers, (2) each person that beneficially owns more than 5% of the outstanding shares of CymaBay Series E-3 preferred stock and (3) all of CymaBay's directors as a group. No executive officers own any Series E-3 preferred stock. Unless otherwise indicated, the address for each of the beneficial owners in the table below is c/o CymaBay Therapeutics, Inc., 3876 Bay Center Place, Hayward, California 94545.

Name of Beneficial Owner (1)	Amount and Nature of Beneficial Ownership	Percentage of Class
Johnson & Johnson Development Corporation (2)	5,687,700	100%

(1) Beneficial ownership is calculated based on 5,687,700 shares of Series E-3 preferred stock issued and outstanding. Unless otherwise indicated, the persons and entities named in the table have sole voting and sole investment power with respect to the shares set forth opposite that person's name, subject to community property laws, where applicable.

(2) The persons holding voting or dispositive power over the shares of Series E-3 preferred stock held by the Johnson & Johnson Development Corporation is as set forth in footnote 17 to the Fully Diluted Table. The address of Johnson & Johnson Development Corporation is: 410 George St., New Brunswick, NJ 08901

ITEM 5. DIRECTORS AND EXECUTIVE OFFICERS.

The following table sets forth information regarding CymaBay's executive officers, directors, key employees and consultants.

Management Team

Name	Age	Position Held With CymaBay
Executive Officers		
Harold Van Wart, Ph.D.	65	President, Chief Executive Officer & Director
Sujal Shah	40	Acting Chief Financial Officer
Mary Jean Stempien, MS, MD, FACP	60	Interim Chief Medical Officer
Charles A. McWherter, Ph.D.	58	Senior Vice President, Research and Preclinical Development
Bonnie A. Charpentier, Ph.D.	61	Vice President, Regulatory and Quality
Robert L. Martin, Ph.D.	50	Vice President, Nonclinical Development and Project Management
Patrick J. O'Mara	52	Vice President, Business Development
Diana Petty	62	Vice President, Human Resources and Administration
Directors		
Louis G. Lange, M.D., Ph.D.	65	Chairman of the Board
Eric Converse	47	Director
Anthony B. Evnin, Ph.D.	72	Director
Carl Goldfischer, M.D.	55	Director
Hari Kumar, Ph.D.	57	Director
Edward E. Penhoet, Ph.D.	72	Director
Harold Van Wart, Ph.D.	65	Director
Kurt von Emster, CFA	45	Director

Biographical Information

Executive Officers

Harold E. Van Wart, Ph.D. has served as CymaBay's Chief Executive Officer since 2003, a member of its board of directors since January 2003, and President since April 2001. He served as Chief Operating Officer from December 2002 to January 2003 and Senior Vice President, Research and Development from October 2000 to December 2002. From 1999 to 2000, Dr. Van Wart was vice president and therapy head for arthritis and fibrotic diseases at Roche Biosciences, a biopharmaceutical company. From 1992 to 1999, he was vice president and director of the institute of biochemistry and cell biology at Syntex Corporation, a biopharmaceutical company acquired by Roche Biosciences in 1994. From 1978 to 1992, Dr. Van Wart served on the faculty of Florida State University. Dr. Van Wart holds a Ph.D. from Cornell University and a B.A. from SUNY Binghamton. He currently serves on the Emerging Companies and Health Section Governing Boards of the Biotechnology Industry Organization (BIO), as well as on its board of directors.

Sujal Shah has served as our acting Chief Financial Officer since June 27, 2012. From 2010 to 2012 Mr. Shah served as Director, Health Care Investment Banking Group for Citigroup. From 2004 to 2010 Mr. Shah served as Vice President, Health Care Investment Banking Group for Credit-Suisse. Mr. Shah received an MBA from Carnegie Mellon University – Tepper School of Business in 2004 and a MS from Northwestern University in Biomedical Engineering in 1997.

Charles A. McWherter, Ph.D. has served as our Senior Vice President, Research and Preclinical Development since July 2007. From 2003 to 2007, he served as Vice President and head of the cardiovascular

therapeutics areas of Pfizer Inc., a biopharmaceutical company. From 2001 to 2003, Dr. McWherter served as Vice President of Drug Discovery at Sugen, Inc., a biopharmaceutical company acquired by Pfizer Inc. in 2003. Dr. McWherter obtained his Ph.D. from Cornell University.

Bonnie A. Charpentier, Ph.D. joined CymaBay in 2007 as Vice President of Regulatory Affairs, and became Vice President of Regulatory and Quality later that year. She previously was Vice President of Regulatory and Quality at Genitope Corp. from 2001 to 2006. From 1995 to 2001, Dr. Charpentier held regulatory positions at Roche Global Development, a division of F. Hoffman-La Roche Ltd., including serving as Vice President and Regulatory Site Head in Palo Alto, CA. From 1991 to 1995 she held regulatory positions of increasing responsibility at Syntex Corporation. Dr. Charpentier obtained her Ph.D. in Biology from the University of Houston. She currently serves on the Board of Directors of the American Chemical Society.

Mary Jean Stempien, M.S., M.D., F.A.C.P. has served as our acting Chief Medical Officer since June 23, 2012. Dr. Stempien has over 16 years of drug development experience obtained at Syntex Corp, Roche Pharmaceuticals, Tularik, Inc. and Cerimon Pharmaceuticals. At Tularik and Cerimon, she was Vice President, Clinical Development, with responsibility for clinical development projects in several therapeutic areas (oncology, autoimmune disorders, inflammation, pain). Her development work at Roche and Syntex contributed to marketing approvals of two antiviral agents, ganciclovir (Cytovene®) and valganciclovir (Valcyte®), as well as the transplant rejection agent mycophenolate mofetil (CellCept®). She has been directly involved in five successful NDAs (or sNDAs) and 4 successful FDA Advisory Committee hearings. Dr. Stempien has a B.S. in Pharmacy from University of Connecticut, an M.S. in Pharmaceutical Chemistry from UCSF, and an M.D. from University of Massachusetts. Dr. Stempien is board-certified in Internal Medicine, and is a Fellow of the American College of Physicians.

Robert L. Martin, Ph.D. has served as our Vice President of Nonclinical Development and Project Management since 2008. Dr. Martin served as our Sr. Director of Preclinical Development and Project Management from 2006 to 2008 and our Director of Preclinical Development and Project Management from 2004 to 2006. From 1994 to 2004, Dr. Martin served in various positions with Roche Palo Alto, a division of F. Hoffman-La Roche Ltd. Dr. Martin obtained his Ph.D. in Biochemistry from the University of California, Davis.

Patrick J. O'Mara joined CymaBay in 1991 and has served CymaBay in a variety of operational and business development positions. He became Vice President for Business Development in August 2006. Before joining CymaBay, Mr. O'Mara worked at Thymax Corporation and Thomas Research Corp. Mr. O'Mara received a B.A. in Biochemistry from the University of California, Berkeley.

Diana Petty joined CymaBay as Vice President of Human Resources and Administration in September 2006. Prior to joining CymaBay, Ms. Petty managed her own human resources consulting firm for 15 years in the biotech and high tech industries. Earlier in her career, she held leadership positions in Human Resources at 3M Corporation's Life Science Division and at SmithKline Corporation. Ms. Petty obtained a M.S. in Human Resources Development from Villanova University.

Directors

Louis G. Lange, M.D., Ph.D. has been a member of our Board of Directors since November 2003 and has been chairman of the board since October 2009. Dr. Lange was elected to the Board of Directors due to his significant drug development experience and leadership roles held in various companies and academic institutions. Dr. Lange has 22 years experience in academic medicine at Harvard and Washington University, where he served as Chief of Cardiology and Professor of Medicine at Jewish Hospital from 1985-1992 and was one of the first academicians in molecular cardiology. He founded CV Therapeutics based on this broad field and as Chairman, CEO and Chief Scientific Officer, led the IPO in 1996 and the overall pipeline development and the initiatives for U.S. FDA and European EMEA approval for Ranexa®, a first-in-class late sodium channel blocker and the first anti-anginal drug class approved in 30 years in the U.S. He also led the approval of Lexiscan®, a

first-in-class adenosine A2a receptor agonist for use in myocardial perfusion imaging studies. Dr. Lange oversaw the commercial success of CV Therapeutics and its sale to Gilead in 2009 for $1.4 billion dollars. As a member of the Board of Trustees at the University of Rochester since 1998 and as Chair of the Health Affairs committee that oversaw all of the medical operations for five years, Dr. Lange has been part of the leadership team for strategic re-invigoration of the medical center with construction of two research buildings and recruitment of over 100 faculty members. As a member of BIO Board of Directors (the trade organization of biotech companies) from 1999 to 2009, Dr. Lange led the largest committee of member companies for two years and was picked as one of two biotech executives to attend the ceremonies at the White House for the signing of the Bioterrorism bill in 2004. Dr. Lange has been a General Partner at Asset Management since 2009; remains a senior advisor to Gilead and serves on numerous other public and private Boards in both the non-profit and for-profit arena.

Eric Converse has been a member of our Board of Directors since April 2011. Mr. Converse was elected to the Board of Directors as a result of Nedamco's investment in Biotech Turnaround Fund (BTF) B.U. which invested in CymaBay and his significant management experience. Mr. Converse has been involved with Nedamco Capital, a privately-held, international investment company, since 2002. He has over 20 years of hands-on management experience working with young, growing companies. He represented Nedamco Capital's interest as CEO of Oblicore, which was subsequently acquired by CA Technologies. Prior to joining Nedamco Capital, Mr. Converse was CEO of Oneswoop.com which was acquired by Norwich Union Consumer Products (Aviva). Earlier in his career, Mr. Converse worked for Nedamco North America Corporation, a U.S.-based global technology development company, where he lead the development of new markets (primarily India and China) and played an active role in its successful sale. Mr. Converse received his B.S. degree from Michigan State University.

Anthony B. Evnin, Ph.D. has been a member of our Board of Directors since November 2004. Dr. Evnin was elected to the Board of Directors as a result of Venrock's investment in the company and his in depth knowledge of the pharmaceutical industry. Dr. Evnin is a Partner of Venrock, a venture capital firm, which he joined in 1974. Dr. Evnin is a Director of AVEO Pharmaceuticals, Inc. and Infinity Pharmaceuticals, Inc. as well as a number of private companies, including Acceleron Pharma, Inc., and Constellation Pharmaceuticals, Inc. Dr. Evnin was formerly a Director of Athena Neurosciences, Centocor, Genetics Institute, IDEC Pharmaceuticals, IDEXX Laboratories, Ribozyme Pharmaceuticals, and Sepracor, among others. He serves as a Trustee of The Rockefeller University, as a Trustee of The Jackson Laboratory, as a Member of the Boards of Overseers and Managers of Memorial Sloan-Kettering Cancer Center, as a Member of the Board of Directors of the New York Genome Center, as a Member of the Board of Directors of the Albert and Mary Lasker Foundation, and as a Trustee Emeritus of Princeton University. Dr. Evnin received an A.B. from Princeton University in 1962 and a Ph.D. in Chemistry from the Massachusetts Institute of Technology in 1966.

Carl Goldfischer, M.D. has been a member of our Board of Directors since August 2003. Dr. Goldfischer was elected to the Board of Directors as a result of Bay City Capital's investment in the company and his in-depth knowledge of the pharmaceutical industry. Dr. Goldfischer is an investment partner and managing director of Bay City Capital, serving as a member of the board of directors and executive committee, and has been with the firm since December 2000. His background includes extensive public and private investment and transaction work, as well as clinical trial development knowledge. Prior to joining Bay City Capital, Dr. Goldfischer was chief financial officer of ImClone Systems. Previously, he was a research analyst with the Reliance Insurance Company, helping to establish its portfolio and presence in the health care investment community. Dr. Goldfischer is a member of the board of directors for BrainCells, EnteroMedics and Epizyme. Dr. Goldfischer received an M.D. with honors in scientific research from Albert Einstein College of Medicine and a B.A. from Sarah Lawrence College.

Hari Kumar, Ph.D. has been a member of our Board of Directors since September 2012. Dr. Kumar was elected to the Board of Directors as a result his in depth knowledge and experience in the pharmaceutical industry. Dr. Kumar has over 25 years of pharmaceutical experience. Dr. Kumar spent a number of years at Hoffmann La Roche starting in basic research, moving to sales and marketing, lifecycle management and finally

to business development. During the period 1996 through 1999, Dr. Kumar moved to Eisai Ltd, as their European Marketing Director before returning to Roche in 1999. He moved to Amira Pharmaceuticals, Inc in 2007 as Chief Business Officer and after Amira's acquisition in 2011, became Chief Executive Officer of Panmira Pharmaceuticals LLC. In his time, Dr. Kumar has overseen the launch of the immunosuppressive, CellCept®, the Alzheimer's drug, Aricept® and gastric ulcer drug, Aciphex®. He was also involved in guiding cross functional teams at Roche for the Transplantation franchise which resulted in the growth of the products in the franchise to achieve billion dollar sales. In his role as lead in-licensing person for inflammation at Roche, he identified and partnered valuable products that have enhanced Roche's portfolio. He was instrumental in partnerships with Isotechnika, Biotie, Biocryst and Actellion. Experience in almost all aspects of the pharmaceutical industry has given Dr. Kumar a unique understanding on what makes a successful drug. At Amira, Dr. Kumar led the process that resulted in the acquisition by Bristol Myers Squibb in 2011. He then led the spin out company, Panmira Pharmaceuticals LLC. In July 2013, he was appointed Chief Executive Officer and Board Director of Adheron Therapeutics, Inc. Having trained as an immunologist at University College London where he completed his Ph.D. under the supervision of Prof N.A. Mitchison, Dr. Kumar completed a postdoctoral fellowship at Tufts New England Medical Center in Boston and another fellowship at the Marie Curie Cancer Research Centre in UK.

Edward E. Penhoet, Ph.D. has been a member of our Board of Directors since November 2004. Dr. Penhoet was elected to the Board of Directors as a result of Alta Partner's investment in the company and his in depth knowledge and experience in the pharmaceutical industry. Dr. Penhoet joined Alta in 2000 as a Director and has been full time at Alta since 2008. He currently serves on the board of directors of Immune Design and Scynexis. A co-founder of Chiron, Dr. Penhoet served as Chiron's President and Chief Executive Officer from its formation in 1981 until April 1998. He served as Vice-Chair of the governing board of the Independent Citizens Oversight Committee for the California Institute of Regenerative Medicine (CIRM) from 2005 to 2010, and served as the President of the Gordon and Betty Moore Foundation from 2004 to 2008. Dr. Penhoet was recently appointed to President Obama's Council of Advisors on Science and Technology (PCAST). PCAST is an advisory group comprised of 20 of the nation's leading scientists and engineers who directly advise the President and the Executive Office of the President. PCAST makes policy recommendations in the many areas where understanding of science, technology, and innovation is key to strengthening our economy and forming policy that works for the American people. For 10 years prior to founding Chiron, Dr. Penhoet was a faculty member of the Biochemistry Department of the University of California, Berkeley. Dr. Penhoet is the immediate past Dean of the School of Public Health at the University of California, Berkeley. He is a member of both the Institute of Medicine of the National Academies and the American Academy of Arts and Sciences. He has co-authored more than 50 scientific articles and papers.

Harold E. Van Wart, Ph.D. has served as CymaBay's Chief Executive Officer since 2003, a member of its board of directors since January 2003, and President since April 2001. Dr. Van Wart was elected to the Board of Directors as a result of his appointment to Chief Executive Officer. He served as Chief Operating Officer from December 2002 to January 2003 and Senior Vice President, Research and Development from October 2000 to December 2002. From 1999 to 2000, Dr. Van Wart was vice president and therapy head for arthritis and fibrotic diseases at Roche Biosciences, a biopharmaceutical company. From 1992 to 1999, he was vice president and director of the institute of biochemistry and cell biology at Syntex Corporation, a biopharmaceutical company acquired by Roche Biosciences in 1994. From 1978 to 1992, Dr. Van Wart served on the faculty of Florida State University. Dr. Van Wart holds a Ph.D. from Cornell University and a B.A. from SUNY Binghamton. He currently serves on the Emerging Companies and Health Section Governing Boards of BIO, as well as on its board of directors.

Kurt von Emster, CFA has been a member of our Board of Directors since April 2009. Dr. von Emster was elected to the Board of Directors as a result of MPM BioEquities Master Fund LP's investment in the company and his in depth knowledge of the pharmaceutical industry. Mr. von Emster is a co-founder and Managing Partner of venBio. He has been an institutional biotechnology and health care analyst and portfolio manager for 22 years. He is a member of the board of directors of Cytos AG, a former member of the board of Facet Biotech

Corporation (sold to Abbott Laboratories in 2010) and Somaxon Pharmaceuticals (sold to Pernix Therapeutics in 2013), and a former board observer of Acceleron Pharma. Mr. von Emster's investment career started in 1989 at Franklin Templeton where he founded and managed several health and biotechnology funds in the 1990s, each achieving a 5-star Morningstar ranking. In 2000, he was managing over $2B in biotech and health care funds for Franklin Templeton. In 2001, Mr. von Emster became a General Partner at MPM Capital, a leading biotechnology private equity firm, and launched the MPM BioEquities Fund, a cross over public and private biotechnology hedge fund. He was the portfolio manager of this fund from inception in 2001 until his departure in 2009. He also co-founded the MPM Biogen Idec Strategic Fund during his tenure at MPM. Mr. von Emster is based in venBio's San Francisco office.

ITEM 6. EXECUTIVE COMPENSATION.

Summary Compensation Table

The following table shows information regarding the compensation earned during the fiscal year ending December 31, 2012, by (i) our Chief Executive Officer, (ii) our Senior Vice President, Research and Pre-clinical Development, (iii) our Chief Medical Officer and (iv) our Vice President, Regulatory and Quality, each of whom were serving as executive officers in 2012. The officers listed below are collectively referred to as the "Named Executive Officers" in this Form 10.

Name	Fiscal Year	Salary	Option/Stock Awards (1)	All Other Compensation	Total
Harold Van Wart, Ph.D. President and Chief Executive Officer	2012	$411,830	$ 26,353	$ 12,430(2)	$450,613
Charles A. McWherter Senior Vice President, Research and Pre-clinical Development	2012	$327,309	$ 11,400	$ 13,755(2)	$352,464
Raymond Urbanski Chief Medical Officer	2012	$151,574	$ 20,278	$ 193,555(2)(3)	$365,407
Bonnie Charpentier, Ph.D. Vice President, Regulatory and Quality	2012	270,097	$ 3,969	$ 19,462(2)	$293,528

(1) The aggregate fair value of the equity compensation paid to our Named Executive Officers for the year ended December 31, 2012. The aggregate fair value is computed in accordance with FASB ASC Topic 718. See Note 11 to our consolidated financial statements contained in this report regarding assumptions underlying valuation of equity awards. Options in the table above were granted from the 2003 Equity Incentive Plan and vest and are exercisable in equal monthly installments over forty-eight (48) months from the grant date and are fully vested within four years from the grant date subject to the optionee's continued employment or service with CymaBay. The options generally have a maximum term of 10 years, subject to earlier termination in certain situations related to cessation of employment or service.

(2) Represents health insurance, group term life insurance, accidental death and dismemberment insurance, and disability insurance premiums paid by the Company.

(3) Represents $8,705 in health insurance, group term life insurance, accidental death and dismemberment insurance, and disability insurance premiums paid by the Company and $184,850 in payments made to Dr. Urbanski in connection with his separation from the Company in June, 2012 pursuant to a separation agreement.

Outstanding Equity Awards at Fiscal Year-End

The following table presents the outstanding equity awards held by each of the Named Executive Officers as of December 31, 2012. Stock options were granted pursuant to our 2003 Equity Incentive Plan (the "Plan").

	Option Awards			
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date
Harold Van Wart, Ph.D.	774,750	0	0.38	1/11/2014
	28,500	0	0.38	1/11/2014
	493,900	0	0.38	01/06/2015
	100,000	0	0.79	11/17/2015
	118,757	0	0.50	6/4/2018
	440,103	0	0.50	6/4/2018
	376,042 (1)	98,958	0.20	1/9/2020
	80,208 (2)	269,792	0.06	1/24/2022
Charles A. McWherter, Ph.D.	450,000	0	0.50	6/4/2018
	118,750 (1)	31,250	0.20	1/9/2020
	45,833 (2)	154,167	0.06	1/24/2022
Raymond Urbanski, M.D.	650,000 (3)	650,000	0.16	10/04/2021
Bonnie Charpentier, Ph.D.	100,000	0	0.50	3/25/2018
	19,500	0	0.50	6/4/2018
	160,500	0	0.50	6/4/2018
	52,866 (2)	13,912	0.20	10/14/2019
	12,604 (2)	42,396	0.06	1/24/2022

(1) These options were granted from the 2003 Equity Incentive Plan. The option vests in equal monthly installments of over forty-eight (48) months, provided however, that initially, the vesting did not commence until achievement of a milestone, such that upon achievement of such milestone, the number of shares that would have vested under the option equal to the number of months between the date of grant and the date of achievement of the milestone vested and thereafter 1/48 of the shares underlying the option vest monthly thereafter subject to the optionee's continued employment or service with CymaBay. The options generally have a maximum term of 10 years, subject to earlier termination in certain situations related to cessation of employment or service.

(2) These options were granted from the 2003 Equity Incentive Plan and vest and are exercisable in equal monthly installments over forty-eight (48) months from the grant date and are fully vested within four years from the grant date subject to the optionee's continued employment or service with CymaBay. The options generally have a maximum term of 10 years, subject to earlier termination in certain situations related to cessation of employment or service.

(3) The option was granted from the 2003 Equity Incentive Plan and 25% of the shares underlying the option vest on the one-year anniversary of the date of grant and the remainder vest in equal monthly installments over the following thirty-six (36) months and are fully vested within four years from the grant date subject to the optionee's continued employment or service with CymaBay. The options generally have a maximum term of 10 years, subject to earlier termination in certain situations related to cessation of employment or service.

Employment Contracts and Termination of Employment and Change of Control Arrangements

Chief Executive Officer

CymaBay entered into an employment letter agreement with Dr. Harold Van Wart as our President and Chief Executive Officer on March 1, 2004. The agreement letter was amended on October 10, 2007 in order to address the requirement of Section 409A of the Internal Revenue Code. Dr. Van Wart's employment agreement will continue until terminated by him or by the Company. Dr. Van Wart serves as Chief Executive Officer of the Company.

Base Salary, Bonus, Benefits: Dr. Van Wart received an annual base salary of $411,830 in FY 2012. In addition, Dr. Van Wart is eligible to earn an annual cash performance bonus, based upon achievement of annual performance goals and objectives set by the Board of Directors each, year, with a target bonus of 35% of his base salary. In addition, Dr. Van Wart is entitled to participate in any employee benefit plans that the Company may from time to time have in effect for its employees. Dr. Van Wart is also eligible to participate in an individual disability income protection plan. The Company reimbursed Dr. Van Wart for reasonable business expenses incurred in the discharge of duties in accordance with the general practices and policies of the Company and subject to the Company's annual expense budget.

Termination: Pursuant to the terms of the employment agreement, Dr. Van Wart entered into an at-will employment relationship with the Company. Either Dr. Van Wart or the Company may terminate the employment relationship at any time, with or without Cause and with or without advance notice. The Company may give Dr. Van Wart twelve (12) months of his base salary in effect as of his termination date. In addition, Dr. Van Wart is eligible to receive his potential annual discretionary bonus amount as if all performance targets established have been satisfied, pro-rated for the number of months elapsed in the year in which his employment terminates. Base salary and bonus severance will be paid in equal installments during the twelve (12) month period following the termination date. Additionally, Dr. Van Wart is eligible to continue coverage of group health benefits under COBRA. The Company will pay premiums for COBRA coverage for up to 12 months following the termination date, provided that Dr. Van Wart does not attain full-time employment within this period. Upon termination, the vesting of Dr. Van Wart's stock options shall be accelerated such that the options are fully vested and exercisable upon the termination date and such stock options shall be exercisable for the remainder of their original term, without regard to termination of employment.

Termination for Cause: If Dr. Van Wart's employment is terminated for cause, he will receive only the portion of his base salary that has been earned and is then payable, but has not yet been paid.

Change in Control: For the purpose of Dr. Van Wart's employee agreement, "Change in Control" means an event or a series of related events (collectively, a "Transaction") wherein the stockholders of the Company immediately before the Transaction do not retain direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding securities of the Company or, in the case of a Transaction described as the sale, exchange or transfer of all or substantially all of the assets of the Company, the corporation or other business entity to which the assets of the Company were transferred. At the close of a Change in Control, Dr. Van Wart's outstanding stock options shall become vested and exercisable with respect to fifty percent (50%) of his then-unvested shares of the Company's common stock. In addition, within twelve (12) months following a Change in Control, if the Company terminates Dr. Van Wart's employment without cause or, if he were to resign for good reason, the remaining unvested portion of all of his stock options shall have accelerated vesting such that all options are fully vested and exercisable as of the date of the Change in Control Termination.

Sr. VP of Research and Preclinical Development

CymaBay entered into an employment letter agreement with Dr. Charles A. McWherter on June 5, 2007. The agreement letter was amended on October 10, 2007 in order to address the requirement of Section 409A of

the Internal Revenue Code. Dr. McWherter's employment agreement will continue until terminated by him or by the Company. Dr. McWherter will serve as VP of Research and Preclinical Development of the Company.

Base Salary, Bonus, Benefits: Dr. McWherter received an annual base salary of $327,309 in FY 2012. In addition, Dr. McWherter is eligible to earn an annual cash performance bonus, based upon achievement of annual performance goals and objectives set by the Chief Executive Officer each, year, with a target bonus of 25% of his base salary. In addition, Dr. McWherter is entitled to participate in any employee benefit plans that the Company may from time to time have in effect for its employees. Dr. McWherter is also eligible to participate in an individual disability income protection plan. The Company will reimburse Dr. McWherter for reasonable business expenses incurred in the discharge of duties in accordance with the general practices and policies of the Company and subject to the Company's annual expense budget.

Termination: Pursuant to the terms of the employment agreement, Dr. McWherter entered into an at-will employment relationship with the Company. Either Dr. McWherter or the Company may terminate the employment relationship at any time, with or without Cause and with or without advance notice. The Company may give Dr. McWherter twelve (12) months of his base salary in effect as of his termination date. In addition, Dr. McWherter is eligible to receive his potential annual discretionary bonus amount as if all performance targets have been satisfied, pro-rated for the number of months elapsed in the year in which his employment terminates. Base salary and bonus severance will be paid in equal installments during the twelve (12) month period following the termination date. Additionally, Dr. McWherter is eligible to continue coverage of group health benefits under COBRA. The Company will pay premiums for COBRA coverage for up to 12 months following the termination date, provided that Dr. McWherter does not attain full-time employment within this period.

Termination for Cause: If Dr. McWherter's employment is terminated for cause, he will receive only the portion of his base salary that has been earned and is then payable, but has not yet been paid.

Change in Control: For the purpose of Dr. McWherter's employee agreement, "Change in Control" means an event or a series of related events (collectively, a "Transaction") wherein the stockholders of the Company immediately before the Transaction do not retain direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding securities of the Company or, in the case of a Transaction described as the sale, exchange or transfer of all or substantially all of the assets of the Company, the corporation or other business entity to which the assets of the Company were transferred. At the close of a Change in Control, Dr. McWherter's outstanding stock options shall become vested and exercisable with respect to fifty percent (50%) of his then-unvested shares of the Company's common stock. In addition, within twelve (12) months following a Change in Control, if the Company terminates Dr. McWherter's employment or, if he resigns his employment, the remaining unvested portion of his stock options shall have accelerated vesting such that all options are fully vested and exercisable as of the date of the Change in Control Termination.

Chief Medical Officer

CymaBay entered into an employment letter agreement with Dr. Raymond Urbanski on October 3, 2011.

Base Salary, Bonus, Benefits: During the term of his 2012 employment, Dr. Urbanski received a base salary of $151,574. In addition, Dr. Urbanski was eligible to earn an annual cash performance bonus, based upon achievement of annual performance goals and objectives set by the Chief Executive Officer each year, with a target bonus of 25% of his base salary. Dr. Urbanski did not receive a bonus payment upon terminating his employment relationship. In addition, Dr. Urbanski was entitled to participate in any employee benefit plans that the Company may from time to time have in effect for its employees. Dr. Urbanski was also eligible to participate in an individual disability income protection plan. Dr. Urbanski resigned from CymaBay in June 2012.

Termination: Pursuant to the terms of the employment agreement, Dr. Urbanski entered into an at-will employment relationship with the Company pursuant to which Dr. Urbanski was eligible to receive twelve

(12) months of his base salary in effect as of his termination date. In addition, Dr. Urbanski was eligible to receive his potential annual discretionary bonus amount as if all performance targets had been satisfied, pro-rated for the number of months elapsed in the year in which his employment terminated. Pursuant to his employment agreement, base salary and bonus severance were to be paid in equal installments during the twelve (12) month period following his termination date.

Vice President, Regulatory and Quality

CymaBay entered into an employment relationship with Dr. Charpentier on May 1, 2007.

Base Salary, Bonus, Benefits: Dr. Charpentier received an annual base salary of $270,097 in FY 2012. In addition, Dr. Charpentier is eligible to earn an annual case performance bonus, based upon achievement of annual performance goals and objectives set by the Chief Executive Officer each year, with a target bonus of 25% of her base salary. In addition, Dr. Charpentier is entitled to participate in any employee benefit plans that the Company may from time to time have in effect for its employees. Dr. Charpentier is also eligible to participate in an individual disability income protection plan. The Company will reimburse Dr. Charpentier for reasonable business expenses incurred in the discharge of duties in accordance with the general practices and policies of the Company and subject to the Company's annual expense budget.

Termination: Dr. Charpentier entered into an at-will employment relationship with the Company. Either Dr. Charpentier or the Company may terminate the employment relationship at any time, with or without Cause and with or without advance notice.

Termination for Cause: If Dr. Charpentier's employment is terminated for cause, she will receive only the portion of her base salary that has been earned and is then payable, but has not yet been paid.

Stock Options

In August 2003, the Company's stockholders approved the 2003 Equity Incentive Plan (2003 Plan), under which shares of common stock are reserved for the granting of options, stock bonuses, and restricted stock awards by the Company. These awards may be granted to employees, members of the Board of Directors, and consultants to the Company. The 2003 Plan terminated in accordance with its terms on July 31, 2013 and replaced the 1993 Stock Option Plan, which had similar terms.

The 2003 Plan permits the Company to (i) grant incentive stock options to directors and employees at not less than 100% of the fair value of common stock on the date of grant; (ii) grant nonqualified options to employees, directors, and consultants at not less than 85% of fair value; (iii) award stock bonuses; and (iv) grant rights to acquire restricted stock at not less than 85% of fair value. Options generally vest over a four- or five-year period and have a term of ten years. Options granted to 10% stockholders have a maximum term of five years and require an exercise price equal to at least 110% of the fair value on the date of grant. The exercise price of all options granted to date has been at least equal to the fair value of common stock on the date of grant. Restricted stock units granted in 2007 vested over a four- or five-year period, subject to certain performance conditions, and terminated on August 19, 2012.

In the past, our Board of Directors has determined the fair market value of our Common Stock based upon inputs including valuation reports prepared by third party valuation firms. Generally, our stock options granted to new hires have vested as 25% of the total number of option shares granted on the first anniversary of the award and in equal monthly installments over the ensuring 36 months, whereas subsequent grants to employees generally vest in equal monthly installments over 48 months. We have offered our Executive Officers the opportunity to purchase the unvested shares subject to their options, with the Company retaining a right to repurchase from the employee any shares that remain unvested if the employee's services with us terminate prior to the date on which the options are fully vested.

Director Compensation

The following table shows for the fiscal year ended December 31, 2012, certain information with respect to the compensation of all non-employee directors of CymaBay:

Name	Fees Earned or Paid in Cash	Option Awards (1) (2)	Total ($)
Louis G. Lange, M.D., Ph.D.	$ 0	$ 11,215	$11,215
Eric Converse	$ 0	$ 0	$ 0
Anthony B. Evnin, Ph.D.	$ 0	$ 0	$ 0
Carl Goldfischer, M.D.	$ 0	$ 0	$ 0
Bradley Bolzon, Ph.D. (3)	$ 0	$ 0	$ 0
Hari Kumar, Ph.D.	$ 0	$ 0	$ 0
Edward E. Penhoet, Ph.D.	$ 0	$ 0	$ 0
Kurt von Emster, CFA	$ 0	$ 3,042	$ 3,042
Robert Zerbe, M.D. (4)	$ 0	$ 2,579	$ 2,579

(1) These amounts are not cash compensation, but rather the aggregate fair value of the equity compensation paid to our Named Executive Officers during the fiscal year. The aggregate fair value is computed in accordance with FASB ASC Topic 718. See Note 11 to our consolidated financial statements contained in this report regarding assumptions underlying valuation of equity awards.

(2) Assumptions made in the valuation of stock options granted are discussed in Note 11 to CymaBay's 2012 Consolidated Financial Statements. Reflects the aggregate grant date fair value computed in accordance with ASC 718. Each director received only one option grant award in 2012, the fair market value of which is reflected in the table.

(3) Dr. Bolzon resigned from the Board of Director effective September 19, 2012.

(4) Dr. Zerbe resigned from the Board of Directors effective December 12, 2012.

At December 31, 2012, the following non-employee directors held options to purchase the following number of shares:

Name	Options
Louis G. Lange, M.D., Ph.D.	100,000
	36,225
	250,000
	9,775
Eric Converse	0
Anthony B. Evnin, Ph.D.	0
Carl Goldfischer, M.D.	0
Bradley Bolzon, Ph.D. (1)	0
Edward E. Penhoet, Ph.D.	0
Hari Kumar, Ph.D.	0
Kurt von Emster, CFA	75,000
	75,000
Robert Zerbe, M.D. (2)	75,000
	75,000

(1) Dr. Bolzon resigned from the Board of Director effective September 19, 2012.

(2) Dr. Zerbe resigned from the Board of Directors effective December 12, 2012.

ITEM 7. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE.

Related Party Transactions

There have been no transactions since January 1, 2011 to which we have been a party, in which the amount involved exceeded or will exceed $120,000, and in which any of our directors, executive officers or beneficial owners of more than 5% of our preferred stock or common stock, or an affiliate or immediate family member thereof, had or will have a direct or indirect material interest, other than compensation, termination and change-in-control arrangements, which are described under "Executive Compensation."

Indemnification Agreements

We have entered into indemnification agreements with certain of our officers and directors. The form of agreement provides that we will indemnify our directors against any and all expenses incurred by that director because of his or her status as one of our directors to the fullest extent permitted by Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws (except under certain circumstances including on account of such officer's or director's breach of a duty to CymaBay as determined by a final judgment or in a proceeding initiated by such person without board approval). In addition, the form agreement provides that, to the fullest extent permitted by Delaware law, we will pay for all expenses incurred by our directors, in connection with a legal proceeding.

Director Independence

CymaBay's business and affairs are organized under the direction of its board of directors, which currently consists of eight members. The Company considers each director, other than Dr. Van Wart, to be an independent director using the standards under the rules of the Nasdaq Stock Market. The primary responsibilities of the board of directors are to provide oversight, strategic guidance, counseling and direction to the Company's management. Each director shall hold office until a successor is elected and qualified or until the director resigns or is removed. Any director may be removed, with or without cause, by the holders of a majority of shares then entitled to vote at a meeting for the election of directors. Vacancies occurring on the board of directors will be filled by the vote of a majority of the remaining directors. The board of directors may, by resolution passed by a majority of the whole board of directors, designate one or more committees, each committee to consist of one or more of the directors of the corporation. In 2012, the non-executive members of the Company's board of directors did not receive compensation.

The board of directors at CymaBay currently has three 3 committees.

Compensation Committee:
Louis G. Lange, M.D., Ph.D.–Chairman
Carl Goldfischer, M.D.
Edward E. Penhoet, Ph.D.

Audit Committee:
Carl Goldfischer, M.D.—Chairman
Hari Kumar, Ph.D.
Anthony Evnin, Ph.D.

Nominating and Corporate Governance Committee:
Edward E. Penhoet, Ph.D.
Anthony Evnin, Ph.D.

ITEM 8. LEGAL PROCEEDINGS.

CymaBay is not a party, nor is any of its property subject to any legal proceedings.

ITEM 9. MARKET PRICE OF AND DIVIDENDS ON THE REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

Market information

There is currently no established public trading market for our common stock or preferred stock.

Rule 144

Shares of our common stock and preferred stock that are restricted securities will be eligible for resale in compliance with Rule 144 of the Securities Act, subject to the requirements described below. "Restricted securities," as defined under Rule 144, were issued and sold by us in reliance on exemptions from the registration requirements of the Securities Act. These shares may be sold in the public market only if registered or if they qualify for an exemption from registration, such as Rule 144. Below is a summary of the requirements for sales of our common stock and preferred stock pursuant to Rule 144, after the effectiveness of this registration statement. Beginning 90 days after the effectiveness of this registration statement, a person who is our affiliate or who was our affiliate at any time during the preceding six months and who has beneficially owned restricted securities for at least six months, will generally be entitled to sell within any three month period a number of shares that does not exceed one percent of the number of shares in the same class of securities. Sales under Rule 144 by our affiliates are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us. Persons who may be deemed to be our affiliates generally include individuals or entities that control, or are controlled by, or are under common control with, us and may include our directors and officers, as well as our significant stockholders. For a person who has not been deemed to have been one of our affiliates at any time during the 90 days preceding a sale, sales of our shares of common stock and preferred stock held longer than six months, but less than one year, will be subject only to the current public information requirement and can be sold under Rule 144 beginning 90 days after the effectiveness of this registration statement without restriction. A person who is not deemed to have been one of our affiliates at any time during the 90 days preceding a sale, and who has beneficially owned the shares proposed to be sold for at least one year, is entitled to sell his or her shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144. We cannot estimate the number of shares of our common stock and preferred stock that our existing stockholders will elect to sell under Rule 144.

Rule 701

Rule 701(g) under the Securities Act permits resales of shares issued in reliance on Rule 701 in reliance upon Rule 144 but, in the case of non-affiliates, without compliance with certain restrictions of Rule 144, including the holding period requirement and the volume and public information requirements. Any of our employees, consultants or advisors, other than our affiliates, who purchased shares from us under a written compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701, but all holders of Rule 701 shares are required to wait until 90 days after the effective date of this registration statement before selling their shares in reliance upon Rule 144.

Holders

As of September 16, 2013, there were 466,681 shares of our common stock outstanding, which were held by approximately 120 record holders. In addition, there were 1,012,389 shares of our Series A-1 preferred stock outstanding, which were held by approximately 23 record holders; 27,282,192 shares of our Series B-1 preferred stock outstanding, which were held by approximately 63 record holders; 2,173,913 shares of our Series C-1 preferred stock outstanding, which were held by 1 record holder; 7,610,626 shares of our Series D-1 preferred stock outstanding, which were held by approximately 55 record holders; 2,859,474 shares of our Series E-1 preferred stock outstanding, which were held by approximately 26 record holders, and 5,687,700 shares of our

Series E-3 preferred stock outstanding, which were held by 1 record holder. As of September 16, 2013, each share of preferred stock was convertible into common stock on a one-for-one basis other than our Series D-1 preferred stock which is convertible into common stock at a ratio of 1:1.3652.

Dividends

We have not paid, nor do we currently intend to pay, any dividends on our common stock and any such dividend is subject to the dividends entitled to by the holders or our preferred stock. See "Item 11. Description of Registrant's Securities to be Registered—Preferred Stock."

Equity Compensation Plan Information

The following table provides information as of December 31, 2012, with respect to shares of our common stock that may be issued under existing equity compensation plans.

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available For Future Issuance under Equity Compensation Plans
Equity compensation plans approved by security holders(1)	8,248,942	$ .43	2,918,190

1. Consists of our 2003 stock plan.

ITEM 10. RECENT SALES OF UNREGISTERED SECURITIES.

CymaBay has completed sales of the following unregistered securities since July 10, 2010:

(1) On December 17, 2010, CymaBay issued 5,687,700 shares of Series E-3 Preferred Stock to Johnson and Johnson Development Company ("JJDC") pursuant to the conversion of certain outstanding promissory notes in the principal amount of $14,000,000, and accrued interest, at a conversion price of $2.93 per share of Series E-3 Preferred Stock and issued 2,950,945 shares of Series E-1 Preferred Stock pursuant to the conversion of certain outstanding promissory notes in the principal amount of $8,072,202 at a conversion price of $2.93 per share. CymaBay relied on Regulation D and Section 4(2) under the Securities Act of 1933, as amended.

(2) On April 6, 2012, CymaBay issued 36 shares of Common Stock to George Daley pursuant to the exercise of outstanding warrants for an aggregate purchase price of $13.68 in reliance on Regulation D and Section 4(2) under the Securities Act of 1933.

(3) From July 10, 2010 to September 16, 2013, CymaBay issued an aggregate of 7,686 shares of Common Stock to four (4) of its employees upon the exercise of employee stock options for an aggregate purchase price of $671.16, in reliance on Rule 701 under the Securities Act.

ITEM 11. DESCRIPTION OF REGISTRANT'S SECURITIES TO BE REGISTERED.

The following description of CymaBay's capital stock does not purport to be complete and is subject in all respects to applicable Delaware law and to the provisions of CymaBay's certificate of incorporation, and bylaws, copies of which have been filed as exhibits to the Registration Statement.

We are registering on this registration statement only our common stock, the terms of which are described below. However, because our preferred stock will remain outstanding following the effectiveness of this registration statement, we also describe below the terms of our preferred stock to the extent such terms qualify the rights of our common stock.

Common Stock

Outstanding Shares. CymaBay's certificate of incorporation provides that an aggregate of 74,000,000 shares of CymaBay common stock, par value $0.0001 per share, are authorized for issuance. As of September 16, 2013, 466,681 shares of common stock and the following options to purchase common stock were issued and outstanding:

- 6,808,778 shares of CymaBay's common stock issuable upon the exercise of stock options outstanding as of September 16, 2013 at a weighted average exercise price of $0.47 per share.

The following is a summary of the material rights of CymaBay's common stock as set forth in its certificate of incorporation and bylaws.

Voting Rights. Each holder of common stock is entitled to one vote for each share of common stock held on all matters submitted to a vote of the stockholders, including the election of directors. The certificate of incorporation and by-laws do not provide for cumulative voting rights in connection with election of directors unless, at the time of such election, CymaBay is subject to Section 2115(b) of the California General Corporation Law.

Dividends. Subject to preferences that may be applicable to any then outstanding preferred stock, the holders of outstanding shares of common stock may receive dividends, if any, as may be declared from time to time by the Board of Directors out of legally available funds. CymaBay has never issued a dividend on shares of its common stock and has no intention to do so in the future.

Liquidation. In the event of liquidation, dissolution or winding up of CymaBay, the assets legally available for distribution shall be distributed ratably to the holders of shares of common stock and preferred stock, subject to the satisfaction of any liquidation preference granted to the holders of any outstanding shares of preferred stock.

Right of First Refusal. Each holder of common stock desiring to sell or otherwise transfer any such shares must first give written notice to CymaBay naming the proposed transferee, the number of shares to be transferred, the proposed consideration, and all other terms and conditions of the proposed transfer. CymaBay has the option to purchase all of the shares specified in the notice at the price and upon the terms set forth in the notice for thirty (30) days following the receipt of such notice. This right of first refusal is subject to the exempt transactions listed in CymaBay's bylaws.

Rights and Preferences. Holders of common stock have no preemptive, conversion or subscription rights, and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that CymaBay may designate and issue in the future.

Fully Paid and Nonassessable. All outstanding shares of common stock are fully paid and nonassessable.

Preferred Stock

Outstanding Shares. CymaBay's certificate of incorporation provides that an aggregate of 55,258,608 shares of CymaBay preferred stock, par value $0.0001 per share, are authorized for issuance, consisting of 1,012,389 shares of Series A-1 Preferred Stock, 29,671,222 shares of Series B-1 Preferred Stock, 6,000,000 shares of Series C-1 Preferred Stock, 7,974,997 shares of Series D-1 Preferred Stock, 3,200,000 shares of Series E-1 Preferred Stock, and 7,400,000 shares of Series E-3 Preferred Stock (together with the Series E-1 Preferred Stock, the "Series E Preferred"). As of September 16, 2013, 46,626,294 shares of CymaBay preferred stock were issued and outstanding, including, 1,012,389 shares of Series A-1 Preferred Stock, 27,282,192 shares of Series B-1 Preferred Stock, 2,173,913 shares of Series C-1 Preferred Stock, 7,610,626 shares of Series D-1 Preferred Stock, 2,859,474 shares of Series E-1 Preferred Stock, and 5,687,700 shares of Series E-3 Preferred Stock.

The following is a summary of the material rights of CymaBay's preferred stock as set forth in its certificate of incorporation and other governing documents.

Dividends. The holders of Series E Preferred are entitled to cumulative dividends in preference to the holders of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, Series D-1 Preferred, and common stock. The holders of Series D-1 Preferred are entitled to cumulative dividends in preference to the holders of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, and common stock. The holders of Series B-1 Preferred and Series C-1 Preferred are entitled to cumulative dividends in preference to the holders of Series A-1 Preferred and common stock. The holders of Series A-1 Preferred are entitled to cumulative dividends in preference to the holders of common stock. The dividend rate is $0.2344, $0.32, $0.368, $0.2344, and $0.2344 per annum for each outstanding share of Series E Preferred, Series D-1 Preferred, Series C-1 Preferred, Series B-1 Preferred, and Series A-1 Preferred, respectively. Additionally, if dividends are paid to any holder of common stock, the holders of Preferred Stock will receive a dividend of a per share amount (on an as-if-converted to common stock basis) equal to the amount paid to the holders of common stock. All dividends are payable when and if declared by CymaBay's Board of Directors. Such dividends shall be awarded prior to any common stock dividends pursuant to CymaBay's certificate of incorporation.

Voting Rights. Each holder of shares of the preferred stock is entitled to the number of votes equal to the number of shares of common stock into which such shares of preferred stock could be converted as provided in CymaBay's certificate of incorporation. Except as provided in the certificate of incorporation, or as required by law, the preferred stock shall vote together with the common stock at any annual or special meeting of the stockholders and not as a separate class. Certain holders of preferred stock also have additional rights such as designating members to the Board of Directors and obligations to vote in favor of mergers, acquisition or reorganization as provided in CymaBay's Amended and Restated Voting Agreement dated October 1, 2009.

Liquidation Rights. Upon any liquidation, dissolution, or winding up of CymaBay, whether voluntary or involuntary, before any distribution or payment is made to the holders of common stock, holders of preferred stock are entitled to be paid out of the assets of CymaBay legally available for distribution as provided in the certificate of incorporation.

Conversion Rights. Any shares of preferred stock may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of common stock. The number of shares of common stock to which a holder of preferred stock shall be entitled upon conversion shall be the product obtained by multiplying the "Series Preferred Conversion Rate," as described in the amended and restated certificate of incorporation, by the number of shares of preferred stock being converted. All preferred stock is subject to automatic conversion to common stock upon certain qualifying event such as the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933 or the affirmative election of the holders of (a) sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of Series B-1 Preferred Stock and (b) the holders of at least fifty-one (51%) percent of the outstanding shares of Series D-1 Preferred and Series E Preferred, voting together as a single class on an as-converted basis. In connection with the next sale and issuance of capital stock of the Company, with aggregate proceeds to the Company of not less than $1,000,000, each holder of the Company's preferred stock that participates in such financing for between 1% and up to 99% of such holders "*Pro Rata Share*" (as defined in the Company's certificate of incorporation) shall have each shares of preferred stock represented by such participation amount convertible into four shares of common stock and the balance of any shares of preferred stock convertible at the applicable conversion rate as defined in the certificate of incorporation. Any holder that participates in such financing for between 100% and 300% of such holder's Pro Rata Share (the "*Participation Multiple*") shall have each shares of preferred stock convert into shares of common stock by multiplying the product of (y) the aggregate number of shares of preferred stock held by such holder multiplied by the applicable Participation Multiple and (z) four (4).

Redemption Rights. The holders of at least (A) sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series B-1 Preferred, voting as a separate class; and (B) fifty-one percent (51%) of the then

outstanding shares of Series D-1 Preferred and Series E Preferred, voting together as a single class on an as-converted basis, may, by written notice to CymaBay, require CymaBay to the extent it may lawfully do so, to redeem the Series B-1 Preferred, Series D-1 Preferred and Series E Preferred in three (3) annual installments beginning September 2021. There are currently no restrictions on the repurchase or redemption of shares by CymaBay in the event that there is any arrearage in the payment of dividends.

Registration Rights. Holders of CymaBay's preferred stock have the right to require CymaBay to register with the SEC the shares of common stock issuable upon conversion of such preferred stock so that those shares of common stock may be publicly resold, or to include those shares in any registration statement CymaBay files. The shares of common stock issuable upon conversion of the outstanding shares of preferred stock are hereinafter referred to as the "Underlying Securities."

Demand Registration Rights. Pursuant to CymaBay's Amended and Restated Investor Rights Agreement, dated October 1, 2009 (the "Investor Rights Agreement"), the holders of at least 35% of the Underlying Securities have the right to demand that CymaBay file up to two registration statements registering Underlying Securities held by such holders for resale. These registration rights are subject to specified conditions and limitations, including the right of the underwriters to limit the number of shares of Underlying Securities included in any such registration under certain circumstances.

Form S-3 registration rights. If CymaBay is eligible to file a registration statement on Form S-3, each holder of shares of the Underlying Securities has the right to demand that CymaBay file not more than two registration statement on Form S-3 in any 12-month period, provided further that the aggregate offering price, before any underwriters' discounts or commissions, of securities to be sold under the registration statement on Form S-3 is at least $1,000,000, subject to specified exceptions, conditions and limitations.

"Piggyback" Registration Rights. If CymaBay registers any securities for public sale (other than any registration statement relating to any employee benefit plan, any corporate reorganization or stock issued upon conversion of debt securities), holders of Underlying Securities shall have the right to include their shares in the registration statement. The underwriters of any underwritten offering will have the right to limit the number of shares having registration rights to be included in the registration statement.

Expenses of Registration. CymaBay will pay all expenses, other than underwriting discounts and commissions, relating to all demand registrations, Form S-3 registrations, and piggyback registrations.

Termination of Registration Rights. All registration rights described above shall terminate and be of no further force and effect five (5) years after the date of CymaBay's first firm commitment underwritten public offering of its commons stock registered under the Securities Act.

Preemptive Rights. As more fully described in the Investor Rights Agreement, each holder of more than 682,500 shares of CymaBay's Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series D-1 Preferred Stock and/or Series E Preferred has a right of first refusal to purchase its *pro rata* share of all equity securities that CymaBay may propose to sell and issue in the future subject to certain exclusions and waiver provisions.

ITEM 12. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the Delaware General Corporation Law, CymaBay's certificate of incorporation contains provisions that eliminate the personal liability of its directors for monetary damages for any breach of fiduciary duties as a director, except liability for the following:

- any breach of the director's duty of loyalty to CymaBay or its stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- under Section 174 of the Delaware General Corporation Law (regarding unlawful dividends and stock purchases); or
- any transaction from which the director derived an improper personal benefit.

As permitted by the Delaware General Corporation Law, CymaBay's amended and restated bylaws provide that:

- CymaBay is required to indemnify its directors and executive officers to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions;
- CymaBay may indemnify its other employees and agents as set forth in the Delaware General Corporation Law;
- CymaBay is required to advance expenses, as incurred, to its directors and executive officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions; and
- the rights conferred in the bylaws are not exclusive.

CymaBay has entered, and intends to continue to enter, into separate indemnification agreements with its directors and executive officers to provide these directors and executive officers additional contractual assurances regarding the scope of the indemnification set forth in CymaBay's certificate of incorporation and restated bylaws and to provide additional procedural protections. At present, there is no pending litigation or proceeding involving a director or executive officer of CymaBay regarding which indemnification is sought. The indemnification provisions in CymaBay's restated certificate of incorporation, restated bylaws and the indemnification agreements entered into or to be entered into between CymaBay and each of its directors and executive officers may be sufficiently broad to permit indemnification of CymaBay's directors and executive officers for liabilities arising under the Securities Act. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of CymaBay pursuant to the foregoing provisions, or otherwise, CymaBay has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

CymaBay currently carries liability insurance for its directors and officers.

ITEM 13. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

The information required by this item may be found beginning on page F-1 of this Form 10.

ITEM 14. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

ITEM 15. FINANCIAL STATEMENTS AND EXHIBITS.

(a) Financial Statements filed as part of this registration statement:

(b) Exhibits.

See the Exhibit Index which follows the signature page of this Form 10, which is incorporated herein by reference.

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INDEX TO EXHIBITS

Exhibit No.	Description of Document
3.1†	Amended and Restated Certificate of Incorporation.
3.2†	Amended and Restated By-Laws.
4.1†	Reference is made to Exhibits 3.1 and 3.2
10.1*†	2003 Equity Incentive Plan
10.2*†	Form of 2003 Equity Incentive Plan Stock Option Agreement
10.3*†	Form of 2003 Equity Incentive Plan Early Exercise Stock Option Agreement
10.4†	Amended and Restated Investor Rights Agreement, dated October 1, 2009
10.5†	Amended and Restated Voting Agreement, dated October 1, 2009
10.6†	Lease, dated February 18, 1992, by and among Transplantation Technology, Inc., Metabolex, Inc. and Spieker-Singleton #87
10.7†	Amendment No. 1 to Lease, dated October 8, 1996, between Metabolex, Inc. and Spieker Properties, L.P.
10.8†	Amendment No. 2 to Lease, dated November 20, 1996, by and among Transplantation Technology, Inc., Metabolex, Inc. and Spieker Properties, L.P.
10.9†	Amendment No. 3 to Lease, dated May 27, 1998, between Metabolex, Inc. and Spieker Properties, L.P.
10.10†	Amendment No. 4 to Lease, dated May 29, 2003, between Metabolex, Inc. and EOP-Industrial Portfolio, L.L.C.
10.11†	Amendment No. 5 to Lease, dated February 15, 2005, between Metabolex, Inc. and RREEF America REIT II, Corp. LLL
10.12†	Amendment No. 6 to Lease, dated September 29, 2006, between Metabolex, Inc. and RREEF America REIT II, Corp. LLL
10.13†	Amendment No. 7 to Lease, dated July 15, 2010, between Metabolex, Inc. and Northern California Industrial Portfolio, Inc.
10.14	Development and Clinical Manufacture Agreement, dated June 5, 2012, between Metabolex, Inc. and Patheon Inc.
10.15	Standard Development Agreement, dated October 31, 2006, between Metabolex, Inc. and Metrics, Inc.
10.16	License and Development Agreement, dated June 30, 1998, between Metabolex, Inc. and DiaTex, Inc.
10.17	First Amendment to License and Development Agreement, dated April 15, 1999, between Metabolex, Inc. and DiaTex, Inc.
10.18	Development and Clinical Manufacture Agreement, dated April 30, 2012, between Metabolex, Inc. and Siegfried AG
10.19	Form of Metabolex, Inc. Indemnity Agreement
10.20*	Offer Letter, dated September 8, 2000, as amended, between Metabolex, Inc. and Harold Van Wart
10.21*	Offer Letter, dated June 5, 2007, as amended, between Metabolex, Inc. and Charles A. McWherter
10.22*	Consulting Agreement, dated June 27, 2012, as amended, between Metabolex, Inc. and SNPLive, LLC
10.23*	Offer Letter, dated October 3, 2011, between Metabolex, Inc. and Raymond Urbanski
10.24*	Resignation Agreement, dated June 25, 2012, between Metabolex, Inc. and Raymond W. Urbanski

* Indicates management contract or compensatory plan.
† Previously filed as the like numbered exhibits to our Current Report on Form 10, filed with the SEC on August 12, 2013.

SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

CymaBay Therapeutics, Inc.

Date: September 18, 2013

By: /s/ Harold Van Wart
Harold Van Wart, Ph.D.
President and Chief Executive Officer

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CymaBay Therapeutics, Inc.

Financial Statements

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Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
CymaBay Therapeutics, Inc.

We have audited the accompanying balance sheets of CymaBay Therapeutics, Inc., formerly known as Metabolex, Inc., as of December 31, 2012 and 2011, and the related statements of operations and comprehensive loss, convertible preferred stock and stockholders' deficit, and cash flows for each of the two years in the period ended December 31, 2012. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of CymaBay Therapeutics, Inc. at December 31, 2012 and 2011, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2012 in conformity with U.S. generally accepted accounting principles.

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

/s/ Ernst & Young LLP

Redwood City, CA
June 17, 2013
Except for Note 15, as to which the date is August 9, 2013

CymaBay Therapeutics, Inc.

Balance Sheets

(In thousands, except share and per share amounts)

	December 31, 2012	December 31, 2011	June 30, 2013 (unaudited)
Assets			
Current assets:			
Cash and cash equivalents	$ 7,726	$ 8,021	$ 3,556
Marketable securities	—	11,012	—
Contract receivables	108	124	—
Accrued interest receivable	9	100	—
Prepaid expenses	147	234	26
Total current assets	7,990	19,491	3,582
Property and equipment, net	84	203	19
Other assets	42	93	114
Total assets	$ 8,116	$ 19,787	$ 3,715
Liabilities and redeemable convertible preferred stock and stockholders' deficit			
Current liabilities:			
Accounts payable	$ 657	$ 1,608	$ 698
Accrued liabilities	894	1,185	891
Convertible notes	13,737	—	13,747
Accrued interest payable	2,566	—	2,979
Equipment loans	—	12	—
Total current liabilities	17,854	2,805	18,315
Convertible notes	—	13,747	—
Accrued interest payable	—	1,785	—
Deferred rent	132	214	86
Total Liabilities	17,986	18,551	18,401
Commitments and contingencies *(Note 8)*			
Redeemable convertible preferred stock, $0.0001 par value: 55,258,608 shares authorized; 49,641,814 shares issued and outstanding; aggregate liquidation preference of $263,003, $256,750 and $244,107 as of June 30, 2013, December 31, 2012 and 2011, respectively	318,697	306,053	324,950
Stockholders' deficit:			
Common stock, $0.0001 par value: 74,000,000 shares authorized; 466,681, 460,495 and 458,959 shares issued and outstanding as of June 30, 2013, December 31, 2012 and 2011, respectively	—	—	—
Additional paid-in capital	913	762	948
Accumulated other comprehensive income (loss)	—	2	—
Accumulated deficit	(329,480)	(305,581)	(340,584)
Total stockholders' deficit	(328,567)	(304,817)	(339,636)
Total liabilities and redeemable convertible preferred stock and stockholders' deficit	$ 8,116	$ 19,787	$ 3,715

See accompanying notes.

CymaBay Therapeutics, Inc.

Statements of Operations and Comprehensive Loss

(In Thousands, except share and per share information)

	Years Ended December 31,		Six Months Ended June 30,	
	2012	2011	2013	2012
			(Unaudited)	
Contract revenue	$ 3,050	$ 15,147	—	125
Operating expenses:				
Research and development	9,280	14,391	2,459	5,279
General and administrative	4,208	4,654	2,097	2,418
Total operating expenses	13,488	19,045	4,556	7,697
Loss from operations	(10,438)	(3,898)	(4,556)	(7,572)
Other income (expense):				
Interest income	22	78	2	17
Interest expense	(841)	(705)	(421)	(400)
Other income, net	2	28	124	2
Net loss	(11,255)	(4,497)	(4,851)	(7,953)
Accretion to redemption value of redeemable convertible preferred stock	(12,644)	(12,609)	(6,253)	(6,245)
Net loss attributable to stockholders	(23,899)	(17,106)	(11,104)	(14,198)
Other comprehensive loss/income:				
Unrealized (losses) gains on marketable securities	(2)	14	—	(2)
Other comprehensive (loss) income	(2)	14	—	(2)
Comprehensive loss	$ (11,257)	$ (4,483)	$ (4,851)	$ (7,955)
Basic and diluted net loss per common share	$ (51.93)	$ (37.27)	$ (23.93)	$ (30.91)
Weighted average common shares outstanding used to calculate basic and diluted net loss per common share	460,182	458,959	464,015	459,266

See accompanying notes.

CymaBay Therapeutics, Inc.

Statements of Convertible Preferred Stock and Stockholders' Deficit

(In Thousands, except share and per share information)

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount				
Balances as of December 31, 2010	49,641,814	$293,444	458,959	$ —	$ —	$ (12)	$ (288,475)	$ (288,487)
Non-employee stock-based compensation expense	—	—	—	—	5	—	—	5
Employee and director stock-based compensation expense	—	—	—	—	757	—	—	757
Accretion to redemption value of redeemable convertible preferred stock	—	12,609	—	—	—	—	(12,609)	(12,609)
Net loss	—	—	—	—	—	—	(4,497)	(4,497)
Net unrealized loss on marketable securities	—	—	—	—	—	14	—	14
Balances as of December 31, 2011	49,641,814	$306,053	458,959	$ —	$ 762	$ 2	$ (305,581)	$ (304,817)
Discount conversion feature associated with convertible notes	—	—	—	—	70	—	—	70
Issuance of common stock upon exercise of options	—	—	1,500	—	—	—	—	—
Non-employee stock-based compensation expense	—	—	36	—	1	—	—	1
Employee and director stock-based compensation expense	—	—	—	—	80	—	—	80
Accretion to redemption value of redeemable convertible preferred stock	—	12,644	—	—	—	—	(12,644)	(12,644)
Net loss	—	—	—	—	—	—	(11,255)	(11,255)
Net unrealized gain on marketable securities	—	—	—	—	—	(2)	—	(2)
Balances as of December 31, 2012	49,641,814	$318,697	460,495	$ —	$ 913	$ —	$ (329,480)	$ (328,567)
Issuance of common stock upon exercise of options	—	—	6,186	—	—	—	—	—
Non-employee stock-based compensation expense	—	—	—	—	1	—	—	1
Employee and director stock-based compensation expense	—	—	—	—	34	—	—	34
Accretion to redemption value of redeemable convertible preferred stock	—	6,253	—	—	—	—	(6,253)	(6,253)
Net loss	—	—	—	—	—	—	(4,851)	(4,851)
Balances as of June 30, 2013 (unaudited)	49,641,814	$324,950	466,681	$ —	$ 948	$ —	$ (340,584)	$ (339,636)

See accompanying notes.

CymaBay Therapeutics, Inc.

Statements of Cash Flows

(In Thousands)

	Year Ended December 31,		Six Months Ended June 30,	
	2012	2011	2013	2012
			(unaudited)	
Operating activities				
Net loss	$ (11,255)	$ (4,497)	$(4,851)	$ (7,953)
Adjustments to reconcile net loss to net cash used in operating activities:				
Depreciation and amortization	119	210	41	62
Amortization of notes payable conversion option			10	(40)
Non-employee stock-based compensation expense	1	6	—	1
Employee and director stock-based compensation expense	80	757	34	42
Non-cash interest associated with discount accretion	60	—	—	—
Change in fair value of warrant liability	—	—	—	69
Gain on sale of property and equipment	—	—	(126)	—
Changes in assets and liabilities:				
Contract receivables	16	267	108	(15)
Accrued interest receivable	91	250	9	63
Prepaid expenses	87	12	121	76
Other assets	51	110	(72)	51
Accounts payable	(951)	(557)	41	(669)
Accrued liabilities	(291)	(520)	(3)	470
Accrued interest payable	781	693	413	370
Deferred rent	(82)	69	(46)	(36)
Deferred revenue	—	(14,725)	—	25
Net cash used in operating activities	(11,293)	(17,925)	(4,320)	(7,484)
Investing activities				
Purchases of property and equipment	—	(37)	150	—
Purchases of marketable securities	(2,881)	(21,714)	—	(2,887)
Proceeds from maturities of marketable securities	13,891	40,985	—	10,441
Net cash provided by investing activities	11,010	19,234	150	7,554
Financing activities				
Principal payments on equipment loans	(12)	(200)	—	(12)
Net cash used in financing activities	(12)	(200)	—	(12)
Net (decrease)/increase in cash and cash equivalents	(295)	1,109	(4,170)	58
Cash and cash equivalents at beginning of year	8,021	6,912	7,726	8,021
Cash and cash equivalents at end of year	$ 7,726	$ 8,021	$ 3,556	$ 8,079
Supplemental disclosure of cash flow information				
Interest paid	$ —	$ 10	—	—

See accompanying notes.

Notes to Financial Statements

1. Organization and Description of Business

CymaBay Therapeutics, Inc., formerly Metabolex, Inc. (the Company) is a biopharmaceutical company focused on the discovery and development of proprietary new medicines for the treatment of gout and metabolic diseases. The Company was incorporated in Delaware in October 1988 as Transtech Corporation.

Since inception, the Company has funded its operations primarily through the sale of convertible preferred stock, receipts from the exercise of related warrants to purchase preferred stock, the issuance of convertible notes, and up-front fees, milestones, and research and development funding received under collaboration agreements. The primary uses of funds to date have been for research, pre-clinical and clinical development, drug manufacturing, license payments, business development and administration, and spending on capital items.

Need to Raise Additional Capital

The accompanying financial statements for the years ended December 31, 2012 and 2011, have been prepared on a going concern basis, which contemplates the realization of assets and the settlement of liabilities and commitments in the normal course of business for the foreseeable future. The Company has incurred net losses from operations since its inception and has an accumulated deficit of $329.5 million at December 31, 2012. The Company recorded net losses of $11.3 million and $4.5 million for the years ended December 31, 2012 and 2011, respectively. The Company also recorded negative cash flows from operating activities during 2012 and 2011 of $11.3 million and $17.9 million, respectively. To date, none of the Company's product candidates have been approved for marketing and sale, and the Company has not recorded any product sales. Management expects operating losses to continue for the next several years. The Company's ability to achieve profitability is dependent primarily on its ability to successfully develop, acquire or in-license additional product candidates, continue clinical trials for product candidates currently in clinical development, obtain regulatory approvals, and support commercialization activities for partnered product candidates. Products developed by the Company will require approval of the U.S. Food and Drug Administration (FDA) or a foreign regulatory authority prior to commercial sale. The regulatory approval process is expensive, time-consuming, and uncertain, and any denial or delay of approval could have a material adverse effect on the Company. Even if approved, the Company's products may not achieve market acceptance and will face competition from both generic and branded pharmaceutical products. As of December 31, 2012, the Company had cash and cash equivalents of $7.7 million and a working capital deficit of $9.9 million. The Company will require additional financial resources to fund its ongoing operations, which management plans to raise primarily through equity and/or debt financings and/or collaboration activities. Such funding may not be available to the Company on acceptable terms, or at all. The Company has recurring losses from operations and has a net capital deficiency that raises substantial doubt about its ability to continue as a going concern if additional financial resources are not obtained. The accompanying financial statements do not include any adjustments relating to the recoverability of the carrying amounts of recorded assets or the amount of liabilities that might result from the outcome of uncertainties.

2. Summary of Significant Accounting Policies

Basis of Presentation and Use of Estimates

The financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP), which requires management to make estimates and assumptions that affect the amounts and disclosures reported in the financial statements and accompanying notes. Management bases its estimates on historical experience and on assumptions believed to be reasonable under the circumstances. The estimation process often may yield a range of potentially reasonable estimates of the ultimate future outcomes, and management must select an amount that falls within that range of reasonable estimates. Actual results could differ materially from those estimates. The Company believes significant judgment is involved in determining revenue recognition and in estimating stock-based compensation, accrued liabilities, and equity instrument valuations.

Unaudited Interim Financial Information

The accompanying balance sheet as of June 30, 2013, the statements of operations and comprehensive loss and cash flows for the six months ended June 30, 2013 and 2012, and the statements of convertible preferred stock and stockholder's deficit for the six months ended June 30, 2013, are unaudited. The financial data and other information disclosed in these notes to the financial statements related to June 30, 2013, and the six months period ended June 30, 2012, are also unaudited. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly the Company's financial position as of June 30, 2012, and the results of its operations and cash flows for the six months ended June 30, 2013, and 2012. The results for the six months ended June 30, 2013, are not necessarily indicative of results to be expected for the year ending December 31, 2013, or for any other interim period or for any future year.

Concentration of Credit Risk

Cash, cash equivalents, and marketable securities consist of financial instruments that potentially subject the Company to a concentration of credit risk to the extent of the fair value recorded in the balance sheet. The Company invests cash that is not required for immediate operating needs primarily in highly liquid instruments that bear minimal risk. The Company has established guidelines relating to the quality, diversification, and maturities of securities to enable the Company to manage its credit risk.

Fair Value of Financial Instruments

The Company's financial instruments consist of cash and cash equivalents, short-term marketable securities, accounts payable, accrued expenses, and convertible notes. Fair value estimates of these instruments are made at a specific point in time, based on relevant market information. These estimates may be subjective in nature and involve uncertainties and matters of significant judgment and therefore cannot be determined with precision. The carrying amounts of cash and cash equivalents, and accrued liabilities are generally considered to be representative of their respective fair values because of the short-term nature of those instruments.

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. Assets and liabilities that are measured at fair value are reported using a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable inputs and maximizes the use of unobservable inputs and is as follows:

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

Level 2—Inputs other than quoted prices in active markets that are observable for the asset or liability, either directly or indirectly.

Level 3—Inputs that are unobservable for the asset or liability.

The carrying amounts of financial instruments such as cash and cash equivalents, short-term marketable securities, accounts payable, convertible notes, and accrued expenses approximate the related fair values due to the short-term maturities of these instruments. Marketable securities consist of available-for-sale securities that are reported at fair value, with the related unrealized gains and losses included in accumulated other comprehensive income (loss), a component of stockholders' deficit. The Company values cash equivalents and marketable securities using quoted market prices or alternative pricing sources and models utilizing observable market inputs and, as such, classifies cash equivalents and marketable securities within Level 1 or Level 2. As of June 30, 2013, December 31, 2012 and 2011, the Company had no assets or liabilities measured at fair value on a recurring basis within the Level 3 hierarchy.

Cash, Cash Equivalents, and Marketable Securities

The Company considers all highly liquid investments with a remaining maturity of 90 days or less at the time of purchase to be cash equivalents. Cash and cash equivalents consist of deposits with commercial banks in checking, interest-bearing, and demand money market accounts. The Company invests excess cash in marketable securities with high credit ratings. These securities consist primarily of U.S. Treasury or agency obligations and corporate debt and are classified as "available-for-sale." Management may liquidate any of these investments in order to meet the Company's liquidity needs in the next year. Accordingly, any investments with contractual maturities greater than one year from the balance sheet date are classified as short-term in the balance sheet.

Realized gains and losses from the sale of marketable securities, if any, are calculated using the specific-identification method. Realized gains and losses and declines in value judged to be other-than-temporary are included in interest income or expense in the statements of operations. Unrealized holding gains and losses are reported in accumulated other comprehensive loss, in the balance sheet. To date, the Company has not recorded any impairment charges on its marketable securities related to other-than-temporary declines in market value. In determining whether a decline in market value is other-than-temporary, various factors are considered, including the cause, duration of time and severity of the impairment, any adverse changes in the investees' financial condition, and the Company's intent and ability to hold the security for a period of time sufficient to allow for an anticipated recovery in market value.

Property and Equipment

Property and equipment is stated at cost, less accumulated depreciation and amortization. Depreciation and amortization is calculated using the straight-line method, and the cost is amortized over the estimated useful lives of the respective assets, generally three to seven years. Leasehold improvements are amortized over the shorter of the useful lives or the non-cancelable term of the related lease. Maintenance and repair costs are charged as expense in the statements of operations and comprehensive loss as incurred.

Impairment of Long-Lived Assets

The Company reviews long-lived assets for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. An impairment loss is recognized if the estimated undiscounted future cash flow expected to result from the use and eventual disposition of an asset is less than the carrying amount. While the Company's current and historical operating losses and cash flows are indicators of impairment, the Company believes the future cash flows to be received support the carrying value of its long-lived assets. Accordingly, the Company has not recognized any impairment losses as of June 30, 2013, December 31, 2012 and 2011.

Deferred Rent

The Company records its costs under facility operating lease agreements as rent expense. Rent expense is recognized on a straight-line basis over the non-cancelable term of the operating lease. The difference between the actual amounts paid and amounts recorded as rent expense is recorded to deferred rent in the balance sheet.

Revenue Recognition

The Company recognizes revenue when (i) persuasive evidence of an arrangement exists, (ii) delivery has occurred or services have been rendered, (iii) the price is fixed and determinable, and (iv) collectability is reasonably assured. Payments received in advance of work performed are recorded as deferred revenue and recognized when earned. All revenue recognized to date under the collaboration agreements has been nonrefundable.

Contract revenue from two strategic partners accounted for 95% and 5%, respectively, of total contract revenue in 2011. In 2012, 100% of contract revenue was from one strategic partner. There was no contract revenue for the six months ended June 30, 2013.

Multiple Element Arrangements

The Company evaluates revenue from agreements that have multiple elements to determine whether the components of the arrangement represent separate units of accounting. Management considers whether components of an arrangement represent separate units of accounting based upon whether certain criteria are met, including whether the delivered element has stand-alone value to the customer. To date, all of the Company's collaboration agreements have been assessed to have one unit of accounting. Up-front and license fees received for a combined unit of accounting have been deferred and recognized ratably over the projected performance period. Non-refundable fees where the Company has no continuing performance obligations have been recognized as revenue when collection is reasonably assured and all other revenue recognition criteria have been met.

Milestones and Contingent Payments

Contingent consideration received from the achievement of a substantive milestone will be recognized in its entirety in the period in which the milestone is achieved. A milestone is defined as an event having all of the following characteristics: (i) there is substantive uncertainty at the date the arrangement is entered into that the event will be achieved, (ii) the event can only be achieved based in whole or in part on either the company's performance or a specific outcome resulting from the company's performance and (iii) if achieved, the event would result in additional payments being due to the company.

The Company's future research and development and license agreements may provide for success fees or payments to be paid to the Company upon the achievement of certain development milestones. Given the challenges inherent in developing biologic products, there may be substantial uncertainty as to whether any such milestones would be achieved at the time the agreements are executed. In addition, the Company will evaluate whether the development milestones meet all of the conditions to be considered substantive. The conditions include: (1) the consideration is commensurate with either of the following: (a) the Company's performance to achieve the milestone or (b) the enhancement of the value of the delivered item or items as a result of a specific outcome resulting from the Company's performance to achieve the milestone; (2) the consideration relates solely to past performance; and (3) the consideration is reasonable relative to all of the deliverables and payment terms within the arrangement. If the Company considers the development milestones to be substantive, revenue related to such future milestone payments will be recognized as the Company achieves each milestone. Research and Development Funding Internal and external research and development costs reimbursed in connection with research and development funding or collaboration agreements are recognized as revenue in the same period as the costs are incurred, and are presented on a gross basis because the Company acts as a principal, has the discretion to choose suppliers, bears credit risk, and performs part of the services.

Research and Development Expenses

Research and development expenses consist of costs incurred in identifying, developing, and testing product candidates. These expenses consist primarily of costs for research and development personnel, including related stock-based compensation; contract research organizations and other third parties that assist in managing, monitoring, and analyzing clinical trials; investigator and site fees; laboratory services; consultants; contract manufacturing services; non-clinical studies, including materials; and allocated expenses, such as depreciation of assets, and facilities and information technology that support research and development activities. Research and development costs are expensed as incurred, including expenses that may or may not be reimbursed under research and development funding arrangements. Research and development expenses under collaboration agreements approximate the revenue recognized under such agreements.

The expenses related to clinical trials are based upon estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and clinical research organizations that conduct and manage clinical trials on behalf of the Company. Expenses related to clinical trials are accrued based upon the level of activity incurred under each contract as indicated by such factors as progress made against specified milestones or targets in each period, patient enrollment levels, and other trial activities. Payments made to third parties under these clinical trial arrangements in advance of the receipt of the related services are recorded as prepaid assets, depending on the terms of the agreement, until the services are rendered.

Stock-Based Compensation

Employee and director stock-based compensation is measured at the grant date, based on the fair-value-based measurements of the stock awards, and the portion that is ultimately expected to vest is recognized as an expense over the related vesting periods, net of estimated forfeitures. The Company calculates the fair-value-based measurements of options using the Black-Scholes valuation model and the single-option approach and recognizes expense using the straight-line attribution method.

Equity awards granted to non-employees have been accounted for using the Black-Scholes valuation model to determine the fair value-based measurements of such instruments. The fair value-based measurements of options and warrants granted to non-employees are re-measured over the related vesting period and amortized to expense as earned.

Income Taxes

The Company utilizes the liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between the financial reporting and the tax bases of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is recorded when it is more likely than not that all or part of a deferred tax asset will not be realized.

The Company follows the accounting guidance for uncertainty in income taxes. The guidance prescribes a recognition threshold and measurement attribute criteria for the financial recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination based on the technical merits of the position. Due to the Company's ongoing operating losses since inception, the Company has not recorded reserves for uncertain tax positions as of December 31, 2012 and 2011.

The Company recognizes the financial statement effects of a tax position when it is more likely than not, based on the technical merits, that the position will be sustained upon examination. The Company records interest related to income taxes, if any, as interest, and any penalties would be recorded as other expense in the statements of operations and comprehensive loss. There was no interest or penalties related to income taxes recorded during the years ended December 31, 2012 and 2011.

Comprehensive Loss

Comprehensive loss includes net loss and net unrealized gains and losses on marketable securities, which are presented in a single continuous statement. Comprehensive loss is disclosed in the statements of convertible preferred stock and stockholders' deficit, and is stated net of related tax effects, if any.

Net Loss Per Common Share

Basic net loss per share of common stock is based on the weighted average number of shares of common stock outstanding during the period. Diluted net loss per share of common stock is based on the weighted average number of shares outstanding during the period, adjusted to include the assumed conversion of certain stock options, and warrants for common stock.

Potentially dilutive securities are excluded from the calculation of loss per share if their inclusion is anti-dilutive. The following table shows the total outstanding securities considered anti-dilutive and therefore excluded from the computation of diluted net loss per share (in thousands):

	Six months ended June 30, (unaudited)		Year ended December 31,	
	2013	2012	2012	2011
Common stock options	7,747	8,788	8,249	9,698
Warrants for common stock	—	2,359	2,243	2,359

For the six and twelve months ended June 30, 2013 and 2012 and December 31, 2012 and 2011, all outstanding securities were considered anti-dilutive, and therefore the calculation of basic and diluted net loss per share was the same.

Recent Accounting Pronouncements

In June 2011, the Financial Accounting Standards Board (the FASB) issued Accounting Standards Update (ASU) No. 2011-05, *Presentation of Comprehensive Income*. This ASU gives an entity the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. This guidance is effective on a retrospective basis in the Company's financial statements for the year ending December 31, 2012. The Company adopted this pronouncement and elected to present a single continuous statement of comprehensive income. The retrospective application had only a presentation impact on the Company's financial statements for the twelve months ended December 31, 2012.

In May 2011, the FASB issued ASU No. 2011-04, *Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs*. This ASU is the result of joint efforts by the FASB and International Accounting Standards Board to develop a single, converged fair value framework. While this ASU is largely consistent with existing fair value measurement principles in U.S. GAAP, it expands the existing disclosure requirements for fair value measurements in Accounting Standards Codification (ASC) Topic 820, *Fair Value Measurement*, and makes other amendments. Many of these amendments were made to eliminate unnecessary wording differences between U.S. GAAP and International Financial Reporting Standards, which could change how fair value measurement guidance in ASC 820 is applied. This guidance was effective on a prospective basis for the Company on January 1, 2012. The prospective application had only a disclosure impact on the Company's financial statements for the year ended December 31, 2012.

3. Marketable Securities

There were no unrealized losses or gains and the amortized cost and estimated fair value was $0 as of June 30, 2013 and December 31, 2012. Marketable available-for-sale securities as of December 31, 2011 consist of the following (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
As of December 31, 2011:				
Obligations of U.S. government agencies	$ 4,495	$ 1	$ —	$ 4,496
Corporate debt securities	6,516	—	—	6,516
	$ 11,011	$ 1	$ —	$ 11,012

As of December 31, 2011, all marketable securities had contractual maturities of less than one year. Realized gains and losses were immaterial for the years ended December 31, 2012 and 2011 and the six months ended June 30, 2013 and 2012.

4. Certain Balance Sheet Items

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

	December 31,		June 30, 2013
	2012	2011	(unaudited)
Laboratory equipment	$ 3,778	$ 3,778	$ 3,405
Office and computer equipment	983	983	982
Purchased software	166	166	166
Furniture and fixtures	174	174	174
Leasehold improvements	2,534	2,534	2,534
Total	7,635	7,635	7,261
Less accumulated depreciation and amortization	(7,551)	(7,432)	(7,242)
Property and equipment, net	$ 84	$ 203	19

Property and equipment includes assets financed through equipment loans, which were fully paid in January 2012. Property and equipment and accumulated depreciation related to assets financed by equipment loans was $1.1 million as of December 31, 2011.

Accrued liabilities consist of the following (in thousands):

	December 31,		June 30, 2013
	2012	2011	(unaudited)
Accrued compensation	$291	$ 362	$ 250
Accrued pre-clinical and clinical trial expenses	304	496	178
Accrued professional fees	285	292	434
Other accruals	14	35	29
Total accrued liabilities	$894	$1,185	$ 891

5. Collaboration Agreements

Sanofi-Aventis Deutschland GMBH

In June 2010, the Company entered into a development and license agreement effective July 21, 2010, with Sanofi-Aventis Deutschland GMBH (Sanofi-Aventis), whereby Sanofi-Aventis received an exclusive worldwide license for the research, development, manufacture and commercialization of small molecules that modulate the G-protein coupled receptor 119 (GPR119). The agreement includes rights to MBX-2982, a potent selective orally active GPR119 agonist discovered by the Company. Upon the effective date of this agreement, the Company received a one-time nonrefundable up-front license payment of $25.0 million. The Company was eligible to receive milestones if certain development and commercial events were achieved, as well as royalties on worldwide product sales, if any. The one-time nonrefundable up-front license payment was being recognized as revenue ratably over the period that the Company expected to complete certain research and development activities that represent the Company's substantive performance obligations under the agreement. Of this up-front license fee, $11.0 million was recognized as contract revenue in 2011 and none was recognized in 2012.

On June 15, 2011, the arrangement was terminated by Sanofi-Aventis. Following termination, the Company retained rights to the current programs under this agreement and may continue to develop the programs and commercialize any products resulting from the programs, or the Company may elect to cease progressing the programs and/or seek other partners for further development and commercialization of the programs.

In 2012, the Company recognized a final payment from Sanofi-Aventis of $2.9 million as contract revenue.

Takeda San Francisco, Inc.

In March 2010, the Company entered into a research collaboration agreement with Takeda San Francisco, Inc. (TSF), a wholly owned subsidiary of Takeda Pharmaceutical Company Limited. The Company collaborated with TSF on the evaluation and validation of protein targets for the development of biological products. In March 2010, the Company received $1.5 million, representing $0.9 million of one-time nonrefundable technology access fees and $0.6 million of specified research and development funding for the research term of the collaboration. The technology access fee and the research and development funding were deferred and were being recognized ratably over the funded research term, which was scheduled from March 2010 to August 2011. The Company recognized $0.7 million and $0.8 million as contract revenue in 2011 and 2010, respectively, under this arrangement. Approximately $0.1 was recognized as specific research and development funding under this agreement in the year ended December 31, 2012. Takeda terminated this agreement on March 16, 2013 with no further payments being made as of June 30, 2013.

Pfizer, Inc.

In December 1998, the Company entered into a collaboration agreement in the area of insulin secretion target discovery with the Parke-Davis division of Warner-Lambert Company, since acquired by Pfizer Inc., to identify genes involved in diabetes and to develop therapeutic compounds from the research. The collaboration agreement provided for an initial five-year funded research term, which was subsequently extended an additional year until December 2004. The Company received payments for research and development costs for the funded research term and is entitled to receive payments for specified drug development achievements. If products resulting from the collaboration are eventually marketed and sold, the Company will also receive royalties on sales of such products. No amounts were received under this agreement in the six months ended June 30, 2013 and the years ended December 31, 2012 and, 2011.

The Company was also eligible to receive contingent payments if certain development and commercial events were achieved as well as royalties on worldwide product sales, if any. The $7.5 million one-time nonrefundable technology access fee was recognized as revenue in 2010, as the Company had no substantive performance obligations under this arrangement. No amounts were received under this agreement in the six months ended June 30, 2013 and for the years ended December 31, 2012 and 2011.

6. License Agreements

In June 1998, the Company entered into a license agreement with DiaTex, Inc. (DiaTex) relating to products containing halofenate, its enantiomers, derivatives, and analogs (the licensed products). The license agreement provides that DiaTex and the Company are joint owners of all of the patents and patent applications covering the licensed products and methods of producing or using such compounds, as well as certain other know-how (the covered IP). As part of the license agreement, the Company received an exclusive worldwide license, including as to DiaTex, to use the covered IP to develop and commercialize the licensed products. The Company also retained the right to sub-license the covered IP. The license agreement contains a $2,000 per month license fee as well as a requirement to make additional payments for development achievements and royalty payments on any sales of licensed products. Pursuant to the license agreement, all of the Company's patents and patent applications related to MBX-102, its use, and production are jointly owned with DiaTex. DiaTex is entitled to up to $0.8 million for the future development of MBX-102, as well as royalty payments on any sales of products containing MBX-102. No development payments were made in the years ended December 31, 2012 and, 2011 or the six months ended June 30, 2013 and no royalties have been paid to date.

7. Debt

On June 20, 2006 the Company entered into a equity and loan facility with the Johnson and Johnson Development Corporation ("JJDC") pursuant to which the Company could drawn down up to an aggregate of $30 million in loans in the form of convertible preferred stock promissory notes. In March and September 2008, the Company issued notes in the aggregate amount of $3.5 million and $10.5 million, respectively. The notes

were due on March 17 and September 17, 2011, including interest that accrued at 7.57% per annum. In December 2010, the aggregate principal amount and all accrued interest under the notes issued in March and September 2008 were converted into the Company's Series E-3 convertible preferred stock (Series E-3 Preferred) at 2.93 per share.

In February and July 2009, the Company issued notes in the aggregate amount of $7.0 million and $6.7 million, respectively, which represented the remaining amount available to the Company, in accordance with the terms of the equity and loan facility with JJDC. The notes were due in February 2012 and July 2012, including interest that accrued at 4.42% per annum and 4.960% per annum, respectively. In January 2012, the Company amended the maturity dates of the outstanding $7.0 million and $6.7 million convertible promissory notes to extend the maturity date to March 1, 2013 (see Note 15 for additional extension), and interest rates were increased to 4.919% and 5.46% per annum, respectively. In addition, the conversion price of the notes to convert into shares of the Company's Series C-1 Preferred Stock was decreased from $5.52 per share to $3.68 per share. All of these notes were further amended in March 2013, to extend the maturity date on the notes to August 1, 2013, and to make the notes subordinate to repayment of the Company's severance obligations to all employees until January 1, 2014. On July 31, 2013, the maturity date was extended to December 31, 2013. For the years ended December 31, 2012 and 2011, the Company recognized $0.7 million and $0.7 million, respectively, of interest expense related to the convertible promissory notes. For the six months ended June 30, 2013 and 2012, the Company recognized $0.2 million and $0.2 million, respectively, of interest expense related to the convertible promissory note. There are no financial covenants associated with the notes.

Equipment Loans

In February 2007, the Company entered into an equipment loan and security agreement with General Electric Capital Corporation (GECC) under which GECC provided loans to the Company totaling $1.1 million in 2007, each with a term of four years, at fixed rates of interest between 9.78% and 9.91%. GECC has been granted a security interest in all equipment financed by the loans. There are no financial covenants associated with the agreement. As part of finalizing the loan agreement, the Company made a one-time deposit to GECC in the amount of $0.2 million. In 2011, $0.1 million of the deposit was returned to the Company, and the remaining outstanding deposit balance was returned upon full repayment of the principal balance in January 2012.

8. Commitments and Contingencies

Operating Lease Commitments

The Company leases office and laboratory space in a single building in Hayward, California. The facility lease, as amended on July 15, 2010, has a term of four years, unless terminated earlier by the Company, and expires on April 30, 2014. Rent expense was $0.5 million for the years ended December 31, 2012 and 2011 and $0.2 million for each of the six months ended June 30, 2013 and 2012.

Future minimum lease payments under this amended agreement are as follows (in thousands):

	Lease Payments
Year ending December 31:	
2013	$ 422
2014	143
Total future minimum payments	$ 565

Indemnification

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnification, including indemnification associated

with product liability or infringement of intellectual property rights. The Company's exposure under these agreements is unknown because it involves future claims that may be made against the Company that may be, but have not yet been, made. To date, the Company has not paid any claims or been required to defend any action related to these indemnification obligations, and no amounts have been accrued in the accompanying balance sheets related to these indemnification obligations.

The Company has agreed to indemnify its executive officers and directors for losses and costs incurred in connection with certain events or occurrences, including advancing money to cover certain costs, subject to certain limitations. The maximum potential amount of future payments the Company could be required to make under this indemnification is unlimited; however, the Company maintains insurance policies that may limit its exposure and may enable it to recover a portion of any future amounts paid. Assuming the applicability of coverage, the willingness of the insurer to assume coverage, and subject to certain retention, loss limits, and other policy provisions, the Company believes the fair value of these indemnification obligations is not material. Accordingly, the Company has not recognized any liabilities relating to these obligations as of December 31, 2012 and 2011. No assurances can be given that the covering insurers will not attempt to dispute the validity, applicability, or amount of coverage without expensive litigation against these insurers, in which case the Company may incur substantial liabilities as a result of these indemnification obligations.

9. Redeemable Convertible Preferred Stock

The Company has the following series of outstanding convertible preferred stock (collectively, the Preferred Stock): Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, Series D-1 Preferred, Series E-1 Preferred and Series E-3 Preferred. Series E-1 Preferred and Series E-3 Preferred are collectively referred to as the Series E Preferred. The Preferred Stock was initially recorded at its original purchase price, which represented fair value on the date of issuance, net of issuance costs, if any. The original purchase price per share of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, Series D-1 Preferred, and Series E Preferred is equal to $2.93, $2.93, $4.60, $4.00, and $2.93 per share, respectively. The preferred stock balances are recorded at the original fair value and the accreted dividends based on the per share terms at issuance of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, Series D-1 Preferred, and Series E Preferred, which are equal to $0.234, $0.234, $0.368, $0.320, and $0.234 per share per annum, respectively.

The shares of Series B-1 Preferred, Series D-1 Preferred, and Series E Preferred are redeemable upon the request of the holders of at least 66 2/3% of outstanding shares of Series B-1 Preferred, voting as a separate class, and 51% of outstanding shares of Series D-1 Preferred and Series E Preferred, voting together as a separate class. In this event, the Company would be required to redeem the shares in three equal annual installments, beginning in September 2021, at the applicable original purchase price per share. All shares of Preferred Stock are redeemable in the event of a change of control at their liquidation preferences.

As all Preferred Stock is redeemable either at the option of the holder or upon an event outside the control of the Company (i.e., a change in control), the related amounts have been presented outside of stockholders' equity (deficit). In August and December 2003, the Company completed two closings of a private placement of Series B-1 Preferred, in which the Company issued a total of 10,853,363 shares at a price of $2.93 per share for gross proceeds of $31.8 million. In November and December 2004, the Company completed two further closings of Series B-1 Preferred, in which the Company issued a total of 15,017,065 shares at a price of $2.93 per share for gross proceeds of $44.0 million. The Series B-1 Preferred investors in these two final closings also purchased warrants for 2,325,000 shares of common stock at an exercise price of $0.38 per share, with an exercise period of five years from the date of purchase, for $0.019 cents per share of common stock covered by the warrants. In November 2009, the exercise period of these warrants was extended to December 31, 2011. In December 2012, the Company's Board of Directors reduced the number of shares exercisable under these warrant by 45% of the original shares and approved the extension of the exercise period until April 1, 2013 (Note 10). As of December 31, 2012, warrants to purchase 1,046,250 shares of common stock were outstanding.

In August 2006, the Company issued 2,173,913 shares of Series C-1 Preferred to JJDC at a price of $4.60 per share, for gross proceeds of $10.0 million (Note 5).

In April 2007, the Company issued 8,012,497 shares of Series D-1 Preferred at a price of $4.00 per share, for gross proceeds of $32.0 million. In connection with the issuance, the Series D-1 Preferred investors also purchased warrants for an aggregate of 1,201,875 shares of common stock at an exercise price of $0.38 per share, with an exercise period of five years from the date of purchase, for $0.01 cents per share of common stock covered by the warrants.

In August 2008, the Company repurchased 51,340, 127,984 and 37,500 shares of Series A-1 Preferred, Series B-1 Preferred and Series D-1 Preferred, respectively, and a warrant for 5,625 shares of common stock, for an aggregate purchase price of $82,000. The Company allocated the purchase price among the preferred shares and warrant based upon their respective fair values.

In November 2009, the Company issued 102,389 shares of Series E-1 Preferred upon the conversion of debt issued under a loan agreement. In June and December 2010, the Company issued 68,259 and 2,950,945 shares of Series E-1 Preferred, respectively, upon conversion of debt issued under a loan agreement.

In December 2010, the Company issued 5,687,700 shares of Series E-3 Preferred upon conversion of the JJDC convertible notes that were due in 2011 (Note 7).

As of June 30, 2013 (unaudited), convertible preferred stock balances were as follows (in thousands, except share amounts):

	Shares Authorized	Shares Issued and Outstanding	Aggregate Liquidation Preference	Carrying Value
Series A-1	1,012,389	1,012,389	$ 5,305	$ 75,572
Series B-1	29,671,222	29,671,222	149,998	148,857
Series C-1	6,000,000	2,173,913	15,519	15,471
Series D-1	7,974,997	7,974,997	47,785	44,536
Series E-1	3,200,000	3,121,593	20,183	11,037
Series E-3	7,400,000	5,687,700	24,213	29,477
Total	55,258,608	49,641,814	$ 263,003	$324,950

As of December 31, 2012, convertible preferred stock balances were as follows (in thousands, except share amounts):

	Shares Authorized	Shares Issued and Outstanding	Aggregate Liquidation Preference	Carrying Value
Series A-1	1,012,389	1,012,389	$ 5,187	$ 75,454
Series B-1	29,671,222	29,671,222	146,549	145,408
Series C-1	6,000,000	2,173,913	15,122	15,074
Series D-1	7,974,997	7,974,997	46,520	43,271
Series E-1	3,200,000	3,121,593	19,820	10,674
Series E-3	7,400,000	5,687,700	23,552	28,816
Total	55,258,608	49,641,814	$ 256,750	$318,697

As of December 31, 2011, convertible preferred stock balances were as follows (in thousands, except share amounts):

	Shares Authorized	Shares Issued and Outstanding	Aggregate Liquidation Preference	Carrying Value
Series A-1	1,012,389	1,012,389	$ 4,949	$ 75,216
Series B-1	29,671,222	29,671,222	139,575	138,434
Series C-1	6,000,000	2,173,913	14,320	14,272
Series D-1	7,974,997	7,974,997	43,961	40,712
Series E-1	3,200,000	3,121,593	19,086	9,940
Series E-3	7,400,000	5,687,700	22,216	27,479
Total	55,258,608	49,641,814	$ 244,107	$306,053

The significant rights, privileges, and preferences of the Preferred Stock are as follows:

Election of Directors

The holders of Series B-1 Preferred are entitled to elect five members of the Company's Board of Directors, the holders of Series D-1 Preferred are entitled to elect one member of the Company's Board of Directors, and the holders of common stock are entitled to elect one member of the Company's Board of Directors, subject to certain restrictions. All remaining members of the Company's Board of Directors are elected by all of the stockholders voting on an as-if-converted basis.

Voting Rights

Preferred Stock carries voting rights equal to the number of shares of common stock into which it can be converted. Additionally, certain corporate actions may be exercised upon the approval of holders of 66 2/3% of the outstanding shares of Series B-1 Preferred and Series C-1 Preferred, voting together as a single class, and 51% of the outstanding shares of Series D-1 Preferred and Series E Preferred, voting together as a single class.

Dividends

All dividends are payable when and if declared by the Company's Board of Directors. The holders of Series E Preferred are entitled to cumulative dividends in preference to the holders of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, Series D-1 Preferred, and common stock. The holders of Series D-1 Preferred are entitled to cumulative dividends in preference to the holders of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, and common stock. The holders of Series B-1 Preferred and Series C-1 Preferred are entitled to cumulative dividends in preference to the holders of Series A-1 Preferred and common stock. The holders of Series A-1 Preferred are entitled to cumulative dividends in preference to the holders of common stock. The dividend rate is $0.2344, $0.32, $0.368, $0.2344, and $0.2344 per annum for each outstanding share of Series E Preferred, Series D-1 Preferred, Series C-1 Preferred, Series B-1 Preferred, and Series A-1 Preferred, respectively. Additionally, if dividends are paid to any holder of common stock, the holders of Preferred Stock will receive a dividend of a per share amount (on an as-if-converted to common stock basis) equal to the amount paid to the holders of common stock.

No dividends were declared as of December 31, 2012 and 2011. The aggregate cumulative dividends as of June 30, 2013, were $3.4 million ($0.59 per share), $1.9 million ($0.61 per share), $15.9 million ($1.99 per share), $5.6 million ($2.54 per share), $63.1 million ($2.13 per share), and $2.3 million ($2.31 per share) for Series E-3 Preferred, Series E-1 Preferred, Series D-1 Preferred, Series C-1 Preferred, Series B-1 Preferred, and Series A-1 Preferred, respectively. The aggregate cumulative dividends as of December 31, 2012, were $2.7 million ($0.48 per share), 1.5 million ($0.49 per share), $14.6 million ($1.83 per share), $5.1 million

($2.36 per share), $59.6 million ($2.01 per share), and $2.2 million ($2.19 per share) for Series E-3 Preferred, Series E-1 Preferred, Series D-1 Preferred, Series C-1 Preferred, Series B-1 Preferred, and Series A-1 Preferred, respectively.

Liquidation Preference

In the event of a liquidation, dissolution, winding up, or change in control of the Company, the liquidation preference of each stockholder class is to be paid in the following order, from available funds: first to the holders of Series E-1 Preferred and Series E-3 Preferred, second to the holders of Series D-1 Preferred, third to the holders of Series B-1 Preferred and Series C-1 Preferred, and fourth to the holders of Series A-1 Preferred. After payment of the Preferred Stock liquidation preferences, the remaining assets of the Company are to be distributed ratably to all holders of common stock and Preferred Stock on an as-if-converted basis. The liquidation preference of Series E-1 Preferred, Series E-3 Preferred, Series D-1 Preferred, Series C-1 Preferred, Series B-1 Preferred, and Series A-1 Preferred is equal to $5.86, $3.66, $4.00, $4.60, $2.93, and $2.93 per share, respectively, plus any cumulative unpaid dividends. If there are insufficient funds available to satisfy each liquidation preference in its entirety, the holders of Preferred Stock are to be paid a pro rata amount based on their liquidation preference.

Conversion Rights

Each share of Preferred Stock is convertible at any time, at the option of the holder, into shares of the Company's common stock at the applicable conversion rate. The conversion rate for each of the series of Preferred Stock is currently 1:1, except for the Series D-1 Preferred, which has a conversion rate of 1.365:1. With respect to the Series E Preferred, Series D-1 Preferred, Series B-1 Preferred, and Series A-1 Preferred, if the Company issues common stock or securities convertible into or exercisable for shares of common stock at a price less than the respective original purchase price per share, the conversion rate of such stock shall be adjusted to the lowest price per share paid in such issuance. The conversion rate for Preferred Stock will not be adjusted for common stock issuances on the exercise of options or warrants issued to employees, directors, or consultants of the Company and in certain other circumstances.

Each share of Preferred Stock automatically converts into common stock upon the approval of holders of 66 2/3% of the outstanding shares of Series B-1 Preferred, voting as a separate class, and 51% of the outstanding shares of Series D-1 Preferred and Series E Preferred, voting together as a separate class, or upon the closing of an underwritten public offering of the Company's common stock pursuant to an effective registration statement under the Securities Act of 1933, as amended, at a per share price of at least $8.00, and raising aggregate gross proceeds of at least $30.0 million. In connection with the next sale and issuance of capital stock of the Company, with aggregate proceeds to the Company of not less than $1,000,000, each holder of the Company's preferred stock that participates in such financing for between 1% and up to 99% of such holders "*Pro Rata Share*" (as defined in the Company's certificate of incorporation) shall have each shares of preferred stock represented by such participation amount convertible into four shares of common stock and the balance of any shares of preferred stock convertible at the applicable conversion rate as defined in the certificate of incorporation. Any holder that participates in such financing for between 100% and 300% of such holder's Pro Rata Share (the "*Participation Multiple*") shall have each shares of preferred stock convert into shares of common stock by multiplying the product of (y) the aggregate number of shares of preferred stock held by such holder multiplied by the applicable Participation Multiple and (z) four (4).

Upon any conversion, any declared and unpaid dividends shall be paid to the holders of Preferred Stock in cash, or to the extent sufficient funds are not legally available, in common stock at the common stock's fair market value.

Rights of First Refusal

Pursuant to the Company's By-laws and a Right of First Refusal and Co-Sale Agreement, the Company has the right to purchase any outstanding common stock that is available or offered for sale prior to an initial public

offering. Additionally, if certain holders of the Company's common stock and/or holders of the Company's Series E Preferred, Series D-1 Preferred, Series C-1 Preferred, or Series B-1 Preferred wish to sell any of their stock, they are required to offer the stock for sale under the same terms and conditions first to the Company and then to the holders of the Company's Series E Preferred, Series D-1 Preferred, Series C-1 Preferred, and Series B-1 Preferred. Certain holders of Preferred Stock have the right to participate in future financings of the Company, subject to their pro rata share, assuming full conversion and exercise of outstanding warrants or options held by them. The right expires upon the earlier of an initial public offering or a change in control of the Company.

10. Common Stock

The Company is authorized to issue 74,000,000 shares of common stock. In November 2009, the Company's Board of Directors approved the extension of the time period in which the holders of warrants to purchase 2,325,000 shares of common stock are able to exercise their warrants that were issued in connection with the issuance of Series B-1 Preferred. The exercise periods of the warrants that originally ended in November 2009 were extended to December 31, 2010. The value of the exercise period extension of $0.1 million was recorded to accumulated deficit and was determined using the Black-Scholes valuation model, with the following inputs used to determine the value of the modification: fair value of the Company's common stock of $0.20 per share, expected life of the modified warrants of 1.10 years, risk-free interest rate of 0.41%, and expected common stock price volatility of 97%.

In December 2010, the Company's Board of Directors modified the warrants to purchase common stock that were issued in connection with the issuance of Series B-1 Preferred. The number of shares exercisable under the warrants issued with the issuance of the Series B-1 Preferred was reduced by 50% to 1,162,500, and the exercise period was extended to December 31, 2012. In December 2012, the Company's Board of Directors again modified the warrants to purchase common stock that were issued in connection with the issuance of Series B-1 Preferred. The number of shares exercisable under the warrants issued with the issuance of the Series B-1 Preferred was reduced by 45% of the original shares to 1,046,465, and the exercise period was extended to April 1, 2013. The extension of the agreement did not make a material change in value.

In December 2010, the Company's Board of Directors modified the warrants to purchase common stock that were issued in connection with the issuance of Series D-1 Preferred. The exercise period of the warrants issued in connection with the Series D-1 Preferred issuance was extended to April 13, 2013. The charge related to the modifications to these warrants of $0.1 million was recorded to accumulated deficit and was determined using the Black-Scholes valuation model, with the following inputs used to determine the charge related to the modification: fair value of the Company's common stock of $0.20 per share, expected life of the modified warrants of one to two years, risk-free interest rate of 0.50%, and expected common stock price volatility of 83%.

As of June 30, 2013 and December 31, 2012, the Company had reserved shares of authorized but unissued common stock as follows:

	Shares Reserved June 30, 2013 (unaudited)	Shares Reserved December 31, 2012
Conversion of convertible preferred stock	49,641,814	49,641,814
Outstanding common stock warrants	—	2,242,500
Equity incentive plans	11,162,946	11,167,651
Total reserved shares of common stock	60,804,760	63,051,965

In addition to the above reserved shares, the Company has reserved stock for issuance upon conversion of the outstanding convertible notes (Note 7).

11. Stock Plans and Stock-Based Compensation

Stock Plans

In August 2003, the Company's stockholders approved the 2003 Equity Incentive Plan (2003 Plan), under which shares of common stock are reserved for the granting of options, stock bonuses, and restricted stock awards by the Company. These awards may be granted to employees, members of the Board of Directors, and consultants to the Company. The 2003 Plan has a term of ten years and replaced the 1993 Stock Option Plan, which had similar terms. The 2003 Plan permits the Company to (i) grant incentive stock options to directors and employees at not less than 100% of the fair value of common stock on the date of grant; (ii) grant nonqualified options to employees, directors, and consultants at not less than 85% of fair value; (iii) award stock bonuses; and (iv) grant rights to acquire restricted stock at not less than 85% of fair value. Options generally vest over a four- or five-year period and have a term of ten years. Options granted to 10% stockholders have a maximum term of five years and require an exercise price equal to at least 110% of the fair value on the date of grant. The exercise price of all options granted to date has been at least equal to the fair value of common stock on the date of grant. Restricted stock units granted in 2007 vested over a four- or five-year period, subject to certain performance conditions, and terminated on August 19, 2012.

Stock Plan Activity

In March 2008, the Company's Board of Directors approved an exchange offer program (the Exchange Offer) under which current employees, directors, and scientific advisory board members could elect to exchange all of their unexercised stock options with an exercise price of greater than $1.60 and cancel all of their restricted stock units in exchange for new stock options for the same number of shares as the unexercised stock options being exchanged. The newly granted options would be issued under the 2003 Plan and have an exercise price equal to the fair value of the Company's common stock on the date of grant, and a term of ten years. New options replacing vested canceled options would be fully vested upon grant and new options replacing unvested canceled options would vest over a three-year period. In June 2008, under this program, unexercised options for 3,667,355 shares and 600,423 restricted stock units were canceled and exchanged for 3,667,355 new options at an exercise price of $0.50 per share. For stock options granted under the Exchange Offer, the Company will recognize the remaining unamortized expense related to the original options as of the exchange date of $5.2 million over the vesting period of the new awards. The incremental expense resulting from the Exchange Offer of $0.5 million will also be recognized over the same period. In the years ended December 31, 2012 and 2011, the Company recognized $0.0 million and $0.8 million, respectively, of noncash stock-based compensation expense related to the new awards, including a portion of the unamortized expense related to the original options as of the exchange date.

As of June 30, 2013, December 31, 2012 and 2011, 3,413,736, 2,918,190 shares and 1,470,306 shares were available for grant under the 2003 Plan.

The following table summarizes stock option activity:

	Shares Subject to Outstanding Options	Weighted-Average Exercise Price of Options	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (In Thousands)
Outstanding as of December 31, 2011	9,697,625	$ 0.45	4.58	$ 3
Vested and expected to vest as of December 31, 2011	9,637,325	$ 0.45	4.55	$ 3
Exercisable as of December 31, 2011	7,991,814	$ 0.50	3.87	$ 2
Options granted	1,200,000	0.06		
Options exercised	(1,500)	0.20		
Options forfeited	(885,559)	0.18		
Options expired	(1,761,625)	0.42		
Outstanding as of December 31, 2012	8,248,941	$ 0.43	4.43	$ 0
Vested and expected to vest as of December 31, 2012	8,211,373	$ 0.43	4.41	$ 0
Exercisable as of December 31, 2012	6,983,971	$ 0.49	3.84	$ 0
Options granted	—			
Options exercised	(6,186)	0.06		
Options forfeited	(131,666)	0.13		
Options expired	(363,880)	0.39		
Outstanding as of June 30, 2013	7,747,210	0.44	4.21	$ 0
Vested and expected to vest as of June 30, 2013	7,715,393	0.44	4.20	$ 0
Exercisable as of June 30, 2013 (unaudited)	6,994,602	0.48	3.68	$ 0

The following table summarizes information about stock options outstanding as of December 31, 2012:

	Options Outstanding		Options Exercisable
Exercise Price	Number of Shares	Weighted-Average Remaining Contractual Term (Years)	Number of Shares
$0.06	1,148,483	8.47	266,733
$0.12	75,000	6.42	68,750
$0.20	1,616,105	6.02	1,241,988
$0.30	71,000	6.14	68,146
$0.38	2,552,221	1.35	2,552,221
$0.50	2,322,795	4.81	2,322,795
$0.69	15,000	2.43	15,000
$0.79	170,000	2.58	170,000
$3.00	278,338	3.70	278,338
	8,248,942	4.43	6,983,971

No restricted stock units were granted in the six months ended June 30, 2013 or the years ended December 31, 2012 and 2011. No restricted stock units vested in the six months ended June 30, 2013 or the years ended December 31, 2012 and 2011. As of June 30, 2013, December 31, 2012 and 2011, there were 0 and 700 restricted stock units outstanding, respectively, with a weighted-average grant date fair value of $3.00 per share and a weighted-average remaining contractual term of 0.00 and 0.64 years, respectively. No expense has been recorded to date related to the Company's restricted stock units, as no restricted stock units have vested. Vesting of the restricted stock units is contingent upon either an initial public offering of the Company's common stock or a change in control.

Grant Date Fair Value

The following table presents the weighted-average assumptions the Company used with the Black-Scholes valuation model to derive the grant date fair value-based measurements of employee and director stock options and the resulting estimated weighted-average grant date fair-value-based measurements per share:

	Year Ended December 31,		Six Months Ended June 30,	
	2012	2011	2013	2012
			(unaudited)	
Weighted-average assumptions:				
Expected term	6.25 yrs	6.25 yrs	6.25 yrs	6.25 yrs
Expected volatility	100%	100%	94%	102%
Risk-free interest rate	1.01%	1.27%	1.45%	0.95%
Expected dividend yield	0%	0%	0%	0%
Weighted-average grant date fair value-based measurement per share	$ 0.05	$ 0.14	$ 0.05	$ 0.05

Expected Term

The Company does not believe it can place reliance on its historical exercise and post-vesting termination activity to provide accurate data for estimating the expected term. Therefore, for stock option grants made during the six months ended June 30, 2013 and years ended December 31, 2012 and 2011, the Company has opted to use the simplified method for estimating the expected term.

Expected Volatility

As the Company does not have any trading history for its common stock, the expected stock price volatility for the Company's common stock was estimated by considering the volatility rates of publicly traded peer entities within the life sciences industry.

Risk-Free Interest Rate

The risk-free interest rate assumption was based on U.S. Treasury instruments with constant maturities whose term was consistent with the expected term of stock options granted by the Company.

Expected Dividend Yield

The Company has never declared or paid cash dividends and does not plan to pay cash dividends in the foreseeable future. Consequently, the Company uses an expected dividend yield of zero.

Common Stock Fair Value

The Company's Board of Directors has historically determined the fair value of the Company's common stock for the purpose of pricing the Company's equity awards to employees, directors, and consultants. As there

has been no public market for the Company's common stock, the Company's Board of Directors, in making such fair value determinations, considered a number of factors, including the price at which Preferred Stock was issued to outside investors in arm's-length transactions, the rights, preferences, and privileges of the Preferred Stock relative to the common stock, important developments relating to advancement of the Company's technology and clinical programs, the Company's stage of development and business strategy, the likelihood of achieving a liquidity event for the shares of common stock, such as an initial public offering or sale of the Company, prevailing market conditions, and the market prices of various publicly held life sciences companies. Additionally, the Board of Directors considered contemporaneous valuations provided by third-party valuation specialists.

Forfeitures

The Company estimates forfeitures at the time of grant and revises these estimates in subsequent periods if actual forfeitures differ from those estimates. Changes in forfeiture estimates impact compensation in the period in which the change occurs.

The total intrinsic value of options exercised in the six months ended June 30, 2013 and years ended December 31, 2012 and 2011, was $0, $0 and $3,000, respectively.

Vested and Unvested Awards

The total fair value of options vested in the six months ended June 30, 2013 and years ended December 31, 2012 and 2011, was $0.0 million, $0.1 million and $0.1 million, respectively.

As of June 30, 2013 and December 31, 2012, the total compensation expense related to unvested employee stock options to be recognized in future periods, excluding estimated forfeitures, was less than $100,000 and $0.2 million, respectively. The weighted-average periods over which this compensation expense is expected to be recognized are 1.4 years and 2.0 years as of June 30, 2013 and December 31, 2012, respectively. The weighted-average period over which compensation expense related to these restricted stock units is expected to be recognized is not determinable, as vesting is contingent upon future events.

Stock-Based Compensation Expense

Employee and Director Expense

Employee and director stock-based compensation expense recorded was as follows (in thousands):

	Year Ended December 31		Six Months Ended June 30,	
	2012	2011	2013	2012
			(unaudited)	
Research and development	$ 26	$ 380	$ 11	$ 13
General and administrative	54	377	23	29
Total	$ 80	$ 757	$ 34	$ 42

In January 2004, the Company's Board of Directors canceled outstanding employee options under the 1993 Stock Option Plan and replaced them with new options to purchase 97,767 shares of common stock under the 2003 Plan at an exercise price of $0.38 per share. These replacement options were fully vested on the grant date and are exercisable for ten years, or 18 months after an initial public offering, if earlier. All replacement options are being accounted for as variable from the date of issuance to the date the options are exercised, forfeited or expire. During the six months ended June 30, 2013 and years ended December 31, 2012 and 2011, as a result of decreases in the fair market value of its common stock, the Company did not record any compensation expense related to these options.

Non-Employee Expense

The Company has issued options to purchase shares of common stock to members of its Scientific Advisory Board (SAB) and certain consultants. The stock options have various exercise prices, a term of ten years, and vest over periods up to sixty months. In 2011, the Company did not grant any options to its SAB members or consultants. In 2012 the Company granted options to purchase 250,000 to its SAB members and consultants. As of December 31, 2012, options to purchase 272,853 shares of common stock remained unvested, and compensation related to these stock options is subject to periodic adjustment as the shares vest. The Company recorded $1,000 (unaudited), $1,000 and $6,000 of expense in the six months ended June 30, 2013 and years ended December 31, 2012 and 2011, respectively, related to these awards.

The Company has not recognized, and does not expect to recognize in the near future, any tax benefit related to employee stock-based compensation costs.

12. 401(k) Plan

The Company provides a qualified 401(k) savings plan for its employees. All employees are eligible to participate, provided they meet the requirements of the plan. While the Company may elect to match employee contributions, no such matching contributions have been made through June 30, 2013, December 31, 2012 and 2011.

13. Income Taxes

No provision for U.S. income taxes exists due to tax losses incurred in all periods presented. Deferred income taxes reflect the tax effects of net operating loss and tax credit carryforwards and the net temporary differences between the carrying amounts of assets and liabilities for financial reporting and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets are as follows (in thousands):

	December 31	
	2012	2011
Deferred tax assets:		
Federal and state net operating loss carryforwards	$ 62,745	$ 57,901
Capitalized research and development	22,490	22,541
Federal and state tax credit carryforwards	6,153	6,059
Other	1,200	1,390
Total deferred tax assets	92,588	87,891
Valuation allowance	(92,588)	(87,891)
Net deferred tax assets	$ —	$ —

Realization of the net deferred tax assets is dependent upon future taxable income, if any, the amount and timing of which is uncertain. Based on available objective evidence, management believes it more likely than not that the Company's deferred tax assets are not realizable. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. The net valuation allowance increased by $4.5 million and $2.0 million during the years ended December 31, 2012 and 2011, respectively.

As of December 31, 2012, we had federal and state net operating loss carryforwards of approximately $156.0 million to offset future federal income taxes which will expire beginning in 2024 through 2032 and the state income taxes which will expire beginning in 2014 through 2032. Current federal and state tax laws include substantial restrictions on the utilization of net operating losses and tax credits in the event of an ownership change. Even if the carryforwards are available, they may be subject to annual limitations, lack of future taxable income, or future ownership changes that could result in the expiration of the carryforwards before they are utilized. If we determine in the future that we will be able to realize all or a portion of our net operating loss carryforwards, an adjustment to our net operating loss carryforwards would increase net income in the period in which we make such a determination.

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

The following table summarizes activity related to the Company's gross unrecognized tax benefits (in thousands):

	Total
Balance as of December 31, 2010	$1,543
Increases related to 2011 tax positions	168
Balance as of December 31, 2011	1,711
Increases related to 2012 tax positions	36
Balance as of December 31, 2012	$1,747

The unrecognized tax benefits, if recognized, would not have an impact on the Company's effective tax rate. The Company does not expect a significant change to its unrecognized tax benefits over the next twelve months. The unrecognized tax benefits may increase or change during the next year for items that arise in the ordinary course of business.

The Company files income tax returns in the U.S. federal and California jurisdiction and is not currently under examination by federal, state, or local taxing authorities for any open tax years. The tax years 1998 through 2012 remain open to examination by the major taxing authorities.

14. Related-Party Transactions

The Company paid a former member of its Board of Directors, who is also a member of its Scientific and Clinical Advisory Boards, a total of $60,000 per year in the years ended December 31, 2012 and 2011, respectively, and $30,000 for the six months ended June 30, 2013, in monthly cash retainers. The Company also issued options to purchase shares of common stock to this individual in his capacity as a member of its Scientific Advisory Board (Note 11).

15. Subsequent Events

Contingent Severance Obligation

In January 2013, the Company Board of Directors approved a lump-sum severance benefit to employees in the event of the Company's cessation of operations due to bankruptcy. The severance benefit had not been used previously and is due to expire on January 1, 2014. It contained no service requirement and because it was not considered to be company policy, it was not communicated to all employees.

Convertible Notes – JJDC

On March 18, 2013, the Company's equity and loan facility agreement with JJDC was amended. Under the terms of the amendment, the maturity dates of the convertible notes outstanding were extended to August 1, 2013, and the payment of the note is to rank junior in priority for up to an aggregate of $1.1 million in payments to the Company's officers and employees in connection with severance obligations. On July 31, 2013, the Company and JJDC entered into a further amendment to the loan facility to extend the maturity date of the convertible notes outstanding until December 31, 2013.

Preferred Stock – KBC Equity

On August 7, 2013, the Company purchased back from various KBC Equity Funds 2,389,000 shares of Series B-1 Preferred Stock, 364,371 shares of Series D-1 Preferred Stock and 262,119 shares of Series E-1 Preferred Stock, 364,371 for $3,000.

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

Exhibit 10.14

DEVELOPMENT AND CLINICAL MANUFACTURE AGREEMENT

This **Development and Clinical Manufacture Agreement** (the "**Agreement**") is made and entered into as of June 5, 2012 (the **"Effective Date"**) by and between **Metabolex, Inc.**, a Delaware corporation with its principal place of business located at 3876 Bay Center Place, Hayward, California 94545 (**"Metabolex"**) and **Patheon Inc.,** a Canadian company with its principal place of business located at 2100 Syntex Court, Mississauga, Ontario, L5N 7K9, Canada (**"Patheon"**). Metabolex and Patheon may be referred to herein individually as a **"Party"** or collectively as the **"Parties".**

RECITALS

Metabolex desires Patheon to perform certain manufacturing process development work on its proprietary drug compound known as "MBX-102" (also known as "arhalofenate") in accordance with the terms and conditions set forth in this Agreement. This Agreement also allows Patheon to manufacture pharmaceutical products intended for use in clinical trials in accordance with the terms and conditions set forth in this Agreement.

Patheon is willing to perform such development and other specified work under the terms and conditions set forth in this Agreement.

Now therefore, the Parties agree as follows:

1. DEFINITIONS

1.1. **"Affiliate"** means, with respect to a particular Party, any other corporation or other legal entity that controls, is controlled by or is under common control with such Party. For purposes of this definition, the term "control" (with correlative meanings for the terms "controlled by" and "under common control with") means that the applicable entity has more than 50% of the voting rights in the controlled entity.

1.2. **"API"** means the chemical compound known as MBX-102 or arhalofenate, having the chemical structure as described in **Exhibit A** of this Agreement.

1.3. "**Applicable Law"** means all applicable laws, rules, ordinances, and regulations, including any rules, regulations, guidelines or other requirements of relevant government agencies, that may be in effect from time to time in the applicable country or jurisdiction, including then-current cGMP as applicable to the Services to be provided under this Agreement.

1.4. **"Confidential Information"** means, with respect to a Party, all Information that such Party delivers or discloses to the other Party pursuant to, or in connection with, this Agreement, regardless of its source, and whether or not the same is specifically identified as being "confidential". This Agreement constitutes Confidential Information of both Parties. In addition, but subject to the limitations set forth in Section 7.2, all Information that (i) is disclosed by Metabolex to Patheon regarding the Services to be provided under this

Agreement; (ii) is set forth in the Scope of Work; (iii) is developed or generated by Patheon as a result of performing Services under this Agreement, including the Data and Deliverables; or (iv) comprises the API or otherwise is directly related to the API, shall be deemed to be Confidential Information of Metabolex.

1.5. **"Controlled"** means, with respect to a specific material, item of Information or Intellectual Property right, that the applicable Party owns or has a license to such material, item or right and has the ability to grant the other Party access and a license thereto as provided for in this Agreement without violating or conflicting with any agreement with or rights of a third party.

1.6. **"Current Good Manufacturing Practice"** or **"cGMP"** means the then-current standards for the manufacture of fine chemicals, active pharmaceutical ingredients, intermediates, bulk products or finished pharmaceutical products set forth (i) in 21 U.S.C. 351(a)(2)(B), in U.S. FDA regulations at 21 C.F.R. Parts 210 and 211 and in The Rules Governing Medicinal Products in the European Community, Volume IV, Good Manufacturing Practice for Medicinal Products, each as may be amended from time to time; (ii) in International Conference on Harmonization (ICH) Guidelines relating to the manufacture of active pharmaceutical ingredients and finished pharmaceuticals as may be amended from time to time; (iii) all other similar Applicable Laws relating to the manufacturing of active pharmaceutical ingredients intended for use in humans and promulgated by any other governmental authority having jurisdiction over the manufacture of drug compounds in the countries in which the Product containing API will be used or sold as communicated to Patheon in writing by Metabolex from time to time and as may be agreed to by Patheon, which agreement shall not be unreasonably withheld or delayed; and (iv) all additional regulatory authority documents or regulations that replace, amend, modify, supplant or complement any of the foregoing.

1.7. **"Data"** has the meaning set forth in Section 6.2.

1.8. **"Deliverable"** or **"Deliverables"** means all deliverables that Patheon agrees to provide to Metabolex under a Plan, and the items set forth in Section 6.1.

1.9. **"FDA"** means the United States Food and Drug Administration, or any successor thereto having the administrative authority to regulate the development and marketing of human pharmaceutical products in the United States.

1.10. **"Information"** means any and all information of any kind, including results, data, discoveries, improvements, processes, methods, protocols, formulas, techniques, inventions, know-how and trade secrets, scientific, chemical, pharmaceutical, toxicological, biochemical, and biological, data, and information relating to the results of tests, assays, methods, processes, and specifications, and/or other documents containing information and related data, and any assay control, regulatory, and any other test results or information, regulatory, manufacturing, financial, pricing and commercial information or data.

1.11. **"Intellectual Property" or "IP"** means all intellectual property, regardless or form and as conferred or established by the laws of any jurisdiction, including published and unpublished works of authorship; inventions and discoveries (including compositions of matter, methods, processes and improvements thereof); words, names, symbols and designs used to distinguish a business, product, or service; and all Confidential Information.

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

1.12. **"Metabolex Materials"** means the API, chemical compounds, and other materials specified in each SOW to be supplied by or on behalf of Metabolex to Patheon that are necessary to perform the Services.

1.13. **"Quality Agreement"** means the Quality Agreement to be entered into by the Parties as described in Section 2.5.

1.14. **"Statement of Work" or "SOW"** has the meaning set forth in Section 2.3.

1.15. **"Services"** means process development, manufacturing and other services to be performed by Patheon under one or more Statements of Work.

1.16. "**Specifications"** means the characteristics, processing requirements, standards and other specifications set forth in the applicable SOW (**Exhibit B**,) of this Agreement, as may be amended or supplemented from time to time by mutual agreement of the Parties.

2. **PURPOSE; SCOPE; PROCESS DEVELOPMENT AND MANUFACTURE**

2.1. **Purpose and Intent**. The Parties agree that Patheon may, pursuant to the terms of this Agreement, perform product development services for Metabolex including but not limited to drug substance characterization, pharmaceutical development, process development, analytical method and specification development, and manufacturing of experimental batches and cGMP clinical trial materials using the API or Metabolex Materials as set forth in one or more SOWs.

2.2. **Process Development and other Manufacturing Services.** Patheon shall perform the process development and/or other manufacturing Services and tasks and activities as set forth in the agreed upon SOW, the form of which is attached hereto as **Exhibit B**, as such SOW may be amended from time to time by the written agreement of the Parties. Such Services shall include the preparation and delivery to Metabolex of the Deliverables as set forth in the SOW. If the Parties agree that Patheon will, under an SOW, manufacture products for Metabolex, Patheon shall manufacture and supply to Metabolex the specified products in such quantities as ordered by Metabolex in orders submitted to Patheon from time to time by Metabolex in accordance with the Quality Agreement and the applicable SOW, which may be amended from time to time by the written agreement of the Parties.

2.3. **Additional Projects.** If Metabolex desires that Patheon perform certain additional activities or tasks relating to process development or manufacturing of API that are outside the scope of the SOW, Metabolex shall submit a written request to Patheon setting forth in reasonable detail the particular activities or tasks requested for such proposed additional SOW. The Parties shall then negotiate reasonably and in good faith and seek to agree on a written Statement of Work setting forth such additional activities and tasks, and the specific terms for such proposed SOW (which activities and tasks shall, upon agreement by the Parties to such SOW, be deemed additional Services to be performed hereunder). Each such SOW shall include a specific description of the particular Services to be performed and the budget, costs and timeline therefore, and all Deliverables to be prepared and delivered to Metabolex, and, as necessary, any additional Information and requirements for such Services. Each SOW be attached to this Agreement as an exhibit and shall be deemed incorporated herein. Each

agreed SOW may be modified or amended from time to time upon mutual written agreement of the Parties, and such agreed-upon modifications or amendments shall be attached and deemed incorporated into the applicable SOW. It is contemplated that there may be multiple Statements of Work that shall be sequentially numbered, each referencing and covering a different project.

2.4. **Conflicting Terms.** The Parties agree that if there is any conflict between a particular term of a SOW and the terms of this Agreement, the terms of this Agreement shall control and supersede such conflicting term of the applicable SOW, *unless* such SOW specifically and expressly provides that such term shall prevail notwithstanding such conflict.

2.5. **Quality Agreement**. Prior to Patheon commencing work for Metabolex under a SOW, Patheon and Metabolex shall enter into a quality agreement governing the quality systems used in connection with Patheon's performance (the "**Quality Agreement**").

2.6. **Schedule and Performance**. Patheon will schedule the performance of each of the SOWs (including all Services under the SOW and delivery of all Deliverables) as specified in the SOW applicable to the SOW and will coordinate with Metabolex as appropriate to ensure the timely commencement and performance of all such Services. Patheon shall perform all the Services and other work under a SOW in accordance with the terms of the applicable SOW, Applicable Law, and the terms and conditions of this Agreement. Patheon shall perform all the Services and other work under this Agreement using good faith, reasonable care and in accordance with industry practice. Patheon shall provide the facilities and supplies (other than Metabolex Materials, and subject to the fees set forth in Article 3) and staff necessary to complete all the Services in accordance with the terms of this Agreement and the applicable SOW. All such staff shall have all training, education and experience needed to perform the applicable Services in a competent and efficient manner. Notwithstanding anything in this Article, the Parties acknowledge and agree that the SOWs may need to be adjusted and adapted depending on the progress and interim results of the activities performed by Patheon under this Agreement. The Parties further acknowledge that Patheon shall be compensated based on the works done under this Agreement, rather than based on achievement of specific results.

2.7. **Metabolex Materials**. In the preparation or processing of APIs, Patheon agrees to use only those Metabolex Materials that are supplied by Metabolex or obtained by Patheon from a qualified vendor. Patheon shall determine the amounts of Metabolex Materials that Patheon will need to perform the Services requested by Metabolex. Any Metabolex Materials supplied by or on behalf of Metabolex to Patheon shall only be used for Services associated with Metabolex SOWs, unless otherwise agreed. All Metabolex Materials shall remain the property of Metabolex at all times. Patheon shall store all Metabolex Materials in appropriate and secure conditions, and shall take all necessary care to prevent damage, loss or theft of Metabolex Materials. Provider shall clearly identify all Metabolex Materials in storage as goods belonging to Metabolex, and the Metabolex Materials shall be separated from, and not intermingled with, other products although Metabolex Materials may be stored in the same storage room as other products. At all times, Metabolex Materials shall be stored within the temperature range specified in writing by Metabolex prior to shipment of such materials to Patheon's facility, and in each case in accordance with Applicable Law. Patheon shall not transfer or otherwise provide access to the Metabolex Materials to any person or entity other

than its employees or permitted subcontractors without the prior written consent of Metabolex. Patheon shall use the Metabolex Materials solely to perform Services in accordance with this Agreement and the applicable SOW. Patheon understands and agrees that the Metabolex Materials may have unpredictable and unknown biological and/or chemical properties and are to be used with caution. Patheon will use and handle all Metabolex Materials in accordance with Metabolex's written instructions and in compliance with Applicable Law, including, but not limited to, any laws or regulations relating to the testing, storage, transportation, packaging, labeling or other use of the Metabolex Materials. Metabolex shall be responsible for qualification of vendors of Metabolex Materials and for providing a certificate of compliance confirming that the Metabolex Materials are compliant with the provisions outlined in the "Note for Guidance on minimizing the risk of transmitting spongiform encephalopathy agents via human and veterinary medicinal products" (EMEA/410/01, Rev.2 or update). Upon the completion or termination of a SOW, Patheon shall either return or destroy any Metabolex Materials for such SOW that remain in Patheon's possession in accordance with Metabolex's written instructions and at Metabolex's expense. In the event that any quantity of Metabolex Materials provided to Patheon is lost, or damaged, stolen, destroyed, or otherwise rendered unusable for its intended purpose (e.g., because it was not stored in accordance with the storage conditions specified by Metabolex in writing and in accordance with Applicable Law) while in Patheon's custody or control (other than destruction of Metabolex Materials requested or approved by Metabolex), [*], subject to [*]. Nothing in this Agreement shall obligate Patheon to [*] to perform Services under a signed SOW, and then [*] to perform such Services.

2.8. **Affiliates**. Patheon may arrange for any of its Affiliates to perform specific Services under a SOW, and such Affiliate and the Services to be performed shall be specified in that SOW and approved by the Parties. Each Affiliate performing Services will execute the SOW, which will bind such Affiliate to the terms and conditions contained herein. Patheon shall remain primarily liable for the performance of its Affiliates under any such SOW and its Affiliates' compliance with the provisions of this Agreement.

2.9. **Subcontractors.** Except as provided in Section 2.9, Patheon may not subcontract any of the Services or other work to be performed by it hereunder without Metabolex's prior written consent. In the event that Metabolex does so consent, then any agreement entered into by Patheon with the permitted subcontractor shall, at a minimum, provide for ownership and allocation of Intellectual Property rights and for obligations of confidentiality of Information, record-keeping, access, rights to data, and performance in accordance with Applicable Law that are consistent with the intent and terms of this Agreement and the Quality Agreement. Patheon shall remain liable for the performance of any of its obligations hereunder that it delegates to a subcontractor.

2.10. **Shipping.** Shipments of Metabolex Materials and manufactured products by Patheon will be made [*], unless otherwise mutually agreed. The Metabolex Materials and manufactured products will be transported in accordance with the written instructions of Metabolex. Patheon shall package all manufactured products being shipped to Metabolex or other locations designed by Metabolex into secondary packaging for shipment in accordance with instructions provided by Metabolex. All shipments from Metabolex to Patheon will be made [*], unless otherwise agreed. All shipments of API will be accompanied by certificate(s) of analysis from the API manufacturer including confirmatory results demonstrating that the API complies with the manufacturer's API specifications.

2.11. **Changes to a SOW**. If Metabolex requests any changes to the scope of a SOW, Patheon will promptly prepare a written change order reflecting such changes, including an estimate of any resulting adjustment to the timeline for the performance of the Services under the SOW and to the compensation schedule (whether an increase or decrease). Upon Metabolex's written approval of the change order, such change order shall constitute an amendment to the applicable SOW and shall be incorporated herein, and Patheon shall perform the Services in accordance with such amended SOW. Notwithstanding anything herein to the contrary, to the extent that any changes to the Services requested by Metabolex consist of a reduction in the scope of the Services to be performed for a particular SOW, Patheon shall immediately implement such reduction at Metabolex's request, and the parties shall negotiate in good faith a change order that reduces the compensation schedule and reflects such change as soon as practicable.

3. **PAYMENTS**

3.1. **Price**.

3.1.1. The price for the Services performed by Patheon shall be in accordance with the pricing schedule set forth in the applicable SOW. Unless otherwise agreed to between the Parties, Patheon will purchase common materials and supplies required to perform the Services, other than Metabolex Materials. A fixed "[*] Fee" equaling [*], will be included in the project budget to cover [*].

3.1.2. The costs of all third party suppliers' fees and the purchase of project specific items (such as exclusive raw materials, excipients, packaging, special equipment, tooling, change parts, laboratory columns and reagents, reference standards including those under the applicable United States Pharmacopoeia, the National Formulary, the British Pharmacopoeia, the European Pharmacopoeia or the Japanese Pharmacopoeia) necessary for Patheon to perform the Services will be purchased by Patheon and charged back to Metabolex [*]. Upon the termination or completion of a SOW, Patheon shall transfer to Metabolex, at Metabolex's expense, all project specific items in Patheon's possession that were charged back to Metabolex.

3.1.3. If Patheon is required to buy any third party marketed product in order to complete the Services, Metabolex acknowledges that such purchases will be made on behalf of Metabolex [*].

3.2. **Invoices; Payment.** Patheon shall provide to Metabolex an invoice upon completion of the Services relating to a particular SOW, according to the payment schedule set forth in such SOW which invoice shall set forth the price for such Services in accordance with the applicable SOW and be accompanied by sufficient back-up documentation, if any, necessary to support the payments being invoiced. Metabolex shall pay each undisputed invoice no later than [*] days following the date of invoice. Patheon shall mail a copy of the invoice to the mailing address provided in Section 16.1, with a copy to be sent by email on the date of invoice to the email address provided in Section 16.1, or to such other mailing or email address as Metabolex may indicate in writing, from time to time.

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

3.3. [*] **(if Applicable as per the Budget Summary).** Metabolex will pay to Patheon any applicable [*] set out in the SOW within [*] days of the date of receipt of invoice for [*]. Patheon will not [*]. The [*] Services are fully completed [*]. [*]. Patheon [*] Services performed under the applicable SOW that are [*]. Patheon may[*].

3.4. **Disputed Portions of Invoices.** If any portion of an invoice is disputed, then Metabolex will pay Patheon the undisputed amount and the parties will use good faith efforts to reconcile the disputed amount as soon as practicable. [*].

3.5. **Acceptance of Deliverables and Services.** Metabolex shall have the right to review and test all Deliverables and Services delivered or provided by Patheon under a SOW to confirm that such deliverables comply with the specifications of the SOW and the obligations of this Agreement. Metabolex may reject any such Deliverables or Services (or portion thereof) if the same do not comply as stated above, or if they are otherwise defective or unsatisfactory, by providing to Patheon a written rejection within [*] business days from its discovery of such problem, which rejection identifies the basis for such rejection. Metabolex shall not have the obligation to pay for any Deliverable or Service properly rejected. Within [*] business days of any notice of rejection, Patheon shall present a corrective plan of action to Metabolex. Upon approval by Metabolex of the corrective plan, Patheon, at no additional expense to Metabolex (other than paying for any additional API or Metabolex Material needed, as set forth in Section 12.5), shall then make the corrections and, where applicable, Patheon shall resubmit the corrected Deliverable or Service to Metabolex. If Metabolex does not reject in writing within [*] business days of its discovery of a defect or other problem with Deliverables or Services, [*].

3.6. **Payment Upon Termination by Metabolex.** Upon termination of this Agreement or any SOW by Metabolex pursuant to Section 4.2, Metabolex shall pay Patheon full payment for that portion of Services satisfactorily performed up through the date of termination, [*].

4. TERM, TERMINATION AND RENEWAL

4.1. **Term.** This Agreement begins on the Effective Date and expires [*] years from the Effective Date unless earlier terminated pursuant to this Article 4. In the event this Agreement is terminated prior to completion of a SOW, this Agreement will remain in effect with regard to each ongoing SOW until such SOW is terminated. Each SOW shall be effective upon the effective date specified therein and shall terminate upon (i) the completion of the Services to be provided thereunder, and (ii) Patheon's receipt of all fees, and any other payments due to Patheon related to the Services provided thereunder, unless earlier terminated in accordance with this Article 4.

4.2. **Termination by Metabolex.** Metabolex may terminate this Agreement or any SOW for any reason upon [*]days written notice to Patheon.

4.3. **[*] Termination or Postponement**. If Metabolex terminates this Agreement or any SOW under Section 4.2, or postpones scheduled and reserved manufacturing services pursuant to a SOW[*] of the start date of such scheduled and reserved manufacturing services (the "**Start Date**"),

then [*]. If Metabolex terminates this Agreement or any SOW under Section 4.2, or postpones scheduled and reserved manufacturing services pursuant to a SOW [*], then [*]% of the costs of such scheduled and reserved manufacturing services]. If Metabolex terminates this Agreement or any SOW under Section 4.2, or postpones scheduled and reserved manufacturing services pursuant to a SOW [*], then [*] of the costs of such scheduled and reserved manufacturing services]. In any such event of termination or postponement by Metabolex, Patheon will use reasonable commercial efforts to utilize its manufacturing facilities for an alternative project[*].

4.4. **Termination for Material Breach.** Each Party may terminate this Agreement or any SOW and all Services then in progress upon written notice if the other Party materially breaches this Agreement and such breaching Party fails to cure the breach within [*] days after receipt of written notice from the non-breaching Party specifying in detail the nature of such breach. During such [*]day cure period, each Party will continue to perform its obligations under the Agreement and any applicable SOW. In the event of termination by Metabolex for material breach by Patheon pursuant to Section 4.4, Metabolex shall be obligated to pay Patheon only for Services satisfactorily completed by the effective date of termination.

4.5. **Return of API; Storage**. Upon termination of this Agreement or a SOW, or otherwise upon the request of Metabolex, Patheon shall return any unused Metabolex Materials and related items within [*] days of the date of such termination or request and all work-in-process and manufactured API, at the expense of Metabolex. Excluding retained samples or stability samples, and unless otherwise agreed between the Parties, Metabolex will [*] after their release for shipment by Patheon or anticipated use for the Services as the case may be (unless such anticipated use is postponed by Patheon): (i) $[*] all materials and supplies stored at the Patheon's site under room temperature conditions; (ii) $[*] for all materials and supplies stored at the Patheon site under conditions of 2 °C - 8 °C; (iii) $[*] for all materials and supplies stored at the Patheon site under conditions of -70 °C; and (iv) If Metabolex requests storage at conditions different than those stated above (Sec. 4.5(i)-(iii)), then the arrangement and cost will be discussed and agreed between the Parties on a separate basis. Patheon reserves the right to refuse to store any API, products or other Metabolex property, at its sole discretion, at any time. [*] all risk or loss of damage to the stored Metabolex Materials, products or other Metabolex property stored by Patheon following the [*] of (i) [*] this Agreement; or (ii) [*] particular Services under the SOW to which such API, products or Metabolex Materials relate; other than [*], and it will be [*] in place for this risk. Patheon will reimburse Metabolex for [*].

5. OWNERSHIP

5.1. **Disclosure of Inventions.** Patheon shall notify Metabolex in writing of any and all inventions, technology, discoveries, or ideas, whether patentable or not, conceived, reduced to practice, made, or developed by Patheon or its agents in the performance of Services or related to the Metabolex Materials or Metabolex Confidential Information (collectively, **"Inventions"**), promptly after each such conception, reduction to practice, making, or developing. All inventions, technology, discoveries, or ideas, whether patentable or not, conceived, reduced to practice, made, or developed by Patheon or its agents which have been independently developed without the use or benefit of Metabolex Materials or Metabolex Confidential Information and which have general application to manufacturing processes or formulation

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

development of drug products or drug delivery systems will be the exclusive property of Patheon and shall not constitute "Inventions," as defined in this Section 5.1. Patheon hereby grants to Metabolex, a non-exclusive, worldwide, paid-up, royalty-free, sublicensable, transferable license of Patheon's intellectual property that was used by Patheon, its Affiliates or subcontractors for the manufacture of Metabolex's products hereunder, solely to make, have made, use, import, offer for sale, or sell such Metabolex products, products incorporating such Metabolex products, and products that have the same API as such Metabolex products.

5.2. **Ownership of Inventions.** Patheon agrees and acknowledges that Metabolex owns all right, title, and interest in and to all Inventions, and all intellectual property rights arising therefrom. Patheon hereby assigns and transfers to Metabolex all of its right, title and interest in and to the Inventions (and all intellectual property rights arising therefrom) and agrees to take all further acts reasonably required to evidence such assignment and transfer to Metabolex at Metabolex's expense. Patheon shall enter into an agreement with each employee or agent of Patheon performing work in connection with the Services, pursuant to which such person shall grant all rights in the Inventions (and all intellectual property rights arising therefrom) to Patheon such that Patheon may assign and transfer such rights to Metabolex in accordance with this Section 5.2. Patheon hereby appoints Metabolex as its attorney-in-fact to sign such documents as Metabolex deems necessary for Metabolex to obtain ownership and to apply for, secure, and maintain patent or other proprietary protection of the Inventions (and all intellectual property rights arising therefrom) if Metabolex is unable, after reasonable inquiry, to obtain Patheon's (or its employee's or agent's) signature on such a document. All Inventions and any information with respect thereto or intellectually property rights arising therefrom are Metabolex Confidential Information subject to the confidentiality provisions of Section 7.3.

5.3. **Deliverables**. Metabolex owns all right, title, and interest in and to all Deliverables, and all reports and biological or chemical specimens generated by Patheon as a direct result of conducting the Services. All Deliverables and any information with respect thereto are Metabolex Confidential Information subject to the confidentiality provisions of Section 7.3.

5.4. **Metabolex Property.** All tangible property provided to Patheon in connection with this Agreement, including without limitation all Metabolex Materials, records, or other Metabolex Confidential Information (as defined in Section 7.1), is the exclusive property of Metabolex.

5.5. **Limited License**. Metabolex hereby grants to Patheon for the term of this Agreement a nonexclusive, royalty-free, limited (to the scope as described herein) license (without any rights to sublicense) under such intellectual property, know-how or information that is controlled by Metabolex and is necessary to enable Patheon to perform the Services hereunder solely for the purpose of the performance of Services in accordance with the applicable SOW. Patheon shall not acquire any other right, title or interest in or to any intellectual property owned or controlled by Metabolex as a result of this Agreement or Patheon's performance hereunder.

6. DELIVERABLES AND RECORDS

6.1. **Deliverables**. Patheon agrees to provide to Metabolex (i) all data, certificates of analysis, reports, and other information generated by Patheon in the performance of the Services; (ii) all batches of API or product containing API that Patheon processes or manufactures under this Agreement; (iii) a detailed description of the processes used to make each batch of API or of

product containing API (each batch of API or product containing API will be identified by an internal Patheon lot number, with a cross-reference to the identification number for process and Metabolex Materials utilized in the synthesis), including Patheon's batch record; and (iv) for each batch shipped, a quality statement certifying whether or not the batch was processed according to cGMPs (Certificate of Compliance) and a Certificate of Analysis that confirms the API or other product meets the applicable Specifications. Patheon shall also conduct all quality testing provided for in the SOW and the Quality Agreement and provide to Metabolex all documentation of such quality testing required by the Quality Agreement and/or the applicable SOW. Metabolex has responsibility for API release. Patheon shall deliver to Metabolex various samples of or containing API according to any schedule set forth in a SOW or as otherwise mutually agreed upon in writing by the Parties.

6.2. **Books and Records**. Patheon shall keep complete and accurate books and records related to all Services performed under the Agreement, including covering the manufacture, processing and supply of the API. Patheon shall also maintain complete, accurate, and authentic documentation, notes, data, test results, records, master batch records, and working batch records for each batch of API, for all Services, and for all other work relating to API and/or any of the Services generated by Patheon during the performance of, and in connection with, the SOW(s) (collectively, the "**Data**"). Patheon shall retain such records for a period of [*] years following the date of manufacture or for such longer period as may be required by the Quality Agreement, the applicable SOW or Applicable Law. Such records shall be made available to Metabolex for inspection, copying and/or audit verification by Metabolex or its designee at any reasonable time during Patheon regular business hours. Upon Metabolex's request, Patheon shall make copies of such records available to Metabolex, at Metabolex's expense.

7. CONFIDENTIALITY.

7.1. **Metabolex Confidential Information.** Subject to the limitations set forth in Section 7.2, all information that: (i) is disclosed by Metabolex to Patheon regarding the Services; (ii) is disclosed by Metabolex to Patheon to obtain a price quotation regarding the Services; (iii) is set forth in a SOW; (iv) is developed or generated by Patheon as a result of performing the Services, including the Data and Inventions; or (v) is related to the Metabolex Materials, including information that relates to the Metabolex Materials and was disclosed by Metabolex to Patheon pursuant to the Confidentiality Agreement entered into by the Parties on March 2, 2012 (the **"Confidentiality Agreement"**), shall be deemed to be **"Metabolex Confidential Information**." Metabolex Confidential Information may include, without limitation, trade secrets, ideas, patent applications, data, processes, formulae, programs, compounds, know-how, improvements, designs, information regarding plans for research development, business plans, and budgets, whether disclosed in oral, written, graphic, or electronic form.

7.2. **Exceptions to Confidential Information.** Patheon shall not have any obligations under this Agreement with respect to a specific portion of the Metabolex Confidential Information if Patheon can demonstrate by providing competent tangible proof that such Metabolex Confidential Information: (a) is in the public domain or comes into the public domain through no fault of Patheon; (b) is furnished to Patheon without any restrictions on its disclosure by a third party rightfully in possession of such information and not subject to a duty of confidentiality with respect to such information; or (c) solely with respect to Metabolex

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

Confidential Information provided by Metabolex to Patheon, is already known by Patheon at the time of receiving such Metabolex Confidential Information from Metabolex, as evidenced by Patheon's prior written records. For clarity, it is understood that notwithstanding the fact that individual components of information are in the public domain, but a particular compilation or integration of such components is not in the public domain, the fact that such individual components are in the public domain does not relieve Patheon of its obligations of confidentiality under this Article 7 with regard to the compilation or integration of such components.

7.3. **Non-Disclosure and Non-Use of Confidential Information.** During the term of this Agreement and for a period of [*] years after the expiration or termination of this Agreement, Patheon shall maintain all Metabolex Confidential Information in strict trust and confidence and shall not disclose any such Metabolex Confidential Information to any third party other than Patheon's or its Affiliates' employees, consultants or advisors having a need to know such Confidential Information, or use any such Metabolex Confidential Information received except as may be authorized by the Metabolex's prior written consent. Patheon may use or disclose Metabolex's Confidential Information only to the extent required to perform the Services, and for no other purpose. Patheon shall not file any patent application containing any disclosure or claim, the subject matter of which is derived from the Metabolex Confidential Information. Patheon shall not use Metabolex Confidential Information for any purpose or in any manner that would constitute a violation of any laws or regulations of the United States. Nothing in this Agreement grants Patheon the right to retain, distribute, or commercialize any of the Metabolex Confidential Information. Patheon shall procure from each of its employees and subcontractors performing Services hereunder a signed confidentiality agreement containing terms at least as restrictive as those found herein, and Patheon shall be liable to Metabolex for the breach by any of them of the provisions of this Section 7.3.

7.4. **Third Party Confidential Information.** Patheon shall not disclose to Metabolex any confidential or proprietary information that belongs to any third party unless Patheon first obtains the consent of such third party and enters into a separate confidentiality agreement with Metabolex covering that disclosure. Patheon shall not represent to Metabolex as being unrestricted any designs, plans, models, samples, or other writings or products that Patheon knows are covered by valid patent, copyright, or other form of intellectual property protection belonging to a third party.

7.5. **Required Disclosures.** Notwithstanding any other provision of this Agreement, Patheon may disclose specific Confidential Information to the extent that such disclosure: (i) is in response to a valid order of a court or other governmental body having jurisdiction or (ii) is otherwise required by applicable law or regulation, provided in either case that Patheon uses best efforts to limit the scope of the disclosure to that which is required, provides Metabolex with prior written notice of such requirement as soon as reasonably possible, and cooperates with Metabolex in seeking a protective order, confidential treatment, or similar remedy limiting the use and disclosure of any Confidential Information required to be disclosed.

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8. Regulatory Filing and Inspections.

8.1. Regulatory Inspections. Patheon shall promptly notify Metabolex of any regulatory inspections relating to the Services by any government agency or other regulatory entity including, without limitation, the United States Food and Drug Administration (the **"FDA"**), of which it becomes aware. Metabolex shall have the primary responsibility for preparing any responses relating to the Metabolex Materials that may be required by the government agency or regulatory entity, and Patheon shall have the primary responsibility for preparing any responses relating to the method of performing the Services and Patheon's operations and procedures. Patheon shall take all reasonable actions requested by Metabolex to cure deficiencies as noted during any such inspection.

8.2. Site Visits by Metabolex. Metabolex's representatives may visit Patheon's facilities at reasonable times and upon reasonable notice during normal business hours to observe the performance of the Services. Patheon will assist Metabolex in scheduling such visits.

8.3. Regulatory Filing. Metabolex will have the sole responsibility for filing of all documents with the applicable regulatory authority (such as the FDA, the Health Products and Food Branch of Health Canada or the European Medicines Agency) and to take any other actions that may be required for the receipt of approval from the regulatory authority for the commercial manufacture of Metabolex's products. Where information or data generated by Patheon in relation to the Services are to be incorporated into documents to be filed by Metabolex with any regulatory authority and such filing may create the possibility of an inspection or audit of Patheon's facility, then Metabolex shall provide Patheon with a draft of the applicable portions of such documents incorporating such data so as to give Patheon the opportunity to verify the accuracy and validity of such documents. Metabolex needs to supply only one form of such information or data when substantially similar documents are being submitted to multiple regulatory authorities.

9. FACILITY AND COMPOUND REQUIREMENTS

9.1. Facility

9.1.1. All manufacturing Services shall be performed by Patheon solely at the facilities identified in the applicable SOW. In performing the Services, Patheon shall comply with all Applicable Laws for a drug establishment and obtain and maintain all necessary registrations, licenses and permits. Metabolex shall have the right to review, from time to time as it requests, during normal business hours, and upon written notice of no less than two weeks, all registrations, licenses and permits of Patheon that are directly related to Patheon's obligations under this Agreement, including but not limited to those required by the FDA or any other regulatory agency having jurisdiction over Patheon.

9.1.2. For Services under an SOW, Patheon shall ensure that the facility meets all the requirements of a drug establishment promulgated by the FDA at all times during the manufacture of the drug product, and Patheon shall comply with all aspects required by the Quality Agreement.

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9.2. Authority and API Requirements

9.2.1. Metabolex and Patheon hereby agree that with respect to the Services and the API, and in addition to the other rights and obligations of this Agreement they each have the following responsibilities and liabilities:

9.2.1.1. Metabolex shall use good faith reasonable efforts to [*] relating to API manufactured or processed hereunder will provide [*] under this Agreement as required by Applicable Law and will comply with all regulations for governmental applications, submissions, and approvals. Metabolex further represents, warrants and covenants that no API will be released for human public use or consumption until all requisite governmental approvals thereof have been obtained for such use and consumption.

9.2.1.2. Patheon will make its own identification tests on the Metabolex Materials delivered to Patheon before commencing manufacturing or processing of the API and shall not commence manufacturing or processing and shall notify Metabolex if such tests indicate the Metabolex Materials do not comply with the applicable specifications.

9.2.1.3. Patheon shall be responsible for manufacturing, processing, storing, handling, and shipping the API in accordance with the specifications provided to Patheon and the agreed upon terms in the relevant SOW.

9.2.1.4. Metabolex and Patheon shall comply with all Applicable Law, rules, regulations, codes, and standards of all federal, state, local and municipal government agencies that affect their respective performance and activities under this Agreement. Each Party shall provide upon request such information as the other Party reasonably requires for compliance with all Applicable Law, rules, regulations, codes, and standards of all federal, state, local and municipal government agencies that affect their respective performance and activities under this Agreement.

10. REPRESENTATIONS AND WARRANTIES

10.1. **No Inconsistent Obligations or Constraints upon Patheon.** Patheon represents and warrants that it is qualified and permitted to enter into this Agreement and that the terms of the Agreement are not in conflict with its other contractual arrangements.

10.2. **Due Authorization.** Each Party represents and warrants that (a) it has the full power and authority to enter into this Agreement, (b) this Agreement has been duly authorized, and (c) this Agreement is binding upon it.

10.3. **No Debarred Person.** Patheon represents and warrants that it shall not employ, contract with, or retain any person or entity directly or indirectly to perform the Services under this Agreement [*] under investigation by the FDA for debarment or being presently debarred by the FDA pursuant to the Generic Drug Enforcement Act of 1992, as amended (21 U.S.C. § 301, *et seq*.). In addition, Patheon represents and warrants that, to its best knowledge, it has not engaged in any conduct or activity that could lead to any such debarment actions. If during the term of this Agreement, Patheon or any person or entity employed or retained by it to perform any Services is debarred[*] then in each case Patheon shall immediately notify Metabolex of same.

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10.4. **No Pending Regulatory Actions.** Patheon represents and warrants that as of the Effective Date it is not currently subject to an FDA consent decree or other regulatory action impacting Patheon's manufacture of pharmaceutical products under this Agreement. Patheon shall notify Metabolex within [*] business days if Patheon receives any Form 483s or warnings from, or comes under a consent decree issued by, a regulatory authority relating to manufacturing, supply and distribution services it has provided or related to the facility where it is performing Services hereunder, and will provide to Metabolex copies of all relevant documents relating thereto, except that Patheon shall be permitted to redact from the copies provided to Metabolex any information contained in such documents that is another Patheon customer's confidential information.

10.5. **No Infringement.** Patheon represents and warrants that the use of methods, processes and software selected by Patheon to perform the Services including, without limitation, Patheon's IP, in the course of conducting the Services, will not infringe or misappropriate any intellectual property right of any third party. Metabolex represents and warrants that none of the Metabolex Materials, or Metabolex Intellectual Property, know-how or information that is provided or disclosed to Patheon for conducting the Services will, if used to conduct Services in accordance with the applicable SOW, infringe or misappropriate any intellectual property right of any third party when used as permitted in this Agreement.

10.6. **No Pending Litigation.** As of the Effective Date, Patheon is not involved in any litigation relating to Patheon's performance of pharmaceutical development services including, without limitation, clinical manufacturing services, for any third party. Patheon shall have no obligation to notify Metabolex of any litigation commenced at any time following the Effective Date."

10.7. **Manufacturing Warranty.** Patheon represents and warrants that all products manufactured by Patheon under an SOW shall be manufactured in compliance with the Quality Agreement and all other Applicable Laws and, if the products are required to be manufactured in accordance with cGMP pursuant to the applicable SOW, such products shall be manufactured in compliance with cGMP and the applicable Specifications.

11. **INSURANCE.** Patheon shall secure and maintain in full force and effect throughout the performance of the Services insurance coverage for (a) employer's liability, and (b) general liability, in amounts appropriate to the conduct of Patheon's business. Certificates evidencing such insurance will be made available for examination upon request by Metabolex. Patheon further agrees to maintain workers' compensation insurance in the amount required by the laws of the state in which Patheon's employees performing the Services are located.

12. **INDEMNIFICATION AND LIMITATION OF LIABILITY**

12.1. **Indemnification by Metabolex.** Metabolex shall indemnify, defend, and hold harmless Patheon and Patheon's directors, officers, employees, and agents (the **"Patheon Indemnitees"**) from and against any and all third party liabilities, claims, suits, losses, expenses (including reasonable attorneys' fees and legal expenses), and costs (collectively "**Claims**") resulting from or arising out of (a) the negligence, gross negligence or intentional misconduct of any of the Metabolex Indemnitees relating to this Agreement or the Services, (b) a breach of Metabolex's

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obligations, covenants, representations or warranties under this Agreement, or (c) any claim of infringement or alleged infringement of any third party's intellectual property rights in the Metabolex Materials or Metabolex IP that Metabolex requires Patheon to use in the performance of Services, in each case to the extent that such infringement or alleged infringement arises out of the use of the Metabolex Materials or Metabolex IP solely for the purpose of and in accordance with the applicable SOW. Such indemnity shall not apply if Patheon fails to comply with the indemnification procedures set forth in Section 12.3, or to the extent that a Claim arises out of or results from (i) the negligence, gross negligence or intentional misconduct on the part of any of the Patheon Indemnitees or Patheon's subcontractors, (ii) a failure of any of the Patheon Indemnitees or Patheon's subcontractors to comply with Applicable Law, or (iii) a breach of Patheon's obligations, covenants, representations, or warranties under this Agreement.

12.2. **Indemnification by Patheon.** Patheon shall indemnify, defend, and hold harmless Metabolex and Metabolex's directors, officers, employees, and agents (the **"Metabolex Indemnitees"**) from and against any and all third party Claims resulting from or arising out of (a) the performance of the Services by Patheon; (b) the negligence, gross negligence, or intentional misconduct on the part of the Patheon Indemnitees or Patheon's subcontractors relating to this Agreement or the Services, or (c) a breach of Patheon's obligations, covenants, representations, or warranties under this Agreement. Such indemnity shall not apply if Metabolex fails to comply with the indemnification procedures set forth in Section 12.3 or to the extent that a Claim arises out of or results from (i) the negligence, gross negligence or intentional misconduct of any of the Metabolex Indemnitees, or (ii) a breach of Metabolex's obligations, covenants, representations or warranties under this Agreement.

12.3. **General Conditions of Indemnification.** Each Party's agreement to indemnify, defend and hold the other Party harmless is conditioned on the indemnified Party (i) providing written notice to the indemnifying Party of any claim for which it is seeking indemnification hereunder promptly after the indemnified Party has knowledge of such claim; (ii) permitting the indemnifying Party to assume full responsibility to investigate, prepare for, defend against and settle any such claim or demand; (iii) assisting the indemnifying Party, at the indemnifying Party's reasonable expense, in the investigation of, preparation for and defense of any such claim or demand; and (iv) not compromising or settling such claim or demand without the indemnifying Party's written consent.

12.4. **Separate Defense of Claims.** In the event that the Parties cannot agree as to the application of Sections 12.1 and 12.2 above to any particular claim, the Parties may conduct separate defenses of such claim. So long as the Party seeking indemnification has complied with the notice provisions of Section 12.3(i) above and the consent provisions of Section 12.3(iv) above, such Party shall have the right to seek indemnity from the other in accordance with Section 12.1 or 12.2 (as applicable) above upon resolution of the underlying claim, notwithstanding such Party's failure to comply with the provisions of Section 12.3(ii) above permitting the indemnifying Party to assume full responsibility to defend against such claim.

12.5. **Limitations of Liability.** If, except for acts of negligence, gross negligence or intentional misconduct, Patheon fails to materially perform any part of the Services in accordance with the terms of this Agreement or the SOW, then Patheon shall, at Metabolex's request, either (i)

repeat that part of the Service at Patheon's costs except that Metabolex will supply the API or Metabolex Materials at Metabolex's expense; or (ii) reimburse Metabolex for the price for that part of the Service, excluding the cost of the API or Metabolex Materials. [*] API or Metabolex Materials [*] arises out of [*]. If Patheon fails to materially perform any part of the Services in accordance with the terms of this Agreement or the SOW because of [*], then in addition to the remedies listed in the first sentence of Section 12.5 above, Patheon will reimburse Metabolex for [*]. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION IS INTENDED TO LIMIT OR RESTRICT THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER SECTION 12.1 OR 12.2, OR DAMAGES AVAILABLE FOR BREACHES OF THE PROPERTY OWNERSHIP/PATENT RIGHTS IN ARTICLE 5 OR THE CONFIDENTIALITY OBLIGATIONS IN ARTICLE 7.

13. SURVIVAL

The termination of this Agreement shall not affect the provisions of Articles 1, 5, 7, 9, 10, 12, 14 or Section 16.2, which shall expressly survive any termination.

14. PRESS RELEASE

No Party shall (i) issue a press release or make any other public statement that references this Agreement, or (ii) use the other Party's or its Affiliates' name or trademarks for publicity or advertising purposes, except, in each case, with the prior written consent of the other Party. For the avoidance of doubt, Patheon shall not disclose, present, disseminate or produce any publication that contains information regarding the Services, Deliverables or any Confidential Information without Metabolex's prior written consent. Notwithstanding the foregoing sentences, either Party may use the name of the other Party in regulatory filings, including filings with the FDA and the United States Securities and Exchange Commission, or in disclosures to investors, partners, potential investors, and potential partners. For the avoidance of doubt, each Party shall fully comply with Section 7 when issuing a press release or making any other public statement.

15. EFFECT OF OTHER AGREEMENTS

This Agreement, together with validly approved SOWs, sets forth the entire agreement between Patheon and Metabolex as to their subject matter and supersedes all other agreements and understandings between the Parties with respect to the same except that the Master Services Agreement titled "Formulation Development for MBX-102 Tablet (100 mg)," Proposal #MTB-FQ-0001-0401-R2, 30-July-01, and the corresponding Quality Agreement with a signature of last date of 11 March 2011 remain in effect and continue to set forth the entire agreement between Patheon and Metabolex with respect to the Change of Scope titled "Arhalofenate (MBX 102) IR Tablets – 200 mg," COS Reference # MTB-FQ-0001-0401-R2-COS-36-R1, dated May 8, 2012.

16. MISCELLANEOUS

16.1. **Notices.** All notices, consents and approvals required or permitted hereunder shall be given in writing to the other Party by personal delivery, by certified or registered mail, return receipt

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requested, by overnight courier, or by facsimile transmission with electronic confirmation of transmission, at the address specified below or to such other addresses as may be designated in writing from time to time in accordance with this Section 16.1:

If to Metabolex:	Metabolex, Inc. 3876 Bay Center Place Hayward, CA 94545 Attention: Legal Department Fax [*] Email address for invoices: Violet Yung, [*]
For Patheon:	Patheon Inc. 2100 Syntex Court Mississauga, Ontario L5N 7K9 Attention: Legal Department Fax [*]

16.2. **Governing Law**. Any claim, dispute, or controversy of whatever nature arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law principles that would require the application of the laws of a different state.

16.3. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns.

16.4. **Counterparts**. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original. Copies of original signature pages sent by facsimile and/or PDF shall have the same effect as signature pages containing original signatures.

16.5. **Amendment, Waiver.** This Agreement may be amended, modified, superseded or canceled, and any of the terms may be waived, only by a written instrument executed by each Party or, in the case of waiver, by the Party or Parties waiving compliance. The delay or failure of any Party at any time or times to require performance of any provisions shall in no manner affect the rights at a later time to enforce the same. No waiver by any Party of any condition or of the breach of any term contained in this agreement in any one or more instances, shall be deemed to be, or considered as, a further or continuing waiver of any such condition or of the breach of such term or any other term of this Agreement.

16.6. **No third party Beneficiaries**. No third party, including any employee of any Party to this Agreement, shall have or acquire any rights by reason of this Agreement.

16.7. **Assignment.** Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by Patheon without the prior written consent of Metabolex, which consent may not be unreasonably withheld, provided however, that Patheon may, without such consent but upon prior written notice to Metabolex, assign its rights and obligations under this Agreement in connection with a merger, consolidation or sale of substantially all of the business to which this Agreement relates, to an unrelated third party. However, if Patheon assigns this Agreement to an unrelated third party in connection with a

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merger, consolidation or sale of substantially all of the business to which this Agreement relates and all Services under all SOWs have not been completed as of the effective date of such assignment, Metabolex shall have the right to terminate this Agreement and any such SOWs effective upon written notice to Patheon, without having to pay any termination or cancellation penalties set forth in Section 4.3 in connection with such termination. Patheon may arrange for any of its Affiliates to perform specific Services under a SOW. Each Affiliate performing Services will execute the SOW which will bind such Affiliate to the terms and conditions contained herein. Patheon shall remain primarily liable for the performance of its Affiliates under any such SOW. Any attempted assignment of this Agreement not in compliance with this Section 16.7 shall be null and void. This Agreement shall inure to the benefit of and be binding upon each Party signatory hereto, its successors and permitted assigns. No assignment shall relieve either Party of the performance of any accrued obligation that such party may then have under this Agreement.

16.8. **Force Majeure**. Neither Metabolex nor Patheon shall be liable for failure of or delay in performing obligations set forth in this Agreement, and neither shall be deemed in breach of its obligations, if such failure or delay is due to natural disasters or any causes reasonably beyond the control of Metabolex or Patheon, as applicable. The affected Party shall notify the other Party of such force majeure circumstances as soon as reasonably practical and shall take reasonable, diligent efforts to remove the condition constituting force majeure or to avoid its effects so as to resume performance as soon as practicable.

16.9. **Severability.** If any provision of this Agreement is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, it is the intention of the Parties that the remainder of the Agreement shall not be affected. The Parties shall make a good faith effort to replace any such provision with a valid and enforceable one such that the objectives contemplated by the parties when entering this Agreement may be realized.

16.10. **Relationship of Parties.** The relationship between the Parties is that of independent contractors. Neither Party, nor any employee or agent of such Party, shall have the authority to bind or act on behalf of the other Party without its prior written consent. No employee or agent of Patheon shall be considered to be an employee or agent of Metabolex, and no employee or agent of Metabolex shall be considered to be an employee or agent of Patheon. Each Party shall be solely and entirely responsible for its acts and for the acts of its employees and agents during performance of this Agreement. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership or business organization of any kind.

16.11. **Construction.** Section headings are included in this Agreement merely for convenience of reference; they are not to be considered part of this Agreement or used in the interpretation of this Agreement. No rule of strict construction will be applied in the interpretation or construction of this Agreement.

16.12. **Foreign Corrupt Practices Act.** Patheon agrees that it will perform the Services in compliance with all applicable export or import laws of the United States or any foreign jurisdiction. Further, Patheon and its personnel, agents and representatives are aware of, and agree to abide by, the obligations imposed by the United States Foreign Corrupt Practices Act with

respect to dealing with payments or gifts to governments or related persons for the purpose of obtaining or retaining business for or with, or directing business to, any person. Accordingly, Patheon agrees that no portion of monies paid or payable to Patheon in connection with this Agreement, nor any other item of value, shall, directly or indirectly, be paid, received, transferred, loaned, offered, promised or furnished to, or for the use of, any officer or employee of any government department, agency, instrumentality or corporation thereof, or any political party or any official of such party or candidate for office, or any person acting for or on behalf of any of the foregoing, for the purpose of obtaining or retaining business for or with, or directing business to, any person. Patheon will comply with the applicable provisions of 42 USC § 1320a-7b prohibiting illegal remuneration (including kickback, bribe or rebate).

16.13. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER METABOLEX NOR PATHEON MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

[Remainder of page intentionally left blank]

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In witness whereof, the parties hereto have duly executed this Agreement as of the Effective Date.

METABOLEX, INC.	**PATHEON INC.**
By: /s/ Raymond Urbanski	By: /s/ Rita Terzian
R. Urbanski	Rita Terzian
Print Name	Print Name
CMO	Sr. Director, POS IRO
Title	Title

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Exhibit A

API

[*]

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Exhibit B
Form of Statement of Work

Statement of Work No.

THIS SCOPE OF WORK NO. (a "**Statement of Work**") is made and entered into as of , 20 , by and between **Metabolex, Inc.** a Delaware corporation with a business address of 3876 Bay Center Place, Hayward, California 94545 ("Metabolex") and **Patheon Inc.**, a Canadian company with its principal place of business located at 2100 Syntex Court, Mississauga, Ontario, L5N 7K9, Canada ("**Patheon**").

Pursuant to the terms and conditions of the **Development and Clinical Manufacture Agreement** of Patheon has agreed to perform certain services in accordance with written Scopes of Work, such as this one, entered into from time-to-time.

The parties hereby agree as follows:

1. Statement of Work. This document constitutes a "Statement of Work" under the Development and Clinical Manufacture Agreement, and this Statement of Work and the work contemplated herein are subject to the terms and provisions of the Development and Clinical Manufacture Agreement.

2. Services and Payment of Fees and Expenses. The specific work contemplated by this Statement of Work and the related payment terms and obligations are set forth on the following attachments, which are incorporated herein by reference:

DESCRIPTION OF WORK	ATTACHMENT 1
PROJECT BUDGET	ATTACHMENT 1
TIMELINE	ATTACHMENT 1
PAYMENT SCHEDULE	ATTACHMENT 1

3. Term. The term of this Statement of Work shall commence on , 20 and shall continue until the services described in **Attachment 1** are completed, unless this Statement of Work is terminated in accordance with the Development and Clinical Manufacture Agreement.

4. Amendments. No modification, amendment, or waiver of this Statement of Work shall be effective unless in writing and duly executed and delivered by each Party to the other.

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Exhibit B, continued

ACKNOWLEDGED, ACCEPTED AND AGREED TO:

Metabolex, Inc.	**Patheon Inc.**
By: _____	By: _____
_____	_____
Print Name	Print Name
_____	_____
Title	Title

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

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Exhibit 10.15

METRICS, INC.

STANDARD DEVELOPMENT AGREEMENT

THIS AGREEMENT, effective as of October 31, 2006, by and between Metrics, Inc., a North Carolina corporation, having a principal place of business at 1240 Sugg Parkway, Greenville, NC 27834 ("METRICS"), and Metabolex, Inc., a Delaware corporation, having a principal place of business at 3876 Bay Center Place, Hayward, CA 94545 ("COMPANY").

WITNESSETH

WHEREAS, COMPANY is engaged in the business of the research, development and commercialization of pharmaceutical and biotechnology products;

WHEREAS, METRICS is engaged in the business of, among other things, providing contract pharmaceutical development, formulation and analytical services;

WHEREAS, COMPANY desires to engage the services of METRICS to assist COMPANY in certain pharmaceutical development activities upon the terms and conditions set forth herein;

WHEREAS, METRICS performance pursuant to this Agreement may require the use by METRICS of COMPANY owned intellectual property that is necessary or useful to the development services provided hereunder; and WHEREAS, METRICS performance pursuant to this Agreement may require the parties to disclose to each other confidential and proprietary information, inventions, trade secrets and know-how, which must be protected from disclosure to third parties;

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Definitions.

   1.1 Applicable Law means all applicable federal, state, and local laws, ordinances, and regulations applicable to the Services, including without limitation GLP.

   1.2 Confidential Information means any and all information furnished by the disclosing party to the receiving party that is designated as confidential or that would ordinarily be considered confidential, including but not limited to, the chemical structure of any drug

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substance or active pharmaceutical ingredient ("API") provided to METRICS, the formulation and/or optimization of any drug substance and/or API into capsules and/or tablets, the development plans and strategies of COMPANY as to any product candidate, information set forth in the Work Statement, information related to the Materials and/or any other information developed or generated by METRICS as a result of performing the Services (including the Inventions), procedures, manufacturing techniques, analytical methods and techniques, testing methods, developments, results, data, study results (including analytical testing and stability results, and including the Study Data), conclusions, technologies, inventions, development plans, business or financial information, and any of METRICS' price estimates, proposals, quotations, or similar pricing information.

1.3 Deliverables means all data (including the Study Data), results, products, substances and materials to be developed for or delivered to COMPANY by METRICS as provided in this Agreement and under any Work Statement issued hereunder.

1.4 GLP means the Good Laboratory Practices promulgated from time to time by the United States Food and Drug Administration.

1.5 Initial Work Statement means the initial Work Statement between the parties attached hereto as Schedule A.

1.6 Invention means any intellectual property, whether patentable or not, know-how, trade-secret, discovery, technology, process, procedure, manufacturing technique, analytical method and technique, innovation, invention, improvement and the like developed in the course and scope of this Agreement.

1.7 COMPANY Invention means an Invention made or conceived solely by COMPANY's employees in the course and scope of this Agreement.

1.8 METRICS Invention means an Invention made or conceived solely by METRICS' employees in the course and scope of this Agreement.

1.9 Joint Invention means an Invention jointly made or conceived by COMPANY's employees and METRICS' employees in the course and scope of this Agreement.

1.10 Licensed Intellectual Property means all COMPANY owned patents, patent applications, prospective patents, copyrights, trademarks, trade secrets, technology, Confidential Information and other intellectual property that are necessary or useful to the Services to be provided by METRICS hereunder.

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1.11 Product means a pharmaceutical product developed or manufactured for COMPANY by METRICS as provided in this Agreement and under any Work Statement issued hereunder.

1.12 Services means the services described in Section 2.1 and the additional services described in Section 2.2.

1.13 Work Statement means a schedule agreed to by the parties that outlines, among other things, the plan for development services to be provided by METRICS, the particular services to be provided by METRICS, any Deliverables or Products to be developed or manufactured by METRICS, the time schedule for performance, and the amount, schedule and method of payment to be made by COMPANY. Any Work Statement may be modified or amended from time to time upon mutual written agreement of the parties, and such agreed-upon modifications or amendments shall be attached as part of the appropriate schedule and incorporated herein.

2. Scope and Purpose.

2.1 Services. METRICS agrees to use commercially reasonable efforts to provide the services outlined in the Initial Work Statement set forth in Schedule A attached hereto.

2.2 Additional Services. METRICS agrees to provide additional services specified in any future Work Statements that may be agreed to between the parties in writing, incorporated into this Agreement and attached hereto as additional schedules. Each Work Statement shall be governed by the terms and conditions of this Agreement and by such supplementary written amendments of this Agreement as may be, from time to time, executed between the parties. In the event of a conflict between the terms and conditions of this Agreement and any Work Statement, the terms of this Agreement shall govern.

2.3 Performance of Services. METRICS shall perform the Services using reasonable care, in accordance with the Work Statement, Applicable Law, COMPANY's instructions, and the terms and conditions of this Agreement. METRICS shall use its best efforts to provide the facilities, supplies (other than the materials that will be provided by COMPANY) and staff necessary to complete the Services in accordance with the terms of this Agreement. METRICS shall conduct and complete the Services in accordance with the time schedule set forth in the Work Statement, subject to any delays caused by COMPANY's failure to timely provide to METRICS Materials or any other items needed by METRICS from COMPANY to commence or complete the Services.

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2.4 Change Orders. COMPANY may, from time to time, submit to METRICS a request for changes to an existing Work Statement. If, in METRICS' reasonable judgment, METRICS can implement the requested changes without requiring additional METRICS' time or resources and without affecting METRICS' ability to maintain the project schedule, METRICS will implement the change at no additional cost to COMPANY. Otherwise, METRICS will provide COMPANY with a written change order proposal for the additional work, including: (i) price change, (ii) impact on project schedule, and (iii) revised Work Statement, including additional requirements of COMPANY, if any. COMPANY may, at its discretion, accept or reject METRICS' change order proposal. COMPANY shall be deemed to have accepted METRICS change order proposal if [*] business days pass without COMPANY providing its written acceptance, rejection or proposed modification of such proposal. Each party will use reasonable efforts to respond as expeditiously as possible to change order proposals.

2.5 Materials and Information to be Provided. COMPANY agrees to provide METRICS with all relevant information, documentation materials, candidate techniques for development, samples, specimens and the like ("Materials"), that are necessary for METRICS' performance under this Agreement. COMPANY and/or its agents and/or subcontractors shall provide METRICS with sufficient amounts of the Materials necessary to perform the Services. METRICS shall use the Materials solely for the purpose of performing the Services. METRICS shall not supply the Materials, or any portion thereof, to any third parties other than a subcontractor approved by COMPANY to perform work in connection with this Agreement. METRICS will use the Materials in compliance with all Applicable Laws and regulations, including, but not limited to, any laws or regulations relating to the testing, storage, transportation, packaging, labeling, or other authorized use of the Materials. METRICS shall retain the unused portion of any Materials until such time as COMPANY requests that such Materials be returned or destroyed.

2.6 Study Data. All data and other information generated or recorded in the performance of the Services, including any summary information based thereon, shall be referred to herein as the "Study Data." METRICS shall create and maintain written records of the Study Data and other information related to the performance of the Services in a timely, accurate, complete, and legible manner in the form as agreed between the parties. METRICS shall maintain the

Study Data in compliance with the terms and conditions of this Agreement, the Work Statement, and Applicable Law. METRICS shall maintain the Study Data in a professional manner so as to permit COMPANY to review the Study Data in full without disclosing to COMPANY any third party confidential or proprietary information in any review that COMPANY may perform hereunder. METRICS shall make the Study Data available for COMPANY's inspection and copying during regular business hours and upon reasonable advance notice, provided that COMPANY or its representative may not audit, copy or inspect such records more than once per calendar year. Promptly upon completion or termination of the Services, METRICS shall transfer to COMPANY all Study Data or, at COMPANY's request, shall maintain the Study Data. METRICS shall not destroy any Study Data until the earlier of (a) [*] or (b) its receipt of COMPANY's prior written permission to do so. METRICS may in any event retain one true copy of all Study Data, which it may use solely to comply with its obligations under Applicable Law and this Agreement.

2.7 Reports of Results. Upon completion of the Services, or at other time points as the parties may agree, METRICS shall provide written reports of Study Data, in both electronic and hard copy format to COMPANY and, at COMPANY's request, to such other third parties as directed by COMPANY. All reports provided to COMPANY by METRICS shall be deemed COMPANY Confidential Information subject to the obligations of confidentiality set forth in Section 5.

2.8 Subcontractors. METRICS may utilize subcontractors with appropriate expertise and experience in the performance of its obligations under this Agreement; provided, however, that COMPANY must give its written approval, which shall not be unreasonably withheld, prior to the use of subcontractors by METRICS. METRICS shall ensure that all subcontractors employed by METRICS in connection with the Services shall execute such instruments as are necessary to confirm such subcontractor's obligations in connection with this Agreement. METRICS shall remain liable for the performance of any of its obligations hereunder that it delegates to a subcontractor.

2.9 Work Location. METRICS shall perform the Services at the location indicated in the applicable Work Statement, or, if no such location is indicated, at the address given above for METRICS unless mutual agreement to the contrary has been made and stipulated by the parties.

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3. Compensation. In return for the performance by METRICS of, and as compensation for, the Services, COMPANY agrees to pay METRICS the amounts specified in the Initial Work Statement in the attached Schedule A and any future Work Statements that may be agreed to by the parties. COMPANY understands and agrees that METRICS reserves the right to revise the charge estimates in a Work Statement should the scope of METRICS' services change or should unforeseen difficulties arise; provided, however, that the parties must mutually agree to any such change. Unless otherwise agreed, METRICS will invoice COMPANY on the schedule set forth in the Work Statement or if not set forth in the Work Statement after completion of the Services, with payment due within [*] days of the receipt of an invoice. The invoice shall explicitly refer to the Services performed so as to allow COMPANY to cross-check the completed Services against the Work Statement and schedule of payments. The invoice shall also be accompanied by reasonable back-up documentation, if applicable.

4. Shipping. Deliverables to be delivered by METRICS under this Agreement shall be shipped by METRICS to COMPANY or locations designated by COMPANY as directed by COMPANY. METRICS shall be responsible for arranging all shipping, as appropriate, including suitable packaging materials to comply with applicable standards, customs forms and insurance. Risk of loss shall transfer to COMPANY upon placement of the Deliverables in the hands of a carrier mutually acceptable to the parties. METRICS shall invoice COMPANY for shipping, insurance and any sales, use, excise, import, customs or similar taxes as outlined in the Work Statement.

5. Confidentiality.

   5.1 Confidential Information. During the term of this Agreement and for a period of [*] years after the expiration or termination of this Agreement, Confidential Information shall be held in confidence and shall not be used by the receiving party for any purpose other than to fulfill its obligations under this Agreement and shall not be disclosed to any third party (except as otherwise required or permitted by this Agreement); provided, however, that the receiving party may disclose such information: (i) on a need-to-know basis to its agents, employees and consultants who are under a written obligation to maintain the confidentiality of such Confidential Information on terms substantially similar to those set forth in this Agreement and (ii) to investigators retained in connection with a study to which such Confidential Information relates, and who are under a written obligation to maintain the confidentiality of such Confidential Information on terms substantially similar to those set forth in this Agreement. In each such case the receiving party shall be responsible to the disclosing party for breaches by any person to whom the receiving party discloses Confidential Information.

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5.2 Use. Neither party shall file any patent application containing any disclosure or claim, the subject matter of which is derived from the Confidential Information of the other party. Neither party shall use the Confidential Information of the other party for any purpose or in any manner that would constitute a violation of any laws or regulations of the United States. Except as otherwise provided herein, neither party shall have the right to retain, distribute, or commercialize any of the Confidential Information of the other party.

5.3 Limitation. The receiving party shall have no obligations of confidentiality with respect to any portion of Confidential Information that: (i) is or later becomes generally available to the public by use, publication or the like, through no fault of the receiving party; (ii) is obtained without restriction from a third party who had the legal right to disclose the same to the receiving party; (iii) the receiving party already possesses, as evidenced by its written records, predating receipt thereof from the disclosing party; or (iv) is required to be disclosed by order of a governmental authority or a court of competent jurisdiction; provided that the receiving party shall, whenever reasonably possible, give the disclosing party notice of such requirement and an opportunity to be heard on the issue prior to disclosing the Confidential Information.

5.4 Third Party Confidential Information. METRICS shall not disclose to COMPANY any confidential or proprietary information that belongs to any third party unless METRICS first obtains the consent of such third party and enters into a separate confidentiality agreement with COMPANY covering that disclosure. METRICS shall not represent to COMPANY as being unrestricted any designs, plans, models, samples, or other writings or products that METRICS knows are covered by valid patent, copyright, or other form of intellectual property protection belonging to a third party.

5.5 Return of Information. Any and all written information or other materials in tangible or electronic form received by the receiving party from the disclosing party and all copies, notes, and other materials made by the receiving party regarding Confidential Information shall upon termination of this Agreement, or earlier at the disclosing party's request, be immediately destroyed or, at the disclosing party's option, returned.

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6. Inspections.

6.1 Regulatory Inspections. METRICS shall promptly notify COMPANY of any regulatory inspections relating to the Services by any government agency or other regulatory entity including, without limitation, the United States Food and Drug Administration (the "FDA"), of which it becomes aware. COMPANY shall have the primary responsibility for preparing any responses relating to the Materials that may be required by the government agency or regulatory entity, provided, however, that if any such FDA inspection takes place at METRICS' facility, [*], though [*]. METRICS shall [*] preparing any responses relating to [*]. METRICS shall take all reasonable actions to cure deficiencies as noted during any such inspection.

6.2 Site Visits by COMPANY. COMPANY'S representatives may visit METRICS' facilities at reasonable times and upon reasonable notice during normal business hours to observe the performance of the Services. METRICS will assist COMPANY in scheduling such visits. The site visits described in this Section 6.2 shall be [*], and COMPANY [*].

7. COMPANY License Grant. COMPANY hereby grants to METRICS a limited, non-exclusive right and license to use Licensed Intellectual Property solely for the purpose of enabling METRICS to carry out its tasks and responsibilities under this Agreement and under any Work Statement issued hereunder.

8. Ownership and Rights.

8.1 Intellectual Property Rights Related to a Product. Any and all intellectual property rights related to a Product, or API provided to METRICS, including but not limited to, patents and patent applications [*] such Product or API, shall be the sole and exclusive property of COMPANY. COMPANY shall be responsible for the preparation, filing and prosecution of patent or other intellectual property applications relating to such Product or API at its own expense (unless otherwise agreed by both parties) and its own discretion. METRICS shall assist COMPANY, at COMPANY's expense, with the preparation of all documents necessary to effectuate COMPANY's rights related to such Product or API.

8.2 COMPANY Inventions. COMPANY shall own all right, title and interest in any COMPANY Inventions; provided, however, that COMPANY shall provide METRICS a nonexclusive, irrevocable, royalty-free license to the use of any such COMPANY Inventions, for purposes not related to a Product or to API provided to METRICS, that resulted from the use by COMPANY of

Confidential Information disclosed to COMPANY by METRICS. COMPANY shall be responsible for the preparation, filing and prosecution of patent or other intellectual property applications for any such COMPANY Inventions at its own expense (unless otherwise agreed by both parties) and its own discretion. METRICS shall assist COMPANY, at COMPANY's expense, with the preparation of all documents necessary to effectuate COMPANY's rights in COMPANY Inventions.

8.3 METRICS Inventions. METRICS shall own all right, title and interest in any METRICS Inventions; provided, however, that METRICS shall [*] METRICS Inventions resulting from (i) [*], (ii) [*], or (iii) [*]. METRICS shall be responsible for the preparation, filing and prosecution of patent or other intellectual property applications for any such METRICS Inventions at its own expense (unless otherwise agreed by both parties) and its own discretion. COMPANY shall assist METRICS, at METRICS' expense, with the preparation of all documents necessary to effectuate METRICS' rights in METRICS Inventions.

8.4 Joint Inventions. COMPANY and METRICS shall own an equal and undivided interest in any Joint Invention that is not related to a Product or to API provided to METRICS. The parties shall confer and mutually determine which party (or parties) will be responsible for the preparation, filing, and prosecution of any patent or other intellectual property applications pertaining to any Joint Invention that is not related to a Product or to API provided to METRICS. COMPANY shall own all Joint Inventions that are related to a Product or to API provided to METRICS. COMPANY will be responsible for the preparation, filing, and prosecution of any patent or other intellectual property applications pertaining to any Joint Inventions that are related to a Product or to API provided to METRICS.

8.5 Further Assurances. Each party shall ensure that it has in place with each of its applicable employees or agents, appropriate arrangements whereby such party will be able to satisfy its obligations under this Section 8.

8.6 Study Data. COMPANY shall own all right, title, and interest in and to all Study Data, and all reports and biological or chemical specimens generated by METRICS as a result of conducting the Services. All Study Data and any information with respect thereto shall be COMPANY Confidential Information subject to the confidentiality provisions of Section 5.

8.7 COMPANY Property. All tangible property provided to METRICS in connection with this Agreement, including without limitation all Materials, records, or other COMPANY Confidential Information, shall be and remain the exclusive property of COMPANY.

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9. Representations and Warranties.

9.1 COMPANY Representations and Warranties. COMPANY represents and warrants that it has the right to enter into this Agreement, that it is not a party to any existing agreements, grants, licenses, encumbrances, obligations, or agreements, written or oral, inconsistent with this Agreement, that it [*], and that it [*]. COMPANY further represents and warrants that it has no present knowledge of the existence of United States patents or other intellectual property rights that would be infringed by the development and manufacture of Products under this Agreement.

9.2 METRICS Representations and Warranties. METRICS represents and warrants that it has the right to enter into this Agreement and that it is not a party to any existing agreements, grants, licenses, encumbrances, obligations, or agreements, written or oral, inconsistent with this Agreement. METRICS further represents and warrants that it has no present knowledge of the existence of United States patents or other intellectual property rights that would be infringed by the development and manufacture of Products under this Agreement.

9.3 No Debarred Person. METRICS represents and warrants that it shall not employ, contract with, or retain any person directly or indirectly to perform the Services under this Agreement if such person is under investigation by the FDA for debarment or is presently debarred by the FDA pursuant to the Generic Drug Enforcement Act of 1992, as amended (21 U.S.C. § 301, et seq.). In addition, METRICS represents and warrants that it has not engaged in any conduct or activity that could lead to any such debarment actions. If during the term of this Agreement, METRICS or any person employed or retained by it to perform the services (i) comes under investigation by the FDA for a debarment action, (ii) is debarred, or (iii) engages in any conduct or activity that could lead to debarment, METRICS shall immediately notify COMPANY of same.

9.4 NO OTHER REPRESENTATIONS. THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 9 ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR

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IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Insurance. METRICS shall secure and maintain in full force and effect throughout the performance of the services insurance coverage for (a) employer's liability, (b) general liability, and (c) professional services indemnity in amounts appropriate to the conduct of METRICS business. Certificates evidencing such insurance will be made available for examination upon request by COMPANY. METRICS and COMPANY each also agree that it will maintain adequate insurance to cover its indemnification obligations hereunder. METRICS further agrees to maintain workers' compensation insurance in the amount required by the laws of the state in which METRICS employees performing the Services are located.

11. Indemnification.

11.1 Indemnification by COMPANY. COMPANY hereby agrees to defend, indemnify, and hold METRICS and METRICS' directors, officers, employees, and agents (the "METRICS Indemnitees") harmless from and against any and all expenses, losses, royalties, profits, damages, liabilities, settlements, claims or demands, including reasonable attorneys' fees, to the extent arising from or in connection with any third party claim that: (i) involves the breach by COMPANY of any of its obligations, warranties or representations under this Agreement; (ii) [*]; (iii) involves the [*]; or (iv) involves the [*]. Such indemnity shall not apply if METRICS fails to comply with the indemnification procedures set forth in Section 11.3, or to the extent that a claim arises out of or results from (i) the negligence, gross negligence, or intentional misconduct on the part of any of the METRICS Indemnitees, (ii) a failure of any one of the METRICS Indemnitees to comply with Applicable Law in the performance of the Services, or (iii) a material breach of METRICS' obligations, covenants, representations, or warranties under this Agreement.

11.2 Indemnification by METRICS. METRICS hereby agrees to defend, indemnify, and hold COMPANY and COMPANY'S directors, officers, employees, and agents (the "COMPANY Indemnitees") harmless from and against any and all expenses, losses, royalties, profits, damages, liabilities, settlements, claims or demands, including reasonable attorneys' fees, to the extent arising from or in connection with any third party claim that involves: (i) the negligence, gross negligence, or intentional misconduct on the part of any of the METRICS Indemnitees, (ii) a failure of any one of the METRICS Indemnitees to comply with Applicable Law in

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the performance of the Services, or (iii) a breach of METRICS' obligations, covenants, representations, or warranties under this Agreement. Such indemnity shall not apply if COMPANY fails to comply with the indemnification procedures set forth in Section 11.3, or to the extent that a claim arises out of or results from (i) the breach by COMPANY of any of its obligations, warranties or representations under this Agreement; (ii) [*]; (iii) [*]; (iv) [*]; (v) the negligence, gross negligence, or intentional misconduct on the part of any of the COMPANY Indemnitees.

11.3 General Conditions of Indemnification. Each party's agreement to indemnify, defend and hold the other party harmless is conditioned upon the indemnified party (i) providing written notice to the indemnifying party of any claim for which it is seeking indemnification hereunder promptly after the indemnified party has knowledge of such claim; (ii) permitting the indemnifying party to assume full responsibility to investigate, prepare for and defend against any such claim or demand; (iii) assisting the indemnifying party, at the indemnifying party's reasonable expense, in the investigation of, preparation for and defense of any such claim or demand; and (iv) not compromising or settling such claim or demand without the indemnifying party's written consent.

11.4 Separate Defense of Claims. In the event that the parties cannot agree as to the application of Sections 11.1 and 11.2 to any particular claim, the parties may conduct separate defenses of such claim. So long as the party seeking indemnification has complied with the notice provisions of Section 11.3(i) and the consent provisions of Section 11.3(iv), such party shall have the right to seek indemnity from the other in accordance with Section 11.1 or 11.2 (as applicable) above upon resolution of the underlying claim, notwithstanding such party's failure to comply with the provisions of Section 11.3(ii) permitting the indemnifying party to assume full responsibility to defend against such claim.

12. Term, Termination and Survival.

12.1 Term. This Agreement shall be effective upon the date specified at the beginning of this Agreement and shall continue until terminated by either party at any time on [*] days prior written notice. Upon termination, COMPANY shall be obligated to pay the cost of all work completed through the effective date of termination in accordance with the foregoing, as well as [*].

12.2 Survival. In the event of any termination of this Agreement, Sections 2.6, 2.7, 5, 6, 8, 9.4, 11, 12, and 13 shall survive and shall be binding upon the parties respective successors and assigns.

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13. Miscellaneous.

13.1 [*]. COMPANY shall not [*] during the term of this Agreement [*] of [*] pursuant to this Agreement. For the purposes of this Section 13.1, a "[*]" shall be [*] has provided [*] pursuant to this Agreement within [*], and at the time of [*] pursuant to this Agreement [*]. Notwithstanding the foregoing, [*] shall not include (i) [*], (ii) [*], and (iii) [*].

13.2 Force Majeure. Either party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party; provided that, in order to be excused from delay or failure to perform, such party must act diligently to remedy the cause of such delay or failure.

13.3 No Agency. METRICS, in rendering performance under this Agreement, is acting solely as an independent contractor. In no way is METRICS to be construed as the agent or acting as the agent of COMPANY in any respect, any other provisions of this Agreement notwithstanding.

13.4 Multiple Counterparts/Signatures. This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties. Facsimile and PDF signatures shall have the same effect as original signatures.

13.5 Section Headings, Schedules. The section and subsection headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof The schedules referred to herein and attached hereto, or to be attached hereto are incorporated herein to the same extent as if set forth in full herein.

13.6 Required Approvals. Where agreement, approval, acceptance, or consent by either party is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld.

13.7 No Waiver. No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise.

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13.8 Authority of METRICS. METRICS has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be performed by METRICS hereunder unless otherwise provided herein.

13.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

13.10 Time is of the Essence. For the purposes of this Agreement, including the Initial Work Statement and any other Work Statement, time shall be of the essence. METRICS shall promptly provide written notice to COMPANY of any change in its ability to provide the Services in accordance with the schedule set forth in the Initial Work Statement or any Work Statement.

13.11 Entire Agreement. This Agreement and the schedules annexed hereto constitute the entire agreement between the parties. No change, waiver, or discharge hereof shall be valid unless it is in writing and is executed by the party against whom such change, waiver, or discharge is sought to be enforced.

13.12 Notices. All notices required or permitted hereunder shall be given in writing and sent by facsimile transmission, or mailed postage prepaid, certified or registered mail, return receipt requested, or sent by a nationally recognized express courier service, or hand-delivered at the following addresses (or as subsequently noticed to the other party):

if to METRICS: Metrics, Inc.
1240 Sugg Parkway
Greenville, North Carolina 27834
Facsimile: [*]
Attention: President

if to COMPANY: Metabolex, Inc.
3876 Bay Center Place
Hayward, CA 94545
Facsimile: [*]
Attention: General Counsel

All notices shall be deemed made upon receipt by the addressee as evidenced by a written receipt or three (3) days after posting if sent by registered U.S. mail.

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13.13 No Assignment. Neither party may, without the prior written consent of the other party, assign or transfer this Agreement or any obligation incurred hereunder, except by merger, reorganization, consolidation, or sale of all or substantially all of such party's assets. Any attempt to do so in contravention of this Section shall be void and of no force and effect. This Agreement shall inure to the benefit of and be binding upon each party signatory hereto, its successors and permitted assigns.

13.14 Use of Names. Neither party shall use the name of the other party or the names of the employees of the other party in any advertising or sales promotional material or in any publication without prior written permission of such other party; provided, however, that COMPANY may use the name of METRICS in regulatory filings, including filings with the FDA and the United States Securities and Exchange Commission, or in disclosures to investors and potential partners.

13.15 Severability. If any provision of this Agreement shall be deemed void in whole or in part for any reason whatsoever, the remaining provisions shall remain in full force and effect. The parties shall make a good faith effort to replace any such provision with a valid and enforceable one such that the objectives contemplated by the parties when entering this Agreement may be realized.

13.16 No Implied Rights or License. No right or license is granted under this Agreement by either party to the other, either expressly or by implication, except as specifically set forth herein.

IN WITNESS WHEREOF, METRICS and COMPANY have caused this Agreement to be signed and delivered by their duly authorized officers, all as of the date first hereinabove written.

METRICS Metrics, Inc.		COMPANY Metabolex, Inc.	
By:	/s/ Jeffery C. Basham	By:	/s/ Harold Van Wart
Name:	Jeffery C. Basham	Name:	Harold Van Wart
Title:	VP, Marketing & Sales	Title:	Chief Executive Officer

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SCHEDULE A

Initial Work Statement

[*]

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Exhibit 10.16

LICENSE AND DEVELOPMENT AGREEMENT

THIS LICENSE AND DEVELOPMENT AGREEMENT is made and entered into as of June 30, 1998 (the "Effective Date") by and between **METABOLEX, INC.**, a Delaware corporation with a place of business at 3876 Bay Center Place, Hayward, CA 94545 ("Metabolex"), and **DIATEX, INC.**, a Texas corporation with a place of business at 105 Elm Spring Lane, San Antonio, TX 78231 ("DiaTex"). Metabolex and DiaTex may be referred to herein as a "Party" or, collectively, as "Parties."

RECITALS

WHEREAS, Metabolex has expertise in, and proprietary technology for, the discovery, development and commercialization of novel therapeutics for use in the treatment of diabetes and other diseases and conditions; and

WHEREAS, DiaTex has developed proprietary technology regarding use of the compound Halofenate, and its enantiomers, analogues and derivatives, for the treatment of diabetes; and

WHEREAS, Metabolex wishes to obtain, and DiaTex desires to grant, an exclusive license to Metabolex to develop, make, have made, import, offer for sale and sell therapeutic products containing Halofenate or enantiomers, analogues or derivatives thereof for the treatment of diabetes and related conditions;

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

1.1 "**Affiliate**" means any company or entity controlled by, controlling or under common control with a Party. As used in this Section 1.1, "control" means (a) that an entity or company owns, directly or indirectly, fifty percent (50%) or more of the voting stock of another entity, or (b) that an entity, person or group has the actual ability to control and direct the management of the entity, whether by contract or otherwise.

1.2 "**Controlled**" means, with respect to any material, Know-How or intellectual property right, that the Party owns or has a license to such material, Know-How or intellectual property right and has the ability to grant access, a license, or a sublicense to such material, Know-How or intellectual property right to the other Party as provided for herein without violating an agreement with a Third Party as of the time the Party would be first required hereunder to grant the other Party such access, license or sublicense.

1.3 "**DiaTex Know-How**" means all Know-How Controlled by DiaTex at any time during the term of this Agreement, but excluding the DiaTex Patents.

1.4 "**DiaTex Patents**" means any and all Patents Controlled by DiaTex during the term of this Agreement that claim a Licensed Compound or its manufacture or use or a Product or its manufacture or use.

1.5 "**DiaTex Principal**" means a person listed on Exhibit A. Such persons may be collectively referred to as the "DiaTex Principals."

1.6 "**DiaTex Technology**" means the DiaTex Know-How and the DiaTex Patents.

1.7 "**Enantiomer**" means either of the chiral isomers of Halofenate that are direct, nonsuperimposable mirror images of each other or derivatives or analogues of the chiral isomers of Halofenate.

1.8 "**Enantiomer Patent**" means a Patent having at least one claim which claims a composition of matter embodying an Enantiomer, a method for producing such Enantiomer, or the use of such Enantiomer.

1.9 "**FDA**" means the U.S. Food and Drug Administration.

1.10 "**Halofenate**" means the molecule having the structure and the International Union of Pure and Applied Chemistry ("IUPAC") name as described in Exhibit B.

1.11 "**IND**" shall mean an investigational new drug application for Regulatory Approval by the FDA, or equivalent approval by the relevant regulatory agency of a country, to commence clinical testing of a drug, as defined by the FDA or relevant regulatory agency, as the case may be.

1.12 "**Joint Know-How**" means all Know-How developed jointly by the Parties during the term of the Agreement.

1.13 "**Joint Patents**" means (a) all Patents claiming inventions within the Joint Know-How, and (b) the Enantiomer Patents.

1.14 "**Joint Technology**" means the Joint Know-How and the Joint Patents.

1.15 "**Know-How**" means all information, data, know-how, trade secrets, inventions, developments, results, techniques and materials, whether or not patentable, that are necessary or useful to the discovery and development of Licensed Compounds and Products for use in the treatment or prevention of human diseases or conditions, including without limitation diabetes, or to the manufacture or use of such Licensed Compounds or Products.

1.16 "**Licensed Compound**" means Halofenate, the Enantiomers, and any analogues or derivatives of Halofenate.

1.17 "**NDA**" shall mean an application for Regulatory Approval by the FDA, or equivalent approval by the relevant regulatory agency of a country, to commence marketing of a drug, as defined by the FDA or relevant regulatory agency, as the case may be.

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1.18 "**Net Sales**"

(a) In the case of a Product sold by a Sublicensee or Third Party, "Net Sales" shall have the meaning ascribed in the relevant sublicense agreement between Metabolex and such Sublicense or Third Party for sales of such Product.

(b) In the case of a Product sold by Metabolex or its Affiliate, "Net Sales" means the gross invoiced price for the sale of such Product, less the following deductions:

(i) sales taxes, duties and other governmental charges;

(ii) separately identified shipping costs (including freight and insurance);

(iii) cash, trade and/or quantity discounts actually allowed;

(iv) amounts repaid or credited by reason of rejection or return of goods;

(v) volume or formal discount amounts paid or credited to a wholesaler, purchaser, Third Party payor or other contractee as a result of a contractual arrangement specific to a Product;

(c) rebates paid or credited to any governmental agency (or branch thereof) or to any Third Party payor, administrator or contractee; and

(d) discounts mandated by, or granted in response to, applicable state, provincial or federal law, wholesaler, including chargebacks or retroactive price reductions.

A sale of a Product under this Section 1.18(b) is deemed to occur upon the earlier of: (i) invoice date; (ii) delivery of Product; (iii) payment of an invoice by a Third Party purchaser.

1.19 "**Patents**" means any and all issued or pending patents and patent applications, both foreign and domestic, and including without limitation (i) all divisionals, continuations and continuations-in-part of any such applications, (ii) any patents that issue from any of the foregoing, and (iii) all substitutions, extensions, reissues, renewals, supplementary protection certificates and inventors' certificates with respect to any of the foregoing issued patents.

1.20 "**Product**" means a product that contains a Licensed Compound, including any formulation thereof, and is intended for sale for use in the treatment or prevention of human diseases or conditions, including without limitation diabetes.

1.21 "**Racemate**" means a mixture comprising approximately equal proportions of each Enantiomer.

1.22 "**Regulatory Approval**" shall mean any approvals, licenses, registrations or authorizations of any country, federal, state or local regulatory agency, ministry, department, bureau or other governmental entity necessary for the development, use, marketing, sale or distribution of a Product.

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1.23 "**Sublicensee**" means a Third Party that is granted a sublicense by Metabolex to make, use, import and/or sell a Product.

1.24 "**Third Party**" means a person or entity other than DiaTex or Metabolex or their respective Affiliates.

2. LICENSES

2.1 Metabolex License. DiaTex hereby grants Metabolex an exclusive license (even as to DiaTex), with right to sublicense, to use and practice the DiaTex Technology and the Joint Technology to develop, make, have made, import, offer for sale and sell Licensed Compounds and Products, provided that DiaTex shall retain sufficient rights as necessary for DiaTex's performance of its obligations under this Agreement, and solely for such purpose.

2.2 Exclusivity. DiaTex hereby covenants that it will require and ensure, to the extent permissible by law, that DiaTex, the DiaTex Principals and DiaTex's employees shall conduct such work on [*] and [*] exclusively for the benefit of Metabolex pursuant to this Agreement.

2.3 Agreement Regarding [*].

(a) The Parties acknowledge that DiaTex [*] with the [*] regarding the rights to [*].

(b) The Parties desire that after the Effective Date Metabolex shall [*] with [*] that [*] and shall make reasonable efforts, with DiaTex's cooperation, to [*] with [*] that is [*] ("[*]"). The Parties agree that the terms of any [*] shall [*] for Metabolex to [*] to allow [*] to [*], and for [*] to (i) provide funding for and conduct the development of [*], including without limitation performing [*] in such country, and (ii) manufacture [*]. Any [*] shall also [*] for pharmaceutical products of similar nature and market potential and shall specifically [*] all development activities regarding [*] and the [*] shall be subject to the prior approval of Metabolex and shall conform to [*], as applicable, under the United States Federal Food, Drug and Cosmetic Act and regulations promulgated thereunder. If Metabolex is unable to [*], or if Metabolex [*], Metabolex shall not [*].

(c) If Metabolex [*] pursuant to Section 2.3(b) by [*], the Parties will [*] that Metabolex and DiaTex shall [*], including [*], if any, [*] under [*]. If [*] associated with it, then Diatex will [*] of the [*], and then [*]. In the event that Metabolex [*], Metabolex shall have no further obligations under this Section 2.3, and the provisions of Sections [*] Products by or [*] that [*].

(d) In the event that Metabolex [*] by [*], the terms of [*] hereof shall not apply to [*].

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3. RESEARCH AND DEVELOPMENT PROGRAM

3.1 Overview. DiaTex agrees to work cooperatively with and assist Metabolex in a program for the research and development of Licensed Compounds and Products (the "Program"), in order for Metabolex to eventually commercialize the Products for the treatment or prevention of human diseases, including without limitation diabetes. Metabolex will be responsible for the overall Program, including its management and direction. DiaTex will be responsible for Animal Testing Program, as described in Section 3.2(b).

3.2 DiaTex Responsibilities.

(a) Document Transfer. Promptly following the Effective Date, DiaTex shall transfer to Metabolex copies of (i) its IND for the Racemate, and (ii) all documents or materials in its possession comprising or containing DiaTex Know-How.

(b) Animal Testing Program. Promptly following the Effective Date, DiaTex shall commence a program of animal drug testing for demonstrating the improved efficacy of at least one of the Enantiomers, with the objective of providing sufficient data and justification to file at least one Enantiomer Patent (the "Animal Testing Program"). DiaTex shall bear all costs relating to the Animal Testing Program.

(c) Reporting. As soon as is reasonably practicable following the end of each calendar quarter of the Program Term (as defined in Section 3.5 below), DiaTex shall deliver to Metabolex a report detailing the results of the Animal Testing Program during such quarter and describing its research goals for the next quarter. Such reports shall include, without limitation, all data, documents and materials developed during or resulting from DiaTex's efforts under the Animal Testing Program for such quarter which relate to the discovery, development, use or manufacture of the Enantiomer.

3.3 Metabolex Efforts. Metabolex shall use diligent efforts to conduct preclinical and clinical testing of the Racemate, in order to determine its efficacy for use in the treatment or prevention of human diseases or conditions, including without limitation diabetes. Metabolex shall also, to the extent it deems appropriate, create (or have created) derivatives and analogues of the Racemate and the Enantiomers for conducting such preclinical and clinical testing. Metabolex shall use diligent efforts to conduct such testing on one or more Licensed Compounds as needed to achieve regulatory approval of a Product, if possible. Metabolex shall bear all costs of the Program, provided that Metabolex shall not be responsible for any costs of the Animal Testing Program.

3.4 DiaTex Principals. The DiaTex Principals shall be available for consultation throughout the Program Term, including without limitation by phone, by fax or in person. The DiaTex Principals shall attend Metabolex meetings, if Metabolex so requests and upon reasonable notice. If such meeting takes place outside the San Antonio, Texas area, Metabolex shall pay DiaTex a per diem of $[*] for each DiaTex Principal who attends such meeting, plus all reasonable out of pocket expenses relating to attending the meeting. If such meeting takes place in the San Antonio, Texas area, Metabolex shall pay DiaTex $[*] per hour of attendance for each DiaTex Principal who attends such meeting. DiaTex hereby agrees to ensure that the DiaTex Principals will agree to and be bound by this Section 3.4.

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3.5 [*] of Program. The Program Term shall be [*] from the Effective Date. At the [*] the Effective Date, if Metabolex has (a) [*] with respect to the Racemate and its derivatives and analogues, and (b) [*] with respect to the Enantiomers, Metabolex shall either:

(a) [*], in which case, Metabolex shall, at its option, grant DiaTex either (i) [*] of the [*], or (ii) [*] of the [*]. For purposes of this Section 3.5(a), "[*]" shall mean the [*] under [*]; or

(b) [*] to [*] and provide [*] commercially reasonable [*] and [*] that may [*].

4. PURCHASE AND DELIVERY OF HALOFENATE

4.1 Purchase. The Parties agree that promptly after the Effective Date, DiaTex shall sell to Metabolex, and Metabolex shall purchase, [*] of Halofenate. Such purchase shall be made by delivery to Metabolex in a form mutually agreed, and such delivery will be accompanied by an invoice for such Halofenate in the amount of $[*]. Within [*] days of delivery of the Halofenate and the invoice therefor pursuant to this Section 4.1, Metabolex shall pay the full amount of such invoice to DiaTex pursuant to the payment procedures set forth in Article 6 below.

4.2 Delivery. The Halofenate supplied by DiaTex to Metabolex under Section 4.1 will be delivered FCA the Metabolex facility. DiaTex shall make shipping arrangements with a carrier mutually agreeable to the Parties. Title and risk of loss passes to Metabolex when the Halofenate is delivered to the Metabolex facility. All insurance premiums and other expenses related to such transportation and delivery shall be at DiaTex's expense.

5. PAYMENTS

5.1 License Fees. In consideration of the license granted herein, Metabolex shall pay DiaTex the following license fees:

(a) [*], Metabolex shall pay DiaTex $[*];

(b) [*], Metabolex shall pay DiaTex $2,000 per month [*].

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5.2 Milestone Payments. Metabolex shall pay DiaTex the following milestone payments within [*] days of achieving each milestone below for the first time for a Product containing the indicated Licensed Compound:

	Licensed Compound	
Milestone	**[*]**	**[*]**
[*]	[*]	$ 50,000
[*]	[*]	
[*]		[*]
[*]	[*]	[*]
	[*]	

As used in this Section 5.2:

(a) "[*]" means [*] which Metabolex determines [*] the applicable Licensed Compound or Product.

(b) "[*]" means [*] Metabolex [*] pharmaceutical products, [*].

5.3 Royalties. Metabolex shall pay DiaTex a royalty of two percent (2%) on all Net Sales of Products by Metabolex, its Affiliates or its Sublicensees, in countries where there is a valid claim for the use, manufacture, and sale of Product from an issued DiaTex Patent or Joint Patent. Such royalty obligation will commence on the first commercial sale of such Product in a country by Metabolex, its Affiliates or its Sublicensees, and will expire on the expiration of last to expire DiaTex Patent or Joint Patent claiming such Product on a country-by-country basis. For clarity, the foregoing royalty shall not apply to Products that contain the Racemate.

5.4 Cumulative Sales Payments. Metabolex shall pay DiaTex the following amounts, on a one time only basis, within [*] days of Metabolex learning that the cumulative Net Sales of a Product containing the Racemate exceed the following amounts:

Cumulative Net Sales	**Payment**
US[*]	[*]
US[*]	[*]
US[*]	[*]
US[*]	[*]
US[*]	[*]
US[*]	[*]

6. PAYMENT PROCEDURES

6.1 Manner of Payment. Remittance of payments under Articles 4 and 5 will be made by means of wire or electronic transfer to DiaTex's account in a bank in the United States to be designated by DiaTex.

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6.2 Payments and Reports. All amounts payable to DiaTex under this Agreement shall be paid in U.S. dollars. Royalty obligations that accrue during a calendar quarter shall be paid within [*] days after the end of such calendar quarter, and other payments owing shall be made as specified herein. Each payment of royalties due to DiaTex under Section 5.3 shall be accompanied by a report listing (i) in the case of a sale of a Product by Metabolex or its Affiliate, the gross selling price of each Product sold during such period on a product-by-product and country-by-country basis and the calculation of Net Sales based on such sales including all other information reasonably necessary to determine the appropriate amount of such royalty payments; or (ii) in the case of a sale of a Product by a Sublicensee, such Sublicensee's calculation of Net Sales.

6.3 Exchange Rate. The rate of exchange to be used in computing Net Sales and the amount of currency equivalent in United States dollars due DiaTex shall be made at the rate of exchange quoted on the last business day of the applicable royalty period (calendar quarter period) in the Wall Street Journal or a similar reference, consistently applied.

6.4 Records and Audit. For a period of [*] years after the royalty period to which the records relate, Metabolex shall keep complete and accurate records pertaining to the sale or other disposition of the Products commercialized by it, in sufficient detail to permit DiaTex to confirm the accuracy of all payments due hereunder. DiaTex shall have the right to cause an independent, certified public accountant to audit such records to confirm the Net Sales and royalty payments; *provided, however*, that such auditor shall not disclose Metabolex's confidential information to DiaTex, except to the extent such disclosure is necessary to verify the amount of royalties and other payments due under this Agreement. Such audits may be exercised once a year, within [*] after the royalty period to which such records relate, upon notice to Metabolex and during normal business hours. Any amounts shown to be owing by such audits shall be paid immediately with interest in the amount of [*] per month (or the maximum amount permitted by law, if less) from the date first owed until paid. DiaTex shall bear the full cost of such audit unless such audit discloses a variance in the amounts paid by Metabolex of more than [*] percent [*] from the amount of royalties and/or other payments actually owed. In such case, Metabolex shall bear the full cost of such audit.

7. INTELLECTUAL PROPERTY

7.1 Ownership of Inventions. Except as otherwise provided in this Article 7, the Party that invents or develops specific Know-How shall own such Know-How and all intellectual property rights therein, including without limitation any Patents claiming such Know-How. Inventorship shall be determined in accordance with the U.S. patent laws. Each Party shall remain the sole owner of its respective technology and other intellectual property that it owned as of the Effective Date or develops independently. A Party shall not have or acquire any rights in any inventions, know-how or intellectual property rights of the other Party, except as specifically granted herein. The Parties shall each own an undivided one-half interest in all Joint Technology subject to the following: Metabolex shall have the exclusive right to use and practice the Joint Technology for use in the treatment or prevention of human diseases or conditions, including without limitation diabetes. The Parties shall jointly own the Enantiomer Patents, and the Parties agree to execute all instruments and assignments and take all such actions necessary to effect such joint ownership.

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7.2 Patent Prosecution.

(a) Party's Patents. Each Party shall have the sole right to file, prosecute and maintain Patents claiming inventions within such Party's Know-How, at such Party's expense.

(b) Joint Patents. Metabolex shall have the responsibility, at its expense, to file, prosecute and maintain Joint Patents claiming inventions within the Joint Know-How, respectively, in such countries as selected by Metabolex. Metabolex shall reasonably consider any recommendations provided by DiaTex regarding patent filing and/or prosecution of such patents, but the final decision as to filing and/or prosecution matters shall rest with Metabolex.

7.3 Cooperation. Each Party agrees to cooperate with the other and take all reasonable additional actions as may be reasonably required to achieve the intent of this Article 7, including, without limitation, the execution of all necessary and appropriate instruments and documents.

7.4 Infringement of Third Party Patents. In the event that a Third Party files an action against a Party alleging that such Party's activities under this Agreement infringe such Third Party's patent rights, such Party shall give written notice to the other Party, and the Parties will consult and cooperate on the best course of action. The Party that was sued shall have the right to defend itself against such action, and the other Party shall provide all reasonable assistance in such defense at the requesting Party's sole expense.

7.5 Infringement of DiaTex Patents. If either Party becomes aware that a Third Party is infringing any rights in the DiaTex Patents, such Party shall give written notice to the other Party describing in detail the nature of such infringement. Metabolex (or its Sublicensee) shall have the initial right, but not the obligation, to enforce the DiaTex Patents against such Third Party infringer. Each Party agrees to provide the other Party (or its Sublicensee) all reasonable assistance in such enforcement at the requesting Party's sole expense. Any damages or other recovery, whether by settlement or otherwise, from an action hereunder to enforce DiaTex Patents shall first be applied pro rata to each Party to pay the costs and expenses of litigation in such action, and any remaining amount shall be paid to Metabolex and deemed to be Net Sales for purposes of royalty obligations to DiaTex hereunder.

7.6 Infringement of Joint Patents. If either Party becomes aware that a Third Party is infringing any Patent rights in the Joint Technology, such Party shall give written notice to the other. Party describing in detail the nature of such infringement. Metabolex shall have the sole right, at its expense, to enforce such Patents in the Joint Technology against Third Party infringers. DiaTex agrees to provide Metabolex all reasonable assistance in such enforcement at Metabolex's sole expense. Any damages or other recovery, whether by settlement or otherwise, from an action hereunder to enforce such Patents shall first be applied pro rata to each Party to pay such Party's costs and expenses of litigation in such action. Any remaining amount shall be paid to Metabolex, and [*] shall be deemed to be Net Sales for purposes of royalty obligations to DiaTex hereunder.

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8. REPRESENTATIONS AND WARRANTIES

8.1 Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party as follows:

(a) Such Party (a) is duly organized, validly existing and in good standing under the laws of the state in which it is organized; (b) has the power and authority and the legal right to own and operate its property and assets, to lease the property and assets it operates under lease, and to carry on its business as it is now being conducted; and (c) is in compliance with all requirements of applicable law, except to the extent that any noncompliance would not materially adversely affect such Party's ability to perform its obligations under the Agreement.

(b) Such Party (a) has the power and authority and the legal right to enter into the Agreement and to perform its obligations hereunder and (b) has taken all necessary action on its part to authorize the execution and delivery of the Agreement and the performance of its obligations hereunder. The Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid, binding obligation, enforceable against such Party in accordance with its terms.

(c) All necessary consents, approvals and authorizations of all governmental authorities and other persons required to be obtained by such Party in connection with the Agreement have been obtained.

(d) The execution and delivery of the Agreement and the performance of such Party's obligations hereunder do not materially conflict with, or constitute a material default or require any consent under any material contractual obligation of such Party.

8.2 DiaTex represents and warrants to Metabolex that as of the date of this Agreement:

(a) DiaTex owns all the DiaTex Patents and DiaTex Know-How existing as of the Effective Date, and to the best of DiaTex's and the DiaTex Principals' knowledge, the DiaTex Patents and DiaTex Know-How existing as of the Effective Date are subsisting and are not invalid or unenforceable, in whole or in part;

(b) DiaTex has the full right, power and authority to enter into this Agreement and to grant the licenses granted under Section 2.1 hereof;

(c) to the best of DiaTex's and the DiaTex Principals' knowledge, the DiaTex Patents and DiaTex Know-How existing as of the Effective Date practiced as permitted herein do not infringe on any intellectual property rights owned by any Third Party.

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9. CONFIDENTIALITY

9.1 Confidential Information Obligations. As used herein, "Confidential Information" means information that a Party discloses to the other Party under this Agreement in oral, written, graphic, electronic or other form, and is marked or otherwise designated as "confidential" or "proprietary" and, if disclosed orally, is summarized and designated as "confidential" or "proprietary" in a writing provided to the receiving Party not later than [*] days after such disclosure, *provided that* Confidential Information shall not include such information excluded under Section 9.2. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties, each Party agrees that, during the term of this Agreement and for [*] years after the expiration or termination of this Agreement, it shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose other than as provided for in this Agreement any Confidential Information furnished to it by the other Party pursuant to this Agreement.

9.2 Exceptions. The obligations set forth in Section 9.1 shall not apply to any Information that the receiving Party can demonstrate by competent evidence:

(a) was already known to the receiving Party, other than under an obligation of confidentiality, at the time of disclosure by the other Party;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party by the other Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of this Agreement;

(d) was disclosed to the receiving Party, other than under an obligation of confidentiality to a third Party, by a third Party who had no obligation to the disclosing Party not to disclose such information to others; or

(e) is independently developed by the receiving Party without using any of the other Party's Confidential Information.

For clarity, it is understood that notwithstanding the fact that individual components of a particular item of Confidential Information are in the public domain, but the compilation or integration of such components in such item is not in the public domain, the fact that such individual components of the Program are in the public domain does not relieve a Party of its obligations of confidentiality under this Article 9 with regard to the compilation or integration of such components.

9.3 Permitted Disclosure. Notwithstanding the limitations in Section 9.1, Metabolex may disclose Confidential Information belonging to DiaTex, to the extent such disclosure is reasonably necessary in the following instances, but solely for the limited purpose of such necessity:

(a) filing or prosecuting Patents;

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(b) regulatory and tax filings;

(c) prosecuting or defending litigation;

(d) complying with applicable governmental laws or regulations or valid court orders;

(e) conducting preclinical or clinical trials of Products; and

(f) disclosure to Affiliates, licensees, Sublicensees, potential Sublicensees, employees, consultants, shareholders, potential shareholders, or agents who agree to be bound by similar terms of confidentiality and non-use at least equivalent in scope to those set forth in this Article 9:

Notwithstanding the foregoing, in the event a Party is required to make a disclosure of the other Party's Confidential Information pursuant to Section 9.3, it will endeavor in good faith to secure confidential treatment of such information.

9.4 Terms of the Agreement. The Parties agree that the terms of the Agreement will be considered Confidential Information of both Parties. Notwithstanding the foregoing, a Party shall have the right to disclose the material financial terms of the Agreement to any bona fide potential investor, investment banker, acquiror, merger partner or other potential financial partner, subject to such Party obtaining the agreement of such Party to keep such information confidential.

10. TERMINATION

10.1 Term of Agreement. The term of this Agreement shall expire, unless earlier terminated as provided by Sections 10.2 or 10.3 below, on the expiration of the last to expire DiaTex Patent, Enantiomer Patent, or if later, the expiration of all payment obligations hereunder. Upon such expiration, Metabolex shall retain a nonexclusive, worldwide, fully paid-up license under the DiaTex Technology to make, have made, use, import, offer for sale and sell Licensed Compounds and Products.

10.2 Termination for Material Breach. If a Party materially breaches this Agreement, and within [*] days of written notice of breach from the non-breaching Party the breaching Party has not (i) cured the breach, or (ii) initiated good faith efforts to cure such breach to the reasonable satisfaction of the non-breaching Party, then the non-breaching Party may terminate this Agreement in writing promptly after expiration of such [*] day period.

10.3 Termination by Metabolex. Metabolex shall have the right to terminate, upon [*] days prior written notice, the Program and the Agreement at any time that Metabolex determines that it no longer is interested in pursuing the Program.

10.4 Effect of Termination. Upon termination or expiration of the Agreement, (i) all licenses granted by DiaTex to Metabolex under Article 2 will terminate; (ii) any and all claims and payment obligations that accrued prior to the date of such termination or expiration shall survive such termination and (iii) each Party shall return all of the other Party's Confidential Information.

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10.5 Surviving Rights. The obligations and rights of the Parties under Section 3.5, 6.4, 7.1 and 11.6 and Article 10 shall survive termination or expiration of the Agreement.

10.6 Accrued Rights and Surviving Obligations. The termination or expiration of the Agreement for any reason shall be without prejudice to any rights which shall have accrued to the benefit of either Party prior to such termination or expiration, including any damages arising from any breach hereunder. Such termination or expiration shall not relieve either Party from obligations which are expressly indicated to survive termination or expiration of the Agreement.

10.7 Bankruptcy Rights. In the event that this Agreement is terminated or rejected by DiaTex or its receiver or trustee under applicable bankruptcy laws due to DiaTex's bankruptcy, then all rights and licenses granted under or pursuant to this Agreement by DiaTex to Metabolex are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the Bankruptcy Code and any similar law or regulation in any other country, licenses of rights to "intellectual property" as defined under Section 101(52) of the Bankruptcy Code. The Parties agree that all intellectual property rights licensed hereunder, including without limitation any patents or patent applications in any country of DiaTex covered by the license grants under this Agreement, are part of the "intellectual property" as defined under Section 101(52) of the Bankruptcy Code subject to the protections afforded Metabolex under Section 365(n) of the Bankruptcy Code, and any similar law or regulation in any other country.

11. MISCELLANEOUS

11.1 Waiver. No waiver by either Party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent or similar breach or default.

11.2 Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns; provided, however, that neither Party shall assign any of its rights and obligations hereunder without the prior written consent of the other Party, except as incident to the merger, consolidation, reorganization or acquisition of stock or assets affecting substantially all of the assets or actual voting control of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this Section 11.2 shall be null and void and of no legal effect.

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11.3 Notices. Any notice or other communication required or permitted to be given to either Party hereto shall be in writing and shall be deemed to have been properly given and to be effective on the date of delivery if delivered in person or by facsimile or five (5) days after mailing by registered or certified mail, postage paid, to the other Party at the following address:

In the case of Metabolex:	Metabolex, Inc. 3876 Bay Center Place Hayward, CA 94545-3619 Fax: [*] Attention: President
with a copy to:	Cooley Godward LLP Five Palo Alto Square Palo Alto, CA 94306 Fax: [*] Attention: Barclay James Kamb, Esq.
In the case of DiaTex:	DiaTex, Inc. 105 Elm Spring Lane San Antonio, TX 78231 Fax: [*] Attn: Dr. Samuel Friedberg, President

Either Party may change its address for communications by a notice to the other Party in accordance with this Section.

11.4 Headings. The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

11.5 Amendment. No amendment or modification hereof shall be valid or binding upon the Parties unless made in writing and signed by both Parties.

11.6 Governing Law. This Agreement shall be governed exclusively by the laws of the State of California, U.S.A., excluding any choice of law rules which may direct the application of the law of any other jurisdiction.

11.7 Force Majeure. Any delays in performance by any Party under this Agreement shall not be considered a breach of this Agreement if and to the extent caused by occurrences beyond the reasonable control of the Party affected, including but not limited to acts of God, embargoes, governmental restrictions, fire, flood, explosion, riots, wars, civil disorder, rebellion or sabotage. The Party suffering such occurrence shall immediately notify the other Party as soon as practicable, and any time for performance hereunder shall be extended by the actual time of delay caused by the occurrence.

11.8 Dispute Resolution. In the event of any controversy or claim arising out of, relating to or in connection with any provision of this Agreement, or the rights or obligations of the Parties hereunder, the Parties shall try to settle their differences amicably between themselves by referring the disputed matter to the President of Metabolex and the President of DiaTex for discussion and resolution. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and within [*] days of such notice the President of Metabolex and the President of DiaTex shall meet for attempted resolution by good faith

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negotiations. If such designated officers of the Parties are unable to resolve such dispute after [*] days of commencing such good faith negotiations, then the dispute will be resolved, if requested by a Party, by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Such arbitration shall be initiated by notice from one Party to the other in accordance with this Section 11.8, and shall be conducted in Denver, Colorado before a panel of three arbitrators.

11.9 Independent Contractors. In making and performing this Agreement, Metabolex and DiaTex act and shall act at all times as independent contractors and nothing contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between Metabolex and DiaTex. At no time shall one Party make commitments or incur any charges or expenses for or in the name of the other Party.

11.10 Severability. If any part of this Agreement is declared invalid by any legally governing authority having jurisdiction over either Party, then such declaration shall not affect the remainder of the Agreement and the Parties shall revise the invalidated part in a manner that will render such provision valid without impairing the Parties' original interest.

11.11 Cumulative Rights. The rights, powers and remedies hereunder shall be in addition to, and not in limitation of, all rights, powers and remedies provided at law or in equity, or under any other agreement between the Parties. All of such rights, powers and remedies shall be cumulative, and may be exercised successively or cumulatively.

11.12 Entire Agreement. This Agreement and any and all Exhibits referred to herein embody the entire understanding of the Parties with respect to the subject matter hereof and supersedes and terminates all previous communications, representations or understandings, either oral or written, between the Parties relating to the subject matter hereof.

[THIS SPACE INTENTIONALLY LEFT BLANK.]

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11.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute together the same document.

IN WITNESS WHEREOF, both Metabolex and DiaTex have executed this Agreement, as of the day and year first written above.

METABOLEX, INC.		**DIATEX, INC.**	
By:	/s/ David W. Pritchard	By:	/s/ Samuel J. Friedberg
Name:	David W. Pritchard	Name:	Samuel J. Friedberg
Title:	Vice President Business Development and Finance	Title:	President

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EXHIBIT A

DIATEX PRINCIPALS

[*]

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EXHIBIT B

STRUCTURE OF HALOFENATE

[*]

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Exhibit 10.17

FIRST AMENDMENT

This First Amendment (the "First Amendment"), dated April 15, 1999, ("Effective Date of this First Amendment") entered by and between METABOLEX, INC., a Delaware corporation with a place of business at 3876 Bay Center Place, Hayward, CA 94545 ("Metabolex"), and DIATEX, INC., a Texas corporation with a place of business at 105 Elm Spring Lane, San Antonio, TX 78231 ("DiaTex") amends the License and Development Agreement by and between the same Parties, dated June 30, 1998 (the "Agreement"). Metabolex and DiaTex may be referred to herein as a "Party" or, collectively, as "Parties."

RECITALS

WHEREAS, The Parties having entered into an Agreement, the scope of which covers developing pharmaceutical products containing the chemical structure of Halofenate, its enantiomers, analogues or derivatives ("Licensed Compounds"), for the purpose of treating diabetes and related conditions; and

WHEREAS, DiaTex is now the registered holder of an IND (as defined in Section 1.11 of the Agreement) application No. 13,836 (the "Original IND"), filed with the FDA (as defined in Section 1.9 of the Agreement) under which the clinical development of the Licensed Compounds and/or the Halofenate Racemate (as defined in Section 1.21 of the Agreement) are permitted to take place; and

WHEREAS, DiaTex wishes to transfer ownership and all of its rights, privileges and obligations of ownership of the Original IND over to Metabolex and Metabolex wishes to accept such ownership rights, as well as privileges and responsibilities attendant to owning the Original IND.

NOW THEREFORE, in consideration of the foregoing and the covenants and mutual promises, the Parties hereby agree to amending the Agreement as follows:

1. Add a definition for:

Original IND—means the Investigational New Drug application that DiaTex filed with the F.D.A. in accordance with 21 C.F.R. §312.3, as supplemented and current as of the Effective Date of this Amendment.

2. Section 3.2(a) of the Agreement shall be replaced with the following:

Document Transfer. For good and valuable consideration, the sufficiency of which is hereby acknowledged, DiaTex hereby completely transfers and outright assigns to Metabolex, its legal representatives, successors and assigns, DiaTex' interests, right and title in and to the Original IND. Promptly after executing this First Amendment, DiaTex shall transfer to Metabolex any and all documents or materials in its possession relevant and necessary for maintaining the Original IND. DiaTex shall undertake whatever actions, communications and measures required to properly affect such transfer, and acknowledgment of the same, with the FDA and any other agency regulating the conduct of development under the Original IND.

3. Add a new Section 16 as follows:

[*]. In the event that the Program (as defined in Section 3.1 of the Agreement) [*] of the Agreement, Metabolex shall [*] of the Agreement, its [*], to the extent there are any, [*] DiaTex. Metabolex agrees to [*] on the Effective Date of this Amendment from DiaTex, but may also [*]. At this time, DiaTex is free to use [*] on the Effective Date of this Amendment and to use [*]. However, the Parties recognize that the Original IND at this time may contain [*]. Subject to Section 3.5 of the Agreement, in the event that Metabolex [*] information, data and/or materials (including racemate and enantiomers) that [*] as provided under the Agreement, then DiaTex shall have [*]. In the event that DiaTex [*], but [*], then Metabolex shall [*], but would [*] of the Agreement. If Metabolex has [*] its [*] of this Section 3.6, then Metabolex shall [*].

4. Add a new Section 8.2 (d)(i)-(iv) as follows:

8 .2(d)(i):

Indemnification by Metabolex. Metabolex shall indemnify, protect, and hold harmless DiaTex, its Affiliates, its and their respective directors, officers, employees, and agents ("DiaTex Indemnitees") against any and all losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys fees and expenses and court costs) (collectively, "Losses") resulting or arising from any third party claims, actions, proceedings, investigations or litigation relating to or arising from or in connection with its negligent or wrongful conduct of clinical trials from the Effective Date of this Amendment. Such indemnification rights shall abide only from such time and for so long as Metabolex owns or is transferred rights to conduct clinical trials under the Original IND in accordance with the transfer affected by this First Amendment. Notwithstanding the foregoing, Metabolex shall not be required to indemnify DiaTex for any Losses to the extent they arise from the negligent or wrongful acts or omissions of DiaTex or any of the DiaTex Indemnitees or DiaTex's breach of its obligations to any third party or under this Agreement.

8 .2 (d)(ii) :

Indemnification by DiaTex. DiaTex shall indemnify, protect, and hold harmless Metabolex, its Affiliates, and its and their respective directors, officers, employees, and agents (the "Metabolex Indemnitees") against any and all Losses resulting or arising from any third party claims, actions, proceedings, investigations or litigation relating to or arising from or in connection with: (i) any rights under the Original IND not otherwise subject to indemnification under Section 8.2(d)(i) above, as relate to the time when such claim arises; (ii) the negligent or wrongful acts or omissions of DiaTex or any of its directors, officers, employees or agents in connection with the Original IND; or (iii) the wrongful acts, representations or misrepresentations by DiaTex relating to the Agreement or transfer of rights under this First Amendment. Notwithstanding the foregoing, DiaTex shall not be required to indemnify Metabolex for any Losses to the extent they arise from the negligent or wrongful acts or omissions of Metabolex or Metabolex Indemnitees.

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8 .2(d)(iii):

Procedure. The Party seeking indemnification hereunder (the "Indemnified Party") shall (a) promptly notify the Party obligated to indemnify (the "Indemnifying Party") of any Losses for which the Indemnified Party seeks indemnification; (b) cooperate fully with Indemnifying Party and its legal representatives in the investigation of any matter the subject of indemnification; (c) permit the Indemnifying party full control over the defense and settlement of any matter the subject to indemnification; and (d) shall not unreasonably withhold its approval of the settlement of any claim, liability or action by Indemnifying Party covered by this indemnification provision.

8 .2(d)(iv):

No Consequential Damages. Notwithstanding the Parties' rights and remedies in equity and except with respect to indemnification obligations described hereunder, neither Party, nor its Indemnitees shall have any liability to the other for any special, incidental, indirect or consequential damages, including, but not limited to the loss of opportunity, use, revenue or profit, in connection with or arising out of this Agreement, or the services performed by Metabolex hereunder, even if such damages were foreseeable.

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To the extent there are conflicting terms between this First Amendment and the Agreement, the Terms of this First Amendment shall supersede the Agreement. All other terms and conditions of the Agreement shall abide this First Amendment.

THIS FIRST AMENDMENT has been executed by the Parties as of the Effective Date of this Amendment.

METABOLEX, INC.	**DIATEX, INC.**
By: /s/ David W. Pritchard	By: /s/ Samuel Friedberg
David W. Pritchard	Dr. Samuel Friedberg
Title: Vice President, Business Development and Finance	Title: President

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Exhibit 10.18

DEVELOPMENT AND CLINICAL MANUFACTURE AGREEMENT

This **Development and Clinical Manufacture Agreement** (the "**Agreement**") is made and entered into as of 30 April 2012 (the **"Effective Date"**) by and between **METABOLEX, Inc.**, a Delaware corporation with its principal place of business located at 3876 Bay Center Place, Hayward, California 94545 (**"METABOLEX"**) and **SIEGFRIED AG**, a Swiss Company, with its principal address place of business located at Untere Brühlstrasse 4, Zofingen CH4800 Switzerland ("**SIEGFRIED**"). METABOLEX and SIEGFRIED may be referred to herein individually as a **"Party"** or collectively as the **"Parties".**

RECITALS

METABOLEX desires SIEGFRIED to perform certain manufacturing process development work on its proprietary drug compound known as "MBX-102" (also known as "arhalofenate") in accordance with the terms and conditions set forth in this Agreement. This Agreement also allows SIEGFRIED to manufacture and supply to METABOLEX quantities of this drug compound in accordance with the terms and conditions set forth in this Agreement.

SIEGFRIED is willing to perform such development work and potentially to manufacture MBX-102 for METABOLEX under the terms and conditions set forth in this Agreement.

Now therefore, the Parties agree as follows:

1. DEFINITIONS

1.1. **"Affiliate"** means, with respect to a particular Party, any person, other corporation or other legal entity that controls, is controlled by or is under common control with such Party. For purposes of this definition, the term "control" (with correlative meanings for the terms "controlled by" and "under common control with") means that the applicable entity has the actual ability to control and direct the management and business of the particular Party, whether through ownership of voting capital shares or similar voting securities of such Party, or by contract or otherwise.

1.2. **"Applicable Law"** means all applicable laws, rules, ordinances, and regulations, including any rules, regulations, guidelines or other requirements of relevant government agencies, that may be in effect from time to time in the applicable country or jurisdiction, including then-current Good Manufacturing Practices applicable to the Services to be provided under this Agreement.

1.3. **"Compound"** means the chemical compound known as MBX-102, having the chemical structure as described in **Exhibit A** of this Agreement.

1.4. **"Confidential Information"** means, with respect to a Party, all Information, including but not limited to data, deliverables, know-how, chemical structure of the Compound, information contained in a Plan, information contained in or related to Intellectual Property, and technical

and non-technical materials, that such Party delivers to the other Party pursuant to, or in connection with, this Agreement, regardless of its source, and whether or not the same is specifically identified as being "confidential". This Agreement constitutes Confidential Information of both Parties. In addition, but subject to the limitations set forth in Section 7.3, all Information that: (i) is disclosed by METABOLEX to SIEGFRIED regarding the Services to be provided under this Agreement; (ii) is set forth in a Plan; (iii) is developed or generated by SIEGFRIED as a result of performing Services under this Agreement, including the Data and Deliverables; or (iv) comprises the the Compound or otherwise is directly related to the Compound, shall be deemed to be Confidential Information of METABOLEX. Confidential Information also includes information disclosed by the Parties under the Non-Disclosure Agreement of February 28, 2012 (among METABOLEX, SIEGFRIED and Cilag AG) and under the Non-Disclosure Agreement of January 31, 2012 (between METABOLEX and SIEGFRIED).

1.5. **"Controlled"** means, with respect to a specific material, item of Information or Intellectual Property right, that the applicable Party owns or has a license to such material, item or right and has the ability to grant the other Party access and a license thereto as provided for in this Agreement without violating or conflicting with any agreement with or rights of a Third Party.

1.6. **"Current Good Manufacturing Practice"** or **"cGMP"** means the then-current standards for the manufacture of fine chemicals, active pharmaceutical ingredients, intermediates, bulk products or finished pharmaceutical products set forth (i) in 21 U.S.C. 351(a)(2)(B), in U.S. FDA regulations at 21 C.F.R. Parts 210 and 211 and in The Rules Governing Medicinal Products in the European Community, Volume IV, Good Manufacturing Practice for Medicinal Products, each as may be amended from time to time; (ii) in International Conference on Harmonization (ICH) Guidelines relating to the manufacture of active pharmaceutical ingredients and finished pharmaceuticals as may be amended from time to time; (iii) all other similar Applicable Laws relating to the manufacturing of active pharmaceutical ingredients and promulgated by any other governmental authority having jurisdiction over the manufacture of drug compounds in the countries in which the Product containing Compound will be used or sold; and (iv) all additional regulatory authority documents or regulations that replace, amend, modify, supplant or complement any of the foregoing.

1.7. **"Deliverable"** or **"Deliverables"** means, respectively, each individual item or collectively all items that SIEGFRIED agrees to provide to METABOLEX pursuant to Section 6.1.

1.8. **"FDA"** means the United States Food and Drug Administration, or any successor thereto having the administrative authority to regulate the development and marketing of human pharmaceutical products in the United States.

1.9. **"Information"** means any and all information of any kind, including results, data, discoveries, improvements, processes, methods, protocols, formulas, techniques, inventions, know-how and trade secrets, scientific, chemical, pharmaceutical, toxicological, biochemical, and biological, data, and information relating to the results of tests, assays, methods, processes, and specifications, and/or other documents containing information and related data, and any assay control, regulatory, and any other test results or information, regulatory, manufacturing, financial and commercial information or data.

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1.10. **"Intellectual Property" or "IP"** means patents, trademarks, copyrights, trade secret rights, rights in proprietary, confidential Information, and any other similar rights in any intellectual property as conferred or established by the laws of any jurisdiction, and all applications for any such rights.

1.11. **"Plan"** means the Process Development Plan, the Manufacturing Plan and any agreed upon Scope of Work.

1.12. **"Project"** shall mean a specific set of Services to be performed by SIEGFRIED for METABOLEX as set forth in a Plan.

1.13. **"Quality Agreement"** means the Quality Agreement to be entered into by the Parties as described in Section 2.6.

1.14. **"Raw Material"** means the specific starting materials (including purchased intermediates) that are used in the manufacture of the Compound, as provided in this Agreement, including materials that are consumed during such manufacturing process. "Raw Materials" are listed in **Exhibit A** of this Agreement.

1.15. **"Services"** means the process development, manufacturing and other services performed by SIEGFRIED under a Plan and in accordance with the terms of this Agreement.

1.16. "**Specifications"** means the characteristics, processing requirements, standards and other specifications related to the Compound as agreed to by the Parties and set forth in the applicable Plan (**Exhibit B**, **Exhibit C** and/or **Exhibit D**) of this Agreement, as may be amended or supplemented from time to time by mutual agreement of the Parties.

1.17. **"Third Party"** means any entity or individual other than METABOLEX and SIEGFRIED and the Affiliates of either Party.

2. **PURPOSE; SCOPE; PROCESS DEVELOPMENT AND MANUFACTURE**

2.1. **Purpose and Intent**. The Parties agree that SIEGFRIED shall, pursuant to the terms of this Agreement, perform: (i) process development Services to improve and scale-up the manufacturing process for bulk Compound manufacturing, (ii) potentially manufacturing Services to supply to METABOLEX amounts of bulk Compound in accordance with the Specifications, for use in clinical materials, and (iii) potentially other Services relating to Compound manufacture, as set forth in one or more Scope of Work documents as agreed to by the Parties. SIEGFRIED will use good faith, commercially reasonable diligent efforts to provide all of the agreed Services as requested by METABOLEX and set forth in a Plan.

2.2. **Process Development.** SIEGFRIED shall perform the process development Services and tasks and activities as set forth in the agreed upon process development plan attached hereto as **Exhibit B** (the **"Process Development Plan"**), as such plan may be amended from time to time by the written agreement of the Parties. Such Services shall include the preparation and delivery to METABOLEX of the Deliverables as set forth in the Process Development Plan.

2.3. **Manufacture.** If the Parties agree on a manufacturing plan (**"Manufacturing Plan**," **Exhibit C**) and execute a Quality Agreement (see Section 2.6), SIEGFRIED shall manufacture and supply to METABOLEX the bulk Compound in such quantities as ordered by METABOLEX in orders submitted to SIEGFRIED from time to time by METABOLEX in accordance with the Manufacturing Plan, which may be amended from time to time by the written agreement of the Parties. The Manufacturing Plan shall cover all relevant terms for such manufacture and supply, including sales price, applicable Incoterms, any additional Deliverables, whether specific Raw Materials will be supplied by METABOLEX or by SIEGFRIED from a qualified vendor, the manufacturing process to be used, whether the manufacturing is to be performed under cGMP, [*], an agreed [*], an agreed [*] and any other relevant information associated with the execution of the manufacturing work. All such bulk Compound manufactured and supplied under the Manufacturing Plan shall be manufactured in compliance with cGMP (except as otherwise specified in the Manufacturing Plan) and all other Applicable Laws and shall comply with the Specifications. The ordering and delivery of such Compound under the Manufacturing Plan shall be in accordance with the provisions of the Manufacturing Plan.

2.4. **Additional Projects.** If METABOLEX desires that SIEGFRIED perform certain additional activities or tasks relating to process development or manufacturing of Compound that are outside the scope of the Process Development Plan or the Manufacturing Plan, METABOLEX shall submit a written request to SIEGFRIED setting forth in reasonable detail the particular activities or tasks requested for such proposed additional Project. The Parties shall then negotiate reasonably and in good faith and seek to agree on a written "**Scope of Work**" setting forth such additional activities and tasks, and the specific terms for such proposed Project (which activities and tasks shall, upon agreement by the Parties to such Scope of Work, be deemed additional Services to be performed hereunder). Each such Scope of Work shall include a specific description of the particular Services to be performed and the budget, costs and timeline therefore, and all Deliverables to be prepared and delivered to, and, as necessary, any additional Information and requirements for such Services. Upon the Parties agreeing on such a Scope of Work, it shall be attached to this Agreement as **Exhibit D** and shall be deemed incorporated herein, and the Services covered by such Scope of Work shall be deemed to be a new Project hereunder. Each agreed Scope of Work may be modified or amended from time to time upon mutual written agreement of the Parties, and such agreed-upon modifications or amendments shall be attached as part of **Exhibit D** and deemed incorporated into the applicable Project. It is contemplated that there may be multiple Scopes of Work that shall be sequentially numbered, each referencing and covering a different Project. An exemplary "Form of Scope of Work" is attached hereto as **Exhibit D**.

2.5. **Conflicting Terms.** The Parties agree that if there is any conflict between a particular term of a Plan and the terms of this Agreement, the terms of this Agreement shall control and supersede such conflicting term of the applicable Plan, *unless* such Plan specifically and expressly provides that such term shall prevail notwithstanding such conflict.

2.6. **Quality Agreement**. Prior to SIEGFRIED commencing work for METABOLEX under a Manufacturing Plan, SIEGFRIED and METABOLEX shall enter into a quality agreement governing the quality systems used in connection with SIEGFRIED's performance (the "**Quality Agreement**").

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

2.7. **Schedule and Performance**. SIEGFRIED will schedule the performance of each of the Projects (including all Services under the Project and delivery of all Deliverables) as specified in the Plan applicable to the Project and will coordinate with METABOLEX as appropriate to ensure the timely commencement and performance of all such Services. SIEGFRIED shall perform all the Services and other work under a Project in accordance with the terms of the applicable Plan, Applicable Law, and the terms and conditions of this Agreement. SIEGFRIED shall perform all the Services and other work under this Agreement using good faith, reasonable care and in accordance with industry practice. SIEGFRIED shall [*] provide the facilities, all supplies and Raw Materials (other than any specific materials to be provided by or on behalf of METABOLEX under the terms of a particular Plan) and staff necessary to complete all the Services and work in accordance with the terms of this Agreement and the applicable Plan. All such staff shall have all training, education and experience needed to perform the applicable Services in a competent and efficient manner. Notwithstanding anything in this Article, the Parties acknowledge and agree that the Projects and the Plans may need to be adjusted and adapted depending on the progress and interim results of the activities performed by SIEGFRIED under this Agreement. The Parties further acknowledge that SIEGFRIED shall be compensated based on the works done under this Agreement, rather than based on achievement of specific results.

2.8. **Raw Materials**. In the preparation of Compounds, SIEGFRIED agrees to use only those Raw Materials that are supplied by METABOLEX or obtained by SIEGFRIED from a qualified vendor. SIEGFRIED shall determine the amounts of Raw Materials that SIEGFRIED will need to make the Compound ordered by METABOLEX. Any Raw Materials supplied by METABOLEX to SIEGFRIED shall only be used for Services associated with METABOLEX Projects, unless otherwise agreed.

2.9. **Excess Material**. At the conclusion of a Plan or upon expiry or termination of this Agreement, SIEGFRIED shall provide notice to METABOLEX of any excess Raw Material and/or Compound (the "**Excess Material**") requiring disposal. METABOLEX shall instruct SIEGFRIED within [*] calendar days of receipt of such notice, whether SIEGFRIED shall deliver such Excess Material to METABOLEX (or to a METABOLEX designated Affiliate or Third Party) or otherwise dispose of such Excess Material. In the event that METABOLEX does not instruct SIEGFRIED within the above mentioned [*]-day period, SIEGFRIED may dispose of the Excess Material in its sole and absolute discretion without any further liability or obligation to METABOLEX. In any event, METABOLEX shall [*] (i) the delivery of Excess Material to METABOLEX (or to a METABOLEX designated Affiliate or Third Party) and/or any other disposal of Excess Material by SIEGFRIED. METABOLEX shall [*] (i) [*] excess Raw Material, and (ii) [*] excess Compound.

2.10. **Subcontractors.** SIEGFRIED may not subcontract any of the Services or other work to be performed by it hereunder without METABOLEX's prior written consent. In the event that METABOLEX does so consent, then any agreement entered into by SIEGFRIED with the permitted subcontractor shall, at a minimum, provide for ownership and allocation of Intellectual Property rights and for obligations of confidentiality of Information, record-keeping, access, rights to data, and performance in accordance with Applicable Law that are consistent with the intent and terms of this Agreement and the Quality Agreement. SIEGFRIED shall remain liable for the performance of any of its obligations hereunder that it delegates to a subcontractor.

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

3. **PAYMENTS**

3.1. **Compound Purchase Prices and Services Prices**. The Manufacturing Plan shall provide the fixed price for the Compound manufactured and supplied to Metabolex by SIEGFRIED under such Plan. The Process Development Plan shall provide for the specific prices charged for the Services performed under such Plan, with such prices tied to the specific Services to be performed, it being understood and agreed, however, that SIEGFRIED shall be compensated based on the Services actually performed under such Process Development Plan in accordance this Agreement, rather than based on achievement of specific results or milestones. In the event that SIEGFRIED expects that it will be unable to perform the Services under a Process Development Plan or to significantly delay or deviate from the Process Development Plan, then SIEGFRIED shall so inform METABOLEX without undue delay. The Parties then shall discuss such matter and seek to mutually agree on an amended Process Development Plan.

3.2. **Expenses**. METABOLEX shall reimburse SIEGFRIED for any out-of-pocket costs and expenses of SIEGFRIED incurred in connection with conduct of the agreed Services under a Plan, to the extent that such costs and expenses are set forth in the Plan or otherwise have been mutually agreed to in writing by the Parties (such amounts, the "**Expenses**").

3.3. **Payment Terms**. SIEGFRIED will invoice METABOLEX for the payment amounts owed for the Services actually performed under the Plans and for the Expenses on a monthly basis. SIEGFRIED will further invoice METABOLEX for the purchase price for Compound upon delivery of such Compound. Any such invoice shall provide specific details as to the payment obligation and the basis for such obligation. All payments of undisputed amounts on such invoices shall be due within [*] calendar days following the invoice date. The invoice shall reference this Agreement and the relevant Plan, be accompanied by sufficient back-up documentation, if any, necessary for SIEGFRIED to support the payments being invoiced, and shall be sent to:

METABOLEX, Inc.
3876 Bay Center Place
Hayward, CA 94545
Attention: Accounts Payable
Fax: [*]

Unless otherwise agreed in writing by the Parties, (i) all amounts payable hereunder and under the Plans shall be invoiced and paid in U.S. Dollars and (ii) any required conversion of amounts in Swiss Francs, Euros or other currencies into U.S. Dollars shall be made in accordance with SIEGFRIED's standard accounting policies.

3.4. **Acceptance of Compound and Services.** METABOLEX shall have the right to review and test all Compound delivered by SIEGFRIED under the Manufacturing Plan to confirm that such delivered Compound complies with the obligations of this Agreement. METABOLEX may reject any such Compound shipment (or portion thereof) if the same does not comply with the requirements as set forth in the Manufacturing Plan or the terms of this Agreement by providing to SIEGFRIED a written rejection within [*] calendar days from receipt thereof, which rejection identifies the basis for such rejection. METABOLEX shall not have the obligation to pay for any Compound properly rejected. Further, METABOLEX shall have the right to review the Services performed and/or Deliverables delivered to METABOLEX under a Project, or any portion thereof, and METABOLEX shall not have any obligation to make payments for any such

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Services or Deliverables that do not comply with the terms of the applicable Plan, unless and until SIEGFRIED provides to METABOLEX replacement Services or Deliverables (as applicable) that conform to the criteria in the Plan. If METABOLEX does not reject in writing within [*] calendar days of receipt, [*]. METABOLEX shall clearly state in writing the reasons for any rejection. If SIEGFRIED disagrees with METABOLEX, it shall notify METABOLEX to such effect, stating the basis of its disagreement, within the [*] days following METABOLEX's rejection notice. In such event, either Party may elect to have the disagreement resolved by an independent laboratory, whose decision will be binding on the Parties and whose expenses will be borne by the Party whose position is not upheld by the laboratory. If SIEGFRIED does not dispute METABOLEX's rejection notice, it shall,within [*] days of such notice present a corrective plan of action to METABOLEX. Upon approval by METABOLEX of the corrective plan, SIEGFRIED, at no additional expense to METABOLEX (other than paying the payment amounts owed under the applicable Plan, at such time as SIEGFRIED delivers the conforming Compound, Services or Deliverable (as applicable)), shall then make the corrections and, where applicable, SIEGFRIED shall resubmit the corrected Service or Deliverable to METABOLEX.

3.5. **Disputed Amounts.** For disputed invoices or the disputed portion of an invoice, METABOLEX shall provide to SIEGFRIED, in writing, within [*] calendar days of receipt of the invoice, a description of the disputed amounts and the basis of the dispute. Without limiting either Party's rights or remedies under law, METABOLEX and SIEGFRIED shall negotiate in a good faith, reasonable manner to resolve any such billing issue or disputed invoice.

4. **TERM, TERMINATION AND RENEWAL**

4.1. **Term.** This Agreement shall commence on the Effective Date and shall expire [*] from the Effective Date unless earlier terminated pursuant to this Article 4 or as otherwise provided for in this Agreement.

4.2. **Termination Without Cause**. METABOLEX may, at its sole discretion, terminate this Agreement or any Plan without cause on [*] calendar days written notice to SIEGFRIED.). If METABOLEX terminates this Agreement (but not any ongoing Plan) pursuant to this Section, such termination shall not terminate the ongoing Plan. Notwithstanding any termination of this Agreement and/or a Plan, the accrued rights of METABOLEX and/or SIEGFRIED pursuant to this Agreement shall survive.

4.3. **Termination for Discontinuance or Divestiture**. SIEGFRIED shall have the right to terminate this Agreement on [*] calendar days written notice to METABOLEX in the event that METABOLEX discontinues all of its business activities relating to development or commercialization of a Compound covered by this Agreement.

4.4. **Termination For Cause**. Either Party shall have the right to terminate this Agreement with immediate effect upon written notice if the other Party materially breaches this Agreement and such breaching Party fails to cure such breach within [*] calendar days following written receipt of such notice from the non-breaching party specifying such breach and the steps the breaching Party must take in order to remedy such breach.

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4.5. **Termination in Event of Insolvency**. In the event that either Party: (i) institutes or has instituted against it a petition for bankruptcy or is adjudicated bankrupt; or (ii) executes a bill of sale, deed of trust, or a general assignment for the benefit of creditors; or (iii) is dissolved or transfers a substantially all of its assets to a third party receiver or creditor in connection with its insolvency; or (iv) a receiver is appointed for the benefit of its creditors, or a receiver is appointed on account of insolvency; then the bankrupt Party shall immediately notify the other Party of such event and such other Party shall be entitled to: (a) terminate this Agreement with immediate effect upon written notice to the insolvent Party; or (b) request that the insolvent Party or its successor provide adequate assurances of continued and future performance in form and substance acceptable to such other Party, which shall be provided by the insolvent Party within [*] calendar days of such request, and the other Party may terminate this Agreement with immediate effect upon written notice to the bankrupt Party in the event that the Party fails to provide such assurances acceptable to the other Party within such [*] day period. Termination pursuant to this Section 4.6 shall be without prejudice to any rights and claims accrued under this Agreement or any Plan prior to the termination of this Agreement.

4.6. **Accrued Claims**. The termination or expiry of this Agreement for any reason whatsoever shall be without prejudice for any claims accrued under this Agreement prior to the effectiveness of the expiry or termination. Without limiting the generality of the foregoing, in the event of the termination or expiry of this Agreement for any reason, METABOLEX shall pay to SIEGFRIED within the [*] calendar days following the effective date of termination or expiry all payment amounts actually accrued under Section 3.1 under the applicable Plan(s) being terminated, and also shall pay SIEGFRIED's actual Expenses (based on invoices demonstrating the costs and the basis therefore) that are incurred in performing the terminated Plan(s) through the termination (above and beyond the costs that are covered by payment amounts already accrued) [*].

5. OWNERSHIP

5.1. **Ownership and Disclosure.** METABOLEX shall own all rights, title and interest in and to: (i) all the Deliverables and all Intellectual Property rights and know-how comprising, covering or appurtenant to the Deliverables; (ii) all Data, other Information and other Intellectual Property that is made, discovered or developed based on or as the direct result of SIEGFRIED's performance of the Services or other activities under this Agreement, and (iii) the Compound supplied to METABOLEX hereunder, all Certificates of Analysis, all Data, and all reports and biological or chemical specimens generated by SIEGFRIED as a direct result of conducting the Services (collectively, the **"Project IP"**). For the avoidance of doubt, Project IP shall not include any Siegfried Background IP (as defined below) or any Intellectual Property rights, know-how, Information, developed by SIEGFRIED independent of this Agreement[*]. SIEGFRIED shall notify METABOLEX in writing of any and all Project IP as soon as commercially reasonable after each such conception, reduction to practice, making, or development thereof.

5.2. **Assignment.** SIEGFRIED hereby assigns and agrees to assign and transfers to METABOLEX all rights, title and interest in and to all the Project IP. SIEGFRIED agrees to take all further acts reasonably required to evidence and/or effect or perfect such assignments and transfers to METABOLEX, at METABOLEX's expense. SIEGFRIED shall enter into an agreement with each employee, agent or consultant of SIEGFRIED performing work in connection with the Services, pursuant to which such person shall grant all rights in Project IP to SIEGFRIED such that

SIEGFRIED may assign and transfer such rights to METABOLEX in accordance with this Section 5.2. SIEGFRIED hereby appoints METABOLEX as its attorney-in-fact to sign such documents as METABOLEX deems necessary for METABOLEX to obtain ownership and to apply for, secure, and maintain patent or other proprietary protection of Project IP if METABOLEX is unable, after reasonable inquiry, to obtain SIEGFRIED's (or its employee's , agent's or consultant's) signature on such a document(s). METABOLEX shall have the sole right and authority, at its discretion and expense, to prepare, file, prosecute and maintain any patent applications and patents claiming the Project IP. All Project IP shall be deemed to be and treated as METABOLEX Confidential Information and shall be subject to the confidentiality obligations and provisions of Article 7.

5.3. **METABOLEX Property.** Subject to the license set forth in Section 5.6, METABOLEX shall retain exclusively all rights, title and interest in and to (i) all Intellectual Property owned or known by METABOLEX or its agents prior to the Effective Date or made or acquired by METABOLEX during the term of this Agreement, and (ii) all physical property provided to SIEGFRIED in connection with this Agreement.

5.4. **SIEGFRIED Intellectual Property.** Subject to the license set forth in Section 5.5, SIEGFRIED shall retain all right, title and interest in and to (i) all Intellectual Property, know-how, information, and documents (x) owned or known by SIEGFRIED, its agents and Affiliates prior to the Effective Date or (y) made by SIEGFRIED during the term of this Agreement independently of this Agreement [*]. All such Intellectual Property, and all Intellectual Property otherwise Controlled by SIEGFRIED as of the Effective Date or independently of this Agreement during the term of this Agreement, shall be the "**SIEGFRIED Background IP**".

5.5. **License to METABOLEX**. [*] a non-exclusive license under any item(s) of SIEGFRIED Background IP [*] (i) to fully exploit any product or service based on, embodying, incorporating, or derived from the Deliverables; (ii) to exercise any and all other present or future rights in the Deliverables for any and all purposes, or (iii) to manufacture Compound, to manufacture or have manufactured Compound (or any analog or derivative thereof) for all purposes, including making commercial products, [*].

5.6. **License to SIEGFRIED.** METABOLEX hereby grants to SIEGFRIED for the term of this Agreement a nonexclusive, royalty-free, revocable, right and license (without any rights to sublicense) under Metabolex's Intellectual Property, know-how or Information solely to the extent necessary to enable SIEGFRIED to perform Services. SIEGFRIED shall not acquire any other right, title or interest in or to such Intellectual Property as a result of its performance hereunder.

6. DELIVERABLES AND RECORDS

6.1. **Deliverables**. SIEGFRIED agrees to provide to METABOLEX (i) all batches of Compound that SIEGFRIED manufactures under this Agreement; (ii) a detailed description of the process used to make each batch of Compound (each batch Compound will be identified by an internal SIEGFRIED lot number, with a cross-reference to the identification number for the intermediates in the synthetic process and Raw Materials utilized in the synthesis), including SIEGFRIED's "batch record"; and (iii) for each batch shipped, a quality statement certifying whether or not the Compound was processed according to cGMPs (Certificate of Compliance)

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and a Certificate of Analysis that confirms the Compound meets the Compound Specifications. SIEGFRIED shall also conduct all quality testing provided for in the Plan and the Quality Agreement and provide to METABOLEX all documentation of such quality testing required by the Quality Agreement and/or the applicable Plan. METABOLEX has responsibility for Compound release (see Section 8.2.2.1).

SIEGFRIED shall deliver to METABOLEX various samples of Compound according to any schedule set forth in a Plan or as otherwise mutually agreed upon in writing by the Parties.

6.2. **Books and Records**. SIEGFRIED shall keep complete and accurate books and records related to all Services performed under the Agreement, including covering the manufacture, processing and supply of the Compound. SIEGFRIED shall also maintain complete, accurate, and authentic documentation, notes, data, test results, records, master batch records, and working batch records for each batch of Compound, for all Services, and for all other work relating to Compound and/or any of the Services generated by SIEGFRIED during the performance of, and in connection with, the Plan(s) (collectively, the "**Data**"). SIEGFRIED shall retain such records for a period of [*] following the date of manufacture or for such longer period as may be required by the Quality Agreement, the applicable Plan or Applicable Law. Such records shall be made available to METABOLEX for inspection, copying and/or audit verification by METABOLEX or its designee at any reasonable time during SIEGFRIED regular business hours. Upon METABOLEX's request, SIEGFRIED shall make copies of such records available to METABOLEX, at METABOLEX' expense.

7. USE OF CONFIDENTIAL INFORMATION

7.1. Each Party agrees to maintain in strict trust and confidence and shall not disclose to any Third Party any Confidential Information of the other Party, and shall not use any such Confidential Information of the other Party for any purpose, either for itself or for a Third Party, other than as provided for in this Agreement.

7.2. Each Party agrees that it will disclose the Confidential Information of the other Party only to such of its officers, employees and approved subcontractors ("**Representatives**") who are directly concerned with performance of the work or exercise of rights granted hereunder, and only after such Representatives have been advised of the confidential nature of such information and are bound by obligations of confidentiality with respect to such Confidential Information that are substantially similar to the terms of this Agreement. The Party having such obligations (the "**Receiving Party**") as to the Confidential Information of the other Party shall be liable for any failure of any of its Representatives to (i) maintain the confidentiality of such Confidential Information, or (ii) otherwise comply with the terms of this Agreement to the same extent as the Receiving Party is obligated to do so.

7.3. The preceding obligations on a Party to maintain the Confidential Information of the other Party in confidence and the limitation upon the right to use such Confidential Information shall not apply to specific Confidential Information to the extent such Party can demonstrate with competent evidence that: (i) such Confidential Information disclosed by the other Party (the "**Disclosing Party**") to such Party pursuant to this Agreement was already in Receiving Party's possession at the time of disclosure by the Disclosing Party; or (ii) such Confidential Information

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is or becomes in the future public knowledge through no fault or omission by the Receiving Party; (iii) such Confidential Information is obtained by Receiving Party from a Third Party with a legal right to disclose and not under a confidentiality obligation to the Disclosing Party; or (iv) is independently developed by the Receiving Party without use of any Confidential Information of the Disclosing Party, as demonstrated by the Receiving Party's independent written records contemporaneous with such development.

7.4. The preceding obligations to maintain in confidence and the limitations upon the right to use the Confidential Information received pursuant hereto, shall terminate [*] years from termination or expiry of this Agreement.

7.5. SIEGFRIED agrees to use Raw Materials and Compound only for the performance of Services and under the terms and conditions of this Agreement.

7.6. Notwithstanding any other provision of this Agreement, the Receiving Party may disclose specific Confidential Information of the other Party to the extent that such disclosure: (i) is in response to a valid order of a court or other governmental body having jurisdiction or (ii) is otherwise required by applicable law or regulation, provided in either case that Receiving Party uses best efforts to limit the scope of the disclosure to that which is required, provides Disclosing Party with prior written notice of such requirement as soon as reasonably possible, and cooperates with Disclosing Party in seeking a protective order, confidential treatment, or similar remedy limiting the use and disclosure of any Information required to be disclosed.

7.7. Neither Party shall disclose to the other Party any confidential or proprietary information that belongs to any Third Party unless the Disclosing Party first obtains the consent of such Third Party to such disclosure.

7.8. Notwithstanding the foregoing, either Party may disclose the text and terms of this Agreement in filings with the United States Securities and Exchange Commission or any other governmental body (U.S. and otherwise) to the extent such disclosure is required by Applicable Law, as well as in disclosures in confidence to its auditors and attorneys. In addition, METABOLEX may disclose the text and terms of this Agreement in confidence in disclosures to its investors, and strategic partners, and to potential investors, acquirors, and strategic partners. SIEGFRIED may disclose the text and terms of this Agreement (but not Plans) in confidence in disclosures to its investors, and strategic partners, and to potential investors, acquirors, and strategic partners.

8. FACILITY AND COMPOUND REQUIREMENTS

8.1. Facility

8.1.1. In performing the Services, SIEGFRIED shall comply with all Applicable Laws for a drug establishment and obtain and maintain all necessary registrations, licenses and permits. METABOLEX shall have the right to review, from time to time as it requests, during normal business hours, and upon written notice of no less than [*], each registrations, licenses and permits of SIEGFRIED that is directly related to SIEGFRIED's obligations under this Agreement, including but not limited to those required by the FDA or any other regulatory agency having jurisdiction over SIEGFRIED.

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8.1.2. For Services under a Manufacturing Plan, SIEGFRIED shall ensure that the facility meets all the requirements of a drug establishment promulgated by the FDA at all times during the manufacture of the Compound, and SIEGFRIED shall comply with all aspects required by the Quality Agreement.

8.1.3. SIEGFRIED shall promptly notify METABOLEX of any FDA or other regulatory audit or inspection that is directly relevant to the Services or facilities used in performing the Services. SIEGFRIED shall promptly provide to METABOLEX a copy of all correspondence and reports that it receives from a governmental agency or regulatory authority in connection with the Services or its manufacture of Compound. SIEGFRIED shall take all reasonable actions requested by FDA or another governmental agency or regulatory authority to cure deficiencies as noted during any such inspection. METABOLEX shall [*] notify SIEGFRIED of any activities or communications by METABOLEX that may reasonably be expected to result in an inspection of SIEGFRIED. METABOLEX'S involvement in such audit or inspection shall [*].

8.2. Authority and Compound Requirements

8.2.1. Each Party represents and warrants to the other that, to its current knowledge, (i) it has the full right and authority to enter into and to perform its obligations under this Agreement, (ii) this Agreement has been duly authorized and (iii) this Agreement is binding upon it.

8.2.2. METABOLEX and SIEGFRIED hereby agree that with respect to the Services and the Compound, and in addition to the other rights and obligations of this Agreement they each have the following responsibilities and liabilities:

8.2.2.1. METABOLEX shall ensure that [*] relating to Compound manufactured hereunder will [*] under this Agreement as required by Applicable Law and will comply with all regulation for governmental applications, submissions, and approvals. METABOLEX further represents, warrants and covenants that no Compound will be released for human public use or consumption until all requisite governmental approvals thereof have been obtained for such use and consumption.

8.2.2.2. SIEGFRIED will make its own identification tests on the Raw Materials delivered to SIEGFRIED before commencing manufacture of the Compound (and shall not commence manufacture if such tests indicate the Raw Materials do not comply with the applicable specifications).

8.2.2.3. SIEGFRIED shall be responsible for manufacturing, storing, handling, and shipping the Compound in accordance with the specifications provided to SIEGFRIED and the agreed upon terms in the relevant Plan.

8.2.2.4. METABOLEX and SIEGFRIED (except where METABOLEX has the responsibility under Section 8.2) shall comply with all Applicable Law, rules, regulations, codes, and standards of all federal, state, local and municipal government agencies that affect their respective performance and activities under this Agreement. Each Party shall provide upon request such information as the other Party reasonably

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requires for compliance with all Applicable Law, rules, regulations, codes, and standards of all federal, state, local and municipal government agencies that affect their respective performance and activities under this Agreement.

8.2.2.5. During all periods when any Raw Materials, Compound or other property of METABOLEX, is stored on the premises of SIEGFRIED, SIEGFRIED shall be responsible for all insurable risks of loss or damage to such stored Raw Materials, Compound, or property. SIEGFRIED shall not be responsible for risk of loss of any Raw Material or Compound not stored on the premises of SIEGFRIED.

8.2.2.6. Except as provided below, SIEGFRIED and METABOLEX shall maintain, throughout the term of this Agreement (and, with respect to any policies made on a "claims made" basis, after the term hereof for at least [*] years following the performance of the Services such liability insurance as is reasonably requested by SIEGFRIED and METABOLEX, respectively, from time to time and in the amounts of not less than USD [*] in the aggregate, and will cause the other Party to be named as an additional insured thereunder, and to be covered with respect to the contractual indemnities hereunder, without liability for premiums. Each Party shall submit certificates of insurance, evidencing such insurance coverage, when requested by the other Party. SIEGFRIED further agrees to maintain workers' compensation insurance in the amount required by the laws of the state in which SIEGFRIED's employees performing the Services are located.

8.2.3. **No Debarred Person.** SIEGFRIED represents and warrants that it shall not employ, contract with, or retain any person directly or indirectly to perform the Services under this Agreement [*] under investigation by the FDA for debarment or being presently debarred by the FDA pursuant to the Generic Drug Enforcement Act of 1992, as amended (21 U.S.C. § 301, *et seq*.). In addition, SIEGFRIED represents and warrants that, to its best knowledge, it has not engaged in any conduct or activity that could lead to any such debarment actions. If during the term of this Agreement, SIEGFRIED [*] (i) coming under investigation by the FDA for a debarment action, (ii) being debarred, or (iii) engaging in any conduct or activity that could lead to debarment, SIEGFRIED shall immediately notify METABOLEX of same, subject to limitations and disclosure prohibitions pursuant to Applicable Laws, including but not limited to data protection laws.

8.2.4. **No Pending Regulatory Actions.** SIEGFRIED represents and warrants that, as of the Effective Date, it has not received any citations with respect to its manufacturing facilities, including without limitation FDA Form 483 warning letters, and is not currently subject to an FDA consent decree or other regulatory action impacting SIEGFRIED's manufacture of Compound under this Agreement.

8.2.5. **No Pending Litigation.** SIEGFRIED represents and warrants that, as of the Effective Date, it is not currently involved in any litigation, and is unaware of any pending litigation proceedings, relating to SIEGFRIED's performance of services for any Third Party that could materially affect SIEGFRIED's performance of its obligations under this Agreement.

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8.2.6. **Shipping.** SIEGFRIED will package, insure and ship the Compound in accordance with the instructions stated in the applicable Plan. METABOLEX will be responsible for providing instructions for and payment of freight, insurance, customs duties and related charges for delivery of packaged Compounds to METABOLEX incurred after title passes to METABOLEX, unless otherwise specified in the applicable Plan, and SIEGFRIED shall comply with METABOLEX's instructions.

8.2.7. **No Infringement.** SIEGFRIED represents and warrants that no Siegfried Background IP, when used as contemplated in this Agreement, will infringe or misappropriate, any intellectual property right of any Third Party. METABOLEX represents and warrants that no METABOLEX Intellectual Property, know-how or Information that is licensed to SIEGFRIED pursuant to Section 5.6 will infringe or misappropriate any intellectual property right of any Third Party when used as permitted in this Agreement.

8.2.8. **SIEGFRIED Indemnification**. METABOLEX shall indemnify, defend, and hold harmless SIEGFRIED and SIEGFRIED's directors, officers, employees, Affiliates and agents (the **"SIEGFRIED Indemnitees"**) from and against any and all liabilities, losses, judgments, costs and expenses (including reasonable attorneys' fees and legal expenses) (collectively, "**Losses**") that are based on or caused by any allegations, claims, suits, or action by a Third Party (collectively **"Claims"**) against any SIEGFRIED Indemnitee to the extent such Claims result from or arise out of: (i) gross negligence, recklessness or intentional misconduct on the part of METABOLEX or its directors, officers, employees or agents; or (ii) a breach of METABOLEX's obligations, covenants, representations, or warranties under this Agreement (each, a **"METABOLEX Assumed Liability"**). Such indemnity shall not apply to the extent that a Claim arises out of or results from a SIEGFRIED Assumed Liability (as defined in Section 8.2.9).

8.2.9. **METABOLEX Indemnification**. SIEGFRIED shall indemnify, defend, and hold harmless METABOLEX and METABOLEX's directors, officers, employees, Affiliates and agents (the **"METABOLEX Indemnitees"**) from and against any and all Losses that are based on or caused by any Claims against any METABOLEX Indemnitee to the extent such Claims result from or arise out of: (i) gross negligence, recklessness or intentional misconduct on the part of any one of the SIEGFRIED Indemnitees, (ii) a failure of any one of the SIEGFRIED Indemnitees to comply with any Applicable Law in the performance of the work under this Agreement, or (iii) a breach of SIEGFRIED's obligations, covenants, representations, or warranties under this Agreement or Compound (each, a **"SIEGFRIED Assumed Liability"**). Such indemnity shall not apply to the extent that a Claim arises out of or results from any METABOLEX Assumed Liability.

8.2.10. **Indemnification Procedure**. In the event that any Claim is asserted or imposed against any Party hereto, then such Party (an "**Indemnified Party**") shall promptly give written notice to the other Party (the "**Indemnifying Party**") of such Claim. The Indemnified Party shall take all reasonable measures to limit or mitigate any Losses and shall inform the Indemnifying Party of all such measures. The Indemnifying Party shall assume, at its cost and expense, the defense of such Claim. The Indemnifying Party shall have control over the Claim, including the right to settle; provided, however, that the Indemnifying Party shall not, absent the prior written consent of the Indemnified Party, consent to

the entry of any judgment or enter into any settlement that (i) provides for any relief other than the payment of monetary damages for which the Indemnifying Party shall be solely liable and (ii) where the claimant or plaintiff does not release the Indemnified Party, its Affiliates and its respective directors, officers, employees, agents and representatives, as the case may be, from all liability in respect thereof. In no event shall the Indemnified Party be liable for any claims that are compromised or settled in violation of this Section.

8.2.11. Except for Losses resulting from SIEGFRIED's gross negligence, fraud or willful misconduct, in no event shall SIEGFRIED's total liability to METABOLEX arising under this Agreement exceed the total amount paid by METABOLEX to SIEGFRIED for the Services. Except for Losses resulting from METABOLEX's gross negligence, fraud or willful misconduct, in no event shall METABOLEX's total liability to SIEGFRIED arising under this Agreement exceed the total amount paid (or owed hereunder) by METABOLEX to SIEGFRIED for the Services. The above terms of this Section 8.2.11 shall not be deemed to limit a Party's obligations under section 8.2.8 or 8.2.9, or a Party's liability for a breach of its obligations under Article 7.

9. SURVIVAL

The termination of this Agreement shall not affect the provisions of Sections 1, 5, 7, 8.2.8, 8.2.9, 8.2.10, 8.2.11, 9, 10, 13.1, 13.2, 13.3, 13.4, and 13.14, which shall expressly survive any termination.

10. PRESS RELEASE

No Party shall (i) issue a press release or make any other public statement that references this Agreement, or (ii) use the other Party's or its Affiliates' name or trademarks for publicity or advertising purposes, except, in each case, with the prior written consent of the other Party. For the avoidance of doubt, SIEGFRIED shall not disclose, present, disseminate or produce any publication that contains information regarding the Services, Deliverables or any Confidential Information of METABOLEX without METABOLEX's prior written consent. Notwithstanding the foregoing sentences, either Party may use the name of the other Party in regulatory filings, including filings with the FDA and the United States Securities and Exchange Commission, or in disclosures to investors, partners, potential investors, and potential partners. For the avoidance of doubt, each Party shall fully comply with Section 7 when issuing a press release or making any other public statement.

11. EFFECT OF OTHER AGREEMENTS

This Agreement, together with validly approved Plans, sets forth the entire agreement between SIEGFRIED and METABOLEX as to their subject matter and supersedes all other agreements and understandings between the Parties with respect to the same.

12. ACCESS TO SITE

12.1. METABOLEX personnel will be afforded reasonable access to the SIEGFRIED site on advance written notice of not less than two weeks and during regular working hours or any other time during which work under any Plan is being performed. SIEGFRIED will use its best efforts to accommodate any requests for visitations during such periods.

12.2. While on site, METABOLEX personnel will use best care in the conduct of their activities. METABOLEX will indemnify and otherwise hold SIEGFRIED harmless from any damages resulting from violation of this due care standard by METABOLEX personnel.

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13. MISCELLANEOUS

13.1. **Notices.** All notices, consents and approvals required or permitted hereunder shall be given in writing to the other Party by personal delivery, by certified or registered mail, return receipt requested, by overnight courier, or by facsimile transmission with electronic confirmation of transmission, at the address specified below or to such other addresses as may be designated in writing from time to time in accordance with this Section 13.1:

If to METABOLEX:	METABOLEX, Inc. 3876 Bay Center Place Hayward, CA 94545 Attention: Legal Department Fax [*]
For SIEGFRIED:	SIEGFRIED AG Untere Brühlstrasse 4 Zofingen CH4800 Switzerland Attention: Legal Department Fax [*]

13.2. **LIMITATION OF DAMAGES**. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SIEGFRIED OR METABOLEX BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, MULTIPLE-BASED OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF REVENUES OR PROFIT TO A PARTY OR A THIRD PARTY) ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, OR OTHERWISE, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT THAT THE FOREGOING SHALL NOT LIMIT DAMAGES FOR BREACH OF THE OBLIGATIONS IN ARTICLE 7. FURTHER, THE ABOVE TERMS OF THIS SECTION 13.2 SHALL NOT BE DEEMED TO LIMIT A PARTY'S OBLIGATIONS UNDER SECTION 8.2.8 OR 8.2.9.

13.3. **Governing Law**. Any claim, dispute, or controversy of whatever nature arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law principles that would require the application of the laws of a different state.

13.4. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns.

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

13.5. **Counterparts**. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original. Copies of original signature pages sent by facsimile and/or PDF shall have the same effect as signature pages containing original signatures.

13.6. **Amendment, Waiver.** This Agreement may be amended, modified, superseded or canceled, and any of the terms may be waived, only by a written instrument executed by each Party or, in the case of waiver, by the Party or Parties waiving compliance. The delay or failure of any Party at any time or times to require performance of any provisions shall in no manner affect the rights at a later time to enforce the same. No waiver by any Party of any condition or of the breach of any term contained in this agreement, whether by conduct, or otherwise, in any one or more instances, shall be deemed to be, or considered as, a further or continuing waiver of any such condition or of the breach of such term or any other term of this Agreement.

13.7. **No Third Party Beneficiaries**. No Third Party, including any employee of any Party to this Agreement, shall have or acquire any rights by reason of this Agreement.

13.8. **Assignment and Successors.** This Agreement may not be assigned by either Party, except that each Party may assign this Agreement and the rights and interests of such Party, in whole or in part, to any of its Affiliates, any purchaser of all or substantially all of its assets or to any successor corporation resulting from any merger or consolidation of such Party with or into such corporation.

13.9. **Force Majeure**. Neither METABOLEX nor SIEGFRIED shall be liable for failure of or delay in performing obligations set forth in this Agreement, and neither shall be deemed in breach of its obligations, if such failure or delay is due to natural disasters or any causes reasonably beyond the control of METABOLEX or SIEGFRIED, as applicable. The affected Party shall notify the other Party of such force majeure circumstances as soon as reasonably practical and shall take reasonable, diligent efforts to remove the condition constituting force majeure or to avoid its affects so as to resume performance as soon as practicable.

13.10. **Severability.** If any provision of this Agreement is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, it is the intention of the Parties that the remainder of the Agreement shall not be affected. The Parties shall make a good faith effort to replace any such provision with a valid and enforceable one such that the objectives contemplated by the parties when entering this Agreement may be realized.

13.11. **Employees.** Each Party shall be responsible for claims made by its own employees, and each Party shall defend, indemnify and hold harmless the other Party, the other Party's employees, directors, trustees and officers, from and against any and all liability, claims, damages, losses, actions or suits, which the other Party may incur by reason of any claim made by an employee of the Party, except for injuries resulting from the gross negligence or willful misconduct of the other Party.

13.12. **Relationship of Parties.** The relationship between the Parties is that of independent contractors. Neither Party, nor any employee or agent of such Party, shall have the authority to bind or act on behalf of the other Party without its prior written consent. No employee or agent of SIEGFRIED shall be considered to be an employee or agent of METABOLEX, and no

employee or agent of METABOLEX shall be considered to be an employee or agent of SIEGFRIED. Each Party shall be solely and entirely responsible for its acts and for the acts of its employees and agents during performance of this Agreement. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership or business organization of any kind.

13.13. **Construction.** Section headings are included in this Agreement merely for convenience of reference; they are not to be considered part of this Agreement or used in the interpretation of this Agreement. No rule of strict construction will be applied in the interpretation or construction of this Agreement.

13.14. **Time Is of the Essence.** Time is of the essence in the performance of the Services and SIEGFRIED's other obligations under this Agreement.

[Remainder of page intentionally left blank]

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

In witness whereof, the parties hereto have duly executed this Agreement as of the Effective Date.

METABOLEX, INC.

By: /s/ Charles A. McWherter

Charles A. McWherter
Print Name

SVP, Research and Preclinical Dev't
Title

SIEGFRIED AG

By: /s/ Marianne Spaene

Marianne Spaene
Print Name

EVP Business Dev
Title

By: /s/ Sandra Cernick

Sandra Cernick
Print Name

Senior Director
Business Development & Sales USA
Title

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Exhibit A

Compound & Raw Materials

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

Exhibit B

Process Development Plan

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

Exhibit C

Manufacturing Plan

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

Exhibit D
Form of Scope of Work

Scope of Work No.

THIS SCOPE OF WORK NO. (a "**Scope of Work**") is made and entered into as of , 20 , by and between **METABOLEX, INC.** a Delaware corporation with a business address of 3876 Bay Center Place, Hayward, California 94545 ("METABOLEX") **SIEGFRIED AG**, a Swiss Company, with its principal address place of business located at Untere Brühlstrasse 4, Zofingen CH4800 Switzerland ("**SIEGFRIED**").

Pursuant to the terms and conditions of the **Development and Clinical Manufacture Agreement** of (the "**Master Agreement**"), SIEGFRIED has agreed to perform certain services in accordance with written Scopes of Work, such as this one, entered into from time-to-time.

The parties hereby agree as follows:

1. Scope of Work. This document constitutes a "Scope of Work" under the Master Agreement, and this Scope of Work and the work contemplated herein are subject to the terms and provisions of the Master Agreement.

2. Services and Payment of Fees and Expenses. The specific work contemplated by this Scope of Work and the related payment terms and obligations are set forth on the following attachments, which are incorporated herein by reference:

DESCRIPTION OF WORK	ATTACHMENT 1
PROJECT BUDGET	ATTACHMENT 1
TIMELINE	ATTACHMENT 1
PAYMENT SCHEDULE	ATTACHMENT 1

3. Term. The term of this Scope of Work shall commence on , 20 and shall continue until the services described in **Attachment 1** are completed, unless this Scope of Work is terminated in accordance with the Master Agreement, and except as otherwise provided for in this Agreement.

4. Amendments. No modification, amendment, or waiver of this Scope of Work shall be effective unless in writing and duly executed and delivered by each Party to the other.

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

Exhibit D, continued

ACKNOWLEDGED, ACCEPTED AND AGREED TO:

EXAMPLE ONLY – NOT FOR SIGNATURE

METABOLEX, INC.

By: _____

_____
Print Name

_____
Title

SIEGFRIED AG

By: _____

_____
Print Name

_____
Title

By: _____

_____
Print Name

_____
Title

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

Exhibit 10.19

INDEMNITY AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 200__ by and between **METABOLEX, INC.**, a Delaware corporation (the "Corporation"), and _____ ("Agent").

RECITALS

WHEREAS, Agent performs a valuable service to the Corporation in his capacity as an officer or member of the Board of Directors of the Corporation;

WHEREAS, the stockholders of the Corporation have adopted bylaws (the "Bylaws") providing for the indemnification of the directors, officers, employees and other agents of the Corporation, including persons serving at the request of the Corporation in such capacities with other corporations or enterprises, as authorized by the Delaware General Corporation Law, as amended (the "Code");

WHEREAS, the Bylaws and the Code, by their non-exclusive nature, permit contracts between the Corporation and its directors, officers, employees and other agents with respect to indemnification of such persons; and

WHEREAS, in order to induce Agent to continue to serve as an officer or a member of the Board of Directors of the Corporation, the Corporation has determined and agreed to enter into this Agreement with Agent;

NOW, THEREFORE, in consideration of Agent's continued service as an officer or member of the Board of Directors of the Corporation after the date hereof, the parties hereto agree as follows:

AGREEMENT

1. Services to the Corporation. Agent will serve, at the will of the Corporation or under separate contract, if any such contract exists, as an officer or a member of the Board of Directors of the Corporation or as a director, officer or other fiduciary of an affiliate of the Corporation (including any employee benefit plan of the Corporation) faithfully and to the best of his ability so long as he is duly elected and qualified in accordance with the provisions of the Bylaws or other applicable charter documents of the Corporation or such affiliate; *provided, however,* that Agent may at any time and for any reason resign from such position (subject to any contractual obligation that Agent may have assumed apart from this Agreement) and that the Corporation or any affiliate shall have no obligation under this Agreement to continue Agent in any such position.

2. Indemnity of Agent. The Corporation hereby agrees to hold harmless and indemnify Agent to the fullest extent authorized or permitted by the provisions of the Bylaws and the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the Bylaws or the Code permitted prior to adoption of such amendment).

3. Additional Indemnity. In addition to and not in limitation of the indemnification otherwise provided for herein, and subject only to the exclusions set forth in Section 4 hereof, the Corporation hereby further agrees to hold harmless and indemnify Agent:

(a) against any and all expenses (including attorneys' fees), witness fees, damages, judgments, fines and amounts paid in settlement and any other amounts that Agent becomes legally obligated to pay because of any claim or claims made against or by him in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, arbitrational, administrative or investigative (including an action by or in the right of the Corporation) to which Agent is, was or at any time becomes a party, or is threatened to be made a party, by reason of the fact that Agent is, was or at any time becomes a director, officer, employee or other agent of the Corporation, or is or was serving or at any time serves at the request of the Corporation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise; and

(b) otherwise to the fullest extent as may be provided to Agent by the Corporation under the non-exclusivity provisions of the Code and the Bylaws of the Company.

4. Limitations on Additional Indemnity. No indemnity pursuant to Section 3 hereof shall be paid by the Corporation:

(a) on account of any claim against Agent solely for an accounting of profits made from the purchase or sale by Agent of securities of the Corporation pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any federal, state or local statutory law;

(b) on account of Agent's conduct that is established by a final judgment as knowingly fraudulent or deliberately dishonest or that constituted willful misconduct;

(c) on account of Agent's conduct that is established by a final judgment as constituting a breach of Agent's duty of loyalty to the Corporation or resulting in any personal profit or advantage to which Agent was not legally entitled;

(d) for which payment is actually made to Agent under a valid and collectible insurance policy or under a valid and enforceable indemnity clause, bylaw or agreement, except in respect of any excess beyond payment under such insurance, clause, bylaw or agreement;

(e) if indemnification is not lawful (and, in this respect, both the Corporation and Agent have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication); or

(f) in connection with any proceeding (or part thereof) initiated by Agent, or any proceeding by Agent against the Corporation or its directors, officers, employees or other agents, unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the Corporation, (iii) such indemnification is provided by the Corporation, in its sole discretion, pursuant to the powers vested in the Corporation under the Code, or (iv) the proceeding is initiated pursuant to Section 9 hereof.

5. Continuation of Indemnity. All agreements and obligations of the Corporation contained herein shall continue during the period Agent is a director, officer, employee or other agent of the Corporation (or is or was serving at the request of the Corporation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise) and shall continue thereafter so long as Agent shall be subject to any possible claim or threatened, pending or completed action, suit or proceeding, whether civil, criminal, arbitrational, administrative or investigative, by reason of the fact that Agent was serving in the capacity referred to herein.

6. Partial Indemnification. Agent shall be entitled under this Agreement to indemnification by the Corporation for a portion of the expenses (including attorneys' fees), witness fees, damages, judgments, fines and amounts paid in settlement and any other amounts that Agent becomes legally obligated to pay in connection with any action, suit or proceeding referred to in Section 3 hereof even if not entitled hereunder to indemnification for the total amount thereof, and the Corporation shall indemnify Agent for the portion thereof to which Agent is entitled.

7. Notification and Defense of Claim. Not later than thirty (30) days after receipt by Agent of notice of the commencement of any action, suit or proceeding, Agent will, if a claim in respect thereof is to be made against the Corporation under this Agreement, notify the Corporation of the commencement thereof; but the omission so to notify the Corporation will not relieve it from any liability which it may have to Agent otherwise than under this Agreement. With respect to any such action, suit or proceeding as to which Agent notifies the Corporation of the commencement thereof:

(a) the Corporation will be entitled to participate therein at its own expense;

(b) except as otherwise provided below, the Corporation may, at its option and jointly with any other indemnifying party similarly notified and electing to assume such defense, assume the defense thereof, with counsel reasonably satisfactory to Agent. After notice from the Corporation to Agent of its election to assume the defense thereof, the Corporation will not be liable to Agent under this Agreement for any legal or other expenses subsequently incurred by Agent in connection with the defense thereof except for reasonable costs of investigation or otherwise as provided below. Agent shall have the right to employ separate counsel in such action, suit or proceeding but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Agent unless (i) the employment of counsel by Agent has been authorized by the Corporation, (ii) Agent shall have reasonably concluded, and so notified the Corporation, that there is an actual conflict of interest between the Corporation and Agent in the conduct of the defense of such action or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, in each of which cases the fees and expenses of Agent's separate counsel shall be at the expense of the Corporation. The Corporation shall not be entitled to assume the defense of any action, suit or proceeding brought by or on behalf of the Corporation or as to which Agent shall have made the conclusion provided for in clause (ii) above; and

(c) the Corporation shall not be liable to indemnify Agent under this Agreement for any amounts paid in settlement of any action or claim effected without its written consent, which shall not be unreasonably withheld. The Corporation shall be permitted to settle any action except that it shall not settle any action or claim in any manner which would impose any penalty or limitation on Agent without Agent's written consent, which may be given or withheld in Agent's sole discretion.

8. Expenses. The Corporation shall advance, prior to the final disposition of any proceeding, promptly following request therefor, all expenses incurred by Agent in connection with such proceeding upon receipt of an undertaking by or on behalf of Agent to repay said amounts if it shall be determined ultimately that Agent is not entitled to be indemnified under the provisions of this Agreement, the Bylaws, the Code or otherwise.

9. Enforcement. Any right to indemnification or advances granted by this Agreement to Agent shall be enforceable by or on behalf of Agent in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. Agent, in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. It shall be a defense to any action for which a claim for indemnification is made under Section 3 hereof (other than an action brought to enforce a claim for expenses pursuant to Section 8 hereof, *provided that* the required undertaking has been tendered to the Corporation) that Agent is not entitled to indemnification because of the limitations set forth in Section 4 hereof. Neither the failure of the Corporation (including its Board of Directors or its stockholders) to have made a determination prior to the commencement of such enforcement action that indemnification of Agent is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Directors or its stockholders) that such indemnification is improper shall be a defense to the action or create a presumption that Agent is not entitled to indemnification under this Agreement or otherwise.

10. Subrogation. In the event of payment under this Agreement, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of Agent, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Corporation effectively to bring suit to enforce such rights.

11. Non-Exclusivity of Rights. The rights conferred on Agent by this Agreement shall not be exclusive of any other right which Agent may have or hereafter acquire under any statute, provision of the Corporation's Certificate of Incorporation or Bylaws, agreement, vote of stockholders or directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding office.

12. Survival of Rights.

(a) The rights conferred on Agent by this Agreement shall continue after Agent has ceased to be a director, officer, employee or other agent of the Corporation or to serve at the request of the Corporation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise and shall inure to the benefit of Agent's heirs, executors and administrators.

(b) The Corporation shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place.

13. Separability. Each of the provisions of this Agreement is a separate and distinct agreement and independent of the others, so that if any provision hereof shall be held to be invalid for any reason, such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions hereof. Furthermore, if this Agreement shall be invalidated in its entirety on any ground, then the Corporation shall nevertheless indemnify Agent to the fullest extent provided by the Bylaws, the Code or any other applicable law.

14. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Delaware.

15. Amendment and Termination. No amendment, modification, termination or cancellation of this Agreement shall be effective unless in writing signed by both parties hereto.

16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute but one and the same Agreement. Only one such counterpart need be produced to evidence the existence of this Agreement.

17. Headings. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

18. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) upon delivery if delivered by hand to the party to whom such communication was directed or (ii) upon the third business day after the date on which such communication was mailed if mailed by certified or registered mail with postage prepaid:

(a) If to Agent, at the address indicated on the signature page hereof.

(b) If to the Corporation, to:

METABOLEX, INC.
3876 Bay Center Place
Hayward, CA 94545

or to such other address as may have been furnished to Agent by the Corporation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on and as of the day and year first above written.

METABOLEX, INC.

By: _____

Print Name: _____

Title: _____

AGENT

Print Name: _____

Address: _____

_____

Exhibit 10.20

March 1, 2004

Harold Van Wart
80 Arbuelo Way
Los Altos, CA 94022

Dear Hal:

Metabolex, Inc. (the "Company") is pleased to continue your employment as President and Chief Executive Officer ("CEO") on the following terms:

1. Position, Duties and Responsibilities. As President and CEO, you will continue to report to the Company's Board of Directors (the "Board"), and will perform the duties customarily associated with this position and such other duties assigned by the Board. You shall devote your full time and attention during normal business hours to the business affairs of the Company, except for reasonable vacations and periods of illness or incapacity.

2. Compensation and Employee Benefits.

2.1 Base Salary. Your annual base salary will continue to be $325,357, less payroll deductions and required withholdings, paid according to the Company's regular payroll schedule and procedures.

2.2 Discretionary Bonus. You will be eligible to earn an annual discretionary bonus of up to thirty-five percent (35%) of your annual base salary based on the Company's performance and your contributions in a given calendar year, as evaluated by the Board in its sole discretion. You will be eligible for any such bonus if you are employed at the end of the bonus period (December 31). Any bonus payment shall be subject to payroll deductions and required withholdings.

2.3 Signing Bonus. Notwithstanding your offer letter dated September 8, 2000, the one-time signing bonus of $145,000 that you received upon joining the Company will no longer be subject to repayment if you leave the Company prior to October 14, 2004.

2.4 Employee Benefits. You shall continue to be entitled to all benefits, including vacation accrual of four weeks per year and health and disability benefits, for which you are eligible under the terms and conditions of the standard Company benefit plans, which may be in effect from time to time and provided by the Company to its senior executive level employees generally.

2.5 Stock Options. On January 12, 2004, you were granted a stock option to purchase that number of shares of Company common stock which together with the shares of Company common stock held by you or subject to your currently outstanding stock options constitute four and one quarter percent (4.25%) of the "fully-diluted" outstanding capital stock of

the Company calculated as of the date of grant (including as outstanding any outstanding but unexercised options and warrants to purchase Company capital stock and the conversion of all preferred stock into common stock at the then-applicable conversion rate, but excluding any remaining unallocated shares available for issuance under the Company's equity incentive plans). The per share exercise price of such stock options was equal to the per share fair market value of the common stock on the date of grant, as determined by the Board. The term of such stock option is ten (10) years, subject to earlier expiration in the event of the termination of your service with the Company. Such stock option is immediately exercisable, if you elect to do so, but the purchased shares shall be subject to repurchase by the Company at the lower of (1) the original exercise price and (2) the then-fair market value of the Company's common stock in the event that your service with the Company terminates before you become vested in the shares. You have vested, and the Company's repurchase right, if applicable, shall not apply, as to twenty-five percent (25%) of the shares immediately upon the date of grant, and as to the balance of the option shares in forty-eight (48) equal monthly installments with the first monthly installment vesting retroactively as of October 1, 2003. Notwithstanding the foregoing, a portion of the shares subject to your outstanding stock options may vest on an accelerated basis pursuant to Section 6 below. Except as provided herein, such stock options will be subject to the provisions of the equity incentive plan of the Company under which the options are granted and the applicable form of stock option agreement thereunder (the "Plan Documents").

3. Other Activities During Employment.

3.1 Activities. Except with the prior written consent of the Board, you will not during your employment undertake or engage in any other employment, occupation or business enterprise, other than ones in which you are a passive investor. You may engage in civic and not-for-profit activities so long as such activities do not materially interfere with the performance of your job duties.

3.2 Investment and Interests. Except as permitted by Section 3.3 below, during your employment you agree not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known by you to be adverse or antagonistic to the Company, or its business or prospects, financial or otherwise.

3.3 Noncompetition. During the term of your employment by the Company except on behalf of the Company, you will not directly or indirectly, whether as an officer, director, stockholder, partner, proprietor, associate, representative, consultant, or in any capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever that competes with the Company anywhere in the world, in any line of business engaged in (or planned to be engaged in) by the Company; *provided, however,* that anything above to the contrary notwithstanding, you may own, as a passive investor, securities of any entity, so long as your direct holdings in any one such corporation do not in the aggregate constitute more than one percent (1%) of the voting stock of such corporation.

4. Company Policies; Proprietary Information and Inventions Agreement. You acknowledge your ongoing obligations under the Company's Employee Agreement on Confidential Information and Inventions, a copy of which is attached hereto as Exhibit B. You further acknowledge your obligation to abide by the Company's rules, policies and procedures.

5. Termination of Employment.

5.1 At-Will Employment Relationship. Your employment with the Company shall continue to be at-will. Either you or the Company may terminate the employment relationship at any time, with or without Cause and with or without advance notice.

5.2 Termination for Cause.

(a) If the Company terminates your employment at any time for Cause (as defined below), your salary shall cease on the date of termination and you shall not be entitled to severance pay, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required in such event by applicable law or the terms of applicable benefit plans. The continued vesting of any stock options held by you shall cease on the termination date, and your right to exercise vested option shares shall be governed by the terms of the Company's applicable stock option plans and the corresponding stock option agreements.

(b) Definition of Cause. For purposes of this agreement, "Cause" means the occurrence of any one or more of the following: (i) your conviction of, or plea of no contest with respect to, any felony involving fraud, dishonesty or moral turpitude; (ii) your participation in a fraud or act of dishonesty that results in material harm to the Company; (iii) your intentional material violation of any contract or agreement between you and the Company, including but not limited to this agreement or your Employee Agreement on Confidential Information and Inventions, or your violation of any statutory duty that you owe to the Company, but only if you do not correct such violation within thirty (30) days after written notice thereof has been provided to you; or (iv) your gross negligence or willful neglect of your job duties, as determined by the Board in good faith, but only if you do not correct such violation within thirty (30) days after written notice thereof has been provided to you.

5.3 Severance Benefits For Termination Without Cause or Resignation for Good Reason.

(a) If the Company terminates your employment without Cause or you resign your employment for Good Reason (defined below), you will be eligible to receive twelve (12) months of the greater of (i) your base salary in effect as of such termination date or (ii) your base salary as set forth in Section 2.1, subject to payroll deductions and required withholdings and net of any amounts earned by you pursuant to any employment or consulting arrangements obtained by you following such termination (other than the activities described in the last sentence of Section 3.1). In addition you will be eligible to receive your potential annual discretionary bonus amount set forth in Section 2.2, determined as if all performance targets established by the Board have been satisfied, pro-rated for the number of months elapsed in the year in which your employment terminates. This base salary and bonus severance will be paid according to the Company's payroll procedures during the twelve (12) month period following the termination date. Moreover, if you timely elect continued coverage of your group health

insurance under COBRA, the Company will pay your premiums for COBRA coverage for up to twelve (12) months following the termination date, provided that such payments shall cease if you obtain full-time employment within such period. Upon such termination, the vesting of all stock options held by you shall be accelerated such that the options are fully vested and exercisable upon the termination date and such stock options shall be exercisable for the remainder of their original term, without regard to your termination of employment. Upon approval by the Board of this Agreement, your currently outstanding stock options shall be amended to the extent necessary to provide for the foregoing accelerated vesting and extended exercisability. Your receipt of any severance benefits under this Section 5.3 is contingent upon your signing and making effective the Release Agreement (attached as Exhibit A) on or after the termination date.

(b) Definition of Good Reason. For purposes of this Agreement, "Good Reason" shall mean any one of the following events that occurs without your consent: (i) the material reduction in your responsibilities, authorities or functions as an employee of the Company (but not merely a change in reporting relationships); (ii) a reduction in your level of compensation (including base salary, fringe benefits and target bonuses under any corporate-performance based bonus or incentive programs); (iii) a relocation of your place of employment by more than twenty (20) miles; or (iv) the Company's material breach of this Agreement. Notwithstanding the foregoing, you must provide the Company with thirty (30) days' advance written notice of Company's conduct giving rise to Good Reason (the "Cure Period") and during the Cure Period, the Company may attempt to rescind or correct the matter giving rise to Good Reason. If the Company does not rescind or correct the conduct giving rise to Good Reason to your reasonable satisfaction by the expiration of the Cure Period, your employment will then terminate with Good Reason.

6. Change in Control.

6.1 Definitions.

(a) "Change in Control" shall mean an Ownership Change Event or a series of related Ownership Change Events (collectively, a "Transaction") wherein the stockholders of the Company immediately before the Transaction do not retain direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding securities of the Company or, in the case of a Transaction described in Section 6.1(b)(iii) below, the corporation or other business entity to which the assets of the Company were transferred (the "Transferee"), as the case may be. For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities that own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities.

(b) "An "Ownership Change Event" shall be deemed to have occurred if any of the following occurs with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange or transfer of all or substantially all of the assets of the Company.

6.2 Stock Options. At the closing of a Change in Control, your outstanding stock options shall become vested and exercisable with respect to fifty percent (50%) of your then-unvested shares of the Company's common stock subject thereto. In addition, in the event that within twelve (12) months following a Change in Control, the Company terminates your employment without Cause (as defined above) or you resign for Good Reason (as defined above) (a "Change in Control Termination"), any remaining unvested portion of all stock options held by you shall have the vesting accelerated such that all options are fully vested and exercisable as of the date of the Change in Control Termination (the "Acceleration"). As a precondition of receiving the Acceleration, you must first sign and allow to become effective a general release of claims in favor of the Company in a form acceptable to the Company.

6.3 Parachute Payments After the Listing Date.

(a) After the Listing Date (as defined below), if any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to or for your benefit, whether under this Agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") (together with any interest or penalties imposed with respect to such excise tax, the "Excise Tax"), then you will be entitled to receive from the Company an additional payment (the "Gross-Up Payment") in an amount equal to (i) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the Payment (the "First Reimbursement Payment"), (ii) all federal, state and local income taxes and employment taxes on the First Reimbursement Payment, and (iii) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the First Reimbursement Payment. For purposes of this provision, the term "Listing Date" means the date of the sale of the Company's securities to the general public pursuant to an initial public offering under a Registration Statement filed with and declared effective by the U.S. Securities and Exchange Commission under the Securities Act of 1933, as amended.

(b) All determinations required to be made under this Section 6.3 including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the nationally recognized certified public accounting firm used by the Company immediately prior to the effective date of the Change in Control or, if such firm declines to serve, such other nationally recognized certified public accounting firm as you may designate (the "Accounting Firm"). Any determination by the Accounting Firm shall be binding upon the Company and you. The Accounting Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good-faith interpretations concerning the application of Sections 280G and 4999 of the Code.

7. General Provisions.

7.1 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced in such jurisdiction so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

7.2 Entire Agreement. This Agreement, together with its exhibits, constitutes the entire and exclusive agreement between you and the Company, and it supersedes any prior agreement, promise, representation, or statement, written or otherwise, between you and the Company with regard to this subject matter, including the letter dated December 12, 2002. It is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in a writing signed by you and a duly authorized officer of the Company.

7.3 Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by you, the Company and your and its respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your duties hereunder and you may not assign any of your rights hereunder without the written consent of the Company, which shall not be withheld unreasonably.

7.4 Governing Law. All questions concerning the construction, validity and interpretation of this Agreement will be governed by the law of the State of California as applied to contracts made and to be performed entirely within California.

7.5 Attorneys' Fees. If either party hereto brings any action to enforce his or its rights hereunder, the prevailing party in such action shall be entitled to be paid by the other party such prevailing party's reasonable attorneys fees and costs incurred in such action. In addition, the Company shall reimburse you for your attorneys fees and costs (not to exceed $2,500 in the aggregate) reasonably incurred by you in connection with this Agreement.

To indicate your acceptance of the Company's offer of continued employment, please sign and date this Agreement in the space provided below and return it to me.

Sincerely,

Metabolex, Inc.

By: 

A. Barr Dolan
Chairman of the Compensation Committee of the Board

Accepted and agreed:

HAROLD VAN WART

March 4, 2004
DATE

EXHIBIT A – Release Agreement

EXHIBIT B – Employee Agreement on Confidential Information and Inventions

EXHIBIT A

RELEASE AGREEMENT

(To be signed on or after the Separation Date)

I understand that my employment with Metabolex, Inc. (the "Company") terminated effective _____, _____ (the "Separation Date"). The Company has agreed that if I choose to sign this Release Agreement ("Release"), the Company will provide certain severance benefits (minus the required withholdings and deductions) pursuant to the terms of the employment agreement dated March 1, 2004 (the "Agreement"). I understand that I am not entitled to such severance benefits unless I sign this Release, and it becomes fully effective. I understand that, regardless of whether I sign this Release, the Company will pay me all of my accrued salary and vacation through the Separation Date, to which I am entitled by law.

In consideration for the severance benefits I am receiving under the Agreement, as described therein, I hereby agree to release the Company and its officers, directors, agents, attorneys, employees, shareholders, parents, subsidiaries, affiliates, successors, and assigns, of and from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys' fees, damages, indemnities and obligations of every kind and nature, in law, equity, or otherwise, known or unknown, suspected and unsuspected, disclosed and undisclosed, liquidated or contingent, arising out of or in any way related to agreements, events, acts or conduct at any time prior to and including the execution date of this Release, including but not limited to: any and all such claims and demands directly or indirectly arising out of or in any way connected with my employment with the Company or the termination of that employment; claims or demands related to salary, bonuses, commissions, incentive payments, stock, stock options, or any ownership or equity interests in the Company, vacation pay, personal time off, fringe benefits, expense reimbursements, severance benefits, or any other form of compensation; claims pursuant to any federal, any state or any local law, statute, common law or cause of action including, but not limited to, the federal Civil Rights Act of 1964, as amended; the federal Americans with Disabilities Act of 1990; the federal Employee Retirement Income Security Act; the federal Age Discrimination in Employment Act of 1967, as amended ("ADEA"); the California Fair Employment and Housing Act, as amended; tort law; contract law; wrongful discharge; discrimination; harassment; fraud; misrepresentation; defamation; libel; emotional distress; and breach of the implied covenant of good faith and fair dealing.

In releasing claims unknown to me at present, I am waiving all rights and benefits under Section 1542 of the California Civil Code, and any law or legal principle of similar effect in any jurisdiction: **"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA and that the consideration given for the waiver in the above paragraphs is in addition to anything of value to which I was already entitled. I have been advised by this writing, as required by the ADEA, that: (a) my waiver and release do not apply to any claims that may arise after my signing of this Release; (b) I should consult with an attorney prior to signing this Release; (c) I have twenty-one (21) days within which to consider this Release

(although I may choose to voluntarily sign this Release earlier); (d) I have seven (7) days after I sign this Release to revoke it; and (e) this Release will not be effective until the eighth day after this Release has been signed by me.

I accept and agree to the terms and conditions stated above:

Date	Harold Van Wart

EXHIBIT B

EMPLOYEE AGREEMENT ON CONFIDENTIAL INFORMATION AND INVENTIONS

October 10, 2007

Harold Van Wart
c/o Metabolex, Inc.
3876 Bay Center Place
Hayward, CA 94545

Dear Hal:

This letter agreement (the "Amendment") amends the terms of your employment agreement dated March 1, 2004 (the "Original Agreement") with Metabolex, Inc. (the "Company") in order to address the requirements of Section 409A of the Internal Revenue Code, as amended (the "Code"). The Original Agreement is hereby amended only as expressly set forth herein. All other terms and conditions of the Original Agreement continue in full force and effect.

Section 5.3 is amended and restated as follows:

5.3 Severance Benefits For Termination Without Cause or Resignation for Good Reason.

(a) If the Company terminates your employment without Cause and other than as a result of your death or disability, or if you resign your employment for Good Reason (defined below), you will be eligible to receive the severance benefits described in this Section 5.3. You will be eligible to receive, subject to payroll deductions and required withholdings and net of any amounts earned by you pursuant to any employment or consulting arrangements obtained by you following such termination (other than the activities described in the last sentence of Section 3.1), continuation for twelve (12) months of the greater of (i) your base salary in effect as of such termination date or (ii) your base salary as set forth in Section 2.1. In addition you will be eligible to receive your potential annual discretionary bonus amount set forth in Section 2.2, determined as if all performance targets established by the Board have been satisfied, pro-rated for the number of months elapsed in the year in which your employment terminates. You agree to notify the Company promptly of any amount earned by you from other employment or a consulting engagement while you are receiving severance payments under this Agreement. Moreover, if you timely elect and remain eligible for continued coverage of your group health insurance under COBRA, the Company will pay your premiums for COBRA coverage for up to twelve (12) months following the termination date, provided that such payments shall cease if you obtain full-time employment, or cease to be eligible for COBRA, within such period. You agree to notify the Company promptly if you obtain full-time employment while the Company is paying your COBRA premiums under this Agreement. Upon such termination, the vesting of all compensatory equity awards held by you shall be accelerated such that the awards are fully vested and exercisable upon the termination date and all stock options shall be exercisable for the remainder of their original term, without regard to your termination of employment. Upon approval by the Board of this Agreement, any currently outstanding compensatory equity awards shall be amended to the extent necessary to provide for the foregoing accelerated vesting. Your receipt of any severance benefits under this Section 5.3 is contingent upon your signing and making effective within forty-five (45) days after the

termination date, a full, general release of all claims against the Company in a form acceptable to the Company containing the language set forth in the Release Agreement attached as Exhibit A on or after the termination date. This base salary and bonus severance will be paid in substantially equal installments over the twelve (12) month period following the termination date according to the Company's payroll procedures; provided, however, that no payments will be made to you prior to the effective date of the Release Agreement. On the first payroll pay day following the effective date of the Release Agreement, the Company will pay you the cash severance amounts you would have received on or prior to such date in a lump sum, with the balance of the cash payments being made as originally scheduled.

(b) Definition of Good Reason. For purposes of this Agreement, "Good Reason" shall mean any one of the following events that occurs without your consent: (i) the material reduction in your responsibilities, authorities or functions as an employee of the Company (but not merely a change in reporting relationships); (ii) a material reduction in your level of compensation (including base salary, fringe benefits and target bonuses under any corporate-performance based bonus or incentive programs); (iii) a relocation of your place of employment that results in an increase to your round trip commute of more than twenty (20) miles; or (iv) the Company's material breach of this Agreement. Notwithstanding the foregoing, you must provide written notice to the General Counsel of the Company within thirty (30) days after the date on which such event first occurs, and allow the Company thirty (30) days thereafter (the "Cure Period") during which the Company may attempt to rescind or correct the matter giving rise to Good Reason. If the Company does not rescind or correct the conduct giving rise to Good Reason to your reasonable satisfaction by the expiration of the Cure Period, your employment will then terminate with Good Reason as of such thirtieth day.

The following is added as Section 5.4:

5.4 Application of Section 409A. If the Company (or, if applicable, the successor entity thereto) determines that the severance payments and benefits provided for in this Agreement (the "Agreement Payments") constitute "deferred compensation" under Section 409A of the Internal Revenue Code (together, with any state law of similar effect, "Section 409A") and you are a "specified employee" of the Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) (a "Specified Employee"), then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the Agreement Payments shall be delayed as follows: on the earliest to occur of (i) the date that is six months and one day after the termination date or (ii) the date of your death (such earliest date, the "Delayed Initial Payment Date"), the Company (or the successor entity thereto, as applicable) shall (A) pay to you a lump sum amount equal to the sum of the Agreement Payments that you would otherwise have received through the Delayed Initial Payment Date if the commencement of the payment of the Agreement Payments had not been delayed pursuant to this Section 6.5 and (B) commence paying the balance of the Agreement Payments in accordance with the applicable payment schedules set forth in this Agreement. For the avoidance of doubt, it is intended that (1) each installment of the Agreement Payments provided in this Agreement is a separate "payment" for purposes of Section 409A, (2) all Agreement Payments satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under of Treasury Regulation 1.409A-1(b)(4) and 1.409A-l(b)(9)(iii), and (3) the Agreement Payments consisting of COBRA premiums also satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation 1.409A-l(b)(9)(v).

Section 6.2 is amended and restated as follows:

6.2 Stock Awards. At the closing of a Change in Control, your outstanding compensatory equity awards shall become vested and exercisable with respect to fifty percent (50%) of your then-unvested shares of the Company's common stock subject thereto. In addition, in the event that within twelve (12) months following a Change in Control, the Company terminates your employment without Cause (as defined above) and other than as a result of your death or disability, or you resign for Good Reason (as defined above) (a "Change in Control Termination"), any remaining unvested portion of all compensatory equity awards held by you shall have the vesting accelerated such that all awards are fully vested and exercisable as of the date of the Change in Control Termination (the "Acceleration"). As a precondition of receiving the Acceleration, you must first sign and make effective on or after the termination date a full, general release of claims in favor of the Company within forty-five (45) days after the termination date in a form acceptable to the Company containing the language set forth in the Release Agreement attached hereto as Exhibit A.

Section 6.3 is amended and restated as follows:

6.3 Parachute Payments After the Listing Date.

(a) After the Listing Date (as defined below), if any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to you or for your benefit, whether under this Agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") (together with any interest or penalties imposed with respect to such excise tax, the "Excise Tax"), then you will be entitled to receive from the Company an additional payment (the "Gross-Up Payment") in an amount equal to (i) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the Payment (the "First Reimbursement Payment"), (ii) all federal, state and local income taxes and employment taxes on the First Reimbursement Payment, and (iii) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the First Reimbursement Payment. For purposes of this provision, the term "Listing Date" means the date of the sale of the Company's securities to the general public pursuant to an initial public offering under a Registration Statement filed with and declared effective by the U.S. Securities and Exchange Commission under the Securities Act of 1933, as amended.

(b) All determinations required to be made under this Section 7.3 including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the nationally recognized certified public tax accounting firm used by the Company or, if such firm declines to serve, such other nationally recognized certified public tax accounting firm as you may designate (the "Accounting Firm"). The Accounting Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good-faith interpretations concerning the application of Sections 280G and 4999 of the Code. The

Accounting Firm shall provide its calculations, together with detailed supporting documentation, to the Company and you within thirty (30) calendar days after the date on which your right to a Payment is triggered (if requested at that time by the Company or you) and/or at such other times as requested by the Company or you. If the Accounting Firm determines that no Excise Tax is payable with respect to a Payment, it shall furnish the Company and you with an opinion reasonably acceptable to you that no Excise Tax will be imposed with respect to such Payment. If the Accounting Firm determines that an Excise Tax is payable with respect to a Payment, it shall furnish to the Company and you an opinion reasonably acceptable to you of the amount of Excise Tax payable with respect to the Payments and the amount of Gross-Up Payment due to you. The Company will pay the Gross-Up Payment to you within thirty (30) days of the date the Company receives the Accounting Firm's opinion, but in no event later than the end of your tax year following your tax year in which you pay the Excise Tax. The Company shall bear all reasonable expenses with respect to the determinations by the Accounting Firm required to be made hereunder. Any determination by the Accounting Firm shall be binding upon the Company and you.

To indicate your agreement to this Amendment, please sign and date this Amendment in the space provided below and return it to me.

Sincerely,

Metabolex, Inc.

By: 

Ed Penhoet
Chairman of the Board

Accepted and agreed:

 ;

HAROLD VAN WART

October 15, 2007
DATE

EXHIBIT B

RELEASE AGREEMENT

(To be signed on or after the Separation Date)

I understand that my employment with Metabolex, Inc. (the "Company") terminated effective _____, _____ (the "Separation Date"). The Company has agreed that if I choose to sign this Release Agreement ("Release"), the Company will provide certain severance benefits (minus the required withholdings and deductions) pursuant to the terms of the employment agreement dated _____ (as amended, the "Agreement"). I understand that I am not entitled to such severance benefits unless I sign this Release, and it becomes fully effective.

I understand that this Release, together with the Agreement, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated therein.

I hereby confirm my obligations under my Employee Agreement on Confidential Information and Inventions with the Company.

I hereby represent that I have been paid all compensation owed and for all hours worked, have received all the leave and leave benefits and protections for which I am eligible, pursuant to the Family and Medical Leave Act or otherwise, and have not suffered any on-the-job injury for which I have not already filed a claim.

In exchange for the consideration provided to me by this Release that I am not otherwise entitled to receive, I hereby generally and completely release Company and its current and former directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release. This general release includes, but is not limited to: (a) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (b) all claims related to my compensation or benefits from the Company, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) *("**ADEA**"),* and the California Fair Employment and Housing Act (as amended). Nothing in this Release shall prevent me from challenging this Release by filing, cooperating with, or participating in any proceeding before the

Equal Employment Opportunity Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that I hereby acknowledge and agree that I shall not recover any monetary benefits in connection with any challenge to my Release.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA *("**ADEA Waiver**").* I also acknowledge that the consideration given for the ADEA Waiver is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my ADEA Waiver does not apply to any rights or claims that arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release; (c) I have twenty-one (21) days to consider this Release (although I may choose to voluntarily sign it sooner); (d) I have seven (7) days following the date I sign this Release to revoke the ADEA Waiver; and (e) the ADEA Waiver will not be effective until the date upon which the revocation period has expired unexercised, which will be the eighth day after I sign this Release.

I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."** I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims hereunder.

I acknowledge that to become effective, I must sign and return this Release to the Company so that it is received not later than twenty-one (21) days following the date it is provided to me.

I accept and agree to the terms and conditions stated above:

_____

Date

Harold Van Wart

Exhibit 10.21

June 5, 2007

Charles A. McWherter
1320 Christmas Valley Drive
Chesterfield, MO 63005

Dear Chuck:

Metabolex, Inc. (the "Company") is pleased to offer you employment as Senior Vice President, Research and Preclinical Development on the following terms:

1. Position, Duties and Responsibilities. Subject to the terms set forth herein, the Company agrees to employ you in the position of Senior Vice President, Research and Preclinical Development and you hereby accept such employment effective as of a mutually acceptable start date. As Senior Vice President, Research and Preclinical Development, you will report to the Company's Chief Executive Officer ("CEO"), and will perform the duties customarily associated with this position and such other duties as are assigned to you by the CEO. You shall devote your full business time and attention to the business affairs of the Company, except for reasonable vacations and periods of illness or incapacity permitted by the Company's general employment policies. The employment relationship between you and the Company shall also be governed by the general employment policies and practices of the Company, including those relating to protection of confidential information and assignment of inventions, except that when the terms of this letter agreement differ from or are in conflict with the Company's general employment policies or practices, this letter agreement shall control.

2. Compensation and Employee Benefits.

2.1 Base Salary. Your base salary will be two hundred ninety thousand dollars ($290,000) on an annualized basis, less payroll deductions and required withholdings, paid according to the Company's regular payroll schedule and procedures. Your base salary may be modified by the Company in its sole discretion. For your initial year of employment, any merit increase you receive will not be *pro rated* for the time period for which you were employed by the Company during the year.

2.2 Hiring Bonus. On the first regular pay date after the date upon which you commence your employment (your "Employment Commencement Date") the Company will pay to you a hiring bonus (the "Hiring Bonus") in the amount of fifty thousand dollars ($50,000), less payroll deductions and required withholdings. The Hiring Bonus shall be repaid to the Company, in full, if within one (1) year of your Employment Commencement Date your employment with the Company (and its successors) is terminated either (i) by you or (ii) by the Company for Cause (as defined in Section 7.2(b)).

2.3 Relocation Bonus. On the first regular pay date after your Employment Commencement Date the Company will pay to you a relocation bonus (the "Relocation Bonus") in the amount of forty thousand five hundred dollars ($40,500), less payroll deductions and required withholdings. The Relocation Bonus shall be repaid to the Company, in full, if within one (1) year of your Employment Commencement Date your employment with the Company (and its successors) is terminated either (i) by you or (ii) by the Company for Cause (as defined in Section 7.2(b)). Attached as Exhibit A is a copy of the Company's relocation expense policy.

2.4 Discretionary Bonus. You will be eligible to participate in the Company's annual bonus program in recognition of your performance and achievement of agreed upon goals. Your target annual bonus will be equal to twenty-five percent (25%) of your annual base salary. Your actual bonus, if any, will be determined by the Company's Board of Directors ("Board"), or a subcommittee thereof, in its sole discretion, based upon its evaluation of your performance, the Company's performance, and any other considerations it deems relevant. For your initial year of employment, your bonus will be *pro rated* for the number of months elapsed in the bonus period for which you were employed by the Company. You must be employed through the bonus payment date in order to be eligible for any such bonus. Any bonus payment shall be subject to payroll deductions and required withholdings.

2.5 Employee Benefits. You shall be entitled to all employee benefits, including vacation accrual of twenty (20) days per year and health and disability benefits, for which you are eligible under the terms and conditions of the standard Company benefit plans, which may be in effect from time to time and provided by the Company to its senior executive-level employees generally. Currently, such benefits include eight paid holidays and four floating holidays per year, as well as paid sick leave of up to ten days per year. Notwithstanding the foregoing, the Company reserves the right to adopt, amend or discontinue any employee benefit plan or policy, including changes required by applicable law.

2.6 Stock Options. Subject to the approval of the Board you will be granted a stock option to purchase four hundred fifty thousand (450,000) shares of Company common stock, at a per share exercise price equal to the per share fair market value of the common stock on the date of grant, as determined by the Board, pursuant to the Company's equity incentive plan. Option grants are made at regular Board meetings held approximately once each calendar quarter. Your option grant will be considered at the first regular Board meeting following your employment commencement date. The term of such stock option will be ten (10) years, subject to earlier expiration in the event of the termination of your service with the Company. Such stock option will be immediately exercisable, if you elect to do so, but the purchased shares shall be subject to repurchase by the Company in the event that your service with the Company terminates before you become vested in the shares, at the lower of (1) the original exercise price or (2) the then-fair market value of the Company's common stock. You will be vested in, and the Company's repurchase right, if applicable, shall not apply as to, twenty-five percent (25%) of the shares covered by the option on the first year anniversary of your Employment

Commencement Date and the remaining seventy-five percent (75%) of the shares covered by the option will vest in thirty-six (36) equal monthly installments with the first monthly installment vesting one month following the first year anniversary of your Employment Commencement Date, as long as you remain in continuous service with the Company. Notwithstanding the foregoing, a portion of the shares subject to your outstanding stock options may vest on an accelerated basis pursuant to Sections 7 or 8. Except as provided herein, such stock options will be subject to the provisions of the equity incentive plan of the Company under which the options are granted and the applicable form of stock option agreement thereunder (the "Plan Documents").

3. Other Activities During Employment.

3.1 Activities. Except with the prior written consent of the CEO, you will not, during your employment with the Company, undertake or engage in any other employment, occupation or business enterprise, other than ones in which you are a passive investor. You may engage in civic and not-for-profit activities so long as such activities do not interfere with the performance of your job duties.

3.2 Investments and Interests. Except as permitted by the first sentence of Section 3.1 and by Section 3.3, during your employment you agree not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known by you to be adverse or antagonistic to the Company, or its business or prospects, financial or otherwise.

3.3 Noncompetition. During the term of your employment by the Company, except on behalf of the Company, you will not directly or indirectly, whether as an officer, director, stockholder, partner, proprietor, associate, representative, consultant, or in any capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever that competes with the Company anywhere in the world, in any line of business engaged in (or planned to be engaged in) by the Company; *provided, however,* that anything above to the contrary notwithstanding, you may own, as a passive investor, securities of any entity, so long as your direct holdings in any one such corporation do not in the aggregate constitute more than one percent (1%) of the voting stock of such corporation.

4. Company Policies; Confidential Information and Inventions Agreement. You acknowledge your obligations under the Company's Employee Agreement on Confidential Information and Inventions, a copy of which is attached as Exhibit B. You further acknowledge your obligation to abide by the Company's rules, policies and procedures.

5. Immigration. The Immigration Reform and Control Act of 1986 requires that every person present proof to the Company of their identity and eligibility and/or authorization to accept employment with the Company. In order to comply with this law, and before you can

become a Company employee, you must provide appropriate documentation to prove both your identity and legal eligibility to be employed at the Company. **Please be sure to bring this documentation with you to your employee orientation. If you are working in this country on a VISA, you will need to provide copies of this documentation at your employee orientation. Failure to do so may result in over withholding of taxes.**

6. Your Representations and Warranties.

6.1 No Breach of Contract. You represent and warrant that the execution and delivery of this letter agreement by you and the performance of your obligations hereunder will not conflict with or breach any agreement, order or decree to which you are a party or by which you are bound. You warrant that you are subject to no employment agreement or restrictive covenant preventing full performance of your duties under this letter agreement.

6.2 No Conflict of Interest. You warrant that you are not, to the best of your knowledge and belief, involved in any situation that might create, or appear to create, a conflict of interest with your loyalty to or duties for the Company.

6.3 Notification of Materials or Documents from Other Employers. You further warrant that you have not brought and will not bring to the Company or use in the performance of your responsibilities at the Company any materials or documents of a former employer that are not generally available to the public, unless you have obtained express written authorization from the former employer for their possession and use.

6.4 Notification of Other Post-Employment Obligations. You also understand that, as part of your employment with the Company, you are not to breach any obligation of confidentiality that you have to former employers, and you agree to honor all such obligations to former employers during your employment with the Company.

7. Termination of Employment.

7.1 At-Will Employment Relationship. Your employment with the Company shall be at-will. Either you or the Company may terminate the employment relationship at any time, with or without Cause and with or without advance notice.

7.2 Termination for Cause.

(a) If the Company terminates your employment at any time for Cause (as defined below), your salary shall cease on the date of termination and you shall not be entitled to severance pay, COBRA premium payments, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required in such event by applicable law or the terms of applicable benefit plans. The continued vesting of any stock options held by you shall cease on your employment termination date, and your right to exercise vested option shares shall be governed by the Plan Documents.

(b) Definition of Cause. For purposes of this agreement, "Cause" means the occurrence of any one or more of the following: (i) your conviction of, or plea of no contest with respect to, any felony or any crime involving fraud, dishonesty or moral turpitude; (ii) your participation in a fraud or act of dishonesty that results in material harm to the Company; (iii) your intentional material violation of any contract or agreement between you and the Company, including but not limited to this letter agreement or your Employee Agreement on Confidential Information and Inventions, or your violation of any statutory duty that you owe to the Company, but only if you do not correct such violation within thirty (30) days after written notice thereof has been provided to you; or (iv) your gross negligence or willful neglect of your job duties, as determined by the Board in good faith, but only if you do not correct such violation within thirty (30) days after written notice thereof has been provided to you.

7.3 Severance Benefits For Termination Without Cause or Resignation for Good Reason.

(a) If the Company terminates your employment without Cause or you resign your employment for Good Reason (defined below), you will be eligible to receive the severance benefits described in this Section 7.3. You will be eligible to receive, subject to payroll deductions and required withholdings and net of any amounts earned by you pursuant to any employment or consulting arrangements obtained by you following such termination (other than the activities described in Section 3.1), continuation for twelve (12) months of the greater of (i) your base salary in effect as of such termination date or (ii) your base salary as set forth in Section 2.1. In addition you will be eligible to receive your potential annual discretionary bonus amount set forth in Section 2.4, determined as if all performance targets established by the Board have been satisfied, pro-rated for the number of months elapsed in the year in which your employment terminates. This base salary and bonus severance will be paid according to the Company's payroll procedures during the twelve (12) month period following the termination date. You agree to notify the Company promptly of any amount earned by you from other employment or a consulting engagement while you are receiving severance payments under this letter agreement. Moreover, if you timely elect and remain eligible for continued coverage of your group health insurance under COBRA, the Company will pay your premiums for COBRA coverage for up to twelve (12) months following the termination date, provided that such payments shall cease if you obtain full-time employment within such period. You agree to notify the Company promptly if you become eligible for health care benefits while the Company is paying your COBRA premiums under this letter agreement. Upon termination without Cause or for Good Reason, the vesting of all stock options held by you shall be accelerated such that the options are fully vested and exercisable as of the termination date. Your receipt of any severance benefits under this Section 7.3 is contingent upon your signing and making effective a full, general release of all claims against the Company in a form acceptable to the Company containing the language set forth in the Release Agreement attached as Exhibit C on or after the termination date.

(b) Definition of Good Reason. For purposes of this letter agreement, "Good Reason" shall mean any one of the following events that occurs without your consent: (i) the material reduction in your responsibilities, authorities or functions as an employee of the Company (but not merely a change in reporting relationships); (ii) a reduction in your level of compensation (including base salary and target bonuses under any corporate-performance based bonus or incentive programs), or in fringe benefits, other than changes applicable to all employees of the Company; (iii) a relocation of your place of employment by more than twenty (20) miles; or (iv) the Company's material breach of this letter agreement. Notwithstanding the foregoing, within thirty (30) days after the occurrence of an event or conduct giving rise to Good Reason, you must provide the Company with thirty (30) days' advance written notice of termination, detailing the Company's conduct giving rise to Good Reason (the "Cure Period") and during the Cure Period, the Company may attempt to rescind or correct the matter giving rise to Good Reason. If the Company does not rescind or correct the conduct giving rise to Good Reason to your reasonable satisfaction by the expiration of the Cure Period, your employment will then terminate with Good Reason.

7.4 Voluntary or Mutual Termination.

(a) You may voluntarily terminate your employment with the Company at any time without Good Reason. If you terminate without Good Reason, your salary shall cease on the date of termination and you shall not be entitled to severance pay, COBRA premium payments, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required in such event by applicable law or the terms of applicable benefit plans. The continued vesting of any stock options held by you shall cease on the termination date, and your right to exercise vested option shares shall be governed by the Plan Documents.

(b) If at any time during the course of this letter agreement the parties by mutual consent decide to terminate this letter agreement, you and the Company shall do so by separate agreement setting forth the terms and conditions of such termination.

7.5 Application of Section 409A. In the event that any benefit provided herein shall fail to satisfy the distribution requirement of Section 409A(a)(2)(A) of the United States Internal Revenue Code (the "Code") as a result of the application of Section 409A(a)(2)(B)(i) of the Code, the payment of such benefit shall be delayed to the minimum extent necessary so that such benefits are not subject to the provisions of Section 409A(a)(l) of the Code. The Board may attach conditions to or adjust the amounts paid pursuant to this Section 7.5 to preserve, as closely as possible, the economic consequences that would have applied in the absence of this Section 7.5; *provided, however,* that no such condition or adjustment shall result in the payments being subject to Section 409A(a)(l) of the Code.

8. Change in Control.

8.1 Definitions.

(a) "Change in Control" shall mean an Ownership Change Event (as defined below) or a series of related Ownership Change Events (collectively, a "Transaction") wherein the stockholders of the Company immediately before the Transaction do not retain direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding securities of the Company or, in the case of a Transaction described in Section 8.1(b)(iii), the corporation or other business entity to which the assets of the Company were transferred (the "Transferee"), as the case may be. For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities that own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities.

(b) An "Ownership Change Event" shall be deemed to have occurred if any of the following occurs with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange or transfer of all or substantially all of the assets of the Company.

8.2 Stock Options. At the closing of a Change in Control, your outstanding stock options shall become vested and exercisable with respect to fifty percent (50%) of your then-unvested shares of the Company's common stock subject thereto. In addition, in the event that within twelve (12) months following a Change in Control, the Company terminates your employment without Cause or you resign for Good Reason (a "Change in Control Termination"), any remaining unvested portion of all stock options held by you shall have the vesting accelerated such that all options are fully vested and exercisable as of the date of the Change in Control Termination (the "Acceleration"). As a precondition of receiving the Acceleration, you must first sign and make effective on or after the termination date a full, general release of claims against the Company in a form acceptable to the Company containing the language set forth in the Release Agreement attached as Exhibit C.

8.3 Parachute Payments After the Listing Date.

(a) After the Listing Date (as defined below), if any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to or for your benefit, whether under this letter agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") (together with any interest or penalties imposed with respect to such excise tax, the "Excise Tax"), then you will be entitled to receive from the Company an additional payment (the "Gross-Up Payment") in an amount equal to (i) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the Payment (the "First Reimbursement Payment"); (ii) all federal, state and local income taxes and employment taxes on the First Reimbursement Payment; and (iii) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the First Reimbursement Payment. For purposes of this provision, the term "Listing Date" means the date of the sale of the Company's securities to the general public pursuant to an initial public offering under a Registration Statement filed with and declared effective by the U.S. Securities and Exchange Commission under the Securities Act of 1933, as amended.

(b) All determinations required to be made under this Section 8.3 including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the nationally recognized certified public accounting firm used by the Company immediately prior to the effective date of the Change in Control or, if such firm declines to serve, such other nationally recognized certified public accounting firm as you may designate (the "Accounting Firm"). Any determination by the Accounting Firm shall be binding upon the Company and you. The Accounting Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good-faith interpretations concerning the application of Sections 280G and 4999 of the Code.

9. General Provisions.

9.1 Severability. Whenever possible, each provision of this letter agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced in such jurisdiction so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

9.2 Notices. Any notices provided hereunder must be in writing and shall be deemed effective upon the earlier of personal delivery (including personal delivery by fax) or the next day after sending by overnight courier, to the Company at its primary office location and to you at your address as listed on the Company payroll.

9.3 Waiver. If either party should waive any breach of any provisions of this letter agreement, you or the Company shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this letter agreement.

9.4 Entire Agreement. This letter agreement, together with its exhibits, constitutes the entire and exclusive agreement between you and the Company, and it supersedes any prior agreement, promise, representation, or statement, written or otherwise, between you and the Company with regard to this subject matter. It is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in a writing signed by you and a duly authorized officer of the Company.

9.5 Counterparts. This letter agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same letter agreement.

9.6 Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

9.7 Successors and Assigns. This letter agreement is intended to bind and inure to the benefit of and be enforceable by you, the Company and your and its respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your duties hereunder and you may not assign any of your rights hereunder without the written consent of the Company.

9.8 Governing Law. All questions concerning the construction, validity and interpretation of this letter agreement will be governed by the law of the State of California as applied to contracts made and to be performed entirely within California.

9.9 Attorneys' Fees. If either party hereto brings any action to enforce your or its rights hereunder, the prevailing party in such action shall be entitled to be paid by the other party such prevailing party's reasonable attorneys' fees and costs incurred in such action.

Enclosed is your Employee Agreement on Confidential Information and Inventions, which you should read carefully.

METABOLEX

To indicate your acceptance of the Company's offer, please sign this letter agreement in the space provided below and return it to me along with the signed Employee Agreement on Confidential Information and Inventions, in the stamped self-addressed envelope, which is enclosed. This offer shall expire on June 15, 2007 if not accepted prior to such date. If you have any questions regarding this letter agreement, feel free to contact me.

Sincerely,

METABOLEX, INC.

By: _____

Diana M. Petty
VP of HR & Administration

Accepted and agreed:

June 14, 2007

Charles A. McWherter

EXHIBIT A – Relocation Expense Policy for New and Transferred Employees

EXHIBIT B – Employee Agreement on Confidential Information and Inventions

EXHIBIT C – Release Agreement

October 10, 2007

Charles A. McWherter
c/o Metabolex, Inc.
3876 Bay Center Place
Hayward, CA 94545

Dear Chuck:

This letter agreement (the "Amendment") amends the terms of your employment agreement dated June 5, 2007 (the "Original Agreement") with Metabolex, Inc. (the "Company") in order to address the requirements of Section 409A of the Internal Revenue Code, as amended (the "Code"). The Original Agreement is hereby amended only as expressly set forth herein. All other terms and conditions of the Original Agreement continue in full force and effect.

Section 7.3 is amended and restated as follows:

7.3 Severance Benefits For Termination Without Cause or Resignation for Good Reason.

(a) If the Company terminates your employment without Cause and other than as a result of your death or disability, or if you resign your employment for Good Reason (defined below), you will be eligible to receive the severance benefits described in this Section 7.3. You will be eligible to receive, subject to payroll deductions and required withholdings and net of any amounts earned by you pursuant to any employment or consulting arrangements obtained by you following such termination (other than the activities described in the last sentence of Section 3.1), continuation for twelve (12) months of the greater of (i) your base salary in effect as of such termination date or (ii) your base salary as set forth in Section 2.1. In addition you will be eligible to receive your potential annual discretionary bonus amount set forth in Section 2.4, determined as if all performance targets established by the Board have been satisfied, pro-rated for the number of months elapsed in the year in which your employment terminates. You agree to notify the Company promptly of any amount earned by you from other employment or a consulting engagement while you are receiving severance payments under this letter agreement. Moreover, if you timely elect and remain eligible for continued coverage of your group health insurance under COBRA, the Company will pay your premiums for COBRA coverage for up to twelve (12) months following the termination date, provided that such payments shall cease if you obtain full-time employment, or cease to be eligible for COBRA, within such period. You agree to notify the Company promptly if you obtain full-time employment while the Company is paying your COBRA premiums under this letter agreement. Upon such termination, the vesting of all compensatory equity awards held by you shall be accelerated such that the awards are fully vested and exercisable upon the termination date. Upon approval by the Board of this letter agreement, any currently outstanding compensatory equity awards shall be amended to the extent necessary to provide for the foregoing accelerated vesting. Your receipt of any severance benefits under this Section 7.3 is contingent upon your signing and making effective within forty-five (45) days after the termination date, a full, general release of all claims against the Company in a form acceptable to the Company containing the

language set forth in the Release Agreement attached as Exhibit C on or after the termination date. This base salary and bonus severance will be paid in substantially equal installments over the twelve (12) month period following the termination date according to the Company's payroll procedures; provided, however, that no payments will be made to you prior to the effective date of the Release Agreement. On the first payroll pay day following the effective date of the Release Agreement, the Company will pay you the cash severance amounts you would have received on or prior to such date in a lump sum, with the balance of the cash payments being made as originally scheduled.

(b) Definition of Good Reason. For purposes of this letter agreement, "Good Reason" shall mean any one of the following events that occurs without your consent: (i) the material reduction in your responsibilities, authorities or functions as an employee of the Company (but not merely a change in reporting relationships); (ii) a material reduction in your level of compensation (including base salary, fringe benefits and target bonuses under any corporate-performance based bonus or incentive programs); (iii) a relocation of your place of employment that results in an increase to your round trip commute of more than twenty (20) miles; or (iv) the Company's material breach of this letter agreement. Notwithstanding the foregoing, you must provide written notice to the General Counsel of the Company within thirty (30) days after the date on which such event first occurs, and allow the Company thirty (30) days thereafter (the "Cure Period") during which the Company may attempt to rescind or correct the matter giving rise to Good Reason. If the Company does not rescind or correct the conduct giving rise to Good Reason to your reasonable satisfaction by the expiration of the Cure Period, your employment will then terminate with Good Reason as of such thirtieth day.

Section 7.4 is amended and restated as follows:

7.4 Voluntary or Mutual Termination; Death; Disability.

(a) You may voluntarily terminate your employment with the Company at any time without Good Reason. If you terminate without Good Reason or if your employment terminates as a result of your death or disability, your salary shall cease on the date of termination and you shall not be entitled to severance, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required in such event by applicable law or the terms of applicable benefit plans. The continued vesting of any compensatory equity awards held by you shall cease on the termination date, and your right to exercise vested awards (or be issued shares under such vested awards) shall be governed by the terms of the Company's applicable compensatory equity plans and the corresponding award agreements.

(b) If at any time during the course of this letter agreement the parties by mutual consent decide to terminate this letter agreement, you and the Company shall do so by separate agreement setting forth the terms and conditions of such termination.

Section 7.5 is amended and restated as follows:

7.5 Application of Section 409A. If the Company (or, if applicable, the successor entity thereto) determines that the severance payments and benefits provided for in this letter agreement (the "Agreement Payments") constitute "deferred compensation" under Section 409A of the Internal Revenue Code (together, with any state law of similar effect, "Section 409A") and you are a "specified employee" of the Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) (a "Specified Employee"), then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the Agreement Payments shall be delayed as follows: on the earliest to occur of (i) the date that is six months and one day after the termination date or (ii) the date of your death (such earliest date, the "Delayed Initial Payment Date"), the Company (or the successor entity thereto, as applicable) shall (A) pay to you a lump sum amount equal to the sum of the Agreement Payments that you would otherwise have received through the Delayed Initial Payment Date if the commencement of the payment of the Agreement Payments had not been delayed pursuant to this Section 7.5 and (B) commence paying the balance of the Agreement Payments in accordance with the applicable payment schedules set forth in this letter agreement. For the avoidance of doubt, it is intended that (1) each installment of the Agreement Payments provided in this letter agreement is a separate "payment" for purposes of Section 409A, (2) all Agreement Payments satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under of Treasury Regulation 1.409A-1(b)(4) and 1.409A-l(b)(9)(iii), and (3) the Agreement Payments consisting of COBRA premiums also satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation 1.409A-l(b)(9)(v).

Section 8.2 is amended and restated as follows:

8.2 Stock Awards. At the closing of a Change in Control, your outstanding compensatory equity awards shall become vested and exercisable with respect to fifty percent (50%) of your then-unvested shares of the Company's common stock subject thereto. In addition, in the event that within twelve (12) months following a Change in Control, the Company terminates your employment without Cause (as defined above) and other than as a result of your death or disability, or you resign for Good Reason (as defined above) (a "Change in Control Termination"), any remaining unvested portion of all compensatory equity awards held by you shall have the vesting accelerated such that all awards are fully vested and exercisable as of the date of the Change in Control Termination (the "Acceleration"). As a precondition of receiving the Acceleration, you must first sign and make effective on or after the termination date a full, general release of claims in favor of the Company within forty-five (45) days after the termination date in a form acceptable to the Company containing the language set forth in the Release Agreement attached hereto as Exhibit C.

Section 8.3 is amended and restated as follows:

8.3 Parachute Payments After the Listing Date.

(a) After the Listing Date (as defined below), if any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to you or for your benefit, whether under this letter agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") (together with any interest or penalties imposed with respect to such excise tax, the "Excise Tax"), then you will be entitled to receive from the Company an

additional payment (the "Gross-Up Payment") in an amount equal to (i) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the Payment (the "First Reimbursement Payment"), (ii) all federal, state and local income taxes and employment taxes on the First Reimbursement Payment, and (iii) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the First Reimbursement Payment. For purposes of this provision, the term "Listing Date" means the date of the sale of the Company's securities to the general public pursuant to an initial public offering under a Registration Statement filed with and declared effective by the U.S. Securities and Exchange Commission under the Securities Act of 1933, as amended.

(b) All determinations required to be made under this Section 8.3 including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the nationally recognized certified public tax accounting firm used by the Company or, if such firm declines to serve, such other nationally recognized certified public tax accounting firm as you may designate (the "Accounting Firm"). The Accounting Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good-faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Accounting Firm shall provide its calculations, together with detailed supporting documentation, to the Company and you within thirty (30) calendar days after the date on which your right to a Payment is triggered (if requested at that time by the Company or you) and/or at such other times as requested by the Company or you. If the Accounting Firm determines that no Excise Tax is payable with respect to a Payment, it shall furnish the Company and you with an opinion reasonably acceptable to you that no Excise Tax will be imposed with respect to such Payment. If the Accounting Firm determines that an Excise Tax is payable with respect to a Payment, it shall furnish to the Company and you an opinion reasonably acceptable to you of the amount of Excise Tax payable with respect to the Payments and the amount of Gross-Up Payment due to you. The Company will pay the Gross-Up Payment to you within thirty (30) days of the date the Company receives the Accounting Firm's opinion, but in no event later than the end of your tax year following your tax year in which you pay the Excise Tax. The Company shall bear all reasonable expenses with respect to the determinations by the Accounting Firm required to be made hereunder. Any determination by the Accounting Firm shall be binding upon the Company and you.

To indicate your agreement to this Amendment, please sign and date this Amendment in the space provided below and return it to me.

Sincerely,

Metabolex, Inc.

By: 
Harold Van Wart
Chief Executive Officer

Accepted and agreed:

CHARLES A. MCWHERTER

October 15, 2007
DATE

EXHIBIT C

RELEASE AGREEMENT

(To be signed on or after the Separation Date)

I understand that my employment with Metabolex, Inc. (the "Company") terminated effective _____, ____ (the "Separation Date"). The Company has agreed that if I choose to sign this Release Agreement ("Release"), the Company will provide certain severance benefits (minus the required withholdings and deductions) pursuant to the terms of the employment agreement dated _____ (as amended, the "letter agreement"). I understand that I am not entitled to such severance benefits unless I sign this Release, and it becomes fully effective.

I understand that this Release, together with the letter agreement, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated therein.

I hereby confirm my obligations under my Employee Agreement on Confidential Information and Inventions with the Company.

I hereby represent that I have been paid all compensation owed and for all hours worked, have received all the leave and leave benefits and protections for which I am eligible, pursuant to the Family and Medical Leave Act or otherwise, and have not suffered any on-the-job injury for which I have not already filed a claim.

In exchange for the consideration provided to me by this Release that I am not otherwise entitled to receive, I hereby generally and completely release Company and its current and former directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release. This general release includes, but is not limited to: (a) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (b) all claims related to my compensation or benefits from the Company, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ***("ADEA"),*** and the California Fair Employment and Housing Act (as amended). Nothing in this Release shall prevent me from challenging this Release by filing, cooperating with, or participating in any proceeding before the

Equal Employment Opportunity Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that I hereby acknowledge and agree that I shall not recover any monetary benefits in connection with any challenge to my Release.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA ***("ADEA Waiver").*** I also acknowledge that the consideration given for the ADEA Waiver is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my ADEA Waiver does not apply to any rights or claims that arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release; (c) I have twenty-one (21) days to consider this Release (although I may choose to voluntarily sign it sooner); (d) I have seven (7) days following the date I sign this Release to revoke the ADEA Waiver; and (e) the ADEA Waiver will not be effective until the date upon which the revocation period has expired unexercised, which will be the eighth day after I sign this Release.

I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."** I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims hereunder.

I acknowledge that to become effective, I must sign and return this Release to the Company so that it is received not later than twenty-one (21) days following the date it is provided to me.

I accept and agree to the terms and conditions stated above:

_____

Date Charles A. McWherter

Exhibit 10.22

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the **"Agreement")** is made and entered into as of June 27, 2012 (the **"Effective Date")** by and between **METABOLEX, INC.**, a Delaware corporation located at 3876 Bay Center Place, Hayward, California 94545 **("Metabolex"),** and **SNPLIVE, LLC,** a company with a mailing address at 5086 Holborn Way, San Ramon, CA 94582 **("Consultant").**

IN CONSIDERATION of the mutual obligations set forth below, the parties hereby agree as follows:

1. PERFORMANCE OF SERVICES. Consultant shall provide consulting services to Metabolex (the **"Services")** in the field of fundraising and related financial services (the **"Field").** Consultant shall render the Services at such times as may be mutually agreed upon by Consultant and Metabolex and at a minimum of two days per week. Consultant shall perform the Services at Metabolex's principal place of business, another Metabolex location, or at other places upon mutual agreement of the parties. Consultant shall perform the Services in a timely and professional manner consistent with industry standards, and shall comply with all applicable laws and regulations in performing the Services.

2. COMPENSATION. Metabolex shall pay Consultant the compensation listed in **Exhibit A** for performing Services requested by Metabolex. Consultant will provide Metabolex, on a monthly basis, itemized invoices detailing the amount and type of Services provided by Consultant during the applicable month. All payments due to Consultant under this Agreement will be made by Metabolex within 30 days of receipt of a proper invoice therefor. Metabolex shall also reimburse Consultant for out-of-pocket expenses incurred by Consultant in performing the Services, provided that such expenses are supported by written receipts and are reasonable and necessary as determined by Metabolex. In no event shall Metabolex be required to reimburse Consultant with respect to general, administrative or other overhead expenses. Travel expenses must be approved by Metabolex in advance.

3. MAINTAINING CONFIDENTIAL INFORMATION

3.1 Confidential Information. During the term of this Agreement and in the course of Consultant's performance hereunder, Consultant may receive or otherwise be exposed to confidential and/or proprietary information relating to Metabolex's technology, know-how, data, inventions, developments, plans, business practices, and strategies (collectively referred to as **"Confidential Information").** Confidential Information may include, without limitation, the following: (i) business or technical information concerning research, development, commercial plans and strategies, experimental work, design details and specifications, business operations and systems, marketing techniques, marketing plans, material pricing policies, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, customers, licensees, vendors, clinical development strategies, and scientific evaluations, and (ii) any patent, patent application, trade secret, invention, idea, procedure, formulation, process, formula, chemical compound, biological material, assay, or data. Without limiting the foregoing in any way, all information disclosed by Metabolex to Consultant that is related to the Field shall be considered Confidential Information.

3.2 Non-Disclosure and Non-Use of Confidential Information. All Confidential Information is the sole and exclusive property of Metabolex. Consultant shall not reproduce any Confidential Information without the prior written consent of Metabolex, shall not use Confidential Information except in the performance of the Services, and shall not to disclose all or any part of the Confidential Information in any form to any third party. In particular, Consultant shall not file any patent application containing any claim the subject matter of which is derived from Confidential Information.

3.3 Protection of Confidential Information. Consultant shall take security precautions equal to or greater than those security precautions Consultant employs to protect Consultant's own highly confidential information, but in any event not less than reasonable security precautions, to protect from disclosure and to keep confidential the Confidential Information, including without limitation, protection of documents from theft, unauthorized duplication and discovery of contents, and restrictions on access by other persons to Confidential Information. Consultant may make a limited disclosure of such Confidential Information as Consultant may be required to disclose by law, government regulation or court order; *provided, however,* that in any such event, Consultant will give Metabolex at least 30 days advance notice so that Metabolex may seek a protective order or take other action reasonable in light of the circumstances to prevent and/or limit the scope of any such disclosure.

3.4 Exceptions to Confidential Information. Confidential Information shall not be deemed to include information that: (a) is now, or hereafter becomes, through no act or failure to act on the part of Consultant, generally known or available; (b) is known by Consultant at the time of receiving such information as evidenced by his or her written records; (c) is hereafter furnished to Consultant by a third party, as a matter of right and without restriction on disclosure; or (d) is the subject of a written permission to disclose provided by Metabolex. For clarity, it is understood that notwithstanding the fact that individual components of information are in the public domain, but a particular compilation or integration of such components is not in the public domain, the fact that such individual components are in the public domain does not relieve the Consultant of its obligations of confidentiality under this Section 3.4 with regard to the compilation or integration of such components.

3.5 Third Party Information. During the term of this Agreement, Consultant agrees to properly protect any proprietary information or trade secrets of Consultant's former or concurrent employers or companies, if any, and agrees not to bring onto the premises of Metabolex any unpublished documents or any property belonging to Consultant's former or concurrent employers or companies unless consented to in writing by those employers or companies. Consultant further recognizes that Metabolex has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on Metabolex's part to maintain the confidentiality of such information and, in some cases, to use it only for certain limited purposes. Consultant agrees, both during the term of Consultant's engagement and thereafter, to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation (except in a manner that is consistent with Metabolex's agreement with the third party) or use it for the benefit of anyone other than Metabolex or such third party (consistent with Metabolex's agreement with the third party).

3.6 Term of Confidentiality Obligations. Consultant's obligations of non-disclosure, non-use and protection of Confidential Information will survive termination of this Agreement and will be binding upon Consultant for five years after the Effective Date.

4. INVENTIONS

4.1 Disclosure of Inventions. Consultant shall promptly and fully disclose to Metabolex any and all ideas, improvements, inventions, know-how, techniques, and works of authorship learned, conceived, or developed by Consultant, either alone or jointly with others, pursuant to the performance of the Services or that result from the use of equipment or premises owned or leased by Metabolex (the **"Inventions").** Consultant agrees to keep and maintain adequate and current records (in the form of notes, sketches, drawings or in any other form that may be required by Metabolex) of all work performed relating to the Services, including all proprietary information developed relating thereto, and such records shall be available to and remain the sole property of Metabolex at all times.

4.2 Ownership of Inventions. Consultant agrees that any and all Inventions shall be the sole and exclusive property of Metabolex. Consultant hereby assigns to Metabolex all his or her right, title, and interest in and to any and all Inventions. Consultant further agrees that Metabolex is and shall be vested with all rights, title, and interest, including patent, copyright, trade secret, and trademark rights, in and to all of Consultant's Inventions under this Agreement.

4.3 Perfecting Proprietary Rights. Consultant agrees to assist Metabolex in every proper way to obtain and enforce United States and foreign proprietary rights relating to the proprietary rights (including Inventions) in any and all countries. To that end, Consultant agrees to execute, verify and deliver such documents and perform such other acts (including appearing as a witness) as Metabolex may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining, and enforcing such proprietary rights and the assignment thereof. In addition, Consultant agrees to execute, verify, and deliver assignments of such proprietary rights to Metabolex or its designee. Consultant's obligation to assist Metabolex with respect to proprietary rights in any and all countries shall continue beyond the termination of the Agreement, but Metabolex shall compensate Consultant at a reasonable rate after such termination for the time actually spent by Consultant at Metabolex's request on such assistance.

4.4 Designation of Attorney in Fact. In the event Metabolex is unable for any reason, after reasonable effort, to secure Consultant's signature on any document needed in connection with the actions specified in Section 4.3, Consultant hereby irrevocably designates and appoints Metabolex and its duly authorized officers and agents as Consultant's agent and attorney in fact to execute, verify and file, with the same legal force and effect as if executed by Consultant, any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph. Consultant hereby waives and quitclaims to Metabolex any and all claims of any nature whatsoever that Consultant now or may hereafter have for infringement of any proprietary rights assigned to Metabolex.

5. COMPLIANCE WITH LAWS AND COMPANY POLICIES

5.1 Compliance with Laws. Consultant agrees to abide by all applicable laws related to performance of Services.

5.2 Compliance with Company Policies. If, at any time, Consultant is required to work at any of Metabolex's premises or use any of its equipment, Consultant will comply with all applicable company policies, including health and safety rules, security regulations, sexual harassment, and other instructions issued by Metabolex, which will be made available to Consultant at such time.

6. OWNERSHIP; NO LICENSE. Confidential Information received by Consultant and any extracts, summaries, and abstracts thereof and any developments materially derived therefrom are and shall remain the sole property of Metabolex. Nothing contained in this Agreement, nor either party's performance under it, shall be construed as granting Consultant any rights or licenses, express or implied, to use or disclose for any purpose whatsoever any intellectual property (including but not limited to any trade secrets, know-how, trademarks, copyrights, and patents) or Confidential Information, owned or controlled or licensed by Metabolex. Consultant shall not perform any Services on time that Consultant is required to devote to any third party. Consultant shall not use the funding, resources or facilities of any third party to perform the Services and shall not perform any Services in any manner that would give any third party rights to the product of such work.

7. NO CONFLICTS. Consultant represents and warrants that it is not a party to any existing agreement that will be breached by Consultant's performance of the Services or that conflict with the terms of this Agreement.

8. TERM AND TERMINATION. This Agreement automatically terminates on September 30, 2012 unless earlier terminated as provided herein or extended upon the agreement of the parties. Either party may terminate this Agreement at any time upon 30 days' written notice. Promptly after the termination of this Agreement, Consultant shall return to Metabolex all whole and partial copies and derivatives of Confidential Information, Inventions, and other materials belonging to Metabolex that are in Consultant's possession or under Consultant's direct or indirect control. Articles 3 through 14 shall survive the termination of this Agreement.

9. ASSIGNMENT. Due to the personal nature of the Services to be rendered by Consultant hereunder, Consultant may not assign this Agreement nor subcontract any of the Services to be performed under this Agreement. Metabolex may assign all its rights and liabilities under this Agreement to any of its affiliates or to a successor to all or a substantial part of its business or assets without the consent of Consultant. Subject to the foregoing, this Agreement will inure to the benefit of and be binding upon each of the assigns and successors of the respective parties.

10. NOTICES. Any notices required or permitted under this Agreement shall be in writing and shall be delivered to the appropriate party at the address set forth herein or at such other address as the party shall specify in writing. Such notice shall be deemed given (i) upon the date of delivery when delivered personally; (ii) upon the date such notice is transmitted by facsimile when sent by facsimile, provided that such transmission is subsequently confirmed by telephone; (iii) one day after sending when sent by private courier service (such as Federal Express); or (iv) three days after the date of mailing when sent by certified or registered mail, postage prepaid.

11. INDEPENDENT CONTRACTOR; CONSULTANT PERSONNEL

11.1 INDEPENDENT CONTRACTOR. It is understood and agreed that Consultant is an independent contractor and not an agent or employee of Metabolex, and is not authorized to act on behalf of Metabolex. Consultant agrees not to hold herself out as, or give any person any reason to believe that he or she is an employee, agent, joint-venture partner, or other partner of Metabolex.

11.2. Consultant Personnel. Consultant will not be eligible for any employee benefits from Metabolex, nor will Metabolex make deductions from any amounts payable to Consultant for taxes. All payroll and employment taxes and insurance, and benefits shall be the sole responsibility of Consultant. Consultant further agrees to maintain workers' compensation insurance in the amount required by the laws of the state in which Consultant's employees performing the Services are located. Consultant shall provide Metabolex with a completed IRS Form W-9, including his or her United States Tax Identification Number (TIN) upon execution of this Agreement. Metabolex shall provide Consultant with an Internal Revenue Service (IRS) Form 1099 in connection with the performance of the Services.

12. REMEDIES. Consultant hereby acknowledges and agrees that in the event of any breach of Articles 3 or 4 of this Agreement by Consultant, including, without limitation, the actual or threatened disclosure of Confidential Information or Inventions without the prior express written consent of Metabolex, Metabolex will suffer an irreparable injury, such that no remedy at law will afford it adequate protection against, or appropriate compensation for, such injury. Accordingly, Consultant hereby agrees that Metabolex shall be entitled to obtain equitable and such other further relief as may be granted by a court of competent jurisdiction for such breaches, without the requirement of posting bond or other similar measures.

13. REPRESENTATION OF NON-DISBARMENT. Consultant warrants and represents that he or she has never been (a) debarred or convicted of a crime for which a person can be debarred under Section 306 of the United States Food, Drug and Cosmetic Act of 1938, 21 USC § 321 (the **"FDCA"**) and/or any corresponding foreign laws or regulations, or (b) threatened to be debarred or indicted for a crime or otherwise engaged in conduct for which a person can be debarred under Section 306 of FDCA and/or any corresponding foreign laws or regulations, and Consultant agrees to promptly notify Metabolex in the event of such debarment, conviction, threat or indictment occurring during the term of this Agreement and for three years following termination of this Agreement.

14. MISCELLANEOUS

14.1. ADVICE OF COUNSEL. Each party represents that it has voluntarily executed this Agreement having read and fully understood it, and after having the opportunity to freely consult with counsel or other advisor(s) of each party's choice, and each acknowledges and agrees that this Agreement shall not be deemed to have been drafted by one party or the other and will be construed accordingly.

14.2. SEVERABILITY. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

14.3. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Copies of original signature pages sent by facsimile or pdf have the same effect as signature pages containing original signatures.

14.4. GOVERNING LAW. This Agreement is governed by the laws of the State of California without giving effect to any choice of law principles that would require the application of the laws of a different jurisdiction. Any claim or controversy arising out of or related to this Agreement or any breach hereof shall be submitted to a court of competent jurisdiction in or covering the County of Alameda, CA, and each party hereby consents to the exclusive jurisdiction and exclusive venue of such courts.

14.5. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement and understanding between the parties as to its subject matter, and supersedes and cancels all prior and contemporaneous representations, understandings, agreements and discussions between the parties relating to the subject matter of this Agreement. Each party acknowledges that in agreeing to enter into this Agreement, it has not relied on any representation, warranty or other assurance save as expressly set out in this Agreement and (except in the case of fraud) neither party shall have any remedy against the other in the event that any such representation, warranty or assurance is found to be untrue.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

METABOLEX, INC.

By: Harold Van Wart
Name:
Title:

SNPLIVE, LLC

By:
Name: SUJAL SHAH
Title: President

FEIN or **SS#**: 45- - 4928818

Exhibit A
Compensation Formula

1. Consultant shall be paid at a rate of 200 dollars per hour ("USD Compensation"); and
2. Consultant agrees that Metabolex, at Metabolex's sole discretion, may exchange up to 50 percent of consultant's total USD Compensation for Metabolex common stock options valued at the price set at the next financing. If a change of control transaction occurs prior to the next financing or if Metabolex chooses not to complete a financing then Consultant shall be paid 100 percent of Consultant's total compensation in USD.

FIRST AMENDMENT TO CONSULTING AGREEMENT

This First Amendment **("First Amendment")** to the Consulting Agreement is entered into on September 26, 2012 **("First Amendment Effective Date")** by Metabolex, Inc., a Delaware corporation located at 3876 Bay Center Place, Hayward, California 94545 **("Metabolex"),** and **SNPLive, LLC,** a company with a mailing address at 5086 Holborn Way, San Ramon, CA 94582 **("Consultant").**

BACKGROUND

Metabolex and Consultant entered into the Consulting Agreement on June 27, 2012, which automatically terminates on September 30, 2012. Metabolex wishes to continue working with Consultant and Consultant wishes to continue providing Services to Metabolex under the terms of the Consulting Agreement and this First Amendment.

Accordingly, Metabolex and Consultant agree as follows:

AMENDMENT

1. **Term and Termination.** The first sentence of Section 8 of the Consulting Agreement is hereby amended by replacing "September 30, 2012" with "December 31, 2012."

EXCEPT AS MODIFIED BY THIS FIRST AMENDMENT, all terms of the Consulting Agreement remain unchanged, in full force and effect, and binding upon the parties hereto.

This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument. Facsimile and PDF signatures have the same effect as original signatures.

The parties are signing this First Amendment on the First Amendment Effective Date.

Metabolex, Inc.

By:
Name: Charles A. McWherter
Title: SVP, Research & Preclinical Development

SNPLive, LLC

By:
Name: Sujal Shah
Title: President

SECOND AMENDMENT TO CONSULTING AGREEMENT

This Second Amendment to the Consulting Agreement **("Second Amendment")** is entered into on December 31, 2012 **("Second Amendment Effective Date")** by Metabolex, Inc., a Delaware corporation located at 3876 Bay Center Place, Hayward, California 94545 **("Metabolex"),** and **SNPLive, LLC,** a company with a mailing address at 5086 Holborn Way, San Ramon, CA 94582 **("Consultant").**

BACKGROUND

Metabolex and Consultant entered into the Consulting Agreement on June 27, 2012, which automatically terminated on September 30, 2012. Metabolex and Consultant then entered into a First Amendment to the Consulting Agreement which extended the term of the Consulting Agreement to December 31, 2012. Metabolex wishes to continue working with Consultant and Consultant wishes to continue providing Services to Metabolex under the terms of the Consulting Agreement and this Second Amendment.

Accordingly, Metabolex and Consultant agree as follows:

AMENDMENT

1. **Term and Termination.** The first sentence of Section 8 of the Consulting Agreement is hereby amended by replacing "September 30, 2012" with "January 31, 2013."

Except as modified by this Second Amendment, all terms of the Consulting Agreement remain unchanged, in full force and effect, and binding upon the parties hereto.

This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument. Facsimile and PDF signatures have the same effect as original signatures.

The parties are signing this Second Amendment on the Second Amendment Effective Date.

Metabolex, Inc.

By: 
Name: Charles A. McWherter
Title: SVP, Research & Preclinical Development

SNPLive, LLC

By: 
Name: Sujal Shah
Title: President

THIRD AMENDMENT TO CONSULTING AGREEMENT

This Third Amendment to the Consulting Agreement **("Third Amendment")** is entered into on January 29, 2012 **("Third Amendment Effective Date")** by Metabolex, Inc., a Delaware corporation located at 3876 Bay Center Place, Hayward, California 94545 **("Metabolex"),** and **SNPLive, LLC,** a company with a mailing address at 5086 Holborn Way, San Ramon, CA 94582 **("Consultant").**

BACKGROUND

Metabolex and Consultant entered into the Consulting Agreement on June 27, 2012, which automatically terminated on September 30, 2012. Metabolex and Consultant then entered into (1) a First Amendment to the Consulting Agreement which extended the term of the Consulting Agreement to December 31, 2012 and (2) a Second Amendment to the Consulting Agreement which extended the term of the Consulting Agreement to January 31, 2013.

Metabolex wishes to continue working with Consultant and Consultant wishes to continue providing Services to Metabolex under the terms of the Consulting Agreement and this Third Amendment.

Accordingly, Metabolex and Consultant agree as follows:

AMENDMENT

1. **Term and Termination.** The first sentence of Section 8 of the Consulting Agreement is hereby amended by replacing "September 30, 2012" with "March 31, 2013."

Except as modified by this Third Amendment, all terms of the Consulting Agreement remain unchanged, in full force and effect, and binding upon the parties hereto.

This Third Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument. Facsimile and PDF signatures have the same effect as original signatures.

The parties are signing this Third Amendment on the Third Amendment Effective Date.

Metabolex, Inc.

By:
Name: Charles A. McWherter
Title: SVP, Research & Preclinical Development

SNPLive, LLC

By:
Name: Sujal Shah
Title: President

FOURTH AMENDMENT TO CONSULTING AGREEMENT

This Fourth Amendment to the Consulting Agreement **("Fourth Amendment")** is entered into on March 28,2013 **("Fourth Amendment Effective Date")** by Metabolex, Inc., a Delaware corporation located at 3876 Bay Center Place, Hayward, California 94545 **("Metabolex"),** and **SNPLive, LLC,** a company with a mailing address at 5086 Holborn Way, San Ramon, CA 94582 **("Consultant").**

BACKGROUND

Metabolex and Consultant entered into the Consulting Agreement on June 27,2012, which automatically terminated on September 30, 2012. Metabolex and Consultant then entered into (1) a First Amendment to the Consulting Agreement which extended the term of the Consulting Agreement to December 31, 2012 (2) a Second Amendment to the Consulting Agreement which extended the term of the Consulting Agreement to January 31, 2013 and (3) a Third Amendment to the Consulting Agreement which extended the term of the Consulting Agreement to March 31, 2013.

Metabolex wishes to continue working with Consultant and Consultant wishes to continue providing Services to Metabolex under the terms of the Consulting Agreement and this Fourth Amendment.

Accordingly, Metabolex and Consultant agree as follows:

AMENDMENT

1. **Term and Termination.** The first sentence of Section 8 of the Consulting Agreement is hereby amended by replacing "March 31, 2013" with "June 30, 2013."

Except as modified by this Fourth Amendment, all terms of the Consulting Agreement remain unchanged, in full force and effect, and binding upon the parties hereto.

This Fourth Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument. Facsimile and PDF signatures have the same effect as original signatures.

The parties are signing this Fourth Amendment on the Fourth Amendment Effective Date.

Metabolex, Inc.

By: 
Name: Charles A. McWherter
Title: SVP, Research & Preclinical Development

SNPLive, LLC

By: 
Name: Sujal Shah
Title: President

FIFTH AMENDMENT TO CONSULTING AGREEMENT

This Fifth Amendment to the Consulting Agreement ("**Fifth Amendment**") is entered into on June 27, 2013 ("**Fifth Amendment Effective Date**") by Metabolex, Inc., a Delaware corporation located at 3876 Bay Center Place, Hayward, California 94545 ("**Metabolex**"), and **SNPLive, LLC,** a company with a mailing address at 5086 Holborn Way, San Ramon, CA 94582 ("**Consultant**").

BACKGROUND

Metabolex and Consultant entered into the Consulting Agreement on June 27, 2012, which automatically terminated on September 30, 2012. Metabolex and Consultant then entered into (1) a First Amendment to the Consulting Agreement which extended the term of the Consulting Agreement to December 31, 2012 (2) a Second Amendment to the Consulting Agreement which extended the term of the Consulting Agreement to January 31, 2013 (3) a Third Amendment to the Consulting Agreement which extended the term of the Consulting Agreement to March 31, 2013 and (4) a Fourth Amendment to the Consulting Agreement which extended the term of the Consulting Agreement to June 30, 2013.

Metabolex wishes to continue working with Consultant and Consultant wishes to continue providing Services to Metabolex under the terms of the Consulting Agreement and this Fifth Amendment.

Accordingly, Metabolex and Consultant agree as follows:

AMENDMENT

1. **Term and Termination.** The first sentence of Section 8 of the Consulting Agreement is hereby amended by replacing "June 30, 2013" with "September 30, 2013."

Except as modified by this Fifth Amendment, all terms of the Consulting Agreement remain unchanged, in full force and effect, and binding upon the parties hereto.

This Fifth Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument. Facsimile and PDF signatures have the same effect as original signatures.

The parties are signing this Fifth Amendment on the Fifth Amendment Effective Date.

Metabolex, Inc.

By: 
Name: Charles A. McWherter
Title: SVP, Research & Preclinical Development

SNPLive, LLC

By: 
Name: Sujal Shah
Title: President

Exhibit 10.23

October 03, 2011
Dr. Raymond Urbanski
11 North Pocono Road
Mountain Lakes, NJ 07046

Dear Ray:

Metabolex, Inc. (the "Company") is pleased to offer you employment as Chief Medical Officer on the following terms:

1. Position, Duties and Responsibilities. Subject to the terms set forth herein, the Company agrees to employ you in the position of Chief Medical Officer and you hereby accept such employment effective as of a mutually acceptable start date. As Chief Medical Officer, you will report to the Company's Chief Executive Officer ("CEO"), and will perform the duties customarily associated with this position and such other duties as are assigned to you by the CEO. You shall devote your full business time and attention to the business affairs of the Company, except for reasonable vacations and periods of illness or incapacity permitted by the Company's general employment policies. The employment relationship between you and the Company shall also be governed by the general employment policies and practices of the Company, including those relating to protection of confidential information and assignment of inventions, except that when the terms of this letter agreement differ from or are in conflict with the Company's general employment policies or practices, this letter agreement shall control.

2. Compensation and Employee Benefits.

2.1 Base Salary. Your base salary will be three hundred forty thousand dollars ($340,000) on an annualized basis, less payroll deductions and required withholdings, paid according to the Company's regular payroll schedule and procedures. Your base salary may be modified by the Company in its sole discretion. For your initial year of employment, any merit increase you receive will be *pro rated* for the time period for which you were employed by the Company during the calendar year.

2.2 Hiring Bonus. You will receive a forty thousand dollar ($40,000) hiring bonus (the "Hiring Bonus") less payroll deductions and required withholdings, paid in two equal twenty thousand ($20,000) installments. The first twenty thousand dollar ($20,000) installment will be paid on the first regular pay date after the date upon which you commence your employment (your "Employment Commencement Date"), provided that you present proof of your identity and work authorization, for immigration compliance purposes. The second and final twenty thousand dollar ($20,000) installment will be paid on the one-year anniversary of your employment with the Company, provided that you remain an active full-time employee through the one-year anniversary of the Employment Commencement Date. The Hiring Bonus shall be repaid to the Company, pro rata, if within two (2) years of your Employment Commencement Date your employment with the Company (and its successors) is terminated either (i) by you or (ii) by the Company for Cause (as defined in Section 7.2(b)). The pro rata repayment will be the product of (i) the Hiring Bonus and (ii) the fraction where the

numerator is the number of full months remaining in the two (2) year period on the date of termination and the denominator is twenty-four (24). The Hiring Bonus will not become fully earned and vested unless you remain an active full-time employee through the second anniversary of the Employment Commencement Date.

2.3 Housing Assistance. You are entitled to relocation assistance in accordance with the Company's relocation expense policy (attached as Exhibit A).

2.4 Discretionary Bonus. You will be eligible to participate in the Company's annual bonus program in recognition of your performance and achievement of agreed upon goals. Your target annual bonus will be equal to twenty-five percent (25%) of your annual base salary. Your actual bonus, if any, will be determined by the Company's Board of Directors ("Board"), or a subcommittee thereof, in its sole discretion, based upon its evaluation of your performance, the Company's performance, and any other considerations it deems relevant. For your initial year of employment, your bonus will be *pro rated* for the time elapsed in the bonus period for which you were employed by the Company. You must be employed through the bonus payment date in order to be eligible to earn any such bonus. Any bonus payment shall be subject to payroll deductions and required withholdings.

2.5 Employee Benefits. You shall be entitled to all employee benefits, including vacation accrual of twenty (20) days per year and health and disability benefits, for which you are eligible under the terms and conditions of the standard Company benefit plans, which may be in effect from time to time and provided by the Company to its senior executive-level employees generally. Currently, such benefits include twelve (12) paid holidays per year, as well as paid sick leave of up to ten (10) days per year. Notwithstanding the foregoing, the Company reserves the right to adopt, amend or discontinue any employee benefit plan or policy, including changes required by applicable law.

2.6 Stock Option. Subject to the approval of the Board you will be granted a stock option to purchase six hundred fifty thousand (650,000) shares of Company common stock, at a per share exercise price equal to the per share fair market value of the common stock on the date of grant, as determined by the Board, pursuant to the Company's equity incentive plan. Option grants are made at regular Board meetings held approximately once each calendar quarter. Your option grant will be considered at the first regular Board meeting following your Employment Commencement Date. The term of such stock option will be ten (10) years, subject to earlier expiration in the event of the termination of your service with the Company. You may elect to receive such stock option with an early exercise feature, wherein such stock option will be immediately exercisable, but any shares purchased prior to vesting shall be subject to repurchase by the Company in the event that your service with the Company terminates before you become vested in the shares, at the lower of (1) the original exercise price or (2) the then-fair market value of the Company's common stock. You may also elect to receive your stock option without this early exercise feature. You will be vested in, and the Company's repurchase right, if applicable, shall not apply as to, twenty-five percent (25%) of the shares covered by the option on the first year anniversary of your Employment Commencement Date and the remaining seventy-five percent (75%) of the shares covered by the option will vest in thirty-six (36) equal monthly installments with the first monthly installment vesting one month following the first year anniversary of your Employment Commencement Date, as long as you remain in continuous service with the Company. Notwithstanding the foregoing, a portion of the shares subject to your outstanding stock options may vest on an accelerated basis pursuant to Sections 7 or 8. Except as provided herein, such stock options will be subject to the provisions of the equity incentive plan of the Company under which the options are granted and the applicable form of stock option agreement thereunder (the "Plan Documents").

3. Other Activities During Employment.

3.1 Activities. Except with the prior written consent of the CEO, you will not, during your employment with the Company, undertake or engage in any other employment, occupation or business enterprise, other than ones in which you are a passive investor. You may engage in civic and not-for-profit activities so long as such activities do not interfere with the performance of your job duties.

3.2 Investments and Interests. Except as permitted by Section 3.1 and by Section 3.3, during your employment you agree not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known by you to be adverse or antagonistic to the Company, or its business or prospects, financial or otherwise.

3.3 Noncompetition. During the term of your employment by the Company, except on behalf of the Company, you will not directly or indirectly, whether as an officer, director, stockholder, partner, proprietor, associate, representative, consultant, or in any capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever that competes with the Company anywhere in the world, in any line of business engaged in (or planned to be engaged in) by the Company; *provided, however,* that anything above to the contrary notwithstanding, you may own, as a passive investor, securities of any entity, so long as your direct holdings in any one such corporation do not in the aggregate constitute more than one percent (1%) of the voting stock of such corporation.

4. Company Policies; Confidential Information and Inventions Agreement. You acknowledge your obligations under the Company's Employee Agreement on Confidential Information and Inventions, a copy of which is attached as Exhibit B. You further acknowledge your obligation to abide by the Company's rules, policies and procedures.

5. Immigration. Your employment is contingent upon your providing adequate documentation to prove both your identity and authorization to work in the Untied States.

6. Your Representations and Warranties.

6.1 No Breach of Contract. You represent and warrant that the execution and delivery of this letter agreement by you and the performance of your obligations hereunder will not conflict with or breach any agreement, order or decree to which you are a party or by which you are bound. You warrant that you are subject to no employment agreement or restrictive covenant preventing full performance of your duties under this letter agreement.

6.2 No Conflict of Interest. You warrant that you are not, to the best of your knowledge and belief, involved in any situation that might create, or appear to create, a conflict of interest with your loyalty to or duties for the Company.

6.3 Notification of Materials or Documents from Other Employers. You further warrant that you have not brought and will not bring to the Company or use in the performance of your responsibilities at the Company any materials or documents of a former employer that are not generally available to the public, unless you have obtained express written authorization from the former employer for their possession and use.

6.4 Notification of Other Post-Employment Obligations. You also understand that, as part of your employment with the Company, you are not to breach any obligation of confidentiality that you have to former employers, and you agree to honor all such obligations to former employers during your employment with the Company.

7. Termination of Employment.

7.1 At-Will Employment Relationship. Your employment with the Company shall be at-will. Either you or the Company may terminate the employment relationship at any time, with or without Cause and with or without advance notice.

7.2 Termination for Cause.

(a) If the Company terminates your employment at any time for Cause (as defined below), your salary shall cease on the date of termination and you shall not be entitled to severance pay, COBRA premium payments, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required in such event by applicable law or the terms of applicable benefit plans. The continued vesting of any compensatory equity award held by you shall cease on your employment termination date, and your right to exercise vested option shares shall be governed by the Plan Documents.

(b) Definition of Cause. For purposes of this agreement, "Cause" means the occurrence of any one or more of the following: (i) your conviction of, or plea of no contest with respect to, any felony or any crime involving fraud, dishonesty or moral turpitude; (ii) your participation in a fraud or act of dishonesty that results in material harm to the Company; (iii) your intentional material violation of any contract or agreement between you and the Company, including but not limited to this letter agreement or your Employee Agreement on Confidential Information and Inventions, or your violation of any statutory duty that you owe to the Company, but only if you do not correct such violation within thirty (30) days after written notice thereof has been provided to you; or (iv) your gross negligence or willful neglect of your job duties, as determined by the Board in good faith, but only if you do not correct such violation within thirty (30) days after written notice thereof has been provided to you.

7.3 Severance Benefits For Termination Without Cause or Resignation for Good Reason.

(a) If the Company terminates your employment without Cause and other than as a result of your death or disability, or if you resign your employment for Good Reason (defined below), you will be eligible to receive the severance benefits described in this Section 7.3. You will be eligible to receive, subject to payroll deductions and required withholdings and net of any amounts earned by you pursuant to any employment or consulting arrangements obtained by you following such termination (other than the activities described in the last sentence of Section 3.1), continuation for twelve (12) months of the greater of (i) your base salary in effect as of such termination date or (ii) your base salary as set forth in Section 2.1. In addition you will be eligible to receive your potential annual discretionary bonus amount set forth in Section 2.4, determined as if all performance targets established by the Board have been satisfied, pro-rated for the number of months elapsed in the year in which your employment terminates. You agree to notify the Company promptly of any amount earned by you from other employment or a consulting engagement while you are receiving severance payments under this letter agreement. Moreover, if you timely elect and remain eligible for continued coverage of your group health insurance under COBRA, the Company will pay your premiums for COBRA coverage for up to twelve (12) months following the termination date, provided that such payments shall cease if you obtain full-time employment, or cease to be eligible for COBRA, within such period. You agree to notify the Company promptly if you obtain full-time employment while the Company is paying your COBRA premiums under this letter agreement. Upon such termination, the vesting of all compensatory equity awards held by you shall be accelerated such that the awards are fully vested and exercisable upon the termination date. Your receipt of any severance benefits under this Section 7.3 is contingent upon your signing and making effective a full, general release of all claims against the Company in a form acceptable to the Company containing the language set forth in the Release Agreement attached as Exhibit C on or after the termination date. This base salary and bonus severance will be paid in substantially equal installments over the twelve (12) month period following the termination date according to the Company's payroll procedures; provided, however, that no payments will be made to you prior to the Effective Date as defined in the Release Agreement. On the first payroll pay day occurring at least three (3) business days following the Effective Date, the Company will pay you the cash severance amounts you would have received on or prior to such date in a lump sum, with the balance of the cash payments being made as originally scheduled.

(b) Definition of Good Reason. For purposes of this letter agreement, "Good Reason" shall mean any one of the following events that occurs without your consent: (i) the material reduction in your responsibilities, authorities or functions as an employee of the Company (but not merely a change in reporting relationships); (ii) a material reduction in your level of compensation your base salary and target bonuses under any corporate-performance based bonus or incentive programs); (iii) a relocation of your place of employment that results in an increase to your round trip commute of more than twenty (20) miles; or (iv) the Company's material breach of this letter agreement. Notwithstanding the foregoing, you must provide written notice to the General Counsel of the Company within thirty (30) days after the date on which such event first occurs, and allow the Company thirty (30) days thereafter (the "Cure Period") during which the Company may attempt to rescind or correct the matter giving rise to Good Reason. If the Company does not rescind or correct the conduct giving rise to Good Reason to your reasonable satisfaction by the expiration of the Cure Period, your employment will then terminate with Good Reason as of such thirtieth day.

7.4 Voluntary or Mutual Termination; Death; Disability.

(a) You may voluntarily terminate your employment with the Company at any time without Good Reason. If you terminate without Good Reason or if your employment terminates as a result of your death or disability, your salary shall cease on the date of termination and you shall not be entitled to severance, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required in such event by applicable law or the terms of applicable benefit plans. The continued vesting of any compensatory equity awards held by you shall cease on the termination date, and your right to exercise vested awards (or be issued shares under such vested awards) shall be governed by the terms of the Company's applicable compensatory equity plans and the corresponding award agreements.

(b) If at any time during the course of this letter agreement the parties by mutual consent decide to terminate this letter agreement, you and the Company shall do so by separate agreement setting forth the terms and conditions of such termination.

7.5 Application of Section 409A. If the Company (or, if applicable, the successor entity thereto) determines that the severance payments and benefits provided for in this letter agreement (the "Agreement Payments") constitute "deferred compensation" under Section 409A of the Internal Revenue Code (together, with any state law of similar effect, "Section 409A") and you are a "specified employee" of the Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) (a "Specified Employee"), then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the Agreement Payments shall be delayed as follows: on the earliest to occur of (i) the date that is six months and one day after the termination date or (ii) the date of your death (such earliest date, the "Delayed Initial Payment Date"), the Company (or the successor entity thereto, as applicable) shall (A) pay to you a lump sum amount equal to the sum of the Agreement Payments that you would otherwise have received through the Delayed Initial Payment Date if the commencement of the payment of the Agreement Payments had not been delayed pursuant to this Section 7.5 and (B) commence paying the balance of the Agreement Payments in accordance with the applicable payment schedules set forth in this letter agreement. For the avoidance of doubt, it is intended that (1) each installment of the Agreement Payments provided in this letter agreement is a separate "payment" for purposes of Section 409A, (2) all Agreement Payments satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under of Treasury Regulation 1.409A-l(b)(4) and 1.409A-l(b)(9)(iii), and (3) the Agreement Payments consisting of COBRA premiums also satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation 1.409A-l(b)(9)(v).

8. Change in Control.

8.1 Definitions.

(a) "Change in Control" shall mean an Ownership Change Event (as defined below) or a series of related Ownership Change Events (collectively, a "Transaction") wherein the stockholders of the Company immediately before the Transaction do not retain direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding securities of the Company or, in the case of a Transaction described in Section 8.1(b)(iii), the corporation or other business entity to which the assets of the Company were transferred (the "Transferee"), as the case may be. For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities that own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities.

(b) An "Ownership Change Event" shall be deemed to have occurred if any of the following occurs with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange or transfer of all or substantially all of the assets of the Company.

8.2 Stock Awards. At the closing of a Change in Control, your outstanding compensatory equity awards shall become vested and exercisable with respect to fifty percent (50%) of your then-unvested shares of the Company's common stock subject thereto. In addition, in the event that within twelve (12) months following a Change in Control, the Company terminates your employment without Cause (as defined above) and other than as a result of your death or disability, or you resign for Good Reason (as defined above) (a "Change in Control Termination"), any remaining unvested portion of all compensatory equity awards held by you shall have the vesting accelerated such that all awards are fully vested and exercisable as of the date of the Change in Control Termination (the "Acceleration"). As a precondition of receiving the Acceleration, you must first sign and make effective on or after the termination date a full, general release of claims in favor of the Company within forty-five (45) days after the termination date in a form acceptable to the Company containing the language set forth in the Release Agreement attached hereto as Exhibit C.

8.3 Parachute Payments After the Listing Date.

(a) After the Listing Date (as defined below), if any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to you or for your benefit, whether under this letter agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") (together with any interest or penalties imposed with respect to such excise tax, the "Excise Tax"), then you will be entitled to receive from the Company an additional payment (the "Gross-Up Payment") in an amount equal to (i) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the Payment (the "First Reimbursement Payment"), (ii) all federal, state and local income taxes and employment taxes on the First Reimbursement Payment, and (iii) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the First Reimbursement Payment. For purposes of this provision, the term "Listing Date" means the date of the sale of the Company's securities to the general public pursuant to an initial public offering under a Registration Statement filed with and declared effective by the U.S. Securities and Exchange Commission under the Securities Act of 1933, as amended.

(b) All determinations required to be made under this Section 8.3 including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the nationally recognized certified public tax accounting firm used by the Company or, if such firm declines to serve, such other nationally recognized certified public tax accounting firm as you may designate (the "Accounting Firm"). The Accounting Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good-faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Accounting Firm shall provide its calculations, together with detailed supporting documentation, to the Company and you within thirty (30) calendar days after the date on which your right to a Payment is triggered (if requested at that time by the Company or you) and/or at such other times as requested by the Company or you. If the Accounting Firm determines that no Excise Tax is payable with respect to a Payment, it shall furnish the Company and you with an opinion reasonably acceptable to you that no Excise Tax will be imposed with respect to such Payment. If the Accounting Firm determines that an Excise Tax is payable with respect to a Payment, it shall furnish to the Company and you an opinion reasonably acceptable to you of the amount of Excise Tax payable with respect to the Payments and the amount of Gross-Up Payment due to you. The Company will pay the Gross-Up Payment to you within thirty (30) days of the date the Company receives the Accounting Firm's opinion, but in no event later than the end of your tax year following your tax year in which you pay the Excise Tax. The Company shall bear all reasonable expenses with respect to the determinations by the Accounting Firm required to be made hereunder. Any determination by the Accounting Firm shall be binding upon the Company and you.

9. General Provisions.

9.1 Severability. Whenever possible, each provision of this letter agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced in such jurisdiction so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

9.2 Notices. Any notices provided hereunder must be in writing and shall be deemed effective upon the earlier of personal delivery (including personal delivery by fax) or the next day after sending by overnight courier, to the Company at its primary office location and to you at your address as listed on the Company payroll.

9.3 Waiver. If either party should waive any breach of any provisions of this letter agreement, you or the Company shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this letter agreement.

9.4 Entire Agreement. This letter agreement, together with its exhibits, constitutes the entire and exclusive agreement between you and the Company, and it supersedes any prior agreement, promise, representation, or statement, written or otherwise, between you and the Company with regard to this subject matter. It is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in a writing signed by you and a duly authorized officer of the Company.

9.5 Counterparts. This letter agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same letter agreement.

9.6 Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

9.7 Successors and Assigns. This letter agreement is intended to bind and inure to the benefit of and be enforceable by you, the Company and your and its respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your duties hereunder and you may not assign any of your rights hereunder without the written consent of the Company.

9.8 Governing Law. All questions concerning the construction, validity and interpretation of this letter agreement will be governed by the law of the State of California as applied to contracts made and to be performed entirely within California.

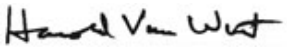
9.9 Attorneys' Fees. If either party hereto brings any action to enforce your or its rights hereunder, the prevailing party in such action shall be entitled to be paid by the other party such prevailing party's reasonable attorneys' fees and costs incurred in such action.

Enclosed is your Employee Agreement on Confidential Information and Inventions, which you should read carefully.

To indicate your acceptance of the Company's offer, please sign this letter agreement in the space provided below and return it to me along with the signed Employee Agreement on Confidential Information and Inventions, in the stamped self-addressed envelope, which is enclosed. This offer shall expire on October 11, 2011 if not accepted prior to such date. If you have any questions regarding this letter agreement, feel free to contact me.

Sincerely,

METABOLEX, INC.

By: 

Harold Van Wart
Chief Executive Officer

Accepted and agreed:

October 5, 2011

Raymond W. Urbanski, M.D., Ph.D.

EXHIBIT A – Relocation Expense Policy for New and Transferred Employees

EXHIBIT B – Employee Agreement on Confidential Information and Inventions

EXHIBIT C – Release Agreement

EXHIBIT A

RELOCATION EXPENSE POLICY FOR NEW AND TRANSFERRED EMPLOYEES

Exhibit 10.24

June 25, 2012

Raymond W. Urbanski, M.D., Ph.D.
623 Greylyn Drive
San Ramon, CA 94583

Re: Resignation Agreement

Dear Ray:

This letter sets forth the substance of the Resignation Agreement (the "Agreement") that Metabolex, Inc. (the "Company") is offering you as an alternative to the proposed Termination Agreement of today's date.

1. Resignation Date. As part of this Agreement you hereby offer your resignation of employment and as an officer of the Company, pursuant to the letter of resignation (a form of which is set forth in Exhibit A) that you agree to execute and return to the Company concurrently with this Agreement. The Company hereby accepts your resignation, effective as of June 11, 2012 (the "Resignation Date"), which became your last day of work with the Company and your employment termination date.

2. Accrued Salary and Vacation. On the Resignation Date, the Company will pay you all accrued salary, and all accrued and unused vacation earned through the Resignation Date, subject to standard payroll deductions and withholdings.

3. Severance. You acknowledge that under the circumstances of your employment termination, you are not eligible for the severance benefits described in the offer letter agreement between you and the Company dated October 3, 2011 (the "Offer Letter Agreement"). As part of this Agreement, the Company agrees to pay you, as severance, $ 184,850 subject to standard payroll deductions and withholdings ("Severance"). Severance will be paid in a lump sum on the first regular payday no earlier than one week after the Effective Date, as defined in paragraph 18 below, provided that you sign this Agreement and do not revoke the ADEA Waiver as defined in paragraph 18.

4. Hiring Bonus. You acknowledge that you were paid the first $20,000 installment of the Hiring Bonus, pursuant to and as defined in the Offer Letter Agreement. As part of this Agreement, you agree and acknowledge that you will not be eligible to receive, and will not earn, the second $20,000 installment of the Hiring Bonus. As part of this Agreement, the Company agrees to waive its right under the Offer Letter Agreement, to repayment by you of any portion of the first installment of the Hiring Bonus.

5. Housing Assistance. You acknowledge that, in accordance with your letter agreement with the Company dated November 18, 2011, the Company has fully performed its obligations under the Offer Letter Agreement to provide you with relocation assistance.

6. Discretionary Bonus. You will not be eligible to earn, and will not receive, any bonus award for your service in 2012, under the Company's annual discretionary bonus program.

7. **Unemployment Benefits.** As part of this Agreement, the Company agrees not to oppose your claim for unemployment compensation benefits, which will be determined by the State of California. If you wish, you may characterize the separation as a "mutual resignation".

8. Health Care Continuation Coverage (COBRA). To the extent provided by the federal COBRA law or, if applicable, state insurance laws, and by the Company's current group health insurance policies, you will be eligible to continue your group health insurance benefits at your own expense. Later, you may be able to convert to an individual policy through the provider of the Company's health insurance, if you wish.

9. Stock Options. You were granted an option to purchase 650,000 shares of the Company's common stock, pursuant to the Company's equity incentive plan (the "Plan"). Under the terms of the Plan and your stock option grant, vesting will cease as of the Resignation Date, as of which date none of your shares will have

10. Other Compensation or Benefits. You acknowledge that, except as expressly provided in this Agreement, you will not receive any additional compensation, bonus, stock option vesting, severance or benefits after the Resignation Date.

11. Expense Reimbursements. You agree that, within five (5) business days of the Resignation Date, you will submit your final documented expense reimbursement statement reflecting all business expenses you incurred through the Resignation Date, if any, for which you seek reimbursement. The Company will reimburse you for these expenses pursuant to its regular business practice.

12. Return of Company Property. By the Resignation Date, you agree to return to the Company all Company documents (and all copies thereof) and other Company property that you have had in your possession at any time, including, but not limited to, Company files, notes, drawings, records, business plans and forecasts, financial information, specifications, computer-recorded information, tangible property (including, but not limited to, computers, telephone), credit cards, entry cards, identification badges and keys; and, any materials of any kind that contain or embody any proprietary or confidential information of the Company (and all reproductions thereof).

13. Proprietary Information Obligations. You hereby acknowledge your continuing obligations, both during and after your employment, under your Employee Agreement on Confidential Information and Inventions, including your obligations not to use or disclose any confidential or proprietary information of the Company. A copy of your Employee Agreement on Confidential Information and Inventions is attached hereto as Exhibit B.

14. Confidentiality. The provisions of this Agreement will be held in strictest confidence by you and the Company and will not be publicized or disclosed in any manner whatsoever; *provided, however,* that: (a) you may disclose this Agreement to your immediate family; (b) the parties may disclose this Agreement in confidence to their respective attorneys, accountants, auditors, tax preparers, and financial advisors; (c) the Company may disclose this Agreement as necessary to fulfill standard or legally required corporate reporting or disclosure requirements; and (d) the parties may disclose this Agreement insofar as such disclosure may be necessary to enforce its terms or as otherwise required by law. In particular, and without limitation, you agree not to disclose the terms of this Agreement to any current or former Company employee.

15. Nondisparagement. You agree not to disparage the Company or the Company's officers, directors, employees, shareholders, parents, subsidiaries, affiliates, and agents, in any manner likely to be harmful to them or their business, business reputation or personal reputation; *provided that* you may respond accurately and fully to any question, inquiry or request for information when required by legal process.

16. Release of Claims. In exchange for Severance, the Company's waiver of repayment of the Hiring Bonus, and other consideration provided to you by this Agreement that you are not otherwise entitled to receive, you hereby generally and completely release Metabolex, Inc. and its current and former directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to your signing this Agreement. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to your employment with the Company, or the termination of that employment; (2) all claims related to your compensation or benefits from the Company, including salary, bonuses, the Hiring Bonus, commissions, vacation pay, expense reimbursements, relocation assistance, severance pay, severance benefits, fringe benefits, stock, stock options, accelerated vesting of stock options (including without limitation the Acceleration as defined in the Offer Letter Agreement), or any other ownership interests in the Company; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; claims under the Offer Letter Agreement; (4) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("ADEA"), and the California Fair Employment and Housing Act (as amended).

17. Exceptions. You are not releasing any claim that cannot be waived under applicable state or federal law. You are not releasing any rights that you have to be indemnified (including any right to reimbursement of expenses) arising under applicable law, the certificate of incorporation or by-laws (or similar constituent documents of the Company), any indemnification agreement between you and the Company, or any directors' and officers' liability insurance policy of the Company. Nothing in this Agreement shall prevent you from filing, cooperating with, or participating in any proceeding before the Equal Employment

Opportunity Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that you acknowledge and agree that you shall not recover any monetary benefits in connection with any such claim, charge or proceeding with regard to any claim released herein. Nothing in this Agreement shall prevent you from challenging the validity of the release in a legal or administrative proceeding.

18. ADEA Waiver. You acknowledge that you are knowingly and voluntarily waiving and releasing any rights you may have under the ADEA ("ADEA Waiver"). You also acknowledge that the consideration given for the ADEA Waiver is in addition to anything of value to which you were already entitled. You further acknowledge that you have been advised by this writing, as required by the ADEA, that: (a) your ADEA Waiver does not apply to any rights or claims that arise after the date you sign this Agreement; (b) you should consult with an attorney prior to signing this Agreement; (c) you have twenty-one (21) days to consider this Agreement (although you may choose to voluntarily sign it sooner); (d) you have seven (7) days following the date you sign this Agreement to revoke the ADEA Waiver, with such revocation to be effective only if you deliver written notice of revocation to the Company within the seven (7)-day period; and (e) the ADEA Waiver will not be effective until the date upon which the revocation period has expired unexercised, which will be the eighth day after you sign this Agreement ("Effective Date").

19. Section 1542 Waiver. YOU UNDERSTAND THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. In giving the release herein, which includes claims which may be unknown to you at present, you acknowledge that you have read and understand Section 1542 of the California Civil Code, which reads as follows:

> **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

You hereby expressly waive and relinquish all rights and benefits under that section and any law of any other jurisdiction of similar effect with respect to your release of any unknown or unsuspected claims herein.

20. Representations. You hereby represent that you have been paid all compensation owed and for all hours worked, have received all the leave and leave benefits and protections for which you are eligible, pursuant to the Family and Medical Leave Act or otherwise, and have not suffered any on-the-job injury for which you have not already filed a claim.

21. General. This Agreement including Exhibits A and B, constitutes the complete, final and exclusive embodiment of the entire agreement between you and the Company with regard to this subject matter. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations. This Agreement may not be modified or amended

except in a writing signed by both you and a duly authorized officer of the Company. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and the Company, and inure to the benefit of both you and the Company, and each party's heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question will be modified by the court so as to be rendered enforceable to the fullest extent permitted by law, consistent with the intent of the parties. This Agreement will be deemed to have been entered into and will be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California.

If you choose to accept this Agreement instead of the Termination Agreement, please sign below and on Exhibit A, and return the originals to me.

I wish you good luck in your future endeavors.

Sincerely,

METABOLEX, INC.

By: Harold Van Wart
Harold Van Wart
Chief Executive Officer

Exhibit A – Resignation Letter

Exhibit B – Employee Agreement on Confidential Information and Inventions

AGREED:

Raymond W. Urbanski, M.D., Ph.D.

June 25, 2012
Date

EXHIBIT A

Louis G. Lange, M.D., Ph.D.
Chairman, Board of Directors
Metabolex, Inc.

Dear Chairman Lange:

I hereby tender my resignation as an employee, and as Chief Medical Officer of Metabolex, Inc., effective as of June 11, 2012.

Dated: June 26, 2012

Raymond W. Urbanski, M.D., Ph.D.

EXHIBIT B

[Employee Agreement on Confidential Information and Inventions]

www.metabolex.com