Table of Contents

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

Form 10/A

(Amendment No. 2)

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.

Table of Contents

CymaBay Therapeutics, Inc.

FORM 10

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Table of Contents

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. On September 30, 2013, we sold shares of our common stock and warrants to purchase shares of our common stock in a private placement for aggregate gross proceeds of $26.8 million, and raised an additional $5.0 million in venture debt financing pursuant to a $10.0 million loan agreement which we entered into simultaneously with the private placement, resulting in aggregate net proceeds to CymaBay of $28.9 million after deducting placement agent fees and estimated offering expenses. At the same time we issued shares of our common stock in cancellation of approximately $16.9 million of debt owed to the holder of that debt. We refer to the private placement, the venture debt financing and the issuance of our common stock in cancellation of the $16.9 million of debt as the 2013 financing. After giving effect to the 2013 financing, we believe that our existing cash will allow us to continue operation through the third quarter of 2015. As set forth in the notes to our financial statements, our auditors expressed substantial doubt as to our ability to continue as a going concern if we are unable to raise additional capital, without giving effect to the 2013 financing.

Concurrent with the 2013 financing, we engaged in a 1-for-79.5 reverse split of our preferred stock and common stock, which we refer to as the reverse stock split, and all of the shares of our outstanding preferred stock converted to common stock. The discussion in this Form 10 gives retroactive effect to the reverse stock split for all periods presented. The conversion of the preferred stock is also reflected in this Form 10, except where specifically stated to the contrary.

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.

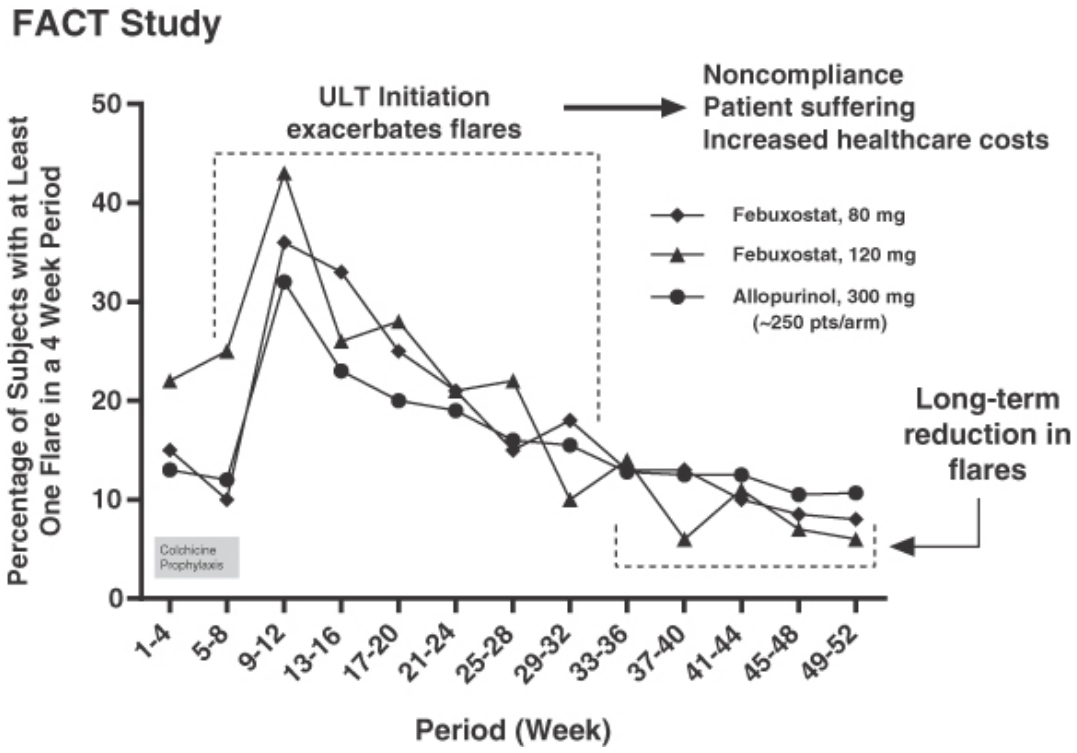
Market Opportunity

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

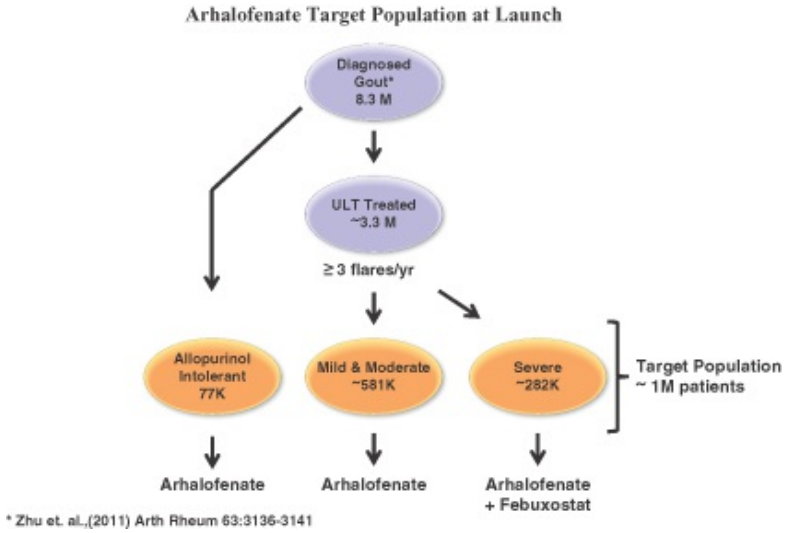
CymaBay believes that a significant opportunity exists for arhalofenate as a result of its combined anti-flare and sUA lowering profile for the treatment of gout. It addresses key unmet needs by preventing flares and achieving sUA target goals as monotherapy. In patients who need additional sUA lowering, 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.



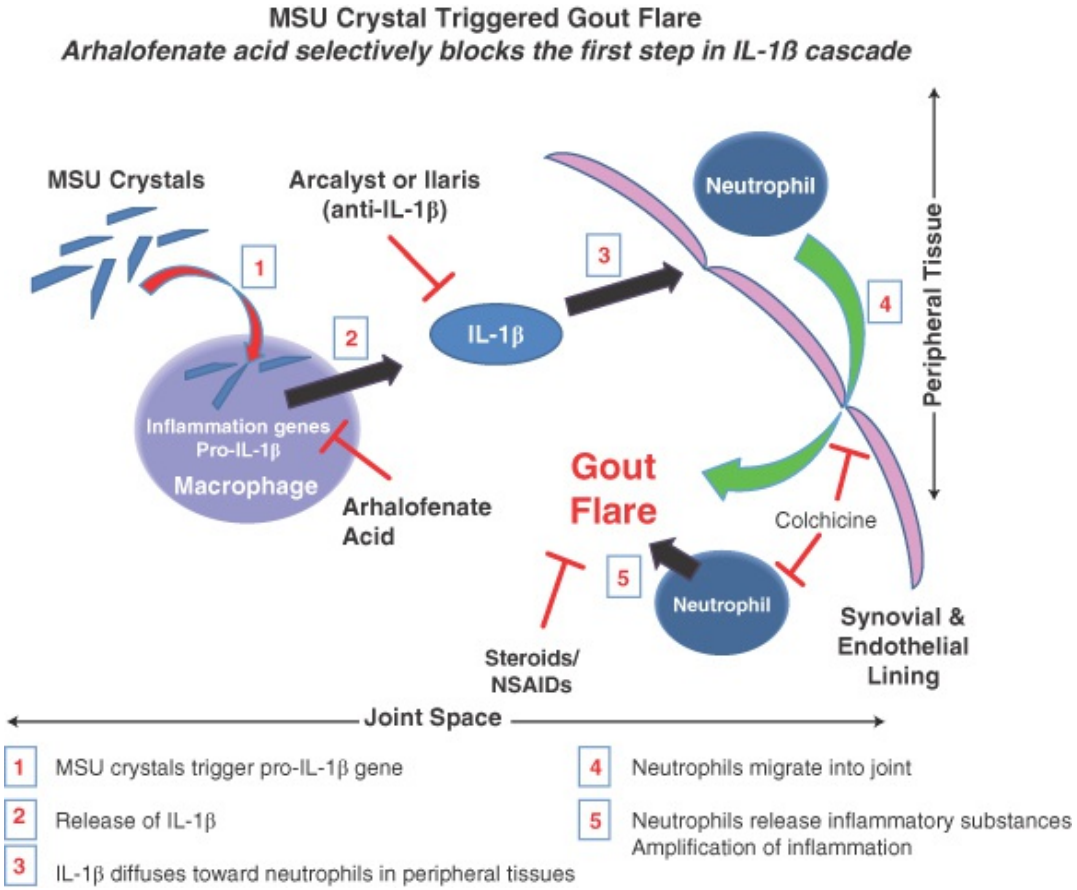
Arhalofenate Overview

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

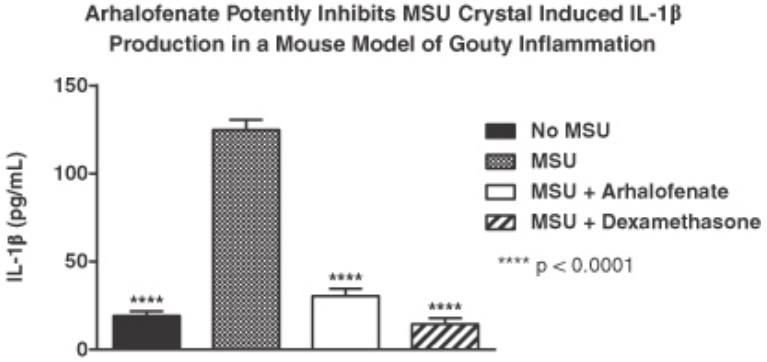
A simplified model of gouty inflammation which reflects many of the important features of the IL-1ß mediated inflammatory cascade, a sequence of biochemical events that produces inflammatory proteins, caused by MSU crystals is depicted below. Arhalofenate (through arhalofenate acid) is unique among available 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.

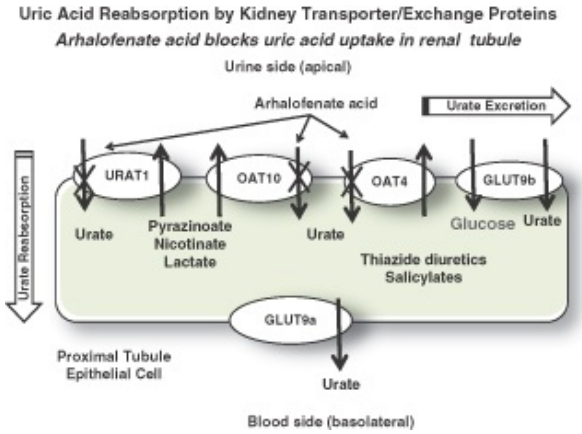
In vivo confirmation of this effect was seen in a mouse model of gouty inflammation. Injecting MSU crystals into mice produces many of the molecular and cellular steps involved in a gout flare. As shown below, administration of arhalofenate at doses that produce clinically relevant exposures was able 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.

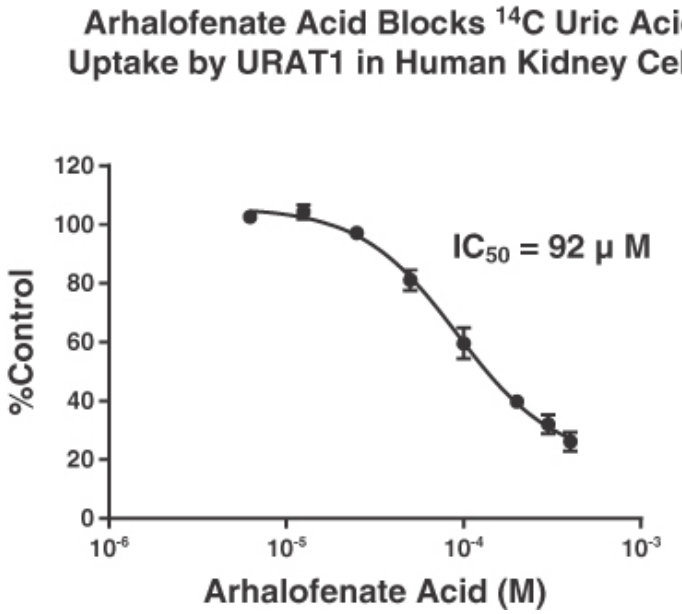
This suggests arhalofenate could be superior to colchicine in being able to suppress additional inflammatory pathways caused by MSU crystals.



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

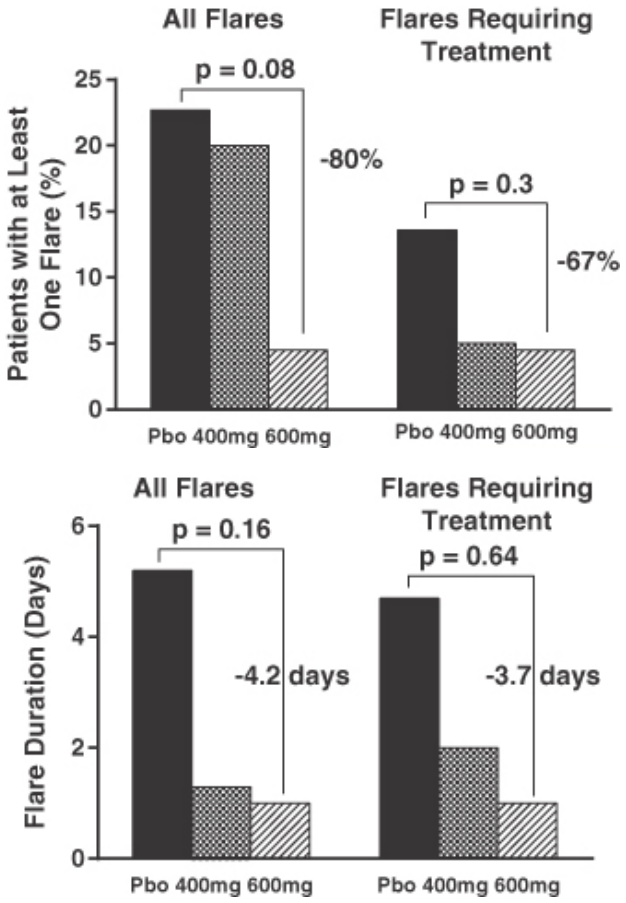
The Gout Development Program

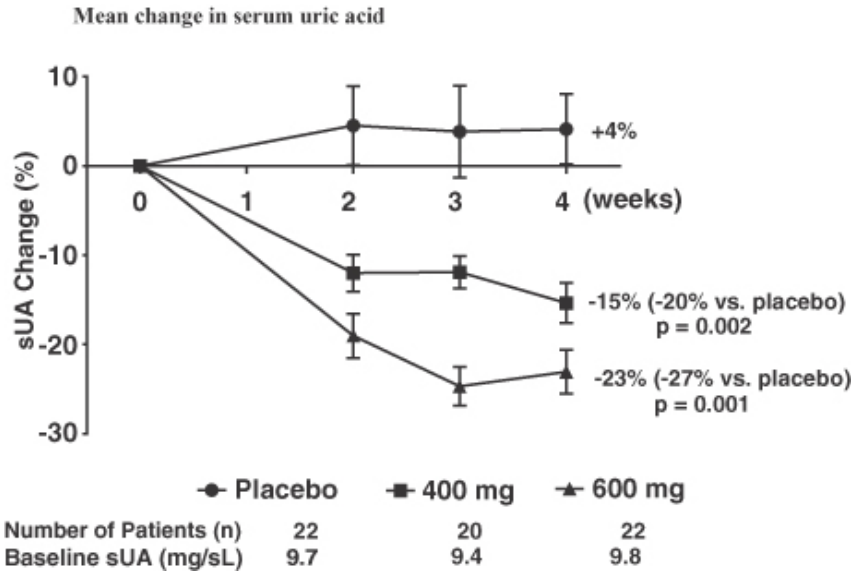
Arhalofenate has been studied in three Phase 2 gout clinical trials including a monotherapy study, febuxostat combination study and an allopurinol combination study.

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.



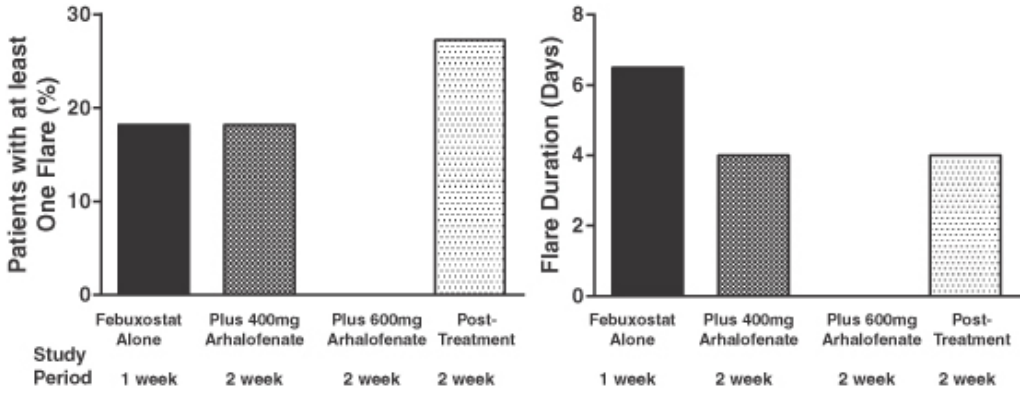


Overall, adverse events (AEs) were similar among the placebo and arhalofenate-treated groups. There were no severe or serious AEs, discontinuations due to AEs, or deaths during the study. Overall, the types and frequencies of AEs were similar among patients receiving placebo or arhalofenate 400 mg or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

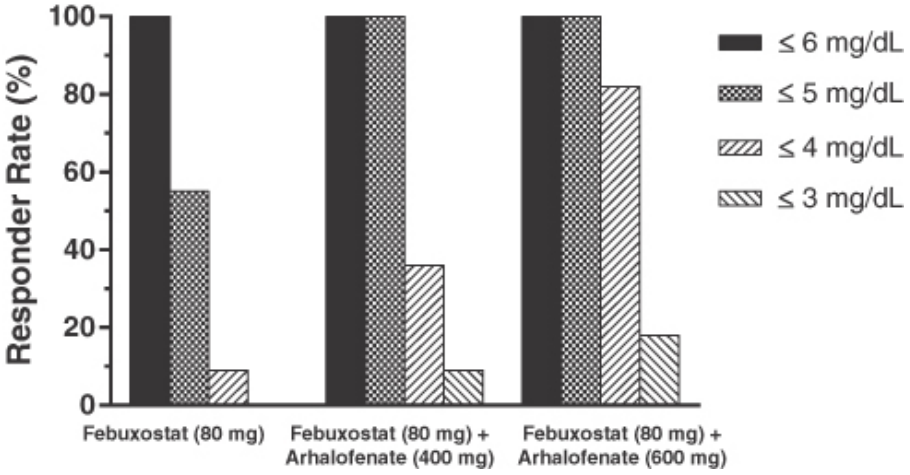
Febuxostat Combination Study

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).



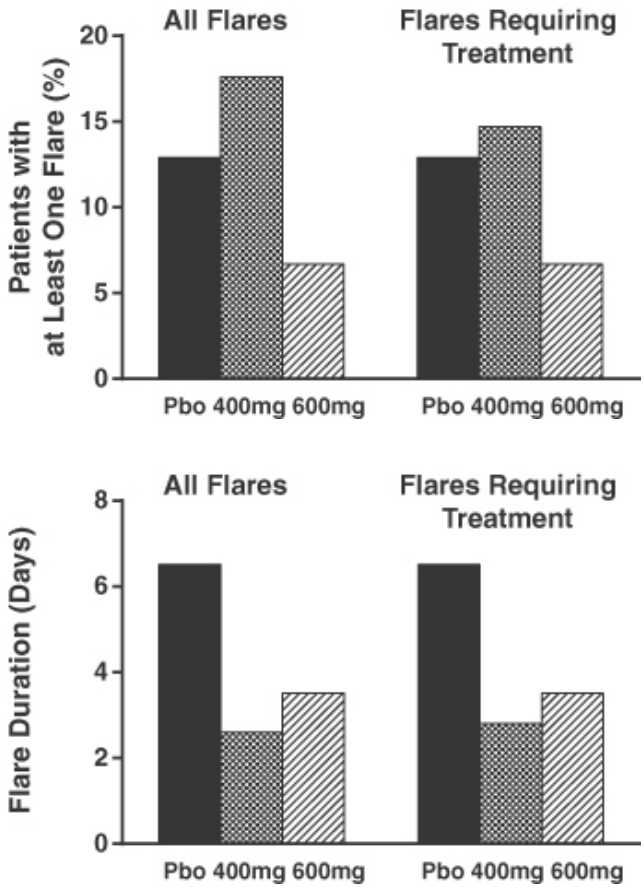
No patients experienced severe or serious AEs or deaths, and there were no discontinuations because of AEs. No clinically meaningful differences were observed among the study treatments in safety laboratory test results.

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 oxypurinol, the product of metabolism, or active metabolite, of allopurinol 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 (first-line therapy for uncomplicated hypertension) 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 in pancreatic ß-islets either by natural (endogenous) substances or by drugs developed to interact with it (GPR119 agonists) results in direct stimulation of glucose-dependent insulin secretion *in vitro*. Activation of GPR119 in intestinal enteroendocrine cells either by endogenous substances or by GPR119 agonists 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. Under the terms of the agreement, if CymaBay does not expend more than a de minimus amount of effort and resources on the research and/or development of at least one PPARδ product, such action would constitute a

default under the agreement. In addition, if CymaBay fails to make any payment called for under the agreement, discloses any non-exempt confidential information related to the agreement, or fails to use diligent efforts to promote, market and sell any PPARδ product under the agreement, such action would constitute a default under the agreement. In the event of such default, or upon CymaBay's termination of the agreement, CymaBay shall grant Janssen a worldwide, exclusive, irrevocable license under the agreement in all information that is controlled, developed or acquired by CymaBay which relate to a PPARδ compound or PPARδ product and in all patents that are filed during the term of the agreement with a priority date after the effective date of the agreement and relate to a PPARδ compound or PPARδ product.

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. Under the terms of the agreements, if CymaBay discloses any non-exempt confidential information related to the agreements, such action would constitute a default under the agreements. In addition, if CymaBay breaches any of its representations or warranties under the agreements, such action would constitute a default. In the event of a default, the agreements do not provide that CymaBay will lose any of its rights to the intellectual property developed under the agreement.

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. Under the terms of the agreement, if we fail to use diligent efforts to conduct preclinical and clinical testing of halofenate and its enantiomers to determine its efficacy for use in the treatment or prevention of human diseases or conditions, fail to make any payment called for under the agreement, or disclose non-exempt confidential information under the agreement, such action would constitute a material breach under the agreement. In addition, if we fail to execute all instruments and assignments or fail to take any action to effect joint ownership of any enantiomer patent with DiaTex, such action would constitute a material breach under the agreement. 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. On September 30, 2013, we raised aggregate net proceeds of approximately $28.9 million and issued common stock in cancellation of $16.9 million of debt owed to the holder of that debt in the 2013 financing. After giving effect to the 2013 financing, we believe that our existing cash will allow us to continue operation through the third quarter of 2015. As set forth in the notes to our financial statements, our auditors expressed substantial doubt as to our ability to continue as a going concern if we are unable to raise additional capital without giving effect to the 2013 financing. Our monthly spending levels vary based on new and ongoing development and corporate activities.

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 June 30, 2013, we had an accumulated deficit of $340.6 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.

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 our Phase 3 study of arhalofenate and we may not be able to raise sufficient funds necessary to conduct this study. We believe that our existing cash will be sufficient to enable us to complete our Phase 2b study, which we anticipate completing the second quarter of 2015, and will allow us to continue operation through the third quarter of 2015. We currently believe that we will need to raise additional capital to continue our operations beyond the third quarter of 2015.

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. 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. 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."

Reverse Stock Split and Conversion of Preferred Stock

On September 30, 2013, we effected a 1-for-79.5 reverse split of our preferred stock and common stock, which we refer to as the reverse stock split, all of the shares of our outstanding preferred stock converted to common stock, we sold shares of our common stock and warrants to purchase shares of our common stock in a private placement for aggregate gross proceeds of $26.8 million, and raised an additional $5.0 million in venture debt financing pursuant to a $10.0 million loan agreement which we entered into simultaneously with the private placement, resulting in aggregate net proceeds to CymaBay of $28.9 million after deducting placement agent fees and estimated offering expenses. At the same time we issued shares of our common stock in cancellation of approximately $16.9 million of debt owed to the holder of that debt. We refer to the private placement, the venture debt financing and the issuance of our common stock in cancellation of the $16.9 million of debt as the 2013 financing. The discussion in this "Management's Discussion and Analysis of Financial Conditions and Results of Operations" gives retroactive effect to the reverse stock split that occurred on September 30, 2013.

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	15,094	$ 4.77	$ 3.97	$ 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	$4.77	$0.80
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 $0.2 million and $0.1 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. As stated above under “Reverse Stock Split and Conversion of Preferred Stock,” on September 30, 2013, we raised aggregate net proceeds of $28.9 million and issued common stock in cancellation of $16.9 million of debt owed to the holder of that debt in the 2013 financing.

The following table summarizes our equity funding sources from inception through to October 1, 2013:

Series *($ millions)*	Year	Number of Shares	Gross Proceeds
A-1 Convertible Preferred Stock, net	1990 - 2001	12,734	$ 73.2
B-1 Convertible Preferred Stock, net	2003 - 2008	373,223	85.9
C-1 Convertible Preferred Stock, net	2006	27,345	9.9
D-1 Convertible Preferred Stock, net	2007	136,948	28.7
E-1 Convertible Preferred Stock, net	2009 - 2010	39,265	9.1
E-3 Convertible Preferred Stock, net	2010	71,543	26.1
Common Stock and Warrants, net[1]	2013	5,991,672 (and warrants to purchase 1,543,437 shares)	26.8
TOTAL		6,652,730 (and warrants to purchase 1,543,437 shares)	$ 259.7

[1] Includes shares of common stock issued in cancellation of approximately $16.9 million of debt and warrants issued to the venture debt lenders and to the placement agent in the 2013 financing.

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 October 1, 2013, including the funds raised in the 2013 financing, are sufficient to sustain the operations of the company through the third quarter of 2015. 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 were 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 would 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 had been declared by the board. On September 30, 2013, all shares of the company's preferred stock converted to common stock without the payment of dividends.

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 sets forth information regarding the beneficial ownership of CymaBay common stock as of October 1, 2013, after giving effect to the reverse stock split and the 2013 financing, by (1) each of our directors and named executive officers, (2) each person that beneficially owns more than 5% of CymaBay common stock and (3) all of our 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 (2)	33,048	*%
Charles McWherter (3)	8,699	*%
Bonnie Charpentier (4)	4,675	*%
Robert Martin (5)	4,387	*%
Patrick J. O'Mara III (6)	4,866	*%
Diana Petty (7)	3,535	*%
Lou Lange (8)	5,743	*%
Carl Goldfischer M.D. (9)	46,729	*%
Hari Kumar Ph.D.	0	*%
Edward E. Penhoet Ph.D. (10)	1,123,600	12.67%
Kurt von Emster (11)	20,701	*%
Entities Associated With Alta BioPharma (12)	1,123,600	12.67%
Entities Associated With Deerfield Funds (13)	593,206	6.69%
Johnson & Johnson Development Corporation (14)	860,266	9.77%
Entities Associated With Versant Venture Capital (15)	1,123,600	12.67%
D&O as Group (16)	1,255,983	14.18%

* Less than 1%.

(1) Beneficial ownership is calculated based on 8,790,764 shares of common stock issued and outstanding as of October 1, 2013. 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 October 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) Includes shares issuable upon options to acquire 32,590 shares of common stock exercisable within 60 days of October 1, 2013.

(3) Includes shares issuable upon options to acquire 8,699 shares of common stock exercisable within 60 days of October 1, 2013.

(4) Includes shares issuable upon options to acquire 4,675 shares of common stock exercisable within 60 days of October 1, 2013.

(5) Includes shares issuable upon options to acquire 4,387 shares of common stock exercisable within 60 days of October 1, 2013.

(6) Includes shares issuable upon options to acquire 4,844 shares of common stock exercisable within 60 days of October 1, 2013.

(7) Includes shares issuable upon options to acquire 3,535 shares of common stock exercisable within 60 days of October 1, 2013.

(8) Includes shares issuable upon options to acquire 4,297 shares of common stock exercisable within 60 days of October 1, 2013.

(9) Includes 41 shares of common stock held by Bay City Capital LLC, 43,824 shares of common stock held by The Bay City Capital Fund II, L.P. and 2,864 shares of common stock held by The Bay City Capital Fund II Co-Investment Fund, L.P (collectively the "Bay City Capital Funds"). Carl Goldfischer is a managing director of Bay City Capital Funds, and has voting and investment control over the shares owned by the Bay City Capital Funds. Mr. Goldfischer disclaims beneficial ownership of the shares owned by the Bay City Capital Funds, except to the extent of his pecuniary interest therein.

(10) Includes shares held by the entities associated with Alta BioPharma. See Note 12. Mr. Penhoet disclaims beneficial ownership of the shares held by the entities associated with Alta BioPharma, except to the extent of his ability to direct the voting or disposition of such shares or his pecuniary interest therein.

(11) Consists of 17,326 shares held by The Konrad Hans von Emster III and Elizabeth F. von Emster Revocable Trust dated January 18, 2005, shares issuable upon exercise of warrants to acquire 2,000 shares of common stock and shares issuable upon options to acquire 1,375 shares of common stock exercisable within 60 days of October 1, 2013.

(12) Consists of 64,501 shares of common stock and warrants exercisable for 4,613 shares of common stock held by Alta BioPharma Partners III GmbH & Co. Beteiligungs KG, 960,433 shares of common stock and warrants exercisable for 68,693 shares of common stock held by Alta BioPharma Partners III, L.P., and 23,668 shares of common stock and warrants exercisable for 1,692 shares of common 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.. 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.

(13) Consists of 255,071 shares of common stock and warrants exercisable for 35,920 shares of common stock held by Deerfield Special Situations International Master Fund, L.P., and 258,135 shares of common stock and warrants exercisable for 44,080 shares of common stock held by Deerfield Special Situations Fund, LP

(collectively, the "Deerfield Funds"). Deerfield MGMT, L.P. ("Deerfield MGMT") is the general partner, and Deerfield Management Company, L.P. ("Deerfield Management") is the investment advisor, of the Deerfield Funds, James E. Flynn, president of the general partners of Deerfield MGMT and Deerfield Management, holds voting and dispositive power over the shares held by the Deerfield Funds. The address of the Deerfield Funds is 780 Third Avenue 37th Floor, New York, NY 10017.

(14) Consists of 850,266 shares of common stock and warrants exercisable for 10,000 shares of common stock held by the Johnson & Johnson Development Corporation. 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.

(15) Consists of 19,358 shares of common stock and warrants exercisable for 1,384 shares of common stock held by Versant Affiliates Fund II-A, L.P., 9,116 shares of common stock and warrants exercisable for 652 shares of common stock held by Versant Side Fund II, L.P., and 1,020,127 shares of common stock and warrants exercisable for 72,963 shares of common 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.

(16) Consists of shares held by each executive officer and director including the shares described in footnotes 2 through 11 above.

ITEM 5. DIRECTORS AND EXECUTIVE OFFICERS.

The following table sets forth information regarding CymaBay's executive officers, directors, key employees and consultants, as of October 10, 2013.

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	61	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.	51	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
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	46	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.

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. The share numbers below give retroactive effect to the reverse stock split that occurred on September 30, 2013. 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.	9,745	0	30.21	1/11/2014
	358	0	30.21	1/11/2014
	6,213	0	30.21	01/06/2015
	1,258	0	62.80	11/17/2015
	1,494	0	39.75	6/4/2018
	5,536	0	39.75	6/4/2018
	4,730	1,245 (1)	15.90	1/9/2020
	1,009	3,394 (2)	4.77	1/24/2022
Charles A. McWherter, Ph.D.	5,660	0	39.75	6/4/2018
	1,494	393 (1)	15.90	1/9/2020
	577	1,939 (2)	4.77	1/24/2022
Raymond Urbanski, M.D.	8,176	8,176 (3)	12.72	10/04/2021
Bonnie Charpentier, Ph.D.	1,258	0	39.75	3/25/2018
	245	0	39.75	6/4/2018
	2,019	0	39.75	6/4/2018
	665	175 (2)	15.90	10/14/2019
	159	533 (2)	4.77	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 (3)	$ 0	$ 0	$ 0
Anthony B. Evnin, Ph.D. (4)	$ 0	$ 0	$ 0
Carl Goldfischer, M.D.	$ 0	$ 0	$ 0
Bradley Bolzon, Ph.D. (5)	$ 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. (6)	$ 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) Mr. Converse resigned from the Board of Directors effective September 24, 2013.
(4) Dr. Evnin resigned from the Board of Directors effective September 26, 2013.
(5) Dr. Bolzon resigned from the Board of Directors effective September 19, 2012.
(6) 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 (the share numbers give retroactive effect to the reverse stock split that occurred on September 30, 2013):

Name	Options
Louis G. Lange, M.D., Ph.D.	1,258
	456
	3,145
	123
Eric Converse (1)	0
Anthony B. Evnin, Ph.D. (2)	0
Carl Goldfischer, M.D.	0
Bradley Bolzon, Ph.D. (3)	0
Edward E. Penhoet, Ph.D.	0
Hari Kumar, Ph.D.	0
Kurt von Emster, CFA	943
	943
Robert Zerbe, M.D. (4)	943
	943

(1) Mr. Converse resigned from the Board of Directors effective September 24, 2013.
(2) Dr. Evnin resigned from the Board of Directors effective September 26, 2013.
(3) Dr. Bolzon resigned from the Board of Directors effective September 19, 2012.
(4) 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" and under "2013 Financing" below.

2013 Financing

On September 30, 2013, CymaBay issued: (a) 374,999 shares of its common stock and warrants exercisable for 74,998 shares of its common stock to entities affiliated with Alta BioPharma for an aggregate purchase price of $1,874,995 (Ed Penhoet is a director of CymaBay and is affiliated with the Alta BioPharama entities); (b) 10,000 shares of its common stock and warrants exercisable for 2,000 shares of its common stock to The Konrad Hans von Emster III and Elizabeth F. von Emster Revocable Trust dated January 18, 2005 (the "von Emster Trust") for an aggregate purchase price of $50,000 (Kurt von Emster is a director of CymaBay and affiliated with the von Emster Trust); (c) 50,000 shares of its common stock and warrants exercisable for 10,000 shares of its common stock to JJDC for an aggregate purchase price of $250,000 and 624,944 shares of its common stock to JJDC in cancellation of approximately $16.9 million of debt; (d) 400,000 shares of its common stock and warrants exercisable for 80,000 shares of its common stock to entities affiliated with the Deerfield Funds for an aggregate purchase price of $2,000,000; and (e) 374,999, shares of its common stock and warrants exercisable for 74,999 shares of its common stock to entities affiliated with Versant Venture Capital for an aggregate purchase price of $1,874,995.

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 six 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 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 and may be removed, without cause, by the holders of sixty-six and two-thirds percent (66 2/3%) of the shares then entitled to vote at a meeting for the election of directors. The board of directors may, by resolution passed by a majority of the whole board of directors, designate one or more committees, each 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.

Nominating and Corporate Governance Committee:
Kurt von Emster, CFA – Chairman
Hari Kumar, 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.

Rule 144

Shares of our common 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 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 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 that our existing stockholders will elect to sell under Rule 144.

Rule 701

Rule 701 under the Securities Act permits sales of shares issued in reliance on Rule 701 by CymaBay to its officers, directors, employees and certain consultants. Rule 701 is only available to an issuer of securities, such as CymaBay, and does not cover resales of securities by any person. Shares issued by CymaBay in reliance upon Rule 701 may be sold by the holder pursuant to Rule 144 and, 90 days after the effective date of this registration statement, (1) in the case of non-affiliates, without compliance with the holding period and public information requirements of Rule 144, and (2) in the case of affiliates, without compliance with the holding period requirement of Rule 144.

Holders

As of October 1, 2013, there were 8,790,764 shares of our common stock outstanding, which were held by approximately 503 record holders.

Dividends

We have not paid, nor do we currently intend to pay, any dividends on our common stock. On September 30, 2013, we entered into credit facility in any amount up to $10,000,000 and pursuant to the terms of such credit facility, we are not permitted to pay any dividends on our capital stock (other than dividends payable solely in capital stock) without the prior written consent of the lenders under the credit facility.

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 (the share numbers give retroactive effect to the reverse stock split that occurred on September 30, 2013).

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)	103,760	$ 34.18	36,707

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 (the share numbers give retroactive effect to the reverse stock split that occurred on September 30, 2013, except where specifically indicated to the contrary):

(1) On December 17, 2010, CymaBay issued 71,543 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 $232.93 per share of Series E-3 Preferred Stock and issued 37,119 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 $232.93 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 (on a pre-reverse stock split basis) 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 97 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.

(4) On September 30, 2013, CymaBay issued an aggregate of 5,366,728 shares of common stock, and warrants to purchase 1,073,338 shares of common stock, to approximately 260 investors. The shares and warrants were issued to the investors in reliance on Rule 506 of Regulation D, in that all of the investors represented that they were "accredited investors" as that term is defined in Regulation D. The shares and related warrants were sold for an aggregate offering price of $26,833,640. National Securities Corporation, or NSC, acted as placement agent with respect to 3,483,597 shares and related warrants issued in the transaction, and received an aggregate placement agent commission of $1.8 million in cash and warrants to purchase 348,360 shares of common stock at an exercise price of $5.75 per share. The warrants issued to NSC in reliance on Rule 506 of Regulation D, in that NSC represented it was an "accredited investor" as that term is defined in Regulation D.

(5) On September 30, 2013, CymaBay issued an aggregate of 2,793,281 shares of common stock to the 118 holders of its preferred stock upon conversion of the preferred stock to common stock. The shares were issued to these investors in reliance on Section 3(a)(9) of the Securities Act of 1933, as amended.

(6) On September 30, 2013, CymaBay issued an aggregate of 624,944 shares of common stock to Johnson & Johnson Development Corporation, or JJDC and entered into an amendment to the Development and License Agreement, dated June 15, 2010, with Janssen Pharmaceuticals, Inc. (formerly known as Ortho-McNeil, Inc.) an affiliate of JJDC, pursuant to which CymaBay agreed to forego certain milestone payments and modify future contingent royalty payments as consideration for the cancellation of $13.7 million in aggregate principal and $3.2 million in aggregate accrued interest of our debt. The shares were issued in reliance on Rule 506 of Regulation D, in that JJDC represented it was an "accredited investor" as that term is defined in Regulation D.

(7) On September 30, 2013, CymaBay issued warrants to purchase an aggregate of 121,739 shares of common stock to Silicon Valley Bank, or SVB, and Oxford Finance LLC, or Oxford, as partial consideration for SVB and Oxford entering into a $10,000,000 credit facility with CymaBay. The shares were issued in reliance on Rule 506 of Regulation D, in that each of SVB and Oxford represented each was an "accredited investor" as that term is defined in Regulation D.

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.

Common Stock

Outstanding Shares. CymaBay's certificate of incorporation provides that an aggregate of 100,000,000 shares of CymaBay common stock, par value $0.0001 per share, are authorized for issuance. As of October 1, 2013, 8,790,764 shares of common stock and the following options and warrants to purchase common stock were issued and outstanding:

- 92,497 shares of CymaBay's common stock issuable upon the exercise of stock options outstanding at a weighted average exercise price of $37.36 per share.
- 1,543,437 shares of CymaBay's common stock issuable upon the exercise of warrants outstanding at a weighted average exercise price of $5.69 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. The affirmative vote of holders of 66 2/3% of the voting power of all of the then-outstanding shares of capital stock, voting as a single class, will be required to amend certain provisions of our amended and restated certificate of incorporation, including provisions relating to amending our amended and restated bylaws, and removal of directors.

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.

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.

Warrants

In connection with the 2013 financing, and as described in Recent Sales of Unregistered Securities, CymaBay issued warrants exercisable for 1,073,338 shares of our common stock to purchasers in the 2013 financing (the "Financing Warrants"). The Financing Warrants are exercisable for a period of five (5) years from September 30, 2013, at an exercise price of $5.75 per share. The exercise prices for such Financing Warrants may be adjusted in the event of any recapitalization, reclassification, exchange, or subdivision of our outstanding shares of Common Stock. In the event CymaBay was to declare and pay a dividend or other distribution on the shares of its common stock, then the holder of the Financing Warrants, shall be entitled to receive such dividends or distributions to the same extent as if the holder had exercised the Financing Warrant and held common stock. In the event of an acquisition or change (a "Major Transaction") of control of CymaBay, the proceeds payable to the holder of a Financing Warrant shall be determined as more completely described in the Financing Warrants using the Black-Scholes Option Pricing Model as set forth in Schedule 1 of the Financing Warrants. Furthermore, the Company may be subject to liquidated damages in the event of certain "Events of Failure" as described in the Financing Warrants, including failure to deliver shares upon exercise of the Financing Warrants, failure to remove a restrictive legend from a Financing Warrant or the underlying shares, or failure to affect a transfer of a Financing Warrant. The Company may be subject to liquidated damages in connection with any Event of Failure in the form of cash payments or issuance of shares of common stock in connection with any such Event of Failure, each as determined by the Black-Scholes Option Pricing Model. The Company may be subject to additional liquidated damages in the event of certain "Events of Default" as described in the Financing Warrants, including Events of Failure that are not cured within the requisite periods or in the event the Company fails to provide for appropriate payments to the holders of Financing Warrants in connection with a Major Transaction. The Company may be subject to liquidated damages or early mandatory termination of the Financing Warrant in connection with any Event of Default in the form of cash payments or issuance of shares of common stock in full satisfaction of the Financing Warrants, each as determined by the Black-Scholes Option Pricing Model. CymaBay further issued a warrant exercisable for 348,360 shares of its common stock to NSC in its capacity as placement agent in the 2013 financing under the same terms and conditions as the Financing Warrants.

On September 30, 2013, CymaBay issued warrants to purchase an aggregate of 121,739 shares of common stock to SVB and Oxford, as partial consideration for SVB and Oxford entering into a $10,000,000 credit facility with CymaBay (the "Bank Warrants"). The Bank Warrants are exercisable for a period of ten (10) years from September 30, 2013, at an exercise price of $5.00 per share. The exercise prices for such Bank Warrants may be adjusted in the event of any recapitalization, reclassification, exchange, or subdivision of our outstanding shares of Common Stock. In the event CymaBay was to declare and pay a dividend or other distribution on the shares of its common stock, then upon exercise of the Bank Warrants, the holder shall be entitled to receive, without

additional cost to the holder, the total number and kind of securities and property which the holder would have received had holder owned the shares of record as of the date the dividend or distribution occurred. In the event of any merger or acquisition of CymaBay, the holder of any Bank Warrant is obligated to exercise the Bank Warrant prior to the consummation of such merger or acquisition and the Bank Warrant shall expire immediately prior to the consummation of such merger or acquisition, unless the consideration to be paid to the holders of the Company's common stock is something other than cash or marketable securities, in which case any successor entity to CymaBay shall be obligated to assume the Bank Warrants.

Preferred Stock

CymaBay's board of directors is authorized, subject to limitations prescribed by Delaware law, to issue up to 10,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each series and to fix the designation, powers, preferences and rights of the shares of each series and any of its qualifications, limitations or restrictions. CymaBay's board of directors can also increase or decrease the number of shares of any series, but not below the number of shares of that series then outstanding, without any further vote or action by the company's stockholders. CymaBay's board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of the common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring, discouraging or preventing a change in control of CymaBay and may adversely affect the market price of CymaBay's common stock and the voting and other rights of the holders of common stock.

Registration Rights

Holders of 5,366,728 shares of CymaBay's common stock, and holders of warrants to purchase 1,073,338 shares of CymaBay's common stock, have the right to require CymaBay to register with the SEC the shares of common stock and the shares of common stock issuable upon exercise of such warrants so that those shares of common stock may be publicly resold, or to include those shares in any registration statement CymaBay files.

Resale Registration Statement. Pursuant to CymaBay's Registration Rights Agreement, dated September 30, 2013, entered into in connection with the 2013 financing (the "Registration Agreement"), CymaBay is obligated to file resale registration statements with the SEC to register the Shares, Warrant Shares and Conversion Shares (each as defined in the Registration Agreement) within the time frames permitted under the Registration Agreement. Currently, CymaBay anticipates filing the first of its resale registration statements no later than December 2, 2013 (the "Initial Registration Statement"). CymaBay is required to cause the Initial Registration Statement be to be made effective no later than December 30, 2013, unless CymaBay receives comments to the Initial Registration Statement from the SEC in which case the deadline for causing such Initial Registration Statement to go effective shall be extended until January 29, 2014. Thereafter, CymaBay shall be obligated, as promptly as practicable, to cause any Shares, Warrant Shares or Conversion Shares that were not registered under the Initial Registration Statement to register the maximum allowable number of such shares as permitted by the SEC under any remaining registration statements to cause all of the shares registrable under the Registration Agreement to be registered for resale. In the event CymaBay fails to timely file the Initial Registration Statement or any remaining registration statement or fails to keep such registration statement effective during the period required for such registration statement, then CymaBay shall pay to each holder of such affected registrable securities liquidated damages in an amount in cash equal to 1.5% of the aggregate purchase price paid by such holder for such registrable securities required to be included in such registration statement, provided that the amount of such liquidated damages paid to each holder may not exceed more than 25% of the aggregate purchase price paid by such holder for such registrable securities.

"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 registrable securities under the Registration Agreement 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 relating to all registrations and piggyback registrations provided for under the terms of the Registration Agreement.

Termination of Registration Rights. All registration rights described above shall terminate and be of no further force and effect at such time that all holders can sell their registrable securities under Rule 144 (1) without limitations as to volume of sales, method of sale requirements or notice requirements and (2) without the requirement for the Company to be in compliance with the current public information requirement under Rule 144(c)(1).

Anti-Takeover Provisions

Our amended and restated certificate of incorporation and amended and restated bylaws, include a number of provisions that may deter or impede hostile takeovers or changes of control or management. These provisions include:

Issuance of undesignated preferred stock. Our board of directors has the authority, without further action by the stockholders, to issue up to 10,000,000 shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock enables our board of directors to make it more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise.

Board of directors vacancies. Our amended and restated certificate of incorporation and amended and restated bylaws authorize only our board of directors to fill vacant directorships. In addition, the number of directors constituting our board of directors may be set only by resolution adopted by a majority vote of our entire board of directors. These provisions prevent a stockholder from increasing the size of our board of directors and gaining control of our board of directors by filling the resulting vacancies with its own nominees.

Stockholder action; special meetings of stockholders. Our amended and restated certificate of incorporation provides that our stockholders may not take action by written consent, but may only take action at annual or special meetings of our stockholders. Stockholders will not be permitted to cumulate their votes for the election of directors unless required by applicable law. Our amended and restated certificate of incorporation further provides that only the chairman of our board of directors, chief executive officer or a majority of our board of directors may call special meetings of our stockholders.

Advance notice requirements for stockholder proposals and director nominations. Our amended and restated bylaws provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders, or to nominate candidates for election as directors at our annual meeting of stockholders. Our amended and restated bylaws also specify certain requirements as to the form and content of a stockholder's notice. These provisions may make it more difficult for our stockholders to bring matters before our annual meeting of stockholders or to nominate directors at annual meetings of stockholders.

CymaBay designed these provisions to enhance the likelihood of continued stability in the composition of our board of directors and its policies, to discourage certain types of transactions that may involve an actual or threatened acquisition of us, and to reduce our vulnerability to an unsolicited acquisition proposal. We also designed these provisions to discourage certain tactics that may be used in proxy fights. However, these provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they may also reduce fluctuations in the market price of our shares that could result from actual or rumored takeover attempts.

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the DGCL, which prohibits a Delaware corporation from engaging in a business combination with any interested stockholder for a period of three years following the date the person became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested holder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (a) by persons who are directors and also officers and (b) pursuant to employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; and
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

- In general, Section 203 of the DGCL defines business combination to include the following:
- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; and
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 of the DGCL defines an "interested stockholder" as an entity or person who, together with the entity's or person's affiliates and associates, beneficially owns, or is an affiliate of the corporation and within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation. A Delaware corporation may "opt out" of these provisions with an express provision in its certificate of incorporation. We have not opted out of these provisions, which may as a result, discourage or prevent mergers or other takeover or change of control attempts of us.

Transfer Agent and Registrar

Our transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC.

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 following the signature page 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 and financial pages of this Form 10, which is incorporated by reference here.

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: October 17, 2013

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

CymaBay Therapeutics, Inc.

Financial Statements

Index to Financial Statements Table of Contents

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, and except for the retroactive effect of the 1-for-79.5 reverse stock split as described in Note 2, as to which the date is October 11, 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; 661,059 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; 5,870, 5,792 and 5,773 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	$ (4,128.71)	$ (2,963.11)	$ (1,902.45)	$ (2,457.86)
Weighted average common shares outstanding used to calculate basic and diluted net loss per common share	5,788	5,773	5,833	5,777

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	661,059	$293,444	5,773	$ —	$ —	$ (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	661,059	$306,053	5,773	$ —	$ 762	$ 2	$ (305,581)	$ (304,817)
Discount conversion feature associated with convertible notes	—	—	—	—	70	—	—	70
Issuance of common stock upon exercise of options	—	—	19	—	—	—	—	—
Non-employee stock-based compensation expense	—	—	0	—	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	661,059	$318,697	5,792	$ —	$ 913	$ —	$ (329,480)	$ (328,567)
Issuance of common stock upon exercise of options	—	—	78	—	—	—	—	—
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)	661,059	$324,950	5,870	$ —	$ 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.

Reverse Stock Split

On September 30, 2013, the Company filed amended and restated certificates of incorporation under which the Company's preferred stock and common stock was reverse split on a 1-for-79.5 basis. The accompanying financial statements and notes to the financial statements, other than with respect to the authorized number of shares, give retroactive effect to the reverse split for all periods presented.

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	97	111	104	122
Warrants for common stock	—	30	28	30

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 232.93 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 $438.84 per share to $292.56 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 $232.93, $232.93, $365.70, $232.94, and $232.93 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 $18.64, $18.64, $29.26, $18.64, and $18.64 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 136,520 shares at a price of $232.93 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 188,894 shares at a price of $232.93 per share for gross proceeds of $44.0 million. The Series B-1 Preferred investors in these two final closings also purchased warrants for 29,245 shares of common stock at an exercise price of $30.21 per share, with an exercise period of five years from the date of purchase, for $1.51 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 13,160 shares of common stock were outstanding.

In August 2006, the Company issued 27,345 shares of Series C-1 Preferred to JJDC at a price of $365.70 per share, for gross proceeds of $10.0 million (Note 5).

In April 2007, the Company issued 137,592 shares of Series D-1 Preferred at a price of $232.94 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 20,639 shares of common stock at an exercise price of $22.13 per share, with an exercise period of five years from the date of purchase, for $0.79 cents per share of common stock covered by the warrants.

In August 2008, the Company repurchased 646, 1,610 and 472 shares of Series A-1 Preferred, Series B-1 Preferred and Series D-1 Preferred, respectively, and a warrant for 71 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 1,288 shares of Series E-1 Preferred upon the conversion of debt issued under a loan agreement. In June and December 2010, the Company issued 859 and 37,119 shares of Series E-1 Preferred, respectively, upon conversion of debt issued under a loan agreement.

In December 2010, the Company issued 71,543 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	12,734	12,734	$ 5,305	$ 75,572
Series B-1	373,223	373,223	149,998	148,857
Series C-1	75,472	27,345	15,519	15,471
Series D-1	136,948	136,949	47,785	44,536
Series E-1	40,252	39,265	20,183	11,037
Series E-3	93,082	71,543	24,213	29,477
Total	731,711	661,059	$ 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	12,734	12,734	$ 5,187	$ 75,454
Series B-1	373,223	373,223	146,549	145,408
Series C-1	75,472	27,345	15,122	15,074
Series D-1	136,948	136,949	46,520	43,271
Series E-1	40,252	39,265	19,820	10,674
Series E-3	93,082	71,543	23,552	28,816
Total	731,711	661,059	$ 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	12,734	12,734	$ 4,949	$ 75,216
Series B-1	373,223	373,223	139,575	138,434
Series C-1	75,472	27,345	14,320	14,272
Series D-1	136,948	136,949	43,961	40,712
Series E-1	40,252	39,265	19,086	9,940
Series E-3	93,082	71,543	22,216	27,479
Total	731,711	661,059	$ 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 $18.64, $18.64, $29.26, $18.64, and $18.64 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 ($47.28 per share), $1.9 million ($48.14 per share), $15.9 million ($116.00 per share), $5.6 million ($201.83 per share), $63.1 million ($168.96 per share), and $2.3 million ($183.64 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 ($38.04 per share), 1.5 million ($38.90 per share), $14.6 million ($106.75

per share), $5.1 million ($187.32 per share), $59.6 million ($159.72 per share), and $2.2 million ($174.40 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 $465.87, $290.97, $232.94, $365.70, $232.93, and $232.93 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 was authorized to issue 74,000,000 shares of common stock for the audited periods December 31, 2012 and 2011. In November 2009, the Company's Board of Directors approved the extension of the time period in which the holders of warrants to purchase 29,245 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 $15.90 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 14,623, 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 13,163, 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 $15.90 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	661,059	661,059
Outstanding common stock warrants	—	28,208
Equity incentive plans	140,414	140,474
Total reserved shares of common stock	801,472	829,740

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 $127.20 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 46,130 shares and 7,552 restricted stock units were canceled and exchanged for 46,130 new options at an exercise price of $39.75 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, 42,940, 36,707 shares and 18,494 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	121,983	$ 35.77	4.58	$ 3
Vested and expected to vest as of December 31, 2011	121,224	$ 35.77	4.55	$ 3
Exercisable as of December 31, 2011	100,526	$ 39.75	3.87	$ 2
Options granted	15,094	4.77		
Options exercised	(19)	15.90		
Options forfeited	(11,139)	14.31		
Options expired	(22,159)	33.39		
Outstanding as of December 31, 2012	103,760	$ 34.19	4.43	$ 0
Vested and expected to vest as of December 31, 2012	103,288	$ 34.19	4.41	$ 0
Exercisable as of December 31, 2012	87,849	$ 38.96	3.84	$ 0
Options granted	—			
Options exercised	(78)	4.77		
Options forfeited	(1,656)	10.34		
Options expired	(4,577)	31.01		
Outstanding as of June 30, 2013	97,449	34.98	4.21	$ 0
Vested and expected to vest as of June 30, 2013	97,049	34.98	4.20	$ 0
Exercisable as of June 30, 2013 (unaudited)	87,982	38.16	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
$4.77	14,446	8.47	3,355
$9.54	943	6.42	865
$15.90	20,328	6.02	15,622
$23.85	893	6.14	857
$30.21	32,103	1.35	32,103
$39.75	29,218	4.81	29,218
$54.86	189	2.43	189
$62.81	2,138	2.58	2,138
$238.50	3,501	3.70	3,501
	103,759	4.43	87,848

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 9 restricted stock units outstanding, respectively, with a weighted-average grant date fair value of $238.50 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	$ 3.97	$ 11.13	$ 3.97	$ 3.97

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 1,230 shares of common stock under the 2003 Plan at an exercise price of $30.21 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 3,145 to its SAB members and consultants. As of December 31, 2012, options to purchase 3,432 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. In connection with the 2013 financing, described below, the Company issued an aggregate of 624,944 shares of common stock to JJDC as partial consideration for the cancellation of the aggregate principal amount and all accrued interest under the equity and loan facility agreements.

Preferred Stock – KBC Equity

On August 7, 2013, the Company purchased back from various KBC Equity Funds 30,050 shares of Series B-1 Preferred Stock, 6,257 shares of Series D-1 Preferred Stock and 3,297 shares of Series E-1 Preferred Stock for $3,000.

2013 Financing

On September 30, 2013, we sold shares of our common stock and warrants to purchase shares of our common stock in a private placement for aggregate gross proceeds of $26.8 million, and raised an additional $5.0 million in venture debt financing pursuant to a $10.0 million loan agreement which we entered into simultaneously with the private placement, resulting in aggregate net proceeds to CymaBay of $28.9 million after deducting placement agent fees and estimated offering expenses. At the same time we issued shares of our common stock in cancellation of approximately $16.9 million of debt owed to the holder of that debt. We refer to the private placement, the venture debt financing and the issuance of our common stock in cancellation of the $16.9 million of debt as the 2013 financing. Concurrent with the 2013 financing, all preferred stock converted to common stock.

Sale of Fixed Assets

In the third quarter of 2013, CymaBay sold or disposed of all of their machinery and equipment and a portion of their computers and furniture and fixtures which resulted in a gain on sale of assets of $0.4 million.

Table of Contents

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
4.2	Form of Registration Rights Agreement
4.3	Form of 2013 Financing Warrant
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	Form of CymaBay Indemnity Agreement
10.5	Loan and Security Agreement, dated September 30, 2013, by and among CymaBay Therapeutics, Inc., Silicon Valley Bank and Oxford Finance LLC
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

Table of Contents

Exhibit No.	Description of Document
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
10.25*	2013 Equity Incentive Plan
10.26*	Form of Option Grant Notice and Option Agreement under the 2013 Equity Incentive Plan

* Indicates management contract or compensatory plan.
† Previously filed as the like numbered exhibits to our Registration Statement on Form 10, filed with the SEC on August 12, 2013.
†† Previously filed as the like numbered exhibits to our Amendment No. 1 to Registration Statement on Form 10, filed with the SEC on September 19, 2013.
# Portions of this exhibit have been omitted pursuant to a request for confidential treatment, which portions were omitted and filed separately with the Securities and Exchange Commission.

Exhibit 3.1

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
CYMABAY THERAPEUTICS, INC

Harold Van Wart hereby certifies that:

ONE: This Company was originally incorporated in the State of Delaware on October 5, 1988 under the name Transtech Corporation. This Company changed its name to Transplantation Technology, Inc. by an amendment filed on April 27, 1989. This Company changed its name from Transplantation Technology, Inc. to Transtech Medical, Inc. by an amendment filed on June 15, 1992. This Company changed its name from Transtech Medical, Inc. to Metabolex, Inc. by an amendment filed on September 30, 1994. This Company changed its name from Metabolex, Inc. to CymaBay Therapeutics, Inc. by a Restated Certificate of Incorporation filed on July 30, 2013.

TWO: He is the duly elected and acting Chief Executive Officer of CymaBay Therapeutics, Inc., a Delaware corporation.

THREE: The Certificate of Incorporation of this Company is hereby amended and restated to read as follows:

I.

The name of this Company is CymaBay Therapeutics, Inc. (the "Company" or "Corporation").

II.

The address of the Company's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, County of New Castle, Wilmington, Zip Code 19808. The name of the Company's registered agent at such address is The Prentice-Hall Corporation System, Inc.

III.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("DGCL").

IV.

A. This Corporation is authorized to issue two classes of stock to be designated, respectively, "***Common Stock***" and "***Preferred Stock***." The total number of shares which the Corporation is authorized to issue is 110,000,000 shares. 100,000,000 shares shall be Common Stock, each having a par value of $.0001. 10,000,000 shares shall be Preferred Stock, each having a par value of $.0001.

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby expressly authorized to provide for the issue of all of any of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the DGCL. The Board of Directors is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Common Stock, without a separate vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock.

C. Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; *provided, however*, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock).

V.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A.

1. MANAGEMENT OF THE BUSINESS. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the Board of Directors shall be fixed exclusively by resolutions adopted by a majority of the authorized number of directors constituting the Board of Directors.

2. BOARD OF DIRECTORS

a. Directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Each director shall hold office either until the expiration of the term for which elected or appointed and until a successor has been elected and qualified, or until such director's death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

b. No stockholder entitled to vote at an election for directors may cumulate votes to which such stockholder is entitled unless required by applicable law at the time of such election. During such time or times that applicable law requires cumulative voting, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder thinks fit. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

3. REMOVAL OF DIRECTORS

a. Subject to any limitations imposed by applicable law, the Board of Directors or any individual director may be removed from office at any time (a) with cause by the affirmative vote of the holders of a majority of the voting power of all the then-outstanding shares of capital stock of the Corporation, entitled to vote generally at an election of directors or (b) without cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all the then-outstanding shares of the capital stock of the Corporation entitled to vote generally at an election of directors.

4. VACANCIES. Subject to any limitations imposed by applicable law and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders and except as otherwise provided by applicable law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.

B.

1. BYLAW AMENDMENTS. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Corporation; *provided, however,* that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class shall be required to adopt, amend or repeal any provision of the Bylaws of the Corporation.

2. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

3. No action shall be taken by the stockholders of the Corporation except at an annual or special meeting of stockholders called in accordance with the Bylaws.

4. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

VI.

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law.

B. To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which applicable law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by such applicable law. If applicable law is amended after approval by the stockholders of this Article VI to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director to the Company shall be eliminated or limited to the fullest extent permitted by applicable law as so amended.

C. Any repeal or modification of this Article VI shall be prospective and shall not affect the rights under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

VII.

A. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in paragraph B. of this Article VII, and all rights conferred upon the stockholders herein are granted subject to this reservation.

B. Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Corporation required by law or by this Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI, and VII.

* * * *

FOUR: This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Company.

FIVE: This Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of the Company in accordance with Section 228 of the DGCL. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of the Company.

IN WITNESS WHEREOF, the undersigned has executed this certificate on September 30, 2013.

/s/ Harold Van Wart
Harold Van Wart
President and Chief Executive Officer

Exhibit 3.2

AMENDED & RESTATED BYLAWS

OF

CYMABAY THERAPEUTICS, INC.
(A DELAWARE CORPORATION)

TABLE OF CONTENTS

TABLE OF CONTENTS
(CONTINUED)

AMENDED AND RESTATED BYLAWS

OF

CYMABAY THERAPEUTICS, INC.
(A DELAWARE CORPORATION)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle. (Del. Code Ann., tit. 8, § 131)

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require. (Del. Code Ann., tit. 8, § 122(8))

ARTICLE II

CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. (Del. Code Ann., tit. 8, § 122(3))

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 4. Place Of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("***DGCL***"). (Del. Code Ann., tit. 8, § 211(a))

Section 5. Annual Meetings.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors.

Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders; (ii) by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in the following paragraph, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5; provided, however, that clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly brought under Rule 14-8 under the Securities Exchange Act of 1934, as amended (the "1934 Act") and included in the corporation's notice of meeting of stockholders) before an annual meeting of stockholders. (Del. Code Ann., tit. 8, § 211(b)).

(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, (ii) such other business must be a proper matter for stockholder action under DGCL, (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in clause (iii) of the last sentence of this Section 5(b)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice, and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 5. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act and Rule 14a-4(d) thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a

director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

(c) Notwithstanding anything in the third sentence of Section 5(b) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 5 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

(d) Only such persons who are nominated in accordance with the procedures set forth in this Section 5 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 5. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(e) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 5. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(f) For purposes of this Section 5, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

At any time or times that the corporation is subject to Section 2115(b) of the California General Corporation Law ("***CGCL***"), stockholders holding ten percent (10%) or more of the outstanding shares shall have the right to call a special meeting of stockholders only as set forth in Section 18(b) herein**.** If a special meeting is properly called by such stockholders, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified or registered mail, return receipt requested, to the Secretary of the corporation.

(b) The Board of Directors shall determine the time and place of such special meeting. Upon determination of the time and place of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. No business may be transacted at such special meeting otherwise than specified in the notice of meeting. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in Section 5 of these Bylaws. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by Section 5(b) of these Bylaws shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(d) Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 6. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

Section 7. Notice Of Meetings. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given. (Del. Code Ann., tit. 8, §§ 222, 229, 232)

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange or Nasdaq rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the

affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series. (Del. Code Ann., tit. 8, § 216)

Section 9. Adjournment And Notice Of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. (Del. Code Ann., tit. 8, § 222(c))

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period. (Del. Code Ann., tit. 8, §§ 211(e), 212(b))

Section 11. Joint Owners Of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest. (Del. Code Ann., tit. 8, § 217(b))

Section 12. List Of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is

provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law. (Del. Code Ann., tit. 8, § 219)

Section 13. Action Without Meeting. No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent or by electronic transmission.

Section 14. Organization.

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV

DIRECTORS

Section 15. Number And Term Of Office. The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws. (Del. Code Ann., tit. 8, §§ 141(b), 211(b), (c))

Section 16. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation. (Del. Code Ann., tit. 8, § 141(a))

Section 17. Board of Directors.

(a) Directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Each director shall hold office either until the expiration of the term for which elected or appointed and until a successor has been elected and qualified, or until such director's earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(b) No stockholder entitled to vote for directors may cumulate votes to which such stockholder is entitled, unless, at the time of such election, the corporation is subject to §2115(b) of the CGCL. During such time or times that the corporation is subject to Section 2115(b) of the CGCL, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder thinks fit. No stockholder, however, shall be entitled to cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

Section 18. Vacancies.

(a) Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, *provided, however*, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director. (Del. Code Ann., tit. 8, § 223(a), (b))

(b) At any time or times that the corporation is subject to Section 2115(b) of the CGCL, if, after the filling of any vacancy, the directors then in office who have been elected by stockholders shall constitute less than a majority of the directors then in office, then

(1) Any holder or holders of an aggregate of five percent (5%) or more of the total number of shares at the time outstanding having the right to vote for those directors may call a special meeting of stockholders; or

(2) The Superior Court of the proper county shall, upon application of such stockholder or stockholders, summarily order a special meeting of stockholders, to be held to elect the entire board, all in accordance with Section 305(c) of the CGCL. The term of office of any director shall terminate upon that election of a successor. (CGCL § 305(c).

Section 19. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified. (Del. Code Ann., tit. 8, §§ 141(b), 223(d))

Section 20. Removal.

(a) During such time or times that the corporation is subject to Section 2115(b) of the CGCL, the Board of Directors or any individual director may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote on such removal; provided, however, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

(b) At any time or times that the corporation is not subject to Section 2115(b) of the CGCL and subject to any limitations imposed by law, Section 20(a) above shall no longer apply and the Board of Directors or any director may be removed from office at any time (i) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors or (ii) without cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors.

Section 21. Meetings.

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors. (Del. Code Ann., tit. 8, § 141(g))

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the Chief Executive Officer or by any two (2) directors. (Del. Code Ann., tit. 8, § 141(g))

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. (Del. Code Ann., tit. 8, § 141(i))

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. (Del. Code Ann., tit. 8, § 229)

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting. (Del. Code Ann., tit. 8, § 229)

Section 22. Quorum And Voting.

(a) Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Section 44 for which a quorum shall be one-third of the exact number of directors fixed from time to time, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however,* at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting. (Del. Code Ann., tit. 8, § 141(b))

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws. (Del. Code Ann., tit. 8, § 141(b))

Section 23. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. (Del. Code Ann., tit. 8, § 141(f))

Section 24. Fees And Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor. (Del. Code Ann., tit. 8, § 141(h))

Section 25. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of two (2) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the corporation. (Del. Code Ann., tit. 8, § 141(c))

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of two (2) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws. (Del. Code Ann., tit. 8, § 141(c))

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 25, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. (Del. Code Ann., tit. 8, §141(c))

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any Director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee. (Del. Code Ann., tit. 8, §§ 141(c), 229)

Section 26. Lead Independent Director. The Chairman of the Board of Directors, or if the Chairman is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director to serve until replaced by the Board of Directors ("Lead Independent Director"). The Lead Independent Director will, with the Chairman of the Board of Directors, establish the agenda for regular Board meetings and serve as chairman of Board of Directors meetings in the absence of the Chairman of the Board of

Directors; establish the agenda for meetings of the independent directors; coordinate with the committee chairs regarding meeting agendas and informational requirements; preside over meetings of the independent directors; preside over any portions of meetings of the Board of Directors at which the evaluation or compensation of the Chief Executive Officer is presented or discussed; preside over any portions of meetings of the Board of Directors at which the performance of the Board of Directors is presented or discussed; and coordinate the activities of the other independent directors and perform such other duties as may be established or delegated by the Chairman of the Board of Directors.

Section 27. Organization. At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, Lead Independent Director, or if the Lead Independent Director is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary or other officer or director directed to do so by the President, shall act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 28. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors. (Del. Code Ann., tit. 8, §§ 122(5), 142(a), (b))

Section 29. Tenure And Duties Of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. (Del. Code Ann., tit. 8, § 141(b), (e))

(b) Duties of Chief Executive Officer. The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present or the Lead Independent Director is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and

control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(c) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors, the Lead Independent Director, or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. (Del. Code Ann., Tit. 8, § 142(a))

(d) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

(e) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief

Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

Section 30. Delegation Of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 31. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer. (Del. Code Ann., tit. 8, § 142(b))

Section 32. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 33. Execution Of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation. (Del. Code Ann., tit. 8, §§ 103(a), 142(a), 158)

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount. (Del. Code Ann., tit. 8, §§ 103(a), 142(a), 158).

Section 34. Voting Of Securities Owned By The Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in

any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President. (Del. Code Ann., tit. 8, § 123)

ARTICLE VII

SHARES OF STOCK

Section 35. Form And Execution Of Certificates. The shares of the corporation shall be represented by certificates, or shall be uncertificated. Certificates for the shares of stock, if any, of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by certificate in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. (Del. Code Ann., tit. 8, § 158)

Section 36. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed. (Del. Code Ann., tit. 8, § 167)

Section 37. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares. (Del. Code Ann., tit. 8, § 201, tit. 6, § 8- 401(1))

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL. (Del. Code Ann., tit. 8, § 160 (a))

Section 38. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. (Del. Code Ann., tit. 8, § 213)

Section 39. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware. (Del. Code Ann., tit. 8, §§ 213(a), 219)

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 40. Execution Of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 35), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures

of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 41. Declaration Of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law. (Del. Code Ann., tit. 8, §§ 170, 173)

Section 42. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created. (Del. Code Ann., tit. 8, § 171)

ARTICLE X

FISCAL YEAR

Section 43. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION

Section 44. Indemnification Of Directors, Executive Officers, Other Officers, Employees And Other Agents.

(a) Directors and Executive Officers. The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, “executive officers” shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the fullest extent not

prohibited by the DGCL or any other applicable law; *provided, however,* that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, *provided, further,* that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person 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 DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

(b) Other Officers, Employees and Other Agents. The corporation shall have power to indemnify its other officers employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

(c) Expenses. The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer, of the corporation, or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or executive officer in his or her capacity as a director or executive officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 44 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Section 44, no advance shall be made by the corporation to an executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this Section 44 to a director or executive officer shall be enforceable by or on behalf of the person holding such right 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. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director or executive officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section 44.

(h) Amendments. Any repeal or modification of this Section 44 shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) Saving Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable

portion of this Section 44 that shall not have been invalidated, or by any other applicable law. If this Section 44 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

(j) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:

(1) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(2) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(3) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 44 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(4) References to a "director," "executive officer," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(5) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Section 44.

ARTICLE XII

NOTICES

Section 45. Notices.

(a) Notice To Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by US mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means. (Del. Code Ann., tit. 8, §§ 222, 232)

(b) Notice To Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), as otherwise provided in these Bylaws, or by overnight delivery service, facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Affidavit Of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained. (Del. Code Ann., tit. 8, § 222)

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice To Person With Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address. Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

ARTICLE XIII

AMENDMENTS

Section 46. Subject to the limitations set forth in Section 44(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; *provided, however,* that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

LOANS TO OFFICERS

Section 47. Loans To Officers. Except as otherwise prohibited by applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute. (Del. Code Ann., tit. 8, §143)

Exhibit 4.2

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of September 30, 2013 (the "Agreement Date"), by and among CymaBay Therapeutics, Inc., a Delaware corporation (the "Company"), and the several investors who have signed a joinder agreement to become a party hereto (each a "Purchaser" and collectively, the "Purchasers").

This Agreement is made in connection with the offering contemplated by (i) the Securities Purchase Agreement dated as of the date hereof among the Company and certain purchasers (the "Purchase Agreement"), (ii) the several Subscription Agreements between the Company, on the one hand, and certain subscribers, on the other hand (the "Subscription Agreement"), and, (iii) if applicable, the Institutional Purchase Agreement (as defined in the Subscription Agreement) by and among the Company and certain purchasers (the Purchase Agreement, Subscription Agreement and Institutional Purchase Agreement shall collectively be referred to herein as the "Applicable Agreements").

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Purchasers agree as follows:

1. Definitions. Capitalized terms used and not otherwise defined herein that are defined in an Applicable Agreement shall have the respective meanings given such terms in such Applicable Agreement. As used in this Agreement, the following terms shall have the following meanings:

"*Advice*" shall have the meaning set forth in Section 6(e).

"*Affiliate*" means, with respect to any person, any other person which directly or indirectly controls, is controlled by, or is under common control with, such person.

"*Agreement*" shall have the meaning set forth in the Preamble.

"*Applicable Agreement*" and "*Applicable Agreements*" shall have the respective meanings set forth in the Recitals.

"*Applicable Securities*" means all Registrable Securities in the Holders' possession.

"*Business Day*" means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

"*Commission*" means the Securities and Exchange Commission.

"*Common Stock*" means the common stock of the Company, par value $0.0001 per share, and any securities into which such common stock may hereinafter be reclassified.

"*Company*" shall have the meaning set forth in the Preamble.

"*Conversion Shares*" shall means shares of the Company's Common Stock issued upon conversion of the Company's preferred stock as described in the Purchase Agreement.

"*Effective Date*" means the date that the applicable Registration Statement filed pursuant to Section 2(a) is first declared effective by the Commission.

"*Effectiveness Deadline*" means the 30th calendar day following the Filing Deadline; provided, however, that in the event that the Commission reviews such Registration Statement and has written comments with respect thereto, such deadline shall be extended to the 60th calendar day following the Filing Deadline and provided, further, however, that if the Effectiveness Deadline falls on a Saturday, Sunday or other day that the Commission is closed for business, the Effectiveness Deadline shall be extended to the next Business Day on which the Commission is open for business.

"*Effectiveness Period*" shall have the meaning set forth in Section 2(b).

"*Event*" shall have the meaning set forth in Section 2(c).

"*Event Date*" shall have the meaning set forth in Section 2(c).

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

"*Filing Deadline*" means, with respect to the Registration Statement required to be filed pursuant to Section 2(a), the 30th calendar day following the Offering Termination Date and, provided, however, that if the Filing Deadline falls on a Saturday, Sunday or other day that the Commission is closed for business, the Filing Deadline shall be extended to the next Business Day on which the Commission is open for business.

"*Holder*" or "*Holders*" means the holder or holders, as the case may be, from time to time of Registrable Securities.

"*Indemnified Party*" shall have the meaning set forth in Section 5(c).

"*Indemnifying Party*" shall have the meaning set forth in Section 5(c).

"*Initial Registration Statement*" shall have the meaning set forth in Section 2(a).

"*Losses*" shall have the meaning set forth in Section 5(a).

"*Nasdaq*" means the Nasdaq Stock Market.

"*New York Courts*" means the state and federal courts sitting in the City of New York.

"*New Registration Statement*" shall have the meaning set forth in Section 2(a).

"*Person*" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"*Placement Agent*" shall mean National Securities Corporation.

"*Principal Market*" means the Trading Market on which the Common Stock is primarily listed on and quoted for trading.

"*Proceeding*" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"*Prospectus*" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"*Register*," "*registered*" and "*registration*" refer to a registration made by preparing and filing a Registration Statement or similar document in compliance with the Securities Act and pursuant to Rule 415, and the declaration or ordering of effectiveness of such Registration Statement or document.

"*Registrable Securities*" means all of (i) the Shares, (ii) the Warrant Shares, (iii) the Conversion Shares, and (iv) any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, that the Holder has completed and delivered to the Company a Selling Stockholder Questionnaire; and provided, further, that a Holder's security shall cease to be Registrable Securities upon the earliest to occur of the following: (A) sale of such security by such Holder pursuant to a Registration Statement or Rule 144 under the Securities Act (in which case, only such security sold shall cease to be a Registrable Security); or (B) at such time that the Holder can sell such securities under Rule 144 (1) without limitations as to volume of sales, method of sale requirements or notice requirements and (2) without the requirement for the Company to be in compliance with the current public information requirement under Rule 144(c)(1).

"*Registration Statements*" means any one or more registration statements of the Company filed under the Securities Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement (including without limitation the Initial Registration Statement, each New Registration Statement and any Remainder Registration Statements), amendments and supplements to such Registration Statements, including post-effective amendments, all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such Registration Statements.

"*Remainder Registration Statement*" shall have the meaning set forth in Section 2(a).

"*Rule 144*" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"*Rule 415*" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"*Rule 424*" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"*SEC Guidance*" means (i) any publicly-available written or oral guidance, comments, requirements or requests of the Commission staff and (ii) the Securities Act.

"*Securities Act*" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"*Selling Stockholder Questionnaire*" means a questionnaire in the form attached as Annex B hereto, or such other form of questionnaire as may reasonably be adopted by the Company from time to time.

"*Shares*" means the shares of Common Stock issued or issuable to the Purchasers pursuant to the Applicable Agreements.

"*Trading Day*" means (i) a day on which the Common Stock is listed or quoted and traded on its Principal Market (other than the OTC Bulletin Board), or (ii) if the Common Stock is not listed on a Trading Market (other than the OTC Bulletin Board), a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not quoted on any Trading Market, a day on which the Common Stock is quoted in the over-the-counter market as reported in the "pink sheets" by Pink Sheets LLC (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

"*Trading Market*" means whichever of the following on which the Common Stock is listed or quoted for trading on the date in question: the New York Stock Exchange, the NYSE MKT, Nasdaq, or the OTC Bulletin Board.

"*Transaction Documents*" means the Applicable Agreements, the Warrants and this Agreement.

"*Warrants*" means the Warrants issued pursuant to the Applicable Agreements.

"*Warrant Shares*" means the shares of Common Stock issued or issuable upon exercise of the Warrants.

2. Registration.

(a) No later than the Filing Deadline, the Company shall prepare and file with the Commission a "Shelf" Registration Statement covering the resale of all of the Registrable Securities not already covered by an existing and effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 or if Rule 415 is not available for offers and sales of the Registrable Securities by such other means of distribution of Registrable Securities as the Holders may reasonably specify and that is permitted under the Securities Act (such Registration Statement, the "Initial Registration Statement"). The Initial Registration Statement shall be on Form S-1 or on another appropriate form in accordance herewith, and shall contain (except if otherwise required pursuant to written comments received from the Commission upon a review of such Registration Statement) the "Plan of Distribution" section attached hereto as Annex A (which may be modified to respond to comments, if any, provided by the Commission, except that no Holder shall be named as an "underwriter" without such Holder's consent). In the event the Commission requires a Holder to be named as an "underwriter", such Holder shall have the option to either be named as such in the Registration Statement or to exclude some or all of such Holder's Registrable Securities from such Registration Statement to the extent necessary for such Holder to not be named as an underwriter in such Registration Statement (and such Registrable Securities excluded from the Initial Registration Statement at the option of any Holder shall be deemed "Cut Back Shares", as defined below). Such Initial Registration Statement shall not seek to register any securities other than the Registrable Securities. Notwithstanding the registration obligations set forth in this subsection (a) and subsections (b) and (c) of this Section 2, in the event that, with respect to any particular registration, the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees promptly to (i) inform each of the Holders thereof and use its commercially reasonable best efforts to file amendments to the Initial Registration Statement as required by the Commission and/or (ii) withdraw such Initial Registration Statement and file a new registration statement (a "New Registration Statement"), in either case covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-1 or such other form available to register for resale the Registrable Securities as a secondary offering; provided, however, that prior to filing such amendment or New Registration Statement, the Company shall be obligated to use its commercially reasonable best efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance; provided, further, that, the Company shall not in connection with such amendment or New Registration Statement agree to name any Holder as an "underwriter" in such amendment or New Registration Statement without the prior written consent of such Holder. In the event the Commission requires a Holder to be named as an "underwriter", such Holder shall have the option to either be named as such in the Registration Statement or to exclude some or all of such Holder's Registrable Securities from such Registration Statement to the extent necessary for such Holder to not be named as an underwriter in such Registration Statement (and such Registrable Securities excluded from such Registration Statement at the option of any Holder shall be deemed "Cut Back Shares", as

defined below). Notwithstanding any other provision of this Agreement, if any SEC Guidance sets forth a limitation of the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used its commercially reasonable best efforts to advocate with the Commission for the registration of all or a greater number of Registrable Securities) (a "Cut-Back"), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced on a pro rata basis and such reduction shall be applied first to any Conversion Shares included in the Registrable Securities, second to any Warrant Shares included in the Registrable Securities and finally to any Shares included in the Registrable Securities, unless the SEC Guidance otherwise requires or the Holders otherwise agree (any Registrable Securities so removed from the Initial Registration Statement, the "Cut-Back Shares"). In the event the Company amends the Initial Registration Statement or files a New Registration Statement, as the case may be, under clauses (i) or (ii) above, the Company will use its commercially reasonable best efforts to file with the Commission, as promptly as allowed by the Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-1 or such other form available to register for resale the Cut-Back Shares (a "Remainder Registration Statement").

(b) The Company shall use its commercially reasonable best efforts to cause each Registration Statement to be declared effective by the Commission as soon as practicable and, with respect to the Initial Registration Statement or a New Registration Statement, as applicable, no later than the Effectiveness Deadline (including filing with the Commission a request for acceleration of effectiveness in accordance with Rule 461 promulgated under the Securities Act within three Business Days after the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be "reviewed," or not be subject to further review and the effectiveness of such Registration Statement may be accelerated) and shall use its commercially reasonable best efforts to keep each Registration Statement continuously effective under the Securities Act until the earlier of (i) such time as all of the Registrable Securities covered by such Registration Statement have been publicly sold by the Holders, or (ii) the date that all Registrable Securities covered by such Registration Statement may be sold (A) without limitations as to volume of sales, method of sale requirements or notice requirements pursuant to Rule 144 and (B) without the requirement for the Company to be in compliance with the current public information requirement under Rule 144(c)(1), as determined by counsel to the Company pursuant to written instructions to such effect, addressed to the Company's transfer agent, copies of which shall be provided to the Holders and the Placement Agent (the "Effectiveness Period"). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 pm Eastern Time on the Effective Date. The Company shall promptly notify the Holders via facsimile or e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission. The Company shall, by 9:30 am Eastern Time on the Trading Day after the effective date of such Registration Statement, file a 424(b) prospectus with the Commission.

(c) If: (i) the Initial Registration Statement is not filed with the Commission on or prior to the applicable Filing Deadline, (ii) the Initial Registration Statement (or a New

Registration Statement, as applicable) is not declared effective by the Commission (or otherwise does not become effective) for any reason, or (iii) after its Effective Date, such Registration Statement ceases for any reason (including by reason of a stop order or other suspension of the effectiveness of such Registration Statement) to remain continuously effective as to all Registrable Securities for which it is required to be effective, and, as a result, the Holders are not permitted to utilize the Prospectus therein to resell such Registrable Securities at any time during the 180-day period commencing on the Effective Date (the "Initial Effectiveness Period"), and after the end of the Initial Effectiveness Period for an aggregate of more than 20 consecutive calendar days or 40 calendar days in any twelve (12) month period (which need not be consecutive) (any such failure or breach in clauses (i) through (iii) above being referred to as an "Event," and, for purposes of clauses (i) through (iii), the date on which such Event occurs being referred to as the "Event Date"), then in addition to any other rights available to the Holders hereunder or under applicable law on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to each Holder an amount in cash equal to 1.5% of the aggregate purchase price paid by such Holder for the Applicable Securities required to be included in such Registration Statement, provided that the amount of such liquidated damages paid to each Holder may not exceed more than 25% of the aggregate purchase price paid by such Holder for such Applicable Securities. Such payments shall be made to each Holder in cash. The liquidated damages pursuant to the terms hereof shall apply on a daily pro-rata basis for any portion of a month prior to the cure of an Event. Notwithstanding the foregoing, if two or more Events are occurring simultaneously, the Company shall only be liable for liquidated damages under this Section 2(c) as if one Event is occurring. For the avoidance of doubt, no liquidated damages shall accrue as to any Cut Back Shares until such date as the Company is able to effect the registration of such Cut Back Shares in accordance with any SEC Guidance (such date, the "Restriction Termination Date" of such Cut Back Shares). From and after the Restriction Termination Date applicable to any Cut Back Shares, all of the provisions of this Section 2 (including the liquidated damages provisions) shall again be applicable to such Cut Back Shares; provided, however, that (i) the Filing Deadline for the Registration Statement including such Cut Back Shares shall be thirty (30) Business Days after such Restriction Termination Date, and (ii) the Effectiveness Deadline with respect to such Cut Back Shares shall be the 60th day immediately after the Restriction Termination Date (or the 90th day in the event the Commission provides written comments to such Registration Statement). In the event a Purchaser fails to timely provide the Company with information reasonably requested by the Company and necessary to include shares held by such Holder in a Registration Statement in accordance with the requirements of the Securities Act, the Effectiveness Deadline for such Purchaser shall be extended without, default or liquidated damages hereunder, until the 60th day after such time as the Company files any New Registration Statement subsequent to receiving the information reasonably requested and necessary to include such Holder in such New Registration Statement (or the 90th day in the event the Commission provides written comments to such New Registration Statement).

(d) Each Holder agrees to furnish to the Company a completed Questionnaire in the form attached to this Agreement as Annex B (a "Selling Stockholder Questionnaire") no later than ten (10) Trading Days prior to the Filing Date. Each Holder further agrees that it shall not be entitled to be named as a selling securityholder in a Registration Statement or use the

Prospectus for offers and resales of Registrable Securities at any time, unless such Holder has returned to the Company a completed and signed Selling Stockholder Questionnaire. If a Holder of Registrable Securities returns a Selling Stockholder Questionnaire after the deadline specified in the previous sentence, the Company shall use its commercially reasonable best efforts to take such actions as are required to name such Holder as a selling security holder in a Registration Statement or any pre-effective or post-effective amendment thereto and to include (to the extent not theretofore included) in such Registration Statement the Registrable Securities identified in such late Selling Stockholder Questionnaire. Each Holder acknowledges and agrees that the information in the Selling Stockholder Questionnaire will be used by the Company in the preparation of such Registration Statement and hereby consents to the inclusion of such information in such Registration Statement.

3. Registration Procedures

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than (x) five Trading Days prior to the filing of a Registration Statement and (y) three Trading Days prior to the filing of any related Prospectus or any amendment or supplement thereto (except for amendments or supplements that contain Annual Reports on Form 10-K, and Quarterly Reports on Form 10-Q and Current Reports on Form 8-K and any similar or successor reports), the Company shall furnish to counsel to the Placement Agent and counsel for the Holders copies of such Registration Statement, Prospectus or amendment or supplement thereto, as proposed to be filed.

(b) (i) Prepare and file with the Commission such amendments (including post effective amendments) and supplements to each Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement continuously effective as to the applicable Registrable Securities for its Effectiveness Period; (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424; (iii) respond as promptly as reasonably practicable to any comments received from the Commission with respect to each Registration Statement or any amendment thereto and, as promptly as reasonably practicable, provide counsel to the Placement Agent and the Holders the true and complete copies of all correspondence from and to the Commission relating to such Registration Statement that pertains to the Holders as "Selling Stockholders" but not any comments that would result in the disclosure to the Holders of material and non-public information concerning the Company; and (iv) comply with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement until such time as all of such Registrable Securities shall have been disposed of (subject to the terms of this Agreement) in accordance with the intended methods of disposition by the Holders thereof as set forth in such Registration Statement as so amended or in such Prospectus as so supplemented; provided, however, that each Purchaser shall be responsible for the delivery of the Prospectus to the Persons to whom such Purchaser sells any of the Shares or the Warrant Shares (including in accordance with Rule 172 under the Securities Act), and each Purchaser agrees to dispose of Registrable Securities in compliance with the "Plan of Distribution" described in such Registration Statement and otherwise in compliance with applicable federal and state securities laws; *provided*, *further*, that the Company shall promptly

inform the Purchasers in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 3(b)) by reason of the Company filing a report on Form 10-K, Form 10-Q or Form 8-K or any analogous report under the Exchange Act, the Company shall include such report in such Registration Statement by amendment or supplement, and shall file such amendments or supplements with the Commission on the same day on which the Exchange Act report which created the requirement for the Company to amend or supplement such Registration Statement was filed.

(c) Notify the Holders (which notice shall, pursuant to clauses (i) through (iii) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (in the case of (i) and (ii) below, not more than one Trading Day after such issuance or receipt and in the case of (iii) below, not less than three Trading Days prior to the financial statements in any Registration Statement becoming ineligible for inclusion therein) (i) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose; (ii) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose; and (iii) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in such Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to such Registration Statement, Prospectus or other documents so that, in the case of such Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, form of prospectus or supplement thereto, in light of the circumstances under which they were made), not misleading.

(d) Use its commercially reasonable best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, as soon as reasonably practicable.

(e) If requested by a Holder, furnish to such Holder, without charge, at least one conformed copy of each Registration Statement and each amendment thereto and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission; provided, that the Company shall have no obligation to provide any document pursuant to this clause that is available on the Commission's EDGAR system.

(f) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable best efforts to register or qualify, unless an exemption from registration and qualification applies, the Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in

writing, to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by the Registration Statements; provided, that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action that would subject the Company to general service of process in any jurisdiction where it is not then so subject or subject the Company to any material tax in any such jurisdiction where it is not then so subject.

(g) If requested by the Holders, cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to the Registration Statements, which certificates shall be free, to the extent permitted by the Applicable Agreements, and under law, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may reasonably request.

(h) Following the occurrence of any event contemplated by Section 3(c), as promptly as reasonably practicable (taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event), prepare a supplement or amendment, including a post-effective amendment, to the affected Registration Statements or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, no Registration Statement nor any Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, form of prospectus or supplement thereto, in light of the circumstances under which they were made), not misleading. If the Company notifies the Holders in accordance with clauses (i) through (iii) of Section 3(c) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its commercially reasonable best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(h) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of partial liquidated damages otherwise required pursuant to Section 2(c), for a period not to exceed thirty (40) calendar days (which need not be consecutive days) in any twelve (12) month period.

(i) In order to enable the Holders to sell Shares or Warrant Shares under Rule 144, until such time that the Holder can sell under Rule 144 (A) without limitations as to volume of sales, method of sale requirements or notice requirements and (B) without the requirement for the Company to be in compliance with the current public information requirement under Rule 144(c)(1), timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to Section 13(a) or 15(d) of the Exchange Act. During such period, if the Company is not required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act, it will prepare and furnish to the Holders and make publicly available in accordance with Rule 144(c) promulgated under the Securities Act annual and quarterly financial statements, together with a discussion and analysis of such financial statements in form and substance substantially similar to those that would

otherwise be required to be included in reports required by Section 13(a) or 15(d) of the Exchange Act, as well as any other information required thereby, in the time period that such filings would have been required to have been made under the Exchange Act. The Company further covenants that it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Person to sell Shares and Warrant Shares without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 promulgated under the Securities Act, including compliance with the provisions of any Applicable Agreement relating to the transfer of the Shares and Warrant Shares.

4. Registration Expenses. All fees and expenses incident to the Company's performance of or compliance with its obligations under this Agreement (excluding any underwriting discounts and selling commissions for any Holder), and reasonable fees and disbursements of a single special counsel for the Holders not to exceed $15,000 shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, and (B) in compliance with applicable state securities or Blue Sky laws (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities, and determination of the eligibility of the Registrable Securities for investment under the laws of such jurisdictions as requested by the Holders)), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing prospectuses if the printing of prospectuses is reasonably requested by the Holders of a majority of the Registrable Securities included in a Registration Statement), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or any legal fees or other costs of the Holders.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify, defend and hold harmless each Holder, the officers, directors, agents, partners, members, managers, shareholders, Affiliates and employees of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, partners, members, managers, shareholders, agents and employees of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable costs of preparation and investigation

and reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, that arise out of or are based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading, or (ii) any violation or alleged violation by the Company of the Securities Act, Exchange Act, any state securities law, any Blue Sky laws of any jurisdiction in which Registrable Securities are offered or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or any violation of this Agreement, except to the extent, but only to the extent, that (A) such untrue statements, alleged untrue statements, omissions or alleged omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and approved in writing by such Holder expressly for use in such Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto (it being understood that each Holder has approved Annex A hereto for this purpose), (B) in the case of an occurrence of an event of the type specified in Section 3(c)(i) through (iii), the use by a Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated and defined in Section 6(e), or (C) any such Losses arise out of the Holder's (or any other indemnified Person's) failure to send or give a copy of the Prospectus or supplement (as then amended or supplemented), if required, pursuant to Rule 172 under the Securities Act (or any successor rule) to the Persons asserting an untrue statement or alleged untrue statement or alleged untrue statement or omission or alleged omission at or prior to the written confirmation of the sale of Registrable Securities to such Person if such statement or omission was corrected in such Prospectus or supplement. The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an Indemnified Party and shall survive the transfer of the Registrable Securities by the Holders.

(b) Indemnification by Holders. Each Holder shall, notwithstanding any termination of this Agreement, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, arising out of or based solely upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, or any form of prospectus or supplement

thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent that, such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, (ii) to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and approved by such Holder expressly for use in the Registration Statements (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or such form of Prospectus or in any amendment or supplement thereto or (iii) in the case of an occurrence of an event of the type specified in Section 3(c)(i) through (iii), the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated in Section 6(e). In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all reasonable fees and expenses incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that a conflict of interest exists if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party); provided, that the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys at any time for the Indemnified Party. The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld, delayed or conditioned. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within 10 Trading Days of written notice thereof to the Indemnifying Party; provided, that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally judicially determined to not be entitled to indemnification hereunder and such settlement does not require the Indemnified Party to pay any amount or take any action in connection therewith. The failure to deliver written notice to the Indemnifying Party within a reasonable time of the commencement of any such action shall not relieve such Indemnifying Party of any liability to the Indemnified Party under this Section 5, except to the extent that the Indemnifying Party is prejudiced in its ability to defend such action.

Such indemnity shall survive the transfer of Registrable Securities by the Holder pursuant to Section 6(i).

(d) Contribution. If a claim for indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section 5 was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 5(d), no Holder shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

The indemnity and contribution agreements contained in this Section 5 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties and are not in diminution or limitation of the indemnification provisions under any Applicable Agreement.

6. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder of any of their obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company and each Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

(b) No Other Registration Rights. Except as contemplated by Sections 6(g) and (i), the Company shall not enter into any agreement with any holder or prospective holder of any securities of the Company that would grant such holder rights to demand the registration of shares of the Company's capital stock, or to include such shares in a registration statement that would reduce the number of shares includable by the Holders.

(c) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter, except for, and as provided in the Transaction Documents.

(d) Compliance. Each Holder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it (unless an exemption therefrom is available) in connection with sales of Registrable Securities pursuant to a Registration Statement and, in such event, shall sell the Registrable Securities only in accordance with a method of distribution described in such Registration Statement.

(e) Discontinued Disposition. Each Holder further agrees by its acquisition of Registrable Securities that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(c)(i) through (iii), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company may provide appropriate stop orders to enforce the provisions of this paragraph. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(c) as qualified by Section 3(a). The Company shall use its commercially reasonable best efforts to cause the use of the Prospectus may be resumed as promptly as possible.

(f) Piggy-Back Registrations. If at any time during the Effectiveness Period there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee or director benefit plans, then the Company shall send to each Holder written notice of such determination and, if within 15 calendar days after receipt of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered, subject to customary underwriter cutbacks applicable to all holders of registration rights on a pro rata basis (along with other holders of piggyback registration rights with respect to the Company); provided, however, that no such reduction shall reduce the amount of Registrable Securities of the selling Holders included in the registration statement below 30% of the total amount of securities included in such registration statement, unless such registration does not include shares of any other selling stockholders, in which event any or all of the Registrable Securities of the Holders may be excluded in accordance with the immediately preceding clause; provided, further that (i) the Company shall not be required to register any Registrable Securities pursuant to this Section 6(f) that are (A) eligible for resale under Rule 144 without limitations as to volume of sales, method of sale requirements or notice requirements and without the requirement for the Company to be in compliance with the current public information requirements under Rule 144(c)(1), or (B) the subject of a then effective Registration Statement, and (ii) if at any time after giving written notice of its intention to register any securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register or to delay registration of such securities, the Company may, at its election, give written notice of such determination to such Holder and, thereupon, (Y) in the case of a determination not to register, shall be relieved of its obligation to register any Registrable Securities pursuant to this Section 6(f) in connection with such registration (but not from its obligation to pay expenses in accordance with Section 4 hereof), and (Z) in the case of a determination to delay registering, shall be permitted to delay registering any Registrable Securities being registered pursuant to this Section 6(f) for the same period as the delay in registering such other securities. Nothing contained in this Section 6(f) shall limit the Company's liabilities and/or obligations under this Agreement, including, without limitation, the obligation to pay liquidated damages under Section 2(c).

(g) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented unless the same shall be in writing and signed by the Company and Holders holding 50% of the then outstanding Registrable Securities, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and Holders holding 50% of the then outstanding Registrable Securities; *provided however,* that execution of a

Joinder Agreement by additional Purchasers after the Agreement Date shall not be deemed to be an amendment to this Agreement. If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders and that does not directly or indirectly affect the rights of other Holders may be given by Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(g).

(h) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile (provided the sender receives a machine-generated confirmation of successful transmission) at the facsimile number specified in this Section 6(h) prior to 5:00 p.m., eastern time, on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 6(h) on a day that is not a Trading Day or later than 5:00 p.m., eastern time, on any Trading Day, (c) the Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service with next day delivery specified, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as follows:

If to the Company:

CymaBay Therapeutics, Inc.
3876 Bay Center Place
Hayward, CA 94545
Attention: Chief Executive Officer
Facsimile No.: (510) 293-9090

With a copy to:

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304
Attention: Matthew B. Hemington
Facsimile No.: (650) 849-7400

If to a Purchaser: To the address set forth under such Purchaser's name on the Applicable Agreement;

or such other address as may be designated in writing hereafter, in the same manner, by such Person.

(i) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. Nothing in this Agreement, express or implied, is intended to confer

upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. The Company may not assign its rights or obligations hereunder without the prior written consent of all the Holders of the then outstanding Registrable Securities (other than by merger or to an entity which acquires the Company including by way of acquiring all or substantially all of the Company's assets). The rights of the Holders hereunder, including the right to have the Company register Registrable Securities pursuant to this Agreement, may be assigned by each Holder to transferees or assignees of all or any portion of the Registrable Securities, but only if (i) such Holder complies with all laws applicable thereto, (ii) the transferee or assignee signs the form of Joinder Agreement attached hereto agreeing to be bound by all of the provisions of this Agreement and (iii) such Holder provides written notice of assignment to the Company promptly after such assignment is effected.

(j) Execution and Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. For purposes of the preceding sentence, each Purchaser shall become a party to this Agreement by executing and delivering to the Company a Joinder Agreement in the form attached hereto. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature were the original thereof.

(k) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective Affiliates, employees or agents) shall be commenced exclusively in the New York Courts. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such New York Court, or that such Proceeding has been commenced in an improper or inconvenient forum. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

(l) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

(m) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(n) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(o) Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under this Agreement are several and not joint with the obligations of any other Purchaser hereunder, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser hereunder. The decision of each Purchaser to purchase the Shares and Warrants pursuant to the Transaction Documents has been made independently of any other Purchaser. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert with respect to such obligations or the transactions contemplated by this Agreement. Each Purchaser acknowledges that no other Purchaser has acted as agent for such Purchaser in connection with making its investment hereunder and that no Purchaser will be acting as agent of such Purchaser in connection with monitoring its investment in the Shares and Warrants or enforcing its rights under the Transaction Documents. Each Purchaser shall be entitled to protect and enforce its rights, including, without limitation, the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any Proceeding for such purpose. The Company acknowledges that each of the Purchasers has been provided with the same Registration Rights Agreement for the purpose of closing a transaction with multiple Purchasers and not because it was required or requested to do so by any Purchaser.

(p) No Inconsistent Agreements. The Company has not entered, as of the date hereof, nor shall the Company, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflict with the provisions hereof and (ii) the Company has not previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(q) Currency. Unless otherwise indicated, all dollar amounts referred to in this Agreement are in United States Dollars. All amounts owing under this Agreement are in United States Dollars. All amounts denominated in other currencies shall be converted in the United States Dollar equivalent amount in accordance with the applicable exchange rate in effect on the date of calculation.

(r) Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

(Signature pages follow.)

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

CymaBay Therapeutics, Inc.

By: _____

Name:
Title:

(Company Signature Page for Registration Rights Agreement)

JOINDER AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the undersigned hereby acknowledges receipt of a true and complete copy of the Registration Rights Agreement, dated as of September , 2013, by and among CymaBay Therapeutics, Inc. and the Purchasers party thereto, and agrees to be bound by all of the provisions thereof.

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement as of the day of , 2013.

Individuals Sign Below:

_____
Signature

_____
Name

_____
Signature (if more than one)*

_____
Name (if more than one)*

Corporations, Trusts, Partnerships, Limited Liability Companies, Retirement Plans, Retirement Accounts or Other Entities Sign Below:

_____
Name of Purchaser (please print)

By: _____
Signature

_____
(print name and title of signatory)

Address and Facsimile:

_____

_____

_____

* If joint purchasers, both must sign.

Plan of Distribution

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales effected after the date the registration statement of which this Prospectus is a part is declared effective by the SEC;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;

- a combination of any such methods of sale; and
- any other method permitted by applicable law.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering. Upon any exercise of the warrants by payment of cash, however, we will receive the exercise price of the warrants.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be “underwriters” within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn

on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are "underwriters" within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In addition, to the extent applicable we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We have agreed to indemnify the selling stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus.

We have agreed with the selling stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of (1) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement or (2) the date on which all of the shares may be sold without restriction pursuant to Rule 144 of the Securities Act.

Exhibit 4.3

NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES HAVE BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAW OF ANY FOREIGN JURISDICTION OR ANY STATE WITHIN THE UNITED STATES. SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, OR HYPOTHECATED ABSENT AN EFFECTIVE REGISTRATION THEREOF UNDER THE SECURITIES ACT OR AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT IS AVAILABLE IN CONNECTION WITH SUCH OFFER, SALE OR TRANSFER, INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULE 144 OR 144A UNDER SAID ACT OR PURSUANT TO A PRIVATE SALE EFFECTED UNDER APPLICABLE FORMAL OR INFORMAL SEC INTERPRETATION OR GUIDANCE, SUCH AS A SO-CALLED "4(1) AND A HALF SALE."

CYMABAY THERAPEUTICS, INC.

WARRANT TO PURCHASE COMMON STOCK

Warrant No. Original Issue Date: , 2013

CYMABAY THERAPEUTICS, INC., a Delaware corporation (the "Company"), hereby certifies that, for value received, or its permitted registered assigns (the "Holder"), is entitled to purchase from the Company up to a total of shares of common stock, $0.0001 par value per share (the "Common Stock"), of the Company (each such share, a "Warrant Share" and all such shares, the "Warrant Shares") at an exercise price per share equal to $5.75 (as adjusted from time to time as provided in Section 9 herein, the "Exercise Price"), at any time and from time to time on or after the Original Issue Date (as set forth above) and through and including 5:00 P.M., pacific time, on September 30, 2018 (the "Expiration Date"), subject to the following terms and conditions:

This Warrant (this "Warrant") is one of a series of similar warrants issued pursuant to: (a) that certain Securities Purchase Agreement, dated as of , 2013, by and among the Company and the purchasers identified therein; (b) those certain Subscription Agreements entered into between the Company, on the one hand, and the subscribers identified therein, and, (c) if applicable, a certain Institutional Purchase Agreement entered into by and among the Company and the investors identified therein (each, an "Applicable Agreement" and, collectively, the "Applicable Agreements"). All such warrants are referred to herein, collectively, as the "Warrants."

1. Definitions. In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Applicable Agreement, as the case may be. As used in this Warrant, the following terms shall have the following meanings:

"*Cash-Out Major Transaction*" means a Major Transaction in which the consideration payable to holders of Common Stock in connection with the Major Transaction consists solely of cash.

"Major Transaction" means: (A) a consolidation, merger, exchange of shares, recapitalization, reorganization, business combination or other similar event, (1) following which the holders of Common Stock immediately preceding such consolidation, merger, exchange, recapitalization, reorganization, combination or event either (a) no longer hold a majority of the shares of Common Stock or (b) no longer have the ability to elect a majority of the board of directors of the Company or (2) as a result of which shares of Common Stock shall be changed into (or the shares of Common Stock become entitled to receive) the same or a different number of shares of the same or another class or classes of stock or securities of the Company or another entity (collectively, a "Change of Control Transaction");

(B) the sale or transfer of significant assets of the Company which, without limitation, shall include, but not be limited to, a sale or transfer of assets in one transaction or a series of related transactions for a purchase price of more than $100 million, a sale or transfer of more than 50% of the Company's assets or a sale or transfer of assets or proprietary rights that are material to the operations and business of the Company;

(C) a purchase, tender or exchange offer made to the holders of outstanding shares of Common Stock, such that following such purchase, tender or exchange offer a Change of Control Transaction shall have occurred;

D) the liquidation, bankruptcy, insolvency, dissolution or winding-up (or the occurrence of any analogous proceeding) affecting the Company;

(E) after being listed or quoted on such exchange eor system, the shares of Common Stock cease to be listed, traded or quoted on the NASDAQ Global Market, the New York Stock Exchange, the NYSE Alternext U.S., the NASDAQ Global Select Market or the NASDAQ Capital Market (a "Principal Market") and are not promptly requoteed on a Principal Market; or

(F) the Common Stock, after having been so registered ceases to be registered under Section 12 of the Exchange Act.

"*Mixed Major Transaction*" means (1) a Major Transaction in which the consideration payable to the shareholders of the Company consists partially of cash and partially of securities of a Successor Entity. If the Successor Entity is a Publicly Traded Successor Entity, the percentage of consideration represented by securities of such Successor Entity shall be equal to the percentage that the value of the aggregate anticipated number of shares of the Publicly Traded Successor Entity to be issued to holders of Common Stock of the Company represents in comparison to the aggregate value of all consideration, including cash consideration, in such Mixed Major Transaction, as such values are set forth in any definitive agreement for the Mixed Major Transaction that has been executed at the time of the first public announcement of the Major Transaction or, if no such value is determinable from such definitive agreement, based on the closing market price for shares of the Publicly Traded Successor Entity on its principal

securities exchange on the Trading Day preceding the first public announcement of the Mixed Major Transaction. If the Successor Entity is a Private Successor Entity, the percentage of consideration represented by securities of such Successor Entity shall be determined in good-faith by the Company's Board of Directors

"*Parent Entity*" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of a Major Transaction.

"*Person*" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

"*Private Successor Entity*" means a Successor Entity that is not a Publicly Traded Successor Entity.

"*Registration Rights Agreement*" means the Registration Rights Agreement, of even date herewith, by and between, the Company and, among others, the Holder.

"*Publicly Traded Successor Entity*" means a Successor Entity that is a publicly traded corporation whose common stock is quoted on or listed for trading on an Principal Market (as defined above).

"*Successor Entity*" means any Person purchasing the Company's assets or Common Stock, or any successor entity resulting from such Major Transaction, or if the Warrant is to be exercisable for shares of capital stock of its Parent Entity (as defined above), its Parent Entity.

"*Trading Day*" means (i) a day on which the Common Stock is listed or quoted and traded on any Trading Market (other than the OTC Bulletin Board), OTCQX or OTCB, or (ii) if the Common Stock is not listed on a Trading Market (other than the OTC Bulletin Board), a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not quoted on any Trading Market, a day on which the Common Stock is quoted in the over-the-counter market as reported in the "pink sheets" by OTC Pink (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

"*Trading Market*" means whichever of the following on which the Common Stock is listed or quoted for trading on the date in question: the New York Stock Exchange, the NYSE MKT, Nasdaq, the OTC Bulletin Board (the "Pink Sheets"), the OTCQ or OTCQB.

2. Registration of Warrant. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder (which shall include the initial Holder or, as the case may be, any registered assignee to which this Warrant is permissibly assigned hereunder) from time to time. The

Company may deem and treat the registered Holder as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. Registration of Transfers. Subject to the restrictions on transfer set forth in this Warrant, the Company shall register the transfer of all or any portion of this Warrant in the Warrant Register, upon (a) surrender of this Warrant, with the Form of Assignment attached as Exhibit A hereto duly completed and signed, to the Company at its address specified in the Applicable Agreement and (b) if the Registration Statement is not effective, (i) delivery, at the request of the Company, of an opinion of counsel reasonably satisfactory to the Company to the effect that the transfer of such portion of this Warrant may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws (which exemption may include, without limitation, a so-called "4(1) and a half transaction"); provided, that such opinion shall not be required in connection with a transfer that is (A) an individual, firm, corporation, partnership, association, limited liability company, trust or any other entity (each, a "***Person***") who directly or indirectly, controls, is controlled by or is under common control with such Person, including, without limitation, any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person, (B) a partnership transferring to its partners or former partners in accordance with partnership interests, (C) a corporation transferring to a wholly-owned subsidiary or a parent corporation that owns all of the capital stock of the Holder of this Warrant, (D) a limited liability company transferring to its members or former members in accordance with their interest in the limited liability company, (E) an individual transferring to the Holder's spouse, children or grandchildren or a trust for the benefit of an individual Holder, and (ii) delivery by the transferee of a written statement making the representations and warranties set forth in the Applicable Agreement, as applicable as of the date of such transfer, to the Company at its address specified in the Applicable Agreement, or (F) a transfer in accordance with Rule 144 provided that the transferee provides customary representations that such transfer complies with the requirements thereof. For avoidance of doubt, in the event Holder notifies the Company that such sale or transfer is a so called "4(1) and half" transaction, the parties hereto agree that a legal opinion from outside counsel for the Holder delivered to counsel for the Company substantially in the form attached hereto as Exhibit C shall be the only requirement to satisfy an exemption from registration under the Securities Act to effectuate such "4(1) and half" transaction. The Company shall effect the assignment within three (3) business days (the "Transfer Delivery Period"), and shall deliver to the assignee(s) designated by Holder a Warrant or Warrants of like tenor and terms for the appropriate number of shares. Upon any such registration or transfer, a new warrant to purchase Common Stock in substantially the form of this Warrant (any such new warrant, a "New Warrant") evidencing the portion of this Warrant so transferred shall be issued to the transferee, and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a Holder of a Warrant.

4. Exercise and Duration of Warrant.

(a) All or any part of this Warrant shall be exercisable, in whole or in part, by the registered Holder at any time and from time to time on or after the Original Issue Date and through and including 5:00 P.M., pacific time, on the Expiration Date. At 5:00 P.M., pacific time, on the Expiration Date, this Warrant shall be terminated and no longer outstanding.

(b) The Holder may exercise this Warrant by delivering to the Company an exercise notice, in the form attached as Exhibit B hereto (the "Exercise Notice"), appropriately completed and duly signed. Within three (3) Trading Days following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Exercise Notice by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in 10 below is specified in the applicable Exercise Notice. The date such Exercise Notice is delivered to the Company (as determined in accordance with the notice provisions hereof) is an "Exercise Date." Unless the Holder shall have delivered a Representation Notice (as defined below) in connection therewith, each delivery of an Exercise Notice in connection with a Cash Exercise shall constitute a representation that upon such Cash Exercise, the Holder will acquire the Warrant Shares for its own account, for investment purposes only, and not with a view towards, the sale or distribution of the Warrant Shares, except pursuant to sales registered or exempted under the Securities Act; provided, however, that no such representations shall be construed as constituting an agreement by the Holder to hold any of the Warrant Shares for any minimum or other specific term and the Holder shall reserve the right to dispose of such Warrant Shares at any time in accordance with or pursuant to a registration statement or an exemption under the Securities Act. In addition, unless the Holder shall have delivered a Representation Notice (as defined below) in connection therewith, each delivery of an Exercise Notice in connection with a Cash Exercise shall constitute a representation that, as of the date of such Cash Exercise, the Holder is an "accredited investor" as such term is defined in Rule 501(a)(3) of Regulation D promulgated by the SEC under the Securities Act. If the Holder is unable to make the representations set forth in the immediately preceding two sentences at the time it delivers its Exercise Notice in respect of a Cash Exercise, the Holder shall notify the Company in writing that it is not making such representations (a "Representation Notice"). If the Holder delivers a Representation Notice in connection with a Cash Exercise, it shall be a condition to the Holder's Cash Exercise of this Warrant that the Company receive such other representations as the Company considers reasonably necessary to assure the Company that the issuance of Warrant Shares upon such Cash Exercise of this Warrant shall not violate any United States or state securities laws. The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the certificate or certificates representing Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(c) Notwithstanding anything herein to the contrary, the Company shall not issue to the Holder, and the Holder may not acquire, a number of shares of Common Stock upon exercise of this Warrant to the extent that, upon such exercise, the number of shares of Common Stock then beneficially owned by the Holder and its Affiliates and any other persons or entities

whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) would exceed 9.985% of the total number of shares of Common Stock then issued and outstanding (the "9.985% Cap"), provided, however, that the 9.985% Cap shall not apply with respect to the issuance of MT Shares (as defined below) in connection with a Major Transaction as a result of a consolidation, merger, exchange of shares, recapitalization, reorganization, business combination or other similar event, following which the holders of Common Stock immediately preceding such consolidation, merger, exchange, recapitalization, reorganization, combination or event either (i) no longer hold a majority of the shares of Common Stock or (ii) no longer have the ability to elect a majority of the board of directors of the Company, in which the Company is not the surviving entity (a "Qualified Change of Control Transaction") to the extent that the number of shares beneficially owned by the Holder and its affiliates in the successor entity immediately following consummation of such Qualified Change of Control Transaction does not exceed 9.985% of the outstanding common stock of such successor entity and provided, further, that the 9.985% Cap shall only apply to the extent that the Common Stock is deemed to constitute an "equity security" pursuant to Rule 13d-1(i) promulgated under the Exchange Act. For purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the Securities and Exchange Commission (the "SEC"), and the percentage held by the Holder shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act. Upon the written request of the Holder, the Company shall, within two (2) Trading Days, confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding.

For purposes of this Section 4(c), "Affiliate" means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act of 1933, as amended (the "Securities Act"). With respect to a Holder of Warrants, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder.

5. Delivery of Warrant Shares.

(a) Upon exercise of this Warrant (provided that the Holder shall have paid the aggregate Exercise Price (including cashless exercise, if applicable)) the Company shall promptly (but in no event later than three Trading Days after the Exercise Date) issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate (provided that, if the Registration Statement is not effective and the Holder directs the Company to register the Warrant Shares in a name other than that of the Holder, such Holder shall deliver to the Company on the Exercise Date the documents prescribed by Section 3 relating to a transfer of the Warrant), a certificate for the Warrant Shares issuable upon such exercise, free of restrictive legends, unless a registration statement covering the resale of the Warrant Shares is not then effective or the Warrant Shares are not freely transferable without volume restrictions pursuant to Rule 144 under the Securities Act. The Holder, or any Person permissibly so designated by the Holder to receive Warrant Shares, shall

be deemed to have become the holder of record of such Warrant Shares as of the Exercise Date. If the Warrant Shares are to be issued free of all restrictive legends, the Company shall deliver, or cause to be delivered, Warrant Shares hereunder electronically through The Depository Trust Company or another established clearing corporation performing similar functions, if available; provided, that, the Company may, but will not be required to, change its transfer agent if its current transfer agent cannot deliver Warrant Shares electronically through such a clearing corporation.

(b) If by the close of the third Trading Day after delivery of a properly completed Exercise Notice, the Company fails to deliver to the Holder the required number of Warrant Shares in the manner required pursuant to Section 5(a), and if on or after the Trading Day immediately following such third Trading Day and prior to the receipt of such Warrant Shares, the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall, within three Trading Days after the Holder's request and in the Holder's sole discretion, either (i) pay in cash to the Holder an amount equal to the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the "Buy-In Price"), at which point the Company's obligation to deliver such certificate (and to issue such Warrant Shares) shall terminate or (ii) promptly honor its obligation to deliver to the Holder Warrant Shares and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of Warrant Shares, times (B) the Closing Sales Price (as defined below) on the date of receipt of a properly completed Exercise Notice.

(c) To the extent permitted by law, the Company's obligations to issue and deliver Warrant Shares in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of Warrant Shares. Nothing herein shall limit the Holder's right to pursue any other remedies available to the Holder hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Common Stock upon exercise of this Warrant as required pursuant to the terms hereof.

(d) *Legends.*

(i) Restrictive Legend. The Holder understands that until such time as this Warrant, the Exercise Shares, the shares issuable under Section 9(h) (the "MT Shares"), the shares issuable upon an Event of Default (the "Default Shares") and the Failure Payment Shares (as defined below) have been registered under the Securities Act as contemplated by the Registration Rights Agreement or otherwise may be sold pursuant to Rule 144 under the Securities Act or an exemption from registration under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, this

Warrant, the Warrant Shares, the MT Shares, the Default Shares and the Failure Payment Shares, as applicable, may bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for such securities):

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULES 144 OR 144A UNDER SAID ACT OR PURSUANT TO A PRIVATE SALE EFFECTED UNDER APPLICABLE FORMAL OR INFORMAL SEC INTERPRETATION OR GUIDANCE, SUCH AS A SO-CALLED "4(1) AND A HALF" SALE."

(ii) Removal of Restrictive Legends. This Warrant and the certificates evidencing the Warrant Shares, the MT Shares, the Default Shares and the Failure Payment Shares, as applicable, shall not contain any legend restricting the transfer thereof (including the legend set forth above: (A) while a registration statement (including a Registration Statement, as defined in the Registration Rights Agreement) covering the sale or resale of such security is effective under the Securities Act, or (B) following any sale of such Warrant, Warrant Shares, MT Shares, Default Shares and/or Failure Payment Shares pursuant to Rule 144, or (C) if such Warrant, Warrant Shares, MT Shares, Default Shares and/or Failure Payment Shares are eligible for sale under Rule 144(b)(1), or (D) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC) (collectively, the "Unrestricted Conditions"). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent promptly after the Effective Date, or at such other time as the Unrestricted Conditions have been met, if required by the Company's transfer agent to effect the issuance of this Warrant, the Warrant Shares, the MT Shares, the Default Shares or the Failure Payment Shares, as applicable, without a restrictive legend or removal of the legend hereunder. If the Unrestricted Conditions are met at the time of issuance of this Warrant, Warrant Shares, MT Shares, Default Shares or the Failure Payment Shares, then such Warrant, Warrant Shares, MT Shares, Default Shares or Failure Payment Shares, as applicable, shall be issued free of all legends. The Company agrees that following the Effective Date at such time as the Unrestricted Conditions are met or such legend is otherwise no longer required under this Section 5(d), it will, no later than three (3) Trading Days following the delivery (the "Unlegended Shares Delivery Deadline") by the Holder to the Company or the Transfer Agent of this Warrant and a certificate representing Warrant Shares, MT Shares, Default Shares and/or Failure Payment Shares, as applicable, issued with a restrictive legend (such third Trading Day, the "Legend Removal Date"), deliver or cause to be delivered to such Holder this Warrant and/or a certificate (or electronic transfer) representing such shares that is free from all restrictive and other legends. For purposes hereof, "Effective Date" shall mean the date that the Registration Statement that the Company is required to file pursuant to the Registration Rights Agreement has been declared effective by the SEC.

(iii) Sale of Unlegended Shares. Holder agrees that the removal of the restrictive legend from this Warrant and any certificates representing securities as set forth above

is predicated upon the Company's reliance that the Holder will sell this Warrant or any Warrant Shares, MT Shares, Default Shares and/or any Failure Payment Shares, as applicable, pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if such securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein.

6. Charges, Taxes and Expenses. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, transfer agent fee or other incidental tax or expense in \respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder or an any other person which directly or indirectly controls, is controlled by, or is under common control with such Holder. The Holder shall be responsible for all other tax liability to the Holder that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction (in such case) and, in each case, a customary and reasonable indemnity (which shall not include a surety bond), if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

8. Reservation of Warrant Shares. The Company covenants that it will reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved shares of Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, one hundred percent (100%) of the number of Warrant Shares that are issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will take all such action as may be necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed, including, without limitation, calling a special meeting of stockholders, to authorize additional shares and using its best efforts to obtain the shareholder approval of an increase in such authorized number of shares.

9. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) **Stock Dividends and Splits.** If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) effects a recapitalization, reclassification, exchange, or subdivision of its outstanding shares of Common Stock into a larger number of shares, or (iii) effects a recapitalization, reclassification, exchange, or combination of its outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock (excluding treasury shares, if any), outstanding immediately before such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event and the number of shares issuable upon exercise of this Warrant shall be proportionally adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and shall become effective immediately after the effective date of such subdivision, combination or reclassification.

(b) **Participation.** The Holder, as the holder of this Warrant, shall be entitled to receive such dividends paid and distributions of any kind made to the holders of Common Stock of the Company to the same extent as if the Holder had exercised this Warrant into Common Stock (without regard to any limitations on exercise herein or elsewhere and without regard to whether or not a sufficient number of shares are authorized and reserved to effect any such exercise and issuance) and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock

(c) **Fundamental Transactions.** If, at any time while this Warrant is outstanding (i) the Company effects any merger or consolidation of the Company with or into another Person, in which the Company is not the survivor and the stockholders of the Company immediately prior to such merger or consolidation do not own, directly or indirectly, at least fifty percent (50%) of the voting securities of the surviving entity, (ii) the Company effects any sale of all or substantially all of its assets or at least a majority of its Common Stock is acquired by a third party, in each case, in one or a series of related transactions, (iii) any tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which all or substantially all of the holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (other than as a result of a subdivision or combination of shares of Common Stock covered by Section 9(a)) (in any such case, a "Fundamental Transaction"), then Holder shall thereafter receive, upon exercise of this Warrant, in lieu of any Warrant Shares, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the

number of Warrant Shares then issuable upon exercise in full of this Warrant without regard to any limitations on exercise contained herein (the "Alternate Consideration"). The Company shall not affect any such Fundamental Transaction unless prior to or simultaneously with the consummation thereof, any successor to the Company, surviving entity or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume the obligation to deliver to the Holder, such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to purchase and/or receive (as the case may be), and the other obligations under this Warrant. The provisions of this paragraph (c) shall similarly apply to subsequent transactions analogous to a Fundamental Transaction. Notwithstanding anything herein to the contrary, in the event that a Major Transaction occurs, then (1) in the case of a Cash-Out Major Transaction and in the case of a Mixed Major Transaction to the extent of the percentage of the cash consideration in the Mixed Major Transaction (determined in accordance with the definition of a Mixed Major Transaction below), the Holder, at its option, may require the Company to redeem the Holder's outstanding Warrants for cash in accordance with Section 9(h) below (a "Major Cash Redemption") and (2) in the case of all other Major Transactions and in the case of a Mixed Major Transaction to the extent of the percentage of the consideration represented by securities of a Successor Entity in the Mixed Major Transaction, the Holder, at its option, may require the Company to redeem the Holder's outstanding Warrants for shares of Common Stock in accordance with Section 9(h) below (a "Major Share Redemption").

(d) **Number of Warrant Shares.** (a) Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) and (e) of this Section, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(e) **Calculations.** All calculations under this Section 9 shall be made to the nearest cent or the nearest share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the sale or issuance of any such shares shall be considered an issue or sale of Common Stock.

(f) **Notice of Adjustments.** Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will, at the written request of the Holder, promptly compute such adjustment, in good faith, in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(g) **Notice of Corporate Events.** If, while this Warrant is outstanding, the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including, without limitation, any granting of rights or warrants to

subscribe for or purchase any capital stock of the Company or any subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then, except if such notice and the contents thereof shall be deemed to constitute material non-public information, the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction at least twenty (20) days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all steps reasonably necessary in order to ensure that the Holder is given the practical opportunity to exercise this Warrant prior to such time so as to participate in or vote with respect to such transaction; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

(h) **Major Transaction Early Termination Right.**

(i) *Notice.* At least thirty (30) days prior to the consummation of any Major Transaction, but, in any event, within five (5) Business Days following the first to occur of (x) the date of the public announcement of such Major Transaction if such announcement is made before 4:00 p.m., New York City time, or (y) the day following the public announcement of such Major Transaction if such announcement is made on and after 4:00 p.m., New York City time, the Company shall deliver written notice thereof via facsimile and overnight courier to the Holder (a "Major Transaction Notice"). At any time during the period beginning after the Holder's receipt of a Major Transaction Notice and ending five (5) Trading Days prior to the consummation of such Major Transaction (the "Early Termination Period"), the Holder may require the Company to redeem (an "Early Termination Upon Major Transaction") all or any portion of this Warrant (without taking into consideration the 9.985% Cap) by delivering written notice thereof ("Major Transaction Early Termination Notice") to the Company, which Major Transaction Early Termination Notice shall indicate the portion of the principal amount (the "Early Termination Principal Amount") of the Warrant that the Holder is electing to have redeemed. The portion of this Warrant subject to early termination pursuant to this Section 9(b)(i) (the "Redeemable Shares"), shall be redeemed by the Company at a price (the "Major Transaction Warrant Early Termination Price") payable (a) in the case of a Major Cash Redemption), in cash and (b) in the case of a Major Share Redemption, in shares of Common Stock of the Company that are valued for these purposes at 95% of the closing price of the Common Stock on the Trading Market on the Trading Day immediately preceding the date on which the applicable major Transaction is consummated, in either case, equal to the "Black Scholes Value" of the Redeemable Shares determined by use of the Black Scholes Option Pricing Model using the criteria set forth in Schedule 1 hereto (the "Black Scholes Value").

(ii) *Escrow; Payment of Major Transaction Warrant Early Termination Price.* Following the receipt of a Major Transaction Early Termination Notice from the Holder, the Company shall not effect a Major Transaction that is being treated as an early termination unless it either (a) shall first place into an escrow account with an independent escrow agent, at least three (3) business days prior to the closing date of the Major Transaction (the "Major Transaction Escrow Deadline"), an amount in shares of Common Stock or cash, as applicable, equal to the Major Transaction Warrant Early Termination Price or (b) obtains the written agreement of the Successor Entity that the payment of the Major Transaction Warrant Early

Termination Price shall be made to the Holder concurrently with the consummation of such Major Transaction, and such issuance or payment shall be a condition precedent to consummation of such Major Transaction. Concurrently upon closing of such Major Transaction, the Company shall pay or shall instruct the escrow agent to pay (or issue, as applicable) the Major Transaction Warrant Early Termination Price to the Holder. For purposes of determining the amount required to be placed in escrow pursuant to the provisions of this subsection (ii) and without affecting the amount of the actual Major Transaction Warrant Early Termination Price, the calculation of the price referred to in clause (1) of the first column of Schedule 1 hereto with respect to Stock Price shall be determined based on the Closing Market Price (as defined on Schedule I) of the Common Stock on the Trading Day immediately preceding the date that the funds and/or shares, as applicable, are deposited with the escrow agent.

(iii) *Injunction.* Following the receipt of a Major Transaction Early Termination Notice from the Holder, in the event that the Company attempts to consummate a Major Transaction without either (a) placing the Major Transaction Warrant Early Termination Price in escrow in accordance with subsection (ii) above, (b) payment or issuance of the Major Transaction Warrant Early Termination Price to the Holder prior to consummation of such Major Transaction or (c) obtaining the written agreement of the Successor Entity described in subsection (ii) above, the Holder shall have the right to apply for an injunction in any state or federal courts sitting in the City of New York, borough of Manhattan to prevent the closing of such Major Transaction until the Major Transaction Warrant Early Termination Price is paid or issued, as applicable, to the Holder.

An early termination required by this Section (h) shall have priority to payments to holders of Common Stock in connection with a Major Transaction to the extent an early termination required by this Section 9(h) are deemed or determined by a court of competent jurisdiction to be prepayments of the Warrant by the Company, such early termination shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 9, until the Major Transaction Warrant Early Termination Price is paid in full, this Warrant may be exercised, in whole or in part, by the Holder into shares of Common Stock, or in the event the Exercise Date is after the consummation of the Major Transaction, shares of publicly traded common stock (or their equivalent) of the Successor Entity pursuant to Section 9. The parties hereto agree that in the event of the Company's early termination of any portion of the Warrant under this Section 9, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any premium due under this Section 9 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

10. Payment of Exercise Price. The Holder shall pay the Exercise Price in immediately available funds; provided, however, that the Holder may, in its sole discretion, satisfy its obligation to pay the Exercise Price through a "cashless exercise," in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

X = Y ((A-B)/A)

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the total number of Warrant Shares with respect to which this Warrant is being exercised.

A = the Market Price of one (1) share of Common Stock (for purposes of this Section 10, where "Market Price," as of any date, means the Volume Weighted Average Price (as defined herein) of the Company's Common Stock during the ten (10) consecutive Trading Day period immediately preceding the date in question.

B = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

As used herein, the "Volume Weighted Average Price" for any security as of any date means the volume weighted average sale price on the OTC Bulletin Board as reported by, or based upon data reported by, Bloomberg Financial Markets or an equivalent, reliable reporting service mutually acceptable to and hereafter designated by holders of a majority in interest of the Warrants and the Company ("Bloomberg") or, if the OTC Bulletin Board is not the principal trading market for such security, the volume weighted average sale price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or, if no volume weighted average sale price is reported for such security, then the last closing trade price of such security as reported by Bloomberg, or, if no last closing trade price is reported for such security by Bloomberg, the average of the bid prices of any market makers for such security that are listed in the over the counter market by the Financial Industry Regulatory Authority, Inc. or in the "pink sheets" by the Pink OTC Market, Inc. If the Volume Weighted Average Price cannot be calculated for such security on such date in the manner provided above, the volume weighted average price shall be the fair market value as mutually determined by the Company and the Holders of a majority in interest of the Warrants being exercised for which the calculation of the volume weighted average price is required in order to determine the Exercise Price of such Warrants.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued pursuant to the Applicable Agreement (provided that the Commission continues to take the position that such treatment is proper at the time of such exercise).

11. No Fractional Shares. No fractional Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares which would, otherwise be issuable, the number of Warrant Shares to be issued shall be rounded down to the next whole number and the Company shall pay the Holder in cash the fair market value (based on the Closing Sale Price) for any such fractional shares.

12. Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder (including, without limitation, any Exercise Notice) shall be

in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile (provided the sender receives a machine-generated confirmation of successful transmission) at the facsimile number specified in the Applicable Agreement, or, if to the Company, via electronic mail warrants@cymabay.com prior to 5:00 P.M., eastern time, on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Applicable Agreement or via electronic mail on a day that is not a Trading Day or later than 5:00 P.M., eastern time, on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service specifying next business day delivery, or (iv) upon actual receipt by the party to whom such notice is required to be given, if by hand delivery. The address and facsimile number of a party for such notices or communications shall be as set forth in the Applicable Agreement unless changed by such party by two Trading Days' prior notice to the other party in accordance with this Section 12.

13. Warrant Agent. The Company shall initially serve as warrant agent under this Warrant. Upon thirty days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any entity resulting from any consolidation to which any the Company or new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or stockholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

14. Events of Failure.

(a) Definition.

The occurrence of each of the following shall be considered to be an "Event of Failure."

(i) A Delivery Failure occurs, where a "Delivery Failure" shall be deemed to have occurred if the Company fails to use its best efforts to deliver Warrant Shares to the Holder within three (3) Trading Days after the Exercise Date;

(ii) A Legend Removal Failure occurs, where a "Legend Removal Failure" shall be deemed to have occurred if the Company fails to use its best efforts to issue the Warrant Shares, MT Shares or Default Shares without a restrictive legend, or fails to use it best efforts to remove a restrictive legend, when and as required under Section 5 hereof; and

(iii) a Transfer Delivery Failure occurs, where a "Transfer Delivery Failure" shall be deemed to have occurred if the Company fails to use its best efforts to deliver a Warrant Transfer within any applicable Transfer Delivery Period;

(b) Failure Payments; Black-Scholes Determination. The Company understands that any Event of Failure (as defined above) could result in economic loss to the Holder. In the event that any Event of Failure occurs, as compensation to the Holder for such loss, the Company agrees to pay (as liquidated damages and not as a penalty) to the Holder an amount payable, at the

Company's option, either (i) in cash or (ii) in shares of Common Stock ("Failure Payment Shares") that are valued for these purposes at 95% of the Volume Weighted Average Price on the date of such calculation ("Failure Payments"), in each case equal to 18% per annum (or the maximum rate permitted by applicable law, whichever is less) of the Black-Scholes value (as determined below) of the remaining unexercised portion of this Warrant on the date of such Failure Delivery (as defined below) (as recalculated on the first business day of each month thereafter for as long as Failure Payments shall continue to accrue), which shall accrue daily from the date of such Event of Failure until the Event of Failure is cured, accruing daily and compounded monthly, provided, however, the Holder shall only receive up to such amount of Failure Payment Shares such that Holder and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) shall not collectively beneficially own greater than 9.985% of the total number of shares of Common Stock of the Company then issued and outstanding. For purposes of clarification, it is agreed and understood that Failure Payments shall continue to accrue following any Event of Default until the applicable Default Amount is paid in full.

The Company shall satisfy any Failure Payments under this Section pursuant to Section 14(c) below. Failure Payments are in addition to any Shares that the Holder is entitled to receive upon Exercise of this Warrant.

For purposes hereof, the "Black-Scholes" value of a Warrant shall be determined by use of the Black Scholes Option Pricing Model using the criteria set forth on Schedule 1 hereto.

(c) Payment of Accrued Failure Payments. The Failure Payment (including, Failure Payment Shares representing accrued Failure Payments, if applicable) for each Event of Failure shall be issued and delivered on or before the fifth (5th) business day of each month following a month in which Failure Payments accrued (such date of delivery the "Failure Delivery Date"). Nothing herein shall limit the Holder's right to pursue actual damages (to the extent in excess of the Failure Payments) for the Company's Event of Failure, and the Holder shall have the right to pursue all remedies available at law or in equity (including a decree of specific performance and/or injunctive relief). Notwithstanding the above, if a particular Event of Failure results in an Event of Default pursuant to Section 11 hereof, then the Failure Payment, for that Event of Failure only, shall be considered to have been satisfied upon payment to the Holder of an amount equal to the greater of (i) the Failure Payment, or (ii) the Default Amount, payable in accordance with Section 15.

(d) Maximum Interest Rate. Nothing contained herein or in any document referred to herein or delivered in connection herewith shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest or dividends required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

15. Default.

(a) *Events Of Default*. Each of the following events shall be considered to be an "Event of Default," unless waived by the Holder:

(i) Failure To Deliver Common Stock. A Delivery Failure (as defined above) occurs and remains uncured for a period of more than twenty (20) days; or at any time, the Company announces or states in writing that it will not honor its obligations to issue shares of Common Stock to the Holder upon Exercise by the Holder of the Exercise rights of the Holder in accordance with the terms of this Warrant.

(ii) Legend Removal Failure. A Legend Removal Failure (as defined above) occurs and remains uncured for a period of twenty (20) days;

(iii) Transfer Delivery Failure. Transfer Delivery Failure (as defined above) occurs and remains uncured for a period of twenty (20) days; and

(iv) Corporate Existence; Major Transaction. The Company has failed to place the Major Transaction Warrant Early Termination Price into escrow or obtain the written agreement of the Successor Entity as described in Section 9(b), or the Company has failed to instruct the escrow agent to release such amount or such shares, as the case may be, to the Holder pursuant to Section 9(h).

(b) *Mandatory Early Termination*.

(i) Mandatory Early Termination Amount. If any Events of Default shall occur then, unless waived by the Holder, upon the occurrence and during the continuation of any Event of Default, at the option of the Holder, such option exercisable through the delivery of written notice to the Company by such Holder (the "Default Notice"), the Company shall have the right to terminate the outstanding amount of this Warrant and pay to the Holder (a "Mandatory Early Termination"), in full satisfaction of its obligations hereunder by delivery of a notice to such effect to the Holder within two (2) Business Days following receipt of the Default Notice, an amount payable in cash or in shares of Common Stock valued at 95% of the Volume Weighted Average for the five (5) Trading Days prior to the applicable Default Notice (the "Mandatory Early Termination Amount" or the "Default Amount") equal to the greater of (i) the Black-Scholes value (as determined in accordance with Schedule 1 hereto) of the remaining unexercised portion of this Warrant on the date of such Default Notice and (2) the Black-Scholes value (also as determined in accordance with Schedule 1 hereto) of the remaining unexercised portion of this Warrant on the Trading Day immediately preceding the date that the Mandatory Early Termination Amount is paid to the Holder.

The Mandatory Early Termination Amount shall be payable within five (5) Business Days following the date of the applicable Default Notice.

(ii) Liquidated Damages. The parties hereto acknowledge and agree that the sums payable as Failure Payments or pursuant to a Mandatory Early Termination shall give rise to liquidated damages and not penalties. The parties further acknowledge that (i) the amount of loss or damages likely to be incurred by the Holder is incapable or is difficult to precisely estimate, (ii) the amounts specified bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by the Holder, and (iii) the Company confirms and acknowledges it has been represented by legal counsel and negotiated this Agreement at arm's length.

The Default Amount, together with all other amounts payable hereunder, shall immediately become due and payable, all without demand, presentment or notice, all of which hereby are expressly waived, together with all costs, including, without limitation, legal fees and expenses, of collection, and the Holder shall be entitled to exercise all other rights and remedies available at law or in equity.

(c) *Posting Of Bond*. In the event that any Event of Default occurs hereunder, the Company may not raise as a legal defense (in any Lawsuit, as defined below, or otherwise) or justification to such Event of Default any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, unless the Company has posted a surety bond (a "Surety Bond") for the benefit of such Holder in the amount of 130% of the aggregate Surety Bond Value (as defined below) of all of the Holder's Warrants (the "Bond Amount"), which Surety Bond shall remain in effect until the completion of litigation of the dispute and the proceeds of which shall be payable to such Holder to the extent Holder obtains judgment.

For purposes hereof, a "Lawsuit" shall mean any lawsuit, arbitration or other dispute resolution filed by either party herein pertaining to any of this Warrant, the Facility Agreement and the Registration Rights Agreement.

"Surety Bond Value," for the Warrants shall mean 130% of the of the Black-Scholes value of the remaining unexercised portion of this Warrant on the Trading Day immediately preceding the date that such bond goes into effect).

(d) *Injunction And Posting Of Bond*. In the event that the Event of Default referred to in subsection (c) above pertains to the Company's failure to deliver unlegended shares of Common Stock to the Holder pursuant to a Warrant Exercise, legend removal request, or otherwise, the Company may not refuse such unlegended share delivery based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, unless an injunction from a court, on prior notice to Holder, restraining and or enjoining Exercise of all or part of said Warrant shall have been sought and obtained by the Company and the Company has posted a Surety Bond for the benefit of such Holder in the amount of the Bond Amount, which Surety Bond shall remain in effect until the completion of litigation of the dispute and the proceeds of which shall be payable to such Holder to the extent Holder obtains judgment.

(e) *Remedies, Other Obligations, Breaches And Injunctive Relief*. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, the Facility Agreement and the Registration Rights Agreement, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such

breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

16. Holder's Early Terminations.

(a) *Mechanics of Holder's Early Terminations*. In the event that the Company does not deliver the applicable Major Transaction Warrant Early Termination Price or Default Amount, as the case may be, to the Holder within the time period or as otherwise required pursuant to the terms hereof, at any time thereafter the Holder shall have the option, upon notice to the Company, in lieu of early termination, to require the Company to promptly return to the Holder all or any portion of this Warrant that was submitted for early termination or exercise. Upon the Company's receipt of such notice, (x) the applicable early termination or exercise, as the case may be, shall be null and void with respect to such applicable portion of this Warrant, (y) the Company shall immediately return this Warrant, or issue a new Warrant to the Holder representing the portion of this Warrant that was submitted for early termination or exercise and (z) the Exercise Price of this Warrant or such new Warrant shall be adjusted to the lesser of (A) the Exercise Price as in effect on the date on which the applicable early termination, default or exercise notice, as the case may be, is voided and (B) the lowest closing price for the Common Stock on the principal trading market for the Common Stock, the principal securities exchange or other securities market (including the OTC Market or Pink Sheets) on which the Common Stock is then being traded, during the period beginning on and including the date on which the applicable early termination, default or exercise notice, as the case may be, is delivered to the Company and ending on and including the date on which the applicable early termination or exercise is voided. The Holder's delivery of a notice voiding an early termination or exercise and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Failure Payments which have accrued prior to the date of such notice with respect to the Warrant subject to such notice.

17. Miscellaneous.

(a) **No Rights as a Stockholder.** Except as otherwise provided herein (including, without limitation, Section 9 herein), the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, amalgamation, conveyance or otherwise), receive notice of meetings, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

(b) **Successors and Assigns.** Subject to the restrictions on transfer set forth in this Warrant and compliance with applicable securities laws, this Warrant may be assigned by

the Holder. This Warrant may not be assigned by the Company except to a successor in the event of a Fundamental Transaction. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. Any attempted assignment in violation of this Section 17(b) shall be null and void.

(c) **Amendment and Waiver.** The Warrants, including this Warrant, may be amended, modified or supplemented, and waiver or consents to departures from the provisions of the Warrants may be given, if the Company and the holders of outstanding Warrants representing at least 66.67% of the shares of Common Stock purchasable under the outstanding Warrants consent to such amendment, modification, supplement, waiver or consent. Such consent may be effected by any available legal means, including without limitation at a special or regular meeting, by written consent or otherwise.

(d) **Governing Law; Jurisdiction.** ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE COUNTY OF NEW YORK, NEW YORK, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THE APPLICABLE AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

(e) **Headings.** The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(f) **Severability.** In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby, and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(Signature page follows.)

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

CYMABAY THERAPEUTICS, INC.

By: _____

Name: Harold Van Wart
Title: Chief Executive Officer

DM3\2462114.4

EXHIBIT A

Form of Assignment

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto (the "Transferee") the right represented by the within Warrant to purchase shares of Common Stock of CymaBay Therapeutics, Inc. (the "Company") to which the within Warrant relates and appoints attorney to transfer said right on the books of the Company with full power of substitution in the premises.

Dated: _____

Name of Holder: _____

By: _____
Name: _____
Title: _____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

In the presence of:

Fill in for a new registration or warrant:

_____
Name

_____
Address

_____

_____
Please print name and address of assignee

EXHIBIT B

Form of Exercise Notice

(To be executed by the Holder to purchase shares of Common Stock
under the foregoing Warrant)

Ladies and Gentlemen:

(1) The undersigned is the Holder of Warrant No. (the "Warrant") issued by CymaBay Therapeutics, Inc., a Delaware corporation (the "Company"). Capitalized terms used herein and not otherwise defined herein have the respective meanings set forth in the Warrant.

(2) The undersigned hereby exercises its right to purchase Warrant Shares pursuant to the Warrant.

(3) The Holder intends that payment of the Exercise Price shall be made as (check one):

- ☐ Cash Exercise
- ☐ "Cashless Exercise" under Section 10

(4) If the Holder has elected a Cash Exercise, the Holder shall pay the sum of $ in immediately available funds to the Company in accordance with the terms of the Warrant.

(5) Pursuant to this Exercise Notice, the Company shall deliver to the Holder Warrant Shares in accordance with the terms of the Warrant.

Dated: _____

Name of Holder: _____

By: _____
Name: _____
Title: _____

(Signature must conform in all respects to name of
Holder as specified on the face of the Warrant)

EXHIBIT C

Form of Opinion

, 20

[ ]

Re: [ ] (the "Company")

Dear Sir:

[ ] ("[ ]") intends to transfer Warrants (the "Warrants") of the Company to (" ") without registration under the Securities Act of 1933, as amended (the "Securities Act"). In connection therewith, we have examined and relied upon the truth of representations contained in an Investor Representation Letter attached hereto and have examined such other documents and issues of law as we have deemed relevant.

Based on and subject to the foregoing, we are of the opinion that the transfer of the Warrants by to may be effected without registration under the Securities Act, provided, however, that the Warrants to be transferred to contain a legend restricting its transferability pursuant to the Securities Act and that transfer of the Warrants is subject to a stop order.

The foregoing opinion is furnished only to and may not be used, circulated, quoted or otherwise referred to or relied upon by you for any purposes other than the purpose for which furnished or by any other person for any purpose, without our prior written consent.

Very truly yours,

[FORM OF INVESTOR REPRESENTATION LETTER]

, 20

[ ]

Gentlemen:

(" ") has agreed to purchase Warrants (the "Warrants") of [ ] (the "Company") from [ ] ("[ ]"). We understand that the Warrants are "restricted securities." We represent and warrant that is a sophisticated institutional investor that would qualify as an "Accredited Investor" as defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended (the "Securities Act").

represents and warrants as of the date hereof as follows:

1. That it is acquiring the Warrants and the shares of common stock, $0.001 par value per share underlying such Warrants (the "Exercise Shares") solely for its account for investment and not with a view to or for sale or distribution of said Warrants or Exercise Shares or any part thereof. also represents that the entire legal and beneficial interests of the Warrants and Exercise Shares is acquiring is being acquired for, and will be held for, its account only;

2. That the Warrants and the Exercise Shares have not been registered under the Securities Act on the basis that no distribution or public offering of the stock of the Company is to be effected. realizes that the basis for the exemption may not be present if, notwithstanding its representations, has a present intention of acquiring the securities for a fixed or determinable period in the future, selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the securities. has no such present intention;

3. That the Warrants and the Exercise Shares must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. recognizes that the Company has no obligation to register the Warrants, or to comply with any exemption from such registration;

4. That neither the Warrants nor the Exercise Shares may be sold pursuant to Rule 144 adopted under the Securities Act unless certain conditions are met, including, among other things, the existence of a public market for the shares, the availability of certain current public information about Company, the resale following the required holding period under Rule 144 and the number of shares being sold during any three month period not exceeding specified limitations;

5. That it will not make any disposition of all or any part of the Warrants or Exercise Shares in any event unless and until:

(i) The Company shall have received a letter secured by from the Securities and Exchange Commission stating that no action will be recommended to the Securities and Exchange Commission with respect to the proposed disposition;

(ii) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said registration statement; or

(iii) shall have notified the Company of the proposed disposition and, in the case of a sale or transfer in a so called "4(1) and a half" transaction, shall have furnished counsel to the Company with an opinion of counsel, reasonably satisfactory to counsel to the Company.

We acknowledge that the Company will place stop orders with respect to the Warrants and the Exercise Shares, and if a registration statement is not effective, the Exercise Shares shall bear the following restrictive legend:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULES 144 OR 144A UNDER SAID ACT OR PURSUANT TO A PRIVATE SALE EFFECTED UNDER APPLICABLE FORMAL OR INFORMAL SEC INTERPRETATION OR GUIDANCE, SUCH AS A SO-CALLED "4(1) AND A HALF" SALE."

At any time and from time to time after the date hereof, shall, without further consideration, execute and deliver to [ ] or the Company such other instruments or documents and shall take such other actions as they may reasonably request to carry out the transactions contemplated hereby.

Very truly yours,

Schedule 1

Black-Scholes Value

	Calculation Under Section 9(h)	Calculation Under Section 14 or 15
Remaining Term	Number of calendar days from date of public announcement of the Major Transaction until the last date on which the Warrant may be exercised.	Number of calendar days from date of the Event of Failure until the last date on which the Warrant may be exercised.
Interest Rate	A risk-free interest rate corresponding to the US$ LIBOR/Swap rate for a period equal to the Remaining Term.	A risk-free interest rate corresponding to the US$ LIBOR/Swap rate for a period equal to the Remaining Term.
Cost to Borrow	Zero	Zero
Volatility	If the first public announcement of the Major Transaction is made at or prior to 4:00 p.m., New York City time, the arithmetic mean of the historical volatility for the 10, 30 and 50 Trading Day periods ending on the date of such first public announcement, obtained from the HVT or similar function on Bloomberg. If the first public announcement of the Major Transaction is made after 4:00 p.m., New York City time, the arithmetic mean of the historical volatility for the 10, 30 and 50 Trading Day periods ending on the next succeeding Trading Day following the date of such first public announcement, obtained from the HVT or similar function on Bloomberg.	The arithmetic mean of the historical volatility for the 10, 30 and 50 Trading Day periods ending on the date of such determination, obtained from the HVT or similar function on Bloomberg.
Stock Price	The greater of (1) the closing price of the Common Stock on the OTC Bulletin Board, or, if that is not the principal trading market for the Common Stock, such principal market on which the Common Stock is traded or listed (the "Closing Market Price") on the trading day immediately preceding the date on which a Major Transaction is consummated, (2) the first Closing Market Price following the first public announcement of a Major Transaction, or (3) the Closing Market Price as of the date immediately preceding the first public announcement of the Major Transaction.	The volume Weighted Average Price on the date of such calculation.
Dividends	Zero.	Zero.
Strike Price	Exercise Price as defined in the Warrant.	Exercise Price as defined in the Warrant.

Exhibit 10.4

CYMABAY THERAPEUTICS, INC.
INDEMNITY AGREEMENT

THIS AGREEMENT is made and entered into this day of , 20 by and between **CYMABAY THERAPEUTICS, INC.**, a Delaware corporation (the **"*Corporation*"**), and ("***Agent***").

RECITALS

WHEREAS, Agent performs a valuable service to the Corporation in the capacity as a director, officer, employee or agent of the Corporation;

WHEREAS, the stockholders of the Corporation have adopted bylaws (the "***Bylaws***") and the Amended and Restated Certificate of Incorporation of the Corporation (the "***Certificate***") 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, the Certificate 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 a director, officer, or employee 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 a director, officer, employee or agent of the Corporation, the parties hereto agree as follows:

AGREEMENT

1. DEFINITIONS.

(a) Expenses. For purposes of this Agreement, the term "***Expenses***" shall be broadly construed and shall include, without limitation, all direct and indirect costs of any type or nature whatsoever (including, without limitation, all attorneys', witness, or other professional fees and related disbursements, and other out-of-pocket costs of whatever nature), actually and reasonably incurred by Agent in connection with the investigation, defense or appeal of a Proceeding or establishing or enforcing a right to indemnification under this Agreement, the Code or otherwise, and amounts paid in settlement by or on behalf of Agent, but shall not include any judgments, fines or penalties actually levied against Agent for such individual's violations of law.

(b) Change in Control. For purposes of this Agreement, a "***Change in Control***" shall be deemed to have occurred if (i) any "person" (as such term is used in Sections

13(d) and 14(d) of the Securities Exchange Act of 1934 (the "***Act***")), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Corporation or a corporation owned directly or indirectly by the stockholders of the Corporation in substantially the same proportions as their ownership of stock of the Corporation, becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Corporation representing more than twenty percent (20%) of the total voting power represented by the Corporation's then outstanding Voting Securities; or (ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Corporation if, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Corporation immediately prior thereto do not own, directly or indirectly, either (A) outstanding Voting Securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving entity in such merger, consolidation or similar transaction.

(c) Proceeding. For purposes of this Agreement, the term "***Proceeding***" shall mean and shall include, without limitation, any threatened, pending, or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing, whether brought in the right of or by the Corporation or otherwise and whether of a civil, criminal, administrative or investigative nature, and whether formal or informal in any case, in which Agent was, is or will be involved as a party or otherwise by reason of the fact that: (i) Agent is or was a director, officer, employee or agent of the Corporation; (ii) Agent took an action while acting as director, officer, employee or agent of the Corporation; or (iii) Agent is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and in any such case described above, whether or not serving in any such capacity at the time any Expense is incurred for which indemnification, reimbursement, or advancement of Expenses may be provided under this Agreement.

(d) Voting Securities. For purposes of this Agreement, "***Voting Securities***" shall mean any securities of the Corporation that vote generally in the election of directors.

2. SERVICES TO THE CORPORATION. Agent will serve, at the will of the Corporation or under separate contract, if any such contract exists, as a director, officer, or employee of the Corporation or as a director, officer or other fiduciary of an affiliate of the Corporation (including, but not limited to, any employee benefit plan of the Corporation) faithfully and to the best of Agent's ability so long as Agent 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 be subject to 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.

3. 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, the Certificate 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, the Certificate or the Code permitted prior to adoption of such amendment). These obligations and the other obligations of the Corporation in this Agreement apply regardless of whether the conduct giving rise to the obligations occurred before or occur after the date this Agreement is executed.

4. PARTIAL INDEMNIFICATION. Agent shall be entitled under this Agreement to indemnification by the Corporation for a portion of the Expenses that Agent becomes legally obligated to pay in connection with any Proceeding 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.

5. NOTIFICATION AND DEFENSE OF CLAIM. Not later than thirty (30) days after receipt by Agent of notice of the commencement of any 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 failure so to notify the Corporation will not relieve the Corporation from any liability which it may have to Agent under this Agreement or otherwise. With respect to any such 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 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 Proceeding but the Expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Agent; provided, however, that the Expenses of Agent's separate counsel shall be borne by the Corporation if (i) the employment of counsel by Agent has been authorized by the Corporation, (ii) Agent reasonably shall have concluded that there may be a conflict of interest between the Corporation and Agent in the conduct of the defense of such Proceeding, or (iii) the Corporation in fact shall not have employed counsel to assume the defense of such Proceeding or shall at any time have ceased to actively pursue the defense thereof. The Corporation shall not be entitled to assume the defense of any 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 Proceeding effected without its written consent, which shall not be unreasonably withheld or delayed. The Corporation shall be permitted to settle any

Proceeding except that it shall not settle any Proceeding 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.

6. EXPENSES. Promptly following request by Agent for the advancement of Expenses, the Corporation shall advance, prior to the final disposition of any Proceeding, all Expenses incurred by Agent in connection with such Proceeding upon receipt of an undertaking by or on behalf of Agent to repay such amounts if it shall ultimately be determined by a final judicial decision from which there is no further right of appeal that Agent is not entitled to be indemnified.

7. 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 (a) the claim for indemnification or advances is denied, in whole or in part, or (b) 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, also shall be entitled to be paid the Expense of prosecuting Agent's claim. 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.

8. INSURANCE.

(a) Unless otherwise approved by the Board of Directors prior to a Change in Control, the Corporation shall obtain and maintain during the term of this Agreement directors' and officers' liability insurance ("***D&O Insurance***") with respect to which Agent shall be named as an insured. Notwithstanding any other provision of this Agreement, the Corporation shall not be obligated to indemnify the Agent for Expenses which have been previously paid directly to the Agent by D&O Insurance. If the Corporation has D&O Insurance in effect at the time the Corporation receives from Agent any notice of the commencement of a Proceeding, the Corporation shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the policy. The Corporation shall thereafter take all reasonably necessary action to cause such insurers to pay, on behalf of the Agent, all amounts payable as a result of such Proceeding in accordance with the terms of such policy.

(b) In the event that (i) the D&O Insurance policy is renewed but the renewed policy does not provide for prior act's coverage, or (ii) the Corporation obtains a new D&O Insurance policy for any period following the termination of the prior D&O Insurance, and such new D&O Insurance policy does not provide for prior act's coverage, or (iii) the Corporation does not renew the D&O Insurance policy or obtain a new D&O Insurance policy following the termination of a D&O Insurance policy, then unless otherwise determined by the Board of Directors, the Corporation shall add to the D&O Insurance policy or the applicable successor D&O Insurance policy a run-off endorsement (the "***Endorsement***") on the existing D&O Insurance policy or the applicable successor D&O Insurance policy subject to the same terms

and conditions in all material respects. Unless otherwise approved by the Board of Directors prior to the date on which the Endorsement is obtained, the Endorsement shall be non-cancelable and shall provide for at least a six-year extended coverage period for any and all claims covered under the D&O Insurance policy. The Corporation shall pay all premiums, commissions and other costs or charges incurred in obtaining the Endorsement and shall promptly deliver to Agent a Certificate of Confirmation of Insurance with respect to such Endorsement.

9. 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 reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

10. NON-EXCLUSIVITY AND SURVIVAL OF RIGHTS.

(a) 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 Proceeding. The benefits hereunder shall inure to the benefit of the heirs, executors and administrators and assigns of Agent. The rights conferred on Agent by this Agreement shall not be exclusive of any other right Agent may have or hereafter acquire under any statute, provision of the Certificate or Bylaws, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in Agent's official capacity and as to action in another capacity while holding office.

(b) The obligations and duties of the Corporation to Agent under this Agreement shall be binding on the Corporation and its successors and assigns until terminated in accordance with its terms. The Corporation shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to the Corporation or 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.

(c) No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Agent under this Agreement in respect of any action taken or omitted by such Agent prior to such amendment, alteration or repeal. To the extent that a change in the Code, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Certificate, Bylaws and this Agreement, it is the intent of the parties hereto that Agent shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, by Agent shall not prevent the concurrent assertion or employment of any other right or remedy by Agent.

11. SEVERABILITY. 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 contained herein 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 nevertheless shall indemnify Agent to the fullest extent provided by the Certificate, Bylaws, the Code or any other applicable law.

12. GOVERNING LAW. This Agreement shall be governed exclusively by and construed according to the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware.

13. AMENDMENT, MODIFICATION, WAIVER AND TERMINATION. No amendment, modification, termination or cancellation of this Agreement shall be effective unless signed in writing by both parties hereto, provided, however, that the Corporation shall have the right to amend, modify, terminate or replace this Agreement if: (i) there is a change in the Code or any other applicable law; or (ii) the Corporation amends, modifies, terminates or replaces its form of Indemnification Agreement for directors, officers, employees and other agents of the Corporation; provided, that such amended or modified agreement or such new agreement does not diminish in any material respect the rights of Agent hereunder. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

14. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, written and oral, between the parties with respect to the subject matter of this Agreement; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate, Bylaws, the Code and any other applicable law, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Agent thereunder.

15. INTERPRETATION OF AGREEMENT. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Agent to the fullest extent now or hereafter permitted by law.

16. IDENTICAL COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed for all purposes to be an original but all of which together shall constitute 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

Attn: General Counsel
CymaBay Therapeutics, Inc.
3876 Bay Center Place
Hayward, CA 94545

or to such other address as may have been furnished to Agent by the Corporation, or to such other address as Agent may direct in writing the Corporation to use.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on and as of the day and year first above written.

CYMABAY THERAPEUTICS, INC.

By: _____

Title: _____

AGENT

_____

(Signature)

Print Name and Address:

_____

_____

_____

_____

Exhibit 10.5

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (as the same may from time to time be amended, modified, supplemented or restated, this "**Agreement**") dated as of September 30, 2013 (the "**Effective Date**") among SILICON VALLEY BANK, a California corporation with an office located at 3003 Tasman Drive, Santa Clara, CA 95054 ("**Bank**" or "**SVB**"), as collateral agent (in such capacity, "**Collateral Agent**"), the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including SVB in its capacity as a Lender and OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 ("**Oxford**") (each a "**Lender**" and collectively, the "**Lenders**"), and CYMABAY THERAPEUTICS, INC., a Delaware corporation with offices located at 3876 Bay Center Place, Hayward, CA 94545 ("**Borrower**"), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

1. ACCOUNTING AND OTHER TERMS

1.1 Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to "**Dollars**" or "**$**" are United States Dollars, unless otherwise noted.

2. LOANS AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loans advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2 Term Loans.

(a) Availability.

(i) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make a term loan to Borrower on the Effective Date in an aggregate amount equal to Five Million Dollars ($5,000,000.00) according to each Lender's Term A Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term A Loan**", and collectively as the "**Term A Loans**"). After repayment, no Term A Loan may be re-borrowed.

(ii) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Second Draw Period, to make a term loan to Borrower in an aggregate amount equal to Five Million Dollars ($5,000,000.00) according to each Lender's Term B Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term B Loan**", and collectively as the "**Term B Loans**"; each Term A Loan or Term B Loan is hereinafter referred to singly as a "**Term Loan**" and the Term A Loans and the Term B Loans are hereinafter referred to collectively as the "**Term Loans**"). After repayment, no Term B Loan may be re-borrowed.

(b) Repayment. Borrower shall make monthly payments of interest only commencing on the first (1st) Payment Date following the Funding Date of each Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of each Term Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of such Term Loan and the first Payment Date thereof. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive equal monthly payments of principal and interest, in arrears, to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender's Term Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to thirty six (36) months. All unpaid principal and accrued and unpaid interest with respect to each Term Loan is due and payable in full on the Maturity Date. Each Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If the Term Loans are accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (ii) the Final Payment, (iii) the Prepayment Fee, plus (iv) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if the Final Payment had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to Collateral Agent, for payment to each Lender in accordance with its respective Pro Rata Share, the Final Payment in respect of the Term Loan(s).

(d) Permitted Prepayment of Term Loans. Borrower shall have the option to prepay all, but not less than all, of the Term Loans advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loans at least thirty (30) days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (B) the Final Payment, (C) the Prepayment Fee, plus (D) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts.

2.3 Payment of Interest on the Credit Extensions.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loans shall accrue interest at a fixed per annum rate (which rate shall be fixed for the duration of the applicable Term Loan) equal to the Basic Rate, determined by Collateral Agent on the Funding Date of the applicable Term Loan, which interest shall be payable monthly in arrears in accordance with Sections 2.3(b) and 2.3(e). Interest shall accrue on each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall accrue interest at a fixed per annum rate equal to the rate that is otherwise applicable thereto plus five percentage points (5.00%) (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days.

(d) Debit of Accounts. Collateral Agent and each Lender may debit (or ACH) any deposit accounts, maintained by Borrower or any of its Subsidiaries, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. Any such debits (or ACH activity) shall not constitute a set-off.

(e) Payments. Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Lender's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly on the Payment Date of each month. Payments of principal and/or interest received after 12:00 noon Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

2.4 Secured Promissory Notes. The Term Loans shall be evidenced by a Secured Promissory Note or Notes in the form attached as Exhibit D hereto (each a "**Secured Promissory Note**"), and shall be repayable as set forth in this Agreement. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Funding Date of any Term Loan or at the time of receipt of any payment of principal on such Lender's Secured Promissory Note, an appropriate notation on such Lender's Secured Promissory Note Record reflecting the making of such Term Loan or (as the case may be) the receipt of such payment. The outstanding amount of each Term Loan set forth on such Lender's Secured Promissory Note Record shall be prima facie evidence of the principal amount thereof owing and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on such Lender's Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower under any Secured Promissory Note or any other Loan Document to make payments of principal of or interest on any Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note**,** Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

2.5 Fees. Borrower shall pay to Collateral Agent:

(a) Facility Fee. A fully earned, non-refundable facility fee of One Hundred Thousand Dollars ($100,000.00) to be shared between the Lenders pursuant to their respective Commitment Percentages payable on the Effective Date, receipt of which Collateral Agent hereby acknowledges;

(b) Final Payment. The Final Payment, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares;

(c) Prepayment Fee. The Prepayment Fee, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares;

(d) Lenders' Expenses. All Lenders' Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due. Collateral Agent acknowledges that Borrower has paid a good faith deposit of One Hundred Fifty Thousand ($150,000) to Collateral Agent (the "Good Faith Deposit"). The Good Faith Deposit shall be refunded to Borrower after deduction of the Lenders' Expenses on the Effective Date.

2.6 Withholding. Payments received by the Lenders from Borrower hereunder will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to the Lenders, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, each Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish the Lenders with proof reasonably satisfactory to the Lenders indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

3. CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Each Lender's obligation to make a Term A Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

(a) original Loan Documents, each duly executed by Borrower and each Subsidiary, as applicable;

(b) duly executed original Control Agreements with respect to any Collateral Accounts maintained by Borrower or any of its Subsidiaries;

(c) duly executed original Secured Promissory Notes in favor of each Lender according to its Term A Loan Commitment Percentage;

(d) the Operating Documents and good standing certificates of Borrower and its Subsidiaries certified by the Secretary of State (or equivalent agency) of Borrower's and such Subsidiaries' jurisdiction of organization or formation and each jurisdiction in which Borrower and each Subsidiary is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date**;**

(e) a completed Perfection Certificate for Borrower and each of its Subsidiaries;

(f) the Annual Projections, for the current calendar year;

(g) duly executed original officer's certificate for Borrower and each Subsidiary that is a party to the Loan Documents, in a form acceptable to Collateral Agent and the Lenders;

(h) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(i) subject to the Post Closing Letter, a landlord's consent executed in favor of Collateral Agent in respect of all of Borrower's and each Subsidiaries' leased locations;

(j) subject to the Post Closing Letter, a bailee waiver executed in favor of Collateral Agent in respect of each third party bailee where Borrower or any Subsidiary maintains Collateral having a book value in excess of One Hundred Thousand Dollars ($100,000.00);

(k) a duly executed legal opinion of counsel to Borrower dated as of the Effective Date;

(l) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders;

(m) a copy of any applicable Registration Rights Agreement or Investors' Rights Agreement and any amendments thereto;

(n) evidence of consummation of the Equity Event;

(o) evidence of the transfer to Bank of any amounts in excess of (i) with respect to the State Street Accounts, Zero Dollars ($0.00) and (ii) with respect to the Wells Fargo Accounts, One Million Dollars ($1,000,000.00); and

(p) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

3.2 Conditions Precedent to all Credit Extensions. The obligation of each Lender to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) receipt by (i) the Lenders of an executed Disbursement Letter in the form of Exhibit B-1 attached hereto; and (ii) SVB of an executed Loan Payment/Advance Request Form in the form of Exhibit B-2 attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the date of the Disbursement Letter (and the Loan Payment/Advance Request Form) and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 hereof are true, accurate and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(c) in such Lender's sole discretion, there has not been any Material Adverse Change or any material adverse deviation by Borrower from the Annual Projections of Borrower presented to and accepted by Collateral Agent and each Lender;

(d) to the extent not delivered at the Effective Date, duly executed original Secured Promissory Notes and Warrants, in number, form and content acceptable to each Lender, and in favor of each Lender according to its Commitment Percentage, with respect to each Credit Extension made by such Lender after the Effective Date; and

(e) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

3.3 Covenant to Deliver. Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Credit Extension in the absence of a required item shall be made in each Lender's sole discretion.

3.4 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan, Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon Eastern time three (3) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to the Lenders by electronic mail or facsimile a completed Disbursement Letter (and the Loan Payment/Advance Request Form, with respect to SVB) executed by a Responsible Officer or his or her designee. The Lenders may rely on any telephone notice given by a person whom a Lender reasonably believes is a Responsible Officer or designee. On the Funding Date, each Lender shall credit and/or transfer (as applicable) to the Designated Deposit Account, an amount equal to its Term Loan Commitment.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Collateral Agent, for the ratable benefit of the Lenders, and to each Lender to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, and to each Lender, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that are permitted by the terms of this Agreement to have priority to Collateral Agent's or each Lender's Lien. If Borrower shall acquire a commercial tort claim (as defined in the Code), Borrower, shall promptly notify Collateral Agent in a writing signed by Borrower, as the case may be, of the general details thereof (and further details as may

be required by Collateral Agent) and grant to Collateral Agent, for the ratable benefit of the Lenders, and to each Lender, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that may have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Collateral Agent's and each Lender's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as the Lenders' obligation to make Credit Extensions has terminated, Collateral Agent and each Lender shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then one hundred five percent (105%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then one hundred ten percent (110%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to such Letters of Credit.

4.2 Authorization to File Financing Statements. Borrower hereby authorizes Collateral Agent and Lenders to file financing statements or take any other action required to perfect Collateral Agent's and each Lender's security interests in the Collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's and each Lender's interest or rights under the Loan Documents, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of this Agreement, by Borrower, or any other Person, shall be deemed to violate the rights of Collateral Agent or any Lender under the Code.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Collateral Agent and the Lenders as follows:

5.1 Due Organization, Authorization: Power and Authority. Borrower and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed perfection certificate signed by an officer of Borrower or such Subsidiary (each a "**Perfection Certificate**" and collectively, the "**Perfection Certificates**"). Borrower represents and warrants that (a) Borrower and each of its Subsidiaries' exact legal name is that which is indicated on its respective Perfection Certificate and on the signature page of each Loan Document to which it is a party; (b) Borrower and each of its Subsidiaries is an organization of the type and is organized in the jurisdiction set forth on its respective Perfection Certificate; (c) each Perfection Certificate accurately sets forth each of Borrower's and its Subsidiaries' organizational identification number or accurately states that Borrower or such Subsidiary has none; (d) each Perfection Certificate accurately sets forth Borrower's and each of its Subsidiaries' place of business, or, if more than one, its chief executive office as well as Borrower's and each of its Subsidiaries' mailing address (if different than its chief executive office); (e) Borrower and each of its Subsidiaries (and each of its respective predecessors) have not, in the past five (5) years, changed its jurisdiction of organization, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries, is accurate and complete (it being understood and agreed that Borrower and each of its Subsidiaries may from time to

time update certain information in the Perfection Certificates (including the information set forth in clause (d) above) after the Effective Date to the extent permitted by one or more specific provisions in this Agreement); such updated Perfection Certificates subject to the review and approval of Collateral Agent. If Borrower or any of its Subsidiaries is not now a Registered Organization but later becomes one, Borrower shall notify Collateral Agent of such occurrence and provide Collateral Agent with such Person's organizational identification number within five (5) Business Days of receiving such organizational identification number.

The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's or such Subsidiaries' organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any material agreement by which Borrower or any of such Subsidiaries, or their respective properties, is bound. Neither Borrower nor any of its Subsidiaries is in default under any agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

5.2 Collateral.

(a) Borrower and each its Subsidiaries have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and neither Borrower nor any of its Subsidiaries have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith with respect of which Borrower or such Subsidiary has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) On the Effective Date, and except as disclosed on the Perfection Certificate (i) the Collateral is not in the possession of any third party bailee (such as a warehouse), and (ii) no such third party bailee possesses components of the Collateral in excess of One Hundred Thousand Dollars ($100,000.00). None of the components of the Collateral shall be maintained at locations other than as disclosed in the Perfection Certificates on the Effective Date or as permitted pursuant to Section 6.12.

(c) All Inventory is in all material respects of good and marketable quality, free from material defects.

(d) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate free and clear of all Liens other than Permitted Liens. (i) Each of Borrower's and its Subsidiaries' Patents is valid and enforceable and no part of Borrower's or its Subsidiaries' Intellectual Property has been judged invalid or unenforceable, in whole or in part, and (ii) to the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property or any practice by Borrower or its Subsidiaries violates the rights of any third party except to the extent such claim could not reasonably be expected to have a Material Adverse Change. Except as noted on the Perfection Certificates, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material license or other material agreement with respect to which Borrower or such Subsidiary is the licensee that (i) prohibits or otherwise restricts Borrower or its Subsidiaries from granting a security interest in Borrower's or such Subsidiaries' interest in such material license or material agreement or any other property, or (ii) for which a default under or termination of could interfere with Collateral Agent's or any Lender's right to sell any Collateral. Borrower shall provide written notice to Collateral Agent and each Lender within ten (10) days of Borrower or any of its Subsidiaries entering into or becoming bound by any license or agreement with respect to which Borrower or any Subsidiary is the licensee (other than over the counter software that is commercially available to the public).

5.3 Litigation. Except as disclosed (i) on the Perfection Certificates, or (ii) in accordance with Section 6.9 hereof, there are no actions, suits, investigations, or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than One Hundred Thousand Dollars ($100,000.00).

5.4 No Material Deterioration in Financial Condition; Financial Statements. All consolidated financial statements for Borrower and its Subsidiaries, delivered to Collateral Agent fairly present, in conformity with GAAP, in all material respects the consolidated financial condition of Borrower and its Subsidiaries, and the consolidated results of operations of Borrower and its Subsidiaries as of the dates and for the periods presented. There has not been any material deterioration in the consolidated financial condition of Borrower and its Subsidiaries since the date of the most recent financial statements submitted to any Lender.

5.5 Solvency. Borrower and each of its Subsidiaries is Solvent.

5.6 Regulatory Compliance. Neither Borrower nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Borrower's nor any of its Subsidiaries' properties or assets has been used by Borrower or such Subsidiary or, to Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower, any of its Subsidiaries, or any of Borrower's or its Subsidiaries' Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the knowledge of Borrower and any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

5.7 Investments. Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

5.8 Tax Returns and Payments; Pension Contributions. Borrower and each of its Subsidiaries has timely filed or have timely obtained extensions for filing all required tax returns and reports, and Borrower and each of its Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries, in all jurisdictions in which Borrower or any such Subsidiary is subject to taxes, including the United States, unless such taxes are being contested in accordance with the following sentence. Borrower and each of its Subsidiaries, may defer payment of any contested taxes, provided that Borrower or such Subsidiary, (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, the proceedings, and (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other

than a "**Permitted Lien**." Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Borrower's or such Subsidiaries', prior tax years which could result in additional taxes becoming due and payable by Borrower or its Subsidiaries. Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have, withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

5.9 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes.

5.10 Full Disclosure. No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.11 Definition of "**Knowledge.**" For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

6. AFFIRMATIVE COVENANTS

Borrower shall, and shall cause each of its Subsidiaries to, do all of the following:

6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Borrower and its Subsidiaries of their respective businesses and obligations under the Loan Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Lenders, and each Lender, in all of the Collateral. Borrower shall promptly provide copies to Collateral Agent of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries.

6.2 Financial Statements, Reports, Certificates.

(a) Deliver to each Lender:

(i) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated and consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent;

(ii) as soon as available, but no later than one hundred eighty (180) days after the last day of Borrower's fiscal year or within five (5) days of filing with the SEC, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion**;**

(iii) as soon as available after approval thereof by Borrower's Board of Directors, but no later than forty five (45) days after the last day of each of Borrower's fiscal years, Borrower's annual financial projections for the entire current fiscal year as approved by Borrower's Board of Directors, which such annual financial projections shall be set forth in a month-by-month format (such annual financial projections as originally delivered to Collateral Agent and the Lenders are referred to herein as the "**Annual Projections**"; provided that, any revisions of the Annual Projections approved by Borrower's Board of Directors shall be delivered to Collateral Agent and the Lenders no later than seven (7) days after such approval);

(iv) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or holders of Subordinated Debt;

(v) in the event that Borrower becomes subject to the reporting requirements under the Securities Exchange Act of 1934, as amended, within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission,

(vi) prompt notice of (i) any amendments of or other changes to the Operating Documents of Borrower or any of its Subsidiaries and (ii) any material amendment of or other change to the capitalization table of Borrower; in each case together with any copies reflecting such amendments or changes with respect thereto; and provided that Borrower shall provide Collateral Agent and Lenders the notice with respect to, and copies of, the current capitalization table no later than thirty (30) days after the end of each month to the extent that there have been any amendments of, or changes to, the capitalization table since the last time the same was delivered to Collateral Agent and Lenders;

(vii) prompt notice of: (A) any material change in the composition of the Intellectual Property, (B) the registration of any copyright, including any subsequent ownership right of Borrower or any of its Subsidiaries in or to any copyright, patent or trademark, including a copy of any such registration, and (C) any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property;

(viii) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each Collateral Account maintained by Borrower or its Subsidiaries, which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s), and

(ix) other information as reasonably requested by Collateral Agent or any Lender.

Notwithstanding the foregoing, documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address.

(b) Concurrently with the delivery of the financial statements specified in Section 6.2(a)(i) above but no later than thirty (30) days after the last day of each month, deliver to each Lender, a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Keep proper books of record and account in accordance with GAAP in all material respects, in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities. Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Borrower, Collateral Agent or any Lender, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its

properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than twice every year unless (and more frequently if) an Event of Default has occurred and is continuing.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, or any of its Subsidiaries, and their respective Account Debtors shall follow Borrower's, or such Subsidiary's, customary practices as they exist at the Effective Date. Borrower must promptly notify Collateral Agent and the Lenders of all returns, recoveries, disputes and claims that involve more than One Hundred Thousand Dollars ($100,000.00) individually or in the aggregate in any calendar year.

6.4 Taxes; Pensions. Timely file and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely file, all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Lenders, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

6.5 Insurance. Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and Lenders. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent, as additional insured. The Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent twenty (20) days prior written notice before any such policy or policies shall be materially altered or canceled (ten (10) days for nonpayment of premium). At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to One Hundred Thousand Dollars ($100,000.00) with respect to any loss, but not exceeding One Hundred Thousand Dollars ($100,000.00), in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent and/or any Lender may make, at Borrower's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or such Lender deems prudent.

6.6 Operating Accounts.

(a) Within thirty (30) days after the Effective Date and thereafter, maintain all of Borrower's and its Subsidiaries' Collateral Accounts with Bank or its Affiliates in accounts which are subject to a Control Agreement in favor of Collateral Agent and each Lender.

(b) Borrower shall provide Collateral Agent five (5) days' prior written notice before Borrower or any of its Subsidiaries establishes any Collateral Account at or with any Person other than Bank or its Affiliates. In addition, for each Collateral Account that Borrower or any of its Subsidiaries, at any time maintains, Borrower or such Subsidiary shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's and each Lender's Lien in such Collateral Account in

accordance with the terms hereunder prior to the establishment of such Collateral Account, which Control Agreement may not be terminated without prior written consent of Collateral Agent. The provisions of the previous sentence shall not apply to (i) deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any of its Subsidiaries', employees and identified to Collateral Agent by Borrower as such in the Perfection Certificates, (ii) the State Street Accounts and (iii) the Wells Fargo Accounts.

(c) Neither Borrower nor any of its Subsidiaries shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with Sections 6.6(a) and (b).

6.7 Protection of Intellectual Property Rights. Borrower and each of its Subsidiaries shall: (a) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower's business; (b) promptly advise Collateral Agent in writing of material infringement by a third party of its Intellectual Property; and (c) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent. If Borrower or any of its Subsidiaries (i) obtains any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) applies for any patent or the registration of any trademark or servicemark, then Borrower or such Subsidiary shall substantially contemporaneously provide written notice thereof to Collateral Agent and each Lender and shall execute such intellectual property security agreements and other documents and take such other actions as Collateral Agent shall reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in such property (subject to Permitted Liens). If Borrower or any of its Subsidiaries decides to register any copyrights or mask works in the United States Copyright Office, Borrower or such Subsidiary shall: (x) provide Collateral Agent and each Lender with at least fifteen (15) days prior written notice of Borrower's or such Subsidiary's intent to register such copyrights or mask works together with a copy of the application it intends to file with the United States Copyright Office (excluding exhibits thereto); (y) execute an intellectual property security agreement and such other documents and take such other actions as Collateral Agent may reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in the copyrights or mask works intended to be registered with the United States Copyright Office (subject to Permitted Liens); and (z) record such intellectual property security agreement with the United States Copyright Office contemporaneously with filing the copyright or mask work application(s) with the United States Copyright Office. Borrower or such Subsidiary shall promptly provide to Collateral Agent and each Lender with evidence of the recording of the intellectual property security agreement necessary for Collateral Agent to perfect and maintain a first priority perfected security interest in such property (subject to Permitted Liens).

6.8 Litigation Cooperation. Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Lenders, without expense to Collateral Agent or the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Lender with respect to any Collateral or relating to Borrower.

6.9 Notices of Litigation and Default. Borrower will give prompt written notice to Collateral Agent and the Lenders of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of One Hundred Thousand Dollars ($100,000.00) or more or which could reasonably be expected to have a Material Adverse Change. Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, Borrower shall give written notice to Collateral Agent and the Lenders of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

6.10 Financial Covenants. At any time prior to the occurrence of the Second Draw Milestone, Borrower must maintain at all times, to be tested as of the last day of the applicable month, on a consolidated basis with respect to Borrower and its Subsidiaries, either of the following:

(a) Liquidity Coverage. A ratio of Liquidity to the total aggregate amount of outstanding Credit Extensions of not less than 1.30:1.00; or

(b) Remaining Months Liquidity. Borrower shall maintain cash held at such time by Borrower in Deposit Accounts or Securities Accounts maintained with Bank or its Affiliates sufficient to support eight (8) months of Borrower's operations calculated using the trailing average monthly Cash Burn of Borrower for the most recent twelve (12) months.

Notwithstanding anything herein to the contrary, cash held in Deposit Accounts or Securities Accounts not maintained with Bank or its Affiliates shall be included in the Liquidity of Borrower and its Subsidiaries during the 30-day period following the Effective Date; provided that any such Deposit Account or Securities Account is subject to an Account Control Agreement in favor of, and in form and substance satisfactory to, Collateral Agent and Lenders.

6.11 Performance Covenants. Collateral Agent and Lenders shall receive evidence, in form and substance satisfactory to Collateral Agent and Lenders, of the occurrences and by the deadlines as follows: (a) by no later than June 30, 2014, shares of Borrower's common stock must be publicly traded on NASDAQ; (b) within one hundred twenty (120) days of Borrower becoming eligible to file a registration statement with the United States Securities and Exchange Commission on Form S-3, Borrower must have access to an At The Market facility; and (c) by no later than March 31, 2015, the Second Draw Milestone must have occurred; provided that Borrower's failure to comply with this Section 6.11 shall not be an "Event of Default" hereunder so long as Borrower has deposited an amount equal to one hundred percent (100.00%) of the aggregate outstanding amount of all Credit Extensions in a segregated, blocked Deposit Account at Bank pursuant to a blocked account agreement in form and substance satisfactory to Lenders.

6.12 Landlord Waivers; Bailee Waivers. In the event that Borrower or any of its Subsidiaries, after the Effective Date, intends to add any new offices or business locations, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then Borrower or such Subsidiary will first receive the written consent of Collateral Agent and, in the event that the Collateral at any new location is valued in excess of One Hundred Thousand ($100,000.00) in the aggregate, such bailee or landlord, as applicable, must execute and deliver a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to Collateral Agent prior to the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be.

6.13 Creation/Acquisition of Subsidiaries. In the event Borrower, or any of its Subsidiaries creates or acquires any Subsidiary, Borrower shall provide prior written notice to Collateral Agent and each Lender of the creation or acquisition of such new Subsidiary and take all such action as may be reasonably required by Collateral Agent or any Lender to cause each such Subsidiary to become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Loan Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on Exhibit A hereto); and Borrower (or its Subsidiary, as applicable) shall grant and pledge to Collateral Agent, for the ratable benefit of the Lenders, a perfected security interest in the stock, units or other evidence of ownership of each such newly created Subsidiary.

6.14 Further Assurances.

(a) Execute any further instruments and take further action as Collateral Agent or any Lender reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

(b) Deliver to Collateral Agent and Lenders, within five (5) days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Borrower's business or otherwise could reasonably be expected to have a Material Adverse Change.

7. NEGATIVE COVENANTS

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Lenders:

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn out, surplus or obsolete Equipment; (c) in connection with Permitted Liens, Permitted Investments and Permitted Licenses; (d) use of cash and cash equivalents in the ordinary course of business and in connection with transactions not prohibited hereunder; and (e) other Transfers in an aggregate amount not in excess of Five Hundred Thousand Dollars ($500,000.00) in any fiscal year.

7.2 Changes in Business, Management, Ownership, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower as of the Effective Date or reasonably related thereto; (b) liquidate or dissolve; or (c) (i) any Key Person shall cease to be actively engaged in the management of Borrower unless written notice thereof is provided to Collateral Agent within five (5) days of such change, or (ii) enter into any transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than forty nine percent (49%) of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions (other than by the sale of Borrower's equity securities in a public offering, a private placement of public equity or to venture capital investors so long as Borrower identifies to Collateral Agent the venture capital investors prior to the closing of the transaction). Borrower shall not, without at least thirty (30) days' prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than One Hundred Thousand Dollars ($100,000.00) in assets or property of Borrower or any of its Subsidiaries); (B) change its jurisdiction of organization, (C) change its organizational structure or type, (D) change its legal name, or (E) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person. A Subsidiary may merge or consolidate into another Subsidiary (provided such surviving Subsidiary is a "co-Borrower" hereunder or has provided a secured Guaranty of Borrower's Obligations hereunder) or with (or into) Borrower provided Borrower is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom. Without limiting the foregoing, Borrower shall not, without Collateral Agent's prior written consent, enter into any binding contractual arrangement with any Person to attempt to facilitate a merger or acquisition of Borrower, unless (i) no Event of Default exists when such agreement is entered into by Borrower, (ii) such agreement does not give such Person the right to claim any fees, payments or damages from Borrower in excess of Two Hundred Fifty Thousand Dollars ($250,000.00), and (iii) Borrower notifies Collateral Agent in advance of entering into such an agreement.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens that are permitted by the terms of this Agreement to have priority over Collateral Agent's or each Lender's Lien), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the ratable benefit of the Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or such Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "**Permitted Liens**" herein.

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

7.7 Distributions; Investments. (a) Pay any dividends (other than dividends payable solely in capital stock) or make any distribution or payment in respect of or redeem, retire or purchase any capital stock, provided that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) Borrower may pay dividends solely in common stock and/or non-redeemable preferred stock; (iii) Borrower may repurchase the stock of former or current employees, directors, officers or consultants pursuant to stock repurchase agreements or stock repurchase plans, and provided further such repurchase does not exceed in the aggregate One Hundred Thousand Dollars ($100,000) and (iv) Borrower may make such distributions, payments, redemptions, retirements or purchases solely with the proceeds of any equity financings approved by the Board of Directors not in excess of Fifty Thousand Dollars ($50,000) or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions that are in the ordinary course of Borrower's or such Subsidiary's business, upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary than would be obtained in an arm's length transaction with a non-affiliated Person, and (b) Subordinated Debt or equity investments by Borrower's investors in Borrower or its Subsidiaries.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders.

7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

7.11 Compliance with Anti-Terrorism Laws. Collateral Agent hereby notifies Borrower and each of its Subsidiaries that pursuant to the requirements of Anti-Terrorism Laws, and Collateral Agent's policies and practices, Collateral Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and each of its Subsidiaries and their principals, which information includes the name and address of Borrower and each of its Subsidiaries and their principals and such other information that will allow Collateral Agent to identify such party in accordance with Anti-Terrorism Laws. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower and each of its Subsidiaries shall immediately notify Collateral Agent if Borrower or such Subsidiary has knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof). During the cure period, the failure to cure the payment default is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Notice of Litigation and Default), 6.10 (Financial Covenants), 6.11 (Performance Covenants), 6.13 (Creation/Acquisition of Subsidiaries) or Borrower violates any covenant in Section 7; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Grace periods provided under this Section shall not apply, among other things, to financial covenants or any other covenants set forth in subsection (a) above;

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries or of any entity under control of Borrower or its Subsidiaries on deposit with any Lender or any Lender's Affiliate or any bank or other institution at which Borrower or any of its Subsidiaries maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against Borrower or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; and

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any material part of its business;

8.5 Insolvency. (a) Borrower or any of its Subsidiaries is or becomes Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is a default in any agreement to which Borrower or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of One Hundred Thousand Dollars ($100,000.00) or that could reasonably be expected to have a Material Adverse Change;

8.7 Judgments. One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least One Hundred Thousand Dollars ($100,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of ten (10) days after the entry thereof (provided that no Credit Extensions will be made prior to the satisfaction, vacation, or stay of such judgment, order or decree);

8.8 Misrepresentations. Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

8.9 Subordinated Debt. A default or breach occurs under any agreement between Borrower or any of its Subsidiaries and any creditor of Borrower or any of its Subsidiaries that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

8.10 Guaranty. (a) Any Guaranty terminates or ceases for any reason to be in full force and effect; (b) any Guarantor does not perform any obligation or covenant under any Guaranty; (c) any circumstance described in Sections 8.3, 8.4, 8.5, 8.7, or 8.8 occurs with respect to any Guarantor, or (d) the liquidation, winding up, or termination of existence of any Guarantor;

8.11 Governmental Approvals. Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term *and* such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change; or

8.12 Lien Priority. Any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens which are permitted to have priority in accordance with the terms of this Agreement, provided that such circumstance is not due to Collateral Agent's failure to file an appropriate continuation financing statement, amendment financing statement or initial financing statement.

9. RIGHTS AND REMEDIES

9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, and at the written direction of Required Lenders shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right at the written direction of the Required Lenders, without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or (b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or

(iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;

(iv) place a "hold" on any account maintained with Collateral Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries;

(vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof);

(viii) for any Letters of Credit, demand that Borrower (i) deposit cash with Bank in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then one hundred five percent (105%); and

(y) if such Letters of Credit are denominated in a Foreign Currency, then one hundred ten percent (110%), of the Dollar Equivalent of the aggregate face amount of all Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit; and

(ix) terminate any FX Contracts.

9.2 Power of Attorney. Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make Credit Extensions hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries' attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Credit Extensions terminates.

9.3 Protective Payments. If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the

Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent's security interest therein.

9.5 Liability for Collateral. So long as Collateral Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

10. NOTICES

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:	CYMABAY THERAPEUTICS, INC. 3876 Bay Center Place Hayward, CA 94545 Attn: Sujal Shah Fax: (510) 293-6853 Email: sshah@cymabay.com
with a copy (which shall not constitute notice) to:	Cooley LLP 3175 Hanover Street Palo Alto, CA 94304 Attn: Maricel Mojares-Moore Fax: (415) 693-2134 Email: mmoore@cooley.com
If to Collateral Agent:	SILICON VALLEY BANK 2400 Hanover Street Palo Alto, California 94304 Attn: Rob Freelen Fax: (650) 320-0016 Email: rfreelen@svb.com
with a copy to	OXFORD FINANCE LLC 133 North Fairfax Street Alexandria, Virginia 22314 Attention: Legal Department Fax: (703) 519-5225 Email: LegalDepartment@oxfordfinance.com
with a copy (which shall not constitute notice) to:	DLA Piper LLP (US) 4365 Executive Drive, Suite 1100 San Diego, California 92121-2133 Attn: Matt Schwartz Fax: (858) 638-5134 Email: matt.schwartz@dlapiper.com

11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER, AND JUDICIAL REFERENCE

California law governs the Loan Documents without regard to principles of conflicts of law. Borrower, Collateral Agent and each Lender each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Collateral Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Collateral Agent or any Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, COLLATERAL AGENT AND EACH LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN

DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

12. GENERAL PROVISIONS

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's and each Lender's prior written consent (which may be granted or withheld in Collateral Agent's and each Lender's discretion, subject to Section 12.6). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, pledge, negotiate, or grant participation in **(any** such sale, transfer, assignment, negotiation**,** or grant of a participation, a **"Lender Transfer")** all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents; *provided*, *however*, that any such Lender Transfer (other than a transfer, pledge, sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Loan Documents shall require the prior written consent of the Required Lenders (such approved assignee, an "**Approved Lender**")**.** Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective assignment agreement in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee or Approved Lender as Collateral Agent reasonably shall require. Notwithstanding anything to the contrary contained herein, so long as no Event of Default has occurred and is continuing, no Lender Transfer (other than a Lender Transfer (i) in respect of the Warrants or (ii) in connection with (x) assignments by a Lender due to a forced divestiture at the request of any regulatory agency; or (y) upon the occurrence of a default, event of default or similar occurrence with respect to a Lender's own financing or securitization transactions) shall be permitted, without Borrower's consent, to any Person which is an Affiliate or Subsidiary of Borrower, a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent.

12.2 Indemnification. Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or

representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents between Collateral Agent, and/or the Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.5 Correction of Loan Documents. Collateral Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties**.**

12.6 Amendments in Writing; Integration. (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature;

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "**Required Lenders**" or the percentage of Lenders which shall be required for the Lenders to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.6 or the definitions of the terms used in this Section 12.6 insofar as the definitions affect the substance of this Section 12.6; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with

respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent and Lenders securing the Obligations; or (I) amend any of the provisions of Section 12.10. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the preceding sentence;

(iv) the provisions of the foregoing clauses (i), (ii) and (iii) are subject to the provisions of any interlender or agency agreement among the Lenders and Collateral Agent pursuant to which any Lender may agree to give its consent in connection with any amendment, waiver or modification of the Loan Documents only in the event of the unanimous agreement of all Lenders.

(b) Other than as expressly provided for in Section 12.6(a)(i)-(iii), Collateral Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

12.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.8 Survival. All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. Without limiting the foregoing, except as otherwise provided in Section 4.1, the grant of security interest by Borrower in Section 4.1 shall survive until the termination of all Bank Services Agreements. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.9 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.9 Confidentiality. In handling any confidential information of Borrower, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders' and Collateral Agent's Subsidiaries or Affiliates, or in connection with a Lender's own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Credit Extensions (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, regulation, subpoena, or other order; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement with the Lenders and Collateral Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Lenders may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.9.

12.10 Right of Set Off. Borrower hereby grants to Collateral Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Collateral Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Collateral Agent or the Lenders or any entity under the control of Collateral Agent or the Lenders (including a Collateral Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Collateral Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.11 Cooperation of Borrower. If necessary, Borrower agrees to (i) execute any documents (including new Secured Promissory Notes) reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Loan to an assignee in accordance with Section 12.1, (ii) make Borrower's management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments or Credit Extensions (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request. Subject to the provisions of Section 12.9, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

13. DEFINITIONS

13.1 Definitions. As used in this Agreement, the following terms have the following meanings:

"**Account**" is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

"**Account Debtor**" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

"**Affiliate**" of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"**Agreement**" is defined in the preamble hereof.

"**Amortization Date**" is, (i) with respect to a Term A Loan, November 1, 2014 and (ii) with respect to Term B Loan, the thirteenth (13th) Payment Date following the Funding Date of Term B Loan.

"**Annual Projections**" is defined in Section 6.2(a).

"**Anti-Terrorism Laws**" are any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

"**Approved Fund**" is any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Approved Lender**" is defined in Section 12.1.

"**Bank Services**" are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank's various agreements related thereto (each, a "**Bank Services Agreement**").

"**Bank**" is defined in the preamble hereof.

"**Basic Rate**" is, with respect to a Term Loan, the per annum rate of interest (based on a year of three hundred sixty (360) days) equal to the greater of (i) eight and three quarters percent (8.75%) and (ii) the sum of (a) the Prime Rate three (3) Business Days prior to the Funding Date of such Term Loan, plus (b) four and one quarter percent (4.25%).

"**Blocked Person**" is any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) a Person that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list.

"**Borrower**" is defined in the preamble hereof.

"**Borrower's Books**" are Borrower's or any of its Subsidiaries' books and records including ledgers, federal, and state tax returns, records regarding Borrower's or its Subsidiaries' assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"**Business Day**" is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

"**Cash Burn**" is defined as the net change in the total cash and cash equivalents balance of Borrower and its Subsidiaries (excluding any positive cash flow resulting from Borrower's financing activities) for such period taken as a single accounting period.

"**Cash Equivalents**" are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc., and (c) certificates of deposit maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent. For the avoidance of doubt, the direct purchase by Borrower or any of its Subsidiaries of any Auction Rate Securities, or purchasing participations in, or entering into any type of swap or other derivative transaction, or otherwise holding or engaging in any ownership interest in any type of Auction Rate Security by Borrower or any of its Subsidiaries shall be conclusively determined by the Lenders as an ineligible Cash Equivalent, and any such transaction shall expressly violate each other

provision of this Agreement governing Permitted Investments. Notwithstanding the foregoing, Cash Equivalents does not include and Borrower, and each of its Subsidiaries, are prohibited from purchasing, purchasing participations in, entering into any type of swap or other equivalent derivative transaction, or otherwise holding or engaging in any ownership interest in any type of debt instrument, including, without limitation, any corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a dutch auction and more commonly referred to as an auction rate security (each, an "**Auction Rate Security**").

"**Claims**" are defined in Section 12.2.

"**Code**" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"**Collateral**" is any and all properties, rights and assets of Borrower described on Exhibit A.

"**Collateral Account**" is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Borrower or any Subsidiary at any time.

"**Collateral Agent**" is, SVB, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders.

"**Commitment Percentage**" is set forth in Schedule 1.1, as amended from time to time.

"**Commodity Account**" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

"**Communication**" is defined in Section 10.

"**Compliance Certificate**" is that certain certificate in the form attached hereto as Exhibit C.

"**Contingent Obligation**" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"**Control Agreement**" is any control agreement entered into among the depository institution at which Borrower or any of its Subsidiaries maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower or any of its Subsidiaries maintains a Securities Account or a Commodity Account, Borrower and such Subsidiary, and Collateral Agent or a Lender pursuant to which Collateral Agent or a Lender obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account, or Commodity Account.

"**Copyrights**" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"**Credit Extension**" is any Term Loan or any other extension of credit by Collateral Agent or Lenders for Borrower's benefit.

"**Default Rate**" is defined in Section 2.3(b).

"**Deposit Account**" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"**Designated Deposit Account**" is Borrower's deposit account, account number XXXXXX8841, maintained with Bank.

"**Disbursement Letter**" is that certain form attached hereto as Exhibit B-1.

"**Dollar Equivalent**" is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

"**Dollars**," "**dollars**" and "$" each mean lawful money of the United States.

"**Effective Date**" is defined in the preamble of this Agreement.

"**Eligible Assignee**" is (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which either (A) has a rating of BBB or higher from Standard & Poor's Rating Group and a rating of Baa2 or higher from Moody's Investors Service, Inc. at the date that it becomes a Lender or (B) has total assets in excess of Five Billion Dollars ($5,000,000,000.00), and in each case of clauses (i) through (iv), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that notwithstanding the foregoing, "Eligible Assignee" shall not include, unless an Event of Default has occurred and is continuing, (i) Borrower or any of Borrower's Affiliates or Subsidiaries or (ii) a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent. Notwithstanding the foregoing, (x) in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party and (y) in connection with a Lender's own financing or securitization transactions, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Collateral Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Collateral Agent reasonably shall require.

"**Equipment**" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**Equity Event**" is the receipt by Borrower on or prior to the Effective Date of unrestricted net cash proceeds of not less than Twenty Two Million Dollars ($22,000,000.00) from the issuance and sale by Borrower of its unsecured subordinated convertible debt and/or equity securities, which such proceeds shall have been deposited into the Designated Deposit Account.

"**ERISA**" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"**Event of Default**" is defined in Section 8.

"**Final Payment**" is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of a Term Loan pursuant to Section 2.2(c) or (d), equal to the original principal amount of such Term Loan multiplied by the Final Payment Percentage, payable to Lenders in accordance with their respective Pro Rata Shares.

"**Final Payment Percentage**" is six and one half percent (6.50%).

"**Foreign Currency**" means lawful money of a country other than the United States.

"**Foreign Subsidiary**" is a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof.

"**Funding Date**" is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

"**FX Contract**" is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

"**GAAP**" is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

"**General Intangibles**" are all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"**Governmental Approval**" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"**Governmental Authority**" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"**Guarantor**" is any Person providing a Guaranty in favor of Collateral Agent.

"**Guaranty**" is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

"**Indebtedness**" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

"**Indemnified Person**" is defined in Section 12.2.

"**Insolvency Proceeding**" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"**Insolvent**" means not Solvent.

"**Intellectual Property**" means all of Borrower's or any Subsidiary's right, title and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;

(c) any and all source code;

(d) any and all design rights which may be available to Borrower;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"**Inventory**" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"**Investment**" is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance, payment or capital contribution to any Person.

"**IP Agreement**" is that certain Intellectual Property Security Agreement entered into by and between Borrower and Collateral Agent dated as of the Effective Date, as such may be amended from time to time.

"**Key Person**" is each of Borrower's (i) Chief Executive Officer, who is Harold Van Wart as of the Effective Date, (ii) Chief Financial Officer, who is Sujal Shah as of the Effective Date and (iii) Chief Science Officer, who is Charles McWherter as of the Effective Date.

"**Lender**" is any one of the Lenders.

"**Lenders**" are the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

"**Lenders' Expenses**" are all audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

"**Letter of Credit**" is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

"**Lien**" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"**Liquidity**" is, at any time, the aggregate amount of unrestricted cash held at such time by Borrower in Deposit Accounts or Securities Accounts maintained with Bank or its Affiliates.

"**Loan Documents**" are, collectively, this Agreement, the Warrants, the Perfection Certificates, each Compliance Certificate, each Disbursement Letter, each Loan Payment/Advance Request Form and any Bank Services Agreement, the Post Closing Letter, the IP Agreement, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent in connection with this Agreement; all as amended, restated, or otherwise modified.

"**Loan Payment/Advance Request Form**" is that certain form attached hereto as Exhibit B-2.

"**Material Adverse Change**" is (a) a material impairment in the perfection or priority of Collateral Agent's or a Lender's Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations or condition (financial or otherwise) of Borrower or any Subsidiary; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

"**Maturity Date**" is, for each Term Loan, the date which is thirty five (35) months after the Amortization Date with respect to such Term Loan.

"**Obligations**" are all of Borrower's obligations to pay when due any debts, principal, interest, Lenders' Expenses, the Prepayment Fee, the Final Payment, and other amounts Borrower owes the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Loan Documents (other than the Warrants), or otherwise, including, without limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower's duties under the Loan Documents (other than the Warrants).

"**OFAC**" is the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operating Documents**" are, for any Person, such Person's formation documents, as certified by the Secretary of State (or equivalent agency) of such Person's jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"**Patents**" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"**Payment Date**" is the first (1st) calendar day of each calendar month, commencing on November 1, 2013.

"**Perfection Certificate**" and "**Perfection Certificates**" is defined in Section 5.1.

"**Permitted Indebtedness**" is:

(a) Borrower's Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate(s);

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed One Hundred Thousand Dollars ($100,000.00) at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made);

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower's business;

(g) Indebtedness owed to Bank in respect of Bank Services; and

(h) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (e) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, or its Subsidiary, as the case may be.

"**Permitted Investments**" are:

(a) Investments disclosed on the Perfection Certificate(s) and existing on the Effective Date;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any other Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Collateral Agent;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of Collateral Accounts in which Collateral Agent has a perfected security interest;

(e) Investments in connection with Transfers permitted by Section 7.1 and Investments permitted under Section 7.7;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors

relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors; not to exceed Twenty Five Thousand Dollars ($25,000.00) in the aggregate for (i) and (ii) in any fiscal year;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (h) shall not apply to Investments of Borrower in any Subsidiary; and

(i) non-cash Investments in joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support.

"**Permitted Licenses**" are (A) licenses of over-the-counter software that is commercially available to the public, and (B) non-exclusive and exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in clause (B), (i) no Event of Default has occurred or is continuing at the time of such license; (ii) the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property; (iii) in the case of any exclusive license, (x) Borrower delivers ten (10) days' prior written notice and a brief summary of the terms of the proposed license to Collateral Agent and the Lenders and delivers to Collateral Agent and the Lenders copies of the final executed licensing documents in connection with the exclusive license promptly upon consummation thereof, and (y) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory only as to discrete geographical areas outside of the United States; and (iv) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to Borrower or any of its Subsidiaries are paid to a Deposit Account that is governed by a Control Agreement.

"**Permitted Liens**" are:

(a) Liens existing on the Effective Date and disclosed on the Perfection Certificates or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) liens securing Indebtedness permitted under clause (e) of the definition of "**Permitted Indebtedness**," provided that (i) such liens exist prior to the acquisition of, or attach substantially simultaneous with, or within twenty (20) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such liens do not extend to any property of Borrower other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Twenty Five Thousand Dollars ($25,000.00), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;

(h) banker's liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower's deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6(b) hereof;

(i) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(j) Liens consisting of Permitted Licenses;

(k) deposits to secure the performance of bids, trade contracts, contracts for the purchase of property permitted hereunder, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case, incurred in the ordinary course of business and not representing an obligation for borrowed money; and

(l) deposits to secure the performance of leases incurred in the ordinary course of business and not representing an obligation for borrowed money so long as each such deposit is made at the commencement of a lease or its renewal when there is no underlying default under such lease.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Post Closing Letter**" is that certain Post Closing Letter dated as of the Effective Date by and between Collateral Agent and Borrower.

"**Prepayment Fee**" is, with respect to any Term Loan subject to prepayment prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to the Lenders in amount equal to three percent (3.00%) of the principal amount of such Term Loan prepaid.

"**Prime Rate**" is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the "Prime Rate" shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors).

"**Pro Rata Share**" is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loans held by such Lender by the aggregate outstanding principal amount of all Term Loans.

"**Registered Organization**" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"**Required Lenders**" means (i) for so long as all of the Persons that are Lenders on the Effective Date (each an "**Original Lender**") have not assigned or transferred any of their interests in their Term Loan, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loan, Lenders holding at least sixty six percent (66%) of the aggregate outstanding principal balance of the Term Loan and, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its Term Loan, (B) each assignee or transferee of an Original Lender's interest in the Term Loan, but only to the extent that such assignee or transferee is an Affiliate or Approved Fund of such Original Lender, and (C) any Person providing financing to any Person described in clauses (A) and (B) above; provided, however, that this clause (C) shall only apply upon the occurrence of a default, event of default or similar occurrence with respect to such financing.

"**Requirement of Law**" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Responsible Officer**" is any of the President, Chief Executive Officer, or Chief Financial Officer of Borrower acting alone.

"**Second Draw Milestone**" means receipt by Collateral Agent and Lenders of evidence, in form and substance reasonably satisfactory to Collateral Agent and Lenders, of positive data and successful completion of all primary endpoints for either the 600mg or 800mg dose of Arhalofenate in the Borrower's 225-patient Phase 2b study in patients with gout.

"**Second Draw Period**" is the period commencing on the date of the occurrence of the Second Draw Milestone and ending on the earlier of (i) June 30, 2015 and (ii) the occurrence and continuance of an Event of Default; provided, however, that the Second Draw Period shall not commence if on the date of the occurrence of the Second Draw Milestone an Event of Default has occurred and is continuing.

"**Secured Promissory Note**" is defined in Section 2.4.

"**Secured Promissory Note Record**" is a record maintained by each Lender with respect to the outstanding Obligations owed by Borrower to Lender and credits made thereto.

"**Securities Account**" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

"**Solvent**" is, with respect to any Person: the fair salable value of such Person's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person's liabilities; such Person is not left with unreasonably small capital after the transactions in this Agreement; and such Person is able to pay its debts (including trade debts) as they mature.

"**State Street Accounts**" means those certain Collateral Accounts maintained by Borrower at State Street Bank as of the Effective Date and disclosed in the Perfection Certificate; provided that (i) the aggregate balance of such accounts does not at any time exceed Zero Dollars ($0.00) and (ii) such accounts are closed within thirty (30) days after the Effective Date.

"**Subordinated Debt**" is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Collateral Agent and the Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor), on terms acceptable to Collateral Agent and the Lenders.

"**Subsidiary**" is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

"**Term Loan**" is defined in Section 2.2(a)(ii) hereof.

"**Term A Loan**" is defined in Section 2.2(a)(i) hereof.

"**Term B Loan**" is defined in Section 2.2(a)(ii) hereof.

"**Term Loan Commitment**" is, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on Schedule 1.1. "**Term Loan Commitments**" means the aggregate amount of such commitments of all Lenders.

"**Trademarks**" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"**Transfer**" is defined in Section 7.1.

"**Warrants**" are those certain Warrants to Purchase Stock dated as of the Effective Date, or any date thereafter, issued by Borrower in favor of each Lender or such Lender's Affiliates.

"**Wells Fargo Accounts**" means those certain Collateral Accounts maintained by Borrower at Wells Fargo Bank as of the Effective Date and disclosed in the Perfection Certificate; provided that (i) the aggregate balance of such accounts does not at any time exceed One Million Dollars ($1,000,000.00) and (ii) such accounts are closed within thirty (30) days after the Effective Date.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

CYMABAY THERAPEUTICS, INC.

By: /s/ HAROLD VAN WART
Name: HAROLD VAN WART
Title: PRESIDENT & CEO

COLLATERAL AGENT AND LENDER:

SILICON VALLEY BANK

By: /s/ Jennifer Friel Goldstein
Name: Jennifer Friel Goldstein
Title: Managing Director

LENDER:

OXFORD FINANCE LLC

By: /s/ Mark Davis
Name: Mark Davis
Title: Vice President – Finance, Secretary & Treasurer

SCHEDULE 1.1

Lenders and Commitments

Term A Loans

Lender	Term Loan Commitment	Commitment Percentage
SILICON VALLEY BANK	$ 2,500,000.00	50.00%
OXFORD FINANCE LLC	$ 2,500,000.00	50.00%
TOTAL	**$ 5,000,000.00**	**100.00%**

Term B Loans

Lender	Term Loan Commitment	Commitment Percentage
SILICON VALLEY BANK	$ 2,500,000.00	50.00%
OXFORD FINANCE LLC	$ 2,500,000.00	50.00%
TOTAL	**$ 5,000,000.00**	**100.00%**

Aggregate (all Term Loans)

Lender	Term Loan Commitment	Commitment Percentage
SILICON VALLEY BANK	$ 5,000,000.00	50.00%
OXFORD FINANCE LLC	$ 5,000,000.00	50.00%
TOTAL	**$ 10,000,000.00**	**100.00%**

EXHIBIT A

Description of Collateral

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (including all Intellectual Property), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

EXHIBIT B-1

Form of Disbursement Letter

[see attached]

DISBURSEMENT LETTER

September 30, 2013

The undersigned, being the duly elected and acting of CYMABAY THERAPEUTICS, INC., a Delaware Corporation with offices located at 3876 Bay Center Place, Hayward, CA 94545 ("**Borrower**"), does hereby certify to **SILICON VALLEY BANK** ("**SVB**" and "**Lender**"), as collateral agent (the "**Collateral Agent**") in connection with that certain Loan and Security Agreement dated as of September 30, 2013, by and among Borrower, Collateral Agent and the Lenders from time to time party thereto (the "**Loan Agreement**"; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that:

1. The representations and warranties made by Borrower in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects as of the date hereof.

2. No event or condition has occurred that would constitute an Event of Default under the Loan Agreement or any other Loan Document.

3. Borrower is in compliance with the covenants and requirements contained in Sections 4, 6 and 7 of the Loan Agreement.

4. All conditions referred to in Section 3 of the Loan Agreement to the making of the Loan to be made on or about the date hereof have been satisfied or waived by Collateral Agent.

5. No Material Adverse Change has occurred.

6. The undersigned is a Responsible Officer.

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7. The proceeds of the Term [A][B] Loan shall be disbursed as follows:

Disbursement from Oxford:		
Loan Amount	$	
Plus:		
—Deposit Received	$	
Less:		
—Facility Fee	($	)
[—Interim Interest	($	)]
—Lender's Legal Fees	($	)*
Net Proceeds due from Oxford:	**$**	
Disbursement from SVB:		
Loan Amount	$	
Plus:		
—Deposit Received	$	
Less:		
—Facility Fee	($	)
[—Interim Interest	($	)]
Net Proceeds due from SVB:	**$**	
TOTAL TERM [A][B] LOAN NET PROCEEDS FROM LENDERS	**$**	

8. The Term [A][B] Loan shall amortize in accordance with the Amortization Table attached hereto.

9. The aggregate net proceeds of the Term Loans shall be transferred to the Designated Deposit Account as follows:

Account Name:	CYMABAY THERAPEUTICS, INC.
Bank Name:	Silicon Valley Bank
Bank Address:	3003 Tasman Drive Santa Clara, California 95054
Account Number:	3300998841
ABA Number:	121140399

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* Legal fees and costs are through the Effective Date. Post-closing legal fees and costs, payable after the Effective Date, to be invoiced and paid post-closing.

Dated as of the date first set forth above.

BORROWER:

CYMABAY THERAPEUTICS, INC.

By _____
Name: _____
Title: _____

COLLATERAL AGENT AND LENDER:

SILICON VALLEY BANK

By _____
Name: _____
Title: _____

LENDER:

OXFORD FINANCE LLC

By _____
Name: _____
Title: _____

AMORTIZATION TABLE

(Term [A][B] Loan)

[see attached]

EXHIBIT B-2

Loan Payment/Advance Request Form

DEADLINE FOR SAME DAY PROCESSING IS NOON PACIFIC TIME*

Fax To: Date: _____

LOAN PAYMENT:

CYMABAY THERAPEUTICS, INC.

From Account #_____ To Account #_____
(Deposit Account #) (Loan Account #)
Principal $_____ and/or Interest $_____

Authorized Signature:_____ Phone Number:_____
Print Name/Title:_____

LOAN ADVANCE:

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account #_____ To Account #_____
(Loan Account #) (Deposit Account #)

Amount of Advance $_____

All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:

Authorized Signature:_____ Phone Number:_____
Print Name/Title:_____

OUTGOING WIRE REQUEST:

Complete only if all or a portion of funds from the loan advance above is to be wired.

Deadline for same day processing is noon, Pacific Time

Beneficiary Name:_____ Amount of Wire: $_____
Beneficiary Bank:_____ Account Number:_____
City and State:_____

Beneficiary Bank Transit (ABA) #:_____ Beneficiary Bank Code (Swift, Sort, Chip, etc.):_____
(For International Wire Only)
Intermediary Bank:_____ Transit (ABA) #:_____
For Further Credit to:_____

Special Instruction:_____
By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).

Authorized Signature:_____ 2nd Signature (if required):_____
Print Name/Title:_____ Print Name/Title:_____
Telephone #:_____ Telephone #:_____

EXHIBIT C

Compliance Certificate

TO: SILICON VALLEY BANK, as Collateral Agent and Lender
OXFORD FINANCE LLC, as Lender

FROM: CYMABAY THERAPEUTICS, INC.

The undersigned authorized officer ("**Officer**") of CYMABAY THERAPEUTICS, INC. ("**Borrower**"), hereby certifies that in accordance with the terms and conditions of the Loan and Security Agreement by and among Borrower, Collateral Agent, and the Lenders from time to time party thereto (the "**Loan Agreement**;" capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

(a) Borrower is in complete compliance for the period ending with all required covenants except as noted below;

(b) There are no Events of Default, except as noted below;

(c) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (a), above; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

(d) Borrower, and each of Borrower's Subsidiaries, has timely filed all required tax returns and reports or extensions thereof, Borrower, and each of Borrower's Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 5.8 of the Loan Agreement;

(e) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of Borrower, further certifies that the attached financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under "Complies" column.

	Reporting Covenant	Requirement	Actual	Complies		
1)	Financial statements	Monthly within 30 days		Yes	No	N/A
2)	Annual (CPA Audited) statements	Within 180 days after FYE		Yes	No	N/A
3)	Annual Financial Projections/Budget (prepared on a monthly basis)	Annually (within 45 days of FYE), and when revised		Yes	No	N/A

4) A/R & A/P agings	If applicable		Yes No N/A
5) 8-K, 10-K and 10-Q Filings	If applicable, within 5 days of filing		Yes No N/A
6) Compliance Certificate	Monthly within 30 days		Yes No N/A
7) IP Report	When required		Yes No N/A
8) Total amount of Borrower's cash and cash equivalents at the last day of the measurement period		$	Yes No N/A
9) Total amount of Borrower's Subsidiaries' cash and cash equivalents at the last day of the measurement period		$	Yes No N/A

Deposit and Securities Accounts

(Please list all accounts; attach separate sheet if additional space needed)

Institution Name	Account Number	New Account?	Account Control Agreement in place?
1)		Yes No	Yes No
2)		Yes No	Yes No
3)		Yes No	Yes No
4)		Yes No	Yes No

Financial Covenants

Covenant	Requirement	Actual	Compliance
1) Liquidity Ratio	At least 1.30:1.00	:1.00	Yes No
2) Remaining Months Liquidity	8 months of liquidity	months of liquidity	Yes No

Performance Covenants

Covenant	Requirement	Actual	Compliance
1) Borrower must be publically traded on NASDAQ	by no later than June 30, 2014* within one hundred twenty		Yes No
2) Borrower must have access to an At The Market Facility	(120) days of Borrower becoming eligible use Form S-3*		Yes No
3) the Second Draw Milestone must have occurred	by no later than March 31, 2015*		Yes No

* *provided that Borrower's failure to comply with this Section 6.11 shall not be an "Event of Default" hereunder so long as Borrower has deposited an amount equal to one hundred percent (100.00%) of the aggregate outstanding amount of all Credit Extensions with Bank in a segregated blocked Deposit Account pursuant to a blocked account agreement in form and substance satisfactory to Lenders.*

Other Matters

1) Have there been any changes in management since the last Compliance Certificate? Yes No

2) Have there been any transfers/sales/disposals/retirement of Collateral or IP prohibited by the Loan Agreement? Yes No

3) Have there been any new or pending claims or causes of action against Borrower that involve more than One Hundred Thousand Dollars ($100,000.00)? Yes No

4) Have there been (i) any amendments of or other changes to the Operating Documents of Borrower or any of its Subsidiaries or (ii) any material amendment of or other change to the capitalization table of Borrower? If yes, provide copies of any such amendments or changes with this Compliance Certificate. Yes No

Exceptions

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

CYMABAY THERAPEUTICS, INC.

By _____
Name: _____
Title: _____

Date:

LENDER USE ONLY

Received by: _____ Date: _____

Verified by: _____ Date: _____

Compliance Status: Yes No

EXHIBIT D

Form of Secured Promissory Note

[see attached]

SECURED PROMISSORY NOTE
(Term [A][B] Loan)

$ Dated: September 30, 2013

FOR VALUE RECEIVED, the undersigned, CYMABAY THERAPEUTICS, INC., a Delaware Corporation with offices located at 3876 Bay Center Place, Hayward, CA 94545 ("**Borrower**") HEREBY PROMISES TO PAY to the order of [OXFORD FINANCE LLC][SILICON VALLEY BANK] ("**Lender**") the principal amount of [ ] MILLION DOLLARS ($) or such lesser amount as shall equal the outstanding principal balance of the Term [A][B] Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term [A][B] Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated September 30, 2013 by and among Borrower, Lender, Silicon Valley Bank, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term [A][B] Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Secured Promissory Note (this "**Note**"). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term [A][B] Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2(c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term [A][B] Loan, interest on the Term [A][B] Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of California.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

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IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

CYMABAY THERAPEUTICS, INC.

By _____
Name: _____
Title: _____

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

DEBTOR: **CYMABAY THERAPEUTICS, INC.**
SECURED PARTY: **SILICON VALLEY BANK,**
as Collateral Agent

EXHIBIT A TO UCC FINANCING STATEMENT

Description of Collateral

The Collateral consists of all of Debtor's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (including all Intellectual Property), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Capitalized terms used but not defined herein have the meanings ascribed in the Uniform Commercial Code in effect in the State of California as in effect from time to time (the "Code") or, if not defined in the Code, then in the Loan and Security Agreement by and between Debtor, Secured Party and the other Lenders party thereto (as modified, amended and/or restated 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 24b-2 of the Securities Act of 1934, 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 24b-2 of the Securities Act of 1934, 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 24b-2 of the Securities Act of 1934, 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

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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

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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.

[*] = 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 24b-2 of the Securities Act of 1934, as amended.

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

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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

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.

[*] = 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 24b-2 of the Securities Act of 1934, as amended.

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 [*].

[*] = 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 24b-2 of the Securities Act of 1934, as amended.

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.

[*] = 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 24b-2 of the Securities Act of 1934, as amended.

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 [*].

[*] = 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 24b-2 of the Securities Act of 1934, as amended.

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.

[*] = 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 24b-2 of the Securities Act of 1934, as amended.

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.

[*] = 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 24b-2 of the Securities Act of 1934, as amended.

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.

[*] = 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 24b-2 of the Securities Act of 1934, as amended.

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.

[*] = 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 24b-2 of the Securities Act of 1934, as amended.

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.

[*] = 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 24b-2 of the Securities Act of 1934, as amended.

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.

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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**").

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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.

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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.

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.

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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]

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In witness whereof, the parties hereto have duly executed this Agreement as of the Effective Date.

METABOLEX, INC.	**SIEGFRIED AG**
By: /s/ Charles A. McWherter	By: /s/ Marianne Spaene
Charles A. McWherter Print Name	Marianne Spaene Print Name
SVP, Research and Preclinical Dev't Title	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 24b-2 of the Securities Act of 1934, 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 24b-2 of the Securities Act of 1934, 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 24b-2 of the Securities Act of 1934, 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 24b-2 of the Securities Act of 1934, 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

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Exhibit 10.21

June 5, 2007

Charles A. McWherter

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.

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: /s/ Diana M. Petty

Diana M. Petty
VP of HR & Administration

Accepted and agreed:

/s/ Charles A. McWherter 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: /s/ Harold Van Wart
Harold Van Wart
Chief Executive Officer

Accepted and agreed:

/s/ Charles A. McWherter	October 15, 2007
CHARLES A. MCWHERTER	**DATE**

Exhibit A

RELOCATION EXPENSE POLICY FOR NEW AND TRANSFERRED EMPLOYEES

Objective:

To provide reimbursement of the ordinary standard and routine costs as a result of relocation at the Company's request.

Most reasonable expenses qualify for reimbursement. However, the policy is not intended to provide full reimbursement for each and every item of expense that may be incurred. Because of certain expenses that may arise out of personal preference or due to unusual circumstances, the employee should not assume that this policy would cover all expenses resulting from the relocation. Only the expenses outlined in this policy are reimbursable or subject to financial assistance. Substitution of expenses will not be reimbursed unless specifically outlined and agreed to in advance.

Periodically, the Company will review this policy to determine adequate levels of expense allowance for fair and equitable treatment of employees who are required to move.

Administration of the relocation expense policy is the responsibility of Human Resources.

Eligibility:

The policy provisions apply to:

A. Salaried employees who are being transferred permanently at the Company's request

B. New salaried hires

To qualify for assistance, the employee must exercise the provisions of the policy within six months of the effective date of the transfer or date of employment.

Employees to be relocated should be informed of this policy immediately upon notification of their employment offer or their transfer to prevent any misunderstanding of its contents.

Employees choosing to move themselves and not utilize the services of the Company sponsored mover, will be reimbursed for 50% of the mover's estimate and will receive reimbursement for motel accommodations not to exceed 5 days. Reasonable meal and gasoline expenses will also be reimbursed for 5 days.

To receive reimbursement expenses, the employee's move must meet the IRS 35-mile distance test. To meet this test, the distance between the employee's new job location and the employee's former home is at least 35 miles more than the distance between the employee's old job location and the employee's former home.

Covered Expenses:

A. House hunting

The Company will reimburse the expenses for the employee and the employee's spouse for a maximum of 2 trips not to exceed a total of 7 days per trip for the purpose of selecting a new residence. Reimbursement will include reasonable expenses for travel (coach air fare), lodging, meals and rental car including fuel. Additional house hunting trips are subject to company approval.

B. Moving of Household Goods

Employees are required to utilize the services of moving companies as designated by the Company. Currently, Metabolex has a special arrangement with NorCal Van Lines. NorCal Van Lines, after a visual inspection of the employee's belongings, will provide Human Resources with a written estimate of expenses. A letter of authorization will be sent by the Human Resources Department to the mover authorizing their services and the payment of their expenses directly by the Company. After this authorization, the employee is responsible for contacting the moving company to set a moving date.

Costs paid by the Company include:

a) Packing

b) Transportation

c) Insurance of up to $75,000 on items being shipped

d) Transporting a maximum of one employee car.

The Company will not pay to move unusual or large items such as large boats, children's outdoor play sets, firewood, animals other than household pets, perishable plants, and items of extraordinary value requiring special handling, crating, etc. The Company also will not reimburse for tips given to the movers.

The Company will pay storage charges on the employee's household effects for limited periods, generally not to exceed three months. Extensions beyond this limit require the prior written approval of the Vice President of Human Resources.

C. The Company will pay for temporary living expenses for the employee only at the new location generally for a period not to exceed three months. Extensions beyond this limit require the prior written approval of the VP of Human Resources. Covered expenses include the cost of lodging, meals, laundry, phone calls and transportation. Human Resources will make temporary living arrangements and reservations.

In most cases, it is expected that the move of the employee to the new location will coincide with the availability of permanent living quarters upon arrival.

D. Real Estate—Disposal of Accommodations:

1. Rental Costs—If an employee is renting at the time of his/her transfer, the reasonable net cost of canceling the lease will be borne by the Company, normally not to exceed two months rent. Reimbursable costs include security or deposits forfeited under the lease terms; additional rental payments to effect cancellation, necessary legal fees and agency costs to locate sublease tenants. Written release should be obtained from leave obligations.

2. Sale of home at Old Location—The Company will not pay expenses attributable to the sale of the employee's residence.

E. Home Purchase—Old Residence:

At this time, the Company does not assist in purchasing the employee's old residence.

F. Real Estate—Requiring New Accommodations:

1. Rental Accommodations—Reasonable fees and other related direct costs (excluding security deposit) in arranging to rent a residence at the new location would be reimbursed by the Company. The employee is urged to incorporate relocation or sublease clauses in the lease.

2. Purchase of Home at New Location—If the employee owned a home at the old location and purchases a home at the new location upon being transferred, or within six months thereafter, the Company will pay the following reasonable expenses:

a. Appraisal fees (if required)

b. Abstracts

c. Escrow fees

d. Recording fees

e. Notary fees

f. Title insurance

g. Engineering inspection to determine the physical condition of home

Documentation for these items must be submitted with a Relocation Expense Report.

Closing costs can be requested in advance by submitting a Relocation Expense Report with attached documentation outlining the estimated costs for closing. After closing, the employee must submit a settlement statement to Human Resources to reconcile final closing costs differences.

G. Resettlement Allowance:

An allowance of $3,000 (subject to all applicable taxes) is provided to assist with miscellaneous household move expenses not specifically covered by this policy. This allowance will be initiated within the employee's first pay period.

H. Tax Relief:

Tax laws require moving expenses reimbursed to or paid on behalf of employees to be included in the employee's income as compensation and reported on the employee's form W-2. The reimbursement will increase the employee's tax liability to the extent moving expenses are nondeductible.

To compensate for this, the Company will gross-up the reimbursement of the nondeductible portion of covered expenses to cover Federal income tax, state income tax and FICA tax (when appropriate). The gross-up calculation will be made using the employee's annualized wage income and assuming average itemized deductions, as provided by the IRS. Because of possible wide variations in the tax situation of individual employees, the tax determined by Metabolex may or may not closely approximate the employee's actual taxes resulting from the reimbursement.

Tax gross-up will be included in the employee's income as compensation and reported on the employee's form W-2. The tax gross-up will also be shown as tax withheld on the form W-2 and paid to the appropriate taxing jurisdictions.

The Accounting Department will determine the amount of relocation reimbursement provided each employee annually and will use this information to compute the appropriate gross-up. A copy of the gross-up calculation form is attached.

This policy represents the normal reimbursable expenses connected with relocation. The Company reserves the right to make any exceptions or modifications to the policy that it deems necessary or appropriate for the management of the business.

MOVING EXPENSE REIMBURSEMENT
TAX GROSS-UP CALCULATION

Employee Name: _____ SS#: _____

Homeowner: _____ Renter: _____ Marital Status (S-M): _____

		Tax Liability Calculation Taxable Relocation $	Expense $	Gross-up $
1.	Annualized Earnings (Base Monthly Salary X 12 plus Bonus-only if paid)			
2.	Taxable Annual Earnings			
3.	Taxable Relocation Reimbursement (Total relocation reimbursement less deductible relocation expenses			
4.	Income Subject to Tax (Line 2 + Line 3)			
5.	State & Local Tax Due			
6.	Federal Income Tax Due ((Line 4-Line 5) X tax table)			
7.	Total Tax Due (Line 5 + Line 6)			
8.	Gross-up Required (Line 7, Col. 2—Col. 1)			

Exhibit B

Metabolex, Inc.
3876 Bay Center Place
Hayward, CA 94545-3619
Phone 510 293-8800 Fax 510 293-9090

AGREEMENT REGARDING CONFIDENTIAL INFORMATION AND INVENTIONS

THIS AGREEMENT is between Metabolex, Inc. a Delaware Corporation ("the Company"), and Charles McWherter, Ph.D. (the "Employee").

PURPOSE OF AGREEMENT

I want to be employed by the Company, and the Company wants to employ me pursuant to the terms set forth in the (i.e., offer letter or Employment Agreement or whatever) provided that, in so doing, it can protect its trade secrets and inventions, ideas, information, business, and good will.

In consideration of this purpose, and the mutual promises in this Agreement, I agree with the Company as follows:

1. Term

(a) My employment with the Company is an at-will relationship that may be terminated by either the Company or me with or without cause for any reason whatsoever at any time upon notice to the other party.

(b) If my employment is terminated for any reason, I will be entitled only to the compensation earned by me as of the date of termination, (including accrued vacation pay). If I have received any stock options from the Company, I am entitled to retain only those options which have actually vested by the date of my termination.

2. Confidential Information. I will hold in confidence and use only for the benefit of the Company during the term of my employment and for five years after the termination of my employment all Confidential Information of the Company, its Affiliates, and all Confidential Information of companies or persons other than the Company given to the Company under an agreement prohibiting its disclosure. "Confidential Information" refers to valuable technical or business information that is not known by the public. By way of example, Confidential Information may include, but is not limited to information relating to: inventions or products, including unannounced products; research and development activities; the identities of suppliers; costs, formulas, budgets, requirements and specifications of specific customers and potential customers; nonpublic financial information; and quotations or proposals given to customers.

METABOLEX
September 3, 1999

These restrictions on disclosure do not apply if the information is or becomes publicly known through no wrongful act on my part or the information is explicitly approved for release under such circumstances by an officer of the Company.

3. Disclosure and Assignment of Inventions. I will promptly disclose and assign to the Company my entire right, title and interest in all inventions. "Inventions" refer to (a) all technical or business innovations, whether or not patentable or copyrightable, made by me during the term in my employment; and (b) all technical or business innovations, whether or not patentable, based upon the Company's Confidential Information and made by me after leaving the Company's employ. I will keep adequate written records of all inventions made by me, such as notebooks, sketches, program listings and the like, which are the property of the Company. Notwithstanding the foregoing, I understand that pursuant to California Labor Code Section 2870, I am not required to assign to the Company, although I must disclose, any inventions: (a) for which no equipment, supplies, facilities or Confidential Information of the Company were used and which was developed entirely on my own time; (b) which at the time of conception or reduction to practice did not relate directly to the business of the Company or the Company's actual or demonstrable anticipated research or development; (c) which do not result from any work I performed for the Company. The disclosure of such inventions must be made so that the parties can make a determination whether such inventions do in fact quality for exclusion from assignment to the Company. The Company will keep confidential any such information I disclose. I will take all steps necessary to assist the Company in securing any patents, copyrights or other protection for inventions which I am required to assign to the Company as provided above. If I am unable or unwilling, whether during my employment or after termination, to sign any papers needed to apply for or pursue any patent or copyright registrations for inventions, I agree that the Company is my attorney-in-fact for that purpose and can sign such papers as my agent and take any other actions necessary to pursue these registrations.

4. List of Inventions I Own. I have attached as Exhibit A a list of inventions I own, which is a complete list of all technical or business innovations I own either alone or jointly with others on the date of this Agreement. I agree that I will not incorporate any of these prior inventions into products being developed for the Company without the prior knowledge and written consent of the Company. Should the Company wish to use any of inventions in its business, the Company will negotiate with me for a purchase of license to use such invention on mutually agreeable terms. If no such list is attached, or if no such inventions are listed thereon, I represent that I do not own any inventions at the time of signing this Agreement.

5. Tangible Materials. All tangible materials that incorporate Confidential Information are the Company's property, and I will return to the Company all of these materials and any other documents and materials which are the property of the Company, including but not limited all notes of any research or other work which I have performed for the Company and all biological materials created, used or held by me in the course of my work for the Company, at the termination of my employment or earlier upon the Company's request.

6. Solicitation of Employees. I understand that information about the Company's employees, such as their skills, performance ratings, and salary histories, constitutes Confidential Information owned by the Company. I agree that during and for a period of twelve (12) months

after termination of my employment for any reason, I will not, either directly or indirectly, solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to do any of these things, whether on my own behalf or on behalf of any other person, since to do so would necessarily involve using Confidential Information.

7. Termination. In the event of termination of my employment for any reason, I agree that, as requested by the Company, I will sign and deliver a "Termination Certification" in the form attached to this Agreement as Exhibit B. I also agree that the Company may give notice to my new employer of my duties under this Agreement.

8. Duty of Loyalty. During my employment with the Company, I will not engage in any business activity (either for my own profit or for anyone else) that competes with the Company's business.

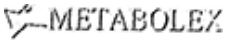
9. Duties to Third Parties. I represent that, to the best of my knowledge, compliance with the terms of this Agreement will not violate any duty that I may have to anyone other than the Company (such as a former employer) to keep such person's proprietary information in confidence or to refrain from using the person's patents or copyrights. If at any time during my employment with the Company, I am asked by the Company to perform work which I believe may cause me to violate a duty I have to someone other than the Company, I will immediately inform an officer of the Company so that an assessment of the situation may be made. I also agree that I will not, during my employment with the Company, bring onto the Company's premises, use or disclose to the Company any proprietary information or trade secrets of any former employer or any other person without that person's consent.

10. Miscellaneous. This is the only agreement between the Company and myself about confidential information and the ownership of inventions, and may not be modified, amended or terminated, in whole or in part, except in a writing signed by me and by an officer of the Company. Any later change in my title, compensation or duties will not affect this Agreement. This Agreement will survive termination of my employment for any reason, and will continue for the benefit of and will be binding upon the successors, assigns, heirs and legal representatives of the Company and myself. Any waiver by the Company of a breach by me of any of the obligations of this Agreement will not operate or be construed as a waiver of any other or subsequent breach by me. In the event any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way. The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorney's fees. This Agreement will be governed by the laws of the State of California governing contracts between residents to be performed in the State of California.

METABOLEX

September 3, 1999

Metabolex, Inc.	Employee
By: /s/ Harold Van Wart	By: /s/ Charles A. McWherter
Harold Van Wart Chief Executive Officer	Signature
6/14/2007 Date	Charles A. McWherter Employee Name
	6/14/2007 Date



September 3, 1999

EXHIBIT B

Termination Certificate

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, equipment, computer programs or listings, other documents or property or any reproductions of any of these materials belonging to Metabolex, Inc., a Delaware corporation, its subsidiaries, successors or assigns (collectively, the "Company").

I further certify that I have complied with all the terms of the Company's Agreement regarding Confidential Information and Inventions signed by me, including the reporting of any inventions and original works of authorship (as defined in that Agreement) conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Agreement regarding Confidential Information and Inventions, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to inventions or products, including but not limited to unannounced products, research and development activities, requirements and specifications of specific customers and potential customers, the identities of suppliers, costs, formulas, budgets, nonpublic financial information, and quotations or proposals given to customers, including any information disclosed to the Company in confidence by any third party.

I further agree that for twelve (12) months from this date, I will not directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to leave their employment.

Signature

Printed Name

Date

METABOLEX

September 3, 1999

EXHIBIT A
List of Inventions I Own (see para. 4.)

METABOLEX
September 3, 1999

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 10.23

October 03, 2011

Dr. Raymond Urbanski

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: /s/ Harold Van Wart
Harold Van Wart
Chief Executive Officer

Accepted and agreed:

/s/ Raymond W. Urbanski, M.D., Ph.D. 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

Objective:

To provide reimbursement of the ordinary standard and routine costs as a result of relocation at the Company's request.

Most reasonable expenses qualify for reimbursement. However, the policy is not intended to provide full reimbursement for each and every item of expense that may be incurred. Because of certain expenses that may arise out of personal preference or due to unusual circumstances, the employee should not assume that this policy would cover all expenses resulting from the relocation. Only the expenses outlined in this policy are reimbursable or subject to financial assistance. Substitution of expenses will not be reimbursed unless specifically outlined and agreed to in advance.

Periodically, the Company will review this policy to determine adequate levels of expense allowance for fair and equitable treatment of employees who are required to move.

Administration of the relocation expense policy is the responsibility of Human Resources.

Eligibility:

The policy provisions apply to:

A. Salaried employees who are being transferred permanently at the Company's request

B. Exempt hires as approved by the VP of Human Resources

To qualify for assistance, the employee must exercise the provisions of the policy within six months of the effective date of the transfer or date of employment.

Employees to be relocated should be informed of this policy immediately upon notification of their employment offer or their transfer to prevent any misunderstanding of its contents.

Employees choosing to move themselves and not utilize the services of the Company sponsored mover, will be reimbursed for 50% of the mover's estimate and will receive reimbursement for motel accommodations not to exceed 5 days. Reasonable meal and gasoline expenses will also be reimbursed for 5 days.

To receive reimbursement expenses, the employee's move must meet the IRS 50-mile distance test. To meet this test, the distance between the employee's new job location and the employee's former home is at least 50 miles more than the distance between the employee's old job location and the employee's former home.

Covered Expenses:

A. House hunting

The Company will reimburse the employee for house hunting expenses for the employee and their spouse for a maximum of 2 trips not to exceed a total of 7 days per trip for the purpose of selecting a new residence. Reimbursement will include reasonable expenses for travel (coach air fare), lodging, meals and rental car including fuel.

House hunting expenses (air travel, lodging and rental car) are directly billed to and paid by Metabolex. They are non-deductible moving expenses and therefore will be reported as income on the employee's W-2. To compensate for this, the Company will gross-up the expenses to cover federal income tax and California state income tax. Meals will be paid for by the employee and submitted for reimbursement by the Company after the employee submits an approved Metabolex expense report with attached receipts. Expense reports are to be submitted to the VP of Human Resources for approval.

B. Moving of Household Goods

Employees are required to utilize the services of moving companies as designated by the Company. Currently, Metabolex utilizes NorCal Van Lines. NorCal Van Lines, after a visual inspection of the employee's belongings, will provide Human Resources with a written estimate of expenses. A letter of authorization will be sent by the Human Resources Department to the mover authorizing their services and the payment of their expenses directly by the Company. After this authorization, the employee is responsible for contacting the moving company to set a moving date.

Costs paid by the Company include:

a) Packing

b) Transportation of household items from the employee's current home to temporary storage and directly to the employee's new residence in the San Francisco Bay Area.

c) Insurance of up to $75,000 on items being shipped

d) Transportation of a maximum of one employee car from the employee's current residence to the San Francisco Bay Area.

The Company will not pay to move unusual or large items such as large boats, children's outdoor play sets, firewood, animals other than household pets, perishable plants, and items of extraordinary value requiring special handling, crating, etc. The Company also will not reimburse for tips given to the movers.

The above moving expenses are paid by Metabolex and are not included as income on the employee's W-2.

The Company will pay storage charges on the employee's household items for limited periods, generally not to exceed three months. Extensions beyond this limit require the prior written approval of the Vice President of Human Resources. Temporary storage charges are billed directly to Metabolex. According to IRS rules, the first 30 days of incurred expenses will not be included as income on the employee's W-2. The remaining temporary storage expenses will be included as income.

C. In most cases, it is expected that the move of the employee to the new location will coincide with the availability of permanent living quarters upon arrival. However, if permanent living quarters are not available when the employee arrives to the Bay Area, Metabolex will arrange for temporary living accommodations for a period not to exceed three months. Extensions beyond this limit require the prior written approval of the VP of Human Resources. Covered expenses include the cost of lodging, meals, phone calls and car rental if one is required.

Temporary housing expenses will be billed to and paid for by Metabolex. They will be reported as income on the employee's W-2 and will be grossed up to cover the cost of taxes. Expenses during this temporary housing period such as food, gas and other miscellaneous expenses are to be paid for by the employee directly.

D. <u>Real Estate – Disposal of Accommodations:</u>

1. Rental Costs – If an employee is renting at the time of his/her transfer, the reasonable net cost of canceling the lease will be borne by the Company, normally not to exceed two month's rent. Reimbursable costs include security or deposits forfeited under the lease terms; additional rental payments to effect cancellation, necessary legal fees and agency costs to locate sublease tenants. Written release should be obtained from leave obligations.
2. Sale of home at old location – The Company will not pay expenses attributed to the sale of the employee's residence.

E. <u>Home Purchase – Old Residence:</u>

At this time, the Company does not assist in purchasing the employee's old residence.

F. <u>Real Estate – Requiring New Accommodations:</u>

1. Rental Accommodations – Reasonable fees and other related direct costs (excluding security deposit) in arranging to rent a residence at the new location would be reimbursed by the Company. The employee is urged to incorporate relocation or sublease clauses in the lease.

2. Purchase of Home at New Location – If the employee owned a home at the old location and purchases a home at the new location upon being transferred, or within six months thereafter, the Company will reimburse the employee for the following reasonable expenses:

- Appraisal fees (if required)

- Abstracts (title search)
- Escrow fees
- Recording fees
- Notary fees
- Title insurance
- Engineering inspection to determine the physical condition of home

Metabolex will reimburse the employee for these expenses and requires a copy of the supporting documentation to be attached to a Metabolex expense report.

Reimbursement of closing costs may be requested of Metabolex in advance by submitting a Metabolex expense report with attached documentation outlining the estimated costs for closing. After closing, the employee must submit a settlement statement to Human Resources to reconcile final closing costs differences.

G. Resettlement Allowance:

An un-receipted allowance of $3,000 is provided to assist the employee with miscellaneous household moving expenses not specifically covered by this policy. This allowance will be initiated within the employee's first pay period. This miscellaneous expense allowance will be reported as income on the employee's W-2 and will not be grossed up for taxes.

H. Tax Relief:

Tax laws require that non-qualified/non-deductible moving expenses are reported as income on the employee's form W-2. Most moving expenses reimbursed to or paid by Metabolex on behalf of the employee will be included in the employee's income as compensation and reported on the employee's form W-2. The reimbursement will increase the employee's tax liability to the extent moving expenses are nondeductible. According to IRS rules, qualified relocation expenses are not considered income to the employee.

To compensate for this, the Company will gross-up the reimbursement of the non-qualified portion of covered expenses to cover Federal income tax and state income tax. The gross-up calculation will be made using the supplemental tax rate and will be reported as income on the employee's form W-2. The tax gross-up will also be shown as tax withheld on the form W-2 and paid to the appropriate taxing jurisdictions. Because of possible wide variations in the tax situation of individual employees, the tax determined by Metabolex may or may not closely approximate the employee's actual taxes resulting from the reimbursement.

A copy of the gross-up calculation form is attached is attached to this policy for your information as Exhibit A.

If the employee voluntarily withdraws service from Metabolex within 39 weeks of their date of hire, all qualified expenses will be converted to non-qualified expenses and will be included as income on the employee's form W-2.

This policy represents the normal reimbursable expenses connected with relocation. The Company reserves the right to make any exceptions or modifications to the policy that it deems necessary or appropriate for the management of the business.

Exhibit B

Metabolex, Inc.
3876 Bay Center Place
Hayward, CA 94545-3619
Phone 510 293-8800 Fax 510 293-9090

October 3, 2011

EMPLOYEE AGREEMENT ON CONFIDENTIAL INFORMATION AND INVENTIONS

THIS AGREEMENT is between Metabolex, Inc. a Delaware Corporation ("the Company"), and Raymond W. Urbanski, M.D., Ph.D., (the "Employee").

PURPOSE OF AGREEMENT

I want to be employed by the Company, and the Company wants to employ me, provided that, in so doing, it can protect its trade secrets and inventions, ideas, information, business, and good will.

In consideration of this purpose, and the mutual promises in this Agreement, I agree with the Company as follows:

1. Term

(A) My employment with the Company is an at-will relationship that may be terminated by either the Company or me with or without cause for any reason whatsoever at any time upon notice to the other party.

(b) If my employment is terminated for any reason, I will be entitled only to the compensation earned by me as of the date of termination.

2. Confidential Information. I will hold in confidence and use only for the benefit of the Company during the term of my employment and for five years after the termination of my employment all Confidential Information of the Company, its Affiliates, and all Confidential Information of companies or persons other than the Company given to the Company under an agreement prohibiting its disclosure. "Confidential Information" refers to valuable technical or business information that is not known by the public. By way of example, Confidential Information may include information relating to: inventions or products, including unannounced products; research and development activities; requirements and specifications of specific customers and potential customers; nonpublic financial information; and quotations or proposals given to customers.

These restrictions on disclosure do not apply if the information is or becomes publicly known through no wrongful act on my part or the information is explicitly approved for release under such circumstances by an officer of the Company.

3. Disclosure and Assignment of Inventions. I will promptly disclose and assign to the Company my entire right, title and interest in all inventions. "Inventions" refer to (a) all technical or business innovations, whether or not patentable or copyrightable, made by me during the term of my employment; and (b) all technical or business innovations, whether or not patentable, based upon the Company's Confidential Information and made by me after leaving the Company's employ. I will keep adequate written records of all inventions made by me, such as notebooks, sketches, program listings and the like, which are the property of the Company. Notwithstanding the foregoing, I am not required to assign to the Company, although I must disclose, any inventions: (a) for which no equipment, supplies, facilities or Confidential Information of the Company were used and which was developed entirely on my own time; (b) which at the time of conception or reduction to practice did not relate directly to the business of the Company or the Company's actual or demonstrably anticipated research or development and (c) which did not result from any work I performed for the Company. The disclosure of such inventions must be made so that the parties can make a determination whether such inventions do in fact qualify for exclusion from assignment to the Company. The Company will keep confidential any such information I disclose. I will take all steps necessary to assist the Company in securing any patents, copyrights or other protection for inventions which I am required to assign to the Company as provided above. If I am unable or unwilling, whether during my employment or after termination, to sign any papers needed to apply for or pursue any patent or copyright registrations for inventions, I agree that the Company is my attorney-in-fact for that purpose and can sign such papers as my agent and take any other actions necessary to pursue these registrations.

4. List of Inventions I Own. I have attached as Exhibit A a list of inventions I own, which is a complete list of all technical or business innovations I own either alone or jointly with others on the date of this Agreement. I agree that I will not incorporate any of these prior inventions into products being developed for the Company without the prior knowledge and written consent of the Company. Should the Company wish to use any of my inventions in its business, the Company will negotiate with me for a purchase of or license to use such invention on mutually agreeable terms. If no such list is attached, or if no such inventions are listed thereon, I represent that I do not own any inventions at the time of signing this Agreement.

5. Tangible Materials. All tangible materials that incorporate Confidential Information are the Company's property, and I will give all of these materials and any other documents and materials which are the property of the Company, including but not limited all notes of any research or other work which I have performed for the Company and all biological materials created, used or held by me in the course of my work for the Company, back to the Company at the termination of my employment or earlier upon the Company's request.

6. Solicitation of Employees. I understand that information about the Company's employees, such as their skills, performance ratings, and salary histories, constitutes Confidential Information owned by the Company. I agree that, for a period of twelve (12) months after termination of my employment for any reason, I will not, either directly or indirectly, solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to do any of these things, whether on my own behalf or on behalf of any other person, since to do so would necessarily involve using Confidential Information.

8. Termination. In the event of termination of my employment for any reason, I agree that, as requested by the Company, I will sign and deliver a "Termination Certification" in the form attached to this Agreement as Exhibit B. I also agree that the Company may give notice to my new employer of my duties under this Agreement.

9. Duty of Loyalty. During my employment with the Company, I will not engage in any business activity (either for my own profit or for anyone else) that competes with the Company's business.

10. Duties to Third Parties. I represent that, to the best of my knowledge, compliance with the terms of this Agreement will not violate any duty that I may have to anyone other than the Company (such as a former employer) to keep such person's proprietary information in confidence or to refrain from using that person's patents or copyrights. If at any time during my employment with the Company, I am asked by the Company to perform work which I believe may cause me to violate a duty I have to someone other than the Company, I will immediately inform an officer of the Company so that an assessment of the situation may be made. I also agree that I will not, during my employment with the Company, bring onto the Company's premises, use or disclose to the Company any proprietary information or trade secrets of any former employer or any other person without that person's consent.

11. Miscellaneous. This is the only agreement between the Company and myself about confidential information and the ownership of inventions, and may not be modified, amended or terminated, in whole or in part, except in a writing signed by me and by an officer of the Company. Any later change in my title, compensation or duties will not affect this Agreement. This Agreement will survive termination of my employment for any reason, and will continue for the benefit of and will be binding upon the successors, assigns, heirs and legal representatives of the Company and myself. Any waiver by the Company of a breach of any of the obligations of this Agreement by me will not operate or be construed as a waiver of any other or subsequent breach by me. In the event any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way. The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition

to any other rights and remedies it may have, to reimburse for its expenses, including court costs and reasonable attorney's fees. This Agreement will be governed by the laws of the State of California governing contracts between residents to be performed in the State of California.

Metabolex, Inc.	Employee
By: /s/ Harold Van Wart	By: /s/ Raymond W. Urbanski
Harold Van Wart	Signature
Chief Executive Officer	
October 3, 2011	Raymond W. Urbanski
Date	Printed Name
	Oct. 5, 2011
	Date

EXHIBIT A

List of Inventions I Own (see para. 4.)

5

EXHIBIT B

Termination Certificate

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, equipment, computer programs or listings, other documents or property or any reproductions of any of these materials belonging to Metabolex, Inc., a Delaware corporation, its subsidiaries, successors or assigns (collectively, the "Company").

I further certify that I have complied with all the terms of the Company's Employee Confidential Information and Inventions Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined in that agreement) conceived or made buy me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Employee Confidential Information and Inventions Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to inventions or products, including but not limited to unannounced products, research and development activities, requirements and specifications of specific customers and potential customers, nonpublic financial information, and quotations or proposals given to customers, including any information disclosed to the Company in confidence by any third party.

I further agree that for twelve (12) months from this date, I will not solicit, induce, recruit or encourage any of the Company's employees to leave their employment.

/s/ R. Urbanski
Signature

R. URBANSKI
Printed Name

6-18-12
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 , 20 (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 October 3, 2011 (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 the Letter Agreement 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; claims under the Letter Agreement; (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).

I understand that I am not releasing any claim that cannot be waived under applicable state or federal law. I am not releasing any rights that I 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 me and the Company, or any directors' and officers' liability insurance policy of the Company. Nothing in this Release shall prevent me 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 I hereby acknowledge and agree that I shall not recover any monetary benefits in connection with any such proceeding with regard to any claim released in this Release. Nothing in this Release shall prevent me from challenging the validity of the release in a legal or administrative proceeding.

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 ("Effective 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 my employment termination date.

I accept and agree to the terms and conditions stated above:

Date	Raymond W. Urbanski, M.D., Ph.D.

EXHIBIT A

RELOCATION EXPENSE POLICY FOR NEW AND TRANSFERRED EMPLOYEES

Exhibit 10.24

June 25, 2012

Raymond W. Urbanski, M.D., Ph.D.

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: /s/ Harold Van Wart
Harold Van Wart
Chief Executive Officer

Exhibit A – Resignation Letter

Exhibit B – Employee Agreement on Confidential Information and Inventions

AGREED:

/s/ Raymond W. Urbanski, M.D., Ph.D.
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

/s/ Raymond W. Urbanski, M.D., Ph.D.
Raymond W. Urbanski, M.D., Ph.D.

Exhibit B

Metabolex, Inc.
3876 Bay Center Place
Hayward, CA 94545-3619
Phone 510 293-8800 Fax 510 293-9090

October 3, 2011

EMPLOYEE AGREEMENT ON CONFIDENTIAL INFORMATION AND INVENTIONS

THIS AGREEMENT is between Metabolex, Inc. a Delaware Corporation ("the Company"), and Raymond W. Urbanski, M.D., Ph.D., (the "Employee").

PURPOSE OF AGREEMENT

I want to be employed by the Company, and the Company wants to employ me, provided that, in so doing, it can protect its trade secrets and inventions, ideas, information, business, and good will.

In consideration of this purpose, and the mutual promises in this Agreement, I agree with the Company as follows:

1. Term

(A) My employment with the Company is an at-will relationship that may be terminated by either the Company or me with or without cause for any reason whatsoever at any time upon notice to the other party.

(b) If my employment is terminated for any reason, I will be entitled only to the compensation earned by me as of the date of termination.

2. Confidential Information. I will hold in confidence and use only for the benefit of the Company during the term of my employment and for five years after the termination of my employment all Confidential Information of the Company, its Affiliates, and all Confidential Information of companies or persons other than the Company given to the Company under an agreement prohibiting its disclosure. "Confidential Information" refers to valuable technical or business information that is not known by the public. By way of example, Confidential Information may include information relating to: inventions or products, including unannounced products; research and development activities; requirements and specifications of specific customers and potential customers; nonpublic financial information; and quotations or proposals given to customers.

These restrictions on disclosure do not apply if the information is or becomes publicly known through no wrongful act on my part or the information is explicitly approved for release under such circumstances by an officer of the Company.

3. Disclosure and Assignment of Inventions. I will promptly disclose and assign to the Company my entire right, title and interest in all inventions. "Inventions" refer to (a) all technical or business innovations, whether or not patentable or copyrightable, made by me during the term of my employment; and (b) all technical or business innovations, whether or not patentable, based upon the Company's Confidential Information and made by me after leaving the Company's employ. I will keep adequate written records of all inventions made by me, such as notebooks, sketches, program listings and the like, which are the property of the Company. Notwithstanding the foregoing, I am not required to assign to the Company, although I must disclose, any inventions: (a) for which no equipment, supplies, facilities or Confidential Information of the Company were used and which was developed entirely on my own time; (b) which at the time of conception or reduction to practice did not relate directly to the business of the Company or the Company's actual or demonstrably anticipated research or development and (c) which did not result from any work I performed for the Company. The disclosure of such inventions must be made so that the parties can make a determination whether such inventions do in fact qualify for exclusion from assignment to the Company. The Company will keep confidential any such information I disclose. I will take all steps necessary to assist the Company in securing any patents, copyrights or other protection for inventions which I am required to assign to the Company as provided above. If I am unable or unwilling, whether during my employment or after termination, to sign any papers needed to apply for or pursue any patent or copyright registrations for inventions, I agree that the Company is my attorney-in-fact for that purpose and can sign such papers as my agent and take any other actions necessary to pursue these registrations.

4. List of Inventions I Own. I have attached as Exhibit A a list of inventions I own, which is a complete list of all technical or business innovations I own either alone or jointly with others on the date of this Agreement. I agree that I will not incorporate any of these prior inventions into products being developed for the Company without the prior knowledge and written consent of the Company. Should the Company wish to use any of my inventions in its business, the Company will negotiate with me for a purchase of or license to use such invention on mutually agreeable terms. If no such list is attached, or if no such inventions are listed thereon, I represent that I do not own any inventions at the time of signing this Agreement.

5. Tangible Materials. All tangible materials that incorporate Confidential Information are the Company's property, and I will give all of these materials and any other documents and materials which are the property of the Company, including but not limited all notes of any research or other work which I have performed for the Company and all biological materials created, used or held by me in the course of my work for the Company, back to the Company at the termination of my employment or earlier upon the Company's request.

6. Solicitation of Employees. I understand that information about the Company's employees, such as their skills, performance ratings, and salary histories, constitutes Confidential Information owned by the Company. I agree that, for a period of twelve (12) months after termination of my employment for any reason, I will not, either directly or indirectly, solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to do any of these things, whether on my own behalf or on behalf of any other person, since to do so would necessarily involve using Confidential Information.

8. Termination. In the event of termination of my employment for any reason, I agree that, as requested by the Company, I will sign and deliver a "Termination Certification" in the form attached to this Agreement as Exhibit B. I also agree that the Company may give notice to my new employer of my duties under this Agreement.

9. Duty of Loyalty. During my employment with the Company, I will not engage in any business activity (either for my own profit or for anyone else) that competes with the Company's business.

10. Duties to Third Parties. I represent that, to the best of my knowledge, compliance with the terms of this Agreement will not violate any duty that I may have to anyone other than the Company (such as a former employer) to keep such person's proprietary information in confidence or to refrain from using that person's patents or copyrights. If at any time during my employment with the Company, I am asked by the Company to perform work which I believe may cause me to violate a duty I have to someone other than the Company, I will immediately inform an officer of the Company so that an assessment of the situation may be made. I also agree that I will not, during my employment with the Company, bring onto the Company's premises, use or disclose to the Company any proprietary information or trade secrets of any former employer or any other person without that person's consent.

11. Miscellaneous. This is the only agreement between the Company and myself about confidential information and the ownership of inventions, and may not be modified, amended or terminated, in whole or in part, except in a writing signed by me and by an officer of the Company. Any later change in my title, compensation or duties will not affect this Agreement. This Agreement will survive termination of my employment for any reason, and will continue for the benefit of and will be binding upon the successors, assigns, heirs and legal representatives of the Company and myself. Any waiver by the Company of a breach of any of the obligations of this Agreement by me will not operate or be construed as a waiver of any other or subsequent breach by me. In the event any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way. The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition

to any other rights and remedies it may have, to reimburse for its expenses, including court costs and reasonable attorney's fees. This Agreement will be governed by the laws of the State of California governing contracts between residents to be performed in the State of California.

Metabolex, Inc.	Employee
By: /s/ Harold Van Wart	By: /s/ Raymond W. Urbanski
Harold Van Wart	Signature
Chief Executive Officer	
	Raymond W. Urbanski
October 3, 2011	Printed Name
Date	
	Oct. 5, 2011
	Date

EXHIBIT A

List of Inventions I Own (see para. 4.)

5

EXHIBIT B

Termination Certificate

This is to certify that I do not have in my possession, nor have I foiled to return, any devices, records, data, notes, reports, proposals, lists, equipment, computer programs or listings, other documents or property or any reproductions of any of these materials belonging to Metabolex, Inc., a Delaware corporation, its subsidiaries, successors or assigns (collectively, the "Company").

I further certify that I have complied with all the terms of the Company's Employee Confidential Information and Inventions Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined in that agreement) conceived or made buy me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Employee Confidential Information and Inventions Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to inventions or products, including but not limited to unannounced products, research and development activities, requirements and specifications of specific customers and potential customers, nonpublic financial information, and quotations or proposals given to customers, including any information disclosed to the Company in confidence by any third party.

I further agree that for twelve (12) months from this date, I will not solicit, induce, recruit or encourage any of the Company's employees to leave their employment.

/s/ R. Urbanski
Signature

R. URBANSKI
Printed Name

6-18-12
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 , 20 (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 October 3, 2011 (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 the Letter Agreement 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; claims under the Letter Agreement; (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).

I understand that I am not releasing any claim that cannot be waived under applicable state or federal law. I am not releasing any rights that I 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 me and the Company, or any directors' and officers' liability insurance policy of the Company. Nothing in this Release shall prevent me 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 I hereby acknowledge and agree that I shall not recover any monetary benefits in connection with any such proceeding with regard to any claim released in this Release. Nothing in this Release shall prevent me from challenging the validity of the release in a legal or administrative proceeding.

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 ("Effective 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 my employment termination date.

I accept and agree to the terms and conditions stated above:

Date	Raymond W. Urbanski, M.D., Ph.D.

EXHIBIT B

[Employee Agreement on Confidential Information and Inventions]

www.metabolex.com

Exhibit 10.25

CYMABAY THERAPEUTICS , INC.

2013 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: SEPTEMBER 25, 2013
APPROVED BY THE STOCKHOLDERS: SEPTEMBER 30, 2013
EFFECTIVE DATE: SEPTEMBER 30, 2013

1. GENERAL.

(a) Successor to Prior Plan. The Plan is intended as the successor to the CymaBay Therapeutics, Inc. 2003 Equity Incentive Plan, as amended (the "***Prior Plan***"). All Awards granted on or after 12:01 a.m. Pacific Time on the Effective Date will be granted under this Plan. All stock awards granted under the Prior Plan will remain subject to the terms of the Prior Plan. On or around the Effective Date, the Company filed a an Amended and Restated Certificate of Incorporation to affect a reverse split of its common stock (the "***Reverse Split***") and all references to the number of shares set forth herein are shown on a Reverse Split basis.

(**i**) From and after 12:01 a.m. Pacific time on the Effective Date, with respect to the aggregate number of shares subject, at such time, to outstanding stock awards granted under the Prior Plan that (1) expire or terminate for any reason prior to exercise or settlement; (2) are forfeited because of the failure to meet a contingency or condition required to vest such shares or otherwise return to the Company; or (3) are reacquired, withheld (or not issued) to satisfy a tax withholding obligation in connection with an award or to satisfy the purchase price or exercise price of a stock award (such shares the "***Returning Shares***") will immediately be added to the Share Reserve (as further described in Section 3(a) below) as and when such a share becomes a Returning Share, up to the maximum number set forth in Section 3(a) below.

(b) Eligible Award Recipients. Employees, Directors and Consultants are eligible to receive Awards.

(c) Available Awards. The Plan provides for the grant of the following Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Appreciation Rights (iv) Restricted Stock Awards, (v) Restricted Stock Unit Awards, (vi) Performance Stock Awards, (vii) Performance Cash Awards, and (viii) Other Stock Awards.

(d) Purpose. The Plan, through the grant of Awards, is intended to help the Company secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate, and provide a means by which the eligible recipients may benefit from increases in value of the Common Stock.

2. ADMINISTRATION.

(a) Administration by Board. The Board will administer the Plan. The Board may delegate administration of the Plan to a Committee or Committees, as provided in Section 2(c).

(b) Powers of Board. The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine: (A) who will be granted Awards; (B) when and how each Award will be granted; (C) what type of Award will be granted; (D) the provisions of each Award (which need not be identical), including when a person will be permitted to exercise or otherwise receive cash or Common Stock under the Award; (E) the number of shares of Common Stock subject to, or the cash value of, an Award; and (F) the Fair Market Value applicable to a Stock Award.

(ii) To construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan and Awards. The Board, in the exercise of these powers, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement or in the written terms of a Performance Cash Award, in a manner and to the extent it will deem necessary or expedient to make the Plan or Award fully effective.

(iii) To settle all controversies regarding the Plan and Awards granted under it.

(iv) To accelerate, in whole or in part, the time at which an Award may be exercised or vest (or the time at which cash or shares of Common Stock may be issued in settlement thereof).

(v) To suspend or terminate the Plan at any time. Except as otherwise provided in the Plan or an Award Agreement, suspension or termination of the Plan will not materially impair a Participant's rights under the Participant's then-outstanding Award without the Participant's written consent, except as provided in subsection (viii) below.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or bringing the Plan or Awards granted under the Plan into compliance with the requirements for Incentive Stock Options or ensuring that they are exempt from, or compliant with, the requirements for nonqualified deferred compensation under Section 409A of the Code, subject to the limitations, if any, of applicable law. If required by applicable law or listing requirements, and except as provided in Section 9(a) relating to Capitalization Adjustments, the Company will seek stockholder approval of any amendment of the Plan that (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan, (D) materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (E) materially extends the term of the Plan, or (F) materially expands the types of Awards available for issuance under the Plan. Except as otherwise provided in the Plan or an Award Agreement, no amendment of the Plan will materially impair a Participant's rights under an outstanding Award without the Participant's written consent.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of (A) Section 162(m) of the Code regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to Covered Employees, (B) Section 422 of the Code regarding "incentive stock options" or (C) Rule 16b-3.

(viii) To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided, however,* that a Participant's rights under any Award will not be impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing. Notwithstanding the foregoing, (1) a Participant's rights will not be deemed to have been impaired by any such amendment if the Board, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant's rights, and (2) subject to the limitations of applicable law, if any, the Board may amend the terms of any one or more Awards without the affected Participant's consent (A) to maintain the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (B) to change the terms of an Incentive Stock Option, if such change results in impairment of the Award solely because it impairs the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (C) to clarify the manner of exemption from, or to bring the Award into compliance with, Section 409A of the Code; or (D) to comply with other applicable laws or listing requirements.

(ix) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Award Agreement that are required for compliance with the laws of the relevant foreign jurisdiction).

(xi) To effect, with the consent of any adversely affected Participant, (A) the reduction of the exercise, purchase or strike price of any outstanding Stock Award; (B) the cancellation of any outstanding Stock Award and the grant in substitution therefor of a new (1) Option or SAR, (2) Restricted Stock Award, (3) Restricted Stock Unit Award, (4) Other Stock Award, (5) cash and/or (6) other valuable consideration determined by the Board, in its sole discretion, with any such substituted award (x) covering the same or a different number of shares of Common Stock as the cancelled Stock Award and (y) granted under the Plan or another equity or compensatory plan of the Company; or (C) any other action that is treated as a repricing under generally accepted accounting principles.

(c) Delegation to Committee.

(i) General. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee, as applicable). Any delegation of administrative powers will be reflected in resolutions, not inconsistent with the provisions of the Plan, adopted from time to time by the Board or Committee (as applicable). The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(ii) Section 162(m) and Rule 16b-3 Compliance. The Committee may consist solely of two or more Outside Directors, in accordance with Section 162(m) of the Code, or solely of two or more Non-Employee Directors, in accordance with Rule 16b-3.

(d) Delegation to an Officer. The Board may delegate to one (1) or more Officers the authority to do one or both of the following (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by applicable law, other Stock Awards) and, to the extent permitted by applicable law, the terms of such Awards, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Employees; *provided, however*, that the Board resolutions regarding such delegation will specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Any such Stock Awards will be granted on the form of Stock Award Agreement most recently approved for use by the Committee or the Board, unless otherwise provided in the resolutions approving the delegation authority. The Board may not delegate authority to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) to determine the Fair Market Value pursuant to Section 13(x)(iii) below.

(e) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

3. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to Section 9(a) relating to Capitalization Adjustments, and the following sentence regarding the annual increase, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards will not exceed 577,294 shares (the "***Share Reserve***"), which number is the sum of (i) 483,160 shares, *plus* (ii) the number of shares that are Returning Shares (which is 94,134 shares as of the Effective Date), as such shares become available from time to time. In addition, the Share Reserve will automatically increase on January 1st of each year, for a period of not more than ten years, commencing on January 1st of the year following the year in which the Effective Date occurs and ending on (and including) January 1, 2023, in an amount equal to 5% of the total number of shares of Capital Stock

outstanding on December 31st of the preceding calendar year. Notwithstanding the foregoing, the Board may act prior to January 1st of a given year to provide that there will be no January 1st increase in the Share Reserve for such year or that the increase in the Share Reserve for such year will be a lesser number of shares of Common Stock than would otherwise occur pursuant to the preceding sentence. For clarity, the Share Reserve in this Section 3(a) is a limitation on the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section 3(a) does not limit the granting of Stock Awards except as provided in Section 7(a). Shares may be issued in connection with a merger or acquisition as permitted by NASDAQ Listing Rule 5635(c) or, if applicable, NYSE Listed Company Manual Section 303A.08, AMEX Company Guide Section 711 or other applicable rule, and such issuance will not reduce the number of shares available for issuance under the Plan.

(b) Reversion of Shares to the Share Reserve. If a Stock Award or any portion thereof (i) expires or otherwise terminates without all of the shares covered by such Stock Award having been issued or (ii) is settled in cash (*i.e.*, the Participant receives cash rather than stock), such expiration, termination or settlement will not reduce (or otherwise offset) the number of shares of Common Stock that may be available for issuance under the Plan. If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares that are forfeited or repurchased will revert to and again become available for issuance under the Plan. Any shares reacquired by the Company in satisfaction of tax withholding obligations on a Stock Award or as consideration for the exercise or purchase price of a Stock Award will again become available for issuance under the Plan.

(c) Incentive Stock Option Limit. Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options will be 5,000,000 shares of Common Stock.

(d) Section 162(m) Limitations. Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, at such time as the Company may be subject to the applicable provisions of Section 162(m) of the Code, the following limitations shall apply.

(i) A maximum of 1,000,000 shares of Common Stock subject to Options, SARs and Other Stock Awards whose value is determined by reference to an increase over an exercise or strike price of at least 100% of the Fair Market Value on the date the Stock Award is granted may be granted to any one Participant during any one calendar year. Notwithstanding the foregoing, if any additional Options, SARs or Other Stock Awards whose value is determined by reference to an increase over an exercise or strike price of at least 100% of the Fair Market Value on the date the Stock Award are granted to any Participant during any calendar year, compensation attributable to the exercise of such additional Stock Awards will not satisfy the requirements to be considered "qualified performance-based compensation" under Section 162(m) of the Code unless such additional Stock Award is approved by the Company's stockholders.

(ii) A maximum of 1,000,000 shares of Common Stock subject to Performance Stock Awards may be granted to any one Participant during any one calendar year (whether the grant, vesting or exercise is contingent upon the attainment during the Performance Period of the Performance Goals).

(iii) A maximum of $1,000,000 may be granted as a Performance Cash Award to any one Participant during any one calendar year.

(e) Source of Shares. The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

4. ELIGIBILITY.

(a) Eligibility for Specific Stock Awards. Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and 424(f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; *provided, however*, that Stock Awards may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any "parent" of the Company, as such term is defined in Rule 405 of the Securities Act, unless (i) the stock underlying such Stock Awards is treated as "service recipient stock" under Section 409A of the Code (for example, because the Stock Awards are granted pursuant to a corporate transaction such as a spin off transaction), (ii) the Company, in consultation with its legal counsel, has determined that such Stock Awards are otherwise exempt from Section 409A of the Code, or (iii) the Company, in consultation with its legal counsel, has determined that such Stock Awards comply with the distribution requirements of Section 409A of the Code.

(b) Ten Percent Stockholders. A Ten Percent Stockholder will not be granted an Incentive Stock Option unless the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five years from the date of grant.

5. PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS.

Each Option or SAR will be in such form and will contain such terms and conditions as the Board deems appropriate. All Options will be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, or if an Option is designated as an Incentive Stock Option but some portion or all of the Option fails to qualify as an Incentive Stock Option under the applicable rules, then the Option (or portion thereof) will be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; *provided, however*, that each Award Agreement will conform to (through incorporation of provisions hereof by reference in the applicable Award Agreement or otherwise) the substance of each of the following provisions:

(a) Term. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of ten years from the date of its grant or such shorter period specified in the Award Agreement.

(b) Exercise Price. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will be not less than 100% of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Award is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value of the Common Stock subject to the Award if such Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Section 409A and, if applicable, Section 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

(c) Purchase Price for Options. The purchase price of Common Stock acquired pursuant to the exercise of an Option may be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board will have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to use a particular method of payment. The permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) if an Option is a Nonstatutory Stock Option, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however*, that the Company will accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued. Shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are used to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

(v) in any other form of legal consideration that may be acceptable to the Board and specified in the applicable Award Agreement.

(d) Exercise and Payment of a SAR. To exercise any outstanding SAR, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such SAR. The appreciation distribution payable on the exercise of a SAR will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the SAR) of a

number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such SAR, and with respect to which the Participant is exercising the SAR on such date, over (B) the aggregate strike price of the number of Common Stock equivalents with respect to which the Participant is exercising the SAR on such date. The appreciation distribution may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Award Agreement evidencing such SAR.

(e) Transferability of Options and SARs. The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board will determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options and SARs will apply:

(i) Restrictions on Transfer. An Option or SAR will not be transferable except by will or by the laws of descent and distribution (or pursuant to subsections (ii) and (iii) below), and will be exercisable during the lifetime of the Participant only by the Participant. The Board may permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws. Except as explicitly provided in the Plan, neither an Option nor a SAR may be transferred for consideration.

(ii) Domestic Relations Orders. Subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to the terms of a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulations Section 1.421-1(b)(2). If an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) Beneficiary Designation. Subject to the approval of the Board or a duly authorized Officer, a Participant may, by delivering written notice to the Company, in a form approved by the Company (or the designated broker), designate a third party who, on the death of the Participant, will thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, upon the death of the Participant, the executor or administrator of the Participant's estate will be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. However, the Company may prohibit designation of a beneficiary at any time, including due to any conclusion by the Company that such designation would be inconsistent with the provisions of applicable laws.

(f) Vesting Generally. The total number of shares of Common Stock subject to an Option or SAR may vest and become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of Performance Goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

(g) Termination of Continuous Service. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates (other than for Cause and other than upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Award as of the date of termination of Continuous Service) within the period of time ending on the earlier of (i) the date which occurs ninety (90) days following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the applicable Award Agreement), and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR (as applicable) within the applicable time frame, the Option or SAR will terminate.

(h) Extension of Termination Date. If the exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause and other than upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR will terminate on the earlier of (i) the expiration of a total period of time (that need not be consecutive) equal to the applicable post termination exercise period after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement. In addition, unless otherwise provided in a Participant's Award Agreement, if the sale of any Common Stock received on exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option or SAR will terminate on the earlier of (i) the expiration of the period of days or months (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the sale of the Common Stock received upon exercise of the Option or SAR would not be in violation of the Company's insider trading policy, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement.

(i) Disability of Participant. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date which occurs 12 months following such termination of Continuous Service (or such longer or shorter period specified in the Award Agreement), and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the applicable time frame, the Option or SAR (as applicable) will terminate.

(j) Death of Participant. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Award Agreement for exercisability after the termination of the Participant's Continuous Service for a reason other than death, then the Option

or SAR may be exercised (to the extent the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance or by a person designated to exercise the Option or SAR upon the Participant's death, but only within the period ending on the earlier of (i) the date which occurs 18 months following the date of death (or such longer or shorter period specified in the Award Agreement), and (ii) the expiration of the term of such Option or SAR as set forth in the Award Agreement. If, after the Participant's death, the Option or SAR is not exercised within the applicable time frame, the Option or SAR (as applicable) will terminate.

(k) Termination for Cause. Except as explicitly provided otherwise in a Participant's Award Agreement or other individual written agreement between the Company or any Affiliate and the Participant, if a Participant's Continuous Service is terminated for Cause, the Option or SAR will terminate immediately upon such Participant's termination of Continuous Service, and the Participant will be prohibited from exercising his or her Option or SAR from and after the date of such termination of Continuous Service.

(l) Non-Exempt Employees. If an Option or SAR is granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, the Option or SAR will not be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option or SAR (although the Award may vest prior to such date). Consistent with the provisions of the Worker Economic Opportunity Act, (i) if such non-exempt Employee dies or suffers a Disability, (ii) upon a Corporate Transaction in which such Option or SAR is not assumed, continued, or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Award Agreement in another agreement between the Participant and the Company, or, if no such definition, in accordance with the Company's then current employment policies and guidelines), the vested portion of any Options and SARs may be exercised earlier than six months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay. To the extent permitted and/or required for compliance with the Worker Economic Opportunity Act to ensure that any income derived by a non-exempt employee in connection with the exercise, vesting or issuance of any shares under any other Stock Award will be exempt from the employee's regular rate of pay, the provisions of this Section 5(l) will apply to all Stock Awards and are hereby incorporated by reference into such Stock Award Agreements.

6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS AND SARs.

(a) Restricted Stock Awards. Each Restricted Stock Award Agreement will be in such form and will contain such terms and conditions as the Board will deem appropriate. To the extent consistent with the Company's bylaws, at the Board's election, shares of Common Stock may be (x) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (y) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical. Each Restricted Stock Award Agreement will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. A Restricted Stock Award may be awarded in consideration for (A) cash, check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of legal consideration (including future services) that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) Vesting. Shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

(iii) Termination of Participant's Continuous Service. If a Participant's Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

(iv) Transferability. Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement will be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board will determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

(v) Dividends. A Restricted Stock Award Agreement may provide that any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate.

(b) Restricted Stock Unit Awards. Each Restricted Stock Unit Award Agreement will be in such form and will contain such terms and conditions as the Board will deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical. Each Restricted Stock Unit Award Agreement will conform to (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) Vesting. At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(iii) Payment. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

(iv) Additional Restrictions. At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(v) Dividend Equivalents. Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

(vi) Termination of Participant's Continuous Service. Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

(c) Performance Awards.

(i) Performance Stock Awards. A Performance Stock Award is a Stock Award (covering a number of shares not in excess of that set forth in Section 3(d) above) that is payable (including that may be granted, may vest or may be exercised) contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Stock Award may, but need not, require the Participant's completion of a specified period of Continuous Service. The length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained will be conclusively determined by the Committee (or, if not required for compliance with Section 162(m) of the Code, the Board), in its sole discretion. In addition, to the extent permitted by applicable law and the applicable Award Agreement, the Board may determine that cash may be used in payment of Performance Stock Awards.

(ii) Performance Cash Awards. A Performance Cash Award is a cash award (for a dollar value not in excess of that set forth in Section 3(d) above) that is payable contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Cash Award may also require the completion of a specified period of Continuous Service. At the time of grant of a Performance Cash Award, the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained will be conclusively determined by the Committee (or, if not required for compliance with Section 162(m) of the Code, the Board), in its sole discretion. The Board may specify the form of payment of Performance Cash

Awards, which may be cash or other property, or may provide for a Participant to have the option for his or her Performance Cash Award, or such portion thereof as the Board may specify, to be paid in whole or in part in cash or other property.

(iii) Board Discretion. The Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for a Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Stock Award Agreement or the written terms of a Performance Cash Award.

(iv) Section 162(m) Compliance. Unless otherwise permitted in compliance with the requirements of Section 162(m) of the Code with respect to an Award intended to qualify as "performance-based compensation" thereunder, the Committee will establish the Performance Goals applicable to, and the formula for calculating the amount payable under, the Award no later than the earlier of (a) the date which occurs 90 days after the commencement of the applicable Performance Period, and (b) the date on which 25% of the Performance Period has elapsed, and in any event at a time when the achievement of the applicable Performance Goals remains substantially uncertain. Prior to the payment of any compensation under an Award intended to qualify as "performance-based compensation" under Section 162(m) of the Code, the Committee will certify the extent to which any Performance Goals and any other material terms under such Award have been satisfied (other than in cases where such Performance Goals relate solely to the increase in the value of the Common Stock). Notwithstanding satisfaction of, or completion of any Performance Goals, the number of shares of Common Stock, Options, cash or other benefits granted, issued, retainable and/or vested under an Award on account of satisfaction of such Performance Goals may be reduced by the Committee on the basis of such further considerations as the Committee, in its sole discretion, will determine.

(d) Other Stock Awards. Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value of the Common Stock at the time of grant) may be granted either alone or in addition to Stock Awards provided for under Section 5 and the preceding provisions of this Section 6. Subject to the provisions of the Plan, the Board will have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

7. COVENANTS OF THE COMPANY.

(a) Availability of Shares. The Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy then-outstanding Awards.

(b) Securities Law Compliance. The Company will seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of

the Stock Awards; *provided, however*, that this undertaking will not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained. A Participant will not be eligible for the grant of an Award or the subsequent issuance of cash or Common Stock pursuant to the Award if such grant or issuance would be in violation of any applicable securities law.

(c) No Obligation to Notify or Minimize Taxes. The Company will have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company will have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award.

8. MISCELLANEOUS.

(a) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Awards will constitute general funds of the Company.

(b) Corporate Action Constituting Grant of Awards. Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the papering of the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.

(c) Stockholder Rights. No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to an Award unless and until (i) such Participant has satisfied all requirements for exercise of, or the issuance of shares of Common Stock under, the Award pursuant to its terms, and (ii) the issuance of the Common Stock subject to such Award has been entered into the books and records of the Company.

(d) No Employment or Other Service Rights. Nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or will affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or

without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(e) Change in Time Commitment. In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Award to the Participant, the Board has the right in its sole discretion to (x) make a corresponding reduction in the number of shares or cash amount subject to any portion of such Award that is scheduled to vest or become payable after the date of such change in time commitment, and (y) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced or extended.

(f) Incentive Stock Option Limitations. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds $100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(g) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that such Participant is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, will be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Award has been registered under a then currently effective registration statement under the Securities Act, or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(h) Withholding Obligations. Unless prohibited by the terms of an Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; *provided, however,* that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lesser amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Award Agreement.

(i) Electronic Delivery. Any reference herein to a "written" agreement or document will include any agreement or document delivered electronically, filed publicly at www.sec.gov (or any successor website thereto) or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access).

(j) Deferrals. To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

(k) Compliance with Section 409A of the Code. Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A of the Code, and, to the extent not so exempt, in compliance with Section 409A of the Code. If the Board determines that any Award granted hereunder is not exempt from and is therefore subject to Section 409A of the Code, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding an Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) will be issued or paid before the date that is six months following the date of such Participant's "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) or, if earlier, the date of the Participant's death,

unless such distribution or payment can be made in a manner that complies with Section 409A of the Code, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

(l) Clawback/Recovery. All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, the Board may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Board determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of an event constituting Cause. No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company.

9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c), (iii) the class(es) and maximum number of securities that may be awarded to any person pursuant to Sections 3(d), and (iv) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board will make such adjustments, and its determination will be final, binding and conclusive.

(b) Dissolution or Liquidation. Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service; *provided, however*, that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) Corporate Transaction. The following provisions will apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of a Stock Award. In the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board will take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Corporate Transaction:

(i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

(ii) arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

(iii) accelerate the vesting, in whole or in part, of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Corporate Transaction as the Board determines (or, if the Board does not determine such a date, to the date that is five days prior to the effective date of the Corporate Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction;

(iv) arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

(v) cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Corporate Transaction, in exchange for such cash consideration, if any, as the Board, in its sole discretion, may consider appropriate; and

(vi) make a payment, in such form as may be determined by the Board equal to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of the Stock Award immediately prior to the effective time of the Corporate Transaction, over (B) any exercise price payable by such holder in connection with such exercise.

The Board need not take the same action or actions with respect to all Stock Awards or portions thereof or with respect to all Participants. The Board may take different actions with respect to the vested and unvested portions of a Stock Award.

(d) Change in Control. A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration will occur.

10. PLAN TERM; EARLIER TERMINATION OR SUSPENSION OF THE PLAN.

The Board may suspend or terminate the Plan at any time. No Incentive Stock Options may be granted after the tenth anniversary of the earlier of (i) the date the Plan is adopted by the Board (the "***Adoption Date***"), or (ii) the date the Plan is approved by the stockholders of the Company. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

11. EFFECTIVE DATE OF THE PLAN; TIMING OF FIRST GRANT OR EXERCISE.

This Plan will become effective on the Effective Date. In addition, no Stock Award will be exercised (or, in the case of a Restricted Stock Award, Restricted Stock Unit Award, Performance Stock Award, or Other Stock Award, no Stock Award will be granted) and no Performance Cash Award will be settled unless and until the Plan has been approved by the stockholders of the Company, which approval will be within 12 months after the date the Plan is adopted by the Board.

12. CHOICE OF LAW.

The law of the State of Delaware will govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

13. DEFINITIONS. As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

(a) "***Affiliate***" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Securities Act. The Board will have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(b) "***Award***" means a Stock Award or a Performance Cash Award.

(c) "***Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award.

(d) "***Board***" means the Board of Directors of the Company.

(e) "***Capital Stock***" means each and every class of common stock of the Company, regardless of the number of votes per share.

(f) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Adoption Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(g) "***Cause***" will have the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of any of the following events: (i) such Participant's commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) such Participant's

attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (iii) such Participant's intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iv) such Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) such Participant's gross misconduct. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause will be made by the Company, in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(h) "***Change in Control***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control will not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities, (C) on account of the acquisition of securities of the Company by any individual who is, on the Effective Date, either an executive officer or a Director (either, an "***IPO Investor***") and/or any entity in which an IPO Investor has a direct or indirect interest (whether in the form of voting rights or participation in profits or capital contributions) of more than 50% (collectively, the "***IPO Entities***") or on account of the IPO Entities continuing to hold shares that come to represent more than 50% of the combined voting power of the Company's then outstanding securities as a result of the conversion of any class of the Company's securities into another class of the Company's securities having a different number of votes per share pursuant to the conversion provisions set forth in the Company's Amended and Restated Certificate of Incorporation; or (D) solely because the level of Ownership held by any Exchange Act Person (the "***Subject Person***") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control will be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such

merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction; *provided, however*, that a merger, consolidation or similar transaction will not constitute a Change in Control under this prong of the definition if the outstanding voting securities representing more than 50% of the combined voting power of the surviving Entity or its parent are owned by the IPO Entities;

(iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; *provided, however*, that a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries will not constitute a Change in Control under this prong of the definition if the outstanding voting securities representing more than 50% of the combined voting power of the acquiring Entity or its parent are owned by the IPO Entities; or

(iv) individuals who, on the date the Plan is adopted by the Board, are members of the Board (the "***Incumbent Board***") cease for any reason to constitute at least a majority of the members of the Board; *provided, however*, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member will, for purposes of this Plan, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing definition or any other provision of the Plan, the term Change in Control will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company and the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant will supersede the foregoing definition with respect to Awards subject to such agreement; *provided, however*, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition will apply.

(i) "***Code***" means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(j) "***Committee***" means a committee of one or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(k) "***Common Stock***" means, as of the Effective Date, the common stock of the Company, having one vote per share.

(l) "***Company***" means CymaBay Therapeutics, Inc., a Delaware corporation.

(m) "***Consultant***" means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a "Consultant" for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company's securities to such person.

(n) "***Continuous Service***" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, will not terminate a Participant's Continuous Service; *provided, however*, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, in its sole discretion, such Participant's Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in an Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

(o) "***Corporate Transaction***" means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board, in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of at least 90% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(p) "***Covered Employee***" will have the meaning provided in Section 162(m)(3) of the Code.

(q) "***Director***" means a member of the Board.

(r) "***Disability***" means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months, as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(s) "***Effective Date***" means the effective date of this Plan, which is the earlier of (i) the date that this Plan is first approved by the Company's stockholders, and (ii) the date this Plan is adopted by the Board.

(t) "***Employee***" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "Employee" for purposes of the Plan.

(u) "***Entity***" means a corporation, partnership, limited liability company or other entity.

(v) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(w) "***Exchange Act Person***" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities.

(x) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock will be, unless otherwise determined by the Board, the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable.

(ii) Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing selling price on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, the Fair Market Value will be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(y) "***Incentive Stock Option***" means an option granted pursuant to Section 5 of the Plan that is intended to be, and qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

(z) "***Non-Employee Director***" means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act ("***Regulation S-K***")), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3.

(aa) "***Nonstatutory Stock Option***" means any Option granted pursuant to Section 5 of the Plan that does not qualify as an Incentive Stock Option.

(bb) "***Officer***" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(cc) "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(dd) "***Option Agreement***" means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement will be subject to the terms and conditions of the Plan.

(ee) "***Optionholder***" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(ff) "***Other Stock Award***" means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(d).

(gg) "***Other Stock Award Agreement***" means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement will be subject to the terms and conditions of the Plan.

(hh) "***Outside Director***" means a Director who either (i) is not a current employee of the Company or an "affiliated corporation" (within the meaning of Treasury Regulations

promulgated under Section 162(m) of the Code), is not a former employee of the Company or an "affiliated corporation" who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year, has not been an officer of the Company or an "affiliated corporation," and does not receive remuneration from the Company or an "affiliated corporation," either directly or indirectly, in any capacity other than as a Director, or (ii) is otherwise considered an "outside director" for purposes of Section 162(m) of the Code.

(ii) "***Own,***" "***Owned,***" "***Owner,***" "***Ownership***" means a person or Entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(jj) "***Participant***" means a person to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(kk) "***Performance Cash Award***" means an award of cash granted pursuant to the terms and conditions of Section 6(c)(ii).

(ll) "***Performance Criteria***" means the one or more criteria that the Board will select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that will be used to establish such Performance Goals may be based on any one of, or combination of, the following as determined by the Board: (i) earnings (including earnings per share and net earnings); (ii) earnings before interest, taxes and depreciation; (iii) earnings before interest, taxes, depreciation and amortization; (iv) earnings before interest, taxes, depreciation, amortization and legal settlements; (v) earnings before interest, taxes, depreciation, amortization, legal settlements and other income (expense); (vi) earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense) and stock-based compensation; (vii) earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense), stock-based compensation and changes in deferred revenue; (viii) total stockholder return; (ix) return on equity or average stockholder's equity; (x) return on assets, investment, or capital employed; (xi) stock price; (xii) margin (including gross margin); (xiii) income (before or after taxes); (xiv) operating income; (xv) operating income after taxes; (xvi) pre-tax profit; (xvii) operating cash flow; (xviii) sales or revenue targets; (xix) increases in revenue or product revenue; (xx) expenses and cost reduction goals; (xxi) improvement in or attainment of working capital levels; (xxii) economic value added (or an equivalent metric); (xxiii) market share; (xxiv) cash flow; (xxv) cash flow per share; (xxvi) share price performance; (xxvii) debt reduction; (xxviii) implementation or completion of projects or processes; (xxix) user satisfaction; (xxx) stockholders' equity; (xxxi) capital expenditures; (xxxii) debt levels; (xxxiii) operating profit or net operating profit; (xxxiv) workforce diversity; (xxxv) growth of net income or operating income; (xxxvi) billings; (xxxvii) bookings; (xxxviii) the number of users, including but not limited to unique users; (xxxix) employee retention; and (xxxx) to the extent that an Award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the Board.

(mm) "***Performance Goals***" means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria.

Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Goals at the time the Performance Goals are established, the Board will appropriately make adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects; (3) to exclude the effects of changes to generally accepted accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; (5) to exclude the effects of any "extraordinary items" as determined under generally accepted accounting principles; (6) to exclude the dilutive effects of acquisitions or joint ventures; (7) to assume that any business divested by the Company achieved performance objectives at targeted levels during the balance of a Performance Period following such divestiture; (8) to exclude the effect of any change in the outstanding shares of common stock of the Company by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (9) to exclude the effects of stock based compensation and the award of bonuses under the Company's bonus plans; (10) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to be expensed under generally accepted accounting principles; (11) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles; and (12) to exclude the effect of any other unusual, non-recurring gain or loss or other extraordinary item. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for such Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Stock Award Agreement or the written terms of a Performance Cash Award.

(nn) "***Performance Period***" means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to and the payment of a Stock Award or a Performance Cash Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

(oo) "***Performance Stock Award***" means a Stock Award granted under the terms and conditions of Section 6(c)(i).

(pp) "***Plan***" means this CymaBay Therapeutics , Inc. 2013 Equity Incentive Plan, as it may be amended.

(qq) "***Restricted Stock Award***" means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

(rr) "***Restricted Stock Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

(ss) "***Restricted Stock Unit Award***" means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

(tt) "***Restricted Stock Unit Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement will be subject to the terms and conditions of the Plan.

(uu) "***Rule 16b-3***" means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(vv) "***Securities Act***" means the Securities Act of 1933, as amended.

(ww) "***Stock Appreciation Right***" or "***SAR***" means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

(xx) "***Stock Appreciation Right Agreement***" means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement will be subject to the terms and conditions of the Plan.

(yy) "***Stock Award***" means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, a Stock Appreciation Right, a Performance Stock Award or any Other Stock Award.

(zz) "***Stock Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement will be subject to the terms and conditions of the Plan.

(aaa) "***Subsidiary***" means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

(bbb) "***Ten Percent Stockholder***" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

Exhibit 10.26

CYMABAY THERAPEUTICS, INC.
STOCK OPTION GRANT NOTICE
(2013 EQUITY PLAN)

CymaBay Therapeutics, Inc. (the "***Company***"), pursuant to its 2013 Equity Plan (the "***Plan***"), hereby grants to Optionholder an option to purchase the number of shares of the Company's Common Stock set forth below. This option is subject to all of the terms and conditions as set forth in this notice, in the Option Agreement, the Plan and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Option Agreement will have the same definitions as in the Plan or the Option Agreement. If there is any conflict between the terms in this notice and the Plan, the terms of the Plan will control.

Optionholder:	_____
Date of Grant:	_____
Vesting Commencement Date:	_____
Number of Shares Subject to Option:	_____
Exercise Price (Per Share):	_____
Total Exercise Price:	_____
Expiration Date:	_____

Type of Grant: ☐ Incentive Stock Option[1] ☐ Nonstatutory Stock Option

Exercise Schedule: ☐ Same as Vesting Schedule ☐ Early Exercise Permitted

Vesting Schedule: [One-fourth (1/4th) of the shares vest one year after the Vesting Commencement Date; the balance of the shares vest in a series of thirty-six (36) successive equal monthly installments measured from the first anniversary of the Vesting Commencement Date, subject to Optionholder's Continuous Service as of each such date.]

Payment: By one or a combination of the following items (described in the Option Agreement):

☒ By cash, check, bank draft or money order payable to the Company
☒ Pursuant to a Regulation T Program if the shares are publicly traded
☒ By delivery of already-owned shares if the shares are publicly traded
☐ If and only to the extent this option is a Nonstatutory Stock Option, and subject to the Company's consent at the time of exercise, by a "net exercise" arrangement

Additional Terms/Acknowledgements: Optionholder acknowledges receipt of, and understands and agrees to, this Stock Option Grant Notice, the Option Agreement and the Plan. Optionholder acknowledges and agrees that this Stock Option Grant Notice and the Option Agreement may not be modified, amended or revised except as provided in the Plan. Optionholder further acknowledges that as of the Date of Grant, this Stock Option Grant Notice, the Option Agreement, and the Plan set forth the entire understanding between Optionholder and the Company regarding this option award and supersede all prior oral and written agreements, promises and/or representations on that subject with the exception of (i) options previously granted and delivered to Optionholder, (ii) any compensation recovery policy that is adopted by the Company or is otherwise required by applicable law and (iii) any written employment or severance arrangement that would provide for vesting acceleration of this option upon the terms and conditions set forth therein.

[1] If this is an Incentive Stock Option, it (plus other outstanding Incentive Stock Options) cannot be first *exercisable* for more than $100,000 in value (measured by exercise price) in any calendar year. Any excess over $100,000 is a Nonstatutory Stock Option.

By accepting this option, Optionholder consents to receive such documents by electronic delivery and to participate in the Plan through an online or electronic system established and maintained by the Company or another third party designated by the Company.

CYMABAY THERAPEUTICS, INC.	**OPTIONHOLDER:**
By: _____	_____
Signature	Signature
Title: _____	Date: _____
Date: _____	

ATTACHMENTS: Option Agreement, 2013 Equity Plan and Notice of Exercise

ATTACHMENT I

OPTION AGREEMENT

CYMABAY THERAPEUTICS, INC.
2013 EQUITY PLAN

OPTION AGREEMENT
(INCENTIVE STOCK OPTION OR NONSTATUTORY STOCK OPTION)

Pursuant to your Stock Option Grant Notice ("***Grant Notice***") and this Option Agreement, CymaBay Therapeutics, Inc. (the "***Company***") has granted you an option under its 2013 Equity Plan (the "***Plan***") to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. The option is granted to you effective as of the date of grant set forth in the Grant Notice (the "***Date of Grant***"). If there is any conflict between the terms in this Option Agreement and the Plan, the terms of the Plan will control. Capitalized terms not explicitly defined in this Option Agreement or in the Grant Notice but defined in the Plan will have the same definitions as in the Plan.

The details of your option, in addition to those set forth in the Grant Notice and the Plan, are as follows:

1. VESTING. Subject to the provisions contained herein, your option will vest as provided in your Grant Notice. Vesting will cease upon the termination of your Continuous Service.

2. NUMBER OF SHARES AND EXERCISE PRICE. The number of shares of Common Stock subject to your option and your exercise price per share in your Grant Notice will be adjusted for Capitalization Adjustments.

3. EXERCISE RESTRICTION FOR NON-EXEMPT EMPLOYEES. If you are an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (that is, a "***Non-Exempt Employee***"), and except as otherwise provided in the Plan, you may not exercise your option until you have completed at least six (6) months of Continuous Service measured from the Date of Grant, even if you have already been an employee for more than six (6) months. Consistent with the provisions of the Worker Economic Opportunity Act, you may exercise your option as to any vested portion prior to such six (6) month anniversary in the case of (i) your death or disability, (ii) a Corporate Transaction in which your option is not assumed, continued or substituted, (iii) a Change in Control or (iv) your termination of Continuous Service on your "retirement" (as defined in the Company's benefit plans).

4. EXERCISE PRIOR TO VESTING ("EARLY EXERCISE"). If permitted in your Grant Notice (*i.e.*, the "Exercise Schedule" indicates "Early Exercise Permitted") and subject to the provisions of your option, you may elect at any time that is both (i) during the period of your Continuous Service and (ii) during the term of your option, to exercise all or part of your option, including the unvested portion of your option; *provided, however,* that:

(a) a partial exercise of your option will be deemed to cover first vested shares of Common Stock and then the earliest vesting installment of unvested shares of Common Stock;

(b) any shares of Common Stock so purchased from installments that have not vested as of the date of exercise will be subject to the purchase option in favor of the Company as described in the Company's form of Early Exercise Stock Purchase Agreement;

(c) you will enter into the Company's form of Early Exercise Stock Purchase Agreement with a vesting schedule that will result in the same vesting as if no early exercise had occurred; and

(d) if your option is an Incentive Stock Option, then, to the extent that the aggregate Fair Market Value (determined at the Date of Grant) of the shares of Common Stock with respect to which your option plus all other Incentive Stock Options you hold are exercisable for the first time by you during any calendar year (under all plans of the Company and its Affiliates) exceeds one hundred thousand dollars ($100,000), your option(s) or portions thereof that exceed such limit (according to the order in which they were granted) will be treated as Nonstatutory Stock Options.

5. METHOD OF PAYMENT. You must pay the full amount of the exercise price for the shares you wish to exercise. You may pay the exercise price in cash or by check, bank draft or money order payable to the Company or in any other manner ***permitted by your Grant Notice,*** which may include one or more of the following:

(a) Provided that at the time of exercise the Common Stock is publicly traded, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds. This manner of payment is also known as a "broker-assisted exercise", "same day sale", or "sell to cover".

(b) Provided that at the time of exercise the Common Stock is publicly traded, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. "Delivery" for these purposes, in the sole discretion of the Company at the time you exercise your option, will include delivery to the Company of your attestation of ownership of such shares of Common Stock in a form approved by the Company. You may not exercise your option by delivery to the Company of Common Stock if doing so would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

(c) If this option is a Nonstatutory Stock Option, subject to the consent of the Company at the time of exercise, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price. You must pay any remaining balance of the aggregate exercise price not satisfied by the "net exercise" in cash or other permitted form of payment. Shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter if those shares (i) are used to pay the exercise price pursuant to the "net exercise," (ii) are delivered to you as a result of such exercise, and (iii) are withheld to satisfy your tax withholding obligations.

6. WHOLE SHARES. You may exercise your option only for whole shares of Common Stock.

7. SECURITIES LAW COMPLIANCE. In no event may you exercise your option unless the shares of Common Stock issuable upon exercise are then registered under the Securities Act or, if not registered, the Company has determined that your exercise and the issuance of the shares would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with all other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations (including any restrictions on exercise required for compliance with Treas. Reg. 1.401(k)-1(d)(3), if applicable).

8. TERM. You may not exercise your option before the Date of Grant or after the expiration of the option's term. The term of your option expires, subject to the provisions of Section 5(h) of the Plan, upon the earliest of the following:

(a) immediately upon the termination of your Continuous Service for Cause;

(b) three (3) months after the termination of your Continuous Service for any reason other than Cause, your Disability or your death (except as otherwise provided in Section 8(d) below); *provided, however,* that if during any part of such three (3) month period your option is not exercisable solely because of the condition set forth in the section above relating to "Securities Law Compliance," your option will not expire until the earlier of the Expiration Date or until it has been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service; *provided further,* if during any part of such three (3) month period, the sale of any Common Stock received upon exercise of your option would violate the Company's insider trading policy, then your option will not expire until the earlier of the Expiration Date or until it has been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service during which the sale of the Common Stock received upon exercise of your option would not be in violation of the Company's insider trading policy. Notwithstanding the foregoing, if (i) you are a Non-Exempt Employee, (ii) your Continuous Service terminates within six (6) months after the Date of Grant, and (iii) you have vested in a portion of your option at the time of your termination of Continuous Service, your option will not expire until the earlier of (x) the later of (A) the date that is seven (7) months after the Date of Grant, and (B) the date that is three (3) months after the termination of your Continuous Service, and (y) the Expiration Date;

(c) twelve (12) months after the termination of your Continuous Service due to your Disability (except as otherwise provided in Section 8(d)) below;

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

(e) the Expiration Date indicated in your Grant Notice; or

(f) the day before the tenth (10th) anniversary of the Date of Grant.

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

9. EXERCISE.

(a) You may exercise the vested portion of your option (and the unvested portion of your option if your Grant Notice so permits) during its term by (i) delivering a Notice of Exercise (in a form designated by the Company) or completing such other documents and/or procedures designated by the Company for exercise and (ii) paying the exercise price and any applicable withholding taxes to the Company's Secretary, stock plan administrator, or such other person as the Company may designate, together with such additional documents as the Company may then require.

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

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

10. TRANSFERABILITY. Except as otherwise provided in this Section 10, your option is not transferable, except by will or by the laws of descent and distribution, and is exercisable during your life only by you.

(a) Certain Trusts. Upon receiving written permission from the Board or its duly authorized designee, you may transfer your option to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the option is held in the trust. You and the trustee must enter into transfer and other agreements required by the Company.

(b) Domestic Relations Orders. Upon receiving written permission from the Board or its duly authorized designee, and provided that you and the designated transferee enter

into transfer and other agreements required by the Company, you may transfer your option pursuant to the terms of a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulation 1.421-1(b)(2) that contains the information required by the Company to effectuate the transfer. You are encouraged to discuss the proposed terms of any division of this option with the Company prior to finalizing the domestic relations order or marital settlement agreement to help ensure the required information is contained within the domestic relations order or marital settlement agreement. If this option is an Incentive Stock Option, this option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(c) Beneficiary Designation. Upon receiving written permission from the Board or its duly authorized designee, you may, by delivering written notice to the Company, in a form approved by the Company and any broker designated by the Company to handle option exercises, designate a third party who, on your death, will thereafter be entitled to exercise this option and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, your executor or administrator of your estate will be entitled to exercise this option and receive, on behalf of your estate, the Common Stock or other consideration resulting from such exercise.

11. OPTION NOT A SERVICE CONTRACT. Your option is not an employment or service contract, and nothing in your option will be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option will obligate the Company or an Affiliate, their respective stockholders, boards of directors, officers or employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

12. WITHHOLDING OBLIGATIONS.

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

(b) If this option is a Nonstatutory Stock Option, then upon your request and subject to approval by the Company, and compliance with any applicable legal conditions or restrictions, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code,

covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

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

13. TAX CONSEQUENCES. You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You will not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the "fair market value" per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the option.

14. NOTICES. Any notices provided for in your option or the Plan will be given in writing (including electronically) and will be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company. The Company may, in its sole discretion, decide to deliver any documents related to participation in the Plan and this option by electronic means or to request your consent to participate in the Plan by electronic means. By accepting this option, you consent to receive such documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

15. GOVERNING PLAN DOCUMENT. Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. If there is any conflict between the provisions of your option and those of the Plan, the provisions of the Plan will control. In addition, your option (and any compensation paid or shares issued under your option) is subject to recoupment in accordance with The Dodd–Frank Wall Street Reform and Consumer Protection Act and any implementing regulations thereunder, any clawback policy adopted by the Company and any compensation recovery policy otherwise required by applicable law.

16. OTHER DOCUMENTS. You hereby acknowledge receipt of and the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the

Securities Act, which includes the Plan prospectus. In addition, you acknowledge receipt of the Company's policy permitting certain individuals to sell shares only during certain "window" periods and the Company's insider trading policy, in effect from time to time.

17. EFFECT ON OTHER EMPLOYEE BENEFIT PLANS. The value of this option will not be included as compensation, earnings, salaries, or other similar terms used when calculating your benefits under any employee benefit plan sponsored by the Company or any Affiliate, except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any of the Company's or any Affiliate's employee benefit plans.

18. VOTING RIGHTS. You will not have voting or any other rights as a stockholder of the Company with respect to the shares to be issued pursuant to this option until such shares are issued to you. Upon such issuance, you will obtain full voting and other rights as a stockholder of the Company. Nothing contained in this option, and no action taken pursuant to its provisions, will create or be construed to create a trust of any kind or a fiduciary relationship between you and the Company or any other person.

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

20. MISCELLANEOUS.

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

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

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

(d) This Option Agreement will be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

(e) All obligations of the Company under the Plan and this Option Agreement will be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

* * *

This Option Agreement will be deemed to be signed by you upon the signing by you of the Grant Notice to which it is attached.

ATTACHMENT II

2013 EQUITY PLAN

ATTACHMENT III

NOTICE OF EXERCISE

NOTICE OF EXERCISE

CymaBay Therapeutics, Inc.
Attention: [Stock Plan Administrator]
3876 Bay Center Place
Hayward, CA 94545

Date of Exercise:

This constitutes notice to CymaBay Therapeutics, Inc. (the "***Company***") under my stock option that I elect to purchase the below number of shares of Common Stock of the Company (the "***Shares***") for the price set forth below.

Type of option (check one):	Incentive ☐	Nonstatutory ☐
Stock option dated:		
Number of Shares as to which option is exercised:		
Certificates to be issued in name of:		
Total exercise price:	$	$
Cash payment delivered herewith:	$	$
Value of Shares delivered herewith:	$	$
Value of Shares pursuant to net exercise:	$	$
Regulation T Program (cashless exercise):	$	$

By this exercise, I agree (i) to provide such additional documents as you may require pursuant to the terms of the CymaBay Therapeutics, Inc. 2013 Equity Plan, (ii) to provide for the payment by me to you (in the manner designated by you) of your withholding obligation, if any, relating to the exercise of this option, and (iii) if this exercise relates to an Incentive Stock Option, to notify you in writing within fifteen (15) days after the date of any disposition of any of the Shares issued upon exercise of this option that occurs within two (2) years after the date of grant of this option or within one (1) year after such Shares are issued upon exercise of this option.

I hereby make the following certifications and representations with respect to the number of Shares listed above, which are being acquired by me for my own account upon exercise of the option as set forth above:

I acknowledge that the Shares have not been registered under the Securities Act of 1933, as amended (the "***Securities Act***"), and are deemed to constitute "restricted securities" under Rule 701 and Rule 144 promulgated under the Securities Act. I warrant and represent to the Company that I have no present intention of distributing or selling said Shares, except as permitted under the Securities Act and any applicable state securities laws.

I further acknowledge that I will not be able to resell the Shares for at least ninety (90) days after the stock of the Company becomes publicly traded (*i.e.,* subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934) under Rule 701 and that more restrictive conditions apply to affiliates of the Company under Rule 144.

I further acknowledge that all certificates representing any of the Shares subject to the provisions of the Option shall have endorsed thereon appropriate legends reflecting the foregoing limitations, as well as any legends reflecting restrictions pursuant to the Company's Articles of Incorporation, Bylaws and/or applicable securities laws.

I further agree that, if required by the Company (or a representative of the underwriters) in connection with the first underwritten registration of the offering of any securities of the Company under the Securities Act, I will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company for a period of one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act (or such longer period as the underwriters or the Company shall request to facilitate compliance with FINRA Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation) (the "***Lock-Up Period***"). I further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to securities subject to the foregoing restrictions until the end of such period.

Very truly yours,

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