ABB LTD
Form 6-K
February 10, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 6-K

REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO RULE 13a-16 OR 15d-16
UNDER THE SECURITIES EXCHANGE ACT OF 1934

For the month of February 2006

Commission File Number 001-16429

ABB Ltd

(Translation of registrant s name into English)

P.O. Box 1831, Affolternstrasse 44, CH-8050, Zurich, Switzerland

(Address of principal executive office)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F.

Form 20-F ý Form 40-F o

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1): o

Note: Regulation S-T Rule 101(b)(1) only permits the submission in paper of a Form 6-K if submitted solely to provide an attached annual report to security holders.

Indication by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7): o

Note: Regulation S-T Rule 101(b)(7) only permits the submission in paper of a Form 6-K if submitted to furnish a report or other document that the registrant foreign private issuer must furnish and make public under the laws of the jurisdiction in which the registrant is incorporated, domiciled or legally organized (the registrant s home country), or under the rules of the home country exchange on which the registrant s securities are traded, as long as the report or other document is not a press release, is not required to be and has not been distributed to the registrant s security holders, and, if discussing a material event, has already been the subject of a Form 6-K submission or other Commission filing on EDGAR.

Indicate by check mark whether the registrant by furnishing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

Yes o No ý

If Yes is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): 82- .

This Form 6-K consists of the following:

1. Press release issued by ABB Ltd dated February 8, 2006, regarding ABB reporting further cooperation on suspect payments; and

2. Press release issued by ABB Ltd dated February 9, 2006, regarding the U.S. District Court setting February 28 for confirmation of Combustion Engineering Plan of Reorganization.

For your business and technology editors

ABB reports further cooperation on suspect payments

Zurich, Switzerland, February 8, 2006 ABB said today that it has this week disclosed to the U.S. Department of Justice (DoJ) and the Securities and Exchange Commission (SEC) details of suspect payments in a country in the Middle East.

These payments and several others made by company subsidiaries in a number of countries were discovered by ABB as a result of the company s internal compliance reviews. These payments have been voluntarily disclosed recently to the DoJ and SEC.

The payments may be in violation of the Foreign Corrupt Practices Act (FCPA) or other applicable laws. The consequences for ABB could include penalties, other costs and business-related impact.

ABB is cooperating on these issues with the relevant authorities, and is continuing its internal investigations and compliance reviews. ABB has begun a disciplinary investigation involving a number of employees.

Fred Kindle, ABB President and CEO, commenting on the disclosure, said: Proper business conduct is the hallmark of a sound organization. It is the only way to build a sustainable business, as well as being a legal necessity. At ABB we have a zero tolerance policy and respond to any breaches of compliance. The reported incidents are regrettable and are a further reason why we need to increase our efforts to improve performance in this respect.

ABB (www.abb.com) is a leader in power and automation technologies that enable utility and industry customers to improve performance while lowering environmental impact. The ABB Group of companies operates in around 100 countries and employs about 103,000 people.

Important notice about forward-looking information

This press release includes forward-looking statements, including statements concerning the potential impact on the company of the suspect payments made in a number of countries. Although the company believes that the expectations contained in these statements are based upon

reasonable assumptions, it can give no assurance that those expectations will be achieved. The actual impact could turn out to be more significant than stated because among other things the company cannot predict how the regulators ultimately will choose to deal with this matter or how our business partners may react.

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For your business and technology editors

U.S. District Court sets February 28 for confirmation of Combustion Engineering Plan of Reorganization

Zurich, Switzerland, February 9, 2006 A District Court judge in the United States has set the hearing of the revised Plan of Reorganization for Combustion Engineering, an ABB subsidiary in the U.S., for February 28, 2006.

The judge said he intended to issue an entry and affirmance of the confirmation order of the Plan of Reorganization on that date. If there are no objections during the 30-day appeals period following the February 28 hearing, the plan would then become effective. ABB could then start the process of setting up the Trust Fund for asbestos claimants.

This is a very positive step forward. If the judge confirms the plan, and no appeals are filed during the 30-day period, the order will become final and the plan effective, to the benefit of all parties involved, said Fred Kindle, ABB President and CEO.

No appeals were filed against the Plan of Reorganization before it was confirmed by the U.S. Bankruptcy Court in Pittsburgh, Pennsylvania on December 19, 2005.

In September 2005, claimants to a parallel asbestos-related Plan of Reorganization for another U.S. subsidiary, ABB Lummus Global Inc., voted 96 percent in favor of the plan. That plan has not yet been filed with the Bankruptcy Court.

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SIGNATURES

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

	ABB LTD		
Date: February 10, 2006	By:	/s/ HANS ENHOERNING	
	Name:		Hans Enhoerning
	Title:		Group Vice President and Assistant General Counsel
	By:	/s/ RICHARD A. BROWN	
	Name:		Richard A. Brown
	Title:		Group Vice President and Assistant General Counsel

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c products prior to expiration of those patents. If an ANDA applicant certifies that it believes one or more listed patents are invalid or not infringed, it is required to provide notice of its filing to the NDA sponsor and the patent holder. If the patent holder then initiates a suit for patent infringement against the abbreviated NDA sponsor within 45 days of receipt of the notice, FDA cannot grant effective approval of the ANDA until either 30 months has passed or there has been a court decision holding that the patents in question are invalid or not infringed. A holding that a valid and enforceable listed patent is infringed will preclude approval of the ANDA until the expiration of that patent. If the ANDA applicant certifies that it does not intend to market its generic product before some or all listed patents on the listed drug expire, then FDA cannot grant effective approval of the ANDA until those patents expire. Under Federal law, the term of a patent covering a new chemical entity can be extended by up to five years, for an effective patent life of up to 14 years after approval, based on restoration of part of the patent life lost during clinical testing and FDA review.

Federal law also provides for periods of non-patent exclusivity that also limit the timing of potential approval of an ANDA for a generic equivalent to a listed drug. These include a period of three years of non-patent exclusivity following approval of a listed drug that contains previously approved active ingredients but is approved in a new dosage, dosage form, route of administration or combination, or for a new use, the approval of which was required to be supported by new clinical trials conducted by or for the sponsor, during which such three year period FDA cannot grant effective approval of an ANDA based on that listed drug. Federal law also provides a period of five years following approval of a drug containing no previously approved active

ingredients, during which an ANDA for a generic equivalent cannot be submitted unless the submission accompanies a challenge to a listed patent, in which case the submission may be made four years following the original product approval.

The first ANDA applicant submitting a substantially complete application certifying that listed patents for a particular product are invalid or not infringed may qualify for a period of 180 days after a court decision of invalidity or non-infringement or after it begins marketing its product, whichever occurs first, during which subsequently submitted ANDAs cannot be granted effective approval. Similar non-patent exclusivity restrictions and patent certification requirements apply to so-called 505(b)(2) NDA applications which rely, in part or in whole, on data generated by or for parties other than the applicant to support an NDA approval.

FDA also imposes a number of complex requirements and restrictions on entities that advertise and promote prescription drugs, which include, among others, standards for and regulations of print and in-person promotion, product sampling, direct-to-consumer advertising, off-label promotion, industry sponsored scientific and educational activities, and promotional activities involving the Internet. The FDA has very broad enforcement authority under the Federal Food, Drug and Cosmetic Act, and failure to abide by FDA requirements can result in penalties and other enforcement actions, including the issuance of warning letters or other letters objecting to violations and directing that deviations from FDA standards be corrected, total or partial suspension of production, and state and federal civil and criminal investigations and prosecutions.

Federal regulations and FDA policies prohibit a sponsor or investigator, or any person acting on behalf of a sponsor or investigator, from representing in a promotional context that an investigational new drug is safe or effective for the purposes for which it is under investigation. Prior to approval of a product candidate, any assertion that one of Metabasis product candidates is safe or effective for any purpose or that it is superior to any currently approved product could result in regulatory action by FDA and could delay approval of the product candidate.

A variety of Federal and state laws apply to the sale, marketing and promotion of pharmaceuticals that are paid for, directly or indirectly, by Federal or state health care programs, such as Medicare and Medicaid. The restrictions imposed by these laws are in addition to those imposed by the FDA and corresponding state agencies. Some of these laws significantly restrict or prohibit certain types of sales, marketing and promotional activities by pharmaceutical manufacturers. Violation of these laws can result in significant criminal, civil, and administrative penalties, including imprisonment of individuals, fines and penalties and exclusion or debarment from Federal and state health care and other programs. Many private health insurance companies also prohibit payment to entities that have been sanctioned, excluded, or debarred by Federal agencies. Metabasis is also subject to various laws and regulations regarding laboratory practices, the experimental use of animals, and the use and disposal of hazardous or potentially hazardous substances in connection with Metabasis research. In each of these areas, as above, the FDA and other agencies have broad regulatory and enforcement powers, including the ability to impose fines and civil penalties, suspend or delay issuance of approvals, seize or recall products, and withdraw approvals, any one or more of which could have a material adverse effect upon Metabasis.

Employees

As of December 11, 2009, Metabasis employed one full-time employee.

Corporate Information

Metabasis was incorporated in Delaware in April 1997. Metabasis principal executive offices are located at 11119 North Torrey Pines Road, La Jolla, California 92037. Metabasis has a wholly owned subsidiary, Aramed, Inc., which does not conduct an active business. Metabasis telephone number is (858) 587-2770.

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Available Information

Metabasis makes available free of charge, on or through its Internet website, its annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports, as soon as practicable after it electronically files these materials with, or furnishes them to, the Securities and Exchange Commission. The address of Metabasis website is http:/ /www.mbasis.com. The information contained in, or that can be accessed through, Metabasis website is not part of this annual report on Form 10-K.

Properties

Metabasis believes that its currently licensed and occupied facilities are well maintained, in good operating condition and are sufficient for its current needs. The following table is a summary of its currently leased and occupied facilities:

Leased Property Location	Square Feet	Use	Lease Expiration Date
La Jolla, California	82,000	Research, development and administrative	January 2, 2010[1]

(1) In July 2009, Metabasis entered into an Agreement for Termination of Lease and Voluntary Surrender of Premises, or, as amended, the Termination Agreement, with ARE-SD Region No. 24, LLC, or Owner, to terminate the Lease Agreement, dated December 21, 2004, by and between Metabasis and Owner, as amended. The Lease Agreement governed the terms and conditions for the use of the facilities Metabasis occupies as its corporate offices. Under the Lease Agreement Metabasis was obligated to make future payments to the Owner for a base monthly rent and operating expenses totaling $25.7 million between August 2009 and October 2015.

Pursuant to the terms of the Termination Agreement, the Lease Agreement terminated effective July 21, 2009 and the Owner granted Metabasis a license for the continued use of the facilities. The license will automatically expire on the earlier to occur of: (i) January 2, 2010 or (ii) upon receipt of a 30 day notice of termination from the Owner to Metabasis. In consideration of the early termination of the Lease Agreement, Metabasis agreed to the following: (i) to pay the Owner a fee of $2.5 million on July 21, 2009, (ii) pay up to an additional $1.5 million to be paid as 35% of the gross revenues earned by Metabasis from licenses, collaboration arrangements or sales of Metabasis existing pipeline of therapeutic programs entered into or effected during the period commencing July 1, 2009 and ending September 30, 2013, provided that the proceeds from these revenue generating events have been received by Metabasis, (iii) to grant the Owner a warrant to purchase 1.0 million shares of Metabasis common stock at $0.41 per share, (iv) to surrender and forfeit the $152,356 security deposit to the Owner and (v) transfer certain assets to the Owner consisting of leasehold improvement and furniture. The Termination Agreement excuses both Metabasis and the Owner from any further material obligations with respect to the Lease Agreement as of July 21, 2009, including the outstanding balance of approximately $0.2 million in tenant improvement loans due to the Owner.

Legal Proceedings

Metabasis is currently not a party to any material legal proceedings.

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METABASIS MANAGEMENT S DISCUSSION AND ANALYSIS OF

FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Special Note Regarding Forward-Looking Statements

You should read the following discussion and analysis together with Metabasis unaudited financial statements and the notes to those statements included elsewhere in this proxy statement/prospectus, as well as Metabasis audited financial statements and notes to those statements as of and for the year ended December 31, 2008 included in Metabasis annual report on Form 10-K filed with the Securities and Exchange Commission on March 31, 2009. This discussion contains forward-looking statements that involve risks and uncertainties. As a result of many factors, such as those set forth under Risk Factors and elsewhere in this proxy statement/prospectus and in Metabasis other filings with the Securities and Exchange Commission, Metabasis actual results may differ materially from those anticipated in these forward-looking statements. Readers are cautioned not to place undue reliance on forward-looking statements. The forward-looking statements speak only as of the date on which they are made, and Metabasis undertakes no obligation to update such statements to reflect events that occur or circumstances that exist after the date on which they are made.

Overview

Metabasis is a biopharmaceutical company that has established a pipeline of novel drugs for metabolic diseases using its proprietary technology and its knowledge of processes and pathways within the liver that are useful for liver-selective drug targeting and treatment of metabolic diseases. Metabasis product pipeline includes product candidates and advanced discovery programs for the treatment of metabolic and liver diseases such as diabetes, hyperlipidemia, hepatitis and primary liver cancer.

Metabasis currently has four product candidates at the clinical stage of development. These product candidates include Metabasis metabolic disease proprietary product candidates, MB07811 and MB07803, which have been developed as potential treatments for hyperlipidemia, and type 2 diabetes, respectively, and Metabasis liver disease proprietary product candidates, pradefovir and MB07133, which have been developed as potential treatments for hepatitis B and primary liver cancer, respectively. In addition, Metabasis has compounds generated from various advanced research programs, such as its glucagon antagonist program. At this time, Metabasis does not intend to independently develop any of the assets within its product pipeline.

Recent Developments

Lease Termination

In July 2009, Metabasis entered into an Agreement for Termination of Lease and Voluntary Surrender of Premises, or, as amended, the Termination Agreement, with ARE-SD Region No. 24, LLC, or Owner, to terminate the Lease Agreement, dated December 21, 2004, by and between Metabasis and Owner, as amended. The Lease Agreement governed the terms and conditions for the use of the facilities Metabasis occupies as its corporate offices. Under the Lease Agreement Metabasis was obligated to make future payments to the Owner for a base monthly rent and operating expenses totaling $25.7 million between August 2009 and October 2015.

Pursuant to the terms of the Termination Agreement, the Lease Agreement terminated effective July 21, 2009 and the Owner granted Metabasis a license for the continued use of the facilities. The license will automatically expire on the earlier to occur of: (i) January 2, 2010 or (ii) upon receipt of a 30 day notice of termination from the Owner to Metabasis. In consideration of the early termination of the Lease Agreement, Metabasis agreed to the following: (i) to pay the Owner a fee of $2.5 million on July 21, 2009, (ii) pay up to an additional $1.5 million to be paid as 35% of the gross revenues earned by Metabasis from licenses, collaboration arrangements or sales of Metabasis existing pipeline of therapeutic programs entered into or effected during the period commencing July 1, 2009 and ending September 30, 2013, provided that the proceeds from these revenue generating events have been received by us, (iii) to grant the Owner a warrant to purchase 1.0 million shares of

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Metabasis common stock at $0.41 per share, (iv) to surrender and forfeit the $152,356 security deposit to the Owner and (v) transfer certain assets to the Owner consisting of leasehold improvement and furniture. The Termination Agreement excuses both Metabasis and the Owner from any further material obligations with respect to the Lease Agreement as of July 21, 2009, including the outstanding balance of approximately $0.2 million in tenant improvement loans due to the Owner.

EquipNet Sales

In July 2009, Metabasis entered into an agreement with EquipNet, Inc., or EquipNet, providing for EquipNet to sell Metabasis laboratory and office equipment. EquipNet receives a pre-determined commission for proceeds generated from the sale of these assets. Amounts were payable to Metabasis from EquipNet in periodic installments through October 2009 for the first $1.5 million of proceeds. All proceeds in excess of $1.5 million due to Metabasis will be paid as earned. During the three months ended September 30, 2009, EquipNet sold assets with an aggregate carrying value of approximately $0.6 million for proceeds of approximately $1.5 million resulting in a gain of $0.8 million, net of selling costs. As of September 30, 2009, the remaining carrying value of assets held for sale was $0.9 million.

Going Concern

After considering the impact of the Termination Agreement and the EquipNet transaction, together with the cash available at September 30, 2009, Metabasis expects its working capital to fund its current operations through March 2010 or, if sooner, the completion of the merger. In the event the merger is not completed and Metabasis is otherwise unable to secure additional resources, including through another strategic transaction, Metabasis will be required to cease operations entirely.

In connection with Metabasis fiscal year end 2008 financial statement audit, Metabasis independent registered public accounting firm expressed substantial doubt about Metabasis ability to continue as a going concern given its recurring net losses, negative cash flows from operations and its working capital not being sufficient to fund its operations beyond December 31, 2009.

Research and Development

Through May 2009, Metabasis research and development expenses consist primarily of salaries, stock-based compensation and other expenses for research and development personnel, costs associated with the development and clinical trials of its product candidates, facility costs, supplies and materials, costs for consultants and related contract research and depreciation. Metabasis charges all research and development expenses to operations as they are incurred. From June 1, 2009 through September 30, 2009, Metabasis research and development expenses consist primarily of salaries, impairment charges and various restructuring costs.

General and Administrative

General and administrative expenses consist primarily of salaries, stock-based compensation and other related costs for personnel in executive, finance, accounting, business development, information systems, legal and human resource functions. Other costs include facility costs not otherwise included in research and development expenses, depreciation, professional fees for legal and accounting services and various restructuring costs.

Other Income (Expense)

Other income, net includes interest earned on Metabasis cash, cash equivalents and securities available-for-sale, net of interest expense.

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Critical Accounting Policies

Metabasis discussion and analysis of its financial condition and results of operations are based on its financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles, or GAAP. The preparation of these financial statements requires Metabasis to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosure of contingent assets and liabilities. Metabasis reviews its estimates on an on-going basis. Metabasis bases its estimates on historical experience and on various other assumptions that it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ from these estimates under different assumptions or conditions. Metabasis believes the following accounting policies to be critical to the judgments and estimates used in the preparation of its financial statements.

Revenue Recognition. Metabasis collaboration agreements generally contain multiple elements, including access to its proprietary HepDirect technology and research and development services. Payments under Metabasis collaborations are generally made in the form of up-front license fees, milestone payments and downstream royalties. All fees are nonrefundable. Revenue from milestones is recognized when earned, provided that:

- the milestone event is substantive and its achievability was not reasonably assured at the inception of the agreement, and

- collaborator funding, if any, of Metabasis performance obligations after the milestone achievement will continue at a level comparable to before the milestone achievement.

If both of these criteria are not met, the milestone payment is recognized over the remaining minimum period of Metabasis performance obligations under the agreement. Up-front, nonrefundable fees under Metabasis collaborations are recognized over the period the related services are provided. Nonrefundable upfront fees not associated with Metabasis future performance are recognized when received. Amounts received for sponsored research funding are recognized as revenues as the services are performed. Amounts received for sponsored research funding for a specific number of full-time researchers are recognized as revenue as the services are provided, as long as the amounts received are not refundable regardless of the results of the research project.

Stock-Based Compensation. Metabasis grants equity based awards under three stockholder-approved share-based compensation plans. Metabasis may grant options and restricted stock awards to employees, directors and consultants under its Amended and Restated 2001 Equity Incentive Plan. Metabasis also grants awards to non-employee directors under its 2004 Non-Employee Directors Stock Option Plan. All of Metabasis employees are eligible to participate in Metabasis 2004 Employee Stock Purchase Plan which provides a means for employees to purchase common stock at a discount through payroll deductions. As of September 30, 2009, Metabasis had approximately $1.5 million of unrecognized compensation expense, which it expects to recognize over a weighted average period of 2.4 years.

Metabasis estimates the fair value of stock options granted using the Black-Scholes Merton, or Black-Scholes, option valuation model. This fair value is then amortized over the requisite service periods of the awards. The Black-Scholes option valuation model requires the input of subjective assumptions, including the option s expected life and price volatility of the underlying stock. As stock-based compensation expense is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. Metabasis estimates forfeitures at the time of grant and revise, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Forfeitures were estimated based on historical experience. Metabasis may elect to use different assumptions under the Black-Scholes option valuation model in the future, which could materially affect its net loss and net loss per share.

Restructuring Charges. In accounting for restructuring charges Metabasis considers the primary elements to its restructuring plans: one-time termination benefits and the discontinued use or abandonment of any assets. Metabasis recognizes the fair value of one-time termination benefits when it has taken actions or has the

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appropriate approval for taking action, and when a liability is incurred (when the plan has been communicated to employees). If employees are required to render service beyond a 60-day minimum retention period, the fair value of the obligation is determined on the date of the communication to the employee and recognized over the service period. Metabasis recognizes charges for the abandonment of assets in the period it ceases to use the assets. Metabasis recognizes the cumulative effect of any changes to the plan subsequent to the communication date and cease-use date in the period of the change.

Asset Impairment. In accounting for the impairment or disposal of long-lived assets, Metabasis assesses the recoverability of the affected long-lived assets by determining whether the carrying value of such assets can be recovered through undiscounted future operating cash flows. If impairment is indicated, Metabasis measures the amount of such impairment by comparing the carrying value of the asset to the estimated fair value of the related asset, which is generally determined based on the present value of the expected future cash flows. In the instance where a long-lived asset is to be abandoned it is disposed of when it ceases to be used. Metabasis revises its estimates for depreciation based on the plan of disposal or when it ceases to use such assets.

Results of Operations

Comparison of the Three Months Ended September 30, 2009 and 2008

Revenues. Revenues were $4.9 million for the three months ended September 30, 2009 compared to $1.4 million for the three months ended September 30, 2008. The $3.5 million increase was mainly due to a $2.0 milestone payment received from Roche in exchange for the transfer to Roche of certain know-how related to Metabasis HCV collaboration as well as an increase of approximately $1.9 million related to accelerating the unamortized license fee related to Metabasis HCV collaboration as a result of Roche not extending the research term beyond the first year of the two year term. These increases were offset by a decrease of approximately $0.4 million related to the Merck collaboration that ended during the second quarter of 2009.

Research and Development Expenses. Research and development expenses were $0.4 million for the three months ended September 30, 2009 compared to $8.5 million for the three months ended September 30, 2008. The $8.1 million decrease was mainly due to a decrease of $4.5 million in payroll and related benefits as a result of lower headcount, a decrease of $1.2 million in clinical, pre-clinical and development expenses for the MB07811, MB07803, MB07133 and other research programs and a decrease of $0.5 million in non-cash stock-based compensation. In addition, Metabasis recognized approximately $0.3 million in gains from entering into settlement agreements with certain vendors. In connection with the restructuring in May 2009, all research and development activities were discontinued. As a result, all facilities and other formerly allocated overhead costs subsequently became fully absorbed by the general and administrative function resulting in a decrease of $1.8 million in depreciation and occupancy costs. Offsetting the decreases was an impairment charge of approximately $0.2 million related to classifying certain lab equipment and computers as assets held for sale in connection with the EquipNet agreement. Metabasis does not expect to incur any additional research and development costs.

General and Administrative Expenses. General and administrative expenses were $2.1 million for the three months ended September 30, 2009 compared to $2.7 million for the three months ended September 30, 2008. The $0.6 million decrease was mainly due to a decrease of $0.8 million in payroll and related benefits as a result of lower headcount and a decrease of $0.3 in professional services, non-cash stock-based compensation and other miscellaneous expenses. In connection with the restructuring in May 2009, all research and development activities were discontinued. As a result, all facilities and other formerly allocated overhead costs subsequently became fully absorbed by the general and administrative function resulting in an approximate $0.5 million increase in costs reflected in general and administrative expenses.

Other Operating Expense. For the three months ended September 30, 2009 Metabasis recognized a loss of approximately $0.6 million related to terminating its facility lease in July 2009. Also for the three months ended September 30, 2009, Metabasis recognized a gain of approximately $0.8 million on the sale of assets held for sale under the EquipNet agreement entered into in July 2009.

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Other Income (Expense). Net interest expense was immaterial for the three months ended September 30, 2009 compared to net interest expense of $0.1 million for the three months ended September 30, 2008. The change was primarily a result of decreased interest expense associated with the settlement of Metabasis former debt obligations with Oxford Finance Corporation during the first half of 2009 and decreased interest income as a result of lower cash balances in the third quarter of 2009 as compared to the third quarter of 2008.

Comparison of the Nine Months Ended September 30, 2009 and 2008

Revenues. Revenues were $16.5 million for the nine months ended September 30, 2009 compared to $3.0 million for the nine months ended September 30, 2008. The $13.5 million increase was mainly due to a $6.0 million one-time, non-refundable payment received from Merck in settlement of all potential future amounts payable by Merck in the form of milestone or royalty payments under Metabasis AMPK collaboration agreement. The increase was also due to a $6.7 million increase in license and research revenues from Metabasis HCV collaboration with Roche as a result of accelerating the unamortized license fee due to Roche not extending the research term of the collaboration beyond the first year of the two year term, as well as the $2.0 million milestone payment received from Roche in exchange for the transfer of certain know-how related to Metabasis collaboration. These increases were offset by a decrease of $1.2 million in license and research revenues from Metabasis AMPK collaboration with Merck as the research period naturally ended in the second quarter of 2009.

Research and Development Expenses. Research and development expenses were $11.2 million for the nine months ended September 30, 2009 compared to $27.9 million for the nine months ended September 30, 2008. The $16.7 million decrease was mainly due to a decrease of $10.6 million in payroll and related benefits as a result of lower headcount, a decrease of $4.0 million in clinical, preclinical and development expenses for the MB07811, MB07803, MB07133 and other research programs, and a decrease of $1.2 million in non-cash stock-based compensation. Metabasis also recognized approximately $0.3 million in gains from entering into settlement agreements with certain vendors. In addition, Metabasis experienced a decrease of $2.8 million in depreciation and occupancy costs, primarily as a result of a change in the allocation of these costs. In connection with the restructuring in May 2009, all research and development activities were discontinued. As a result, all facilities and other formerly allocated overhead costs subsequently became fully absorbed by the general and administrative function. These decreased costs were partially offset by a $1.6 million increase in costs associated with severance benefits provided in connection with the January 2009 and May 2009 restructurings and $0.7 million in costs associated with the disposal and/or discontinued use of various long-lived assets. Metabasis does not expect to incur any additional research and development costs.

General and Administrative Expenses. General and administrative expenses were $7.5 million for the nine months ended September 30, 2009 compared to $7.7 million for the nine months ended September 30, 2008. The $0.2 million decrease was primarily comprised of a $1.5 million decrease in payroll and related benefits due to lower headcount and a $0.4 million decrease in professional services. In connection with the restructuring in May 2009, all research and development activities were discontinued. As a result, all facilities and other formerly allocated overhead costs subsequently became fully absorbed by the general and administrative function resulting in an approximate $1.3 million increase in costs reflected in general and administrative expenses. In addition, Metabasis incurred $0.4 million in costs associated with severance benefits provided in connection with the January 2009 and May 2009 restructurings and $0.1 million in costs associated with the disposal and/or discontinued use of various long-lived assets.

Other Operating Expense. For the nine months ended September 30, 2009 Metabasis recognized a loss of approximately $0.6 million related to terminating its facility lease in July 2009. Also for the nine months ended September 30, 2009, Metabasis recognized a gain of approximately $0.8 million on the sale of assets held for sale under the EquipNet agreement entered into in July 2009.

Other Income (Expense). Net interest expense was $0.5 million for the nine months ended September 30, 2009 compared to net interest income of $0.1 million for the nine months ended September 30, 2008. The $0.6 million change was primarily a result of increased interest expense associated with the settlement of Metabasis

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former debt obligations with Oxford and decreased interest income as a result of lower cash balances in the nine months of 2009 as compared to the first nine months of 2008. These impacts were partially offset by a $0.2 million gain recognized from the restructuring of Metabasis debt obligation with Oxford.

Liquidity and Capital Resources

Since Metabasis inception, it has funded its operations primarily with $55.8 million in net proceeds from equity financings prior to becoming a public company and $117.4 million in aggregate net proceeds from its initial public offering in June 2004, a private placement of common stock and warrants in October 2005, a registered direct offering of common stock in March 2006 and Metabasis warrant exchange and concurrent private placement in April 2008.

As of September 30, 2009, Metabasis had $2.2 million in cash and cash equivalents as compared to cash, cash equivalents and securities available-for-sale of $21.6 million as of December 31, 2008, a decrease of $19.4 million. The decrease is primarily a result of net cash used in operations of $9.3 million, $8.6 million of aggregate payments made during the first half of 2009 in final settlement of Metabasis debt obligation with Oxford and the $2.5 million payment related to the lease termination, offset by $0.9 million in proceeds received from the EquipNet agreement.

After considering the impact of the recent transactions described under Recent Developments above, together with the cash available at September 30, 2009, Metabasis expects its working capital to fund its current operations through March 2010 or if sooner, the completion of the merger. In the event the merger is not completed and Metabasis is otherwise unable to secure additional resources, including through another strategic transaction, Metabasis will be required to cease operations entirely. If Metabasis raises additional funds by issuing equity securities, Metabasis stockholders will experience significant dilution of their ownership interests. If Metabasis raises additional funds by issuing debt or other senior securities, then the rights, preferences and privileges of Metabasis existing common stock may be junior to any rights, preferences or privileges that may be established in connection with any such issuances.

The following summarizes Metabasis long-term contractual obligations as of September 30, 2009 (in thousands):

		Payments Due by Period			
	Total	Less than 1 Year	1 to 3 Years	4 to 5 Years	After 5 Years
Operating leases	$ 20	$ 8	$ 12	$	$
Capital leases	35	26	9		
Interest on capital leases	3	2	1		
Total	$ 58	$ 36	$ 22	$	$

Metabasis has maintained employment agreements with its executive officers and certain other key employees that, under certain circumstances, provide for the continuation of salary and certain other benefits if these individuals are terminated under specified circumstances. These agreements generally expire upon termination for cause or when Metabasis has met its obligations under these agreements. As of September 30, 2009, $0.4 million in severance and other separation benefit costs were accrued in connection with the separation of Metabasis former chief executive officer. In October 2009, the Company discontinued the employment of certain executive officers, entitling them to severance benefits, including continuation of salary and certain other benefits, of approximately $1.3 million.

As part of the release agreement entered into with employees associated with the May 2009 restructuring, additional severance benefits will be paid if Metabasis reaches certain business development milestones between

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the date of the release agreement and May 26, 2010. If Metabasis reaches one milestone, it will pay approximately $0.6 million of additional severance benefits. If Metabasis reaches both the first and second milestones, it will pay an incremental $0.5 million of severance benefits for a total of $1.1 million in additional severance benefits.

As part of the consideration for the Termination Agreement s early termination of the Lease Agreement, Metabasis agreed to pay up to an additional $1.5 million to the Owner to be paid as 35% of the gross revenues earned by Metabasis from licenses, collaboration arrangements or sales of its existing pipeline of therapeutic programs entered into or effected during the period commencing July 1, 2009 and ending September 30, 2013, provided that the proceeds from these revenue generating events have been received by Metabasis.

Metabasis has no other material contractual obligations that are not fully recorded on its balance sheets or disclosed in the notes to its financial statements. Metabasis has no off-balance sheet arrangements as defined in Securities and Exchange Commission Regulation S-K 303(a)(4)(ii).

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QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT METABASIS MARKET RISK

Metabasis exposure to market risk for changes in interest rates relates primarily to the increase or decrease in the amount of interest income it can earn on its investment portfolio. Its risk associated with fluctuating interest income is limited to its investments in interest rate sensitive financial instruments. Under its current policies, Metabasis does not use interest rate derivative instruments to manage this exposure to interest rate changes. Metabasis seeks to ensure the safety and preservation of its invested principal by limiting default risk, market risk, and reinvestment risk. Metabasis mitigates default risk by investing in short-term investment grade securities. Metabasis does not invest in auction rate securities. A 100 basis point increase or decrease in interest rates would not materially increase or decrease Metabasis current investment balance or return. While changes in its interest rates may affect the fair value of Metabasis investment portfolio, any gains or losses are not recognized in its statement of operations until the investment is sold or if a reduction in fair value is determined to be a permanent impairment.

Metabasis does not have any foreign currency or other derivative financial instruments. Metabasis long-term capital lease obligations bear interest at fixed rates and therefore it does not have significant market risk exposure with respect to these obligations.

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SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS OF METABASIS

The following table provides information regarding the beneficial ownership of Metabasis common stock as of October 23, 2009 by: (i) each of Metabasis directors, (ii) each of Metabasis 2008 named executive officers, (iii) all of Metabasis current directors and executive officers as a group, and (iv) each person, or group of affiliated persons, known by Metabasis to beneficially own more than 5% of Metabasis common stock. The table is based upon information supplied by Metabasis officers, directors and principal stockholders and a review of Schedules 13D and 13G, if any, filed with the SEC. Unless otherwise indicated in the footnotes to the table and subject to community property laws where applicable, Metabasis believes that each of the stockholders named in the table has sole voting and investment power with respect to the shares indicated as beneficially owned.

Applicable percentages are based on 35,157,359 shares outstanding on October 23, 2009, adjusted as required by rules promulgated by the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In addition, the rules include shares of common stock issuable pursuant to the exercise of stock options or warrants that are exercisable on or within 60 days after October 23, 2009. These shares are deemed to be outstanding and beneficially owned by the person holding those options or warrants for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

Notwithstanding the foregoing, the information provided as to Wellington Management Company, LLP in the table and footnote 7 thereto has been updated to reflect information contained in the amended Schedule 13G filed by Wellington Management Company, LLP with the SEC on December 10, 2009.

Name and Address of Beneficial Owner[1]	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned
MPM Capital L.P. and its affiliates[2] 200 Clarendon Street, 54th Floor Boston, Massachusetts 02116	4,885,263	13.9%
InterWest Management Partners VII, LLC and its affiliates[3] 2710 Sand Hill Road, Second Floor Menlo Park, California 94025	4,272,362	12.0%
Credit Suisse[4] Eleven Madison Avenue New York, New York 10010	3,946,307	11.2%
Biotechnology Value Fund and its affiliates[5] 900 North Michigan Avenue, Suite 1100 Chicago, Illinois, 60611	2,471,600	7.0%
Felix J. Baker, Julian C. Baker and their affiliates[6] 667 Madison Avenue New York, NY 10065	2,361,992	6.7%
Sicor Inc. 19 Hughes Irvine, CA 92618-1902	2,231,296	6.3%
Wellington Management Company, LLP[7] 75 State Street Boston, Massachusetts 02109	0	*
Luke B. Evnin, Ph.D.[2][8]	4,949,430	14.0%
Arnold L. Oronsky, Ph.D.[3][9]	4,336,529	12.2%
Paul K. Laikind, Ph.D.[10]	1,175,740	3.3%
Mark D. Erion, Ph.D.[11]	909,924	2.6%
David F. Hale[12]	278,820	*

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Name and Address of Beneficial Owner[1]	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned
Edgardo Baracchini, Ph.D., M.B.A.[13]	303,837	*
Daniel D. Burgess, M.B.A.[14]	64,167	*
William R. Rohn[15]	56,667	*
George F. Schreiner, M.D., Ph.D.[16]	30,834	*
Elizabeth Stoner, M.D.[17]	18,681	*
Tran B. Nguyen, M.B.A[18]	0	*
All directors and officers as a group (11 persons)[19]	12,124,629	32.7%

(1) Except as otherwise noted above, the address for each person or entity listed in the table is c/o Metabasis Therapeutics, Inc., 11119 North Torrey Pines Road, La Jolla, CA 92037.

(2) Based solely upon information provided to Metabasis by MPM Capital L.P. in October 2009. Includes 357,666 shares held by MPM BioVentures II, L.P., 3,241,318 shares held by MPM BioVentures II-QP, L.P., 1,141,113 shares held by MPM BioVentures GmbH & Co. Parallel- Beteiligungs KG and 74,628 shares held by MPM Asset Management Investors 2000B LLC. Also includes 70,538 shares MPM BioVentures II, L.P., MPM BioVentures II-QP, L.P., MPM BioVentures GmbH & Co. Parallel- Beteiligungs KG and MPM Asset Management Investors 2000 B LLC have the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of warrants. MPM Capital L.P. is a direct or indirect parent and/or control person of MPM Asset Management II LLC, funds managed or advised by it (including MPM BioVentures II, L.P., MPM BioVentures II-QP, L.P., MPM BioVentures GmbH & Co. Parallel-Beteiligungs KG, and MPM Asset Management Investors 2000B LLC) and the general partners of such funds, and may be deemed to beneficially hold the securities owned by such entities. Dr. Evnin may be deemed to be a control person of MPM Capital L.P. as a result of his interest in Medical Portfolio Management LLC, the general partner of MPM Capital L.P. Dr. Evnin disclaims beneficial ownership of these shares except to the extent of his pecuniary interest in these entities.

(3) Based solely upon information provided to Metabasis by InterWest Partners in October 2009. Includes 3,717,282 shares held by InterWest Partners VII, L.P., 177,970 shares held by InterWest Investors VII, L.P. and 50,000 shares held by Harvey B. Cash, a managing director of InterWest Management Partners VII, LLC, the general partner of InterWest Partners VII, L.P. and InterWest Investors VII, L.P. Also includes 327,110 shares InterWest Partners VII, L.P. and InterWest Investors VII, L.P. have the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of warrants. Dr. Oronsky is a managing director of InterWest Management Partners VII, LLC. Dr. Oronsky disclaims beneficial ownership of these shares except to the extent of his pecuniary interest in these entities. Harvey B. Cash maintains sole voting power of the 50,000 shares held by him.

(4) Based upon information contained in the Schedule 13G filed with the SEC on February 18, 2009. Includes 3,863,423 shares held by Sprout Capital IX, L.P., DLJ Capital Corporation, Sprout IX Plan Investors, L.P., Sprout Entrepreneurs Fund, L.P. and Credit Suisse Securities USA, L.L.C. Includes 82,884 shares Sprout Capital IX, L.P. and its affiliates have the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of warrants.

(5) Based solely upon information contained in the Schedule 13G filed with the SEC on February 13, 2009. Includes 1,301,000 shares held by BVF Investments, L.L.C., 524,500 shares held by Biotechnology Value Fund, L.P., 363,000 shares held by Biotechnology Value Fund II, L.P. and 134,000 shares held by Investment 10, L.L.C. Also includes 149,100 shares BVF Investments, L.L.C., Biotechnology Value Fund, L.P., Biotechnology Value Fund II, L.P. and Investment 10, L.L.C. have the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of warrants.

(6) Based solely upon information contained in the Schedule 13G filed with the SEC on February 17, 2009. Includes 2,250,318 shares held by Baker Brothers Life Sciences, L.P., 667, L.P., Baker Bros. Investments II, L.P., FBB Associates, 14159, L.P. and Baker/Tisch

Investments, L.P. Also includes 111,674 shares Felix J. Baker and Julian C. Baker and their affiliates have the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of warrants. Felix J. Baker and Julian C. Baker maintain shared voting and dispositive power over the shares.

(7) Based solely upon information contained in the amended Schedule 13G filed with the SEC on December 10, 2009.

(8) Includes 64,167 shares that Dr. Evnin has the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of stock options.

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(9) Includes 64,167 shares that Dr. Oronsky has the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of stock options.

(10) Includes 468,520 shares that Dr. Laikind has the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of stock options. Also includes 3,662 shares purchased through participation in Metabasis 2004 Employee Stock Purchase Plan, or the 2004 ESPP.

(11) Includes 517,408 shares held by the Erion Family Trust, 49,382 shares held by each of the Mark Erion 2002 Grantor Retained Annuity Trust and the Sonja Erion 2002 Grantor Retained Annuity Trust, and 15,089 shares held by each of the Derek Mark Erion 2003 Irrevocable Trust, the Renske Marie Erion 2003 Irrevocable Trust and the Karel Arnt Erion 2003 Irrevocable Trust. Also includes 238,458 shares that Dr. Erion has the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of stock options. Also includes 10,027 shares purchased through participation in the 2004 ESPP.

(12) Includes 47,226 shares held by the Hale Family Trust dated February 10, 1986 and 13,111 shares held by Hale BioPharma Ventures, L.L.C. Also includes 3,000 shares Hale BioPharma Ventures, L.L.C. has the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of warrants. Also includes 215,483 shares that Mr. Hale has the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of stock options.

(13) Includes 42,250 shares held by the Edgardo and Suzanne Baracchini Living Trust Dated, April 22, 1998. Also includes 3,039 shares held by the Gabriella Baracchini Irrev. Trust and 3,038 shares held by the Alexander Baracchini Irrev. Trust. Also includes 255,510 shares that Dr. Baracchini has the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of stock options.

(14) Represents 64,167 shares that Mr. Burgess has the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of stock options.

(15) Represents 56,667 shares that Mr. Rohn has the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of stock options.

(16) Represents 30,834 shares that Dr. Schreiner has the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of stock options.

(17) Represents 18,681 shares that Dr. Stoner has the right to acquire from Metabasis within 60 days after October 23, 2009 pursuant to the exercise of stock options.

(18) Mr. Nguyen has no stock options that are vested within 60 days after October 23, 2009.

(19) Includes 1,476,654 shares pursuant to the exercise of stock options within 60 days after October 23, 2009 and 400,648 shares pursuant to the exercise of warrants within 60 days after October 23, 2009.

In addition to the shares identified in the table and notes above as being beneficially owned by certain persons because they underlie stock options which are exercisable on or within 60 days after October 23, 2009, such persons hold further stock options which would become exercisable on an accelerated basis immediately before the effective time of the merger. The number of additional shares subject to such further stock options is as follows: Mr. Baracchini, 136,424 shares; Mr. Burgess, 5,833 shares; Mr. Erion, 267,500 shares; Mr. Evnin, 5,833 shares; Mr. Hale, 105,833 shares; Mr. Laikind, 2,917 shares; Mr. Nguyen, 250,000 shares; Mr. Oronsky, 5,833 shares; Mr. Rohn, 5,833 shares; Mr. Schreiner, 9,166 shares; and Ms. Stoner, 21,319 shares.

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UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

The following unaudited pro forma condensed combined balance sheet is based on historical unaudited balance sheets of Ligand and Metabasis and has been prepared to reflect the merger as if it had been completed on the balance sheet date of September 30, 2009. The following unaudited pro forma condensed combined statements of operations give effect to the merger as if it had taken place on January 1, 2008, the beginning of the earliest period presented, in accordance with SEC guidance.

The merger will be accounted for under the acquisition method of accounting in accordance with ASC Topic 805, Business Combinations, as amended. Under the purchase method of accounting, the total estimated purchase price, calculated as described in Note 2 to these unaudited pro forma condensed combined financial statements, is allocated to the net tangible and intangible assets of Metabasis based on their estimated fair values. Management has made a preliminary allocation of the estimated purchase price to the tangible and intangible assets acquired and liabilities assumed based on various preliminary estimates. A final determination of these estimated fair values, which cannot be made prior to the completion of the merger, will be based on the actual net tangible and intangible assets of Metabasis that exist as of the date of completion of the merger, and upon the final purchase price. Differences between the preliminary and final purchase price allocations could have a material impact on the unaudited pro forma condensed combined financial information and Ligand s future results of operations and financial position.

The unaudited pro forma condensed combined financial information is based on the estimates and assumptions which are preliminary and have been made solely for purposes of developing such pro forma information. They do not include liabilities that may result from integration activities which are not presently estimable. The management of Ligand and Metabasis are in the process of making these assessments, and estimates of these costs are not currently known. The unaudited pro forma condensed combined financial statements are not necessarily an indication of the results that would have been achieved had the merger been completed as of the dates indicated or that may be achieved in the future.

Under the terms of the Merger Agreement, each share of Metabasis common stock will be converted into the right to receive a pro rata portion of a total cash payment equal to $3,207,500 less Metabasis estimated net liabilities (as defined in the merger agreement) at closing and also less $150,000 to be deposited in the Stockholders Representative s fund. In addition, each Metabasis stockholder will receive, for each share of Metabasis stock held, (i) one Roche CVR, (ii) one TR Beta CVR, (iii) one Glucagon CVR and (iv) one General CVR. At the closing of the merger, Ligand, Metabasis, the Stockholders Representative and a rights agent will also enter into four contingent value rights agreements, or CVR agreements, in the forms attached to this proxy statement/prospectus as *Annex B, Annex C, Annex D* and *Annex E*. The CVR agreements set forth the rights that former Metabasis stockholders will have with respect to each CVR to be held by them after the closing of the merger. Each Metabasis stockholder will receive one CVR under each of the four CVR agreements for each share of Metabasis stock held. The CVRs will not be listed on any securities exchange but will be generally tradable, subject to certain procedures.

This unaudited pro forma condensed combined financial information should be read in conjunction with the historical consolidated financial statements and notes thereto of Ligand and Metabasis and other financial information pertaining to Ligand and Metabasis, including Management s Discussion and Analysis of Financial Condition and Results of Operations and Risk Factors incorporated by reference or included herein.

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Pro Forma Condensed Combined

Balance Sheet

As of September 30, 2009

(Amounts in thousands, except share data)

	Ligand	Metabasis	Pro Forma Adjustments	Pro Forma Combined
ASSETS				
Current assets:				
Cash and cash equivalents	$ 5,160	$ 2,215	$ (3,418)a	$ 3,957
Short-term investments	39,033			39,033
Accounts receivable, net	2,110			2,110
Assets held for sale		867		867
Current portion of co-promote termination payments receivable	11,925			11,925
Other current assets	1,667	1,002		2,669
Total current assets	59,895	4,084	(3,418)	60,561
Restricted cash and investments	1,341			1,341
Property and equipment, net	9,893			9,893
Long-term portion of co-promote termination payments receivable	45,374			45,374
Goodwill and other identifiable intangible assets	482		28,120 b	28,602
Other assets	101			101
Total assets	$ 117,086	$ 4,084	$ 24,702	$ 145,872
LIABILITIES AND STOCKHOLDERS EQUITY				
Current liabilities:				
Accounts payable and accrued expenses	$ 26,790	$ 1,205	$	$ 27,995
Allowance for loss on returns, rebates and chargebacks related to discontinued operations	354			354
Current portion of accrued litigation settlement costs	1,180			1,180
Current portion of deferred gain	1,702			1,702
Current portion of co-promote termination liability	11,925			11,925
Current portion of equipment financing obligations	172	35		207
Current portion of deferred revenue	10,924			10,924
Total current liabilities	53,047	1,240		54,287
Long-term portion of co-promote termination liability	45,374			45,374
Long-term portion of deferred revenue	4,866			4,866
Long-term portion of deferred gain	2,128			2,128
Other long-term liabilities	12,824		14,573 b	27,397
Total liabilities	118,239	1,240	14,573	134,052
Commitments and contingencies				
Common stock subject to conditional redemption; 665,230 shares issued and outstanding at September 30, 2009	8,344			8,344
Stockholders equity:				
Common stock	119	35	(35)c	119
Additional paid-in capital	716,785	197,654	(197,654)d	716,785

Accumulated other comprehensive income	317			317
Accumulated deficit	(684,584)	(194,845)	207,818 e	(671,611)
Treasury stock, at cost; 6,607,905 shares	(42,134)			(42,134)
Total stockholders equity (deficit)	(9,497)	2,844	10,129	3,476
Total liabilities and stockholders equity	$ 117,086	$ 4,084	$ 24,702	$ 145,872

See Notes to Unaudited Pro Forma Condensed Combined Financial Information.

Pro Forma Condensed Combined

Statement of Operations

For the Nine Months Ended September 30, 2009

(Amounts in thousands, except share and per share data)

	Ligand	Metabasis	Pro Forma Adjustments	Pro Forma Combined
Revenues:				
Royalties	$ 6,386	$	$	$ 6,386
Collaborative research and development and other revenues	18,577	16,484		35,061
Total revenues	24,963	16,484		41,447
Operating costs and expenses:				
Research and development	29,744	11,240		40,984
General and administrative	12,190	7,488		19,678
Write-off of acquired in-process research and development	442			442
Gain on sale of assets held for sale		(821)		(821)
Lease termination costs	15,235	554		15,789
Total operating costs and expenses	57,611	18,461		76,072
Accretion of deferred gain on sale leaseback	(21,426)			(21,426)
Loss from operations	(11,222)	(1,977)		(13,199)
Other income (expense):				
Interest income	436	40	(51)f	425
Interest expense	(257)	(789)		(1,046)
Other, net	137	207		344
Total other income (expense), net	316	(542)	(51)	(277)
Loss before income taxes	(10,906)	(2,519)	(51)	(13,476)
Income tax benefit				
Loss from continuing operations	$ (10,906)	$ (2,519)	$ (51)	$ (13,476)
Basic and diluted per share amounts:				
Loss from continuing operations	$ (0.09)	$ (0.07)	$	$ (0.12)
Weighted average number of common shares	113,102,455	35,154,000	(35,154,000)g	113,102,455

See Notes to Unaudited Pro Forma Condensed Combined Financial Information.

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Pro Forma Condensed Combined

Statement of Operations

For the Year Ended December 31, 2008

(Amounts in thousands, except share and per share data)

	Ligand	Metabasis	Pro Forma Adjustments	Pro Forma Combined
Revenues:				
Royalties	$ 20,315	$	$	$ 20,315
Collaborative research and development and other revenues	7,000	4,810		11,810
Total revenues	27,315	4,810		32,125
Operating costs and expenses:				
Research and development	30,770	36,356		67,126
General and administrative	23,785	10,751		34,536
Write-off of acquired in-process research and development	72,000			72,000
Total operating costs and expenses	126,555	47,107		173,662
Accretion of deferred gain on sale leaseback	(1,964)			(1,964)
Loss from operations	(97,276)	(42,297)		(139,573)
Other income (expense):				
Interest income	2,161	916	(68)f	3,009
Interest expense	(202)	(933)		(1,135)
Other, net	(2,198)			(2,198)
Total other income (expense), net	(239)	(17)	(68)	(324)
Loss before income taxes	(97,515)	(42,314)	(68)	(139,897)
Income tax benefit	55			55
Loss from continuing operations	$ (97,460)	$ (42,314)	$ (68)	$ (139,842)
Basic and diluted per share amounts:				
Loss from continuing operations	$ (1.02)	$ (1.25)	$	$ (1.46)
Weighted average number of common shares	95,505,421	33,779,000	(33,779,000)g	95,505,421

See Notes to Unaudited Pro Forma Condensed Combined Financial Information.

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Notes to Unaudited Pro Forma Condensed

Combined Financial Statements

(1) Description of Transaction

On October 26, 2009, Ligand and Merger Sub entered into a merger agreement with Metabasis, which was amended on November 25, 2009. Upon completion of the merger, if the merger agreement is adopted by Metabasis stockholders and the other conditions to the merger are satisfied or waived, each share of Metabasis common stock will be converted into the right to receive a pro rata portion of a total cash payment equal to $3,207,500 less Metabasis estimated net liabilities (as defined in the merger agreement) at closing and also less $150,000 to be deposited in the Stockholders Representative s fund. In addition, each Metabasis stockholder will receive, for each share of Metabasis stock held, (i) one Roche CVR, (ii) one TR Beta CVR, (iii) one Glucagon CVR and (iv) one General CVR.

At the closing of the merger, Ligand, Metabasis, the Stockholders Representative and a rights agent will also enter into four contingent value rights agreements, or CVR agreements, in the forms attached to this proxy statement/prospectus as *Annex B, Annex C, Annex D* and *Annex E.* The CVR agreements set forth the rights that former Metabasis stockholders will have with respect to each CVR to be held by them after the closing of the merger. Each Metabasis stockholder will receive one CVR under each of the four CVR agreements for each share of Metabasis stock held. The CVRs will not be listed on any securities exchange but will be generally tradable, subject to certain procedures.

Roche CVR. Subject to certain adjustments (including the required payments of certain contingent liabilities and contributions to the Stockholders Representative fund), holders of the Roche CVRs will receive (if and when payable on the January 1st or July 1st following the triggering payment event), the following payouts: (i) 65% of any milestone payments received by Ligand or Metabasis after October 1, 2009 under a collaboration and license agreement with Hoffmann-La Roche Inc. and its affiliates (the Roche Agreement); (ii) 68% of any royalty payments received by Ligand or Metabasis after October 1, 2009 under the Roche Agreement; (iii) 65% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand or Metabasis after October 1, 2009) received by Ligand or Metabasis after October 1, 2009 in connection with a sale or transfer of the Roche Agreement rights (including royalty rights, milestone payment rights or rights to all or any portion of a drug candidate or technology licensed pursuant to the Roche Agreement); and (iv) a proportionate share of any amounts finally distributed to the holders of CVRs from the Stockholders Representative fund.

TR Beta CVR. Subject to certain adjustments (including the required payments of certain contingent liabilities and contributions to the Stockholders Representative fund), holders of the TR Beta CVRs will receive (if and when payable on the January 1st or July 1st following the triggering payment event), the following payouts: (i) (a) 50% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions, including licensing or sale transactions, with respect to the TR Beta Program (as defined in the TR Beta CVR agreement) before the sixth anniversary of the merger, (b) 40% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions, including licensing or sale transactions, with respect to the TR Beta Program after the sixth anniversary of the merger and before the seventh anniversary of the merger, (c) 30% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions, including licensing or sale transactions, with respect to the TR Beta Program after the seventh anniversary of the merger and before the eighth anniversary of the merger, or (d) 20% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions, including licensing or sale transactions, with respect to the TR Beta Program after the eighth anniversary of the merger and before the tenth anniversary of the merger; and (ii) a proportionate share of any amounts finally distributed to the holders of CVRs from the Stockholders Representative fund.

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Notes to Unaudited Pro Forma Condensed

Combined Financial Statements (Continued)

Glucagon CVR. Subject to certain adjustments (including the required payments of certain contingent liabilities and contributions to the Stockholders Representative fund), holders of the Glucagon CVRs will receive (if and when payable on the January 1st or July 1st following the triggering payment event), the following payouts: (i) (a) 50% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions, including licensing or sale transactions, with respect to the Glucagon Program (as defined in the Glucagon CVR agreement) before the sixth anniversary of the merger, (b) 40% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions, including licensing or sale transactions, with respect to the Glucagon Program after the sixth anniversary of the merger and before the seventh anniversary of the merger, (c) 30% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions, including licensing or sale transactions, with respect to the Glucagon Program after the seventh anniversary of the merger and before the eighth anniversary of the merger or (d) 20% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions, including licensing or sale transactions, with respect to the Glucagon Program after the eighth anniversary of the merger and before the tenth anniversary of the merger; and (ii) a proportionate share of any amounts finally distributed to the holders of CVRs from the Stockholders Representative fund.

General CVR. Subject to certain adjustments (including the required payments of certain contingent liabilities and contributions to the Stockholders Representative fund), holders of the General CVRs will receive (if and when payable on the January 1st or July 1st following the triggering payment event), the following payouts: (i) the amount of any shortfall of Ligand s interim or total $8 million guaranteed funding obligations under the merger agreement; (ii) (a) 50% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with each transaction, including a licensing or sale transaction, with respect to other drug research and/or development programs conducted by Metabasis before the merger, including the DGAT-1 Program, FBPase Inhibitor Program, GK Program, HepDirect Program and Pradefovir Program (each as defined in the General CVR agreement), if Ligand has by the time of the transaction not made research and/or development investments of at least $700,000 on such program or (b) 25% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with each transaction, including a licensing or sale transaction, with respect to other drug research and/or development programs conducted by Metabasis before the merger, including the DGAT-1 Program, FBPase Inhibitor Program, GK Program, HepDirect Program and Pradefovir Program, if Ligand has by the time of the transaction made research and/or development investments of at least $700,000 on such program; (iii) (a) 90% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand or Metabasis after October 1, 2009) received by Ligand or Metabasis in connection with transactions, including licensing or sale transactions, with respect to the 7133 Program (as defined in the General CVR agreement) that occur after October 1, 2009 and within six months after the merger, (b) 30% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand or Metabasis after October 1, 2009) received by Ligand in connection with transactions, including licensing or sale transactions, with respect to the 7133 Program that occur after the sixth month anniversary of the merger and before the two year anniversary of the merger or (c) 10% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions, including licensing or sale transactions, with respect to the 7133 Program that occur after the two year anniversary of the merger and before the ten year anniversary of the merger; (iv) 60% of the aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with (a) any sale of certain shares of PeriCor Therapeutics, Inc. stock held by Metabasis, (b) any milestone payments or royalty payments payable directly to Ligand or Metabasis pursuant to certain PeriCor Agreements (as defined in the General CVR agreement) or (c) any full or partial sale or transfer

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Notes to Unaudited Pro Forma Condensed

Combined Financial Statements (Continued)

of any rights to receive such milestone payments or royalty payments or all or any portion of a drug candidate or technology from the drug development program licensed pursuant to certain PeriCor Agreements; (v) 100% of the cash received by Ligand upon a cash exercise of any of the Metabasis warrants outstanding as of the date of the merger; (vi) 50% of the aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with any sale of Metabasis QM/MM Technology (as defined in the General CVR agreement); and (vii) a proportionate share of any amounts finally distributed to the holders of CVRs from the Stockholders Representative fund.

(2) Purchase Price

Total estimated purchase price is summarized as follows (in thousands):

Estimated cash payment to Metabasis stockholders	$ 1,818
Estimated fair value of Contingent Value Rights	14,573
Total preliminary estimated purchase price	$ 16,391

For purposes of the preliminary purchase price allocation, the estimated fair value of the Roche, TR Beta, Glucagon and General Contingent Value Rights is based upon the total estimated fair value of Metabasis of approximately $30 million, which is consistent with Metabasis market value as of October 26, 2009 (the last full trading day before the public announcement of the merger agreement). For purposes of estimating the preliminary purchase price, Ligand s management assumed that an aggregate of 50% of the total identifiable intangible assets estimated fair value would be paid out to Metabasis stockholders under the provisions of the Contingent Value Rights agreements. As of November 23, 2009, the market value of the Metabasis common stock had decreased significantly to approximately $13 million. The decrease could indicate a significantly lower value of the identifiable intangible assets and a corresponding reduction in purchase price. For example, based on assumptions used by Ligand s management, the preliminary estimated purchase price on November 23, 2009 would have been $7.1 million, resulting in estimated fair value of the identifiable intangible assets of $9.5 million, Contingent Value Rights of $5.3 million and gain on acquisition of $5.3 million.

For purposes of this pro forma analysis, the above estimated purchase price has been allocated based on a preliminary estimate of the fair value of assets acquired and liabilities assumed:

	(in thousands)
Assets Acquired:	
Cash & cash equivalents	$ 2,215
Assets held for sale	867
Other assets	1,002
Goodwill and other identifiable intangible assets	28,120
Total Assets	32,204
Liabilities Assumed:	
Accounts payable & accrued liabilities	1,205
Payable to Metabasis stockholders	14,573
Current portion of capital lease obligations	35
Total Liabilities	15,813

Total Purchase Price	$	16,391

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Notes to Unaudited Pro Forma Condensed

Combined Financial Statements (Continued)

(3) Pro Forma Adjustments

Adjustments included in the column under the heading Pro Forma Adjustments are related to the following (in thousands, except share information):

(a) Cash and cash equivalents adjustments consist of the following:

Estimated cash payment to Metabasis stockholders	$ (1,818)
Estimated Ligand transaction fees	(400)
Estimated Metabasis transaction fees	(1,200)
Total	$ (3,418)

(b) To record the estimated fair value of goodwill and other identifiable intangible assets, which is primarily related to Metabasis internal and partnered early stage product candidates. For purposes of the preliminary purchase price allocation, goodwill and other identifiable intangible assets are combined for this presentation which includes the estimated fair value of the related liability for the CVR agreements and resulting gain on acquisition. No amortizable intangible assets have been identified in the preliminary analysis. For purposes of estimating the preliminary purchase price, Ligand s management assumed that an aggregate of 50% of the total identifiable intangible assets estimated fair value would be paid out to Metabasis stockholders under the provisions of the Contingent Value Rights agreements based on various percentage payouts included in the individual Contingent Value Rights agreements. An increase in the estimated aggregate percentage paid to Metabasis stockholders would result in an increase to the estimated liability for the CVR agreements and a decrease to the gain on acquisition. A decrease in the estimated aggregate percentage paid to Metabasis stockholders would result in a decrease to the estimated liability for the CVR agreements and an increase to the gain on acquisition. The final valuation will be performed as of the date of completion of the merger. Differences between the preliminary and final valuation could have a material impact on the accompanying unaudited pro forma condensed combined financial statement information and Ligand s future results of operations and financial position.

(c) To record the following adjustments to common stock:

Elimination of Metabasis common stock	$ (35)

(d) To record the following adjustments to additional paid-in capital:

Elimination of Metabasis paid-in capital	$ (197,654)

(e) To record the following adjustments to accumulated deficit:

Elimination of Metabasis accumulated deficit	$ 194,845
Adjustment for transaction related fees	(1,600)
Gain on acquisition	14,573
Total	$ 207,818

The gain on acquisition is a result of the preliminary purchase price allocation. As of November 23, 2009, the market value of the Metabasis capital stock had decreased significantly to approximately $13 million. The decrease could indicate a significantly lower value of the identifiable intangible assets and a corresponding reduction in the purchase price.

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Notes to Unaudited Pro Forma Condensed

Combined Financial Statements (Continued)

(f) To eliminate interest income foregone on net cash and cash equivalents used to pay transaction related costs.

(g) For purposes of these unaudited pro forma condensed combined financial statements, the unaudited pro forma combined basis and diluted net income per share amounts are based on the historical weighted average number of shares of Ligand common stock outstanding:

For the nine months ended September 30, 2009:

Eliminate Metabasis common stock	(35,154,000)

For the twelve months ended December 31, 2008:

Eliminate Metabasis common stock	(33,779,000)

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EXPERTS

The consolidated financial statements and schedule and management s report on the effectiveness of internal control over financial reporting of Ligand Pharmaceuticals Incorporated as of December 31, 2008 appearing in Ligand s annual report on Form 10-K for the year ended December 31, 2008 incorporated by reference in this proxy statement/prospectus have been audited by Grant Thornton LLP, an independent registered public accounting firm, to the extent and for the periods set forth in their reports incorporated herein by reference, and are included in reliance upon such reports given upon the authority of said firm as experts in auditing and accounting.

The consolidated financial statements and schedule and management s report on the effectiveness of internal control over financial reporting of Ligand Pharmaceuticals Incorporated as of December 31, 2007 incorporated by reference in this Amendment No. 1 to S-4 Registration Statement and Proxy Statement have been audited by BDO Seidman, LLP, an independent registered public accounting firm, to the extent and for the periods set forth in their reports incorporated herein by reference, and are included in reliance upon such reports given upon the authority of said firm as experts in auditing and accounting.

The financial statements of Metabasis Therapeutics, Inc. at December 31, 2007 and 2008, and for each of the three years in the period ended December 31, 2008 included in this Proxy Statement, which is made a part of this Prospectus and Registration Statement, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report (which contains an explanatory paragraph describing conditions that raise substantial doubt about Metabasis Therapeutics, Inc. s ability to continue as a going concern as described in Note 2 to the financial statements), appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

LEGAL MATTERS

The legality and binding effect of the CVRs offered hereby are being passed upon for Ligand by Stradling Yocca Carlson & Rauth, San Diego, California.

WHERE YOU CAN FIND MORE INFORMATION

Ligand and Metabasis each file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information that the companies file at the SEC s Public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. The SEC maintains an internet site that contains annual, quarterly and current reports, proxy and information statements and other information that issuers, including Ligand and Metabasis, file electronically with the SEC. These electronic SEC filings are available to the public at the SEC s Internet site, www.sec.gov. You can also review Ligand s SEC filings on its web site at http://www.ligand.com and Metabasis SEC filings on its web site at http://www.mbasis.com. Information included on Ligand s or Metabasis web site is not a part of this proxy statement/prospectus.

Ligand has filed a registration statement on Form S-4 to register with the SEC the offering and sale of the CVRs to Metabasis stockholders in the merger. You should rely only on the information contained in this proxy statement/prospectus or on information to which Metabasis has incorporated by reference into this proxy statement/prospectus This proxy statement/prospectus does not contain all of the information set forth in the registration statement because certain parts of the registration statement are omitted as provided by the rules and regulations of the SEC. You may inspect and copy the registration statement at the SEC s reference room or web addresses listed above.

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INCORPORATION BY REFERENCE

The SEC allows Ligand to incorporate by reference information into this proxy statement/prospectus, which means that Ligand can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this proxy statement/prospectus, except for any information superseded by information contained directly in this proxy statement/prospectus. This proxy statement/prospectus incorporates by reference the documents described below that Ligand has previously filed with the SEC, as well as the annexes to this proxy statement/prospectus. These documents contain important information about Ligand and the financial condition of Ligand.

The following documents listed below that Ligand has previously filed with the SEC are incorporated by reference:

- the description of Ligand s common stock contained in Ligand s Registration Statement on Form 8-A filed on November 21, 1994, and any amendment or report filed for the purpose of updating such description;
- the description of Ligand s preferred shares purchase rights contained in Ligand s Registration Statement on Form 8-A filed on October 17, 2006, and any amendment or report filed for the purpose of updating such description;
- Ligand s definitive proxy statement/prospectus on Schedule 14A filed with the SEC on April 29, 2009;
- Ligand s annual report on Form 10-K for the fiscal year ended December 31, 2008 filed with the SEC on March 16, 2009;
- Ligand s quarterly report on Form 10-Q for the fiscal quarter ended March 31, 2009 filed with the SEC on May 11, 2009;
- Ligand s quarterly report on Form 10-Q for the fiscal quarter ended June 30, 2009 filed with the SEC on August 4, 2009;
- Ligand s quarterly report on Form 10-Q for the fiscal quarter ended September 30, 2009 filed with the SEC on November 9, 2009;
- Ligand s current reports on Form 8-K filed with the SEC on January 26, 2009, February 6, 2009, February 18, 2009, February 20, 2009, March 27, 2009, April 16, 2009, April 22, 2009, June 1, 2009, June 24, 2009, August 4, 2009, August 11, 2009, August 24, 2009, September 10, 2009, October 1, 2009, October 28, 2009, November 6, 2009, November 9, 2009, November 19, 2009, November 24, 2009, December 1, 2009, December 15, 2009, December 17, 2009 and December 21, 2009; and
- Ligand s current report on Form 8-K/A filed with the SEC on February 25, 2009.

All documents that Ligand files pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this proxy statement/prospectus and before the later of the date of Metabasis special meeting or the date on which the offering of shares of Ligand common stock under this proxy statement/prospectus is completed or terminated shall also be deemed to be incorporated by reference in this proxy statement/prospectus. Notwithstanding anything herein to the contrary, any information furnished under Item 2.02 or Item 7.01 of Ligand s current reports on Form 8-K and any other information which is furnished, but not filed with the SEC, is not incorporated herein by reference.

Ligand has supplied all information contained in this proxy statement/prospectus relating to Ligand and Merger Sub, and Metabasis has supplied all information contained in this proxy statement/prospectus relating to Metabasis.

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You may obtain any of the documents incorporated by reference from the SEC s public reference room or the SEC s Internet web site described above in the section entitled Where You Can Find More Information. Documents incorporated by reference in this proxy statement/prospectus are also available from Ligand without charge, excluding all exhibits unless specifically incorporated by reference in such documents. Stockholders may obtain documents incorporated by reference in this proxy statement/prospectus by requesting them in writing or by telephone from Ligand at the following address:

Ligand Pharmaceuticals Incorporated

Attention: Investor Relations

11085 North Torrey Pines Road

Suite 300

La Jolla, California 92037

Telephone: (858) 550-7500

In order to receive timely delivery of the documents, you must make your request no later than January 17, 2009. If you request any incorporated documents, Ligand will strive to mail them to you by first class mail, or another equally prompt means, within one business day of receipt of your request.

You should rely only on the information contained in this proxy statement/prospectus to vote your shares at the special meeting of Metabasis stockholders. Neither Ligand nor Metabasis has authorized anyone to provide you with information that differs from that contained in this proxy statement/prospectus. This proxy statement/prospectus is dated December 22, 2009. You should not assume that the information contained in this proxy statement/prospectus is accurate as of any date other than that date, and neither the mailing of this proxy statement/prospectus to stockholders nor the issuance of shares of Ligand common stock and CVRs in the merger shall create any implication to the contrary.

This proxy statement/prospectus does not constitute an offer to sell, or a solicitation of an offer to purchase, the securities offered by this proxy statement/prospectus, or the solicitation of a proxy, in any jurisdiction to or from any person to whom or from whom it is unlawful to make such offer, solicitation of an offer or proxy solicitation in such jurisdiction.

Ligand Pharmaceuticals Incorporated s trademarks, trade names and service marks referenced in this proxy statement/prospectus include Ligand and ECLiPS. Metabasis Therapeutics, Inc. s trademarks, trade names and service marks referenced in this proxy statement/prospectus include Metabasis and the Metabasis logo. All other trademarks, trade names or service marks are owned by their respective owners.

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METABASIS THERAPEUTICS, INC.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders

Metabasis Therapeutics, Inc.

We have audited the accompanying balance sheets of Metabasis Therapeutics, Inc. as of December 31, 2008 and 2007, and the related statements of operations, stockholders equity, and cash flows for each of the three years in the period ended December 31, 2008. 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. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Metabasis Therapeutics, Inc. at December 31, 2008 and 2007, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles.

The accompanying financial statements have been prepared assuming that Metabasis Therapeutics, Inc. will continue as a going concern. As more fully described in Note 2, the Company s existing working capital is not sufficient to meet its cash requirements to fund planned operating expenses and working capital requirements through December 31, 2009 without additional sources of cash. This condition raises substantial doubt about the Company s ability to continue as a going concern. Management s plans in regard to this matter is also described in Note 2. The most recent year financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of this uncertainty.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Metabasis Therapeutics, Inc. s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 24, 2009 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

San Diego, California

March 27, 2009

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METABASIS THERAPEUTICS, INC.

BALANCE SHEETS

(in thousands, except par value data)

	December 31, 2008	December 31, 2007
Assets		
Current assets:		
Cash and cash equivalents	$ 12,599	$ 14,141
Securities available-for-sale	9,000	28,297
Prepaids and other current assets	1,091	1,157
Total current assets	22,690	43,595
Property and equipment, net	4,779	6,356
Other assets	273	172
Total assets	$ 27,742	$ 50,123
Liabilities and stockholders equity		
Current liabilities:		
Accounts payable	$ 93	$ 802
Accrued compensation	2,439	3,181
Accrued liabilities	1,798	4,132
Deferred revenue, current portion	5,652	1,321
Current portion of long-term debt	3,890	2,068
Current portion of capital lease obligations	26	23
Total current liabilities	13,898	11,527
Deferred revenue, net of current portion	2,499	
Deferred rent	3,079	2,595
Long-term debt	4,658	3,845
Capital lease obligations, net of current portion	27	55
Other Long Term Liabilities	200	
Total liabilities	24,361	18,022
Stockholders equity:		
Preferred stock, $0.001 par value; 5,000 shares authorized at December 31, 2008 and December 31, 2007, no shares issued or outstanding		
Common stock, $0.001 par value; 100,000 shares authorized at December 31, 2008 and December 31, 2007; 35,152 and 30,754 shares issued and outstanding at December 31, 2008 and December 31, 2007, respectively	35	31
Additional paid-in capital	195,640	182,003
Accumulated deficit	(192,326)	(150,012)
Accumulated other comprehensive loss	32	79
Total stockholders equity	3,381	32,101
Total liabilities and stockholders equity	$ 27,742	$ 50,123

See accompanying notes.

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METABASIS THERAPEUTICS, INC.

STATEMENTS OF OPERATIONS

(in thousands, except per share data)

	Years Ended December 31,		
	2008	**2007**	**2006**
Revenues:			
License fees	$ 2,344	$ 5,301	$ 1,984
Sponsored research	2,466	3,398	2,210
Other revenue		320	192
Total revenues	4,810	9,019	4,386
Operating expenses:			
Research and development	36,356	40,915	29,945
General and administrative	10,751	12,442	11,250
Total operating expenses	47,107	53,357	41,195
Loss from operations	(42,297)	(44,338)	(36,809)
Other income (expense):			
Interest income	916	3,095	3,932
Interest expense	(933)	(556)	(391)
Total other (expense) income	(17)	2,539	3,541
Net loss	$ (42,314)	$ (41,799)	$ (33,268)
Basic and diluted net loss per share	$ (1.25)	$ (1.37)	$ (1.15)
Shares used to compute basic and diluted net loss per share	33,779	30,587	29,019

See accompanying notes.

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METABASIS THERAPEUTICS, INC.

STATEMENTS OF STOCKHOLDERS EQUITY

(in thousands)

	Common Stock						
	Shares	Amount	Additional Paid-In Capital	Deferred Compensation	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders Equity
Balance at December 31, 2005	25,313	$ 25	$ 137,822	$ (3,266)	$ (74,945)	$ (54)	$ 59,582
Net loss					(33,268)		(33,268)
Unrealized gain on short-term investments						77	77
Net comprehensive loss							(33,191)
Issuance of common stock in registered direct offering, net of offering costs of $2,696	4,938	5	37,299				37,304
Issuance of common stock for option exercises	44		95				95
Issuance of common stock pursuant to the Employee Stock Purchase Plan	198		603				603
Reclass of deferred compensation			(3,266)	3,266			
Stock-based compensation			3,745				3,745
Balance at December 31, 2006	30,493	$ 30	$ 176,298	$	$ (108,213)	$ 23	$ 68,138
Net loss					(41,799)		(41,799)
Unrealized gain on short-term investments						56	56
Net comprehensive loss							(41,743)
Issuance of common stock for option exercises	48		71				71
Issuance of common stock pursuant to the Employee Stock Purchase Plan	206	1	599				600
Exercise of series C preferred warrants	7						
Stock-based compensation			5,035				5,035
Balance at December 31, 2007	30,754	$ 31	$ 182,003	$	$ (150,012)	$ 79	$ 32,101
Net loss					(42,314)		(42,314)
Unrealized loss on short-term investments						(47)	(47)
Net comprehensive loss							(42,361)
Issuance of common stock for option exercises	12		10				10
Issuance of common stock pursuant to the Employee Stock Purchase Plan	215		169				169
Exercise of warrants pursuant to warrant exchange	1,686	2	3,613				3,615
Issuance of common stock pursuant to private placement	2,485	2	5,906				5,908
Stock-based compensation			3,939				3,939
Balance at December 31, 2008	35,152	$ 35	$ 195,640	$	$ (192,326)	$ 32	$ 3,381

See accompanying notes.

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METABASIS THERAPEUTICS, INC.

STATEMENTS OF CASH FLOWS

(in thousands)

	Years Ended December 31,		
	2008	**2007**	**2006**
Operating activities			
Net loss	$ (42,314)	$ (41,799)	$ (33,268)
Adjustments to reconcile net loss to net cash used in operating activities:			
Stock-based compensation	3,939	5,035	3,745
Depreciation and amortization	2,073	2,028	1,602
Deferred rent	484	1,029	1,236
Amortization of discount and premium on securities available-for-sale	(494)	(2,220)	(925)
Loss on disposal of assets	29	153	29
Change in operating assets and liabilities:			
Other current assets	66	333	679
Other assets	99	7	(27)
Deferred revenue	6,830	(3,501)	167
Accounts payable	(709)	(251)	(692)
Accrued compensation and other liabilities	(3,076)	2,803	118
Net cash flows used in operating activities	(33,073)	(36,383)	(27,336)
Investing activities			
Purchases of securities available-for-sale	(24,498)	(78,358)	(134,752)
Sales/maturities of securities available-for-sale	44,242	118,208	104,179
Purchases of property and equipment	(525)	(2,274)	(3,230)
Net cash flows provided by (used in) investing activities	19,219	37,576	(33,803)
Financing activities			
Issuance of common stock, net	9,702	671	38,002
Principal payments on debt and capital lease obligations	(2,390)	(1,965)	(1,486)
Proceeds received from debt and capital lease obligations	5,000	2,190	4,078
Net cash flows provided by financing activities	12,312	896	40,594
(Decrease) increase in cash and cash equivalents	(1,542)	2,089	(20,545)
Cash and cash equivalents at beginning of year	14,141	12,052	32,597
Cash and cash equivalents at end of period	$ 12,599	$ 14,141	$ 12,052
Supplemental disclosure of cash flow information:			
Interest paid	$ 933	$ 556	$ 405
Supplemental schedule of noncash investing and financing activities:			
Disposal of assets	$ 26	$ 4,563	$
Net-share settlement of warrant	$	$ 56	$
Unrealized (loss) gain on short-term investments	$ (47)	$ 56	$ 77

Debt issuance costs	$	200	$		$	
Reclass of deferred compensation	$		$		$	3,266
Fair value of warrant issued in connection with the Committed Equity Financing Facility	$		$		$	1,098

See accompanying notes.

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METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS

1. Organization and Basis of Presentation

Metabasis Therapeutics, Inc. (Metabasis or the Company) is a biopharmaceutical company focused on the discovery development of novel drugs by applying our proprietary technologies, scientific expertise and unique capabilities for targeting the liver and liver pathways.

2. Going Concern

The Company has incurred significant net losses since inception and has relied on its ability to fund its operations through private equity financings, an initial public offering, private placements of common stock, a registered direct offering of common stock, proceeds from business collaborations and other traditional debt financings. Management expects operating losses and negative cash flows to continue for the foreseeable future as the Company incurs additional costs and expenses related to the continued development of its products. The Company s working capital will not be sufficient to fund its operations through December 31, 2009 without additional sources of cash. The funding of on-going operating expenses is dependent upon the Company s ability to generate significant additional funding through equity financings, attainment of milestones from existing collaboration agreements, entering into new strategic collaborations with respect to one or more of its metabolic disease assets and licensing or otherwise monetizing its hepatitis B or primary liver cancer programs. If the Company is unable to generate sufficient additional funding in a timely manner, it will be required to seek additional resources by pursuing other strategic alternatives including the merger with or sale of some or all of its assets to another company, or cease operations entirely. These conditions raise substantial doubt about the Company s ability to continue as a going concern. The accompanying financial statements have been prepared on a going concern basis that contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The financial statements do not include adjustments to reflect the possible future effects on the recoverability and classification of recorded assets or the amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

3. Summary of Significant Accounting Policies

Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash and highly liquid instruments with original maturities of three months or less when purchased.

Fair Value of Financial Instruments

In September 2006, the Financial Accounting Standards Board (the FASB) issued Statement of Financial Accounting Standards (SFAS) No. 157, *Fair Value Measurements* (SFAS No. 157). This statement provides a definition of fair value, establishes a hierarchy for measuring fair value in GAAP, and requires certain disclosures about fair values used in financial statements. This statement does not extend the use of fair value beyond what is currently required by other pronouncements, and it does not pertain to stock-based compensation under SFAS No. 123(R), *Share-Based Payment,* or to leases under SFAS No. 13, *Accounting for Leases.*

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METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

This statement was effective for financial statements issued for fiscal years beginning after November 15, 2007 (beginning with the Company s 2008 fiscal year). On February 14, 2008, FASB Staff Position (FSP) FAS 157-2, *Effective Date of FASB Statement No. 157* (FSP FAS 157-2), was issued. FSP FAS 157-2 defers application of SFAS No. 157 for non-financial assets and liabilities to years beginning after November 15, 2008 (beginning with the Company s 2009 fiscal year). As a result, the Company partially adopted SFAS No. 157 as it relates to the Company s financial assets and liabilities until it is required to apply this pronouncement to its non-financial assets and liabilities beginning with fiscal year 2009. The adoption did not have any effect on the Company s results of operations or financial condition.

The Company applies fair value accounting to its securities available-for-sale in accordance with SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities* (SFAS No. 115). These securities consist of treasury backed money market funds, corporate bonds and commercial paper. Due to the current market conditions, the Company no longer invests in asset backed securities. The following table shows the fair value measurement for its financial assets at December 31, 2008 and the fair value hierarchy level, as defined in SFAS No. 157.

		Fair Value Measurements (in thousands)		
Description	**Asset Total**	**Quoted Prices in Active Markets for Identical Assets (Level 1)**	**Significant Other Observable Inputs (Level 2)**	**Significant Unobservable Inputs (Level 3)**
Securities available-for-sale	$ 9,000	$ 9,000	$	$

Asset classes that fall within the Level 1 fair value hierarchy are those assets whose fair value assumptions are based on market data obtained from sources independent of the Company (observable inputs). Level 1 observable inputs are quoted prices for identical items in active markets that the Company has access to at the measurement date.

Asset classes that fall within the Level 2 fair value hierarchy are those assets whose fair value assumptions are also based on independent market data. Level 2 observable inputs are quoted prices for similar items in active markets or quoted prices for identical or similar items in inactive markets. An inactive market is one where there are few transactions, the prices are not current, price quotations vary substantially over time or among market makers or where little information is released publicly.

Asset classes that fall within the Level 3 fair value hierarchy are those assets whose fair value assumptions are based on the Company s own information.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities, including an amendment of SFAS No. 115* (SFAS No. 159). SFAS No. 159 expands the use of fair value accounting but does not affect existing standards that require assets or liabilities to be carried at fair value. Under SFAS No. 159, a company may elect to use fair value to measure accounts and loans receivable, available-for-sale and held-to-maturity securities, equity method investments, accounts payable, guarantees and issued debt. Other eligible items include firm commitments for financial instruments that otherwise would not be recognized at inception and non-cash warranty obligations where a warrantor is permitted to pay a third party to provide the warranty goods or services. If the use of fair value is elected, any upfront costs and fees related to the item must be recognized in earnings and cannot be deferred, such as debt issuance costs. The fair value election is irrevocable and generally made on an instrument-by-instrument basis, even if a company has similar instruments that it elects not to measure based on fair value. At the adoption date, unrealized gains and losses on existing items for which fair value has been elected are reported as a cumulative

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METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

adjustment to beginning retained earnings. Subsequent to the adoption of SFAS No. 159, changes in fair value are recognized in earnings. SFAS No. 159 was effective for fiscal years beginning after November 15, 2007 (beginning with the Company s 2008 fiscal year).

The Company considers the carrying amount of cash and cash equivalents, prepaid expenses and other current assets, securities available-for-sale, accounts receivable, accounts payable, accrued liabilities and deferred revenue to be representative of their respective fair values because of the short-term nature of those instruments. Based on the borrowing rates currently available to the Company for loans with similar terms, management believes the fair value of the long-term obligations approximate their carrying value. Therefore, the Company has elected not to apply the fair value option to these financial assets and liabilities under SFAS No. 159. However, the Company does apply fair value accounting to its securities available-for-sale in accordance with SFAS No. 115.

Short-term investments are classified as available-for-sale and are carried at fair value, with unrealized gains and losses reported in stockholders equity. The amortized cost of debt securities in this category is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization is included in interest income. Realized gains and losses and declines in value judged to be other-than-temporary, if any, on available-for-sale securities are included in other income. The cost of securities sold is based on the specific-identification method. Interest and dividends on securities classified as available-for-sale are included in interest income. Total realized gains from fair value changes included in earnings for the fiscal years ended December 31, 2008, 2007 and 2006 were immaterial. There were no cumulative adjustments to beginning retained earnings as a result of adopting SFAS No. 159.

Concentration of Credit Risks

Financial instruments that potentially subject the Company to a significant concentration of credit risk consist primarily of cash and cash equivalents and securities available-for-sale. The Company invests its excess cash in treasury backed money market funds, corporate bonds and commercial paper. Due to the current market conditions, the Company no longer invests in asset backed securities. In accordance with its investment policy, the Company does not invest in auction rate securities. The Company has established guidelines relative to diversification of its cash investments and their maturities that are intended to secure safety and liquidity. These guidelines are periodically reviewed and modified to take advantage of trends in yields and interest rates and changes in the Company s operations and financial position. To date, the Company has not experienced any impairment losses on its cash equivalents or securities available-for-sale.

Property and Equipment

Property and equipment is carried at cost less accumulated depreciation. Depreciation is computed on the straight-line method and depending on asset classification, over a period of three to five years. Leasehold improvements are amortized over the estimated useful life of the asset or the lease term, whichever is shorter.

Impairment of Long-Lived Assets

The Company assesses potential impairment to its long-lived assets in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets,* when there is evidence that events or changes in circumstances indicate that the carrying amount of an asset may not be recovered. In connection with a corporate restructuring in November 2008 (Note 6), the Company evaluated its long-lived assets for impairment. The impact of the restructuring to long-lived assets was deemed immaterial.

METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

Revenue Recognition

The Company s revenue recognition policies are in accordance with the Staff Accounting Bulletin (SAB) No. 104, *Revenue Recognition,* and Emerging Issues Task Force (EITF) Issue No. 00-21, *Revenue Arrangements with Multiple Deliverables*. The Company s revenues are primarily related to collaborations with pharmaceutical companies. The Company s agreements generally contain multiple elements, including access to proprietary technologies and research and development services. Payments under collaborations are generally made in the form of up-front license fees, milestone payments and downstream royalties. All fees are nonrefundable. Upfront, nonrefundable fees under the Company s collaborations and advance payments for sponsored research, which are in excess of amounts earned are classified as deferred revenue and are recognized as income over the period of performance obligation. Nonrefundable upfront fees, which do not require the Company s continuing involvement, or which do not contain future performance obligations, are recognized when received.

Amounts received for sponsored research funding are recognized as revenues as the services are performed. These agreements are on a best-efforts basis and do not require scientific achievement as a performance obligation and provide for payment to be made when costs are incurred or the services are performed.

Revenue from milestones is recognized when earned, provided that (i) the milestone event is substantive and its achievability was not reasonably assured at the inception of the agreement, and (ii) collaborator funding (if any) of the Company s performance obligations after the milestone achievement will continue at a level comparable to before the milestone achievement. If both of these criteria are not met, the milestone payment is recognized as revenue over the remaining minimum period of the Company s performance obligations under the agreement.

Research and Development

All costs of research and development, including those incurred in relation to the Company s collaborative agreements, are expensed in the period incurred. Research and development costs primarily consist of salaries and related expenses for personnel, stock-based compensation expense, outside service providers, facilities costs, fees paid to consultants, professional services, travel costs, dues and subscriptions, depreciation and materials used in clinical trials and research and development. The Company reviews and accrues clinical trials expenses based on work performed, which relies on estimates of total costs incurred based on completion of patient studies and other events. The Company follows this method since reasonably dependable estimates of the costs applicable to various stages of a research agreement or clinical trial can be made. Accrued clinical development costs are subject to revisions as trials progress to completion. Revisions are charged to expense in the period in which the facts that give rise to the revision become known.

Stock-Based Compensation

In March 2005, the Securities and Exchange Commission (SEC) issued SAB No. 107*, Share-Based Payments,* which provides guidance on the implementation of SFAS No. 123R. The Company applied the principles of SAB No. 107 in conjunction with its adoption of SFAS No. 123R.

The Company adopted SFAS No. 123R effective January 1, 2006, using the modified-prospective transition method. Under this transition method, compensation expense under both the Amended and Restated 2001 Equity Incentive Plan (Equity Incentive Plan) and the 2004 Non-Employee Directors Stock Option Plan (Directors Stock Option Plan) are recognized based on the grant date fair value estimated in accordance with the provisions of SFAS No. 123R for all new grants effective January 1, 2006, and for options granted prior to but not vested as

METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

of December 31, 2005, compensation is recognized based on the grant date fair value as estimated in accordance with SFAS No. 123. Compensation expense is recognized over the requisite service period which is typically the period over which the stock-based compensation awards vest. Compensation expense under the 2004 Employee Stock Purchase Plan (Employee Stock Purchase Plan) is recognized based on the fair value on the date that the purchase rights were granted in accordance with the provisions of SFAS No. 123R for all new grants effective January 1, 2006, and for share purchase rights granted prior to but not vested as of December 31, 2005, and will be recognized over the remaining period of each grant s respective offering period. Compensation expense is reduced for estimated forfeitures. Forfeitures are estimated at the time of grant for option awards and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

The Employee Stock Purchase Plan permits for the modification of the original rate of contribution an employee elects upon enrollment. The Company accounts for each increase from the original rate of contribution, during an offering period, as a modification of the original award and recognizes the incremental change in compensation expense as a result of the change in fair value from the modification. The incremental effect to stock compensation as a result of modifications to these awards during 2008, 2007 and 2006 was immaterial.

The Company accounts for stock options granted to non-employees for acquiring, or in conjunction with selling, goods and services in accordance with SFAS No. 123 and EITF No. 96-18, *Accounting For Equity Instruments That Are Issued To Other Than Employees For Acquiring, Or In Conjunction With Selling, Goods Or Services*, and accordingly recognizes as expense the estimated fair value of such options as calculated using the Black-Scholes option-pricing model. The fair value is remeasured during the service period and is amortized over the vesting period of each option or the recipient s contractual arrangement, if shorter.

Comprehensive Income (Loss)

SFAS No. 130, *Reporting Comprehensive Income*, requires that all components of comprehensive income (loss), including net loss, be reported in the financial statements in the period in which they are recognized. Comprehensive income (loss) is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. The Company s other comprehensive income (loss) for 2008, 2007 and 2006 consisted of unrealized gains and losses on available-for-sale securities and is reported in stockholders equity.

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NOTES TO FINANCIAL STATEMENTS (Continued)

Net Loss Per Share

The Company calculated net loss per share in accordance with SFAS No. 128, *Earnings Per Share*. Basic earnings per share (EPS) is calculated by dividing the net loss by the weighted average number of common shares outstanding for the period, without consideration for common stock equivalents. Diluted EPS is computed by dividing the net loss by the weighted average number of common share equivalents outstanding for the period determined using the treasury-stock method. For purposes of this calculation, common stock subject to repurchase by the Company, options, and warrants are considered to be common stock equivalents and are only included in the calculation of diluted earnings per share when their effect is dilutive. The total number of shares issuable upon exercise of stock options and warrants excluded from the calculation of diluted earnings per share since they are anti-dilutive were 7,609,266, 7,236,732 and 6,694,740 in 2008, 2007 and 2006, respectively.

	Years Ended December 31,		
	2008	2007	2006
	(in thousands, except per share amounts)		
Actual:			
Numerator:			
Net loss	$ (42,314)	$ (41,799)	$ (33,268)
Denominator:			
Weighted average common shares	33,779	30,587	29,152
Weighted average unvested common shares subject to repurchase			(133)
Denominator for basic and diluted net loss per share	33,779	30,587	29,019
Basic and diluted net loss per share	$ (1.25)	$ (1.37)	$ (1.15)

Warrants

The Company has issued warrants to purchase its shares of common stock in connection with financing or debt arrangements. Generally, the warrants have been provided as additional consideration to an investor for the purchase of the Company s common stock, or the commitment to purchase common stock in the future, through a structured offering. The terms of the warrants vary, but generally include an exercise price equal to a specific premium over the value of the common stock at the time of the warrant issuance. The warrant holder may elect to exercise the warrants by physical settlement or net-share settlement.

The Company accounts for these financial instruments in accordance with SFAS No. 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity*, and if and when applicable, EITF Issue No. 00-19, *Accounting for Derivative Financial Instruments Indexed to and Potentially Settled in a Company s Own Stock*. Where the instrument qualifies as a freestanding financial instrument and does not represent an obligation or where the monetary value of the instrument changes in the same direction as the shares of common stock, the Company will assess the terms of the instrument against the criteria within EITF Issue No. 00-19 to determine the appropriate classification as equity or a liability. As of December 31, 2008, all warrants issued were classified as equity.

Recent Accounting Pronouncements

In November 2007, the EITF issued EITF Issue No. 07-1, *Accounting for Collaborative Arrangements Related to the Development and Commercialization of Intellectual Property.* Companies may enter into arrangements with other companies to jointly develop, manufacture, distribute, and market a product. Often the activities associated with these arrangements are conducted by the collaborators without the creation of a

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NOTES TO FINANCIAL STATEMENTS (Continued)

separate legal entity (that is, the arrangement is operated as a virtual joint venture). The arrangements generally provide that the collaborators will share, based on contractually defined calculations, the profits or losses from the associated activities. Periodically, the collaborators share financial information related to product revenues generated (if any) and costs incurred that may trigger a sharing payment for the combined profits or losses. The consensus requires collaborators in such an arrangement to present the result of activities for which they act as the principal on a gross basis and report any payments received from (made to) other collaborators based on other applicable GAAP or, in the absence of other applicable GAAP, based on analogy to authoritative accounting literature or a reasonable, rational, and consistently applied accounting policy election. EITF Issue No. 07-1 is effective for collaborative arrangements in place at the beginning of the annual period beginning after December 15, 2008. The Company does not expect the adoption of EITF Issue No. 07-1 to have a material impact on its financial statements.

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations* (SFAS No. 141(R)). SFAS No. 141(R) replaces SFAS No. 141. SFAS No. 141(R) requires the acquirer of a business to recognize and measure the identifiable assets acquired, the liabilities assumed and any non-controlling interest in the acquiree at fair value. SFAS No. 141(R) also requires transaction costs related to the business combination to be expensed as incurred. SFAS No. 141(R) applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008 (the Company s 2009 fiscal year). The adoption of SFAS No. 141(R) is not expected to have a material impact on the Company s financial statements.

In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles* (SFAS No. 162). SFAS No. 162 identifies the sources of accounting principles and provides entities with a framework for selecting the principles used in preparation of financial statements that are presented in conformity with GAAP. The current GAAP hierarchy has been criticized because it is directed to the auditor rather than the entity, it is complex and it ranks FASB Statements of Financial Accounting Concepts, which are subject to the same level of due process as FASB SFAS, below industry practices that are widely recognized as generally accepted but that are not subject to due process. The FASB believes the GAAP hierarchy should be directed to entities because it is the entity (not its auditors) that is responsible for selecting accounting principles for financial statements that are presented in conformity with GAAP. SFAS No. 162 is effective 60 days following the SEC s approval of the Public Company Accounting Oversight Board amendments to AU Section 411, *The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles*. The Company adopted SFAS No. 162, and it did not have a material impact on the Company s financial statements.

In June 2008, the EITF issued EITF No. 08-3, *Accounting by Lessees for Maintenance Deposits under Lease Agreements* (EITF No. 08-3). Under certain lease arrangements, the lessee is contractually responsible for repair and maintenance of the leased asset, and the lessee is required to make deposits with the lessor to fund that maintenance. The deposit is refunded to the lessee only to the extent that the lessee incurs qualified maintenance costs. Questions have arisen as to the proper accounting for these deposits as some companies account for the maintenance deposits as deposits, while other companies account for them as contingent rental expense. EITF No. 08-3 concludes that maintenance deposits should be considered deposits when paid to the lessor if it is probable that the deposits will be refunded to the lessee. If it is not probable, then the deposits are recognized as rental expense. If it is determined at the inception of the lease that a portion of the deposits is not probable of being refunded to the lessee, then the lessee should recognize as expense a pro-rata portion of the deposits as they are paid. The cost of maintenance activities should be expensed or capitalized, as appropriate. The definition of probable will fall under the guidance of FASB Concept Statement No. 6, *Elements of Financial Statements.* EITF No. 08-3 is effective for fiscal years beginning after December 15, 2008 (beginning with the Company s 2009 fiscal year). Early application is not permitted. The adoption of EITF No. 08-3 is not expected to have a material impact on the Company s financial statements.

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METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

In December 2008, the FASB issued FSP FAS 140-4 and FIN 46(R)-8, *Disclosures by Public Entities about Transfers of Financial Assets and Interests in Variable Interest Entities.* The purpose of this FSP is to promptly increase disclosures by public entities and enterprises until the pending amendments to FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities,* (SFAS No. 140) and FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities,* (FIN 46(R)) are finalized and approved by the FASB. The FSP is effective for reporting periods (interim and annual) ending after December 15, 2008 (the Company s 2008 fiscal year).

This FSP amends SFAS No. 140 to require public entities to provide additional disclosures about transferors continuing involvement with transferred financial assets. This FSP also amends FIN 46(R) to require public enterprises, including sponsors that have a variable interest in a variable interest entity, to provide additional disclosures about their involvement with variable interest entities. This FSP also requires disclosures by a public enterprise that is (a) a sponsor of a qualifying special-purpose entity (SPE) that holds a variable interest in the qualifying SPE but was not the transferor of financial assets to the qualifying SPE and (b) a servicer of a qualifying SPE that holds a significant variable interest in the qualifying SPE but was not the transferor of financial assets to the qualifying SPE. The adoption of this FSP did not have a material impact on the Company s financial statements.

4. Stock-Based Compensation

Equity Plans

The Company maintains three shareholder-approved share-based compensation plans that are subject to the requirements of SFAS No. 123R. The Equity Incentive Plan provides for the grant of stock options and restricted stock to officers, directors and employees of, and consultants and advisors to, the Company. The Directors Stock Option Plan provides for the grant of non-statutory stock options to non-employee directors. The Employee Stock Purchase Plan provides a means by which employees may purchase common stock at a discount through payroll deductions and is intended to qualify as an employee stock purchase plan within the meaning of Section 423 of the Internal Revenue Code (IRC).

Grants under the Equity Incentive Plan and the Directors Stock Option Plan are primarily in the form of options that allow a grantee to purchase a fixed number of shares of the Company s common stock at a fixed exercise price equal to the market price of the shares at the date of the grant. Grants under the Equity Incentive Plan may be either incentive stock option grants or non-qualified stock option grants if they are granted to employees and are non-qualified stock option grants if granted to non-employees. Grants under the Directors Stock Option Plan are non-qualified stock option grants. Options under both the Equity Incentive Plan and the Directors Stock Option Plan may vest on a single date or in tranches over a period of time, but normally they do not vest unless the grantee is still employed by or a director of the Company on the vesting date. Options under the Equity Incentive Plan generally vest over a four year period: $1/4^{th}$ on the first year anniversary of the date of grant and in equal monthly installments over the remaining three years and expire ten years from the date of grant. Options under the Directors Stock Option Plan generally vest from one to three years, and expire ten years from the date of grant. The Company made no modifications to outstanding options with respect to vesting periods or exercise prices prior to adopting SFAS No. 123R. Rights to purchase shares under the Employee Stock Purchase Plan allow participating employees to purchase stock at a discount during offering periods of 6, 12, 18 or 24 months with purchases occurring every six months.

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METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

SFAS No. 123R Compensation Expense

In accordance with SFAS No. 123R, the Company recognized share-based compensation expense for all three plans as follows (in thousands, except per share data):

	December 31, 2008	2007	2006
Stock-based compensation expense:			
Research and development	$ 2,381	$ 3,118	$ 1,936
General and administrative	1,558	1,917	1,809
Total stock-based compensation expense	$ 3,939	$ 5,035	$ 3,745
Effect on loss per share:			
Basic and diluted	$ 0.12	$ 0.16	$ 0.13

Compensation expense for all options granted under the Equity Incentive Plan and the Directors Stock Option Plan during the twelve-month period ended December 31, 2008 was recognized on a straight-line basis over the vesting period of each grant, net of estimated forfeitures.

The estimated fair value of the options and share purchase rights granted during 2006 and in subsequent years was calculated using a Black-Scholes model. The following summarizes the assumptions used in the Black-Scholes model:

	December 31, 2008	
	Equity Incentive Plan and Directors Stock Option Plan	Employee Stock Purchase Plan
Risk-free interest rate[1]	3.1%	3.2%
Volatility[2]	81.3%	79.8%
Dividend yield[3]	0.0%	0.0%
Expected Life[4]	5.8 years	1.3 years
Weighted average fair value at date of grant	$ 1.23	$ 1.12

	December 31, 2007	
	Equity Incentive Plan and Directors Stock Option Plan	Employee Stock Purchase Plan
Risk-free interest rate[1]	4.5%	4.7%
Volatility[2]	72.1%	69.7%
Dividend yield[3]	0.0%	0.0%
Expected Life[4]	5.8 years	1.3 years
Weighted average fair value at date of grant	$ 4.51	$ 3.03

	December 31, 2006	
	Equity Incentive Plan and Directors Stock Option Plan	Employee Stock Purchase Plan

Risk-free interest rate[1]	4.7%	4.7%
Volatility[2]	69.0%	67.5%
Dividend yield[3]	0.0%	0.0%
Expected Life[4]	6 years	1.3 years
Weighted average fair value at date of grant	$ 4.84	$ 2.11

METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

(1) The risk-free interest rate is based on U.S. Treasury debt securities with maturities close to the expected term of the option and the share purchase right.
(2) Expected volatility is based on the weighted average volatility of the Company s stock factoring in daily share price observations and the historical price volatility of certain peers within the Company s industry sector. In computing expected volatility, the length of the historical period used is equal to the length of the expected term of the option and the share purchase right.
(3) No cash dividends have been declared on the Company s common stock since the Company s inception, and the Company currently does not anticipate paying cash dividends over the expected term of the option and the share purchase right.
(4) The expected life of employee stock options represents the average of the contractual term of the options and the weighted average vesting period, as permitted under the simplified method, under SAB No. 107.

As of December 31, 2008, the Company had approximately $5.5 million of unrecognized stock-based compensation expense under the Equity Incentive Plan and the Directors Stock Option Plan The expense is expected to be recognized on a straight-line basis over a weighted average period of approximately 2.5 years.

During the year ended December 31, 2008, the Company recognized approximately $245,000 of additional stock-based compensation expense associated with the modification of vesting terms on stock options held by former officers of the Company. These modifications were made pursuant to existing severance agreements the Company.

Equity Plan Activity

The following is a summary of stock option activity under the Equity Incentive Plan and the Directors Stock Option Plan as of December 31, 2007, and changes during the twelve months ended December 31, 2008 (in thousands, except per share data):

	Outstanding Options	
	Number of Options	Weighted Average Exercise Price Per Share
Outstanding at December 31, 2007	3,558	$ 5.97
Granted	2,923	$ 1.73
Exercised	(13)	$ 0.83
Canceled	(1,061)	$ 4.84
Outstanding at December 31, 2008	5,407	$ 3.91
Exercisable at December 31, 2008	2,519	$ 5.00

The total intrinsic value of options exercised in 2008, 2007 and 2006 was $10,722, $220,000 and $254,000, respectively.

The aggregate intrinsic values of stock options exercisable and outstanding as of December 31, 2008 were immaterial. The weighted average remaining contractual terms of options outstanding and exercisable as of December 31, 2008 were 4.8 years and 4.1 years, respectively.

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METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

5. Balance Sheet Details

Securities Available-For-Sale

Securities available-for-sale consisted of the following (in thousands):

	December 31, 2008			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Corporate debt securities	$ 4,330	$ 20	$	$ 4,350
Government securities	4,638	12		4,650
Total	$ 8,968	$ 32	$	$ 9,000

	December 31, 2007			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Corporate debt securities	$ 21,268	$ 73	$	$ 21,341
Asset-backed securities	6,950	6		6,956
Total	$ 28,218	$ 79	$	$ 28,297

Gross realized gains and losses on available-for-sale securities were immaterial during the years ended December 31, 2008, 2007 and 2006. All realized gains and losses are reclassified out of other comprehensive income (loss) in the period recognized based on the specific identification method. Proceeds from the sale of short-term investments totaled $44.2 million, $118.2 million and $104.2 million for the years ended December 31, 2008, 2007 and 2006, respectively. All available-for-sale securities at December 31, 2008 have a contractual maturity of one year or less.

Investments considered to be temporarily impaired at December 31, 2008 are immaterial. There are no investments held at December 31, 2008, which are considered to be temporarily impaired with maturities beyond 12 months. The Company regularly monitors and evaluates the realizable value of its marketable securities. When assessing marketable securities for other-than-temporary declines in value, the Company considers such factors as, among other things, how significant the decline in value is as a percentage of the original cost, how long the market value of the investment has been less than its original cost and the market in general.

Property and Equipment

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

	December 31,	
	2008	2007
Laboratory equipment	$ 9,250	$ 8,972
Computers and electronics	2,186	1,903

Leasehold improvements	1,401	1,356
Office furniture and fixtures	624	600
Construction in progress		160
	13,461	12,991
Less: accumulated depreciation and amortization	(8,682)	(6,635)
	$ 4,779	$ 6,356

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METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

Depreciation and amortization expense, which include assets held under capital leases, was $2.1 million, $2.0 million and $1.6 million for the years ended December 31, 2008, 2007 and 2006, respectively. Assets held under capital leases were approximately $98,000 at December 31, 2008 and 2007, and accumulated depreciation was approximately $83,000 and $60,000 at December 31, 2008 and 2007, respectively. The balance of capital leases and equipment loans totaled approximately $3.9 million and $6.0 million at December 31, 2008 and 2007, respectively.

The Company recorded $55,000 of asset disposals resulting in a loss of $29,000 for the twelve months ended December 31, 2008. The Company recorded $153,000 in loss on disposals for the twelve months ended December 31, 2007 and $29,000 for the twelve months ended December 31, 2006.

Accrued Liabilities and Accrued Compensation

Accrued liabilities and accrued compensation consisted of the following (in thousands):

	December 31,	
	2008	2007
Accrued development expenses	$ 1,244	$ 3,241
Accrued legal and patent fees	73	216
Other accrued liabilities	481	675
	$ 1,798	$ 4,132
Accrued employee benefits	$ 1,849	$ 1,914
Accrued restructuring expenses	582	
Accrued bonuses	8	1,267
	$ 2,439	$ 3,181

6. Corporate Restructuring

In November 2008, the Company committed to a restructuring plan that resulted in the reduction of approximately 30% of the Company s workforce. The restructuring was a result of a strategic realignment of the Company to preserve cash and reduce on-going operating expenses. Employees directly affected by the restructuring plan received notification and were provided with severance payments, retention bonuses, where applicable, continued benefits for a specified period of time and outplacement assistance. The Company expects to complete the restructuring plan by the end of the first quarter of 2009.

The Company anticipates incurring restructuring charges of approximately $1.7 million, primarily associated with personnel-related termination costs. The Company does not expect to incur any expense related to contractual or lease obligation or other exit costs. However, this expectation is subject to a number of assumptions, and actual results may materially differ. Pursuant to SFAS No. 146, *Accounting for Costs Associated with Exit or Disposal Activities,* the Company recorded a charge of approximately $1.5 million for the twelve month period ending December 31, 2008, of which approximately $1.2 million was included in research and development expense and approximately $334,000 was included in general and administrative expense. The remaining $229,000 of anticipated costs associated with this restructuring relates to employees who were retained and will be recognized as earned over the retention period, which is expected to be completed by the end of the first quarter of 2009.

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METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

As of December 31, 2008, the Company had a remaining balance of $582,000 of accrued restructuring expenses included in the balance sheet. The changes to the accrued liability during 2008 are as follows (in thousands):

	Termination Costs for Involuntary Employee Terminations
Accrual balance at December 31, 2007	$
Accruals	1,483
Payments	(901)
Accrual balance as of December 31, 2008	$ 582

7. Commitments and Contingencies

Lease Commitments

The Company leases its office and research facilities and certain laboratory and electronic equipment under operating and capital lease agreements, which expire at varying dates through 2015.

In September 2007, the Company entered into an operating lease agreement pursuant to which the Company leased approximately 2,900 square feet of office space in Ann Arbor, Michigan. The lease expired on December 31, 2008, and the Company continues to pay for the office space on a month-to-month basis. As a result of a corporate restructuring that occurred in November 2008, the Company does not anticipate occupying this office space after the first quarter of 2009.

In December 2004, the Company entered into an operating lease agreement pursuant to which the Company leased approximately 82,000 square feet of real estate space in La Jolla, California consisting of laboratory and office space. The lease commenced in October 2005 and has an initial term of 10 years unless extended or terminated sooner. The Company has options to extend the lease for two renewal periods of five years each. The Company s aggregate lease payments through 2015 will be $24.2 million. The facility lease provides for various forms of rent abatement during the first 48 months of the lease and annual rent increases of 3.0%. The difference between the straight-line expense over the term of the lease and actual amounts paid are recorded as deferred rent.

Rent expense was approximately $2.9 million for the year ended December 31, 2008 and approximately $2.8 million for the years ended December 31, 2007 and 2006.

Debt

In March 2008, the Company entered into a Loan and Security Agreement (Agreement) with Oxford Corporation (Oxford), pursuant to which Oxford provided the Company with a three-year, $5.0 million term loan. The Company is using the proceeds from the loan for general working capital purposes. Interest accrues at an annual rate of 9.83%, with six interest-only monthly payments, made in arrears, beginning in May 2008, followed by 30 equal monthly payments of principal and interest beginning in November 2008. The Company paid a facility fee of $50,000 upon signing of the term sheet and is required to pay an additional fee of 4% of the term loan amount, or $200,000, at the end of the three year term. The Company has the option to prepay the outstanding balance of the term loan in full, subject to a prepayment fee. The loan is collateralized by the general

METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

assets of the Company, excluding intellectual property. There are no financial covenants under the terms of this Agreement. In the event the Company becomes in default of the loan agreement, the lender has the right under a control agreement, to assume control over the Company s bank accounts, which include its operating and short-term investment accounts.

In connection with the Agreement, the Company issued to Oxford a warrant to purchase up to 154,639 shares of the Company s common stock at an exercise price of $1.94 per share, which represents the closing price of the Company s common stock on the date of the Agreement. The warrant is immediately exercisable and expires in March 2018. The warrant holder may elect to exercise the warrant by physical settlement or net-share settlement. In accordance with EITF Issue No. 00-19 the warrant met all criteria within the guidance providing for the classification of this financial instrument as equity. The fair value of this warrant, totaling $220,000 at March 14, 2008, was determined using the Black-Scholes model with the following assumptions: risk free interest rate of 3.05%, dividend yield of 0%, expected volatility of 81.63%, and an expected term of 5 years.

In August 2003, the Company entered into a $1.4 million equipment loan agreement with a financing company. This agreement was subsequently amended two times to increase the amount available to $7.6 million. The proceeds were used to finance lab equipment, computer and electronic equipment and furniture, which serve as collateral under the loan. The Company utilized the total amount available under the equipment loan agreement by December 31. 2007. Each borrowing is payable over 48 months with the interest rate fixed at the funding date of each borrowing ranging from 8.62% to 10.96%. The weighted average interest rate is 10.46%. The outstanding balance of this loan is $3.6 million and $5.7 million at December 31, 2008 and 2007, respectively.

The Company s outstanding debt and equipment loan agreements with Oxford contain events of default that may be triggered by a material adverse change, which is defined in the agreements as any material change in the general affairs, senior management, results of operations, or financial condition of the Company, whether or not arising from transactions in the ordinary course of business, that is likely to impair the ability of the Company to repay any portion of the obligations or a material impairment in the value or priority of the lender s security interest in the collateral. As described in Note 2, the Company currently does not have sufficient working capital to fund its operations through December 31, 2009 without additional sources of cash. While the determination of the occurrence of a material adverse event is subjective, Oxford has confirmed that the Company was not in default under the outstanding debt and equipment loan agreements as of December 31, 2008. In the event the Company is not successful in securing additional sources of cash in the near-term, Oxford may claim that a material adverse change has occurred under the debt or equipment loan agreements, and Oxford could demand immediate repayment of the balances outstanding under the agreements.

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NOTES TO FINANCIAL STATEMENTS (Continued)

In connection with the facility lease, which commenced in October 2005, the Company agreed to a $300,000 loan for tenant improvements. The term of the loan corresponds to the initial 10 year term of the lease. The interest rate is 8.0% per annum. The outstanding balance of this loan was $229,000 and $254,000 at December 31, 2008 and 2007, respectively. Payment schedules for commitment and contractual obligations at December 31, 2008, are as follows (in thousands):

	Capital Leases	Long-term Debt	Operating Leases
2009	$ 31	$ 4,567	$ 2,820
2010	24	3,640	3,112
2011	4	1,422	3,185
2012		44	3,279
2013		44	3,374
Thereafter		78	6,444
Total minimum payments	59	9,795	$ 22,214
Less amount representing interest	(6)	(1,247)	
Present value of net minimum payments	53	8,548	
Less current portion	(26)	(3,890)	
Long-term debt and capital lease obligations	$ 27	$ 4,658	

The Company also has open purchase orders from time to time for the purchase of capital expenditures, consulting services, subscriptions and materials. Obligations under these open purchase orders totaled $967,000 million at December 31, 2008. These purchase commitments expire at varying dates through December 31, 2009.

Executive Severance Agreements

The Company has entered into employment agreements with our executive officers and certain other key employees that, under certain circumstances, provide for the continuation of salary and certain other benefits if terminated under specified circumstances. These agreements generally expire upon termination for cause or when the Company has met its obligations under these agreements.

As part of the Company s restructuring and reduction in workforce described in Note 6 above, the employment of Howard Foyt, Ph.D., M.D., Vice President of Clinical Development, was terminated. In connection with his termination, the Company recognized $352,000 of severance costs for the year ended December 31, 2008.

In December, Paul K. Laikind, Ph.D. resigned as the Company s President, Chief Executive Officer and Interim Chief Financial Officer, effective December 9, 2008. Dr. Laikind continues to serve as a member of our board of directors. In connection with his resignation, the Company recognized $554,000 of separation costs for the year ended December 31, 2008.

Clinical Development Agreements

The Company has entered into agreements with various vendors for the research and clinical development of its product candidates, which are generally cancelable at the option of the Company at any time. Under the terms of these agreements, the vendors provide a variety of services including conducting preclinical development research, manufacturing clinical compounds, enrolling patients, recruiting patients, monitoring

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NOTES TO FINANCIAL STATEMENTS (Continued)

studies, data analysis and regulatory filing assistance. Payments under these agreements typically include fees for services and reimbursement of expenses. In addition, under certain agreements, we are subject to penalties in the event we prematurely discontinue performance under these agreements.

8. Collaborative Research and Development Agreements

Roche

In August 2008, the Company entered into a two-year Research Collaboration and License Agreement with Hoffmann-La Roche Inc., F. Hoffmann-La Roche LTD and Roche Palo Alto LLC (collectively, Roche). Under the terms of the Roche agreement, the Company s HepDirect liver-targeted technology will be applied to proprietary Roche compounds to develop second-generation nucleoside analog drug candidates for treating hepatitis C virus. The Company received an upfront payment of $10.0 million from Roche in August 2008, of which $8.3 million will be recognized as license fees revenue and $1.7 million will be recognized as sponsored research revenue. Roche may also pay up to $2.1 million in sponsored research funding at the beginning of the second year of the research term, if applicable. In the event a development candidate is identified, Roche will assume development responsibility and the Company will be eligible to receive up to $193.0 million in additional payments upon achievement of predetermined preclinical and clinical development events as well as regulatory and commercialization events. Roche will retain full commercial rights for any marketed products resulting from the collaboration and will pay the Company a royalty on net sales of such products. The Company recognized revenue of $2.3 million for the year ended December 31, 2008 related to this collaboration. Deferred revenue of approximately $7.7 million is reflected on the balance sheet as of December 31, 2008, relating to this agreement.

Merck

In June 2005, the Company entered into a collaboration agreement with Merck & Co. (Merck), to research, develop and commercialize novel small molecule therapeutics with the potential to treat type 2 diabetes, and potentially other metabolic diseases, by activating an enzyme in the liver called AMP-activated Protein Kinase. As part of this collaboration, Merck paid an initial non-refundable license fee of $5.0 million in July 2005 and provided research support funding of approximately $6.3 million over the three year research term. The three-year research term is subject to renewal for one additional year upon the parties mutual agreement. In April 2008, the research term was extended for an additional year, through June 2009. The Company will receive $1.5 million over the course of the one year extension to support continued research efforts. Merck is also obligated to pay milestone payments if specified preclinical and clinical development and regulatory events occur and pay royalties on sales of any product resulting from this collaboration. As of December 31, 2008, the Company has not achieved any developmental milestones and thus, no payments have been received for milestones from Merck. The Company would also have the option to co-promote any such product in the United States. If all preclinical and clinical milestones are achieved on multiple indications, and including the $5.0 million initial, non-refundable license fee and the minimum $6.3 million in research support funding, the Company may be entitled to payments which total up to $74.3 million, plus royalties. Merck is solely responsible for conducting and funding all development work for compounds resulting from this collaboration.

The Company recognized revenue of $2.5 million for the year ended December 31, 2008 and $3.8 million for the years ended December 31, 2007 and 2006 related to this collaboration. Deferred revenue of approximately $478,000 is reflected on the balance sheet as of December 31, 2008, relating to this agreement.

In December 2003, the Company entered into a non-exclusive collaboration agreement with Merck to discover new treatments for hepatitis C. The research term of the collaboration was initially for one year and in January 2005, was extended for an additional year through December 2005. As part of this collaboration, Merck paid an upfront fee of $500,000 which was recognized as revenue over the initial one-year term of the agreement

METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

and paid research support totaling $2.7 million during 2004 and 2005. Revenue recognized under the agreement was zero for the years ended December 31, 2008, 2007 and 2006. Merck is also obligated to pay preclinical and clinical milestone payments if specified development and regulatory events occur and royalties on sales of products resulting from the collaboration. If all preclinical and clinical milestones are achieved, and including the $500,000 upfront fee, the $2.7 million in research support, the Company may be entitled to payments which total up to $25.3 million, plus royalties. Merck is solely responsible for conducting and funding all development work for compounds resulting from the collaboration and for commercializing any resulting products.

Idenix

In October 2006, the Company entered into a non-exclusive collaboration agreement with Idenix Pharmaceuticals, Inc. (Idenix) to apply its HepDirect technology to certain Idenix lead compounds with the goal of improving the safety and efficacy of these compounds for the treatment of hepatitis C. The agreement provided for up to two years of sponsored research. In addition, Idenix had the option to terminate the research term upon the first anniversary of the effective date of the agreement or upon the achievement of certain research and clinical development milestones during the research term. As part of this collaboration, Idenix paid the Company an initial, non-refundable license fee of $2.0 million in November 2006 and agreed to provide research funding of up to $1.7 million per year during the research term. In October 2007, the sponsored research term of the collaboration agreement ended upon the first anniversary of the agreement and the collaboration agreement subsequently terminated in accordance with its terms.

Daiichi Sankyo

In April 1997, the Company entered into a multi-year research, development and commercialization agreement with Daiichi Sankyo Company, Ltd. (Daiichi Sankyo) to develop novel FBPase inhibitors for the treatment of diabetes. The research period ended in April 2002. Daiichi Sankyo was responsible for funding the clinical development of compounds selected for development under the agreement. Daiichi Sankyo had the right to select compounds discovered during the discovery period and was responsible for conducting and funding the clinical development of any compound selected for development. Daiichi Sankyo selected CS-917 as a clinical candidate in 1999 and completed the clinical trials through Phase 2b in the third quarter of 2007. The results of the Phase 2b clinical trial indicated CS-917 failed to achieve the trial s primary endpoint. As a result, the Company and Daiichi Sankyo agreed to terminate the collaboration agreement and return all rights and data related to this product candidate to the Company in January 2008. During the term of the collaboration agreement, the Company achieved three developmental milestones triggering a total of $6.5 million in payments, none of which were received in 2008, 2007 or 2006.

Valeant

In October 2001, the Company entered into a development and license agreement with Valeant Pharmaceuticals International (Valeant) for the development and commercialization of pradefovir for the treatment of hepatitis type B. Under the agreement, Valeant was granted exclusive worldwide rights to develop and commercialize pradefovir. As of December 31, 2008, the Company had achieved developmental milestones triggering a total of $2.0 million in payments from Valeant. The first milestone was earned in April 2003 and the second milestone was earned in July 2004.

Schering Corporation

In January 2007, Valeant entered into an Assignment and Assumption Agreement (the Assignment Agreement) with Schering Corporation (Schering), under which Valeant assigned its rights, interests and obligations under the development and license agreement to Schering, and further granted Schering a license to

METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

its intellectual property related to pradefovir. Concurrently, the Company and Schering entered into an amended and restated development and license agreement for the continued future development and commercialization of pradefovir. Under the amended and restated development and license agreement and pursuant to Valeant s assignment, Schering was granted exclusive worldwide rights to develop and commercialize pradefovir during the term of the agreement. The Company received a non-refundable license fee of $1.8 million in January 2007 from Schering.

In September 2007, the Company, Schering and Valeant entered into a Termination Agreement (the Termination Agreement) to terminate the agreements for the development and commercialization of pradefovir. These agreements were terminated as a result of numerous factors, which may include the results of the 24-month oral carcinogenicity studies of pradefovir in rats and mice. The Company will not receive any additional payments related to these agreements and all rights to pradefovir have been returned to the Company, subject to certain milestone and royalty payments the Company may be required to make to Valeant should this product candidate be subsequently developed.

In September 2008, the Company, Schering and Valeant entered into an Amendment Agreement (the Amendment Agreement) to amend certain terms of the Assignment Agreement and the Termination Agreement. Pursuant to the Amendment Agreement, among other things, the Assignment Agreement was amended to provide for a reduction in the total number and value of milestone payments payable by the Company to Valeant upon the achievement of certain specified events to a single milestone payment due upon the first regulatory approval of pradefovir, and to reduce certain royalty payments due from the Company to Valeant upon commercialization of pradefovir. In addition, the Termination Agreement was amended to transfer certain patient registry obligations, should they be required, to the Company from Valeant (excluding the cost thereof, up to a specified limit).

9. Committed Equity Financing Facility

In November 2006, the Company entered into a Committed Equity Financing Facility (CEFF) with an institutional investor. Under the terms of the agreement the investor is committed to providing the Company up to $50 million in funding, or up to a maximum of 6,046,071 shares of common stock, over a three-year term through the purchase of newly-issued shares of the Company s common stock. In February 2008, the CEFF was amended to reduce the minimum market capitalization required to permit a draw down and to eliminate certain termination rights maintained by the investor, among other things. The Company may access capital under the CEFF in tranches of up to the lesser of $10 million or from between 1.0% to 1.5% of the Company s market capitalization at the time of the draw down of such tranche, subject to certain conditions. Currently, the Company does not meet these conditions and, therefore, does not have access to the CEFF. The investor will purchase shares of the Company s common stock pursuant to the CEFF at discounts ranging from 6% to 10%, depending on the average market price of the common stock during the eight-day pricing period, provided that the minimum acceptable purchase price for any shares to be issued to the investor during the eight-day pricing period is determined by the higher of $1.75 or 90% of the Company s share price the day before the commencement of each draw down.

In accordance with SFAS No. 133 *Implementation Issue A6*, the Company determined the option to sell shares of the Company s common stock does not qualify as a derivative as the notional amount, the sales price of the stock, is variable and therefore undeterminable. In addition, this arrangement does not require a minimum number of shares to be sold and is restricted to a maximum number of shares to be sold.

The Company issued a warrant to the investor to purchase up to 260,000 shares of common stock at an exercise price of $9.26 per share which represents a 30% premium over the average of the closing prices of the Company s common stock during the 5 days preceding the signing of the agreement. In connection with the amendment of the CEFF, the warrant was cancelled and replaced with a new warrant for 260,000 shares of

METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

common stock at an exercise price of $4.76 per share. The warrant is exercisable and will remain exercisable, subject to certain exceptions, until November 2, 2011. In accordance with EITF Issue No. 00-19, the warrant met all criteria within the guidance providing for the classification of this financial instrument as equity. The fair value of this warrant, totaling $1.1 million, was determined using the Black-Scholes model using the following assumptions: risk-free interest rates of 4.84%; dividend yield of 0%; expected volatility of 74%; and a term of 5.5 years. The net effect of recording the fair value to equity is zero at December 31, 2008 and 2007.

The Company filed a registration statement with the SEC for the resale of the shares of common stock issuable in connection with the CEFF and the shares of common stock underlying the warrant in accordance with a registration rights agreement entered into concurrently with the above agreements. The registration rights agreement maintains penalty and make-whole provisions where the investor may be restricted, due to black out periods , from trading shares of the Company s common stock purchased pursuant to the CEFF or by the exercise of the warrant. In accordance with SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, and EITF Issue No. 00-19-2, *Accounting for Registration Payment Arrangements,* the Company accounts for these provisions under SFAS No.5, *Accounting for Contingencies,* and will record the fair value of the liability in the event such a penalty is measurable and probable. In 2007, an effective registration statement was filed with the SEC and the Company had not utilized this financial instrument.

10. Stockholders Equity

Common Stock

In April 2008, the Company raised $9.9 million in cash through a warrant exchange and concurrent private placement of common stock (together, the Transaction). The investors in the Transaction were certain current investors who held existing warrants for the purchase of the Company s common stock issued previously in its October 2001 and October 2005 private placements. Investment banking fees and other offering expenses were approximately $369,000.

In March 2006, the Company raised approximately $40.0 million in gross proceeds in a registered direct offering involving the sale of approximately 4.9 million shares of common stock at a price of $8.10 per share. Placement agency fees and other offering expenses were approximately $2.7 million. These shares were offered pursuant to an effective registration statement that the Company had previously filed with the SEC.

Warrants

Warrants were issued in connection with the Company s CEFF (see Note 9).

In connection with the April 2008 Transaction discussed above, the Company entered into a warrant exercise agreement (the Warrant Exercise Agreement) pursuant to which the Company reduced the exercise prices of the investors warrants to purchase the Company s common stock acquired in its October 2001 and October 2005 private placements to an exercise price of $2.34 per share, in exchange for an irrevocable commitment by the investors to exercise such warrants at the closing. As a result of the Warrant Exercise Agreement, warrants for the purchase of 127,557 shares of the Company s common stock with a prior exercise price of $8.70 per share and warrants for the purchase of 1,558,279 shares of the Company s common stock with a prior exercise price of $6.74 per share were exercised at $2.34 per share.

Additionally, in connection with the Transaction, the Company entered into a securities purchase agreement (the Securities Purchase Agreement) pursuant to which the Company issued and sold to the investors 2,485,103 shares of its common stock at an exercise price of $2.34 per share, and warrants to purchase up to 1,057,196 shares of its common stock at an exercise price of $2.69 per share (the Warrants). The Warrants are exercisable commencing six months after the Transaction date until April 16, 2013. At the closing, the investors paid an

METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

additional purchase price for the Warrants equal to $0.125 per whole share issuable upon exercise of the Warrants. In connection with the Securities Purchase Agreement, the Company also entered into a registration rights agreement (the Registration Rights Agreement) pursuant to which the Company granted to the investors certain registration rights relating to the securities issued and sold in the Securities Purchase Agreement. The Company filed a registration statement pursuant to the Registration Rights Agreement on May 9, 2008 and the SEC declared the registration statement effective on May 30, 2008.

Certain of the Company s existing stockholders, including entities affiliated with MPM Capital, Hale BioPharma Ventures and InterWest Partners, invested in the Transaction. Certain of such investors and/or their affiliates are parties to the Company s amended and restated investors rights agreement dated October 28, 2003. Luke B. Evnin, Ph.D., David F. Hale and Arnold L. Oronsky, Ph.D., members of the Company s board of directors, are associated with MPM Capital, Hale BioPharma Ventures and InterWest Partners, respectively.

The Company accounted for the Warrants issued under the Securities Purchase Agreement in accordance with EITF Issue No. 00-19. According to EITF Issue No. 00-19, the Warrants met all criteria within the guidance providing for the classification of these financial instruments as equity. The fair values of the Warrants were approximately $1.5 million in aggregate and was determined using the Black-Scholes model using the following assumptions: risk-free interest rates of 3.02%; dividend yield of 0%; expected volatility of 81.9%; and a term of 5 years.

In conjunction with the October 2005 private placement offering, the Company issued warrants to purchase approximately 2.5 million shares of its common stock at an exercise price of $6.74 per share. At the closing of the private placement offering, investors in the financing paid an additional price equal to $0.125 per each share issuable upon exercise of the warrants which can be exercised until September 30, 2010. As discussed above, certain investors who held warrants issued in the 2005 private placement participated in the Transaction and exercised such warrants covering approximately 1,558,000 shares. At December 31, 2008, warrants issued in the 2005 private placement covering approximately 892,000 shares remained outstanding.

In conjunction with the 2001 Series D Preferred offering, the Company sold warrants to the Series D investors to purchase 3.5 million shares of Series D Preferred at a purchase price of $0.01 per warrant resulting in proceeds of approximately $35,000. The stock purchase warrants had an exercise price of $8.69 per share. As discussed above, certain investors who held the 2001 Series D warrants participated in the Transaction and exercised such warrants covering approximately 128,000 shares. The remaining warrants issued in the 2001 offering expired in accordance with their terms on October 18, 2008.

In conjunction with the 2000 Series C Preferred offering, the Company sold warrants to the Series C investors to purchase 4.5 million shares of Series C Preferred at a purchase price of $0.01 per warrant resulting in proceeds of approximately $45,000. The stock purchase warrants had an exercise price of $6.08 per share and expired on December 31, 2007 with 7,406 shares issued as a result of exercises during 2007.

Equity Incentive Plan

On June 21, 2004, the Company authorized 2,213,995 shares of its common stock for issuance upon exercise of options or restricted stock granted under the Equity Incentive Plan. Approximately 1,000,000, 1,000,000 and 915,000 shares were added to the Equity Incentive Plan on January 1, 2008, 2007 and 2006, respectively, pursuant to an evergreen provision contained in the Equity Incentive Plan. The Equity Incentive Plan provides for the grant of stock options and restricted stock to officers, directors, and employees of, and consultants and advisors to, the Company. Options under the Equity Incentive Plan may be designated as incentive stock options or non-statutory stock options, generally vest over four years and expire ten years from the date of grant. In addition, incentive stock options may not be granted at prices less than 100% of the fair

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value on the date of grant. The number of vested options available for exercise as of December 31, 2008 and 2007 were approximately 2,240,000 and 1,483,000, respectively.

There were no shares of common stock, originally issued pursuant to option exercises, outstanding at December 31, 2008 and 2007, respectively, that were subject to repurchase by the Company.

Directors Stock Option Plan

On June 21, 2004, the Company authorized 300,000 shares of its common stock for issuance upon exercise of options or restricted stock granted under the Directors Stock Option Plan. On each of January 1, 2008, 2007 and 2006, 100,000 shares were added to the plan pursuant to an evergreen provision contained in the Directors Stock Option Plan. The Directors Stock Option Plan provides for the grant of stock options and restricted stock to directors of the Company. Options under the Directors Stock Option Plan are designated as non-statutory stock options, generally vest from one to two years, and expire ten years from the date of grant. In addition, options granted under the Directors Stock Option Plan may not be granted at prices less than 100% of the fair value on the date of grant. The number of vested options available for exercise as of December 31, 2008 and 2007 were approximately 279,000 and 213,000, respectively.

Employee Stock Purchase Plan

On June 21, 2004, the Company authorized 500,000 shares of its common stock for issuance under the Employee Stock Purchase Plan. Approximately 375,000, 375,000 and 305,000 shares were added to the plan on January 1, 2008, 2007 and 2006, respectively, pursuant to an evergreen provision contained in the Employee Stock Purchase Plan. The Employee Stock Purchase Plan provides for all eligible employees to purchase shares of common stock at 85% of the lower of the fair market value on the first day of each two year offering period or any purchase date during such offering period (generally held every six months during such period). Employees may authorize the Company to withhold up to 15% of their total compensation during each six-month purchase period, subject to certain limitations to pay for the Employee Stock Purchase Plan shares. The following shares were issued under the Employee Stock Purchase Plan during the year ending December 31:

	Number of Shares Purchased	Weighted Average Price	Total Proceeds
2008	214,761	$ 0.79	$ 168,685
2007	205,941	$ 2.91	599,366
2006	198,158	$ 3.04	602,961
	618,860		$ 1,371,012

Shares Reserved For Future Issuance

The following shares of common stock were reserved for future issuance at December 31, 2008:

Warrants to purchase shares in conjunction with the 2005 private placement	891,721
Warrants to purchase shares in conjunction with the CEFF	260,000
Warrants to purchase shares in conjunction with the venture debt	154,639
Warrants to purchase shares in conjunction with the 2008 private placement	1,057,196
Common stock options:	
Granted and outstanding	5,407,334

Reserved for future issuance	529,571
Employee stock purchase plan	1,005,533
	9,305,994

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METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

11. Income Taxes

On July 13, 2006, the FASB issued FIN No. 48 an interpretation of SFAS No. 109, *Accounting for Income Taxes*, to create a single model to address accounting for uncertainty in tax positions. FIN No. 48 clarifies the accounting for income taxes by prescribing a minimum recognition threshold in which a tax position be reached before financial statement recognition. FIN No. 48 also provides guidance on derecognition, measurement, classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN No. 48 is effective for fiscal years beginning after December 15, 2006. The Company adopted FIN No. 48 as of January 1, 2007, as required. The adoption of this guidance did not have a material impact on the Company s results of operations or financial position.

At December 31, 2008, the Company had net deferred tax assets of $81.5 million. These deferred tax assets are primarily comprised of net operating loss (NOL) and research and development (R&D) credit carryforwards, capitalized research and development costs, deferred revenue, deferred rent and stock-based compensation expense. Due to uncertainties surrounding the Company s ability to generate future taxable income to realize these assets, a full valuation has been established to offset the net deferred tax asset. Additionally, the future utilization of the Company s NOL and R&D Credit carryforwards to offset future taxable income may be subject to an annual limitation as a result of ownership changes pursuant to IRC Sections 382 and 383. For the year ended December 31, 2007, the Company removed the NOL and R&D Credit carryforwards from the deferred tax asset table because the Section 382 and 383 analysis had not been completed. For the year ended December 31, 2008, the Company completed a Section 382 and 383 analysis for the period from inception through December 31, 2008 and determined that, although multiple ownership changes have occurred, the Company will be able to utilize the total NOL and R&D Credit carryforwards that existed as of December 31, 2008, provided it generates sufficient future earnings. Accordingly, the Company re-established the deferred tax assets associated with the NOL and R&D Credit carryforwards and recorded a corresponding increase to the valuation allowance. Future ownership changes under Section 382 and 383 may limit the Company s ability to fully utilize these tax benefits.

Due to the existence of the valuation allowance, future changes in our unrecognized tax benefits will not impact the Company s effective tax rate. The Company is subject to taxation in the U.S. and state jurisdictions. The Company s tax years for 2000 and forward are subject to examination by the U.S. and California tax authorities due to the carryforward of unutilized NOL s and R&D credits. The Company is currently not under examination by any taxing authorities.

The Company s practice is to recognize interest and/or penalties related to income tax matters in income tax expense. During the year ended December 31, 2008, the Company did not recognize any interest or penalties. Upon adoption of FIN No. 48 on January 1, 2007, the Company did not record any interest or penalties.

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METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

Significant components of the Company s deferred tax assets as of December 31, 2008 and 2007 are shown below (in thousands). A valuation allowance of $81.5 million and $11.7 million has been established at December 31, 2008 and 2007 respectively, to offset the net deferred tax assets as realization is uncertain.

	December 31,	
	2008	**2007**
Deferred tax assets:		
Capitalized R&D	$ 32,904	$ 8,654
Deferred revenue	3,321	538
Net operating loss carryforwards	33,287	
Research and development credits	9,472	
Other, net	2,532	2,498
Total deferred tax assets	81,516	11,690
Deferred tax liabilities:		
Deferred compensation		9
Valuation allowance for deferred tax assets	(81,516)	(11,699)
Net deferred assets	$	$

At December 31, 2008, the Company had federal and California NOL carryforwards of $82.5 million and $79.4 million, respectively, which begin to expire in 2019 and 2011, respectively, unless previously utilized, and federal and state R&D Credit carryforwards of $6.0 million and $5.2 million, respectively. The federal R&D Credit carryforwards begin to expire in 2019 and the state R&D Credit carryforwards do not expire. Pursuant to IRC Sections 382 and 383, use of our NOL and R&D credit carry forwards may be limited because of a cumulative change in ownership of more than 50%, which may occur in the future. The provision for income taxes on earnings subject to income taxes differs from the statutory Federal rate at December 31, 2008, 2007 and 2006, due to the following (in thousands):

	2008	**2007**	**2006**
Federal income taxes at 35%	$ (14,810)	$ (14,630)	$ (11,644)
State income tax, net of Federal benefit	(2,172)	(2,156)	(1,751)
Tax effect on non-deductible expenses and credits	(276)	1,195	(305)
Increase in valuation allowance[1]	17,258	15,591	13,700
	$	$	$

(1) The removal and re-establishment of the valuation allowance related to the NOL s and R&D credits is not included in the increase in the valuation allowance. See above for explanation.

12. Employee Benefit Plan

The Company established a defined contribution employee retirement plan (the 401(k) Plan) effective January 1, 1999, conforming to Section 401(k) of the IRC. All full-time employees (as defined in the 401(k) Plan) may elect to have a portion of their salary deducted and contributed to the 401(k) Plan up to the maximum allowable limitations of the IRC, which may be matched by the Company in an amount determined by the Board of Directors. In 2007, the Board of Directors authorized a matching contribution up to 25% of employee contributions,

subject to certain limitations, totaling approximately $330,000 and $255,000 for the years ended December 31, 2008 and 2007, respectively. Plan administration costs totaled $6,525, $6,875 and $6,850 for the years ended December 31, 2008, 2007 and 2006, respectively.

METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

13. Related Party Transactions

In April 2008, the Company raised $9.9 million in cash through the Transaction, as described in Note 10. Certain of the Company s existing stockholders, including entities affiliated with MPM Capital, Hale BioPharma Ventures and InterWest Partners, invested in the Transaction. Certain of such investors and/or their affiliates are parties to the Company s amended and restated investors rights agreement dated October 28, 2003. Luke B. Evnin, Ph.D., David F. Hale and Arnold L. Oronsky, Ph.D., members of the Company s board of directors, are associated with MPM Capital, Hale BioPharma Ventures and InterWest Partners, respectively. See Note 10 for further information.

In June 1999, the Company entered into an agreement with Sicor called the Master Agreement under which, among other things, the Company agreed to pay Sicor a 2% royalty on sales of products that are covered by a claim of an issued, valid and unexpired patent or a patent application, that was in existence or based on any discoveries or inventions in existence as of the Company s spin-off from Sicor, and 10% on any royalties the Company receives from licenses of these patents, patent applications, discoveries or inventions. The Company also agreed to pay Sicor a 1% royalty on sales of products that use, contain or are based on the Company s trade secrets, know-how and other proprietary rights in existence as of the Company s spin-off from Sicor that are not covered by the 2% royalty, and 5% of any royalties the Company receives from licenses of these trade secrets, know-how and other proprietary rights that are not covered by the 10% royalty. Some of the Company s current product candidates and drug compounds from our research programs may be subject to these royalty provisions. The determination of any potential obligations will be assessed at the time such products are commercially available.

14. Subsequent Events

Offer to Exchange Stock Options

On January 29, 2009, the Company completed an Offer to Exchange certain outstanding options to purchase shares of the Company s common stock, that were originally granted under the Company s Equity Incentive Plan and that had an exercise price that is equal to or greater than $1.50 per share, for replacement options to purchase shares of the Company s common stock (the Offer). Eligible option holders included employees and scientific advisory board members. Subject to the participant s continued service with the Company, 25% of the shares underlying the replacement options will vest six months after the date the replacement options are granted and the remaining 75% of the shares will vest in equal monthly installments beginning on the date of grant of the replacement options so that the replacement options will be vested in full three years from the grant date of the replacement options.

Upon expiration of the Offer, the Company accepted elections to replace eligible stock options to purchase 1,831,887 shares of common stock, representing 64.3% of the shares subject to options that were eligible to be exchanged in the Offer. As a result, options to purchase 1,831,887 shares of common stock were immediately granted to the participants at an exercise price of $1.00 per share, in accordance with the terms of the Offer. The closing sales price of the Company s common stock on January 29, 2009 was $0.47 per share.

Restructuring Plan

On January 15, 2009, the Company committed to a restructuring plan that will result in the reduction of approximately 43% of the Company s workforce as of that date. In connection with the restructuring plan, the Company will focus on its clinical-stage product candidate, MB07811 for the treatment of hyperlipidemia , as well as on advancing its glucagon antagonist program and its second-generation TR Beta agonist program.

METABASIS THERAPEUTICS, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

Employees directly affected by the restructuring plan have received notification and will be provided with severance payments, continued benefits for a specified period of time and outplacement assistance. The Company expects to complete the restructuring plan by the end of the second quarter of 2009.

The Company anticipates incurring restructuring charges of approximately $1.4 million, primarily associated with personnel-related termination costs. The majority of these costs will be recognized during the first quarter of 2009.

The severance-related charge that the Company expects to incur in connection with the restructuring is subject to a number of assumptions, and actual results may materially differ. The Company may also incur other material charges not currently contemplated due to events that may occur as a result of, or associated with, the restructuring plan.

15. Summary of Quarterly Financial Data (Unaudited)

The following is a summary of the quarterly results of operations for the years ended December 31, 2008 and 2007 (in thousands, except for net loss per share data):

	Quarters Ended				
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Year Ended Dec 31[1]
2008					
Revenue	$ 942	$ 687	$ 1,402	$ 1,779	$ 4,810
Research and development	9,745	9,667	8,480	8,464	36,356
General and administrative	2,519	2,569	2,659	3,004	10,751
Total operating expenses	12,264	12,236	11,139	11,468	47,107
Net loss	(11,100)	(11,542)	(9,834)	(9,838)	(42,314)
Basic and diluted net loss per share:	$ (0.36)	$ (0.34)	$ (0.28)	$ (0.28)	$ (1.25)
2007					
Revenue	$ 3,426	$ 1,604	$ 2,653	$ 1,336	$ 9,019
Research and development	9,506	11,065	10,866	9,478	40,915
General and administrative	3,264	3,186	2,834	3,158	12,442
Total operating expenses	12,770	14,251	13,700	12,636	53,357
Net loss	(8,505)	(11,935)	(10,480)	(10,879)	(41,799)
Basic and diluted net loss per share:	$ (0.28)	$ (0.40)	$ (0.34)	$ (0.35)	$ (1.37)

(1) The sum of the four quarters may not necessarily agree to the year total due to rounding within a quarter.

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Metabasis Therapeutics, Inc.

Balance Sheets

(In thousands, except par value data)

	September 30, 2009 (Unaudited)	December 31, 2008
Assets		
Current assets:		
Cash and cash equivalents	$ 2,215	$ 12,599
Securities available-for-sale		9,000
Assets held for sale	867	
Prepaids and other current assets	1,002	1,091
Total current assets	4,084	22,690
Property and equipment, net		4,779
Other assets		273
Total assets	$ 4,084	$ 27,742
Liabilities and stockholders equity		
Current liabilities:		
Accounts payable	$ 152	$ 93
Accrued compensation	647	2,439
Accrued liabilities	406	1,798
Deferred revenue, current portion		5,652
Current portion of long-term debt		3,890
Current portion of capital lease obligations	35	26
Total current liabilities	1,240	13,898
Deferred revenue, net of current portion		2,499
Deferred rent		3,079
Long-term debt		4,658
Capital lease obligations, net of current portion		27
Other long-term liabilities		200
Total liabilities	1,240	24,361
Stockholders equity:		
Preferred stock, $0.001 par value; 5,000 shares authorized at September 30, 2009 and December 31, 2008, no shares issued or outstanding		
Common stock, $0.001 par value; 100,000 shares authorized at September 30, 2009 and December 31, 2008; 35,157 shares issued and outstanding at September 30, 2009 and December 31, 2008	35	35
Additional paid-in capital	197,654	195,640
Accumulated deficit	(194,845)	(192,326)
Accumulated other comprehensive income		32
Total stockholders equity	2,844	3,381
Total liabilities and stockholders equity	$ 4,084	$ 27,742

See accompanying notes.

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Metabasis Therapeutics, Inc.

Statements of Operations

(In thousands, except per share data)

(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Revenues:				
License fees	$ 2,710	$ 743	$ 6,752	$ 1,333
Sponsored research	173	659	1,732	1,698
Other	2,000		8,000	
Total revenues	4,883	1,402	16,484	3,031
Operating expenses:				
Research and development	400	8,480	11,240	27,892
General and administrative	2,086	2,659	7,488	7,747
Loss on lease termination	554		554	
Gain on sale of assets held for sale	(821)		(821)	
Total operating expenses	2,219	11,139	18,461	35,639
Income (loss) from operations	2,664	(9,737)	(1,977)	(32,608)
Other income (expense):				
Interest income		169	40	812
Interest expense	(2)	(266)	(789)	(680)
Miscellaneous income			207	
Total other (expense) income	(2)	(97)	(542)	132
Net income (loss)	$ 2,662	$ (9,834)	$ (2,519)	$ (32,476)
Basic and diluted net income (loss) per share	$ 0.08	$ (0.28)	$ (0.07)	$ (0.97)
Shares used to compute basic and diluted net income (loss) per share				
Basic	35,157	35,042	35,154	33,354
Diluted	35,162	35,042	35,154	33,354

See accompanying notes.

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Metabasis Therapeutics, Inc.

Statements of Cash Flows

(In thousands)

(Unaudited)

	Nine Months Ended September 30,	
	2009	**2008**
Operating activities		
Net loss	$ (2,519)	$ (32,476)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	1,713	2,904
Depreciation and amortization	1,257	1,558
Deferred rent	105	369
Amortization of discount and premium on securities available-for-sale	(32)	(407)
Loss on disposal or abandonment of assets	987	29
Gain on assets held for sale	(821)	
Loss on lease termination	554	
Gain on accounts payable settlements	(293)	
Realized gain on securities available-for-sale		(7)
Change in operating assets and liabilities:		
Other current assets	669	(212)
Other assets	113	75
Deferred revenue	(8,151)	7,858
Accounts payable	352	(140)
Accrued compensation and other liabilities	(3,184)	(2,153)
Net cash flows used in operating activities	(9,332)	(22,602)
Investing activities		
Purchases of securities available-for-sale		(24,498)
Sales/maturities of securities available-for-sale	9,000	37,492
Payment related to lease termination	(2,484)	
Purchases of property and equipment		(516)
Proceeds from disposition of property & equipment	900	
Net cash flows provided by investing activities	7,416	12,478
Financing activities		
Issuance of common stock, net	2	9,673
Principal payments on debt and capital lease obligations	(8,552)	(1,581)
Proceeds received from debt		5,000
Net cash flows (used in) provided by financing activities	(8,468)	13,092
(Decrease) increase in cash and cash equivalents	(10,384)	2,968
Cash and cash equivalents at beginning of year	12,599	14,141
Cash and cash equivalents at end of period	$ 2,215	$ 17,109
Supplemental schedule of noncash investing and financing activities:		
Unrealized loss on securities available-for-sale	$ (32)	$ (44)

Accrued debt issuance costs	$	$ 200

See accompanying notes.

Metabasis Therapeutics, Inc.

Notes to Financial Statements

(Unaudited)

1. Basis of Presentation

The accompanying unaudited financial statements have been prepared in accordance with U.S. generally accepted accounting principles (GAAP) and with the rules and regulations of the Securities and Exchange Commission (SEC) related to a quarterly report on Form 10-Q. Accordingly, they do not include all of the information and disclosures required by GAAP for complete financial statements. The balance sheet at December 31, 2008 has been derived from the audited financial statements at that date but does not include all information and footnotes required by GAAP for complete financial statements. The interim financial statements reflect all adjustments which, in the opinion of management, are necessary for a fair presentation of the financial condition and results of operations for the periods presented. Except as otherwise disclosed, all such adjustments are of a normal recurring nature.

Operating results for the three and nine months ended September 30, 2009 are not necessarily indicative of the results that may be expected for the year ending December 31, 2009. For further information, see the financial statements and notes thereto for the year ended December 31, 2008 included in our annual report on Form 10-K filed with the SEC.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities as well as disclosures of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The terms Company and we and our are used in this report to refer to Metabasis Therapeutics, Inc.

2. Proposed Merger with Ligand Pharmaceuticals Incorporated

Merger Agreement

On October 26, 2009, the Company entered into an Agreement and Plan of Merger (as amended, the Merger Agreement) with Ligand Pharmaceuticals Incorporated, a Delaware corporation (Ligand), Moonstone Acquisition, Inc., a Delaware corporation and a wholly-owned subsidiary of Ligand (Merger Sub) and David F. Hale as Stockholders Representative. The Merger Agreement provides that Merger Sub will be merged with and into the Company (the Merger), with the Company continuing as the surviving corporation and a wholly-owned subsidiary of Ligand.

Under the terms of the Merger Agreement, at the effective time of the Merger (Effective Time), each outstanding share of the Company s common stock (other than shares held by Ligand, Merger Sub or the Company or by stockholders of the Company who have validly exercised their appraisal rights under Delaware law) will be converted into the right to receive (a) a proportionate share of a closing cash payment equal to $3,207,500 *less* $150,000, which is to be contributed to an account to cover the costs, expenses and compensation of the Stockholders Representative fund, and either (i) *plus* the amount that the Net Cash Amount (as defined in the Merger Agreement) of the Company exceeds the Target Net Cash Amount (as defined in the Merger Agreement) at the closing of the Merger or (ii) *less* the amount that the Net Cash Amount of the Company is less than the Target Net Cash Amount at the closing of the Merger; (b) one Roche CVR (as described below); (c) one TR Beta CVR (as described below); (d) one Glucagon CVR (as described below); and (e) one General CVR (as described below).

The parties have made customary representations, warranties and covenants in the Merger Agreement, including among other things, covenants (a) to conduct their respective businesses in the ordinary course between

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Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

the date of the Merger Agreement and the Effective Time, (b) that Ligand will prepare and file with the Securities and Exchange Commission (the SEC) a registration statement on Form S-4 in which the Company s proxy statement will be included as a prospectus; (c) for the Company to solicit proxies and cause a special meeting of the stockholders of the Company to be held to adopt the Merger Agreement and the transactions contemplated thereunder; (d) subject to certain exceptions which permit the Company s board of directors (the Board) to withdraw its recommendation if failure to do so would be inconsistent with its fiduciary obligations, for the Board to recommend that the stockholders of the Company adopt the Merger Agreement; (e) for the Company not to (i) solicit proposals relating to alternative transactions or (ii) subject to certain exceptions which permit the Board to discuss certain unsolicited proposals for alternative transactions received from third parties if failure to do so would be inconsistent with its fiduciary obligations, enter into discussions concerning, or provide information in connection with, alternative transactions; and (f) for Ligand to honor the terms of the existing severance agreements and certain indemnification obligations of the Company. Additionally, Ligand has agreed to invest an aggregate of at least $8 million in research, development or commercialization expenses in furtherance of the Company s drug programs prior to the 42nd month anniversary of the Effective Time.

Pursuant to the terms of the Merger Agreement, David F. Hale will act as Stockholders Representative and (a) negotiate and settle disputes arising under the Merger Agreement, (b) accept delivery of notices, (c) monitor fulfillment of Ligand s $8 million in funding obligations, (d) confirm satisfaction of Ligand s obligations under the CVR Agreements (described below) and (e) negotiate and settle matters with respect to the amounts to be paid to the holders of the CVRs (described below).

The consummation of the Merger is subject to certain customary conditions, including, without limitation, (a) the approval of the Merger Agreement and the transactions contemplated thereunder by the stockholders of the Company; (b) the absence of any legal prohibitions on the closing of the Merger; (c) subject to certain exceptions, the continued accuracy of the Company s and Ligand s representations and warranties as of the Effective Time; (d) the absence of any development or event since the date of the Merger Agreement that has had or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on either the Company (in the case of Ligand s obligation to close) or Ligand (in the case of the Company s obligation to close); (e) the effectiveness of the registration statement relating to the CVRs to be issued in the Merger; (f) obtaining required consents; and (g) no more than 1,750,000 shares of Company common stock being eligible to assert dissenters rights.

Under the Merger Agreement, each of Ligand and the Company has certain rights to terminate the Merger Agreement and the Merger, including (a) by either party, if the Merger has not been consummated on or prior to February 15, 2010, subject to certain exceptions; (b) by either party, if the required stockholder approval is not obtained; (c) by Ligand, if the Board changes its recommendation regarding the Merger Agreement and the Merger; and (d) by the Company, if the Board validly accepts a superior proposal. If (i) Ligand or the Company terminates the Merger Agreement in the event the Merger does not occur by February 15, 2010 (as may be extended) and/or the stockholder vote is not obtained and (ii) Ligand has not materially breached any of the representations and warranties in the Merger Agreement and (iii) an acquisition proposal shall have been made prior to the termination of the Merger Agreement and within 12 months after the date of termination of the Merger Agreement the Company consummates any acquisition transaction, the Company shall pay Ligand a termination fee of $250,000. In the event that either (A) Ligand terminates the Merger Agreement after a change in the Board recommendation or because the Company breaches its representations, warranties and other covenants in the Merger Agreement or (B) the Company terminates the Merger Agreement to pursue a superior proposal, then the Company shall pay Ligand a termination fee of $400,000.

The Merger Agreement contains representations and warranties that the parties to the Merger Agreement made to and solely for the benefit of each other. The assertions embodied in such representations and warranties

Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

are qualified by information contained in the confidential disclosure schedules that the Company delivered to Ligand in connection with signing the Merger Agreement. Moreover, certain representations and warranties in the Merger Agreement were used for the purpose of allocating risk between the Company and Ligand, rather than establishing matters of fact. Accordingly, investors and stockholders should not rely on such representations and warranties as characterizations of the actual state of facts or circumstances, since they were only made as of the date of the Merger Agreement and are modified in important part by the underlying disclosure schedules. Additionally, information concerning the subject matter of such representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company s public disclosures.

Voting Agreements

On October 26, 2009, in connection with the Merger Agreement, Ligand entered into voting agreements with the Company s officers and directors and certain significant stockholders of the Company who together represented approximately 29% of the Company s outstanding shares of common stock as of October 26, 2009. Under the terms of the voting agreement, each of the above parties agreed to vote, and irrevocably appointed Ligand as its proxy to, among other matters, vote, all outstanding shares of the Company s common stock beneficially held by such party as of the record date (a) in favor of the approval of the Merger and adoption of the Merger Agreement; (b) against any other acquisition proposal or superior proposal; and (c) except as otherwise agreed to in writing in advance by Ligand, against any proposal or transaction which would reasonably be expected to prevent or delay the consummation of the Merger or the Merger Agreement. Under the terms of the voting agreement, each such party agreed not to exercise any appraisal rights or any dissenters rights that such party may have or could potentially have in connection with the Merger Agreement and the transactions contemplated by the Merger Agreement.

Contingent Value Rights Agreements

At the closing of the Merger, Ligand, the Company, David F. Hale as Stockholders Representative and Mellon Investor Services LLC, as Rights Agent, will enter into four Contingent Value Rights Agreements (the CVR Agreements). The CVR Agreements will set forth the rights that holders of the CVRs will have with respect to each CVR (as defined in the Merger Agreement) held by them after the closing of the Merger. As described above under Merger Agreement, each eligible Company stockholder will receive one CVR under each of the four CVR Agreements for each share of Company common stock held at the closing of the Merger. The CVRs will be registered under a registration statement to be filed with the SEC by Ligand on a Form S-4 and will, in general, be tradable.

Roche CVR Agreement

Subject to certain adjustments (including the required payments of certain contingent liabilities and contributions to the Stockholders Representative fund), holders of the Roche CVRs (as defined in the Roche CVR Agreement), will receive (if and when payable on the January 1st or July 1st following the triggering payment event), the following payouts:

- 65% of any milestone payments received by Ligand or the Company after October 1, 2009 under a collaboration and license agreement with Hoffmann-La Roche Inc. and its affiliates (the Roche Agreement);

- 68% of any royalty payments received by Ligand or the Company after October 1, 2009 under the Roche Agreement;

Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

65% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand or the Company after October 1, 2009 in connection with a sale or transfer of the Roche Agreement rights (including royalty rights, milestone payment rights or rights to all or any portion of a drug candidate or technology licensed pursuant to the Roche Agreement); and

a proportionate share of any amounts distributed to the holders of CVRs from the Stockholders Representative fund.

TR Beta CVR Agreement

Subject to certain adjustments (including the required payments of certain contingent liabilities and contributions to the Stockholders Representative fund), holders of the TR Beta CVRs (as defined in the TR Beta CVR Agreement), will receive (if and when payable on the January 1st or July 1st following the triggering payment event), the following payouts:

(a) 50% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions related to the TR Beta Program (as defined in the TR Beta CVR Agreement) prior to the sixth anniversary of the Effective Time, (b) 40% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions related to the TR Beta Program after the sixth anniversary of the Effective Time and prior to the seventh anniversary of the Effective Time, (c) 30% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions related to the TR Beta Program after the seventh anniversary of the Effective Time and prior to the eighth anniversary of the Effective Time or (d) 20% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions related to the TR Beta Program after the eighth anniversary of the Effective Time and prior to the tenth anniversary of the Effective Time; and

a proportionate share of any amounts distributed to the holders of CVRs from the Stockholders Representative fund.

Glucagon CVR Agreement

Subject to certain adjustments (including the required payments of certain contingent liabilities and contributions to the Stockholders Representative fund), holders of the Glucagon CVRs (as defined in the Glucagon CVR Agreement), will receive (if and when payable on the January 1st or July 1st following the triggering payment event), the following payouts:

(a) 50% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions related to the Glucagon Program (as defined in the Glucagon CVR Agreement prior to the sixth anniversary of the Effective Time, (b) 40% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions related to the Glucagon Program after the sixth anniversary of the Effective Time and prior to the seventh anniversary of the Effective Time, (c) 30% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions related to the Glucagon Program after the seventh anniversary of the Effective Time and prior to the eighth anniversary of the Effective Time or (d) 20% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with

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Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

transactions related to the Glucagon Program after the eighth anniversary of the Effective Time and prior to the tenth anniversary of the Effective Time; and

a proportionate share of any amounts distributed to the holders of CVRs from the Stockholders Representative fund.

General CVR Agreement

Subject to certain adjustments (including the required payments of certain contingent liabilities and contributions to the Stockholders Representative fund), holders of the General CVRs (as defined in the General CVR Agreement), will receive (if and when payable on the January 1st or July 1st following the triggering payment event), the following payouts:

(a) 50% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with each deal related to the DGAT-1 Program, FBPase Inhibitor Program, GK Program, Pradefovir Program, HepDirect Program (each as defined in the General CVR Agreement) or certain other Metabasis drug development programs until such time as Ligand makes research and/or development investments in excess of $700,000 on such program or (b) 25% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with each deal related to the DGAT-1 Program, FBPase Inhibitor Program, GK Program, Pradefovir Program, HepDirect Program or certain other Metabasis drug development programs after such time as Ligand makes research and/or development investments in excess of $700,000 on such program;

(a) 90% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions related to the 7133 Program (as defined in the General CVR Agreement) that occur after October 1, 2009 and within six months after the Effective Time, (b) 30% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions related to the 7133 Program that occur after the sixth month anniversary of the Effective Time and prior to the two year anniversary of the Effective Time or (c) 10% of any aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with transactions related to the 7133 Program that occur after the two year anniversary of the Effective Time and prior to the ten year anniversary of the Effective Time;

60% of the aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with (a) any sale of certain shares of PeriCor Therapeutics, Inc. stock held by the Company, (b) any milestone payments or royalty payments payable pursuant to certain PeriCor Agreements (as defined in the General CVR Agreement) or (c) any full or partial sale or transfer of any rights to receive such milestone payments or royalty payments or all or any portion of a drug candidate or technology from the drug development program licensed pursuant to certain PeriCor Agreements;

the amount of any shortfall of Ligand s guaranteed funding obligations under the Merger Agreement;

50% of the aggregate proceeds (less reasonable out of pocket transactional expenses and costs incurred by Ligand) received by Ligand in connection with any sale of the Company s QM/MM Technology (as defined in the General CVR Agreement); and

a proportionate share of any amounts distributed to the holders of CVRs from the Stockholders Representative fund.

Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

3. Going Concern

As of September 30, 2009 the Company s accumulated deficit totaled $194.8 million. In July 2009, the Company entered into an agreement with a third party to sell its laboratory and office equipment (see Note 11), under which the Company is entitled to receive a minimum of $1.5 million in proceeds through October 2009 as the assets are sold, subject to reduction in the event of earlier termination of the agreement. In addition, the Company terminated its lease for its corporate headquarters (see Note 4), thereby reducing its future cash operating needs. On October 26, 2009, the Company entered into the Merger Agreement. After considering the impact of these recent transactions, and together with the cash available at September 30, 2009, the Company expects its existing working capital to fund its current operations through March 2010 or, if sooner, the completion of the Merger. In the event the Merger is not completed and the Company is otherwise unable to secure additional resources, including through another strategic transaction, it will be required to cease operations entirely. These conditions raise substantial doubt about the Company s ability to continue as a going concern. The accompanying financial statements have been prepared on a going concern basis that contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The financial statements do not include adjustments to reflect the possible future effects on the recoverability and classification of recorded assets or the amounts of liabilities that might be necessary should the Company be unable to continue as a going concern.

4. Lease Termination

On July 21, 2009, the Company entered into an Agreement for Termination of Lease and Voluntary Surrender of Premises (as amended, the Termination Agreement) with ARE-SD Region No. 24, LLC (Owner) to terminate the Lease Agreement, dated December 21, 2004, by and between the Company and Owner, as amended pursuant to a First Amendment to Lease Agreement dated May 16, 2006 (the Lease Agreement). The Lease Agreement governed the terms and conditions for the use of the facilities the Company occupies as its corporate offices. Under the Lease Agreement the Company was obligated to make future payments to the Owner for a base monthly rent and operating expenses totaling $25.7 million between August 2009 and October 2015.

Pursuant to the terms of the Termination Agreement, the Lease Agreement terminated effective July 21, 2009 (the Termination Date) and the Owner granted the Company a license for continued use of the facilities (License). The License will automatically expire on the earlier to occur of: (i) January 2, 2010 or (ii) upon receipt of a 30 day notice of termination from the Owner to the Company. In consideration of the early termination of the Lease Agreement, the Company agreed to the following: (i) to pay the Owner a fee of $2.5 million on the Termination Date, (ii) to pay up to an additional $1.5 million to be paid as 35% of the gross revenues earned by the Company from licenses, collaboration arrangements or sales of the Company s existing pipeline of therapeutic programs entered into or effected during the period commencing July 1, 2009 and ending September 30, 2013, provided that the proceeds from these revenue generating events have been received by the Company, (iii) to grant the Owner a warrant to purchase 1.0 million shares of the Company s common stock at $0.41 per share, (iv) to surrender and forfeit the $152,356 security deposit to the Owner and (v) to transfer certain assets to the Owner consisting of leasehold improvements and furniture. The Termination Agreement excuses both the Company and the Owner from any further material obligations with respect to the Lease Agreement as of the Termination Date, including the outstanding balance of tenant improvement loans due to the Owner of approximately $0.2 million at July 31, 2009. As a result of this transaction, the Company recorded a net loss of approximately $0.6 million during the three months ended September 30, 2009, which includes accounting for the considerations discussed above as well as writing off the deferred rent from the balance sheet.

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Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

5. Accounts Payable Settlements

During the three months ended September 30, 2009, the Company entered into a series of settlement agreements with certain vendors, in which the Company settled approximately $0.9 million of its outstanding accounts payable at September 30, 2009 for an aggregate settlement amount of approximately $0.6 million. These settlements resulted in a gain of $0.3 million during the three months ended September 30, 2009, all of which was recorded as a credit to research and development expenses.

6. Comprehensive Loss

All components of comprehensive income (loss), including net income (loss), must be reported in the financial statements in the period in which they are recognized. Comprehensive income (loss) is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. The Company s comprehensive income (loss) is as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net income (loss)	$ 2,662	$ (9,834)	$ (2,519)	$ (32,476)
Unrealized gain (loss) on available-for-sale investments		10	(32)	(44)
Comprehensive income (loss)	$ 2,662	$ (9,824)	$ (2,551)	$ (32,520)

7. Net Loss Per Share

Basic earnings per share (EPS) is calculated by dividing net income (loss) by the weighted average number of common shares outstanding for the period, without consideration for common stock equivalents. Diluted EPS is computed by dividing net income (loss) by the weighted average number of common share equivalents outstanding for the period determined using the treasury-stock method. For purposes of this calculation, common stock subject to repurchase by the Company, options and warrants are considered to be common stock equivalents and are only included in the calculation of diluted EPS when their effect is dilutive. The total number of shares issuable upon exercise of stock options and warrants excluded from the calculation of diluted EPS since they are anti-dilutive were 7,143,993 and 7,906,668 for the three months ended September 30, 2009 and 2008, respectively, and 7,237,101 and 7,580,525 for the nine months ended September 30, 2009 and 2008, respectively. There are 5,000 shares issuable upon the exercise of options that are dilutive for the three months ended September 30, 2009 as included below.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
	(in thousands, except per share data)		(in thousands, except per share data)	
Actual:				
Numerator:				
Net income (loss)	$ 2,662	$ (9,834)	$ (2,519)	$ (32,476)
Denominator:				
Weighted average common shares:				
Basic	35,157	35,042	35,154	33,354

Diluted	35,162	35,042	35,154	33,354
Basic and diluted net income (loss) per share	$ 0.08	$ (0.28)	$ (0.07)	$ (0.97)

Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

8. Collaboration Agreements

The Company has entered into various collaboration agreements which provide collaboration partners access to certain know-how, technology and patent rights maintained by the Company in exchange for the rights to participate in the research and under certain terms development and/or co-promotion of products, if successfully developed through these arrangements. Terms of the various collaboration agreements entitle the Company to receive up-front license fees, milestone payments upon the achievement of certain product research and development objectives and royalties on future sales, if any, of commercial products resulting from the collaboration.

The Company evaluated its collaborative agreements for proper income statement classification based on the nature of the underlying activity. Amounts due from collaborative partners related to research and development activities are generally reflected as sponsored research revenues if the proceeds are provided for research services performed or license fee revenues if the proceeds are provided for rights and access to certain know-how, technology and patent rights maintained by the Company.

Roche

The Company maintains a Research Collaboration and License Agreement with Hoffmann-La Roche Inc., F. Hoffmann-La Roche Ltd. and Roche Palo Alto LLC (collectively, Roche). The collaboration operates as an agreement rather than a joint venture or other legal entity. The Company s HepDirect liver-targeted technology is applied to proprietary Roche compounds to develop second-generation nucleoside analog drug candidates for treating hepatitis C virus. The Company provides a non-exclusive worldwide license to its proprietary know-how and technology to Roche through contracted research and development services during the research phase of this collaboration. By June 2009, a development candidate was identified and Roche has assumed all development responsibility. The Company will be eligible to receive up to $191.0 million in additional payments upon achievement of predetermined preclinical and clinical development events as well as regulatory and commercialization events. Roche will retain full commercial rights for any marketed products resulting from the collaboration and will pay the Company a royalty on net sales of such products.

The Company received a non-refundable upfront payment of $10.0 million from Roche in August 2008, of which $8.3 million was to be recognized as license fee revenue and $1.7 million was to be recognized as sponsored research revenue. The Company generally recognizes the upfront, nonrefundable fee over the period the related services are provided. Amounts received for sponsored research funding for a specific number of full-time researchers are generally recognized as revenue as the services are provided.

Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

As a result of the Company s restructuring in May 2009 (see note 10), Roche did not extend the research term beyond the first year, and the Company accelerated the recognition of the unamortized license fee through the end of the one-year research period in August 2009. On June 1, 2009, the Company entered into a letter agreement with Roche, which provided for the early payment by Roche of a $2.0 million milestone payment to the Company, on or before June 1, 2009. Pursuant to the letter agreement, the payment of this milestone was accelerated in exchange for certain know-how that the Company was obligated to provide to Roche within 30 days of receipt of the payment. All other terms of the Collaboration Agreement are unchanged and remain in effect. The Company recognized the $2.0 million of milestone revenue in July 2009 when all know-how was transferred. The Company recognized the following revenues and costs related to this collaboration (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
License fee revenue	$ 2,710	$ 692	$ 6,649	$ 692
Sponsored research revenue	173	283	1,023	283
Other	2,000		2,000	
	$ 4,883	$ 975	$ 9,672	$ 975
Research and development costs	$	$ 247	$ 282	$ 247

As of September 30, 2009, there was no deferred revenue reflected on the balance sheet relating to this collaboration.

Merck

The Company maintains a collaboration agreement with Merck & Co. (Merck), to research, develop and commercialize novel small molecule therapeutics with the potential to treat type 2 diabetes, and potentially other metabolic diseases, by activating an enzyme in the liver called AMP-activated Protein Kinase. The collaboration operates as an agreement rather than a joint venture or other legal entity. The Company is providing research and preclinical services on jointly identified compounds for the potential treatment of type 2 diabetes and potentially other metabolic diseases. Merck is solely responsible for conducting and funding all development work for compounds resulting from this collaboration. The Company maintains an option to co-promote any such product in the United States.

As part of this collaboration, Merck paid an initial non-refundable license fee of $5.0 million in July 2005 and provided research support funding of approximately $6.3 million over the three-year research term. The three-year research term is subject to renewal for one additional year upon the parties mutual agreement. In April 2008, the research term was extended for an additional year, through June 2009. The Company received $1.5 million over the course of the one year extension to support the research efforts. Under the original collaboration agreement, Merck was also obligated to pay milestone payments if specified preclinical and clinical development and regulatory events occur and pay royalties on sales of any product resulting from this collaboration. If all preclinical and clinical milestones were achieved on multiple indications, and including the $5.0 million initial, non-refundable license fee and the minimum $7.8 million in research support funding, the Company would have been entitled to payments totaling up to $75.8 million, plus royalties.

On June 9, 2009 the Company and Merck amended the License and Collaboration Agreement providing for a one-time, non refundable payment by Merck of $6.0 million to the Company to satisfy all potential future milestone and royalty payments payable by Merck. All other material terms of the Collaboration Agreement are unchanged and remain in effect. The research period under this collaboration ended on June 30, 2009 and the

Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

Company maintains no further material performance obligations to Merck in connection with the License and Collaboration Agreement and therefore recognized the $6.0 million payment upon receipt in June 2009.

The Company recognizes the upfront, nonrefundable fee over the period the related services are provided. Amounts received for sponsored research funding are recognized as revenues as the services are performed. The Company recognized the following revenues and costs related to this collaboration (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
License fee revenue	$	$ 52	$ 103	$ 642
Sponsored research revenue		375	709	1,414
Other			6,000	
	$	$ 427	$ 6,812	$ 2,056
Research and development costs	$	$ 399	$ 522	$ 1,074

As of September 30, 2009, there was no deferred revenue reflected on the balance sheet relating to this collaboration.

9. Offer to Exchange Stock Options

On January 29, 2009, the Company completed an Offer to Exchange certain outstanding options to purchase shares of the Company s common stock, that were originally granted under the Company s Amended and Restated Equity Incentive Plan and that had an exercise price that is equal to or greater than $1.50 per share, for replacement options to purchase shares of the Company s common stock (the Offer). Eligible option holders included employees and scientific advisory board members. Subject to the participant s continued service with the Company, 25% of the shares underlying the replacement options vest six months after the date the replacement options were granted and the remaining 75% of the shares vest in equal monthly installments beginning on the date of grant of the replacement options so that the replacement options will be vested in full three years from the grant date of the replacement options.

Upon expiration of the Offer, the Company accepted elections to replace eligible stock options to purchase 1,831,887 shares of common stock, representing 64.3% of the shares subject to options that were eligible to be exchanged in the Offer. As a result, options to purchase 1,831,887 shares of common stock were immediately granted to the participants at an exercise price of $1.00 per share, in accordance with the terms of the Offer. The closing sales price of the Company s common stock on January 29, 2009 was $0.47 per share.

The Company accounted for the Offer as a short-term inducement and recognized $0 and $83,000 of additional compensation expense during the three and nine months ended September 30, 2009, representing the incremental fair value for those options that were exchanged for new options.

10. Corporate Restructurings

In November 2008, the Company committed to a restructuring plan that resulted in the reduction of approximately 30% of the Company s workforce. The restructuring was a result of a strategic realignment of the Company to preserve cash and reduce on-going operating expenses. Employees directly affected by the restructuring plan received notification and were provided with severance payments, retention bonuses, where applicable, continued benefits for a specified period of time and outplacement assistance. The Company completed this restructuring plan in March 2009.

Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

The Company recorded charges of $0 and $0.1 million for the three and nine months ended September 30, 2009 related to the November 2008 restructuring, all of which were recorded in research and development expense. Since November 2008, the Company incurred restructuring charges of approximately $1.5 million related to the November 2008 restructuring, of which $1.2 million were recorded in research and development expense and $0.3 million were recorded in general and administrative expense. All charges were primarily associated with personnel-related termination costs. The Company did not incur any expense related to contractual or lease obligation or other exit costs. The Company does not anticipate incurring any additional charges related to this restructuring.

On January 15, 2009, the Company committed to another restructuring plan that resulted in the further reduction of approximately 43% of the Company s workforce. In connection with this restructuring plan, the Company narrowed its research and development activities to focus on its clinical-stage product candidate, MB07811 for the treatment of hyperlipidemia, as well as on advancing its glucagon antagonist program and its second-generation TR Beta agonist program. Employees directly affected by this restructuring plan received notification and were provided with severance payments, retention bonuses, where applicable, continued benefits for a specified period of time and outplacement assistance. The Company incurred none and $0.3 million during the three and nine months ended September 30, 2009 of impairment charges primarily related to scientific equipment and other assets which were abandoned or disposed of. The Company completed this restructuring plan in the third quarter of 2009.

The Company recorded charges of none and $1.5 million for the three and nine months ended September 30, 2009 related to the January 2009 restructuring, of which $1.3 million and $0.2 million were recorded in research and development expense and general and administrative expense for the nine months ended September 30, 2009, respectively. The severance-related charge that the Company expected to incur in connection with the January 2009 restructuring was subject to a number of assumptions, and actual results differed. The increase in the actual amount of restructuring charges incurred of $1.5 million compared to the originally anticipated amount of $1.4 million was due to employees remaining with the Company longer than originally planned. The Company does not anticipate incurring any additional charges related to this restructuring. All charges were primarily associated with personnel-related termination costs. The Company did not incur any expense related to contractual or lease obligation or other exit costs.

On May 26, 2009, the Company committed to a third restructuring plan that resulted in the reduction of 45 employees, or approximately 85% of the Company s workforce. This restructuring was intended to further preserve cash and reduce ongoing operating expenses, providing the Board of Directors additional time to evaluate strategic alternatives. All research and development activities were discontinued. The seven remaining employees, primarily consisting of the current officers of the Company, continued to pursue the monetization of its product pipeline and equipment while assisting the Board of Directors in the evaluation of its other strategic alternatives. Initially, it was not anticipated that the Company would incur any material costs associated with this restructuring. However, during the third quarter of 2009, the Company provided the employees associated with the May 2009 restructuring the option to enter into a release agreement, under which each employee who entered into such agreement would receive certain severance benefits. The Company recorded $0.2 million during the three months ended September 30, 2009 related to the May 2009 restructuring, of which $0.1 million was recorded in both research and development expense and general and administrative expense. For the nine months ended September 30, 2009, the Company recorded $0.4 million of expense related to this restructuring, of which $0.1 million was recorded in general and administrative expense and $0.3 million was recorded in research and development expense. The release agreement also provides for additional severance benefits if the Company reaches certain business development milestones between the date of the release agreement and May 26, 2010. If

Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

the Company reaches one milestone, the Company will incur approximately $0.6 million of additional severance expense. If the Company reaches both the first and second milestones, the Company will incur an incremental $0.5 million severance expense for a total of $1.1 million in additional severance expense.

In connection with the cessation of all research and development activities under the May 2009 restructuring, the Company incurred $0.2 million and $0.7 million in impairment charges primarily related to scientific equipment and other assets previously utilized in its research and clinical development activities for the three and nine months ended September 30, 2009, respectively. These assets are now classified as assets held for sale on the Company s balance sheet (see Note 11). It also recorded $0.6 million in contract termination costs for the three and nine months ended September 30, 2009 primarily associated with terminating the Company s facility lease in July 2009 (see Note 4).

Below is a reconciliation of amounts related to all restructuring plans that remain on the balance sheet as of September 30, 2009:

	Employee Severance and Related Benefits (in thousands)
Accrual balance at December 31, 2007	$
Accruals	1,483
Payments	(901)
Accrual balance as of December 31, 2008	$ 582
Accruals	1,559
Payments	(2,137)
Accrual balance as of September 30, 2009	$ 4

The following details the restructuring charges incurred inclusive of severance and related benefits and other costs (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Research and development	$ 339	$	$ 2,400	$
General and administrative	75		518	
Loss on lease termination	554		554	
	$ 968	$	$ 3,472	$

11. Impairment and Disposal of Long-Lived Assets and Assets Held for Sale

If indicators of impairment exist, the Company assesses the recoverability of the affected long-lived assets by determining whether the carrying value of such assets can be recovered through undiscounted future operating cash flows. An impairment loss is recognized when the carrying

amount of the long-lived asset is not recoverable and exceeds its fair value. The impairment charge is recorded as a reduction to the carrying value of the related asset and to operating expense. In the instance where a long-lived asset is to be abandoned it is disposed of when it ceases to be used. The Company revises its estimates for depreciation based on the plan of disposal or when the Company ceases to use such assets.

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In connection with the Company s corporate restructuring during the first quarter of 2009, the Company began the process of disposing and/or discontinuing the use of various lab equipment, office equipment and furniture resulting in impairment charges of $0 and $0.3 million within research and development expenses for the three and nine months ended September 30, 2009.

In connection with the Company s corporate restructuring during the second quarter of 2009, the Company began the process of discontinuing the use of various lab equipment, office equipment and furniture resulting in impairment charges of $0 and $0.5 million of impairment charges for the three and nine months ended September 30, 2009. Of the $0.5 million impairment charge for the nine months ended September 30, 2009, $0.4 million and $0.1 million were recorded within research and development expenses and general and administrative expenses, respectively. Impairment losses on long-lived assets to be held and used are reflected as a permanent write-down of the cost basis of the affected assets. The previously recorded depreciation on the impaired long-lived assets will be eliminated and a new life will be used to determine the depreciation of the revised cost basis of the assets.

The Company utilized quoted market prices to establish the fair value of these assets. The Company utilized quoted prices for similar items in active markets as determined by an independent third party (i.e. broker). Based on the Company s estimated future cash flows, a change in the estimated useful life of these assets was deemed to be seven months (through December 2009). Additionally, as all research and development activities ceased in May 2009, all depreciation costs will be reflected as costs associated with general and administrative activities.

In July 2009, the Company s management entered into an agreement to terminate the lease for the use of its corporate offices (see Note 4). In connection with this agreement, the Company transferred all leasehold improvements and furniture to the landlord. In addition, the Company entered into an agreement with EquipNet to facilitate the sale of the Company s lab equipment and certain of its office equipment. The agreement provides for EquipNet to receive a pre-determined commission for proceeds generated from the sale of these assets. Amounts were payable to the Company from EquipNet in periodic installments through October 2009 for the first $1.5 million of proceeds. All proceeds in excess of $1.5 million due to the Company will be paid as earned.

The assets under the EquipNet agreement met the criteria for being classified as held for sale. As such, the assets are measured at the lower of their carrying value or the fair value less cost to sell, and are reclassified and stated separately on the balance sheet. On the effective date of the EquipNet agreement, the carrying value of the assets was $1.7 million and the fair value less the cost to sell was $1.5 million based on the market quoted prices the Company received from the broker. As a result, the Company recorded an impairment charge of $0.2 million during the three months ended September 30, 2009 and reclassified the $1.5 million to assets held for sale presented separately on the balance sheet. No further depreciation expense will be recognized on these assets.

During the three months ended September 30, 2009, EquipNet sold assets with an aggregate carrying value of approximately $0.6 million for proceeds of approximately $1.5 million resulting in a gain of $0.8 million, net of selling costs. As of September 30, 2009, the remaining carrying value of assets held for sale was $0.9 million. Pursuant to the terms of the agreement with EquipNet, the sale of the lab and office equipment is expected to be completed in November 2009.

12. Accounting Pronouncements

In June 2009, the Financial Accounting Standards Board (the FASB), issued Statement of Financial Accounting Standard No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles, a replacement of FASB Statement No. 162* (SFAS No. 168). Effective for financial statements issued for interim and annual periods ending after September 15, 2009, the *FASB Accounting*

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Notes to Financial Statements (Continued)

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Standards Codification (Codification) will become the source of authoritative U.S. GAAP recognized by the FASB to be applied by nongovernmental entities. Rules and interpretive releases of the SEC under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. On the effective date, the Codification will supersede all existing non-SEC accounting and reporting standards. All other non-grandfathered, non-SEC accounting literature not included in the Codification will become non-authoritative. Following SFAS No. 168, the FASB will not issue new standards in the form of Statements, FASB Staff Positions or Emerging Issues Task Force Abstracts. Instead, it will issue Accounting Standards Updates to the Codification.

In August 2009, the FASB issued an Accounting Standards Update related to Codification Topic 820, *Fair Value Measurements and Disclosures.* This update provides clarification that in circumstances in which a quoted price in an active market for the identical liability is not available, a reporting entity is required to measure fair value using one or more of the following techniques:

A valuation technique that uses the quoted price of the identical liability when traded as an asset or the quoted prices for similar liabilities or similar liabilities when traded as assets.

Another valuation technique that is consistent with the principles of Topic 820.

This update also clarifies that when estimating the fair value of a liability, a reporting entity is not required to include a separate input or adjustment to other inputs relating to the existence of a restriction that prevents the transfer of the liability. Additionally, this update clarifies that both a quoted price in an active market for the identical liability at the measurement date and the quoted price for the identical liability when traded as an asset in an active market when no adjustments to the quoted price of the asset are required are Level 1 fair value measurements. This update is effective for the first reporting period beginning after issuance (the Company s interim period ended September 30, 2009). The adoption of this update did not have a material impact on the Company s financial statements.

In September 2009, the FASB issued an Accounting Standards Update to Codification Topic 740, *Income Taxes.* This update addresses the need for additional implementation guidance on accounting for uncertainty in income taxes, specifically, whether income tax paid to an entity is attributable to the entity or its owners; what constitutes a tax position for a pass-through entity or a tax-exempt entity; and how to apply the uncertainty in income taxes when a group of related entities comprise both taxable and nontaxable entities. This update also eliminates certain disclosures for nonpublic entities. Since the Company currently applies the standards for accounting for uncertainty in income taxes, this update is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The adoption of this update did not have a material impact on the Company s financial statements.

In October 2009, the FASB issued an Accounting Standards Update related to Codification Subtopic 605-25, *Revenue Recognition Multiple-Element Arrangements*. The purpose of this update is to amend the criteria used for separating consideration in the multiple-deliverable arrangements. The amendment establishes a selling price hierarchy for determining the selling price of a deliverable; replaces the term fair value in the revenue allocation guidance with selling price to clarify that the allocation of revenue is based on entity-specific assumptions rather than assumptions of a marketplace participant; eliminates using the residual method of allocation and requires that the arrangement consideration be allocated at the inception of the arrangement to all deliverables using the relative selling price method; and requires that the best estimate of a selling price is determined in a manner that is consistent with that used to determine the price to sell the deliverable on a standalone basis. The amendments in this update will be effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. Early adoption is

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permitted. If adopted early, the Company would be required to apply the amendments retrospectively from the beginning of the fiscal year of adoption. The Company does not intend to adopt the amendments early. The Company does not anticipate that the adoption of this amendment will have a material impact on the Company s financial statements.

13. Subsequent Events

In connection with preparation of the financial statements, the Company evaluated subsequent events after the balance sheet date of September 30, 2009 through November 11, 2009, the date on which the financial statements were initially issued, and through December 17, 2009, the date of reissuance of the unaudited financial statements.

Employment Agreement Amendment

On October 6, 2009, the Compensation Committee (the Compensation Committee) of the Board approved the amendment of the Offer Letter dated February 19, 2009 (the Offer Letter) and the Severance Agreement dated March 20, 2009 (the Severance Agreement) between the Company and Tran Nguyen, the Company s Vice President and Chief Financial Officer. The amendment modifies the Offer Letter such that Mr. Nguyen s entitlement to reimbursement for the costs of corporate housing and weekly trips between San Diego and San Francisco for Mr. Nguyen or his wife, which entitlement had expired on August 17, 2009, instead be extended until further notice by the Compensation Committee, and that Mr. Nguyen also receive a tax gross-up payment to compensate him for the tax impact for the extension of such reimbursements. The amendment also modifies the Severance Agreement such that Mr. Nguyen s severance pay, which had equaled one year of his base salary plus the average of his annual bonus for the past three years, instead be equal to one year of his base salary plus his target bonus for the year in which his termination of employment with the Company is effective. Payment of the severance pay will remain spread over the 12 months following a qualifying termination.

Changes in Executive Officer Status

Due to the discontinuation of our research and development activities, the Company discontinued Barry Gumbiner, M.D. s employment as its Vice President of Clinical Development and Chief Medical Officer, effective October 14, 2009. Following his departure, Dr. Gumbiner will continue to consult with the Company on matters related to the licensing or sale of the Company s pipeline of product candidates and advanced discovery programs or other strategic alternatives. The Company discontinued Edgardo Baracchini, Ph.D., M.B.A. s employment as its Senior Vice President of Business Development, effective October 23, 2009.

On October 26, 2009, the Board appointed David F. Hale, the Company s Executive Chairman, to serve as Acting Principal Executive Officer effective as of October 30, 2009 and contingent upon the previously announced departure of Mark D. Erion, Ph.D., the Company current President, Chief Executive Officer and Chief Scientific Officer. On October 26, 2009, the Board appointed Tran B. Nguyen, M.B.A., the Company Vice President of Finance, Chief Financial Officer, Secretary and Treasurer, to serve as Principal Accounting Officer effective as of October 26, 2009.

Proposed Merger with Ligand Pharmaceuticals Incorporated

On October 26, 2009, the Company entered into the Merger Agreement with Ligand, Merger Sub and David F. Hale as Stockholders Representative. See Note 2 above. On November 25, 2009, the Company entered into an Amendment to Agreement and Plan of Merger (the Amendment) with Ligand, Merger Sub and

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Metabasis Therapeutics, Inc.

Notes to Financial Statements (Continued)

(Unaudited)

David F. Hale as Stockholders Representative. The Amendment clarifies certain items in the Merger Agreement and in each of the form of Roche Contingent Value Rights Agreement attached to the Merger Agreement as Exhibit A, the form of TR Beta Contingent Value Rights Agreement attached to the Merger Agreement as Exhibit B, the form of Glucagon Contingent Value Rights Agreement attached to the Merger Agreement as Exhibit C and the form of General Contingent Value Rights Agreement attached to the Merger Agreement as Exhibit D, respectively.

Lease Termination Agreement Amendment

On December 16, 2009, the Company entered into a First Amendment (the First Amendment) to the Agreement for Termination of Lease and Voluntary Surrender of Premises with ARE-SD REGION NO. 24, LLC (Owner). The First Amendment was made with regard to the Agreement for Termination of Lease and Voluntary Surrender of Premises (the Original Termination Agreement), dated July 21, 2009, by and between the Company and Owner. The Original Termination Agreement was entered into to terminate the Lease Agreement, dated December 21, 2004, by and between the Company and Owner, as amended pursuant to a First Amendment to Lease Agreement dated May 16, 2006.

In the Original Termination Agreement, the Company agreed, among other things, to grant Owner the immediate right, title and interest to receipt of payments of amounts equal to 35% of gross revenue earned or proceeds received by the Company pursuant to licenses, collaboration arrangements or sales of the Company s existing pipeline of therapeutic programs (Revenue Payments) entered into or effected during the period commencing July 1, 2009 and ending September 30, 2010 (the Period), provided that, the Revenue Payments in the aggregate shall not exceed $1,500,000, and provided further that both the Company and Owner agree that the Company shall have no obligation to pay Owner any Revenue Payments until the Company has actually received the applicable revenue earned. In the First Amendment, the Company and Owner agreed to extend the Period such that the Period will now commence on July 1, 2009 and end on September 30, 2013.

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Annex A

AGREEMENT AND PLAN OF MERGER

by and among:

LIGAND PHARMACEUTICALS INCORPORATED,

a Delaware corporation;

MOONSTONE ACQUISITION, INC.,

a Delaware corporation;

METABASIS THERAPEUTICS, INC.,

a Delaware corporation; and

DAVID F. HALE,

as Stockholders Representative

Dated as of October 26, 2009*

* Including amendments made by Amendment to Agreement and Plan of Merger as of November 25, 2009. The amendments are to the definitions of Actual Net Cash Amount and Net Cash Amount in Article I and to Section 5.16(a).

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (*Agreement*) is made and entered into as of October 26, 2009, by and among LIGAND PHARMACEUTICALS INCORPORATED, a Delaware corporation (*Parent*); MOONSTONE ACQUISITION, INC., a Delaware corporation and a wholly-owned Subsidiary of Parent (*Merger Sub*); METABASIS THERAPEUTICS, INC., a Delaware corporation (the *Company*); and DAVID F. HALE as Stockholders Representative (the *Stockholders Representative*). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings given to them in *Article I.*

RECITALS

WHEREAS, the respective boards of directors of each of Parent, Merger Sub and the Company have approved the acquisition of the Company by Parent upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, upon the terms and subject to the conditions set forth in this Agreement, Merger Sub shall merge with and into the Company (the *Merger*) and each Company Share that is issued and outstanding immediately before the Effective Time (other than Dissenting Shares) will be canceled and converted into the right to receive the Merger Consideration, all upon the terms and subject to the conditions set forth herein;

WHEREAS, the board of directors of the Company (the *Company Board*) has, upon the terms and subject to the conditions set forth herein, unanimously and duly adopted resolutions (i) determining that the transactions contemplated by this Agreement, including the Merger (collectively, the *Transactions*), are advisable and in the best interests of the Company and its stockholders, (ii) approving this Agreement and the Transactions in accordance with the Delaware General Corporation Law (the *DGCL*), (iii) directing that this Agreement be submitted to the stockholders of the Company for adoption, and (iv) recommending that the stockholders of the Company adopt this Agreement and approve the Transactions;

WHEREAS, the boards of directors of Parent and of Merger Sub have, upon the terms and subject to the conditions set forth herein, unanimously and duly approved and declared advisable this Agreement and the Transactions, and Parent, in its capacity as the sole stockholder of Merger Sub, has adopted this Agreement, in each case, in accordance with the DGCL;

WHEREAS, as an inducement to Parent s willingness to enter into this Agreement, simultaneously with the execution of this Agreement, Parent and certain stockholders of the Company owning in the aggregate approximately 28% of the Outstanding Company Shares have executed and delivered to the Company voting agreements (the *Voting Agreements*);

WHEREAS, for U.S. federal income tax purposes, it is intended that the Merger not qualify as a tax-free reorganization within the meaning of Section 368(a) of the Code and the Treasury Regulations promulgated thereunder; and

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and the other transactions contemplated by this Agreement and also to prescribe certain conditions to the Merger as specified herein;

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NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Parent, Merger Sub and the Company hereby agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

For purposes of the Agreement:

Acquisition Proposal shall mean any unsolicited, bona fide offer or proposal (other than an offer or proposal made or submitted by Parent or Merger Sub or any of their Affiliates) relating to a possible Acquisition Transaction.

Acquisition Transaction shall mean any transaction or series of related transactions (other than the transactions contemplated by this Agreement) involving or resulting in: (i) any acquisition or purchase by any Person or group (as defined in or under Section 13(d) of the Exchange Act), directly or indirectly, of more than 20% of the total outstanding voting securities of the Company, or any tender offer or exchange offer that, if consummated, would result in the Person or group (as defined in or under Section 13(d) of the Exchange Act) making such offer beneficially owning more than 20% of the total outstanding voting securities of the Company; (ii) any merger, consolidation, share exchange, business combination, acquisition of securities, recapitalization, tender offer, exchange offer or other similar transaction involving the Company pursuant to which the stockholders of the Company immediately before the consummation of such transaction would hold less than 80% of the equity interests in the surviving or resulting entity of such transaction immediately after consummation thereof; or (iii) any sale (other than the sale of laboratory equipment), lease, exchange, transfer, license, acquisition or disposition of assets (other than the 7133 Program) constituting more than 10% of the assets of the Company (measured by either book or fair market value thereof) or the net revenues or net income of the Company and the Company Subsidiaries taken as a whole.

Actual Net Cash Amount shall mean the Net Cash Amount calculated as of the Determination Date (but assuming that the Effective Time had occurred on the day before) and set forth in a certificate delivered by an executive officer of the Company to Parent on the first Business Day following the Determination Date.

Adjusted Reference Amount shall mean the Reference Amount (i) plus the amount, if any, by which the Actual Net Cash Amount exceeds the Target Net Cash Amount or (ii) minus the amount, if any, by which the Target Net Cash Amount exceeds the Actual Net Cash Amount.

Affiliate shall mean a Person who is related to another Person such that such Person directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such other Person.

Business Day shall mean any day other than a Saturday, Sunday or a day on which the banks in New York, New York or San Diego, California are authorized by applicable Legal Requirement or executive order to be closed.

Code shall mean the Internal Revenue Code of 1986, as amended from time to time.

Company Equity Plans shall mean the Metabasis Therapeutics, Inc. Amended and Restated 2001 Equity Incentive Plan, the Company ESPP, and the Metabasis Therapeutics, Inc. 2004 Non-Employee Directors Stock Option Plan, in each case, as amended from time to time.

Company ESPP shall mean the Company s 2004 Employee Stock Purchase Plan, as amended from time to time.

Company Intellectual Property shall mean the Intellectual Property, IP Licenses and Software held for use or used in the business of the Company or any Company Subsidiary as presently conducted.

Company Material Adverse Effect shall mean, in reference to any fact, circumstance, event, change or occurrence, any such fact, circumstance, event, change or occurrence that, individually or in the aggregate with all other facts, circumstances, events, changes or occurrences, has or would reasonably be expected to have a material adverse effect on the results of operations or financial condition of the Company and the Company Subsidiaries, taken as a whole, other than changes, events, occurrences or effects arising out of, resulting from or attributable to (i) changes in conditions in the United States or global economy or capital or financial markets generally, including changes in interest or exchange rates, (ii) conditions (or changes therein) in any industry or industries in which the Company and the Company Subsidiaries operate, (iii) any change in Legal Requirements or GAAP or interpretation of any of the foregoing, (iv) acts of war, sabotage or terrorism, or any escalation or worsening of any such acts of war, sabotage or terrorism threatened or underway as of the date of this Agreement, (v) storms, earthquakes or other natural disasters, (vi) any action taken by the Company or any Company Subsidiary as contemplated or permitted by this Agreement or with Parent s consent, (vii) the initiation of any litigation by any stockholder of the Company relating to this Agreement or the Merger, (viii) any decline in the market price, or change in trading volume, of the capital stock of the Company or any failure of the Company to meet revenue or earnings projections, either published by the Company or any third party (*provided* that this exception shall not prevent or otherwise affect a determination that any changes, state of facts, circumstances, events or effects underlying a change described in this clause (viii) has resulted in, or contributed to, a Company Material Adverse Effect), (ix) any adverse changes, developments, circumstances, events or occurrences relating to the Company s ongoing research programs to the extent resulting from an action by Parent or any of its Affiliates, (x) the determination by, or the delay of a determination by, the FDA, or any panel or advisory body empowered or appointed thereby, with respect to the approval, non-approval or disapproval of any products similar to or competitive with the Company s product candidates, (xi) the results of any clinical trial of one or more products or product candidates of any Person other than the Company, (xii) the entry or threatened entry into the market of a generic version of one or more product candidates of the Company or (xiii) the negotiation, execution, announcement or performance of this Agreement or the consummation of the Transactions, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, distributors, partners, collaborators or employees; *except*, in the case of the foregoing clauses (i), (ii), (iii), (iv) and (v), to the extent that any such condition has a materially disproportionate adverse effect on the Company and the Company Subsidiaries, taken as a whole, relative to other companies of comparable size to the Company and the Company Subsidiaries operating in industry or industries in which the Company and the Company Subsidiaries operate.

Company Options shall mean options to purchase Company Shares from the Company, whether granted by the Company pursuant to the Company Equity Plans or otherwise.

Company Programs shall mean the drug development programs which were formerly drug development programs of the Company before the Effective Time.

Company Subsidiary shall mean a Subsidiary of the Company.

Company Warrants shall mean all warrants issued by the Company to purchase Company Shares.

Confidentiality and Exclusivity Agreement shall mean the Confidentiality and Exclusivity Agreement dated October 9, 2009, and as thereafter extended/amended, between Parent and the Company.

Contract shall mean any loan or credit agreement, bond, debenture, note, mortgage, indenture, guarantee, lease or other contract, commitment, agreement, instrument, arrangement, understanding, obligation, undertaking or license (each, including all amendments thereto).

Copyrights shall mean all registered and unregistered copyrights (including those in Software) and registrations and applications to register the same.

CVR Agreements shall mean, collectively, the Roche CVR Agreement, the TR Beta CVR Agreement, the Glucagon CVR Agreement and the General CVR Agreement.

CVRs shall mean, collectively, the Roche CVRs, the TR Beta CVRs, the Glucagon CVRs and the General CVRs.

Determination Date shall mean the 3rd Trading Day preceding the date of the Special Meeting.

Encumbrance shall mean, with respect to any property or asset, any mortgage, easement, lien, pledge (including any negative pledge), security interest or other encumbrance of any nature whatsoever in respect of such property or asset.

Entity shall mean any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any company limited by shares, limited liability company or joint stock company), firm, society or other enterprise, association, organization or entity (including any Governmental Entity).

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

Exchange shall mean The NASDAQ Global Market of The NASDAQ Stock Market LLC.

Exchange Act shall mean the Securities Exchange Act of 1934, as amended.

Executive shall mean any executive officer of the Company.

FDA shall mean the United States Food and Drug Administration.

FTE shall mean the full time equivalent effort of one scientist with either a B.Sc., M.S. or Ph.D. or equivalent degree consisting of 1,875 hours per year of scientific work.

Fund Distribution Date shall have the meaning set forth in the General CVR Agreement.

Funding shall mean the sum of (i) 100% of reasonable out-of-pocket expenses paid to third parties by Parent or the Surviving Corporation for goods or services actually provided after the Effective Time, or which is an account payable of Parent or the Surviving Corporation for goods or services actually provided after the Effective Time, in each case which relates directly to the research and development of drug development programs which were formerly drug development programs of the Company before the Effective Time (including, without limitation, equipment, supplies, outsource firms, patent attorneys, filing fees, etc.) and (ii) $350,000 per FTE (plus a proportional amount per fractional FTE) working on or directly related to and in support of such programs. For purposes of clarity, Funding shall not include any fees or expenses incurred by any party hereto in connection with the execution of this Agreement or the consummation of the Transactions.

GAAP shall mean United States generally accepted accounting principles.

General CVR shall mean a right having the terms and conditions set forth in the General CVR Agreement to be issued in accordance with *Section 2.06* in respect of each Outstanding Company Share.

General CVR Agreement shall mean the agreement governing the terms and conditions of the General CVRs substantially in the form attached hereto as *Exhibit D*.

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General Program shall have the meaning set forth in the General CVR Agreement.

Glucagon CVR shall mean a right having the terms and conditions set forth in the Glucagon CVR Agreement to be issued in accordance with *Section 2.06* in respect of each Outstanding Company Share.

Glucagon CVR Agreement shall mean the agreement governing the terms and conditions of the Glucagon CVRs substantially in the form attached hereto as *Exhibit C*.

Glucagon Program shall have the meaning set forth in the Glucagon CVR Agreement.

Governmental Authorization shall mean any permit, license, registration, qualification, certificate, clearance, variance, waiver, exemption, certificate of occupancy, exception, franchise, entitlement, consent, confirmation, order, approval or authorization granted by any Governmental Entity.

Governmental Entity shall mean any federal, state or local government or body or any agency, authority, subdivision or instrumentality of any of the foregoing, including any court, tribunal, department, bureau, administrative agency, commission or board, or any quasi-governmental or private body duly exercising any regulatory, taxing, inspecting or other governmental authority.

Indebtedness shall mean (i) indebtedness for borrowed money, including indebtedness evidenced by a note, bond, debenture or similar instrument, or (ii) obligations in respect of outstanding letters of credit, acceptances and similar obligations created for the account of such Person.

Indemnified Leader shall mean each individual who is or was an officer or director of the Company, or its Subsidiaries, at any time on or before the Effective Time.

Indemnified Party shall mean each individual who is or was an officer, director, employee or agent of the Company, or its Subsidiaries, at any time on or before the Effective Time who is or was entitled to indemnification pursuant to the DGCL, the Company Charter Documents or any Contract with such Person.

Intellectual Property shall mean all U.S. and foreign (i) Trademarks, (ii) Patents, (iii) Copyrights, (iv) Trade Secrets and (v) databases and compilations, including any and all electronic data and electronic collections of data.

IP Licenses shall mean any license or sublicense rights in or to any Intellectual Property.

Knowledge of Parent shall mean the actual knowledge of John Higgins, John Sharp or Charles Berkman.

Knowledge of the Company shall mean the actual knowledge of Mark Erion, Tran Nguyen or Barry Gumbiner.

Legal Proceeding shall mean any claim (presented formally to a judicial or quasi-judicial Governmental Entity), lawsuit, court action, suit, arbitration or other judicial or administrative proceeding.

Legal Prohibition shall mean any final, permanent Legal Requirement that is in effect and that prevents or prohibits consummation of the Transactions.

Legal Requirement shall mean any federal, state or local law, statute, code, ordinance, regulation, code, order, judgment, writ, injunction, decision, ruling or decree promulgated by any Governmental Entity.

Net Cash Amount shall mean, as of the applicable date, an amount equal to (i) the sum of all cash (including any payments received by the Company from the exercise of Company Options or Company

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Warrants), cash equivalents, marketable securities and accounts receivable (net of accounts receivable reserves established as required by GAAP) held by the Company and the Company Subsidiaries (but *excluding* any Roche Program Consideration and 7133 Program Consideration); *plus* (ii) all fees and expenses actually incurred by the Company in connection with any 7133 Program Transaction which is consummated before the Effective Time; *minus* (iii) the sum of (A) any amount payable by the Company or the Surviving Corporation after the Determination Date for the out-of-pocket transaction fees and expenses of the Company to its legal and financial advisors and accountants in connection with this Agreement and the Transactions, (B) any amount payable by the Company or the Surviving Corporation after the Determination Date for expenses incurred by the Company in connection with the preparation, filing, printing and mailing of the Proxy Statement and the solicitation of proxies for use at the Special Meeting, (C) except as otherwise covered in subclause (D) below, all severance payments, stay bonuses and performance bonuses payable to all employees, consultants and directors of the Company and the Company Subsidiaries assuming that the service relationship of all such employees, consultants and directors with the Company and the Company Subsidiaries is terminated as of the Closing Date, even if such service relationship in fact does continue after the Closing Date, (D) all severance payments, stay bonuses and performance bonuses remaining payable at the Closing Date to all employees, consultants and directors of the Company and the Company Subsidiaries whose service relationship with the Company and the Company Subsidiaries is terminated on or before the Closing Date, (E) the salary, employer-tax and benefits cost of the continuation of employment of any Company employees, as a result of the advance-notice requirements of their respective employment agreements, beyond the Closing Date until their actual termination date, if before the Determination Date Parent requests the Company to terminate such employees, (F) if the Company has not before the Effective Time purchased a tail prepaid policy on the D&O Insurance Policy as contemplated by the second sentence of *Section 5.10(c)* below, $360,000, and (G) to the extent not included in any other subclause of this clause (iii), all accounts payable, notes payable, lease payables and other capital-item liabilities and other liabilities (other than (x) non-cash items, (y) any contingent payments payable by the Company in respect of post-Merger transactions to ARE-SD Region No. 24, LLC or its Affiliates or (z) any contingent severance payments payable in respect of post-Merger transactions to the employees that were terminated in the Company s May 2009 reduction in force) of the Company and the Company Subsidiaries; *provided* that all such amounts shall be determined in a manner consistent with the manner in which such items were determined by the Company in the most recent balance sheet included in the Company Financial Statements.

Outstanding Company Shares shall mean the Company Shares issued and outstanding immediately before the Effective Time (not including, for purposes of calculating the allocation of the Merger Consideration, any Company Shares to be cancelled pursuant to *Section 2.06(i)* and *(ii)*).

Parent Material Adverse Effect shall mean, in reference to any fact, circumstance, event, change or occurrence, any such fact, circumstance, event, change or occurrence that, individually or in the aggregate with all other facts, circumstances, events, changes or occurrences, has or would reasonably be expected to have a material adverse effect on the results of operations or financial condition of Parent and the Parent Subsidiaries, taken as a whole, other than changes, events, occurrences or effects arising out of, resulting from or attributable to (i) changes in conditions in the United States or global economy or capital or financial markets generally, including changes in interest or exchange rates, (ii) conditions (or changes therein) in any industry or industries in which Parent and the Parent Subsidiaries operate, (iii) any change in Legal Requirements or GAAP or interpretation of any of the foregoing, (iv) acts of war, sabotage or terrorism, or any escalation or worsening of any such acts of war, sabotage or terrorism threatened or underway as of the date of this Agreement, (v) storms, earthquakes or other natural disasters, (vi) the initiation of any litigation by any stockholder of Parent relating to this Agreement or the Merger, (vii) any decline in the market price, or change in trading volume, of the capital stock of Parent or any failure of Parent to meet revenue or earnings projections, either published by Parent or any third party (*provided* that this exception shall not prevent or otherwise affect a determination that any changes, state of facts, circumstances, events or effects underlying a change described in this clause (vii) has resulted in, or contributed to, a Parent Material Adverse Effect), (viii) the negotiation, execution, announcement or performance of this Agreement or the consummation of the Transactions, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, distributors, partners, collaborators or

employees, (ix) any action taken by Parent or any Parent Subsidiary as contemplated or permitted by this Agreement or with the Company s consent, (x) the determination by, or the delay of a determination by, the FDA, or any panel or advisory body empowered or appointed thereby, with respect to the approval, non-approval or disapproval of any products similar to or competitive with Parent s product candidates, (xi) the results of any clinical trial of one or more products or product candidates of any Person other than Parent, or (xii) the entry or threatened entry into the market of a generic version of one or more product candidates of Parent, *except*, in the case of the foregoing clauses (i), (ii), (iii), (iv) and (v), to the extent that any such condition has a materially disproportionate adverse effect on Parent and the Parent Subsidiaries, taken as a whole, relative to other companies of comparable size to Parent and the Parent Subsidiaries operating in such industry or industries.

Parent Subsidiary shall mean a Subsidiary of Parent.

Partner Value shall mean the sum of any upfront Proceeds and any milestone Proceeds, but specifically excluding any royalty Proceeds.

Patents shall mean all patents and pending patent applications, invention disclosure statements, and any and all divisions, continuations, continuations-in-part, reissues, reexaminations and extensions thereof, any counterparts claiming priority therefrom and like statutory rights.

Permitted Encumbrances shall mean: (i) Encumbrances for Taxes not yet due and payable or for Taxes that are being contested in good faith by appropriate proceedings; (ii) Encumbrances or imperfections of title resulting from or otherwise relating to any of the contracts referred to in the Company Disclosure Letter, to the extent the Company Disclosure Letter expressly identifies such Encumbrance or imperfection of title (or such is obvious on the face of the contract); (iii) Encumbrances or imperfections of title relating to liabilities expressly reflected in the financial statements (including any related notes) contained in the Company SEC Documents; (iv) Encumbrances arising from or otherwise relating to transfer restrictions under the Securities Act and the securities laws of the various states of the United States or foreign jurisdictions; and (v) mechanics , materialmen s and similar statutory liens arising or incurred in the ordinary course of business for amounts not overdue.

Person shall mean any individual or Entity.

Proceeds shall mean all cash and the cash equivalent of all non-cash proceeds, where the cash equivalent of such non-cash proceeds is determined by an independent appraiser selected by the Board of Directors of Parent in good faith. The determination made by such appraiser shall be final and binding upon all persons. Future streams of cash shall not be considered to be non-cash proceeds, but the actual cash payments thereunder shall be treated as cash proceeds if, as and when received.

Reference Amount shall mean $3,207,500 *less* $150,000 to be deposited at or before Closing in the Stockholders Representative Fund.

Roche Agreement shall mean that certain Collaboration and License Agreement, effective as of August 7, 2008, by and among Hoffmann-La Roche Inc., Roche Palo Alto LLC, F. Hoffmann-La Roche Ltd. and the Company, as amended from time to time.

Roche CVR shall mean a right having the terms and conditions set forth in the Roche CVR Agreement to be issued in accordance with *Section 2.06* in respect of each Outstanding Company Share.

Roche CVR Agreement shall mean the agreement governing the terms and conditions of the Roche CVRs substantially in the form attached hereto as *Exhibit A*.

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Roche Program Consideration shall mean a cash amount equal to the aggregate Proceeds actually received by the Company on or after the date hereof and before the Effective Time in connection with a Roche Milestone Payment Event, a Roche Purchase Payment Event and/or a Roche Royalty Payment Event (each as defined in the Roche CVR Agreement).

SEC shall mean the United States Securities and Exchange Commission.

Securities Act shall mean the Securities Act of 1933, as amended.

7133 Licensing Event shall have the meaning set forth in the General CVR Agreement.

7133 Licensing Option Event shall have the meaning set forth in the General CVR Agreement.

7133 Program shall mean the Company s active program for the development of a HepDirect prodrug of AraCMP for the treatment of hepatocellular carcinoma, including all related Intellectual Property and other related rights of the Company, and any and all clinical and non-clinical data compiled by the Company, in each case arising from the Company s operation of such program.

7133 Program Consideration shall mean a cash amount equal to the aggregate Proceeds actually received by the Company on or after the date hereof and before the Effective Time in connection with a 7133 Licensing Event, a 7133 Licensing Option Event, a 7133 Sale Event and/or a 7133 Sale Option Event.

7133 Program Transaction shall mean any transaction to which the Company is a party entered into before the Effective Time that results in a 7133 Licensing Event, 7133 Licensing Option Event, a 7133 Sale Event and/or a 7133 Sale Option Event.

7133 Sale Event shall have the meaning set forth in the General CVR Agreement.

7133 Sale Option Event shall have the meaning set forth in the General CVR Agreement.

Software means all computer programs, including any and all software implementations of algorithms, models and methodologies whether in source code or object code form, and all documentation, including user manuals and training materials, related to any of the foregoing.

Special Meeting shall mean a special meeting of the stockholders of the Company held for the purpose of considering and taking action upon this Agreement and the Merger.

Stockholders Representative Fund shall mean the account set up for the benefit of the Stockholders Representative for the reimbursement of fees and expenses pursuant to *Section 5.16(e)* hereof.

Subsidiary shall mean an Entity that is related to another Entity such that such other Entity directly or indirectly owns, beneficially or of record: (i) an amount of voting securities or other interests in such Entity that is sufficient to enable such other Entity to elect at least a majority of the members of such Entity s board of directors or comparable governing body; or (ii) more than 50% of the outstanding equity interests issued by such Entity.

Superior Proposal shall mean any unsolicited, bona fide written offer made by a third party unaffiliated with the Company to directly or indirectly acquire (by way of merger, tender or exchange offer or otherwise) greater than 95% of the Company s assets or greater than 95% of the outstanding Company Shares (other than Company Shares already held by such third party) that the Company Board shall have determined in good faith (after consultation with the Company s outside legal counsel and financial advisor, and after taking into account, among other things, the financial, legal and regulatory aspects of such offer (including any financing required

and the availability thereof), as well as any revisions to the terms hereof proposed by Parent pursuant to *Section 5.04(c)*), is more favorable from a financial point of view to the stockholders of the Company than the terms of the Merger (taking into account any revisions to the terms hereof proposed by Parent pursuant to *Section 5.04(c)* and is reasonably capable of being consummated on the terms proposed.

Target Net Cash Amount shall mean zero.

Tax or *Taxes* shall mean (i) all federal, state, local or foreign taxes, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes or other taxes any kind whatsoever, and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any Governmental Entity in connection with any item described in clause (i).

Tax Returns shall mean any return, report, claim for refund, estimate, information return or statement or other similar document relating to or required to be filed with any Governmental Entity with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

Termination Fee shall mean $400,000; *provided*, *however*, for purposes of Section 7.03(a) Termination Fee shall mean $250,000.

TR Beta CVR shall mean a right having the terms and conditions set forth in the TR Beta CVR Agreement to be issued in accordance with *Section 2.06* in respect of each Outstanding Company Share.

TR Beta CVR Agreement shall mean the agreement governing the terms and conditions of the TR Beta CVRs substantially in the form attached hereto as *Exhibit B*.

TR Beta Program shall mean the Company s active program for the development of a thyroid receptor beta agonist for the treatment of hyperlipidemia, including all related Intellectual Property and other related rights of the Company, and any and all clinical and non-clinical data compiled by the Company, in each case arising from the Company s operation of such program.

Trade Secrets shall mean confidential technology, know-how, plans, data, designs, protocols, plans, strains, molecules, works of authorship, inventions, processes, formulae, algorithms, models and methodologies, and trade secrets as defined in applicable state law.

Trademarks shall mean all registered and unregistered trademarks, service marks, trade names, Internet domain names, designs, logos and slogans, together with goodwill, registrations and applications relating to the foregoing.

Trading Day shall mean any day on which securities are traded on the Exchange.

ARTICLE II

THE MERGER; EFFECTIVE TIME

Section 2.01 Merger of Merger Sub into the Company.

Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the DGCL, at the Effective Time, Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall cease. The Company will continue as the surviving corporation in the Merger (the *Surviving Corporation*).

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Section 2.02 Effect of the Merger.

The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL, including, without limitation Section 259 of the DGCL. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, all the property rights, privileges, immunities, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation and all the debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

Section 2.03 Effective Time

Subject to the provisions of this Agreement, Parent, Merger Sub and the Company will cause a properly executed certificate of merger conforming to the requirements of the DGCL (the *Certificate of Merger*) to be filed with the Secretary of State of the State of Delaware on the Closing Date. The Merger shall become effective at the time the Certificate of Merger is filed with the Secretary of State of the State of Delaware, or at such later time as is agreed to in writing by the parties hereto and specified in the Certificate of Merger (the time at which the Merger becomes effective being referred to in this Agreement as the *Effective Time*).

Section 2.04 Closing

The closing of the Transactions (the *Closing*) will take place at 10:00 a.m. (San Diego time) on the date (the *Closing Date*) that is the second Business Day after the satisfaction or waiver (if such waiver is permitted and effective under applicable Legal Requirements) of the latest to be satisfied or waived of the conditions set forth in *Article VI* (excluding conditions that, by their terms, are to be satisfied on the Closing Date), unless another time or date is agreed to in writing by the parties. The Closing shall be held at the offices of Stradling Yocca Carlson & Rauth located at 4365 Executive Drive, Suite 1500, San Diego, CA 92121, unless another place is agreed to in writing by the parties.

Section 2.05 Certificate of Incorporation and Bylaws; Officers and Directors.

Unless otherwise jointly determined by Parent and the Company before the Effective Time:

(a) Subject to *Section 5.10(a)*, (i) the certificate of incorporation of the Company as in effect immediately before the Effective Time shall be the certificate of incorporation of the Surviving Corporation, until thereafter changed or amended as provided therein or by applicable Legal Requirements, and (ii) the bylaws of the Company as in effect immediately before the Effective Time shall be the bylaws of the Surviving Corporation, until thereafter changed or amended as provided therein or by applicable Legal Requirements.

(b) The directors and officers of Merger Sub immediately before the Effective Time shall be the initial directors and officers, respectively, of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and Bylaws of the Surviving Corporation.

Section 2.06 Conversion of Company Shares.

(a) At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or any stockholder of the Company or of Merger Sub:

(i) any Company Shares then held by the Company or any wholly-owned Company Subsidiary (or held in the Company s treasury) shall cease to exist, and no consideration shall be paid in exchange therefor;

(ii) any Company Shares then held by Parent, Merger Sub or any other wholly-owned Parent Subsidiary shall cease to exist, and no consideration shall be paid in exchange therefor;

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(iii) except as provided in clauses (i) and (ii) above, each issued and outstanding Company Share (other than Dissenting Shares) shall be converted into the right to receive (A) an amount in cash equal to the Adjusted Reference Amount divided by the total number of Outstanding Company Shares, (B) one Roche CVR (C) one TR Beta CVR, (D) one Glucagon CVR, and (E) one General CVR (collectively, the *Merger Consideration*); and

(iv) each share of Merger Sub then outstanding shall be converted into one share of the common stock of the Surviving Corporation, such that immediately after the Effective Time Parent shall, as the former holder of all the shares of Merger Sub, own a number of shares of the common stock of the Surviving Corporation equal to the number (immediately before the Effective Time) of Outstanding Common Shares.

Section 2.07 Closing of the Company s Transfer Books.

At the Effective Time: (a) all Company Shares outstanding immediately before the Effective Time shall cease to exist as provided in *Section 2.06* and all holders of certificates representing Company Shares that were outstanding immediately before the Effective Time shall cease to have any rights as stockholders of the Company except the right to receive the Merger Consideration therefor; and (b) the stock transfer books of the Company shall be closed with respect to all Company Shares. No further transfer of any such Company Shares shall be made on such stock transfer books after the Effective Time. If, after the Effective Time, a valid certificate previously representing any Company Shares (a *Company Stock Certificate*) is presented to the Exchange Agent, the Surviving Corporation or Parent, such Company Stock Certificate shall be canceled and, if it represents Outstanding Company Shares, shall be exchanged as provided in *Section 2.08*.

Section 2.08 Exchange of Certificates.

(a) Before the Effective Time: (i) Parent shall select a bank or trust company (reasonably acceptable to the Company) to act as exchange agent with respect to the payment of the Merger Consideration (the *Exchange Agent*); and (ii) Parent shall deposit with the Exchange Agent the cash component of the Merger Consideration, sufficient to enable the Exchange Agent to make the cash component payments pursuant to *Section 2.06* to the holders of Outstanding Company Shares. Such cash amount deposited with the Exchange Agent shall, pending its disbursement to such holders, be invested by the Exchange Agent in (i) direct obligations of the United States of America, (ii) obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest, or (iii) money market funds investing solely in a combination of the foregoing. Any interest and other income resulting from such investments shall be the property of, and shall be paid to, Parent. Parent shall promptly replace any funds deposited with the Exchange Agent lost through any investment made pursuant to this paragraph.

(b) Promptly after the Effective Time, Parent shall cause the Exchange Agent to mail to each Person who was, immediately before the Effective Time, a holder of record of Company Shares a form of letter of transmittal and instructions for use in effecting the surrender of Company Stock Certificates representing such Company Shares in exchange for payment of the Merger Consideration therefor. Parent shall ensure that, upon surrender to the Exchange Agent of each such Company Stock Certificate, together with a properly completed and executed (and, if necessary, signature-guaranteed) letter of transmittal, the holder of such Company Stock Certificate (or, under the circumstances described in *Section 2.08(f)*, the transferee of the Company Shares represented by such Company Stock Certificate) shall promptly receive in exchange therefor the Merger Consideration (including the CVRs and any payment distributed between the Effective Time and the time of such surrender on CVRs of that type), without interest.

(c) On or after the one year anniversary of the Effective Time, Parent or the Surviving Corporation shall be entitled to cause the Exchange Agent to deliver to Parent or the Surviving Corporation any funds made available by Parent to the Exchange Agent which have not been disbursed to holders of Company Shares, and thereafter such holders shall be entitled to look only to Parent and the Surviving Corporation with respect to the Merger Consideration payable and issuable upon surrender of their Company Shares.

(d) Neither the Exchange Agent, Parent nor the Surviving Corporation shall be liable to any holder of Company Shares for any amount properly paid to a public official pursuant to any applicable abandoned property or escheat Legal Requirements. If any Company Stock Certificates shall not have been surrendered on the day immediately before the day that such property is required to be delivered to any public official pursuant to any applicable abandoned property, escheat or similar Legal Requirement, any such Merger Consideration in respect thereof shall, to the extent permitted by applicable Legal Requirements, become the property of Parent, free and clear of all claims or interest of any Person previously entitled thereto.

(e) If any Company Stock Certificate shall have been lost, stolen or destroyed, then, upon the making of an affidavit of that fact by the Person claiming such Company Stock Certificate to be lost, stolen or destroyed in a form reasonably satisfactory to Parent (together with an indemnity in form reasonably satisfactory to Parent against any claim that may be made against the Exchange Agent or Parent or otherwise with respect to such certificate and, if required by Parent, the posting by such Person of a bond in such reasonable amount as Parent may direct to support such indemnity), Parent shall cause the Exchange Agent to pay in exchange for such lost, stolen or destroyed Company Stock Certificate the Merger Consideration.

(f) In the event of a transfer of ownership of Company Shares which is not registered in the transfer records of the Company, the Merger Consideration may be paid and issued with respect to such Company Shares to a transferee of such Company Shares if the Company Stock Certificate representing such Company Shares is presented to the Exchange Agent, accompanied by all documents reasonably required by the Exchange Agent to evidence and effect such transfer and to evidence that any applicable stock transfer taxes relating to such transfer have been paid.

(g) The Surviving Corporation or Parent shall bear and pay all charges and expenses, including those of the Exchange Agent, incurred in connection with the exchange of the Company Shares.

(h) Parent, the Surviving Corporation and the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to the Merger or this Agreement to any holder of Company Shares, such amounts as Parent, the Surviving Corporation or the Exchange Agent are required to deduct and withhold under the Code with respect to the making of such payment. To the extent that amounts are so withheld and paid over to the appropriate Tax authority or other Governmental Entity by Parent, the Surviving Corporation or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of Company Shares, in respect of whom such deduction and withholding was made by Parent, the Surviving Corporation or the Exchange Agent.

Section 2.09 Company Stock Options; Company Warrants.

(a) By operation of the Company Equity Plans, all outstanding Company Options, whether or not then vested, will become fully vested and exercisable on the Closing Date. The Company Board, by operation of existing agreements or by resolution, will take all requisite actions such that immediately before the Effective Time (i) each holder of outstanding Company Options shall be entitled to exercise in full all Company Options held by such holder by paying the exercise price therefor in exchange for the Company Shares in accordance with the applicable Company Equity Plan, and (ii) all outstanding Company Options not exercised pursuant to clause (i) of this *Section 2.09(a)* shall be terminated and canceled without any payment or liability on the part of the Company.

(b) Unless any outstanding Company Warrant shall otherwise terminate automatically in connection with the Transactions, between the date of this Agreement and the Effective Time, the Company shall use reasonable best efforts to enter into agreements with the holders of the outstanding Company Warrants to terminate and cancel all such Company Warrants, effective immediately before the Effective Time, without any payment or liability on the part of the Company; *provided* that the ability of the Company to terminate and cancel all such Company Warrants shall not limit in any way Parent s obligation to consummate the Merger and the Transactions.

(c) If any Company Warrant remains outstanding after the Effective Time and the holder thereof exercises such Company Warrant before its expiration date, then Parent shall issue and pay in respect of each exercised Company Warrant in exchange for the payment of the applicable exercise price, on a per-exercised-share basis, equivalent consideration to the Merger Consideration (or the proceeds thereof) as is paid (if and when) in respect of each issued and outstanding Company Share, immediately before the Effective Time, on or after the date that such Company Warrant is exercised.

(d) As soon as practicable following the date of this Agreement, the Company Board (or, if appropriate, any committee thereof administering the Company ESPP) shall adopt such resolutions or take such other actions as may be required with respect to the Company ESPP as are necessary to provide that no new offering period shall begin under the Company ESPP after the date of this Agreement and that the Company ESPP shall terminate, effective immediately before the Effective Time.

Section 2.10 Dissenting Shares

Notwithstanding anything in this Agreement to the contrary, any Company Share issued and outstanding immediately before the Effective Time held by a holder who is entitled to demand and properly demands appraisal of such Company Shares (the *Dissenting Shares*), pursuant to, and who complies in all respects with, Section 262 of the DGCL (the *Appraisal Rights*), shall not be converted into the right to receive the Merger Consideration, but instead shall be converted into the right to receive such consideration as may be due such holder pursuant to Section 262 of the DGCL unless such holder fails to perfect, withdraws or otherwise loses such holder s right to such payment or appraisal. From and after the Effective Time, a holder of Dissenting Shares shall not have and shall not be entitled to exercise any of the voting rights or other rights of a stockholder of the Company or the Surviving Corporation. If, after the Effective Time, such holder fails to perfect, withdraws or otherwise loses any such Appraisal Rights, each such share of such holder shall no longer be considered a Dissenting Share and shall be deemed to have converted as of the Effective Time into the right to receive the Merger Consideration in accordance with *Section 2.06(iii)*. The Company shall give prompt notice to Parent of any demands received by the Company for appraisal of Company Shares, withdrawals of such demands and any other instruments served pursuant to the DGCL received by the Company, and Parent shall have the right to control all negotiations and proceedings with respect to such demands. Before the Effective Time, the Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to, or settle or offer to settle, any such demands or agree to do or commit to do any of the foregoing.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent and Merger Sub that except as set forth in the letter delivered by the Company to Parent immediately before the execution of this Agreement (the *Company Disclosure Letter*) or the Company SEC Documents either filed with or furnished to the SEC before the date of this Agreement (the *Filed Company SEC Documents*) (it being understood that any matter set forth in the Company Disclosure Letter or in such Filed Company SEC Documents shall be deemed disclosed with respect to any Section of this *Article III* to which the matter relates, to the extent the relevance of such matter to such Section is reasonably apparent):

Section 3.01 Organization, Standing and Corporate Power.

(a) The Company is a corporation duly organized, validly existing and in good standing under the Legal Requirements of the State of Delaware and has all requisite corporate power and authority necessary to own or lease all of its properties and assets and to carry on its business as it is now being conducted. The Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased or held under

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license by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, impair in any material respect the ability of the Company to perform its obligations hereunder or prevent or materially delay consummation of the Transactions.

(b) Each Company Subsidiary is a corporation or other organization duly organized, validly existing and in good standing under the Legal Requirements of the jurisdiction of its organization. Each Company Subsidiary is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased or held under license by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. *Section 3.01(b)* of the Company Disclosure Letter sets forth a true and complete list of each Company Subsidiary and the jurisdiction of organization of each Company Subsidiary. All the outstanding shares of capital stock of, or other equity interests in, each Company Subsidiary are duly authorized, have been validly issued, are fully paid, non-assessable and free of preemptive rights, and are owned directly or indirectly by the Company free and clear of all Encumbrances, except for such transfer restrictions of general applicability as may be provided under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the *Securities Act*) and other applicable securities laws and rules and regulations promulgated thereunder.

(c) The Company has delivered to Parent complete and correct copies of the certificate of incorporation and bylaws (or other comparable organizational documents) of the Company and each Company Subsidiary, in each case as amended through the date of this Agreement (the *Company Charter Documents*). The Company has made available to Parent and its representatives true and complete copies of the minutes (or, in the case of minutes that have not yet been finalized, a brief summary of the meeting, including in each case a summary of any resolutions adopted by the Company Board) of all meetings of the stockholders, the Company Board and each committee of the Company Board held since January 1, 2007 and equivalent documents of each Company Subsidiary.[1]

Section 3.02 Capitalization.

(a) The authorized capital stock of the Company consists of: (i) 100,000,000 shares of common stock, par value $0.001 per share (each, a *Company Share* and, collectively, the *Company Shares*) and (ii) 5,000,000 shares of Preferred Stock, par value $0.001 per share. At the close of business on October 23, 2009, (i) 35,157,359 Company Shares were issued and outstanding (and 20,941 Company Shares were issued and held by the Company in its treasury), (ii) an aggregate of 8,446,670 Company Shares were reserved for issuance under the Company Equity Plans (of which 3,928,143 Company Shares were subject to outstanding Company Options granted under the Company Equity Plans), (iii) no Company Shares were subject to outstanding Company Options granted other than under the Company Equity Plans, (iv) no person has made or has the right to make a contribution to the Company ESPP for the current Company ESPP offering period, (v) 3,363,556 Company Shares were subject to outstanding Company Warrants and (vi) no shares of Company Preferred Stock were issued or outstanding. All Company Shares, and Company Shares reserved for issuance upon exercise of the Company Options or the Company Warrants, have been duly authorized and are, or upon issuance in accordance with the terms of the Company Options will be, validly issued, fully paid, non-assessable and free of preemptive rights. *Section 3.02(a)* of the Company Disclosure Letter sets forth a correct and complete list, as of October 23, 2009, of: (i) the outstanding Company Options, the number of Company Shares underlying such Company Options and the holders, exercise prices and expiration dates thereof and (ii) the outstanding Company Warrants, the number of Company Shares underlying such Company Warrants and the holders, exercise prices and expiration dates thereof. Since January 1, 2009, the Company has not issued, or reserved for issuance, any shares

[1] The Company will provide all minutes relating to the strategic process undertaken by the Company upon signing of this Agreement.

of its capital stock or any securities convertible into or exchangeable or exercisable for any shares of its capital stock, other than pursuant to the Company Options and Company Warrants referred to above that are outstanding as of the date of this Agreement.

(b) There are no outstanding contractual obligations of the Company or any Company Subsidiary (i) restricting the transfer of, (ii) affecting the voting rights of, (iii) requiring the issuance, sale, repurchase, redemption or disposition of, or containing any right of first refusal with respect to, (iv) requiring the registration for sale of, or (v) granting any preemptive or anti-dilutive right with respect to, any Company Shares or any capital stock of the Company or any Company Subsidiary, except pursuant to the Company Options, the Company Warrants and the Voting Agreements. There are no bonds, debentures, notes or other indebtedness or liabilities of the Company or any Company Subsidiary having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters on which the stockholders of the Company or any Company Subsidiary may vote.

Section 3.03 Authority; Non-contravention; Voting Requirements.

(a) The Company has all necessary corporate power and authority to execute and deliver this Agreement and the CVR Agreements and, subject to obtaining the approval of the holders of the Company Shares of the adoption of this Agreement as contemplated by *Section 5.05* (the *Company Stockholder Approval*), to perform its obligations hereunder and to consummate the Transactions. The execution, delivery and performance by the Company of this Agreement and the CVR Agreements, and the consummation by it of the Transactions, have been duly authorized and approved by the Company Board, and except for obtaining the Company Stockholder Approval, no other corporate action on the part of the Company or any stockholder of the Company is necessary to authorize the execution, delivery and performance by the Company of this Agreement and the CVR Agreements and the consummation by it of the Transactions. This Agreement has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery hereof by the other parties hereto, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Legal Requirements of general application affecting or relating to the enforcement of creditors rights generally and (ii) is subject to general principles of equity, whether considered in a proceeding at law or in equity (the *Bankruptcy and Equity Exception*).

(b) The Company Board has, upon the terms and subject to the conditions set forth in this Agreement, unanimously duly adopted resolutions (i) determining that the Transactions are advisable and in the best interests of the Company and its stockholders, (ii) approving this Agreement and the Transactions, including the Merger, in accordance with the DGCL, (iii) directing that this Agreement be submitted to the stockholders of the Company for adoption, and (iv) recommending that the stockholders of the Company adopt this Agreement and approve the Transactions (the *Company Recommendation*).

(c) Neither the execution and delivery of this Agreement nor the CVR Agreements by the Company nor the consummation by the Company of the Transactions, nor compliance by the Company with any of the terms or provisions hereof, will (i) conflict with or violate any provision of the Company Charter Documents or (ii) assuming that the authorizations, consents and approvals referred to in *Section 3.04* and the Company Stockholder Approval are obtained and the filings referred to in *Section 3.04* are made, (x) violate any Legal Requirement applicable to the Company or any Company Subsidiary or (y) violate or constitute a default under any Company Contract, except, in the case of clause (ii), for such violations or defaults as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, impair in any material respect the ability of the Company to perform its obligations hereunder or the ability of Parent to enjoy in all material respects the intended benefit of the Transactions or prevent or materially delay consummation of the Transactions.

(d) The affirmative vote (in person or by proxy) of the holders of a majority of the issued and outstanding Company Shares in favor of the adoption of this Agreement is the only vote or approval of the holders of any class or series of capital stock of the Company which is necessary to adopt this Agreement and approve the Merger.

Section 3.04 Governmental Approvals.

Except for (i) the filing with the SEC of the Proxy Statement in definitive form, and other filings required under, and compliance with other applicable requirements of, the Exchange Act and the rules of the NASDAQ Capital Market, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, and (iii) any compliance with the blue sky laws of various states, no consents or approvals of, or filings, declarations or registrations with, any Governmental Entity are necessary for the execution and delivery of this Agreement and the CVR Agreements by the Company and the consummation by the Company of the Transactions, other than such consents, approvals, filings, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, impair in any material respect the ability of the Company to perform its obligations hereunder or the ability of Parent to enjoy in all material respects the intended benefit of the Transactions or prevent or materially delay consummation of the Transactions.

Section 3.05 Company SEC Documents; Financial Statements.

(a) The Company has filed all required registration statements, prospectuses, forms, reports and proxy statements with the SEC, together with all certifications required pursuant to the Sarbanes-Oxley Act of 2002 (the *Sarbanes-Oxley Act*), from and after January 1, 2006 (collectively, the *Company SEC Documents*). As of their respective effective dates (in the case of Company SEC Documents that are registration statements filed pursuant to the requirements of the Securities Act) and as of their respective SEC filing dates (in the case of all other Company SEC Documents), or if amended or supplemented, as of the date of the last such amendment or supplement, and giving effect to any amendments or supplements thereto filed before the date of this Agreement, the Company SEC Documents complied in all material respects with the requirements of the Exchange Act and the Securities Act, as the case may be, applicable to such Company SEC Documents, and none of the Company SEC Documents as of such respective dates contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of the Company included in the Company SEC Documents (the *Company Financial Statements*) have been prepared in accordance with GAAP (except, in the case of unaudited interim statements, as indicated in the notes thereto) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company and the consolidated Company Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited interim statements, to normal year-end audit adjustments).

(c) Neither the Company nor any Company Subsidiary has any liabilities of any nature (whether accrued, absolute, determined, determinable, fixed or contingent) which (i) would be required to be reflected or reserved against on a consolidated balance sheet of the Company prepared in accordance with GAAP, except liabilities (A) reflected or reserved against in the consolidated balance sheet included in its Quarterly Report filed on Form 10-Q for the quarterly period ended June 30, 2009 (including the notes thereto), included in the Company SEC Documents, (B) incurred pursuant to this Agreement or in connection with the Transactions, (C) incurred since June 30, 2009 in the ordinary course of business, or (D) that have not had, and would not reasonably be expected to have, individually or in the aggregate, a cash expenditure or exposure in excess of $50,000, or (ii) that are not within subsection (i) but which have had, or would reasonably be expected to have, individually or in the aggregate, a cash expenditure or exposure in excess of $50,000.

(d) Since June 30, 2009, except for actions taken in connection with this Agreement and the Transactions, (i) the Company and the Company Subsidiaries have conducted their businesses in all material respects in the ordinary course, and (ii) there has not been any Company Material Adverse Effect or any change, event, development, condition, occurrence or effect that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(e) The Company and the Company Subsidiaries have designed and maintain a system of internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company (i) has designed and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that material information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC s rules and forms and is accumulated and communicated to the Company s management as appropriate to allow timely decisions regarding required disclosure, and (ii) has disclosed, to the Knowledge of the Company, based on its most recent evaluation of such disclosure controls and procedures before the date hereof, to the Company s auditors and the audit committee of the Company Board (and has specified in the Company Disclosure Letter) (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect in any material respect the Company s ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company s internal controls over financial reporting. For purposes of this Agreement, the terms significant deficiency and material weakness shall have the meanings assigned to them by the Public Company Accounting Oversight Board in Auditing Standard No. 2, as in effect on the date hereof.

Section 3.06 Legal Proceedings.

As of the date hereof, there is no pending or, to the Knowledge of the Company, threatened Legal Proceeding against or relating to the Company or any Company Subsidiary, nor is there any injunction, order, judgment, ruling or decree imposed upon the Company or any Company Subsidiary, in each case, by or before any Governmental Entity, that might, individually or in the aggregate, reasonably be expected to result in a judgment against or ultimately payable by the Company in excess of $50,000 or have a Company Material Adverse Effect, impair in any material respect the ability of the Company to perform its obligations hereunder or prevent or materially delay consummation of the Transactions.

Section 3.07 Compliance With Legal Requirements; Governmental Authorizations; FDA Laws.

(a) The Company and the Company Subsidiaries are in compliance with all Legal Requirements applicable to the Company or any Company Subsidiary, as applicable, except for such non-compliance as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. The Company and the Company Subsidiaries hold all Governmental Authorizations necessary for the lawful conduct of their respective businesses, and all such Governmental Authorizations are valid and in full force and effect, except where the failure to hold the same or of the same to be valid and in full force and effect would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. The Company and the Company Subsidiaries are in compliance with the terms of all Governmental Authorizations, except for such non-compliance as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(b) All facilities operated by the Company and the Company Subsidiaries in connection with the operation of their businesses that are subject to the FDA have been operated in compliance with the Federal Food Drug and Cosmetic Act (21 U.S.C. §§ 301, et seq.) and regulations and guidelines thereunder to the extent applicable, and all similar Legal Requirements applicable to the operation of the business and operations of the Company and the

Company Subsidiaries (collectively, the *FDA Laws*), except for such failures to be in compliance as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(c) To the Knowledge of the Company, all clinical trials conducted by the Company have been, and are being, conducted in substantial compliance with the requirements of current good clinical practice and all applicable requirements relating to protection of human subjects contained in Title 21, Parts 50, 54, 56 and 312 of the United States Code of Federal Regulations.

(d) To the Knowledge of the Company, none of the Roche parties to the Roche Agreement has encountered any significant adverse data or events (as to toxicology or otherwise) with respect to the Roche Agreement drug development program, nor has any of the Roche parties to the Roche Agreement terminated, or discontinued work under, or expressed an intent to terminate, or to discontinue work under, the Roche Agreement.

Section 3.08 Information Supplied.

(a) The Proxy Statement, and any amendments or supplements thereto, at (i) the time the Registration Statement is declared effective, (ii) the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to the stockholders of the Company, (iii) the time of the Special Meeting, and (iv) the Effective Time, will comply as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act and other applicable Legal Requirements.

(b) The Proxy Statement, and any amendments or supplements thereto, do not, and will not, at (i) the time the Registration Statement is declared effective, (ii) the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to the stockholders of the Company, (iii) the time of the Special Meeting, or (iv) the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(c) The representations and warranties contained in this *Section 3.08* will not apply to statements or omissions included, or incorporated by reference, in the Proxy Statement based upon information furnished in writing to the Company by Parent or Merger Sub specifically for use therein.

(d) The information furnished and to be furnished in writing by the Company to Parent specifically for use in the Registration Statement, and any amendments or supplements thereto, does not, and will not, at (A) the time the Registration Statement is declared effective, (B) the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to the stockholders of the Company, (C) the time of the Special Meeting, or (D) the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

Section 3.09 Tax Matters.

(a)(i) Each of the Company and the Company Subsidiaries has timely filed, or has caused to be timely filed on its behalf (taking into account any extension of time within which to file), all material Tax Returns required to be filed by it, and all such filed Tax Returns are correct and complete in all material respects; (ii) all Taxes shown to be due on such Tax Returns have been timely paid; (iii) no deficiency with respect to Taxes has been proposed, asserted or assessed in writing against the Company or any Company Subsidiary which have not been fully paid or adequately reserved in the Company SEC Documents; and (iv) to the Knowledge of the Company, no audit or other administrative or court proceedings are pending with any Governmental Entity with respect to Taxes of the Company or any Company Subsidiary, and no written notice thereof has been received.

(b) Neither the Company nor any Company Subsidiary is a party to or bound by any material Tax allocation or sharing agreement (other than any such agreement solely between or among the Company and any of its Subsidiaries).

(c) To the Knowledge of the Company, neither the Company nor any Company Subsidiary (i) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company) or (ii) has any liability for the Taxes of any Person (other than the Company or any Company Subsidiary) under United States Treasury Regulation Section 1.1502-6 (or any similar provision of any Legal Requirement), as a transferee or successor, by Contract, or otherwise.

(d) There are no liens for Taxes upon any material property or other material assets of the Company or any Company Subsidiary, except liens for Taxes not yet due and payable and liens for Taxes that are being contested in good faith by appropriate proceedings.

(e) All material Taxes required to be withheld, collected or deposited by or with respect to the Company and each of the Company Subsidiaries have been timely withheld, collected or deposited, as the case may be, and to the extent required, have been paid to the relevant Tax authority or other Governmental Entity, and to the Knowledge of the Company no Taxes so required have not been so paid.

(f) Neither the Company nor any Company Subsidiary is a party to any agreement, contract, arrangement or plan that has resulted or would result, individually or in the aggregate, in the payment of any excess parachute payment within the meaning of Section 280G of the Code (or any corresponding provision of state, local or foreign Tax law).

(g) No material deduction by the Company or any Company Subsidiary in respect of any applicable employee remuneration (within the meaning of Section 162(m) of the Code) has been disallowed or is subject to disallowance by reason of Section 162(m) of the Code.

(h) Neither the Company nor any Company Subsidiary has been a party to a transaction governed in whole or part by Code Section 355.

(i) The Company s Board of Directors has taken into full consideration the likelihood that the taxable gain or loss of holders of Company Shares as a result of the Merger may be based on closed transaction treatment (which might result, depending on the value assigned to the CVRs and individual tax circumstances, in some holders of Company Shares owing more in income tax in respect of the disposition of their Company Shares in the Merger than their cash portion of the Merger Consideration); the likelihood that the transferability of the CVRs makes closed transaction tax treatment more likely; that Parent may disclose, in the Registration Statement and its prospectus, Parent s view that it is more likely that the IRS would take the position that the taxable gain or loss of holders of Company Shares as a result of the Merger would be based on closed transaction treatment than that the IRS would take the position that the taxable gain or loss of holders of Company Shares as a result of the Merger would be based on open transaction treatment; that the tax value assigned to the CVRs for the purposes of closed transaction tax treatment might differ from the tax value which the Company or any holder of Company Shares might consider to be appropriate or accurate; and that it might not be possible for holders of CVRs to sell their CVRs for the full tax value assigned to the CVRs for the purposes of closed transaction tax treatment.

Section 3.10 Employee Benefits and Labor Matters.

(a) *Section 3.10(a)* of the Company Disclosure Letter lists each employee benefit plan (as defined in Section 3(3) of ERISA), and any other material employee plan or agreement maintained by the Company or any Company Subsidiary and with respect to which the Company or any Company Subsidiary would reasonably be expected to have any material liability (each, a *Company Plan*). The Company has made available to Parent correct and complete copies of (i) each Company Plan (or, in the case of any such Company Plan that is unwritten, descriptions of the material terms thereof), (ii) the most recent annual report on Form 5500 required to be filed with the Internal Revenue Service (the *IRS*) with respect to each Company Plan (if any such report was required), (iii) the most recent summary plan description for each Company Plan for which such summary plan description is required and (iv) each material trust agreement and insurance or group annuity Contract relating to

any Company Plan. Each Company Plan maintained, contributed to or required to be contributed to by the Company or any Company Subsidiary has been administered in all material respects in accordance with its terms. The Company, the Company Subsidiaries and all the Company Plans are all in material compliance with the applicable provisions of ERISA, the Code and all other applicable Legal Requirements. All Company Plans that constitute employee pension plans (as defined in Section 3(3) of ERISA) and are intended to be Tax qualified under Section 401(a) of the Code (each, a *Company Pension Plan*) have received an opinion or determination letter from the IRS and are expressly identified as such in Section 3.10(a) of the Company Disclosure Letter. The Company has made available to Parent a correct and complete copy of the most recent opinion or determination letter received with respect to each Company Pension Plan maintained, contributed to or required to be contributed to by the Company or any Company Subsidiary, as well as a correct and complete copy of each pending application for an opinion or a determination letter, if any. Neither the Company nor any Company Subsidiary has contributed or has been obligated to contribute to an employee benefit plan subject to Title IV of ERISA, a multiemployer plan, as defined in Section 3(37) of ERISA, or an employee benefit plan subject to Sections 4063 or 4064 of ERISA.

(b) Neither the Company, nor any Company Subsidiary has any material liability for life, health, medical or other welfare benefits for former employees or beneficiaries or dependents thereof under Company Plans, other than Company Pension Plans and other than as required by Section 4980B of the Code, Part 6 of Title I of ERISA or other applicable Legal Requirement.

(c) There are no pending or, to the Company s Knowledge, threatened, claims, lawsuits, arbitrations or audits asserted or instituted against any Company Plan, any fiduciary (as defined by Section 3(21) of ERISA) thereto, the Company, any Company Subsidiary or any employee or administrator thereof in connection with the existence, operation or administration of a Company Plan, other than routine claims for benefits.

(d) Neither the Company nor any Company Subsidiary is a party to a collective bargaining agreement and no labor union has been certified to represent any employee of the Company or any Company Subsidiary or, to the Knowledge of the Company, has applied to represent or is attempting to organize so as to represent such employees.

(e) *Section 3.10(e)* of the Company Disclosure Letter lists each material (i) stay or severance or bonus or employment agreement with directors, officers or employees of or consultants to the Company or any Company Subsidiary; or (ii) stay or severance or bonus program or policy of the Company or any Company Subsidiary with or relating to its employees.

Section 3.11 Contracts.

(a) Except for Contracts filed as exhibits to the Filed Company SEC Documents, *Section 3.11(a)* of the Company Disclosure Letter sets forth a correct and complete list, and the Company has made available to Parent correct and complete copies, of all Contracts (including all material amendments, modifications, extensions or renewals with respect thereto, but excluding all names, terms and conditions that have been redacted in compliance with the terms of each such Contract or with applicable Legal Requirements governing the sharing of information) to which the Company or any Company Subsidiary is a party as of the date of this Agreement (collectively, the *Company Contracts*):

(i) required to be filed as an exhibit to any report of the Company filed pursuant to the Exchange Act of the type described in Item 601(b) of Regulation S-K promulgated by the SEC;

(ii) that contain a covenant restricting the ability of the Company or any Company Subsidiary to compete in any business or with any Person or in any geographic area;

(iii) with any Affiliate of the Company, other than those to which the only parties are the Company and any of the wholly-owned Company Subsidiaries;

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(iv) which primarily relates to (A) the granting to the Company or any Company Subsidiary of any IP License in or to any Company Intellectual Property owned by a third party, with annual license fees of more than $25,000, or (B) the granting by the Company or any Company Subsidiary to a third party of any IP License in or to any Company Intellectual Property, with annual license fees of more than $25,000, excluding click-wrap or shrink-wrap agreements, agreements contained in or pertaining to off-the-shelf Software, or the terms of use or service for any web site;

(v) relating to any material joint venture, partnership or other similar arrangement involving co-investment, collaboration or partnering with a third party;

(vi) with a Governmental Entity (other than ordinary course Contracts with Governmental Entities as a customer);

(vii) pursuant to which any Indebtedness of the Company or any Company Subsidiary is outstanding or may be incurred or pursuant to which the Company or any Company Subsidiary has guaranteed any Indebtedness of any other Person (other than the Company or any Company Subsidiary and excluding Company trade payables arising in the ordinary course of business);

(viii) pursuant to which the Company, any Company Subsidiary or any other party thereto has continuing obligations, rights or interests relating to the research, development, clinical trial, distribution, supply, manufacture, marketing or co-promotion of, or collaboration with respect to, any product or product candidate for which the Company or any Company Subsidiary is currently engaged in research or development, including manufacture or supply services or Contracts with contract research organizations for clinical trials-related services; and

(ix) which are to any extent executory and relate to (A) the disposition or acquisition of any material assets or properties, other than dispositions or acquisitions in the ordinary course of business, or (B) any merger or other business combination transaction.

(b) Each Company Contract is valid and binding on the Company and each Company Subsidiary which is party thereto and, to the Knowledge of the Company, each other party thereto, subject to the Bankruptcy and Equity Exception, and is in full force and effect, and the Company and each Company Subsidiary has performed all obligations required to be performed by it before the date hereof under each Company Contract and, to the Knowledge of the Company, each other party to each Company Contract has performed all obligations required to be performed by it before the date hereof under such Company Contract, except for such failures to be in compliance as would not, individually or in the aggregate, reasonably be expected to result in an allegation of material breach thereof.

(c) The Company has not received or enjoyed any benefit, inducement or incentive from any Governmental Entity which will, as a result of this Agreement or the Transactions or the cessation of the Company s business operations in the geographic area where they are currently conducted or the termination of all or substantially all Company employees, result in any clawback, recapture, recoupment, repayment obligation, penalty, Tax or other such liability.

Section 3.12 Environmental Matters.

(a) To the Knowledge of the Company, the Company and each Company Subsidiary is in compliance with (i) all applicable Legal Requirements concerning pollution or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control or cleanup of any hazardous materials, substances or wastes, as such requirements are enacted and in effect on the date hereof (*Environmental Laws*), and (ii) any Governmental Authorizations required under applicable Environmental Laws for the current operations of the Company and each Company Subsidiary.

(b) Neither the Company nor any Company Subsidiary has received any written notice or report in the past three years regarding any actual or alleged violation of any applicable Environmental Law or any liabilities arising under applicable Environmental Laws. The Company has delivered, or made available to Parent, copies of all environmental assessments, reports, audits, studies, analyses or tests possessed by, or reasonably available to, the Company and Company Subsidiaries pertaining to compliance with, or liability under, any Environmental Laws, in each case relating to the owned or leased real estate or other assets and properties of the Company and the Company Subsidiaries.

(c) The Company has delivered to Parent complete and accurate copies of all environmental reports or assessments referenced on *Section 3.12(c)* of the Company Disclosure Letter and, since the date of such reports or assessments, to the Knowledge of the Company, no facts or conditions have arisen or been discovered which would reasonably be expected to materially alter or modify such reports or assessments if they were to be updated.

Section 3.13 Intellectual Property.

(a) *Section 3.13(a)* of the Company Disclosure Letter sets forth as of the date hereof a true, complete and correct list of all U.S. and foreign (i) Patents; (ii) registered Trademarks; (iii) registered Copyrights; (iv) internet domain registrations and (v) Software (other than standard and duly licensed off-the-shelf Software), in each case owned or purported to be owned or licensed by the Company or any Company Subsidiary and used or held for use in the conduct of the business of the Company or any Company Subsidiary as of the date of this Agreement. The Company or a Company Subsidiary is the sole and exclusive assignee (or otherwise the sole and exclusive owner) of all of the Company Intellectual Property set forth in *Section 3.13(a)* of the Company Disclosure Letter, except for in-licensed Intellectual Property set forth on such *Section 3.13(a)* of the Company Disclosure Letter, all of which is licensed by the Company pursuant to valid and subsisting licenses under agreements of which, to the Knowledge of the Company, neither party is in breach and which neither party has terminated nor expressed an intent to do so. The name of each licensor and the date of the license agreement are set forth next to the respective item of in-licensed Intellectual Property on such *Section 3.13(a)* of the Company Disclosure Letter.

(b) The Company or the Company Subsidiaries own or possess appropriate licenses to all Company Intellectual Property. To the Knowledge of the Company, the Company or the Company Subsidiaries have sufficient legal rights to use, sell or license all material Company Intellectual Property.

(c) All Trademark registrations, Patents issued and Copyright registrations owned by the Company or any Company Subsidiary and included in the Company Intellectual Property are subsisting, in full force and effect and have not lapsed, expired or been abandoned, and, to the Knowledge of the Company, are not the subject of any opposition filed with the United States Patent and Trademark Office or any other Intellectual Property registry, or the subject of any proceeding challenging their validity or enforceability.

(d) To the Knowledge of the Company, the conduct of the businesses of the Company and the Company Subsidiaries does not and has not been alleged to infringe, misappropriate, or otherwise violate (and is not, as a practical matter, blocked by) any Intellectual Property rights of any third party; and no settlement agreements, consents, orders, forbearances to sue or similar obligations to which the Company or any Company Subsidiary is a party limit or restrict any rights of the Company or any Company Subsidiary in and to any Company Intellectual Property that is owned by the Company or any Company Subsidiary.

Section 3.14 Insurance.

The Company s policies or Contracts of insurance are in full force and effect and together constitute an insurance program that is customary for NASDAQ-listed pre-revenue biotechnology companies. There is no material claim pending under any policies or Contracts of insurance maintained by the Company or any Company Subsidiary as to which coverage has been questioned, denied or disputed by the underwriters of such

policies or Contracts. All premiums due and payable to date under all such policies and Contracts have been paid and the Company and the Company Subsidiaries are otherwise in compliance in all material respects with the terms of such policies and Contracts.

Section 3.15 Certain Business Relationships with Affiliates.

Except as disclosed in the Filed Company SEC Documents, from and after January 1, 2009 and before the date hereof, no event has occurred, and there has been no transaction, or series of similar transactions, agreements, arrangements or understandings to which the Company or any Company Subsidiary is a party, that would be required to be reported pursuant to Item 404 of Regulation S-K promulgated by the SEC.

Section 3.16 Opinion of Financial Advisor.

The Company Board has received the opinion of Merriman Curhan Ford Group, Inc. to the effect that, as of the date of such opinion, and subject to the various assumptions and qualifications set forth therein, the Merger Consideration is fair to holders of Company Shares from a financial point of view.

Section 3.17 Brokers and Other Advisors.

Except for Merriman Curhan Ford Group, Inc., the fees and expenses of which will be paid by the Company, no broker, investment banker, financial advisor, agent or other Person is entitled to any broker s, finder s, financial advisor s, agent s or other similar fee or commission in connection with the Transactions based upon arrangements made by or on behalf of the Company or any Company Subsidiary.

Section 3.18 Section 203 of the DGCL Not Applicable; State Takeover Statutes.

Assuming the accuracy of Parent s representation and warranty contained in *Section 4.11*, the Company has taken all necessary actions so that the provisions of Section 203 of the DGCL will not apply to this Agreement or the Merger. To the Knowledge of the Company, no other state takeover statute is applicable to the Merger. The Company does not have any poison pill or similar antitakeover device.

Section 3.19 No Other Representations or Warranties.

Except for the representations and warranties made by the Company in this *Article III* or in the certificates to be delivered pursuant to *Section 6.02(a)* and *Section 6.02(b)*, neither Company nor any other Person makes any representation or warranty with respect to the Company or the Company Subsidiaries or their respective businesses, operations, assets, liabilities, condition (financial or otherwise) or prospects, notwithstanding the delivery or disclosure to Parent or any of its Affiliates or Representatives of any documentation, forecasts or other information with respect to any one or more of the foregoing.

Section 3.20 No Reliance.

Notwithstanding anything contained in this Agreement to the contrary, the Company acknowledges and agrees that (a) neither Parent or Merger Sub nor any Person on behalf of Parent or Merger Sub is making any representations or warranties whatsoever, express or implied, beyond those expressly made by Parent or Merger Sub in *Article IV* or in the certificates to be delivered pursuant to *Section 6.03(a)* and *Section 6.03(b)*, and (b) the Company has not been induced by, or relied upon, any representations, warranties or statements (written or oral), whether express or implied, made by any Person, that are not expressly set forth in *Article IV* or in the certificates to be delivered pursuant to *Section 6.03(a)* and *Section 6.03(b)*. Without limiting the generality of the foregoing, the Company acknowledges that no representations or warranties are made with respect to any projections, forecasts, estimates, budgets or information as to prospects with respect to Parent and its Subsidiaries that may have been made available to the Company or any of its Representatives.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub hereby jointly and severally represent and warrant to the Company that except as set forth in the Parent SEC Documents filed with or furnished to the SEC before the date of this Agreement (the *Filed Parent SEC Documents*) (it being understood that any matter set forth in such Filed Parent SEC Documents shall be deemed disclosed with respect to any Section of this *Article IV* to which the matter relates, to the extent the relevance of such matter to such Section is reasonably apparent):

Section 4.01 Organization and Standing.

(a) Parent is a corporation duly organized, validly existing and in good standing under the Legal Requirements of the State of Delaware and Merger Sub is a corporation duly organized, validly existing and in good standing under the Legal Requirements of the State of Delaware. Each of Parent and Merger Sub has all requisite corporate power and authority necessary to own or lease all of its properties and assets and to carry on its business as it is now being conducted. Each of Parent and Merger Sub is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased or held under license by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect, impair in any material respect the ability of Parent or Merger Sub to perform its obligations hereunder or prevent or materially delay consummation of the Transactions.

(b) Parent has delivered to the Company complete and correct copies of the certificate of incorporation and bylaws of Parent and Merger Sub, in each case as amended through the date of this Agreement.

Section 4.02 Authority; Non-contravention.

(a) Each of Parent and Merger Sub has all necessary corporate power and authority to (as applicable) execute and deliver this Agreement and the CVR Agreements, to perform their respective obligations hereunder and to consummate the Transactions. The execution, delivery and performance by Parent and Merger Sub of (as applicable) this Agreement and the CVR Agreements, and the consummation by Parent and Merger Sub of the Transactions, have been duly authorized and approved by their respective boards of directors and adopted by Parent as the sole stockholder of Merger Sub, and no other corporate action on the part of Parent and Merger Sub or any stockholders of Parent is necessary to authorize the execution, delivery and performance by Parent and Merger Sub of (as applicable) this Agreement and the CVR Agreements and the consummation by them of the Transactions. This Agreement has been duly executed and delivered by Parent and Merger Sub and, assuming due authorization, execution and delivery hereof by the Company, constitutes a legal, valid and binding obligation of each of Parent and Merger Sub, enforceable against each of them in accordance with its terms, subject to the Bankruptcy and Equity Exception.

(b) Neither the execution and delivery of this Agreement by Parent and Merger Sub, nor the execution and delivery of the CVR Agreements by Parent, nor the consummation by Parent or Merger Sub of the Transactions, nor compliance by Parent or Merger Sub with any of the terms or provisions hereof, will (i) conflict with or violate any provision of the certificate of incorporation or bylaws of Parent or Merger Sub or (ii) assuming that the authorizations, consents and approvals referred to in *Section 4.04* are obtained and the filings referred to in *Section 4.04* are made, (x) violate any Legal Requirement of any Governmental Entity applicable to Parent or any of its Subsidiaries, or (y) violate or constitute a default under any of the terms, conditions or provisions of any Contract to which Parent, Merger Sub or any of their respective Subsidiaries is a party, except, in the case of clause (ii), for such violations or defaults as would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect, impair in any material respect the ability of Parent or Merger Sub to perform their obligations hereunder or prevent or materially delay consummation of the Transactions.

(c) No vote of the holders of any class or series of Parent s capital stock or other securities is necessary for the consummation by Parent of the Transactions.

Section 4.03 Ownership and Operations of Merger Sub.

Parent owns beneficially and of record all of the outstanding shares of Merger Sub. Merger Sub was formed solely for the purpose of engaging in the Transactions, has engaged in no other business activities and has conducted its operations only as contemplated hereby.

Section 4.04 Governmental Approvals.

Except for (i) the filing with the SEC of the Registration Statement and other filings required under, and compliance with other applicable requirements of, the Exchange Act and the rules of the Exchange, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, and (iii) any compliance with the blue sky laws of various states, no consents or approvals of, or filings, declarations or registrations with, any Governmental Entity are necessary for the execution, delivery and performance of this Agreement by Parent and Merger Sub, the execution, delivery and performance of the CVR Agreements by Parent or the consummation by Parent and Merger Sub of the Transactions, other than such other consents, approvals, filings, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect, impair in any material respect the ability of Parent or Merger Sub to perform their obligations hereunder or prevent or materially delay consummation of the Transactions.

Section 4.05 Parent SEC Documents; Financial Statements.

(a) Parent has filed all required registration statements, prospectuses, forms, reports and proxy statements with the SEC, together with all certifications required pursuant to the Sarbanes-Oxley Act, from and after January 1, 2006 (collectively, the *Parent SEC Documents*). As of their respective effective dates (in the case of Parent SEC Documents that are registration statements filed pursuant to the requirements of the Securities Act) and as of their respective SEC filing dates (in the case of all other Parent SEC Documents), or if amended or supplemented, as of the date of the last such amendment or supplement, and giving effect to any amendments or supplements thereto filed before the date of this Agreement, the Parent SEC Documents complied in all material respects with the requirements of the Exchange Act and the Securities Act, as the case may be, applicable to such Parent SEC Documents, and none of the Parent SEC Documents as of such respective dates contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of Parent included in the Parent SEC Documents (the *Parent Financial Statements*) have been prepared in accordance with GAAP (except, in the case of unaudited interim statements, as indicated in the notes thereto) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of Parent and the consolidated Parent Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited interim statements, to normal year-end audit adjustments).

(c) Neither Parent nor any Parent Subsidiary has any liabilities of any nature (whether accrued, absolute, determined, determinable, fixed or contingent) which would be required to be reflected or reserved against on a consolidated balance sheet of Parent prepared in accordance with GAAP, except liabilities (i) reflected or reserved against in its consolidated balance sheet included in its Quarterly Report filed on Form 10-Q for the quarterly period ended June 30, 2009 (including the notes thereto), included in the Parent SEC Documents, (ii) incurred pursuant to this Agreement or in connection with the Transactions, (iii) incurred since June 30, 2009 in the ordinary course of business, or (iv) that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(d) Since June 30, 2009, except for actions taken in connection with this Agreement and the Transactions and the Neurogen Corporation acquisition activities, (i) Parent and the Parent Subsidiaries have conducted their businesses in the ordinary course, and (ii) there has not been any Parent Material Adverse Effect or any change, event, development, condition, occurrence or effect that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(e) Parent and the Parent Subsidiaries have designed and maintain a system of internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Parent (i) has designed and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that material information required to be disclosed by Parent in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC s rules and forms and is accumulated and communicated to Parent s management as appropriate to allow timely decisions regarding required disclosure, and (ii) to the Knowledge of Parent, has disclosed, based on its most recent evaluation of such disclosure controls and procedures before the date hereof, to Parent s auditors and the audit committee of the Board of Directors of Parent (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect in any material respect Parent s ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Parent s internal controls over financial reporting.

Section 4.06 Legal Proceedings.

As of the date hereof, there is no pending or, to the Knowledge of Parent, threatened Legal Proceeding against or relating to Parent or any Parent Subsidiary, nor is there any injunction, order, judgment, ruling or decree imposed upon Parent or any Parent Subsidiary, in each case, by or before any Governmental Entity, that would, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect, impair in any material respect the ability of Parent or Merger Sub to perform their obligations hereunder or prevent or materially delay consummation of the Transactions).

Section 4.07 Compliance With Legal Requirements.

Parent and the Parent Subsidiaries are in compliance with all Legal Requirements applicable to Parent or any Parent Subsidiary, as applicable, except for such non-compliance as would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. Parent and the Parent Subsidiaries hold all Governmental Authorizations necessary for the lawful conduct of their respective businesses, and all such Governmental Authorizations are valid and in full force and effect, except where the failure to hold the same or of the same to be valid and in full force and effect would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. Parent and the Parent Subsidiaries are in compliance with the terms of all Governmental Authorizations, except for such non-compliance as would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

Section 4.08 Information Supplied.

(a) The Registration Statement, together with any amendments or supplements thereto, at (A) the time the Registration Statement is declared effective, (B) the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to the stockholders of the Company, (C) the time of the Special Meeting, and (D) the Effective Time, will comply as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act and other applicable Laws.

(b) The Registration Statement and the information provided by Parent or Merger Sub to the Company in writing expressly for inclusion in the Proxy Statement, and any amendments or supplements thereto, do not, and

will not, at (A) the time the Registration Statement is declared effective, (B) the time the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to the stockholders of the Company, (C) the time of the Special Meeting, or (D) the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(c) The representations and warranties contained in this *Section 4.08* will not apply to statements or omissions included in the Registration Statement based upon information furnished in writing to Parent or Merger Sub by the Company specifically for use therein.

Section 4.09 Tax Matters.

(a) Except for those matters that would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect: (i) each of Parent and the Parent Subsidiaries has timely filed, or has caused to be timely filed on its behalf (taking into account any extension of time within which to file), all material Tax Returns required to be filed by it, and all such filed Tax Returns are correct and complete in all material respects; (ii) all Taxes shown to be due on such Tax Returns have been timely paid; (iii) no deficiency with respect to Taxes has been proposed, asserted or assessed in writing against Parent or any Parent Subsidiary which have not been fully paid or adequately reserved in the Parent SEC Documents; and (iv) to the Knowledge of Parent, no audit or other administrative or court proceedings are pending with any Governmental Entity with respect to Taxes of Parent or any Parent Subsidiary (except for pending audits of Parent s 2006 and 2007 federal income tax returns), and no written notice thereof has been received.

(b) Neither Parent nor any Parent Subsidiary is a party to or bound by any material Tax allocation or sharing agreement (other than any such agreement solely between or among Parent and any of the Parent Subsidiaries).

(c) To the Knowledge of Parent, neither Parent nor any Parent Subsidiary (i) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was Parent) or (ii) has any liability for the Taxes of any Person (other than Parent or any Parent Subsidiary) under United States Treasury Regulation Section 1.1502-6 (or any similar provision of any Legal Requirement), as a transferee or successor, by Contract, or otherwise.

(d) There are no liens for Taxes upon any material property or other material assets of Parent or any Parent Subsidiary, except liens for Taxes not yet due and payable and liens for Taxes that are being contested in good faith by appropriate proceedings.

(e) All material Taxes required to be withheld, collected or deposited by or with respect to Parent and each of Parent Subsidiaries have been timely withheld, collected or deposited, as the case may be, and to the extent required, have been paid to the relevant Tax authority or other Governmental Entity, except for such failure to do any of the foregoing as would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

Section 4.10 Brokers and Other Advisors.

No broker, investment banker, financial advisor, agent or other Person is entitled to any broker s, finder s, financial advisor s, agent s or other similar fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Parent or any Parent Subsidiary.

Section 4.11 Ownership of Company Shares.

Neither Parent nor any of its Affiliates beneficially owns (as defined in Rule 13d-3 of the Exchange Act) any Company Shares as of the date hereof.

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Section 4.12 Available Funds.

Parent has, or will have, sufficient funds available to consummate the Transactions.

Section 4.13 No Other Representations or Warranties.

Except for the representations and warranties made by Parent in this *Article IV* or in the certificates to be delivered pursuant to *Section 6.03(a)* and *Section 6.03(b)*, neither Parent nor any other Person makes any representation or warranty with respect to Parent or the Parent Subsidiaries or their respective businesses, operations, assets, liabilities, condition (financial or otherwise) or prospects, notwithstanding the delivery or disclosure to the Company or any of its Affiliates or Representatives of any documentation, forecasts or other information with respect to any one or more of the foregoing.

Section 4.14 No Reliance.

Notwithstanding anything contained in this Agreement to the contrary, each of Parent and Merger Sub acknowledges and agrees that (a) neither the Company nor any Person on behalf of the Company is making any representations or warranties whatsoever, express or implied, beyond those expressly made by the Company in *Article III* or in the certificates to be delivered pursuant to *Section 6.02(a)* and *Section 6.02(b)*, and (b) none of Parent or Merger Sub has been induced by, or relied upon, any representations, warranties or statements (written or oral), whether express or implied, made by any Person, that are not expressly set forth in *Article III* or in the certificates to be delivered pursuant to *Section 6.02(a)* and *Section 6.02(b)*. Without limiting the generality of the foregoing, each of Parent and Merger Sub acknowledges that no representations or warranties are made with respect to any projections, forecasts, estimates, budgets or information as to prospects with respect to the Company and the Company Subsidiaries that may have been made available to Parent, Merger Sub or any of their respective Representatives.

ARTICLE V

COVENANTS

Section 5.01 Interim Operations of the Company.

(a) The Company agrees that, during the period from the date of this Agreement through the earlier of the Effective Time or the date of termination of this Agreement, except: (i) to the extent Parent shall otherwise consent in writing (which consent shall not be unreasonably withheld, delayed or conditioned); (ii) as set forth in *Section 5.01(a)* of the Company Disclosure Letter; or (iii) as expressly required by this Agreement, the Company shall and shall cause each Company Subsidiary to (A) use its reasonable best efforts to (1) conduct their businesses in the ordinary course of business, (2) preserve intact their present business organizations, (3) maintain satisfactory relations with and keep available the services of their current officers and other key employees and (4) preserve existing relationships with material customers, lenders, suppliers, distributors and others having material business relationships with the Company or any Company Subsidiary and (B) not:

(1) amend the Company Charter Documents or the equivalent organizational documents of any Company Subsidiary;

(2) split, combine, subdivide or reclassify any shares of its capital stock;

(3) declare, set aside or pay any dividend (whether payable in cash, stock or property) with respect to any shares of its capital stock (except with respect to shares of the capital stock of a Company Subsidiary that is directly or indirectly wholly owned by the Company);

(4) issue, sell, pledge, transfer, deliver, dispose of or encumber any shares of, or securities convertible or exchangeable for, or options or rights to acquire, any shares of its capital stock, voting securities, phantom stock, phantom stock rights, stock based performance units or other securities that derive their value by reference to such capital stock or voting securities, other than the issuance of Company Shares upon the exercise of Company Options or Company Warrants;

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(5) transfer, lease or license to any third party, or subject to an Encumbrance (except for Permitted Encumbrances), any assets of the Company or any Company Subsidiary (excluding the 7133 Program) other than: (i) sales in the ordinary course of business; or (ii) dispositions of obsolete assets;

(6) repurchase, redeem or otherwise acquire or offer to repurchase, redeem or otherwise acquire any shares of its capital stock other than pursuant to the forfeiture provisions applicable to the Company Options or pursuant to the exercise or tax withholding provisions applicable to the Company Options;

(7) acquire (whether pursuant to merger, stock or asset purchase or otherwise) or lease (i) any asset or assets, except for (A) purchases of raw materials, equipment and supplies in the ordinary course of business or (B) capital expenditures (which are subject to *Section 5.01(a)(15)*), or (ii) any equity interests in any Person or any business or division of any Person (except for marketable securities acquired by the Company from time to time in connection with its normal cash management activities);

(8) incur, issue, repurchase, modify or assume any Indebtedness or guarantee any such Indebtedness;

(9) make any loans, advances or capital contributions to, or investments in, any other Person other than (i) loans, advances or capital contributions to, or investments in, a Company Subsidiary that is directly or indirectly wholly owned by the Company in the ordinary course of business, (ii) advances to employees in respect of travel and other expenses in the ordinary course of business, and (iii) investments made by the Company in marketable securities in connection with its normal cash management activities;

(10)(i) increase benefits under any Company Plan, except as required by applicable Legal Requirements, (ii) increase or otherwise change the method for funding or insuring benefits under any Company Plan, except as required by applicable Legal Requirements, (iii) (A) establish, adopt, enter into, amend or terminate any Company Plan that is an employee benefit plan as defined in Section 3(3) of ERISA or other any other arrangement that would be an employee benefit plan under ERISA if it were in existence as of the date of this Agreement, except as required by applicable Legal Requirements, or (B) establish, adopt, enter into, amend or terminate any collective bargaining agreement, Company Plan that is not an employee benefit plan under ERISA or any plan, agreement, program, policy, trust, fund or other arrangement that would be a Company Plan that is not an employee benefit plan under ERISA if it were in existence as of the date of this Agreement, except in the ordinary course of business or as required by applicable Legal Requirements (including, without limitation, Section 409A of the Code), (iv) grant any increase in the rates of salaries, compensation or fringe or other benefits payable to any Executive (other than as required by applicable Legal Requirements or pursuant to non-discretionary provisions of Contracts in effect as of the date hereof), (v) grant any increase in the rates of salaries, compensation or fringe or other benefits payable to any employee, except increases that are required by Legal Requirements or pursuant to non-discretionary provisions of Contracts in effect as of the date hereof, (vi) grant or pay any bonus of any kind or amount whatsoever to any current or former director or officer or any employee of the Company or any Company Subsidiary (other than pursuant to the non-discretionary provisions of Contracts in effect as of the date of this Agreement) or (vii) grant or pay any stay or severance or termination pay or increase in any manner the stay or severance or termination pay of any current or former director, officer, employee or consultant of the Company or any Company Subsidiary other than as required by applicable Legal Requirements or pursuant to non-discretionary provisions of Contracts in effect as of the date hereof;

(11) settle or compromise any Legal Proceeding (whether or not commenced before the date of this Agreement), other than settlements or compromises of Legal Proceedings where the amount paid (after giving effect to insurance proceeds actually received) in settlement or compromise does not exceed the Company s reserves on its books therefor by more than $10,000, or for any Legal Proceeding for which the Company has not yet reserved, in an amount therefor that does not exceed $20,000;

(12) enter into any new, or amend or prematurely terminate any current, Company Contract or waive, release or assign any rights or claims under any Company Contract (except (i) in the ordinary course of business or (ii) where the failure to amend or terminate a Company Contract would, in the reasonable judgment of the Company Board, have a Company Material Adverse Effect);

(13) change any of its methods of accounting or accounting practices in any material respect, other than changes required by GAAP or Legal Requirements;

(14) make any material Tax election (except for elections made in the ordinary course of business);

(15) make any capital expenditure that is not contemplated by the capital expenditure budget set forth in *Section 5.01(a)(15)* of the Company Disclosure Letter (a *Non-Budgeted Capital Expenditure*), except that the Company or any Company Subsidiary: (A) may make any Non-Budgeted Capital Expenditure that does not individually exceed $5,000 in amount; and (B) may make any Non-Budgeted Capital Expenditure that, when added to all other Non-Budgeted Capital Expenditures made by the Company and the Company Subsidiaries since the date of this Agreement, would not exceed $25,000 in the aggregate;

(16) adopt a plan of complete or partial liquidation or dissolution;

(17) take any action that is intended or would reasonably be expected to result in any of the conditions to the Merger set forth in *Article VI* not being satisfied on or before the Outside Date; or

(18) authorize or enter into any agreement or otherwise make any commitment to do any of the foregoing.

(b) Without in any way limiting any party s rights or obligations under this Agreement, the parties understand and agree that (i) nothing contained in this Agreement shall give Parent or Merger Sub, directly or indirectly, the right to control or direct the Company s operations before the Effective Time, and (ii) before the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations.

Section 5.02 Interim Operations of Parent.

(a) Parent agrees that, during the period from the date of this Agreement through the earlier of the Effective Time or the date of termination of this Agreement, except: (i) to the extent the Company shall otherwise consent in writing (which consent shall not be unreasonably withheld, delayed or conditioned); or (ii) as expressly required by this Agreement, Parent shall and shall cause each Parent Subsidiary to (A) use its reasonable best efforts to conduct their businesses in the ordinary course of business or otherwise to an anticipated advantage, and (B) not:

(1) amend its certificate of incorporation;

(2) split, combine, subdivide or reclassify any shares of its capital stock;

(3) declare, set aside or pay any dividend (whether payable in cash, stock or property) with respect to any shares of its capital stock (except with respect to shares of the capital stock of a Parent Subsidiary that is directly or indirectly wholly owned by Parent);

(4) change any of its methods of accounting or accounting practices in any material respect, other than changes required by GAAP or Legal Requirements;

(5) adopt a plan of complete or partial liquidation or dissolution;

(6) make any material Tax election (except for elections made in the ordinary course of business);

(7) take any action that is intended or would reasonably be expected to result in any of the conditions to the Merger set forth in *Article VI* not being satisfied on or before the Outside Date; or

(8) authorize or enter into any agreement or otherwise make any commitment to do any of the foregoing.

(b) Without in any way limiting any party s rights or obligations under this Agreement, the parties understand and agree that (i) nothing contained in this Agreement shall give the Company, directly or indirectly, the right to control or direct the Parent s operations, and (ii) Parent shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations.

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Section 5.03 No Solicitation.

(a) At all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to *Section 7.01* and the Effective Time, the Company shall not, shall cause all of the Company Subsidiaries not to and shall not authorize or permit the Company s and the Company Subsidiaries directors, officers, employees, investment bankers, attorneys and other agents or representatives (collectively, *Representatives*) to, directly or indirectly, (i) solicit, initiate, knowingly encourage or knowingly induce the making, submission or announcement of an Acquisition Proposal; (ii) furnish to any Person any non-public information relating to the Company in response to or in connection with an Acquisition Proposal (for avoidance of doubt, it being understood that the foregoing shall not prohibit the Company, any Company Subsidiary or any of their respective Representatives from furnishing, in the ordinary course of business, any non-public information to (A) any actual or potential customer, supplier, distributor, licensor, licensee, partner or other Person to the extent necessary to facilitate any business dealings between the Company and such actual or potential customer, supplier, distributor, licensor, licensee, partner or other Person that are unrelated to any Acquisition Proposal, or (B) a Governmental Entity); (iii) participate or engage in discussions or negotiations with any Person with respect to an Acquisition Proposal (for avoidance of doubt, it being understood that the foregoing shall not prohibit the Company, any Company Subsidiary or any of its Representatives from making such Person aware of the restrictions of this *Section 5.03* in response to the receipt of an Acquisition Proposal, nor shall it prohibit the Company from engaging in discussions with its Representatives to the extent reasonably necessary to assist the Company in determining how to properly respond to such Acquisition Proposal); or (iv) approve, endorse or recommend to the stockholders of the Company any Acquisition Proposal; *provided*, *however*, that notwithstanding anything to the contrary contained in this Agreement, at any time before obtaining the Company Stockholder Approval, the Company may, directly or indirectly through its Representatives, (A) engage or participate in discussions or negotiations with any Person (and may engage or participate in discussions or negotiations with such Person s Representatives and potential financing sources) that has made an Acquisition Proposal that the Company Board determines in good faith (after consultation with its outside legal counsel and financial advisor) constitutes or is reasonably likely to lead to a Superior Proposal, and (B) furnish to any such Person described in clause (A) above (including to such Person s Representatives and potential financing sources) any non-public information relating to the Company and the Company Subsidiaries pursuant to a confidentiality agreement (whether executed before or after the date of this Agreement), the terms of which are no less favorable in any material respect to the Company than those contained in the Confidential Disclosure Agreement, dated March 5, 2009, between Parent and the Company (the *Confidentiality Agreement*); and *provided further*, that in the case of any action taken pursuant to clause (A) or clause (B) above, the Company Board shall first have determined in good faith (after consultation with its outside legal counsel) that the failure to take such action is inconsistent with its fiduciary obligations to the stockholders of the Company under applicable Legal Requirements; and contemporaneously with furnishing any nonpublic information to such Person, the Company furnishes such nonpublic information to Parent (to the extent such information has not been previously furnished by the Company to Parent).

(b) Upon the execution and delivery of this Agreement, the Company shall immediately cease and cause to be terminated any active discussions with any Person that relate to any Acquisition Proposal.

(c) Unless the Company Board shall first have determined in good faith (after consultation with its outside legal counsel) that the failure to take the following actions is inconsistent with its fiduciary obligations to the stockholders of the Company under applicable Legal Requirements, the Company agrees not to release or permit the release of any Person from, or to waive or permit the waiver of any provision of, any confidentiality, standstill or similar agreement to which the Company is a party or under which the Company has any rights; *provided*, *however*, that the expiration or termination of such agreement or provision of such agreement by its own terms shall not be considered to be a violation of the foregoing by the Company.

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Section 5.04 Company Board Recommendation.

(a) Subject to *Section 5.04(c)*, the Company Board shall (i) make the Company Recommendation and (ii) include the Company Recommendation in the Proxy Statement.

(b) Subject to *Section 5.04(c)*, neither the Company Board nor any committee thereof shall (i) withdraw, qualify, modify, change or amend in any manner adverse to Parent or Merger Sub, the Company Recommendation, (ii) approve or recommend any Acquisition Proposal, (iii) except in connection with a termination of this Agreement pursuant to *Section 7.01(f)*, permit the Company or any Company Subsidiary to enter into any Contract (other than a confidentiality agreement as contemplated by *Section 5.03(a)*) with respect to any Acquisition Proposal, or (iv) except in connection with a termination of this Agreement pursuant to *Section 7.01(f)*, resolve or propose to take any action described in clauses (i) through (iii) (each of the foregoing actions described in clauses (i) through (iii) being referred to as a *Company Change in Recommendation*).

(c) Notwithstanding anything to the contrary contained in this Agreement, the Company Board may effect a Company Change in Recommendation at any time before receipt of the Company Stockholder Approval, if (i) (A) the Company Board has received an Acquisition Proposal (that has not been withdrawn) that constitutes a Superior Proposal, (B) the Company Board determines in good faith (after consultation with its outside legal counsel and financial advisor and after considering in good faith any counter-offer or proposal made by Parent during the five day period contemplated by clause (D) below) that the failure to effect a Company Change in Recommendation in light of such Superior Proposal is inconsistent with its fiduciary obligations to the stockholders of the Company under applicable Legal Requirements, (C) at least five days before such Company Change in Recommendation, the Company shall have provided to Parent a written notice (a *Notice of Recommendation Change*) of its intention to make such Company Change in Recommendation (which notice shall not be deemed to be, in and of itself, a Company Change in Recommendation), specifying the material terms and conditions of such Superior Proposal, including a copy of such Superior Proposal and identifying the Person making such Superior Proposal, (D) during the five day period following Parent s receipt of a Notice of Recommendation Change, the Company shall have given Parent the opportunity to meet with the Company and its Representatives, and at Parent s request, shall have negotiated in good faith regarding the terms of possible revisions to the terms of this Agreement, and (E) Parent shall not, within five days following Parent s receipt of a Notice of Recommendation Change, have made an offer that the Company Board determines in good faith (after consultation with its outside legal counsel and financial advisor) to be at least as favorable to the stockholders of the Company as such Superior Proposal; or (ii) other than in connection with a Superior Proposal (it being understood and hereby agreed that the Company Board shall not effect a Company Change in Recommendation in connection with a Superior Proposal other than pursuant to the immediately preceding clause (i) of this *Section 5.04(c)*), (A) the Company Board determines in good faith (after consultation with its outside legal counsel) that the failure to effect a Company Change in Recommendation is inconsistent with its fiduciary obligations to the stockholders of the Company under applicable Legal Requirements, (B) at least five days before such Company Change in Recommendation, the Company shall have provided to Parent a Notice of Recommendation Change of its intention to make such Company Change in Recommendation (which notice shall not be deemed to be, in and of itself a Company Change in Recommendation), specifying in reasonable detail the circumstances for such proposed Company Change in Recommendation, and (C) during the five day period following Parent s receipt of a Notice of Recommendation Change, the Company shall have given Parent the opportunity to meet with the Company and its Representatives, and at Parent s request, shall have negotiated in good faith regarding the terms of possible revisions to the terms of this Agreement.

(d) Nothing in this Agreement shall prohibit the Company Board from (i) taking and disclosing to the stockholders of the Company a position contemplated by Rule 14e-2(a) promulgated under the Exchange Act or complying with the provisions of Rule 14d-9 promulgated under the Exchange Act or (ii) making any disclosures to any stockholder of the Company that the Company Board determines in good faith (after consultation with its outside legal counsel) that the Company Board is required to make in order to comply with its fiduciary obligations to the stockholders of the Company under applicable Legal Requirements or with any other

applicable Legal Requirements. In addition, it is understood and agreed that, for purposes of this *Section 5.04*, a factually accurate public statement by the Company that describes the Company s receipt of an Acquisition Proposal and the operation of this Agreement with respect thereto and contains a stop-look-and-listen communication shall not be deemed a Company Change in Recommendation.

(e) Notwithstanding anything to the contrary contained in this Agreement, (i) the obligation of the Company to call, give notice of, convene and hold the Special Meeting shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission to it of any Acquisition Proposal or by any Company Change in Recommendation unless the Agreement has been terminated in accordance with *Section 7.01*, and (ii) the Company shall not submit to the vote of its stockholders any Acquisition Proposal, unless and until this Agreement is terminated in accordance with its terms.

(f) The Company shall not take any action to exempt any Person (other than Parent, Merger Sub and their respective Affiliates) from the restrictions on business combinations contained in Section 203 of the DGCL (or any similar provisions of any other Legal Requirement) or otherwise cause such restrictions not to apply unless such actions are taken simultaneously with a termination of this Agreement pursuant to *Section 7.01(f)*.

Section 5.05 Registration Statement; Proxy Statement; Special Meeting.

(a) As promptly as practicable after the execution of this Agreement, the Company shall prepare and file with the SEC a proxy statement relating to the Special Meeting (together with any amendments thereof or supplements thereto, the *Proxy Statement*), and Parent shall prepare and file with the SEC a registration statement on Form S-4 (together with all amendments thereto, the *Registration Statement*) in which the Proxy Statement shall be included as a prospectus, in connection with the registration under the Securities Act of the CVRs to be issued to the stockholders of the Company pursuant to the Merger. Each of Parent and the Company will use all reasonable efforts to respond to any comments made by the SEC with respect to the Proxy Statement, and to cause the Registration Statement to become effective as promptly as practicable. Before the effective date of the Registration Statement, Parent shall take all or any action required under any applicable federal or state securities laws in connection with the issuance of CVRs in the Merger. Each of Parent and the Company shall furnish all information concerning it and the holders of its capital stock as the other may reasonably request in connection with such actions and the preparation of the Registration Statement and the Proxy Statement. As promptly as practicable after the Registration Statement shall have become effective, the Company shall mail the Proxy Statement to its stockholders. The Proxy Statement shall (subject to *Section 5.04(c)*) include the Company Recommendation.

(b) Subject to *Section 5.04(c)*, no amendment or supplement to the Proxy Statement or the Registration Statement will be made by Parent or the Company without the approval of the other party (which approval shall not be unreasonably withheld, delayed or conditioned). Parent and the Company each will advise the other, promptly after it receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, of the issuance of any stop order, the suspension of the qualification of the CVRs issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Proxy Statement or the Registration Statement or comments thereon and responses thereto or requests by the SEC for additional information.

(c) If at any time before the Effective Time, any event or circumstance relating to Parent or any Parent Subsidiary, or their respective officers or directors, should be discovered by Parent which should be set forth in an amendment or a supplement to the Registration Statement or the Proxy Statement, Parent shall promptly inform the Company. All documents that Parent is responsible for filing with the SEC in connection with the transactions contemplated herein will comply as to form and substance in all material respects with the applicable requirements of the Securities Act and the rules and regulations thereunder, the Exchange Act and the rules and regulations thereunder, and other applicable Legal Requirements (*provided*, that Parent shall not be responsible hereunder for the substance of statements or omissions included in the Registration Statement or Proxy Statement based upon information furnished in writing to Parent by the Company specifically for use therein).

(d) If at any time before the Effective Time, any event or circumstance relating to the Company or any Company Subsidiary, or their respective officers or directors, should be discovered by the Company which should be set forth in an amendment or a supplement to the Registration Statement or the Proxy Statement, the Company shall promptly inform Parent. All documents that the Company is responsible for filing with the SEC in connection with the transactions contemplated herein will comply as to form and substance in all material respects with the applicable requirements of the Securities Act and the rules and regulations thereunder, the Exchange Act and the rules and regulations thereunder, and other applicable Legal Requirements (*provided*, that the Company shall not be responsible hereunder for the substance of statements or omissions included in the Proxy Statement based upon information furnished in writing to the Company by Parent or Merger Sub specifically for use therein).

(e) The Company, acting through the Company Board, shall (i) duly set a record date for, call and establish a date for, and give notice of, the Special Meeting (with the record date and meeting date each set for a date as soon as reasonably practicable and in consultation with Parent), and (ii) convene and hold the Special Meeting as soon as reasonably practicable after the date on which the Registration Statement becomes effective. The Special Meeting shall be scheduled to be held approximately 30 days after the mailing of the Proxy Statement. Notwithstanding anything to the contrary contained in this Agreement, the Company may adjourn or postpone the Special Meeting (x) to the extent necessary to ensure that any necessary supplement or amendment to the Proxy Statement is provided to all stockholders of the Company in advance of the vote to be taken at the Special Meeting, or (y) if as of any time the Special Meeting is scheduled (as set forth in the Proxy Statement) there are insufficient Company Shares represented (either in person or by proxy) to constitute a quorum necessary to conduct the business for which the Special Meeting was called. Parent shall cause all shares of Company Shares owned by Parent, Merger Sub or their Affiliates, if any, to be voted in favor of adoption of this Agreement and approval of the Transactions.

Section 5.06 Filings; Other Action.

(a) Each of the Company, Parent and Merger Sub shall: (i) promptly make and effect all registrations, filings and submissions required to be made or effected by it pursuant to the Exchange Act and other applicable Legal Requirements with respect to the Transactions; and (ii) use its reasonable best efforts to cause to be taken, on a timely basis, all other actions necessary or appropriate for the purpose of consummating and effectuating the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, each of the Company, Parent and Merger Sub shall promptly provide all information requested by any Governmental Entity in connection with the Transactions.

(b) Without limiting the generality of anything contained in *Section 5.06(a)* or *Section 5.06(c)*, each party hereto shall (to the extent permitted by applicable Legal Requirements): (i) give the other parties prompt notice of the making or commencement of any request, inquiry, investigation, action or Legal Proceeding by or before any Governmental Entity with respect to the Transactions; (ii) keep the other parties informed as to the status of any such request, inquiry, investigation, action or Legal Proceeding; and (iii) promptly inform the other parties of any communication to or from any Governmental Entity regarding the Transactions. Each party hereto will consult and cooperate with the other parties and will consider in good faith the views of the other parties in connection with any analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal made or submitted in connection with any such request, inquiry, investigation, action or Legal Proceeding. In addition, except as may be prohibited by any Governmental Entity or by any Legal Requirement, in connection with any such request, inquiry, investigation, action or Legal Proceeding, each party hereto will permit authorized representatives of the other parties to be present at each meeting or conference relating to such request, inquiry, investigation, action or Legal Proceeding and to have access to and be consulted in connection with any document, opinion or proposal made or submitted to any Governmental Entity in connection with such request, inquiry, investigation, action or Legal Proceeding.

(c) In furtherance and not in limitation of the covenants of the parties contained in this *Section 5.06*, each of the parties hereto shall use its reasonable best efforts to resolve such objections, if any, as may be asserted by a

Governmental Entity or other Person with respect to the Transactions. Without limiting any other provision hereof, Parent and the Company shall each use its reasonable best efforts to (i) avoid the entry of, or to have vacated or terminated, any decree, order or judgment that would restrain, prevent or delay the consummation of the Transactions on or before the Outside Date, including by defending through litigation on the merits any claim asserted in any court by any Person, and (ii) avoid or eliminate each and every impediment under any Antitrust Law that may be asserted by any Governmental Entity with respect to the Transactions so as to enable the consummation of the Transactions to occur as soon as reasonably possible (and in any event no later than the Outside Date); except that Parent need do no such thing that would prevent it from achieving in substantial measure all of the benefits it intended to achieve via the Transactions.

(d) For avoidance of doubt, the parties recognize that Parent shall, upon issuance thereof, register the CVRs under the Exchange Act, but Parent shall have no obligation under this Agreement or any of the CVR Agreements to ever list or include the CVRs, or any of them, on the Exchange or on any other securities exchange or quotation system.

Section 5.07 Access.

Upon reasonable advance written notice, the Company shall, and shall cause its Subsidiaries to, afford Parent and its Representatives reasonable access, during normal business hours throughout the period before the Effective Time, to its books and records and, during such period, shall, and shall cause its Subsidiaries to, furnish promptly to Parent all readily available information concerning its business as Parent may reasonably request (and the Company shall also, upon such request, provide such access to its facilities, personnel and contract parties); *provided*, *however*, that neither the Company nor any of its Subsidiaries shall be required to permit any inspection or other access, or to disclose any information, that in its reasonable judgment would: (a) constitute, or result in any, disclosure (whether or not to a third party) of any of its Trade Secrets in such a way as would destroy their trade-secret status; (b) result in the disclosure of any Trade Secrets of third parties; (c) violate any of its obligations to third persons with respect to confidentiality; (d) jeopardize protections afforded it under the attorney-client privilege or the attorney work product doctrine; (e) violate any Legal Requirement; or (f) materially interfere with the conduct of its business. All information obtained by Parent or its Representatives pursuant to this *Section 5.07* shall be treated as Proprietary Information for purposes of the Confidentiality Agreement and Evaluation Information for purposes of the Confidentiality and Exclusivity Agreement.

Section 5.08 Publicity.

The initial press release relating to this Agreement shall be a joint press release issued by the Company and Parent, and thereafter the parties hereto shall consult with each other and give due consideration to any reasonable additions, deletions or changes suggested by the other party and its counsel before issuing any press releases or otherwise making public statements with respect to the Transactions and before making any filings with any Governmental Entity with respect to the Transactions to the extent permitted by applicable Legal Requirements; *provided*, *however*, that the Company need not consult with Parent in connection with any press release or public statement to be issued or made with respect to any Acquisition Proposal or with respect to any Company Change in Recommendation.

Section 5.09 Employee Benefits.

(a) *Employment; Severance*.

(i) If and to the extent so requested by Parent in writing before the Determination Date (and with such exceptions as Parent may designate), the Company shall as of immediately before the Effective Time terminate (and/or provide written notice of termination in accordance with any employment or consulting agreement requiring advance notice of termination of) the service relationship with the Company and the Company Subsidiaries of all employees, consultants and directors of the Company and the Company Subsidiaries and take all customary ancillary actions in connection with such termination (including giving them written notice of such termination).

(ii) Any such termination of employment shall be treated as a termination without cause or benefits eligible termination (or equivalent term) by the Company entitling such employees to full severance payments and benefits under the employment agreements listed on Section 5.09 of the Company Disclosure Letter, determined on the basis that such termination has occurred in connection with a change in control, as applicable to individual employees. Section 5.09 of the Company Disclosure Letter sets forth the amounts of the cash severance payments applicable as of the Effective Time to each employee covered by an employment agreement with the Company. Before the Effective Time, the Company Board may in its sole discretion deliver letters to individual employees setting forth their severance payments and benefits upon termination of employment, on a basis consistent with this *Section 5.09*. Notwithstanding anything contained herein to the contrary, in no event shall any officer s voluntary resignation (as contemplated by this Agreement) affect such Person s eligibility to receive the severance payments set forth on Section 5.09 of the Company Disclosure Letter or otherwise alter the classification of the termination of employment as contemplated under this *Section 5.09*.

(iii) From and after the Effective Time, Parent shall, or shall cause a Parent Subsidiary, the Surviving Corporation or a Subsidiary of the Surviving Corporation, to honor the terms of the employment agreements listed on Section 5.09 of the Company Disclosure Letter, including, without limitation, the payment of continuing severance payments for the period set forth in such employment agreements. The severance amounts payable under such employment agreements to any Company employee who continues in the employ of the Surviving Corporation shall be paid to such employee by the Surviving Corporation or Parent on the first Business Day after such employee s employment with the Surviving Corporation/Parent terminates or as otherwise required or provided for by the Contracts governing the severance payments.

(b) *401(k) Plan*.

(i) If so requested by Parent in writing, the Company shall before the Effective Time amend the Company s 401(k) plan to require, in the event of plan termination, in-kind distribution of any CVRs in a participant s account, and take all customary ancillary actions in connection with such amendment.

(ii) If so requested by Parent in writing, and whether or not such amendment shall have been requested, the Company shall as of immediately before the Effective Time terminate the Company s 401(k) plan and take all customary ancillary actions in connection with such termination.

(c) *Health Care*. From and after the Effective Time, Parent shall, or shall cause a Parent Subsidiary, the Surviving Corporation or a Subsidiary of the Surviving Corporation, to (i) at a minimum, honor in accordance with their terms the obligations of the Company to provide continued medical and dental coverage to employees and their eligible family members under the terms of the employment agreements listed on Section 5.09 of the Company Disclosure Letter, with the understanding that the Company s health plans will be terminated and coverage will instead be provided through Parent s health plans, and (ii) as and to the extent required by applicable Legal Requirements, continue to provide COBRA continuation coverage to former employees of the Company, with the understanding that the Company s health plans will be terminated and coverage will instead be provided through Parent s health plans.

(d) This *Section 5.9* shall survive the Effective Time and the consummation of the Merger. This *Section 5.9* is intended to benefit, and may be enforced by, the employees or former employees entitled to the rights set forth hereunder and their respective heirs, representatives, successors and assigns, and shall be binding on all successors and assigns of Parent and the Surviving Corporation.

Section 5.10 Indemnification; Directors and Officers Insurance.

(a) From and after the Effective Time, Parent will cause the Surviving Corporation and its Subsidiaries to fulfill and honor in all respects the obligations of the Company and the Company Subsidiaries pursuant to (i) each indemnification agreement in effect on the date of this Agreement between the Company or any of the Company Subsidiaries and any Indemnified Party; (ii) any indemnification provision and any exculpation

provision in favor of an Indemnified Party that is set forth in the certificate of incorporation or bylaws of the Company and the equivalent organizational documents of any Company Subsidiary in effect as of the date of this Agreement and (iii) any other rights to indemnification now existing in favor of any Indemnified Party under any statute or any express written Contract. The certificate of incorporation and bylaws of the Surviving Corporation shall contain the provisions with respect to indemnification and exculpation from liability set forth in the Company s certificate of incorporation and bylaws on the date of this Agreement, and, from and after the Effective Time, such provisions shall not be amended, repealed or otherwise modified in any manner that could adversely affect the rights thereunder of any Indemnified Party.

(b) Without limiting the provisions of *Section 5.10(a)*, during the period commencing at the Effective Time and ending on the sixth anniversary of the Effective Time, Parent shall indemnify and hold harmless each Indemnified Leader against and from any costs, fees and expenses (including reasonable attorneys fees and investigation expenses), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any Legal Proceeding, arbitration, investigation or inquiry, whether civil, criminal, administrative or investigative, to the extent such Legal Proceeding, arbitration, investigation or inquiry arises directly or indirectly out of or pertains directly or indirectly to: (i) any action or omission or alleged action or omission in such Indemnified Leader s capacity as a director, officer, employee or agent of the Company or any Company Subsidiary or other Affiliates (regardless of whether such action or omission, or alleged action or omission, occurred before, at or after the Effective Time); or (ii) any of the transactions contemplated by this Agreement; *provided*, *however*, that if, at any time before the sixth anniversary of the Effective Time, any Indemnified Leader delivers to the Company, the Surviving Corporation or Parent, as applicable, a written notice asserting a claim for indemnification under this *Section 5.10(b)*, then the claim asserted in such notice shall survive the sixth anniversary of the Effective Time until such time as such claim is fully and finally resolved. In the event of any such Legal Proceeding, arbitration, investigation or inquiry: (A) any counsel retained by the Indemnified Leaders with respect to the defense thereof for any period after the Effective Time must be reasonably satisfactory to Parent; and (B) Parent will pay the reasonable fees and expenses of such counsel, promptly after statements therefor are received; *provided* that the individual to whom expenses are advanced provides an undertaking to repay such advances to the extent required by applicable Legal Requirements. The Indemnified Leaders as a group may retain only one law firm (in addition to local counsel) to represent them with respect to any single action unless counsel for any Indemnified Leader determines in good faith that, under applicable standards of professional conduct, a conflict exists or is reasonably likely to arise on any material issue between the positions of any two or more Indemnified Leaders. Notwithstanding anything to the contrary contained in this *Section 5.10(b)* or elsewhere in this Agreement, Parent agrees that it will not settle or compromise or consent to the entry of any judgment or otherwise seek termination with respect to any Legal Proceeding, arbitration, investigation or inquiry for which indemnification may be sought under this Agreement unless such settlement, compromise, consent or termination includes an unconditional release of all Indemnified Leaders from all liability arising out of such Legal Proceeding, arbitration, investigation or inquiry.

(c) Through the sixth anniversary of the Effective Time, Parent will cause the Surviving Corporation to maintain in effect, for the benefit of the Company s directors and officers that are insured under the Company s current directors and officers liability insurance policy in effect as of the date of this Agreement (the *D&O Insurance Policy*), the current level and similar scope of directors and officers liability insurance coverage as set forth in the D&O Insurance Policy with a carrier selected by Parent; *provided*, *however*, that in no event shall the Surviving Corporation be required pursuant to this *Section 5.10(c)* to expend in any one year an amount in excess of $60,000, it being understood that if the annual premiums payable for such insurance coverage exceed such amount, the Surviving Corporation shall be obligated to obtain a policy with what Parent determines in good faith to be the most favorable coverage available for a cost equal to such amount. At any time before the Effective Time, notwithstanding anything to the contrary set forth in this Agreement, the Company may purchase a customary tail prepaid policy on the D&O Insurance Policy covering a period of six years from the Effective Time for a total premium of no more than $360,000. In the event that the Company shall purchase such a customary tail prepaid policy before the Effective Time, Parent will cause the Surviving Corporation to maintain such tail policy in full force and effect and continue to honor its respective obligations thereunder, in

lieu of all other obligations of Parent under the first sentence of this *Section 5.10(c)*, for so long as such tail policy shall be maintained in full force and effect.

(d) Parent and the Surviving Corporation jointly and severally agree to pay all expenses, including attorneys fees, that may be incurred by the Indemnified Parties in successfully enforcing their indemnity rights and other rights provided in this *Section 5.10*.

(e) This *Section 5.10* shall survive the Effective Time and the consummation of the Merger. This *Section 5.10* is intended to benefit, and may be enforced by, the Indemnified Parties and their respective heirs, representatives, successors and assigns, and shall be binding on all successors and assigns of Parent and the Surviving Corporation.

Section 5.11 Section 16 Matters.

Before the Effective Time, Parent and the Company shall take all such steps as may be required to cause any dispositions of Company Shares (including derivative securities with respect to Company Shares) resulting from the Merger by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act, including, without limitation, actions in accordance with that certain No-Action Letter dated January 12, 1999 issued by the SEC regarding such matters.

Section 5.12 Plan of Reorganization.

The parties agree that the Merger shall not be, and they shall not report the Merger as, a tax-free reorganization within the meaning of Section 368 of the Code.

Section 5.13 Consultants.

(a) From and after the date hereof, Parent shall use commercially reasonable efforts to negotiate and agree to terms with as many of the individuals listed on *Exhibit E* attached hereto as possible (referred to herein as the *Consulting Committee*), to assist, in the role of consultants, and with such consulting to begin as of the Effective Time, in Parent s efforts toward selling or licensing the 7133 Program by the sixth-month anniversary of the Effective Time; *provided*, that Parent shall not be required to provide more than $40,000 in the aggregate for the compensation of the Consulting Committee.

(b) It is understood that, from and after the Effective Time, Parent s Board of Directors and management shall have the ultimate authority to lead, direct and approve the sale/license process described in paragraph (a) of this *Section 5.13* and to determine (subject to the obligation to act in good faith and with commercial reasonableness) whether or not to seek, solicit, negotiate or accept any proposed offer to sell or license the 7133 Program or any other Program by any deadline (or ever or at all), and that Parent shall have no liability for decisions, actions and inactions in this regard that are taken in good faith and with commercial reasonableness; *provided*, that notwithstanding the foregoing, until the sixth-month anniversary of the Effective Time, Parent shall use commercially reasonable efforts to cause its management to implement any particular proposed sale or license of the 7133 Program recommended by the Consulting Committee on terms and conditions that do not create a commercially unreasonable risk of liability to Parent.

Section 5.14 Efforts to Satisfy Closing Conditions.

Each of Parent, Merger Sub and the Company shall use its reasonable best efforts to cause the conditions to the other party s obligations to effect the Merger and the other Transactions to be satisfied. Each party hereto, at the reasonable request of the other, shall execute and deliver such other instruments and do and perform such other acts and things as may be reasonably necessary and consistent with this Agreement to effect the consummation of the Merger and other Transactions contemplated by this Agreement.

Section 5.15 Guaranteed Funding.

(a) Before the first anniversary of the Effective Time, Parent shall (i) initiate research, development or commercialization efforts on the Glucagon Program and the TR Beta Program and (ii) incur at least $350,000 in Funding for at least one of the General Programs.

(b) If Parent does not incur at least $350,000 in Funding for at least one of the General Programs during the first 12 months following the Effective Time, Parent shall deliver the General Program Funding Shortfall Amount (as defined in the General CVR Agreement) to the Rights Agent pursuant to and for distribution in accordance with the terms of the General CVR Agreement, unless the Stockholders Representative, in its sole discretion, shall have informed Parent in writing that this *Section 5.15(b)* is negated. Parent shall receive full credit for the amount so delivered against any future First Funding Shortfall Amount, Funding Shortfall Amount or Extended Funding Shortfall Amount (each as defined in the General CVR Agreement).

(c) If Parent does not incur an aggregate of at least $7,000,000 in Funding during the first 30 months following the Effective Time, then Parent shall deliver the First Funding Shortfall Amount to the Rights Agent pursuant to and for distribution in accordance with the terms of the General CVR Agreement, unless any of the following has occurred, in which case this *Section 5.15(c)* shall be negated: (i) the Stockholders Representative, in its sole discretion, shall have informed Parent in writing that this *Section 5.15(c)* is negated, (ii) Parent shall provide the Stockholders Representative with reasonable written evidence that Parent entered into a partnering agreement or similar arrangement with another Person to commercialize one of the Company Programs and such agreement has a Partner Value of at least $100,000,000 payable to Parent, or (iii) Parent shall provide the Stockholders Representative with reasonable written evidence that all Funding has ceased on both the TR Beta Program and the Glucagon Program and no future Funding on such programs is contemplated by, or budgeted for, Parent or the Surviving Corporation. Parent shall receive full credit for the amount so delivered against any future Funding Shortfall Amount or Extended Funding Shortfall Amount.

(d) If Parent does not incur an aggregate of at least $8,000,000 in Funding during the first 42 months following the Effective Time, then Parent shall deliver the Funding Shortfall Amount to the Rights Agent pursuant to and for distribution in accordance with the terms of the General CVR Agreement, unless the Stockholders Representative, in its sole discretion, shall instruct Parent in writing to extend such 42-month period so that it is a 48-month compliance period (the *Funding Extension*). In the event of a Funding Extension, Parent shall deliver the Extended Funding Shortfall Amount, if any, to the Rights Agent pursuant to and for distribution in accordance with the terms of the General CVR Agreement.

(e) All Funding by Parent shall be done in good faith and with commercial reasonableness; *provided*, that upon Parent incurring an aggregate of $8,000,000 in Funding, no additional Funding shall be subject to such standard.

(f) Following the Effective Time, on an annual basis, Parent or the Surviving Corporation shall provide the Stockholders Representative with a summary report setting forth (i) an accurate accounting and summary of all Funding incurred by Parent during the preceding 12 month period (including sufficient back-up to allow the Stockholders Representative to understand the general nature and purpose of such Funding payments) and (ii) describing in general the status of the respective Company Programs (each such report, a *Summary Report*). Subject to *Section 5.16(a)*, if the Stockholders Representative disagrees with any of the calculations set forth in a Summary Report and/or whether any payment qualifies as a Funding payment, within 45 calendar days after delivery of such Summary Report to the Stockholders Representative, the Stockholders Representative shall deliver a written notice to Parent specifying, with sufficient detail, any objections the Stockholders Representative has to such Summary Report (*Funding Objection Notice*). If the Stockholders Representative fails to deliver a Funding Objection Notice within such 45 calendar day period, such Summary Report shall be deemed conclusive determination of the Funding incurred during the relevant 12-month period. If the Stockholders Representative delivers a Funding Objection Notice, Parent and the Stockholders Representative

shall resolve such dispute pursuant to the resolution procedures set forth in Section 7.12 of the General CVR Agreement.

(g) This *Section 5.15* shall survive the Effective Time and the consummation of the Merger. In addition, Parent s obligation to provide a Summary Report hereunder shall survive the satisfaction of the Funding obligations and shall continue until such time as each of the CVR Agreements terminate pursuant to their respective terms; *provided*, *however*, upon satisfaction of the Funding obligations hereunder (or, if later, upon the conclusion of the 42-month or, if there has been a Funding Extension, 48-month measuring period)**,** each Summary Report shall only be required to describe in general the status of the respective Company Programs.

Section 5.16 Stockholders Representative.

(a) *Appointment of Stockholders Representative*. For purposes of (i) negotiating and settling, on behalf of the Company stockholders, any dispute that arises under this Agreement after the Effective Time, (ii) accepting delivery of notices hereunder to the former Company stockholders after the Effective Time, (iii) reviewing, negotiating and settling matters with respect to the Funding obligations set forth in *Section 5.15*, (iv) confirming the satisfaction of Parent s obligations under the CVR Agreements, including, without limitation, receiving and reviewing the achievement certificates and/or reports to be provided to the Stockholders Representative thereunder and (v) negotiating and settling matters with respect to the amounts to be paid to the holders of CVRs pursuant to the CVR Agreements, the Stockholders Representative is hereby appointed, authorized and empowered to be the exclusive representative, agent and attorney-in-fact of the Company stockholders and holders of CVRs, with full power of substitution, to make all decisions and determinations and to act (or not act) and execute, deliver and receive all agreements, documents, instruments and consents on behalf of and as agent for such Company stockholders or holders of CVRs at any time in connection with, and that may be necessary or appropriate to accomplish the intent and implement the provisions of this Agreement and the CVR Agreements, and to facilitate the consummation of the transactions contemplated hereby and thereby; *provided*, that before the delivering of any Funding Objection Notice or Notice of Objection (as defined in the CVR Agreements) or the filing of any other litigation or arbitration action or dispute process of any kind or the negating of *Section 5.15(c)* of this Agreement pursuant to *Section 5.15(c)(i)* or the negating of *Section 5.15(b)* of this Agreement or the granting of a Funding Extension or the amending of any CVR Agreement by the Stockholders Representative, the Stockholders Representative shall first obtain the written assent of at least 20% of the then outstanding General CVRs, in the case of a Funding Objection Notice or a filing of any other litigation or arbitration action or dispute process of any kind which does not arise under a particular CVR Agreement or a negating pursuant to *Section 5.15(c)(i)* or a negating of *Section 5.15(b)* or a granting of a Funding Extension, or of at least 20% of the CVRs then outstanding under the applicable CVR Agreement under which such Notice of Objection is to be delivered, in the case of a Notice of Objection or a filing of any other litigation or arbitration action or dispute process of any kind arising under the applicable CVR Agreement or an amending of the applicable CVR Agreement. By executing this Agreement, the Stockholders Representative accepts such appointment, authority and power. Without limiting the generality of the foregoing, the Stockholders Representative shall have the power to take any of the following actions on behalf of the former Company stockholders: to give and receive notices, communications and consents under this Agreement and the CVR Agreements on behalf of the former Company stockholders and holders of CVRs; to negotiate, enter into settlements and compromises of, resolve and comply with orders of courts and other third-party intermediaries with respect to any disputes arising under this Agreement or the CVR Agreements; and to make, execute, acknowledge and deliver all such other agreements, guarantees, orders, receipts, endorsements, notices, requests, instructions, certificates, stock powers, letters and other writings, and, in general, to do any and all things and to take any and all action that the Stockholders Representative, in its sole and absolute discretion, may consider necessary or proper or convenient in connection with or to carry out the activities described in this *Section 5.16*.

(b) *Authority*. The appointment of the Stockholders Representative by each stockholder and holder of CVRs by the Company stockholders collective adoption of this Agreement is coupled with an interest and may not be revoked in whole or in part (including, without limitation, upon the death or incapacity of any

stockholder). Such appointment shall be binding upon the heirs, executors, administrators, estates, personal representatives, officers, directors, security holders, successors and assigns of each stockholder. All decisions of the Stockholders Representative shall be final and binding on all of the stockholders and holders of CVRs, and no stockholder or holder of CVRs, shall have the right to object, dissent, protest or otherwise contest the same. Parent shall be entitled to rely upon, without independent investigation, any act, notice, instruction or communication from the Stockholders Representative and any document executed by the Stockholders Representative on behalf of any stockholder or holder of CVRs and shall be fully protected in connection with any action or inaction taken or omitted to be taken in reliance thereon by Parent absent willful misconduct by Parent. The Stockholders Representative shall not be responsible for any loss suffered by, or liability of any kind to, the stockholders or holders of CVRs arising out of any act done or omitted by the Stockholders Representative in connection with the acceptance or administration of the Stockholders Representative s duties hereunder, unless such act or omission involves gross negligence or willful misconduct.

(c) *Successor Stockholders Representative*. In the event that the Stockholders Representative dies, becomes unable to perform his or her responsibilities hereunder or resigns from such position, the holders of at least 34% of the then outstanding General CVRs shall be authorized to and shall select another representative reasonably acceptable to Parent to fill such vacancy and such substituted representative shall be deemed to be the Stockholders Representative for all purposes of this Agreement and the CVR Agreements. The newly-appointed Stockholders Representative shall notify Parent, the Surviving Corporation and any other appropriate Person in writing of his or her appointment, provide evidence that the holders of the requisite percentage of the then outstanding General CVRs approved such appointment and provide appropriate contact information for purposes of this Agreement and the CVR Agreements. Parent shall be entitled to rely upon, without independent investigation, the identity and validity of such newly-appointed Stockholders Representative as set forth in such written notice.

In the event that within 30 days after the Stockholders Representative dies, becomes unable to perform his or her responsibilities hereunder or resigns from such position and no successor Stockholders Representative reasonably acceptable to Parent has been so selected, the Rights Agent shall forthwith notify the Person holding the largest quantity of the outstanding General CVRs (and who is not a Competitor of Parent), and Parent and the Surviving Corporation, that such Person is the successor Stockholders Representative, and shall Person shall be the successor Stockholders Representative hereunder. If such Person notifies the Rights Agent, Parent and the Surviving Corporation in writing that such Person declines to serve, the Rights Agent shall forthwith notify the Person holding the next-largest quantity of the outstanding General CVRs (and who is not a Competitor of Parent), and Parent and the Surviving Corporation, that such next-largest-quantity Person is the successor Stockholders Representative, and such next-largest-quantity Person shall be the successor Stockholders Representative hereunder. (And so on, to the extent as may be necessary.)

(d) *Access and Confidentiality*. Subject to prior execution and delivery (to Parent and the Surviving Corporation) by the Stockholders Representative of a reasonable and customary confidentiality/nonuse agreement, from and after the Effective Time, Parent and the Surviving Corporation shall use commercially reasonable efforts to provide the Stockholders Representative with reasonable access to information about Parent and the Surviving Corporation (and their respective Subsidiaries) and the reasonable assistance of the officers and employees of the Surviving Corporation (and their respective Affiliates) upon reasonable prior notice and during normal business hours, for purposes of performing the duties of the Stockholders Representative under this *Section 5.16*. Subject to prior execution and delivery (to Parent and the Surviving Corporation) by the applicable holders of CVRs of a reasonable and customary confidentiality/nonuse agreement, the Stockholders Representative may forward any information and documentation it receives to such particular holders of CVRs for the direct purpose of seeking to obtain the assent of the requisite holders of CVRs before the delivery of a Notice of Objection or a Funding Objection Notice or the filing of any other litigation or arbitration action or dispute process of any kind. Notwithstanding the foregoing, the Stockholders Representative covenants and agrees that in no event shall the Stockholders Representative provide any such information or documentation to any Holder who (i) is a Competitor of Parent or (ii) holds fewer than 1% of the total number of

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General CVRs. For purposes of this *Section 5.16*, a *Competitor of Parent* shall mean a pharmaceutical or biotechnology company engaged primarily in the research, development or commercialization of any product that is directly competitive (with respect to the indication treated by such product) with any Company Program and expressly excluding any Person that is an institutional investor.

(e) *Compensation, Fees and Expenses of Stockholders Representative*.

(i) In consideration of the Stockholders Representative s obligations hereunder, the Stockholders Representative shall be paid, from the Stockholders Representative Fund, annual compensation in the amount of $45,000.

(ii) The actual and reasonable fees and expenses of the Stockholders Representative in performing its obligations hereunder shall be paid from the Stockholders Representative Fund in the sole discretion of the Stockholders Representative. The Stockholders Representative shall keep, for a period of at least five years following distribution, reasonable records and an accounting of all distributions made from the Stockholders Representative Fund. Upon the Closing, Parent shall wire $150,000 to the account set up for the Stockholders Representative Fund pursuant to wire instructions to be provided at least two Business Days before the Closing Date. Pursuant to the terms of the CVR Agreements, before the payment of any cash consideration to the holders of CVRs, up to 1% of the aggregate amount of cash consideration payable to the holders of CVRs shall be contributed to the Stockholders Representative Fund; *provided*, that no such additional cash consideration shall be contributed to the Stockholders Representative Fund if the available amount in the Stockholders Representative Fund would, together with the contribution, exceed $300,000 at the time of such payment to the holders of the CVRs. Except as expressly set forth herein, Parent and the Surviving Corporation shall have no obligation to finance or reimburse the Stockholders Representative, the Stockholders Representative Fund, or the Stockholders Representative s activities.

(f) *Termination of Duties and Obligations*. Subject to the following sentence, the Stockholders Representative s duties and obligations under this *Section 5.16* shall survive the Effective Time indefinitely. Upon the occurrence of the Fund Distribution Date, the Stockholders Representative shall be relieved of any and all duties and obligations under this Agreement or any of the CVR Agreements except under the second sentence of *Section 5.16(e)(ii)*.

ARTICLE VI

CONDITIONS TO EACH PARTY S OBLIGATION TO EFFECT THE MERGER

Section 6.01 Conditions to Obligations of Each Party Under This Agreement.

The respective obligations of each party to effect the Merger and the other Transactions shall be subject to the satisfaction at or before the Effective Time of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable Legal Requirements:

(a) The Registration Statement shall have been declared effective by the SEC under the Securities Act. No stop order suspending the effectiveness of the Registration Statement shall have been issued by the SEC and no proceedings for that purpose shall have been initiated or, to the Knowledge of Parent or the Company, threatened by the SEC.

(b) The Company Stockholder Approval shall have been obtained.

(c) No temporary, preliminary or permanent order or injunction shall have been issued by a court of competent jurisdiction and shall be continuing that prohibits the consummation of the Merger, and no Legal Prohibition shall have been enacted since the date of this Agreement and shall remain in effect.

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Section 6.02 Additional Conditions to Obligations of Parent and Merger Sub.

The obligations of Parent and Merger Sub to effect the Merger and the other transactions contemplated herein are also subject to the following conditions:

(a) Each of the representations and warranties of the Company set forth in the Agreement (without giving effect to any Company Material Adverse Effect or other materiality qualifications contained in such representations and warranties) shall be true and correct as of the Effective Time as though made on and as of the Effective Time (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date), except for such inaccuracies, individually or in the aggregate, that would not reasonably be expected to have a Company Material Adverse Effect, and Parent shall have received a certificate of an executive officer of the Company to that effect.

(b) The covenants of the Company contained in the Agreement that are required to have been performed by the Company before the Effective Time shall have been performed in all material respects, and Parent shall have received a certificate of an executive officer of the Company to that effect and to the effect that *Section 6.02(c)*, *Section 6.02(d)*, *Section 6.02(e)* and *Section 6.02(f)* have been satisfied.

(c) Since the date of this Agreement, there shall not have occurred and be continuing any event or development which, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect.

(d) No more than 1,750,000 Outstanding Company Shares shall be eligible to be Dissenting Shares.

(e) The Company shall have delivered to Parent the resignations of each director and officer of the Company and each Company Subsidiary, as such, each effective as of the Effective Time.

(f) The Company shall have obtained consents or approvals from all parties in the absence of whose consent or approval the consummation of the Merger and the Transactions would violate or constitute a default under any Company Contract, except for such violations or defaults as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, impair in any material respect the ability of the Company to perform its obligations hereunder or the ability of Parent to enjoy the intended benefit of the Transactions, or prevent or materially delay consummation of the Transactions; and the Company shall have obtained, made or received all consents or approvals of, or filings, declarations or registrations with, any Governmental Entity necessary for the execution and delivery of this Agreement and the CVR Agreements by the Company and the consummation by the Company of the Transactions, other than (i) the filing with the SEC of the post-Effective-Time filings required under, and compliance with other applicable requirements of, the Exchange Act and the rules of the NASDAQ Capital Market, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, and (iii) such consents, approvals, filings, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, impair in any material respect the ability of the Company to perform its obligations hereunder or the ability of Parent to enjoy the intended benefit of the Transactions, or prevent or materially delay consummation of the Transactions.

(g) Parent shall have received from the Company (i) a properly executed statement, dated as of the Effective Time, stating under penalties of perjury that the Company is not, and has not been, a United States real property holding corporation as defined in Section 897(c)(2) of the Code during the applicable period described in Section 897(c)(1)(A)(ii) of the Code, in form and substance reasonably acceptable to Parent, and (ii) proof reasonably satisfactory to Parent that the Company has provided notice of such verification to the Internal Revenue Service in accordance with the provisions of Treasury Regulations Section 1.897-2(h)(2).

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Section 6.03 Additional Conditions to Obligations of the Company.

The obligation of the Company to effect the Merger and the other transactions contemplated herein are also subject to the following conditions:

(a) Each of the representations and warranties of Parent and Merger Sub set forth in the Agreement (without giving effect to any Parent Material Adverse Effect or other materiality qualifications contained in such representations and warranties) shall be true and correct as of the Effective Time as though made on and as of the Effective Time (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date), except for such inaccuracies, individually or in the aggregate, that would not reasonably be expected to have a Parent Material Adverse Effect, and the Company shall have received a certificate of an executive officer of Parent to that effect.

(b) The covenants of Parent and Merger Sub contained in the Agreement that are required to have been performed by Parent and Merger Sub before the Effective Time shall have been performed in all material respects, and the Company shall have received a certificate of an executive officer of Parent to that effect and to the effect that *Section 6.03(c)* has been satisfied.

(c) Since the date of this Agreement, there shall not have occurred and be continuing any event or development which, individually or in the aggregate, has had or would reasonably be expected to have a Parent Material Adverse Effect.

Section 6.04 Estoppel.

Notwithstanding anything to the contrary contained herein, no party whose failure to take any action required to fulfill or satisfy any of the conditions set forth in this *Article VI* may claim failure of such condition as grounds for termination pursuant to *Article VII* of this Agreement.

ARTICLE VII

TERMINATION

Section 7.01 Termination.

This Agreement may be terminated and the Merger may be abandoned (before or after the obtaining of the Company Stockholder Approval):

(a) by mutual written consent of the Company and Parent at any time before the Effective Time;

(b) by either Parent or the Company if the Company Stockholder Approval shall not have been obtained by reason of the failure to obtain the required vote at the Special Meeting or at any adjournment thereof;

(c) by Parent or the Company at any time after February 15, 2010 (the *Outside Date*) if the Effective Time shall not have occurred on or before the Outside Date (*provided* that the right to terminate this Agreement pursuant to this *Section 7.01(c)* shall not be available to any party where the failure of such party (or any Affiliate or Representative of such party) to fulfill any obligation under this Agreement or any Voting Agreement has resulted in the failure of the Effective Time to have occurred on or before the Outside Date; and *provided further* that if the Registration Statement shall not have been declared effective by the SEC on or before December 11, 2009, then for each day after December 11, 2009 that the SEC has not declared the Registration Statement to be effective, the Outside Date shall automatically be extended by one day until such date as the SEC declares the Registration Statement to be effective and, if the last day of such extension is not a Business Day, then until the next Business Day; and *provided further*, in no event shall the Outside Date be extended beyond February 26, 2010);

(d) by Parent or the Company if there shall be any Legal Prohibition in effect preventing the consummation of the Merger; *provided*, *however*, that a party shall not be permitted to terminate this

Agreement pursuant to this *Section 7.01(d)* if the existence of the Legal Prohibition is attributable to the failure of such party (or any Affiliate or Representative of such party) to perform in any material respect any covenant in this Agreement required to be performed by such party (or any Affiliate or Representative of such party) at or before the Effective Time, and *provided*, *further*, that the party seeking to terminate this Agreement pursuant to this *Section 7.01(d)* shall have used its reasonable best efforts to prevent such Legal Prohibition and to cause any such Legal Prohibition to be vacated or otherwise rendered of no effect as soon as possible and in any event by the Outside Date;

(e) by Parent if the Company Board shall have made a Company Change in Recommendation;

(f) by the Company if the Company Board authorizes the Company, subject to complying with the terms of this Agreement, to accept (or to enter into a written agreement for a transaction constituting) a Superior Proposal; *provided* that immediately before (or contemporaneous with) the termination of this Agreement pursuant to this paragraph, the Company shall pay to Parent the Termination Fee payable pursuant to *Section 7.03(c)*;

(g) by Parent at any time before the Effective Time if: (i) the representations and warranties of the Company set forth in this Agreement shall not be true and correct on and as of the date of such determination as if made on such date (other than those representations and warranties that address matters only as of a particular date, which shall be true and correct as of such date), except where the failure of any such representation or warranty to be true and correct (without giving effect to any Company Material Adverse Effect or other materiality qualifications set forth therein) would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect or impair in any material respect the ability of the Company to perform its obligations under this Agreement or the ability of Parent to enjoy in all material respects the intended benefit of the Transactions; or (ii) the Company shall have, in any material respect, breached or failed to perform or comply with any obligation, agreement or covenant required by this Agreement to be performed or complied with by it, which breach or failure (in each case under clauses (i) and (ii)), following written notice thereof from Parent to the Company, is not cured, or is incapable of being cured, on or before the Outside Date; or

(h) by the Company at any time before the Effective Time if: (i) the representations and warranties of Parent or Merger Sub set forth in this Agreement shall not be true and correct on and as of the date of such determination as if made on such date (other than those representations and warranties that address matters only as of a particular date, which shall be true and correct as of such date), except where the failure of any such representation or warranty to be true and correct (without giving effect to any Parent Material Adverse Effect or other materiality qualifications set forth therein) would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect or impair in any material respect the ability of Parent or Merger Sub to perform their obligations under this Agreement; or (ii) Parent or Merger Sub shall have, in any material respect, breached or failed to perform or comply with any obligation, agreement or covenant required by this Agreement to be performed or complied with by them, which breach or failure (in each case under clauses (i) and (ii)), following written notice thereof from the Company to Parent, is not cured, or is incapable of being cured, on or before the Outside Date.

Section 7.02 Effect of Termination.

In the event of the termination of this Agreement as provided in *Section 7.01*, written notice thereof shall forthwith be given to the other party or parties specifying the provision hereof pursuant to which such termination is made and this Agreement shall be of no further force or effect; *provided*, *however*, that: (a) *Section 5.08*, this *Section 7.02*, *Section 7.03*, and *Article VIII*, and the Confidentiality Agreement and the Confidentiality and Exclusivity Agreement shall survive the termination of this Agreement and shall remain in full force and effect; and (b) except as provided in *Section 7.03*, the termination of this Agreement shall not relieve any party from any liability or damage that was the result of fraud or the breach of any representation, warranty or covenant contained in this Agreement before the date of such termination.

Section 7.03 Termination Fee.

(a) If: (i) this Agreement is validly terminated by either Parent or the Company pursuant to *Section 7.01(b)* or *Section 7.01(c)*; (ii) neither Parent not Merger Sub shall have materially breached any of its representations, warranties or covenants contained in this Agreement; and (iii) at or before the time of any such termination of this Agreement an Acquisition Proposal shall have been made (and such Acquisition Proposal shall not have been withdrawn before the time of the termination of this Agreement) and within 12 months after the date of termination of this Agreement, the Company or any Company Subsidiary consummates an Acquisition Transaction (replacing for purposes of this *Section 7.03(a)*, 20% in the definition thereof with 50%) or enters into a Contract to consummate an Acquisition Transaction that is subsequently consummated, then, within two Business Days after such Acquisition Transaction is consummated the Company shall pay the Termination Fee to Parent.

(b) If this Agreement is validly terminated by Parent pursuant to *Section 7.01(e)* or *Section 7.01(g)*, then, within two Business Days after such termination, the Company shall pay the Termination Fee to Parent.

(c) If this Agreement is validly terminated by the Company pursuant to *Section 7.01(f)*, before (or contemporaneously with) and as a condition to the effectiveness of such termination, the Company shall pay the Termination Fee to Parent.

(d) Each of the parties hereto acknowledges that the agreements contained in this *Section 7.03* are an integral part of the transactions contemplated by this Agreement and that the Termination Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Parent and Merger Sub, as the case may be, in the circumstances in which such Termination Fee is payable for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, which amount would otherwise be impossible to calculate with precision.

(e) In circumstances under which the Termination Fee is payable and has been paid, Parent and Merger Sub agree that (i) to the extent they have incurred losses or damages in connection with this Agreement other than as a result of fraud or intentional misconduct, their sole and exclusive remedy against the Company and any of its directors, officers, Affiliates or Representatives for any breach, loss or damage shall be to receive payment of the Termination Fee to the extent provided in *Section 7.03* and (ii) upon payment in full of such amounts, (x) neither Parent nor Merger Sub shall have any other rights or claims or seek damages against the Company or any of its directors, officers, Affiliates or Representatives under this Agreement or otherwise, whether at law or equity, in contract, in tort or otherwise, and (y) neither the Company nor any of its directors, officers, Affiliates or Representatives shall have any further liability or obligations relating to or arising out of this Agreement or the Transactions.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01 Amendment.

This Agreement may be amended with the written approval of the respective parties at any time before the Effective Time; *provided*, *however*, that after the Company Stockholder Approval shall have been obtained, no amendment shall be made which by applicable Legal Requirements or any rule of any relevant national securities exchange requires further approval of the stockholders of the Company, without such further approval.

Section 8.02 Waiver.

(a) No failure on the part of any party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party in exercising any power, right, privilege or remedy under this

Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(b) No party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

Section 8.03 No Survival of Representations and Warranties.

None of the representations, warranties, covenants and other agreements of the parties contained in this Agreement, or any claim with respect thereto, shall survive the Effective Time, except for (and only to the extent that) those covenants, agreements and other provisions contained herein that by their terms apply or are to be performed in whole or in part after the Effective Time.

Section 8.04 Entire Agreement; Counterparts.

This Agreement, the CVR Agreements, the other agreements referred to herein, the Confidentiality Agreement and the Confidentiality and Exclusivity Agreement constitute the entire agreement of the parties hereto and supersede all prior or contemporaneous agreements and understandings, both written and oral, among or between any of the parties hereto with respect to the subject matter hereof and thereof. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

Section 8.05 Applicable Legal Requirements; Jurisdiction; Waiver of Jury Trial.

(a) This Agreement is made under, and shall be construed and enforced in accordance with, the Legal Requirements of the State of Delaware applicable to agreements made and to be performed solely therein. The parties hereto agree that any Legal Proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the Court of Chancery of the State of Delaware, and each of the parties hereby irrevocably consents to the jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such Legal Proceeding and irrevocably waives, to the fullest extent permitted by Legal Requirements, any objection that it may now or hereafter have to the laying of the venue of such Legal Proceeding in any such court or that any such Legal Proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto agrees that a final judgment in any such Legal Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Legal Requirements. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in *Section 8.09*. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Legal Requirements. Each party hereto agrees not to commence any legal proceedings relating to or arising out of this Agreement or the transactions contemplated hereby in any jurisdiction or courts other than as provided herein.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF

LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (C) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS *Section 8.05(b)*.

Section 8.06 Payment of Expenses.

Whether or not the Merger is consummated, each party hereto shall pay its own expenses incident to preparing for, entering into and carrying out this Agreement and the Transactions. Nothing contained in this Agreement shall be deemed to limit the right or ability of any party to this Agreement to pay such expenses, as and when due and payable.

Section 8.07 Transfer Taxes.

All transfer, documentary, sales, use, stamp, registration and other substantially similar Taxes and fees (including any penalties and interest) incurred in connection with this Agreement (collectively, *Transfer Taxes*) shall be paid by Parent and Merger Sub when due, and Parent and Merger Sub will, at their own expense, file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes.

Section 8.08 Assignability; No Third Party Rights.

Before the Effective Time, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of a Legal Requirement or otherwise, by any of the parties without the prior written consent of the other parties and any purported assignment without such consent shall be void. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties hereto and their respective permitted successors and assigns. Notwithstanding anything contained herein to the contrary, Parent shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless the Person formed by such consolidation or into which Purchaser is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of Purchaser substantially as an entirety shall expressly assume (or assumes by operation of law) (a) payment (if and to the extent required) of all amounts that may become payable under the CVR Agreements and (b) the performance of every duty and covenant of the CVR Agreements on the part of Parent to be performed or observed; *provided*, further, Parent shall remain jointly and severally liable for the foregoing obligations after the date of such transfer, lease or similar transaction. Except (i) for the rights of stockholders and holders of other securities to receive payment in accordance with *Article II* after the Effective Time, (ii) as set forth in *Section 5.09* and *Section 5.10* and (iii) for the right of the Company (but not of the Surviving Corporation), on behalf of its stockholders, to pursue damages in the event of Parent s or Merger Sub s breach of this Agreement, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person, other than the parties hereto, any right, benefit or remedy of any nature. In circumstances in which the stockholders of the Company do not have the right to seek remedies at law or equity, the obligations of Parent and Merger Sub under this Agreement are material to the Company s execution of this Agreement and any failure by Parent or Merger Sub to comply with the terms of this Agreement shall enable the Company (but not the Surviving Corporation) to seek all remedies available at law or equity to it and on behalf of the stockholders. To the extent permitted by applicable Legal Requirements, it is expressly agreed that in no event shall any former stockholders of the Company (as opposed to the Stockholders Representative) or any holders of CVRs (as opposed to the Stockholders Representative) have, after the Effective Time, any power or right to commence or join in any Legal Proceeding based on or arising out of this Agreement or any of the CVR Agreements.

Section 8.09 Notices.

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent designated for overnight delivery by nationally

recognized overnight air courier (such as Federal Express), upon receipt of proof of delivery; (c) if sent by email before 5:00 p.m. California time, when transmitted; (d) if sent by email after 5:00 p.m. California time, on the following Business Day; and (e) if otherwise actually personally delivered, when delivered, *provided* that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

if to Parent or Merger Sub:

Ligand Pharmaceuticals Incorporated

10275 Science Center Drive

San Diego, CA 92121

Attention: John Higgins

Email: jhiggins@ligand.com

Beginning December 1, 2009, please use instead the following address for Ligand:

11085 North Torrey Pines Road, Suite 300, La Jolla, California 92037.

with a copy to:

Stradling Yocca Carlson & Rauth

4365 Executive Drive, Suite 1500

San Diego, CA 92121

Attention: Hayden Trubitt, Esq.

Email: htrubitt@sycr.com

if to the Company:

Metabasis Therapeutics, Inc.

11119 North Torrey Pines Road

La Jolla, CA 92037

Attention: David F. Hale

Email: dfhale@biopharmaventures.com

with a copy to:

Cooley Godward Kronish LLP

4401 Eastgate Mall

San Diego, CA 92121

Attention: Jason Kent, Esq.

Email: jkent@cooley.com

if to the Stockholders Representative:

David F. Hale

1042-B N. El Camino Real

Suite 430

Encinitas, CA 92024

Email: dfhale@biopharmaventures.com

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Section 8.10 Severability.

Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to negotiate in good faith to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

Section 8.11 Obligation of Parent.

Parent shall ensure that each of Merger Sub and the Surviving Corporation duly performs, satisfies and discharges on a timely basis each of the covenants, obligations and liabilities of Merger Sub and (after the Effective Time) the Surviving Corporation under this Agreement and the CVR Agreements.

Section 8.12 Specific Performance.

The parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not to be performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof in addition to any other remedies at law or in equity. Each party agrees to waive any requirement for the posting of, or securing of, a bond in connection with any such remedy.

Section 8.13 Remedies.

All rights and remedies of either party hereto are cumulative of each other and of every other right or remedy such party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

Section 8.14 Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words include and including, and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words without limitation.

(d) Except as otherwise indicated, all references in this Agreement to Articles Sections, Annexes, Exhibits and Schedules are intended to ref
Articles, Sections, Annexes, Exhibits or Schedules to this Agreement, as the case may be.

(e) All references in this Agreement to a document or instrument having been made available to such Party shall be deemed to include the making available of such document or instrument to any Representative of such Party.

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(f) All references in this Agreement to $ are intended to refer to U.S. dollars.

(g) Unless otherwise specifically provided for herein, the term or shall not be deemed to be exclusive.

(h) The titles, captions or headings of the Sections and Subsections herein 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.

Section 8.15 Further Action.

The parties hereto shall execute and deliver such certificates and other documents and take such other actions as may be reasonably necessary or appropriate in order to effect and to more perfectly evidence the Merger and the Transactions, including, but not limited to, making filings, recordings or publications required under the DGCL. Without limitation, if at any time after the Effective Time any further action is necessary to vest in the Surviving Corporation the title to all property or rights of Merger Sub or the Company, the officers of the Surviving Entity are fully authorized in the name of Merger Sub or the Company, as the case may be, to take, and shall take, any and all such lawful action.

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IN WITNESS WHEREOF, Parent, Merger Sub, the Company and the Stockholders Representative have caused this Agreement to be executed as of the date first written above.

LIGAND PHARMACEUTICALS INCORPORATED

By: /s/ JOHN L. HIGGINS
Name: **John L. Higgins**
Title: **President & CEO**

MOONSTONE ACQUISITION, INC.

By: /s/ JOHN L. HIGGINS
Name: **John L. Higgins**
Title: **President & CEO**

METABASIS THERAPEUTICS, INC.

By: /s/ MARK D. ERION
Name: **Mark D. Erion, Ph.D.**
Title: **President and Chief Executive Officer**

DAVID F. HALE, as Stockholders Representative

By: /s/ DAVID F. HALE

EXHIBIT A: Roche CVR Agreement

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EXHIBIT B: TR Beta CVR Agreement

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EXHIBIT C: Glucagon CVR Agreement

EXHIBIT D: General CVR Agreement

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EXHIBIT E: List of Potential Consultants

Edgardo Baracchini

David Bullough

Glenn Dourado

Barry Gumbiner

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Annex B

Form of Roche CVR Agreement

CONTINGENT VALUE RIGHTS AGREEMENT*

THIS CONTINGENT VALUE RIGHTS AGREEMENT, dated as of [ ] (this ***Agreement*** , is entered into by and among Ligand Pharmaceuticals Incorporated, a Delaware corporation (***Buyer***), Metabasis Therapeutics, Inc., a Delaware corporation (***Target***), David F. Hale, as Stockholders Representative (the ***Stockholders Representative***), and Mellon Investor Services LLC, a New Jersey limited liability company, as Rights Agent (the ***Rights Agent***) and as initial Roche CVR Registrar (as defined herein).

Preamble

Buyer, Moonstone Acquisition, Inc., a Delaware corporation and wholly-owned subsidiary of Buyer (***Sub***), Target and the Stockholders Representative have entered into an Agreement and Plan of Merger dated as of October 26, 2009 (as amended to date, the ***Merger Agreement***), pursuant to which Sub will merge with and into Target (the ***Merger***), with Target surviving the Merger as a subsidiary of Buyer.

Pursuant to the Merger Agreement, Buyer agreed to create and issue to Target s stockholders of record immediately before the effective time of the Merger, contingent value rights as hereinafter described.

The parties have done all things necessary to make the contingent value rights, when issued pursuant to the Merger Agreement and hereunder, the valid obligations of Buyer and to make this Agreement a valid and binding agreement of Buyer, in accordance with its terms.

NOW, THEREFORE, for and in consideration of the premises and the consummation of the transactions referred to above, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders (as hereinafter defined), as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

(a) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(ii) all accounting terms used herein and not expressly defined herein shall have the meanings assigned to such terms in accordance with United States generally accepted accounting principles, as in effect on the date hereof;

(iii) the words herein, hereof and hereunder and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision;

* Including amendments made by Amendment to Agreement and Plan of Merger dated as of November 25, 2009. The amendments are to the first paragraph of the Preamble, Section 1.1(b) (the definitions of Landlord Agreement and Roche CVR Payment Amount), Section 2.6, Section 2.7(a), Section 2.7(e) (deleted) and Section 7.11.

(iv) unless the context otherwise requires, words describing the singular number shall include the plural and vice versa, words denoting any gender shall include all genders and words denoting natural Persons shall include corporations, partnerships and other Persons and vice versa; and

(v) all references to including shall be deemed to mean including without limitation.

(b) Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement. The following terms shall have the meanings ascribed to them as follows:

Achievement Certificate has the meaning set forth in Section 2.4(a).

Board of Directors means the board of directors of Buyer.

Board Resolution means a copy of a resolution certified by the secretary or an assistant secretary of Buyer to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Rights Agent.

Business Day means any day other than a Saturday, Sunday or a day on which the banks in New York, New Jersey or California are authorized or obligated by law or executive order to close.

Close of Business on any given date shall mean 5:00 P.M., California time, on such date; provided, however, that if such date is not a Business Day it shall mean 5:00 P.M., California time, on the next succeeding Business Day.

Competitor of Buyer has the same meaning as set forth in the Merger Agreement for Competitor of Parent.

Fraction means the quotient of (a) the number of Company Shares outstanding as of the Effective Time plus the number of Roche CVRs issued between the Effective Time and the occurrence of the applicable Roche CVR Payment Event pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time, minus the number of Dissenting Shares (determined as of the occurrence of the applicable Roche CVR Payment Event), divided by (b) the sum of the number of Company Shares outstanding as of the Effective Time plus the number of Roche CVRs issued between the Effective Time and the occurrence of the applicable Roche CVR Payment Event pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time.

Fund Distribution Date has the meaning set forth in Section 2.4(g).

Holder means a Person in whose name a Roche CVR is registered in the Roche CVR Register.

Landlord means ARE-SD Region No. 24, LLC.

Landlord Agreement means the Agreement for Termination of Lease and Voluntary Surrender of Premises dated July 21, 2009 between the Company and the Landlord, including any amendments thereto entered into before the Effective Time.

Non-Achievement Certificate has the meaning set forth in Section 2.4(b).

Notice of Objection has the meaning set forth in Section 2.4(c).

Objection Period has the meaning set forth in Section 2.4(c).

Officer s Certificate means a certificate signed by the chief executive officer, president, chief financial officer, any vice president, the controller, the treasurer or the secretary, in each case, of Buyer, in his or her capacity as such an officer, and delivered to the Rights Agent.

Outside Date means the last potential Roche CVR Payment Date.

Person shall mean any individual, firm, corporation, limited liability company, partnership, trust or other entity, and shall include any successor (by merger or otherwise) thereof or thereto.

Rights Agent means the Rights Agent named in the first paragraph of this Agreement, until a successor Rights Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter Rights Agent shall mean such successor Rights Agent.

Rights Agent Fees and Expenses means the agreed-upon fees and expenses of the Rights Agent to act in such capacity pursuant to the terms of this Agreement.

Roche Agreement means that certain Collaboration and License Agreement, effective as of August 7, 2008, by and among Hoffmann-La Roche Inc., Roche Palo Alto LLC, F. Hoffmann-La Roche Ltd. and Target, as amended from time to time.

Roche CVR Payment Amount means, as applicable, a Roche Milestone Payment Amount, a Roche Purchase Payment Amount or a Roche Royalty Payment Amount; less in each case (i) 1% (or such lesser percentage as is the maximum permissible pursuant to the following proviso) of such Roche Milestone Payment Amount, Roche Purchase Payment Amount or Roche Royalty Payment Amount, as applicable, which amount shall be contributed to the Stockholders Representative Fund; provided that no such amount shall be contributed to the Stockholders Representative Fund to the extent that the sum of such amount and the amount then held in the Stockholders Representative Fund would exceed $300,000, (ii) to the extent applicable in respect thereof, any amount payable by Buyer or the Surviving Corporation to the Landlord pursuant to the terms of Section 10 of the Landlord Agreement and (iii) to the extent applicable in respect thereof, any contingent severance payments payable to the employees that were terminated in Target s May 2009 reduction in force.

Roche CVR Payment Date means the January 1 or July 1 next following the date (if any and if ever) that a Roche CVR Payment Amount is payable by Buyer to the Holders, which date shall be established pursuant to Section 2.4.

Roche CVR Payment Event means, as applicable, a Roche Milestone Payment Event, a Roche Purchase Payment Amount or a Roche Royalty Payment Event.

Roche CVR Register has the meaning set forth in Section 2.3(b).

Roche CVR Registrar has the meaning set forth in Section 2.3(b).

Roche CVRs means the Roche Contingent Value Rights issued by Buyer pursuant to the Merger Agreement and this Agreement.

Roche Milestone Payment Amount means a cash amount equal to the product of the Fraction times 65% of the Proceeds actually received by Buyer, Target or the Surviving Corporation, after October 1, 2009 and before the Outside Date, in connection with a Roche Milestone Payment Event.

Roche Milestone Payment Event means the receipt by Buyer, Target or the Surviving Corporation of a milestone payment pursuant to the Roche Agreement.

Roche Purchase Payment Amount means a cash amount equal to the product of the Fraction times 65% of the Proceeds actually received by Buyer, Target or the Surviving Corporation, after October 1, 2009 and before the Outside Date, in connection with a Roche Purchase Payment Event, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates (including, but only from and after October 1, 2009, Target), in connection with the Roche Purchase Payment Event (including reasonable attorneys fees and brokers commissions).

Roche Purchase Payment Event means the full or partial sale, surrender or transfer by Buyer, Target or the Surviving Corporation to Roche or any other third party of rights to receive milestone payments under the Roche Agreement, rights to receive royalty payments under the Roche Agreement, or all or any portion of a drug candidate or technology or Intellectual Property from the drug development program licensed pursuant to the Roche Agreement.

Roche Royalty Payment Amount means a cash amount equal to the product of the Fraction times 68% of the Proceeds actually received by Buyer, Target or the Surviving Corporation, after October 1, 2009 and before the Outside Date, in connection with a Roche Royalty Payment Event.

Roche Royalty Payment Event means the receipt by Buyer, Target or the Surviving Corporation of a royalty payment pursuant to the Roche Agreement.

Surviving Person has the meaning set forth in Section 6.1(a)(i).

ARTICLE II

CONTINGENT VALUE RIGHTS

Section 2.1 Issuance of Roche CVRs; Appointment of Rights Agent.

(a) The Roche CVRs shall be issued pursuant to the Merger Agreement at the time and in the manner set forth in the Merger Agreement or pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time.

(b) Buyer hereby appoints the Rights Agent to act as rights agent for Buyer in accordance with the express terms and conditions hereinafter set forth in this Agreement (and no implied terms or conditions), and the Rights Agent hereby accepts such appointment.

(c) To the extent permitted by applicable Legal Requirements, it is expressly agreed that in no event shall any Holders (as opposed to the Stockholders Representative) or any former stockholders of Target (as opposed to the Stockholders Representative) have, after the Effective Time, any power or right to commence or join in any Legal Proceeding based on or arising out of this Agreement or the Merger Agreement.

Section 2.2 Transferability.

At the option of a respective holder thereof, the Roche CVRs may be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, but only in accordance with Section 2.3 hereof and in compliance with all applicable Legal Requirements.

Section 2.3 No Certificate; Registration; Registration of Transfer; Change of Address.

(a) The Roche CVRs shall be issued in book-entry form only and shall not be evidenced by a certificate or other instrument.

(b) The Rights Agent shall keep a register (the ***Roche CVR Register***) for the registration of Roche CVRs. The Rights Agent is hereby initially appointed Roche CVR registrar and transfer agent (***Roche CVR Registrar***) for the purpose of registering Roche CVRs and transfers of Roche CVRs as herein provided. Upon any change in the identity of the Rights Agent, the successor Rights Agent shall automatically also become the successor Roche CVR Registrar.

(c) Every request made to transfer a Roche CVR must be in writing and accompanied by a written instrument or instruments of transfer and any other documentation requested by Buyer or Roche CVR Registrar, in a form reasonably satisfactory to Buyer and the Roche CVR Registrar, properly completed and duly executed by the registered Holder or Holders thereof or by the duly appointed legal representative thereof or by a duly authorized attorney, such signature to be guaranteed by a participant in a recognized Signature Guarantee Medallion Program. Upon receipt of such written request and materials, and all other reasonably necessary information, the Roche CVR Registrar shall register the transfer of the Roche CVRs in the Roche CVR Register. All duly transferred Roche CVRs registered in the Roche CVR Register shall be the valid obligations of Buyer, evidencing the same right and shall entitle the transferee to the same benefits and rights under this Agreement, as those previously held by the transferor. No transfer of a Roche CVR shall be valid until registered in the Roche CVR Register, and any transfer not duly registered in the Roche CVR Register will not be honored by Buyer or the Rights Agent until it is so registered, and then it will be honored only prospectively. Any transfer or assignment of the Roche CVRs shall be without charge (other than the cost of any tax or charge that may be payable in respect of such transfer or assignment, which shall be the responsibility of the transferor) to the Holder. The Rights Agent shall have no duty or obligation under any Section of this Agreement that requires the payment of taxes or charges unless and until it is satisfied that such taxes and/or charges have been or will be paid.

(d) A Holder may make a written request to the Roche CVR Registrar to change such Holder s address of record in the Roche CVR Register. The written request must be duly executed by the Holder and conform to such other reasonable requirements as the Rights Agent may from time to time establish. Upon receipt of such proper written request, the Roche CVR Registrar shall promptly record the change of address in the Roche CVR Register.

(e) Upon reasonable written request of the Stockholders Representative, the Rights Agent shall (at the Stockholders Representative s expense) promptly provide a copy of the Roche CVR Register to the Stockholders Representative.

Section 2.4 Payment Procedures.

(a) Promptly following the occurrence of a Roche CVR Payment Event, but in no event later than five Business Days after the occurrence of a Roche CVR Payment Event, Buyer shall deliver to the Rights Agent and the Stockholders Representative a certificate (the ***Achievement Certificate***), certifying that the Holders are entitled to receive a Roche CVR Payment Amount (and setting forth the calculation of such Roche CVR Payment Amount), and shall also deliver to the Rights Agent the indicated Roche CVR Payment Amount in cash. Until such Achievement Certificate is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that a Roche CVR Payment Event has not occurred. No transaction described in Section 6.1(a) hereof shall give the Holders the right to receive a Roche CVR Payment Amount. Such cash amount deposited with the Rights Agent shall, pending its disbursement to such holders, be invested by the Rights Agent in (i) direct obligations of the United States of America, (ii) obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest, or (iii) money market funds investing solely in a combination of the foregoing. Any interest and other income resulting from such investments shall be applied first to the satisfaction of the Rights Agent Fees and Expenses, and any remainder (the ***Remainder***) shall be paid to the Holders as set forth in Section 2.4(e) below. The Rights Agent must receive federal or other immediately available funds before 1:00 p.m., Eastern Time, on the funding date in order for such funds to be so invested on such date. Funds received after such time on the funding date will not be so invested until the following Business Day. Except as expressly provided above, the Rights Agent will not be obligated to calculate or pay interest to any Holder or any other party.

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(b) If no Roche Milestone Payment Event has occurred on or before the Outside Date, then, within five Business Days after the Outside Date, Buyer shall deliver to the Rights Agent and the Stockholders Representative a certificate, stating that no Roche Milestone Payment Event occurred. If no Roche Royalty Payment Event has occurred on or before the Outside Date, then, within five Business Days after the Outside Date, Buyer shall deliver to the Rights Agent a certificate, stating that no Roche Royalty Payment Event occurred. If no Roche Purchase Payment Event has occurred on or before the Outside Date, then, within five Business Days after the Outside Date, Buyer shall deliver to the Rights Agent a certificate, stating that no Roche Purchase Payment Event occurred. Such certificate or certificates are herein referred to in the singular as the ***Non-Achievement Certificate***. Until such Non-Achievement Certificate is received by the Rights Agent, the Rights Agent shall have no duties or obligations with respect to the Outside Date, and the Rights Agent shall have no duties or obligations to monitor or determine the Outside Date.

(c) Subject to Section 5.16(a) of the Merger Agreement, within 45 calendar days after delivery by Buyer of a Non-Achievement Certificate or Achievement Certificate (the ***Objection Period***), the Stockholders Representative may deliver a written notice to Buyer (with a copy to the Rights Agent) specifying that the Stockholders Representative objects to (i) the determination of Buyer that no Roche Milestone Payment Event occurred on or before the Outside Date and/or that no Roche Royalty Payment Event occurred on or before the Outside Date and/or that no Roche Purchase Payment Event occurred on or before the Outside Date or (ii) the calculation of the Roche CVR Payment Amount, as applicable (a ***Notice of Objection***), and stating the reason upon which the Stockholders Representative has determined that (A) the Roche CVR Payment Event has occurred on or before the Outside Date or (B) the calculation of the Roche CVR Payment Amount is in error, as applicable. Any dispute arising from a Notice of Objection shall be resolved in accordance with the procedure set forth in Section 7.12, which decision shall be binding on the parties hereto and every Holder.

(d) If a Notice of Objection with respect to a Non-Achievement Certificate has not been delivered to Buyer within the Objection Period, then the Holders shall have no right to receive the Roche CVR Payment Amount, and Buyer and the Rights Agent shall have no further obligations with respect to the Roche CVR Payment Amount. If a Notice of Objection with respect to an Achievement Certificate has not been delivered to Buyer within the Objection Period, then the Holders shall have no right to assert that the calculation of the Roche CVR Payment Amount is in error.

(e) If Buyer delivers an Achievement Certificate to the Rights Agent and the Stockholders Representative or if the Roche CVR Payment Amount is determined to be payable pursuant to Section 2.4(c) above, Buyer shall establish a Roche CVR Payment Date on the January 1 or July 1 which next follows the date of the Achievement Certificate or the date of final determination pursuant to Section 2.4(c) above, as applicable, and deliver written notice to the Rights Agent of such determination at least five (5) Business Days before such date. Until such notice is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that the Roche CVR Payment Date has not occurred. The Rights Agent shall have no duty or obligation to establish any payment amount or payment date with respect to the Roche CVR Payment Date. Upon receipt of such written notice and all other necessary information, the Rights Agent will, on such Roche CVR Payment Date, distribute the Roche CVR Payment Amount and the Remainder to the Holders (each Holder being entitled to receive its *pro rata* share of the Roche CVR Payment Amount and the Remainder based on the number of Roche CVRs held (as of the third Business Day before the Roche CVR Payment Date) by such Holder as reflected on the Roche CVR Register) by check mailed to the address of each such respective Holder as then reflected in the Roche CVR Register.

(f) Buyer shall be entitled to deduct and withhold, or cause to be deducted or withheld, from each Roche CVR Payment Amount otherwise payable pursuant to this Agreement, such amounts as Buyer or the applicable subsidiary of Buyer is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld or paid over to or deposited with the relevant governmental entity, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Holder in respect of which such deduction and withholding was made.

(g) On such date following the Outside Date as the holders of at least 20% of the outstanding General CVRs shall request via two Business Day prior written notice to the Stockholders Representative, the Stockholders Representative shall deliver to the Rights Agent in cash any amount remaining available in the Stockholders Representative Fund together with written instructions regarding the distribution of such amount (including the names and addresses of the applicable Holders and the breakdown of amounts to be distributed), and the Rights Agent will, within five Business Days of receipt of such instructions and amount (such date the ***Fund Distribution Date***), distribute such amount in accordance with such instructions to the Holders of the General CVRs, the Glucagon CVRs, the TR Beta CVRs and the Roche CVRs (each Holder being entitled to receive its *pro rata* share of such amount based on the number of General CVRs, Glucagon CVRs, TR Beta CVRs and Roche CVRs held (as of the Fund Distribution Date) by such Holder as reflected in the General CVR Register, the Glucagon CVR Register, the TR Beta CVR Register and the Roche CVR Register (as defined herein and in the General CVR Agreement, the Glucagon TR Beta CVR Agreement and the TR Beta CVR Agreement) by check mailed to the address of each such respective Holder as reflected in the General CVR Register, the Glucagon CVR Register, the TR Beta CVR Register and the Roche CVR Register as of the Close of Business on the last Business Day before the Fund Distribution Date. Until such written instructions are received by the Rights Agent, the Rights Agent shall not be obligated to take any action with respect to this paragraph. After the Fund Distribution Date, the Stockholders Representative shall be relieved of any and all duties and obligations under the Merger Agreement or any of the CVR Agreements.

(h) Subject to prior execution and delivery by the Stockholders Representative to Buyer and Target of a reasonable and customary confidentiality/nonuse agreement, Buyer shall promptly furnish to the Stockholders Representative all information and documentation in connection with this Agreement and the Roche CVRs that the Stockholders Representative may reasonably request in connection with the determination of whether a Roche CVR Payment Event has occurred or whether the calculation of a Roche CVR Payment Amount is in error, as applicable. Subject to prior execution and delivery by the applicable Holders to Buyer and Target of a reasonable and customary confidentiality/nonuse agreement, the Stockholders Representative may forward any information and documentation it receives to the Holders who request such information, but the Stockholders Representative covenants and agrees that in no event shall the Stockholders Representative provide any such information or documentation to any Holder who (i) is a Competitor of Buyer or (ii) holds fewer than 1% of the total number of Roche CVRs.

Section 2.5 No Voting, Dividends or Interest; No Equity or Ownership Interest in Buyer.

(a) The Roche CVRs shall not have any voting or dividend rights, and interest shall not accrue on any amounts payable on the Roche CVRs to any Holder.

(b) The Roche CVRs shall not represent any equity or ownership interest in Buyer (or in any constituent company to the Merger) or in any drug development program or Intellectual Property or other asset. The rights of the holders of Roche CVRs are limited to those expressly set forth in this Agreement, and such holders sole right to receive property hereunder is the right to receive cash from Buyer through the Rights Agent in accordance with the terms hereof.

Section 2.6 Sole Discretion and Decision Making Authority; No Fiduciary Duty.

Notwithstanding anything contained herein to the contrary, Buyer shall have sole discretion and decision making authority, which shall be exercised in good faith and with commercial reasonableness, with respect to the Roche Agreement and over resolution of any third party claims relating to Contingent Payments; provided, that in no event shall declining to effect a Roche Purchase Payment Event or any other decision to retain existing rights under the Roche Agreement be deemed not to satisfy the in good faith and with commercial reasonableness standard.

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Section 2.7 Satisfaction of Contingent Payments. Notwithstanding anything herein to the contrary:

(a) It is understood that upon the occurrence of certain payment events under this Agreement and the other CVR Agreements, the Landlord may be entitled to payments pursuant to the terms of Section 10 of the Landlord Agreement and the employees that were terminated in Target s May 2009 reduction in force may be entitled to contingent severance payments pursuant to their respective severance arrangements (together, and including any payments to resolve claims arising in connection therewith, the ***Contingent Payments***).

(b) In general, such Contingent Payments are to be satisfied first from amounts otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event, but in some instances the full amount payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event will be less than the Contingent Payments owing in respect of such payment event.

(c) In each case described in Section 2.7(b) above, 100% of the amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event will be paid by Buyer directly to the beneficiaries of the Contingent Payments rather than to or for the benefit of the holders of the CVRs under the applicable CVR Agreement, and the remainder of the Contingent Payments owing in respect of such payment event (the ***Excess***) shall be paid by Buyer directly to the beneficiaries of the Contingent Payments.

(d) If an Excess is paid by Buyer pursuant to Section 2.7(c) of this Agreement or of any of the other CVR Agreements, then upon the next payment event under this Agreement or under any of the other CVR Agreements (even if not the same CVR Agreement in connection with which the Excess was paid), Buyer shall withhold from any amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such (new) payment event, and shall keep for Buyer s own account to reimburse Buyer for having paid the Excess, an amount equal to 100% of the Excess (or, if less, 100% of the amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such (new) payment event). If Buyer is not thereby reimbursed for the entire Excess, the shortfall shall be rolled forward to be satisfied in the same manner by withholding from any amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of the next-to-occur payment event under any one of the CVR Agreements (even if not the same CVR Agreement in connection with which the Excess was paid or in connection with which the Excess was partially satisfied).

ARTICLE III

THE RIGHTS AGENT

Section 3.1 Certain Duties and Responsibilities.

The Rights Agent shall be authorized and protected and shall not have any liability for, or in respect of any actions taken, suffered or omitted to be taken by it in connection with its acceptance and administration of this Agreement and the exercise and performance of its duties hereunder, except to the extent of its own willful misconduct, bad faith or gross negligence (each as determined by a final, non-appealable judgment of a court of competent jurisdiction). No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

Section 3.2 Certain Rights of Rights Agent.

The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Rights Agent. In addition:

(a) the Rights Agent may rely and shall be authorized and protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent,

order, power of attorney, endorsement, affidavit, letter or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Rights Agent shall not be deemed to have knowledge of any event of which it was supposed to receive notice thereof hereunder but as to which no notice was provided, and the Rights Agent shall be fully protected and shall incur no liability for failing to take any action in connection therewith unless and until it has received such notice;

(b) whenever the Rights Agent shall deem it necessary or desirable that any fact or matter be proved or established by Buyer before taking, suffering or omitting to take any action hereunder, the Rights Agent may, in the absence of willful misconduct, bad faith or gross negligence on its part (each as determined by a final, non-appealable judgment of a court of competent jurisdiction), request and rely upon an Officer s Certificate from Buyer with respect to such fact or matter; and such certificate shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Agreement in reliance upon such certificate. The Rights Agent shall be fully authorized and protected in relying upon the most recent instructions received from Buyer. In the event the Rights Agent believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Rights Agent hereunder, the Rights Agent, may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to Buyer or any other person or entity for refraining from taking such action, unless the Rights Agent receives written instructions from Buyer that eliminates such ambiguity or uncertainty to the satisfaction of the Rights Agent;

(c) the Rights Agent may engage and consult with counsel of its selection (who may be legal counsel for Buyer and/or an employee of the Rights Agent) and the advice of such counsel or any opinion of counsel shall be full and complete authorization and protection to the Rights Agent in respect of any action taken, suffered or omitted to be taken by it hereunder in reliance thereon in the absence of willful misconduct, bad faith or gross negligence on the part of the Rights Agent (as determined by a final, non-appealable judgment of a court of competent jurisdiction);

(d) in the event of arbitration, the Rights Agent may engage and consult with tax experts, valuation firms and other experts and third parties that it, in its sole and absolute discretion, deems appropriate or necessary to enable it to discharge its duties hereunder;

(e) the permissive rights of the Rights Agent to do things enumerated in this Agreement shall not be construed as a duty;

(f) the Rights Agent shall not be required to give any note or surety in respect of the execution of such powers or otherwise in respect of the premises;

(g) Buyer agrees to indemnify the Rights Agent for, and hold the Rights Agent harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, suit, settlement, cost or expense (including, without limitation, the fees and expenses of legal counsel), incurred without willful misconduct, bad faith or gross negligence on the part of the Rights Agent (each as determined by a final, non-appealable judgment of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Rights Agent in connection with the acceptance and administration of this Agreement, or the exercise or performance of its duties hereunder, including without limitation, the costs and expenses of defending against any claim of liability hereunder, directly or indirectly. The costs and expenses incurred in enforcing this right of indemnification shall be paid by Buyer. The provisions of this Article 3 shall survive the termination of this Agreement, the payment of any distributions made pursuant to this Agreement, and the resignation, replacement or removal of the Rights Agent hereunder, including, without limitation, the costs and expenses of defending a claim of liability hereunder;

(h) Except as paid pursuant to Section 2.4(a) of this Agreement, Buyer agrees to pay the Rights Agent Fees and Expenses in connection with this Agreement, as set forth on Schedule 1 hereto, and further including reimbursement of the Rights Agent for all taxes and charges, reasonable expenses and other charges of any kind and nature incurred by the Rights Agent in the execution of this Agreement (other than

taxes measured by the Rights Agent s net income) and reimbursement for all reasonable and necessary out-of-pocket expenses (including reasonable fees and expenses of the Rights Agent s counsel and agent) paid or incurred by it in connection with the preparation, negotiation, delivery, amendment, administration and execution by the Rights Agent of this Agreement and its duties hereunder;

(i) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by Buyer only;

(j) The Rights Agent shall not have any liability for or be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof; nor shall it be responsible for any breach by Buyer of any covenant or failure by Buyer to satisfy conditions contained in this Agreement;

(k) Buyer agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of its duties under this Agreement;

(l) The Rights Agent and any stockholder, affiliate, director, officer, employee or agent of the Rights Agent may buy, sell or deal in any of the Rights or other securities of Buyer or become pecuniarily interested in any transaction in which Buyer may be interested, or contract with or lend money to Buyer or otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent or any stockholder, affiliate, director, officer, employee or agent from acting in any other capacity for Buyer or for any other Person; and

(m) The Rights Agent shall not be subject to, nor be required to comply with, or determine if any person or entity has complied with, the Merger Agreement or any other agreement between or among any of Buyer, Target, Stockholders Representative or any other parties hereto, even though reference thereto may be made in this Agreement, or to comply with any notice, instruction, direction, request or other communication, paper or document other than as expressly set forth in this Agreement.

Section 3.3 Resignation and Removal; Appointment of Successor.

(a) The Rights Agent may resign and be discharged from its duties at any time by giving written notice thereof to Buyer and the Stockholders Representative specifying a date when such resignation shall take effect, which notice shall be sent at least 30 days before the date so specified.

(b) If the Rights Agent shall resign, be removed or become incapable of acting, Buyer, by way of a Board Resolution, shall promptly appoint a qualified successor Rights Agent who may (but need not) be a Holder but shall not be an officer of Buyer. The successor Rights Agent so appointed shall, forthwith upon its acceptance of such appointment in accordance with this Section 3.3(b), become the successor Rights Agent.

(c) Buyer shall give notice to the Stockholders Representative of each resignation and each removal of a Rights Agent and each appointment of a successor Rights Agent. Such notice shall include the name and address of the successor Rights Agent. If Buyer fails to send such notice within ten days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent shall cause such notice to be mailed at the expense of Buyer.

Section 3.4 Acceptance of Appointment by Successor.

Every successor Rights Agent appointed hereunder shall execute, acknowledge and deliver to Buyer, the Stockholders Representative and the retiring Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and thereupon such successor Rights Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Rights Agent;

provided, that upon the request of Buyer, the Stockholders Representative or the successor Rights Agent, such retiring Rights Agent shall execute and deliver an instrument transferring to such successor Rights Agent all the rights, powers and trusts of the retiring Rights Agent and shall cooperate in the transfer of all relevant data, including the Roche CVR Register, to the successor Rights Agent.

ARTICLE IV

COVENANTS

Section 4.1 List of Holders.

Buyer shall furnish or cause to be furnished to the Rights Agent in such form as Buyer receives from its transfer agent (or other agent performing similar services for Buyer), the names, addresses and Roche CVR holdings of the Holders, within five Business Days after the effective time of the Merger. Buyer shall furnish or cause to be furnished supplementally to the Rights Agent the names, addresses and Roche CVR holdings of any persons acquiring Roche CVRs upon the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time, forthwith after each such exercise.

Section 4.2 Payment of Roche CVR Payment Amount.

Buyer shall duly and promptly pay the Roche CVR Payment Amount, if any, in immediately available funds, to the Rights Agent to be distributed to the Holders in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. The Rights Agent shall have no liability of any kind, and shall not be obligated to make any payments, unless and until it receives the Roche CVR Payment Amount from Buyer.

Section 4.3 Assignments.

Buyer shall not, in whole or in part, assign any of its obligations under this Agreement other than in accordance with the terms of Section 6.1 hereof.

Section 4.4 Availability of Information.

Buyer will comply with all applicable periodic public information reporting requirements of the SEC to which it may from time to time be subject. Buyer will provide to the Rights Agent all information in connection with this Agreement and the Roche CVRs that the Rights Agent may reasonably request.

Section 4.5 Purchase Payment Event.

Notwithstanding anything contained herein to the contrary, neither Buyer nor its Affiliates shall cause a Roche Purchase Payment Event without the consent of the Stockholders Representative (to be granted or withheld in the sole discretion of the Stockholders Representative) unless the Proceeds actually received by Buyer in such Roche Purchase Payment Event exceed $50 million (inclusive of amounts payable to the Holders in respect thereof).

ARTICLE V

AMENDMENTS

Section 5.1 Amendments Without Consent of Stockholders Representative/Holders.

(a) Without the consent of the Stockholders Representative or any Holders or the Rights Agent, Buyer, when authorized by a Board Resolution, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) to evidence the succession of another Person to Buyer and the assumption by any such successor of the covenants of Buyer herein in a transaction contemplated by Section 6.1 hereof; or

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(ii) to evidence the termination of the Roche CVR Registrar and the succession of another Person as a successor Roche CVR Registrar and the assumption by any successor of the obligations of the Roche CVR Registrar herein.

(b) Without the consent of the Stockholders Representative or any Holders, Buyer, when authorized by a Board Resolution, and the Rights Agent, in the Rights Agent s sole and absolute discretion, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) to evidence the succession of another Person as a successor Rights Agent and the assumption by any successor of the covenants and obligations of the Rights Agent herein;

(ii) to add to the covenants of Buyer such further covenants, restrictions, conditions or provisions as the Board of Directors shall consider to be for the protection of the Holders; provided, that in each case, such provisions shall not adversely affect the interests of the Holders;

(iii) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement; provided, that in each case, such provisions shall not adversely affect the interests of the Holders; or

(iv) to add, eliminate or change any provision of this Agreement unless such addition, elimination or change is adverse to the interests of the Holders and/or to the interests of the Stockholders Representative.

(c) Promptly after the execution by Buyer and the Rights Agent of any amendment pursuant to the provisions of this Section 5.1, Buyer shall so notify the Stockholders Representative in writing.

Section 5.2 Amendments With Consent of Stockholders Representative or Holders.

(a) Subject to Section 5.1 (which amendments pursuant to Section 5.1 may be made without the consent of the Holders), with the consent of the Stockholders Representative or of the Holders of not less than a majority of the outstanding Roche CVRs, whether evidenced in writing or taken at a meeting of the Holders, Buyer, when authorized by a Board Resolution, and the Rights Agent may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, even if such addition, elimination or change is in any way adverse to the interests of the Holders and/or to the interests of the Stockholders Representative. Any such amendment shall be fully valid even if such amendment is signed only by Buyer and the Rights Agent.

(b) Promptly after the execution by Buyer and the Rights Agent of any amendment pursuant to the provisions of this Section 5.2, Buyer shall mail a notice thereof by first-class mail to the Holders at their addresses as they shall appear on the Roche CVR Register, setting forth in general terms the substance of such amendment.

Section 5.3 Execution of Amendments.

Before executing any amendment permitted by this Article V, the Rights Agent shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel stating that the execution of such amendment is authorized or permitted by this Agreement, and that all consents, if any, have been obtained in accordance with Section 5.2. The Rights Agent may, but is not obligated to, enter into any such amendment that affects the Rights Agent s own rights, privileges, covenants, immunities, obligations or duties under this Agreement or otherwise.

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Section 5.4 Effect of Amendments.

Upon the execution of any amendment under this Article V, this Agreement shall be modified in accordance therewith, such amendment shall form a part of this Agreement for all purposes and the Stockholders Representative and every Holder shall be bound thereby.

ARTICLE VI

CONSOLIDATION, MERGER, SALE OR CONVEYANCE

Section 6.1 Buyer May Consolidate, Etc.

(a) Buyer shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

(i) the Person formed by such consolidation or into which Buyer is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of Buyer substantially as an entirety (the ***Surviving Person***) shall expressly assume payment (if and to the extent required hereunder) of amounts on all the Roche CVRs and the performance of every duty and covenant of this Agreement on the part of Buyer to be performed or observed; and

(ii) Buyer has delivered to the Rights Agent an Officer s Certificate, stating that such consolidation, merger, conveyance, transfer or lease complies with this Article VI and that all conditions precedent herein provided for relating to such transaction have been complied with.

(b) In the event Buyer conveys, transfers or leases its properties and assets substantially as an entirety in accordance with the terms and conditions of this Section 6.1, Buyer and the Surviving Person shall be jointly and severally liable for the payment of the Roche CVR Payment Amount and the performance of every duty and covenant of this Agreement on the part of Buyer to be performed or observed.

Section 6.2 Successor Substituted.

Upon any consolidation of or merger by Buyer with or into any other Person, or any conveyance, transfer or lease of the properties and assets substantially as an entirety to any Person in accordance with Section 6.1, the Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of, Buyer under this Agreement with the same effect as if the Surviving Person had been named as Buyer herein, and thereafter the predecessor Person shall be relieved of all obligations and covenants under this Agreement and the Roche CVRs.

ARTICLE VII

OTHER PROVISIONS OF GENERAL APPLICATION

Section 7.1 Notices to Rights Agent and Buyer.

Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement shall be sufficient for every purpose hereunder if in writing and delivered personally, or sent by email or sent by certified or registered mail (return receipt requested and first-class postage prepaid) or sent by a nationally recognized overnight courier (with proof of service), addressed as follows, and shall be deemed to have been given upon receipt:

(a) if to the Rights Agent, addressed to it at Mellon Investor Services LLC, 400 S. Hope Street, 4th Floor, Los Angeles, CA 90071, Attn: Mark Cano, or at any other address previously furnished in writing to the Stockholders Representative and Buyer by the Rights Agent in accordance with this Section 7.1 and Section 7.2, with a copy to Mellon Investor Services LLC, 480 Washington Boulevard, Jersey City, NJ 07310, Attn: Legal Department; or

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(b) if to Buyer, addressed to it at 10275 Science Center Drive, San Diego, California 92121, email at jhiggins@ligand.com, or at any other address previously furnished in writing to the Rights Agent and the Stockholders Representative by Buyer in accordance with this Section 7.1 and Section 7.2.

Section 7.2 Notice to Holders or Stockholders Representative.

Where this Agreement provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his, her or its address as it appears in the Roche CVR Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Agreement provides for notice to the Stockholders Representative, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and personally delivered or sent by email or sent by a nationally recognized overnight courier (with proof of service) or mailed, first-class postage prepaid, to the Stockholders Representative at 1042-B N. El Camino Real, Suite 430, Encinitas, CA 92024, email at dfhale@biopharmaventures.com, or at any other address previously furnished in writing to the Rights Agent and Buyer by the Stockholders Representative in accordance with Section 7.1 and this Section 7.2. Notwithstanding anything contained herein to the contrary, the information set forth in any notices delivered by Buyer hereunder related to a Roche CVR Payment Event or an amendment to this Agreement pursuant to Article V hereof and provided solely to the Stockholders Representative (or a summary of such information) shall also be reported by Buyer on a Form 8-K, 10-Q or 10-K of Buyer filed with the SEC.

Section 7.3 Effect of Headings.

The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 7.4 Successors and Assigns.

All covenants and agreements in this Agreement by Buyer shall bind its successors and assigns, whether so expressed or not.

Section 7.5 Benefits of Agreement.

Nothing in this Agreement, express or implied, shall give to any Person (other than the parties hereto, the Holders and their permitted successors and assigns hereunder) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto, the Holders and their permitted successors and assigns. The Holders shall have no rights or remedies hereunder except as expressly set forth herein.

Section 7.6 Governing Law.

This Agreement and the Roche CVRs shall be governed by and construed in accordance with the laws of the State of California without regards to its rules of conflicts of laws; provided, however, that all provisions, regarding the rights, duties, obligations and liabilities of the Rights Agent shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

Section 7.7 Legal Holidays.

In the event that a Roche CVR Payment Date shall not be a Business Day, then, notwithstanding any provision of this Agreement to the contrary, any payment required to be made in respect of the Roche CVRs on such date need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Roche CVR Payment Date.

Section 7.8 Severability Clause.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein; provided, however, that if any such excluded term, provision, covenant or restriction shall adversely affect the rights, immunities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the court or other tribunal making such determination is authorized and instructed to modify this Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.

Section 7.9 Counterparts.

This Agreement may be signed in any number of counterparts (which may be effectively delivered by facsimile or other electronic means), each of which shall be deemed to constitute but one and the same instrument.

Section 7.10 Termination.

This Agreement shall terminate and be of no further force or effect, and the parties hereto shall have no liability hereunder, on the first day after the Outside Date on which no further dispute is possible. A dispute shall be considered possible if an Objection Period is in progress, or if a Section 7.12 process is in progress, or if any payment or other obligation required pursuant to a final determination made in accordance with Section 7.12 has not yet occurred.

Section 7.11 Entire Agreement.

As it relates to the Rights Agent, this Agreement represents the entire understanding of the parties hereto with reference to the Roche CVRs and this Agreement supersedes any and all other oral or written agreements made with respect to the Roche CVRs. As it relates to all other parties hereto, this Agreement and the Merger Agreement represent the entire understanding of the parties hereto with reference to the Roche CVRs and this Agreement supersedes any and all other oral or written agreements made with respect to the Roche CVRs, except for the Merger Agreement. If and to the extent that any provision of this Agreement is inconsistent or conflicts with the Merger Agreement, this Agreement shall govern and be controlling.

Section 7.12 Negotiation; Arbitration.

(a) Before any arbitration pursuant to Section 7.12(b), Buyer and (subject to Section 5.16(a) of the Merger Agreement) the Stockholders Representative shall negotiate in good faith for a period of 30 days to resolve any controversy or claim arising out of or relating to this Agreement or the breach thereof.

(b) After expiration of the 30-day period contemplated by Section 7.12(a), such controversy or claim, including any claims for breach of this Agreement, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the

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arbitrators may be entered in any court having jurisdiction thereof. Buyer and/or (subject to Section 5.16(a) of the Merger Agreement) the Stockholders Representative may initiate an arbitration for any matter relating to this Agreement. However, in the event of a dispute arising from the delivery of a Notice of Objection, the sole matter to be settled by arbitration shall be whether a Roche CVR Payment Event has occurred on or before the Outside Date or whether the calculation of the Roche CVR Payment Amount is in error, as applicable. The number of arbitrators shall be three. Within 15 days after the commencement of arbitration, each party shall select one person to act as arbitrator, and the two selected shall select a third arbitrator within 15 days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The place of the arbitration shall be San Diego, California. The arbitrators shall be lawyers or retired judges with experience in the life sciences industry and with mergers and acquisitions. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both parties. Any award payable in favor of the Holders or the Stockholders Representative as a result of arbitration shall be paid by Buyer to the Rights Agent to be distributed to the Holders the next January 1 or July 1, in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. Buyer and Stockholders Representative shall pay in equal halves all fees and expenses of the arbitration forum, including the costs and expenses billed by the arbitrators in connection with the performance of their duties described herein; provided, however, that if the arbitrators rule in favor of Buyer, an amount equal to the half of the arbitrators fees and expenses paid by Buyer shall be offset against the soonest Roche CVR Payment Amount(s), if any, or any payment to be made thereafter under any of the other CVR Agreements, and if the arbitrators rule in favor of the Holders or the Stockholders Representative, an amount equal to the half of the arbitrators fees and expenses paid by the Stockholders Representative shall be paid by Buyer to the Rights Agent to be distributed to the Holders on the next January 1 or July 1, in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. Each party to the arbitration (which, for the avoidance of doubt, shall not include the Rights Agent) shall be responsible for its own attorney fees, expenses and costs of investigation.

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IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized officers as of the day and year first above written.

LIGAND PHARMACEUTICALS INCORPORATED

By:
Name:
Title:

METABASIS THERAPEUTICS, INC.

By:
Name:
Title:

MELLON INVESTOR SERVICES LLC, as Rights Agent

By:
Name: **Mark Cano**
Title: **Relationship Manager**

DAVID F. HALE, as Stockholders Representative

By:

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Annex C

Form of TR Beta CVR Agreement

CONTINGENT VALUE RIGHTS AGREEMENT*

THIS CONTINGENT VALUE RIGHTS AGREEMENT, dated as of [ ] (this ***Agreement*** , is entered into by and among Ligand Pharmaceuticals Incorporated, a Delaware corporation (***Buyer***), Metabasis Therapeutics, Inc., a Delaware corporation (***Target***), David F. Hale, as Stockholders Representative (the ***Stockholders Representative***), and Mellon Investor Services LLC, a New Jersey limited liability company, as Rights Agent (the ***Rights Agent***) and as initial TR Beta CVR Registrar (as defined herein).

Preamble

Buyer, Moonstone Acquisition, Inc., a Delaware corporation and wholly-owned subsidiary of Buyer (***Sub***), Target and the Stockholders Representative have entered into an Agreement and Plan of Merger dated as of October 26, 2009 (as amended to date, the ***Merger Agreement***), pursuant to which Sub will merge with and into Target (the ***Merger***), with Target surviving the Merger as a subsidiary of Buyer.

Pursuant to the Merger Agreement, Buyer agreed to create and issue to Target s stockholders of record immediately before the effective time of the Merger, contingent value rights as hereinafter described.

The parties have done all things necessary to make the contingent value rights, when issued pursuant to the Merger Agreement and hereunder, the valid obligations of Buyer and to make this Agreement a valid and binding agreement of Buyer, in accordance with its terms.

NOW, THEREFORE, for and in consideration of the premises and the consummation of the transactions referred to above, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders (as hereinafter defined), as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

(a) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(ii) all accounting terms used herein and not expressly defined herein shall have the meanings assigned to such terms in accordance with United States generally accepted accounting principles, as in effect on the date hereof;

(iii) the words herein, hereof and hereunder and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision;

* Including amendments made by Amendment to Agreement and Plan of Merger dated as of November 25, 2009. The amendments are to the first paragraph of the Preamble, Section 1.1(b) (the definitions of Landlord Agreement and TR Beta CVR Payment Amount), Section 2.6, Section 2.7(a), Section 2.7(e) (deleted) and Section 7.11.

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(iv) unless the context otherwise requires, words describing the singular number shall include the plural and vice versa, words denoting any gender shall include all genders and words denoting natural Persons shall include corporations, partnerships and other Persons and vice versa; and

(v) all references to including shall be deemed to mean including without limitation.

(b) Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement. The following terms shall have the meanings ascribed to them as follows:

Achievement Certificate has the meaning set forth in Section 2.4(a).

Board of Directors means the board of directors of Buyer.

Board Resolution means a copy of a resolution certified by the secretary or an assistant secretary of Buyer to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Rights Agent.

Business Day means any day other than a Saturday, Sunday or a day on which the banks in New York, New Jersey or California are authorized or obligated by law or executive order to close.

Close of Business on any given date shall mean 5:00 P.M., California time, on such date; provided, however, that if such date is not a Business Day it shall mean 5:00 P.M., California time, on the next succeeding Business Day.

Competitor of Buyer has the same meaning as set forth in the Merger Agreement for Competitor of Parent.

Fraction means the quotient of (a) the number of Company Shares outstanding as of the Effective Time plus the number of TR Beta CVRs issued between the Effective Time and the occurrence of the applicable TR Beta CVR Payment Event pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time, minus the number of Dissenting Shares (determined as of the occurrence of the applicable TR Beta CVR Payment Event), divided by (b) the sum of the number of Company Shares outstanding as of the Effective Time plus the number of TR Beta CVRs issued between the Effective Time and the occurrence of the applicable TR Beta CVR Payment Event pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time.

Fund Distribution Date has the meaning set forth in Section 2.4(g).

Holder means a Person in whose name a TR Beta CVR is registered in the TR Beta CVR Register.

Landlord means ARE-SD Region No. 24, LLC.

Landlord Agreement means the Agreement for Termination of Lease and Voluntary Surrender of Premises dated July 21, 2009 between the Company and the Landlord, including any amendments thereto entered into before the Effective Time.

Non-Achievement Certificate has the meaning set forth in Section 2.4(b).

Notice of Objection has the meaning set forth in Section 2.4(c).

Objection Period has the meaning set forth in Section 2.4(c).

Officer s Certificate means a certificate signed by the chief executive officer, president, chief financial officer, any vice president, the controller, the treasurer or the secretary, in each case, of Buyer, in his or her capacity as such an officer, and delivered to the Rights Agent.

Outside Date means the later to occur of (a) the 10th anniversary of the date hereof or (b) the last potential TR Beta CVR Payment Date pursuant to a TR Beta Payment Event which occurred before the 10th anniversary of the date hereof; provided, that in the event of a TR Beta Licensing Option Event or a TR Beta Sale Option Event, the Outside Date with respect to the optioned asset shall not occur before the earliest of the exercise, expiration or termination of such option.

Person shall mean any individual, firm, corporation, limited liability company, partnership, trust or other entity, and shall include any successor (by merger or otherwise) thereof or thereto.

Rights Agent means the Rights Agent named in the first paragraph of this Agreement, until a successor Rights Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter Rights Agent shall mean such successor Rights Agent.

Rights Agent Fees and Expenses means the agreed-upon fees and expenses of the Rights Agent to act in such capacity pursuant to the terms of this Agreement.

Surviving Person has the meaning set forth in Section 6.1(a)(i).

TR Beta CVR Payment Amount means, as applicable, a TR Beta Licensing Option Payment Amount, a TR Beta Sale Option Payment Amount, a TR Beta Licensing Payment Amount or a TR Beta Sale Payment Amount; less in each case (i) 1% (or such lesser percentage as is the maximum permissible pursuant to the following proviso) of such TR Beta Licensing Option Payment Amount, TR Beta Sale Option Payment Amount, TR Beta Licensing Payment Amount or TR Beta Sale Payment Amount, as applicable, which amount shall be contributed to the Stockholders Representative Fund; provided that no such amount shall be contributed to the Stockholders Representative Fund to the extent that the sum of such amount and the amount then held in the Stockholders Representative Fund would exceed $300,000, (ii) to the extent applicable in respect thereof, any amount payable by Buyer or the Surviving Corporation to the Landlord pursuant to the terms of Section 10 of the Landlord Agreement and (iii) to the extent applicable in respect thereof, any contingent severance payments payable to the employees that were terminated in Target s May 2009 reduction in force.

TR Beta CVR Payment Date means the January 1 or July 1 next following the date (if any and if ever) that a TR Beta CVR Payment Amount is payable by Buyer to the Holders, which date shall be established pursuant to Section 2.4.

TR Beta CVR Payment Event means, as applicable, a TR Beta Licensing Option Event, a TR Beta Licensing Event, a TR Beta Sale Option Event or a TR Beta Sale Event.

TR Beta CVR Register has the meaning set forth in Section 2.3(b).

TR Beta CVR Registrar has the meaning set forth in Section 2.3(b).

TR Beta CVRs means the TR Beta Contingent Value Rights issued by Buyer pursuant to the Merger Agreement and this Agreement.

TR Beta Licensing Event means the licensing by Buyer to any Person (other than to Buyer) of all or any portion of a drug candidate or technology or Intellectual Property from the TR Beta Program.

TR Beta Licensing Option Event means the grant of an option by Buyer to any Person (other than Buyer) to enter into a TR Beta Licensing Event.

TR Beta Licensing Option Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Licensing Option Event which occurs after the Effective Time and on or before the sixth anniversary of the Effective Time, (b) 40% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Licensing Option Event which occurs after the sixth anniversary of the Effective Time and on or before the seventh anniversary of the Effective Time, (c) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Licensing Option Event which occurs after the seventh anniversary of the Effective Time and on or before the eighth anniversary of the Effective Time, or (d) 20% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Licensing Option Event which occurs after the eighth anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with the TR Beta Licensing Option Event (including reasonable attorneys fees and brokers commissions).

TR Beta Licensing Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Licensing Event which occurs after the Effective Time and on or before the sixth anniversary of the Effective Time, (b) 40% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Licensing Event which occurs after the sixth anniversary of the Effective Time and on or before the seventh anniversary of the Effective Time, (c) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Licensing Event which occurs after the seventh anniversary of the Effective Time and on or before the eighth anniversary of the Effective Time, or (d) 20% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Licensing Event which occurs after the eighth anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with the TR Beta Licensing Event (including reasonable attorneys fees and brokers commissions).

TR Beta Program means the program conducted before the Merger by Target intended to create a thyroid receptor beta agonist drug for the treatment of hyperlipidemia, and as may be continued after the Merger by Buyer.

TR Beta Sale Event means the consummation of the sale or other similar transfer (that does not qualify as a TR Beta Licensing Event) by Buyer to any Person (other than Buyer) of all or any portion of a drug candidate or technology or Intellectual Property from the TR Beta Program.

TR Beta Sale Option Event means the grant of an option by Buyer to any Person (other than Buyer) to enter into a TR Beta Sale Event.

TR Beta Sale Option Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Sale Option Event which occurs after the Effective Time and on or before the sixth anniversary of the Effective Time, (b) 40% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the

Effective Time and before the Outside Date, in connection with a TR Beta Sale Option Event which occurs after the sixth anniversary of the Effective Time and on or before the seventh anniversary of the Effective Time, (c) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a TR Beta Sale Option Event which occurs after the seventh anniversary of the Effective Time and on or before the eighth anniversary of the Effective Time, or (d) 20% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Sale Option Event which occurs after the eighth anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with the TR Beta Sale Option Event (including reasonable attorneys fees and brokers commissions).

TR Beta Sale Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Sale Event which occurs after the Effective Time and on or before the sixth anniversary of the Effective Time, (b) 40% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Sale Event which occurs after the sixth anniversary of the Effective Time and on or before the seventh anniversary of the Effective Time, (c) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Sale Event which occurs after the seventh anniversary of the Effective Time and on or before the eighth anniversary of the Effective Time, or (d) 20% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a TR Beta Sale Event which occurs after the eighth anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with the TR Beta Sale Event (including reasonable attorneys fees and brokers commissions).

ARTICLE II

CONTINGENT VALUE RIGHTS

Section 2.1 Issuance of TR Beta CVRs; Appointment of Rights Agent.

(a) The TR Beta CVRs shall be issued pursuant to the Merger Agreement at the time and in the manner set forth in the Merger Agreement or pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time.

(b) Buyer hereby appoints the Rights Agent to act as rights agent for Buyer in accordance with the express terms and conditions hereinafter set forth in this Agreement (and no implied terms or conditions), and the Rights Agent hereby accepts such appointment.

(c) To the extent permitted by applicable Legal Requirements, it is expressly agreed that in no event shall any Holders (as opposed to the Stockholders Representative) or any former stockholders of Target (as opposed to the Stockholders Representative) have, after the Effective Time, any power or right to commence or join in any Legal Proceeding based on or arising out of this Agreement or the Merger Agreement.

Section 2.2 Transferability.

At the option of a respective holder thereof, the TR Beta CVRs may be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, but only in accordance with Section 2.3 hereof and in compliance with all applicable Legal Requirements.

Section 2.3 No Certificate; Registration; Registration of Transfer; Change of Address.

(a) The TR Beta CVRs shall be issued in book-entry form only and shall not be evidenced by a certificate or other instrument.

(b) The Rights Agent shall keep a register (the ***TR Beta CVR Register***) for the registration of TR Beta CVRs. The Rights Agent is hereby initially appointed TR Beta CVR registrar and transfer agent (***TR Beta CVR Registrar***) for the purpose of registering TR Beta CVRs and transfers of TR Beta CVRs as herein provided. Upon any change in the identity of the Rights Agent, the successor Rights Agent shall automatically also become the successor TR Beta CVR Registrar.

(c) Every request made to transfer a TR Beta CVR must be in writing and accompanied by a written instrument or instruments of transfer and any other documentation requested by Buyer or TR Beta CVR Registrar, in a form reasonably satisfactory to Buyer and the TR Beta CVR Registrar, properly completed and duly executed by the registered Holder or Holders thereof or by the duly appointed legal representative thereof or by a duly authorized attorney, such signature to be guaranteed by a participant in a recognized Signature Guarantee Medallion Program. Upon receipt of such written request and materials, and all other reasonably necessary information, the TR Beta CVR Registrar shall register the transfer of the TR Beta CVRs in the TR Beta CVR Register. All duly transferred TR Beta CVRs registered in the TR Beta CVR Register shall be the valid obligations of Buyer, evidencing the same right and shall entitle the transferee to the same benefits and rights under this Agreement, as those previously held by the transferor. No transfer of a TR Beta CVR shall be valid until registered in the TR Beta CVR Register, and any transfer not duly registered in the TR Beta CVR Register will not be honored by Buyer or the Rights Agent until it is so registered, and then it will be honored only prospectively. Any transfer or assignment of the TR Beta CVRs shall be without charge (other than the cost of any tax or charge that may be payable in respect of such transfer or assignment, which shall be the responsibility of the transferor) to the Holder. The Rights Agent shall have no duty or obligation under any Section of this Agreement that requires the payment of taxes or charges unless and until it is satisfied that such taxes and/or charges have been or will be paid.

(d) A Holder may make a written request to the TR Beta CVR Registrar to change such Holder s address of record in the TR Beta CVR Register. The written request must be duly executed by the Holder and conform to such other reasonable requirements as the Rights Agent may from time to time establish. Upon receipt of such proper written request, the TR Beta CVR Registrar shall promptly record the change of address in the TR Beta CVR Register.

(e) Upon reasonable written request of the Stockholders Representative, the Rights Agent shall (at the Stockholders Representative s expense) promptly provide a copy of the TR Beta CVR Register to the Stockholders Representative.

Section 2.4 Payment Procedures.

(a) Promptly following the occurrence of a TR Beta CVR Payment Event, but in no event later than five Business Days after the occurrence of a TR Beta CVR Payment Event, Buyer shall deliver to the Rights Agent and the Stockholders Representative a certificate (the ***Achievement Certificate***), certifying that the Holders are entitled to receive a TR Beta CVR Payment Amount (and setting forth the calculation of such TR Beta CVR Payment Amount), and shall also deliver to the Rights Agent the indicated TR Beta CVR Payment Amount in cash. Until such Achievement Certificate is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that a TR Beta CVR Payment Event has not occurred. No transaction described in Section 6.1(a) hereof shall give the Holders the right to receive a TR Beta CVR Payment Amount. Such cash amount deposited with the Rights Agent shall, pending its disbursement to such holders, be invested by the Rights Agent in (i) direct obligations of the United States of America, (ii) obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest, or (iii) money market funds investing solely in a combination of the foregoing. Any interest and other income

resulting from such investments shall be applied first to the satisfaction of the Rights Agent Fees and Expenses, and any remainder (the ***Remainder***) shall be paid to the Holders as set forth in Section 2.4(e) below. The Rights Agent must receive federal or other immediately available funds before 1:00 p.m., Eastern Time, on the funding date in order for such funds to be so invested on such date. Funds received after such time on the funding date will not be so invested until the following Business Day. Except as expressly provided above, the Rights Agent will not be obligated to calculate or pay interest to any Holder or any other party.

(b) If no TR Beta CVR Payment Event has occurred on or before the Outside Date, then, within five Business Days after the Outside Date, Buyer shall deliver to the Rights Agent and the Stockholders Representative a certificate, stating that the TR Beta CVR Payment Event did not occur. Such certificate is herein referred to as the ***Non-Achievement Certificate***. Until such Non-Achievement Certificate is received by the Rights Agent, the Rights Agent shall have no duties or obligations with respect to the Outside Date, and the Rights Agent shall have no duties or obligations to monitor or determine the Outside Date.

(c) Subject to Section 5.16(a) of the Merger Agreement, within 45 calendar days after delivery by Buyer of a Non-Achievement Certificate or Achievement Certificate (the ***Objection Period***), the Stockholders Representative may deliver a written notice to Buyer (with a copy to the Rights Agent) specifying that the Stockholders Representative objects to (i) the determination of Buyer that no TR Beta CVR Payment Event occurred on or before the Outside Date or (ii) the calculation of the TR Beta CVR Payment Amount, as applicable (a ***Notice of Objection***), and stating the reason upon which the Stockholders Representative has determined that (A) the TR Beta CVR Payment Event has occurred on or before the Outside Date or (B) the calculation of the TR Beta CVR Payment Amount is in error, as applicable. Any dispute arising from a Notice of Objection shall be resolved in accordance with the procedure set forth in Section 7.12, which decision shall be binding on the parties hereto and every Holder.

(d) If a Notice of Objection with respect to a Non-Achievement Certificate has not been delivered to Buyer within the Objection Period, then the Holders shall have no right to receive the TR Beta CVR Payment Amount, and Buyer and the Rights Agent shall have no further obligations with respect to the TR Beta CVR Payment Amount. If a Notice of Objection with respect to an Achievement Certificate has not been delivered to Buyer within the Objection Period, then the Holders shall have no right to assert that the calculation of the TR Beta CVR Payment Amount is in error.

(e) If Buyer delivers an Achievement Certificate to the Rights Agent and the Stockholders Representative or if the TR Beta CVR Payment Amount is determined to be payable pursuant to Section 2.4(c) above, Buyer shall establish a TR Beta CVR Payment Date on the January 1 or July 1 which next follows the date of the Achievement Certificate or the date of final determination pursuant to Section 2.4(c) above, as applicable, and deliver written notice to the Rights Agent of such determination at least five (5) Business Days before such date. Until such notice is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that the TR Beta CVR Payment Date has not occurred. The Rights Agent shall have no duty or obligation to establish any payment amount or payment date with respect to the TR Beta CVR Payment Date. Upon receipt of such written notice and all other necessary information, the Rights Agent will, on such TR Beta CVR Payment Date, distribute the TR Beta CVR Payment Amount and the Remainder to the Holders (each Holder being entitled to receive its *pro rata* share of the TR Beta CVR Payment Amount and the Remainder based on the number of TR Beta CVRs held (as of the third Business Day before the TR Beta CVR Payment Date) by such Holder as reflected on the TR Beta CVR Register) by check mailed to the address of each such respective Holder as then reflected in the TR Beta CVR Register.

(f) Buyer shall be entitled to deduct and withhold, or cause to be deducted or withheld, from each TR Beta CVR Payment Amount otherwise payable pursuant to this Agreement, such amounts as Buyer or the applicable subsidiary of Buyer is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code, or any provision of state, local or foreign tax law. To the extent that amounts are so

withheld or paid over to or deposited with the relevant governmental entity, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Holder in respect of which such deduction and withholding was made.

(g) On such date following the Outside Date as the holders of at least 20% of the outstanding General CVRs shall request via two Business Day prior written notice to the Stockholders Representative, the Stockholders Representative shall deliver to the Rights Agent in cash any amount remaining available in the Stockholders Representative Fund together with written instructions regarding the distribution of such amount (including the names and addresses of the applicable Holders and the breakdown of amounts to be distributed), and the Rights Agent will, within five Business Days of receipt of such instructions and amount (such date the ***Fund Distribution Date***), distribute such amount in accordance with such instructions to the Holders of the General CVRs, the TR Beta CVRs, the Glucagon CVRs and the Roche CVRs (each Holder being entitled to receive its *pro rata* share of such amount based on the number of General CVRs, TR Beta CVRs, Glucagon CVRs and Roche CVRs held (as of the Fund Distribution Date) by such Holder as reflected in the General CVR Register, the TR Beta CVR Register, the Glucagon CVR Register and the Roche CVR Register (as defined herein and in the General CVR Agreement, the Glucagon CVR Agreement and the Roche CVR Agreement) by check mailed to the address of each such respective Holder as reflected in the General CVR Register, the TR Beta CVR Register, the Glucagon CVR Register and the Roche CVR Register as of the Close of Business on the last Business Day before the Fund Distribution Date. Until such written instructions are received by the Rights Agent, the Rights Agent shall not be obligated to take any action with respect to this paragraph. After the Fund Distribution Date, the Stockholders Representative shall be relieved of any and all duties and obligations under the Merger Agreement or any of the CVR Agreements.

(h) Subject to prior execution and delivery by the Stockholders Representative to Buyer and Target of a reasonable and customary confidentiality/nonuse agreement, Buyer shall promptly furnish to the Stockholders Representative all information and documentation in connection with this Agreement and the TR Beta CVRs that the Stockholders Representative may reasonably request in connection with the determination of whether a TR Beta CVR Payment Event has occurred or whether the calculation of a TR Beta CVR Payment Amount is in error, as applicable. Subject to prior execution and delivery by the applicable Holders to Buyer and Target of a reasonable and customary confidentiality/nonuse agreement, the Stockholders Representative may forward any information and documentation it receives to the Holders who request such information, but the Stockholders Representative covenants and agrees that in no event shall the Stockholders Representative provide any such information or documentation to any Holder who (i) is a Competitor of Buyer or (ii) holds fewer than 1% of the total number of TR Beta CVRs.

Section 2.5 No Voting, Dividends or Interest; No Equity or Ownership Interest in Buyer.

(a) The TR Beta CVRs shall not have any voting or dividend rights, and interest shall not accrue on any amounts payable on the TR Beta CVRs to any Holder.

(b) The TR Beta CVRs shall not represent any equity or ownership interest in Buyer (or in any constituent company to the Merger) or in any drug development program or Intellectual Property or other asset. The rights of the holders of TR Beta CVRs are limited to those expressly set forth in this Agreement, and such holders sole right to receive property hereunder is the right to receive cash from Buyer through the Rights Agent in accordance with the terms hereof.

Section 2.6 Sole Discretion and Decision Making Authority; No Fiduciary Duty.

Notwithstanding anything contained herein to the contrary, Buyer shall have sole discretion and decision making authority, which shall be exercised in good faith and with commercial reasonableness, (i) over any continued operation of, development of or investment in the TR Beta Program, (ii) over when (if ever) and whether to pursue, or enter into, a licensing agreement and/or sale agreement and/or similar transfer agreement

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and/or agreement for the grant of an option to enter into any such transaction with respect to a drug candidate or technology or Intellectual Property from the TR Beta Program, and upon what terms and conditions, and (iii) over resolution of any third party claims relating to Contingent Payments.

Section 2.7 Satisfaction of Contingent Payments. Notwithstanding anything herein to the contrary:

(a) It is understood that upon the occurrence of certain payment events under this Agreement and the other CVR Agreements, the Landlord may be entitled to payments pursuant to the terms of Section 10 of the Landlord Agreement and the employees that were terminated in Target s May 2009 reduction in force may be entitled to contingent severance payments pursuant to their respective severance arrangements (together, and including any payments to resolve claims arising in connection therewith, the ***Contingent Payments***).

(b) In general, such Contingent Payments are to be satisfied first from amounts otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event, but in some instances the full amount payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event will be less than the Contingent Payments owing in respect of such payment event.

(c) In each case described in Section 2.7(b) above, 100% of the amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event will be paid by Buyer directly to the beneficiaries of the Contingent Payments rather than to or for the benefit of the holders of the CVRs under the applicable CVR Agreement, and the remainder of the Contingent Payments owing in respect of such payment event (the ***Excess***) shall be paid by Buyer directly to the beneficiaries of the Contingent Payments.

(d) If an Excess is paid by Buyer pursuant to Section 2.7(c) of this Agreement or of any of the other CVR Agreements, then upon the next payment event under this Agreement or under any of the other CVR Agreements (even if not the same CVR Agreement in connection with which the Excess was paid), Buyer shall withhold from any amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such (new) payment event, and shall keep for Buyer s own account to reimburse Buyer for having paid the Excess, an amount equal to 100% of the Excess (or, if less, 100% of the amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such (new) payment event). If Buyer is not thereby reimbursed for the entire Excess, the shortfall shall be rolled forward to be satisfied in the same manner by withholding from any amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of the next-to-occur payment event under any one of the CVR Agreements (even if not the same CVR Agreement in connection with which the Excess was paid or in connection with which the Excess was partially satisfied).

ARTICLE III

THE RIGHTS AGENT

Section 3.1 Certain Duties and Responsibilities.

The Rights Agent shall be authorized and protected and shall not have any liability for, or in respect of any actions taken, suffered or omitted to be taken by it in connection with its acceptance and administration of this Agreement and the exercise and performance of its duties hereunder, except to the extent of its own willful misconduct, bad faith or gross negligence (each as determined by a final, non-appealable judgment of a court of competent jurisdiction). No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

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Section 3.2 Certain Rights of Rights Agent.

The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Rights Agent. In addition:

(a) the Rights Agent may rely and shall be authorized and protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, power of attorney, endorsement, affidavit, letter or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Rights Agent shall not be deemed to have knowledge of any event of which it was supposed to receive notice thereof hereunder but as to which no notice was provided, and the Rights Agent shall be fully protected and shall incur no liability for failing to take any action in connection therewith unless and until it has received such notice;

(b) whenever the Rights Agent shall deem it necessary or desirable that any fact or matter be proved or established by Buyer before taking, suffering or omitting to take any action hereunder, the Rights Agent may, in the absence of willful misconduct, bad faith or gross negligence on its part (each as determined by a final, non-appealable judgment of a court of competent jurisdiction), request and rely upon an Officer s Certificate from Buyer with respect to such fact or matter; and such certificate shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Agreement in reliance upon such certificate. The Rights Agent shall be fully authorized and protected in relying upon the most recent instructions received from Buyer. In the event the Rights Agent believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Rights Agent hereunder, the Rights Agent, may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to Buyer or any other person or entity for refraining from taking such action, unless the Rights Agent receives written instructions from Buyer that eliminates such ambiguity or uncertainty to the satisfaction of the Rights Agent;

(c) the Rights Agent may engage and consult with counsel of its selection (who may be legal counsel for Buyer and/or an employee of the Rights Agent) and the advice of such counsel or any opinion of counsel shall be full and complete authorization and protection to the Rights Agent in respect of any action taken, suffered or omitted to be taken by it hereunder in reliance thereon in the absence of willful misconduct, bad faith or gross negligence on the part of the Rights Agent (as determined by a final, non-appealable judgment of a court of competent jurisdiction);

(d) in the event of arbitration, the Rights Agent may engage and consult with tax experts, valuation firms and other experts and third parties that it, in its sole and absolute discretion, deems appropriate or necessary to enable it to discharge its duties hereunder;

(e) the permissive rights of the Rights Agent to do things enumerated in this Agreement shall not be construed as a duty;

(f) the Rights Agent shall not be required to give any note or surety in respect of the execution of such powers or otherwise in respect of the premises;

(g) Buyer agrees to indemnify the Rights Agent for, and hold the Rights Agent harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, suit, settlement, cost or expense (including, without limitation, the fees and expenses of legal counsel), incurred without willful misconduct, bad faith or gross negligence on the part of the Rights Agent (each as determined by a final, non-appealable judgment of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Rights Agent in connection with the acceptance and administration of this Agreement, or the exercise or performance of its duties hereunder, including without limitation, the costs and expenses of defending against any claim of liability hereunder, directly or indirectly. The costs and expenses incurred in enforcing this right of indemnification shall be paid by Buyer. The provisions of this Article 3 shall survive the termination of this Agreement, the payment of any distributions made pursuant to this Agreement, and the resignation,

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replacement or removal of the Rights Agent hereunder, including, without limitation, the costs and expenses of defending a claim of liability hereunder;

(h) Except as paid pursuant to Section 2.4(a) of this Agreement, Buyer agrees to pay the Rights Agent Fees and Expenses in connection with this Agreement, as set forth on Schedule 1 hereto, and further including reimbursement of the Rights Agent for all taxes and charges, reasonable expenses and other charges of any kind and nature incurred by the Rights Agent in the execution of this Agreement (other than taxes measured by the Rights Agent s net income) and reimbursement for all reasonable and necessary out-of-pocket expenses (including reasonable fees and expenses of the Rights Agent s counsel and agent) paid or incurred by it in connection with the preparation, negotiation, delivery, amendment, administration and execution by the Rights Agent of this Agreement and its duties hereunder;

(i) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by Buyer only;

(j) The Rights Agent shall not have any liability for or be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof; nor shall it be responsible for any breach by Buyer of any covenant or failure by Buyer to satisfy conditions contained in this Agreement;

(k) Buyer agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of its duties under this Agreement;

(l) The Rights Agent and any stockholder, affiliate, director, officer, employee or agent of the Rights Agent may buy, sell or deal in any of the Rights or other securities of Buyer or become pecuniarily interested in any transaction in which Buyer may be interested, or contract with or lend money to Buyer or otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent or any stockholder, affiliate, director, officer, employee or agent from acting in any other capacity for Buyer or for any other Person; and

(m) The Rights Agent shall not be subject to, nor be required to comply with, or determine if any person or entity has complied with, the Merger Agreement or any other agreement between or among any of Buyer, Target, Stockholders Representative or any other parties hereto, even though reference thereto may be made in this Agreement, or to comply with any notice, instruction, direction, request or other communication, paper or document other than as expressly set forth in this Agreement.

Section 3.3 Resignation and Removal; Appointment of Successor.

(a) The Rights Agent may resign and be discharged from its duties at any time by giving written notice thereof to Buyer and the Stockholders Representative specifying a date when such resignation shall take effect, which notice shall be sent at least 30 days before the date so specified.

(b) If the Rights Agent shall resign, be removed or become incapable of acting, Buyer, by way of a Board Resolution, shall promptly appoint a qualified successor Rights Agent who may (but need not) be a Holder but shall not be an officer of Buyer. The successor Rights Agent so appointed shall, forthwith upon its acceptance of such appointment in accordance with this Section 3.3(b), become the successor Rights Agent.

(c) Buyer shall give notice to the Stockholders Representative of each resignation and each removal of a Rights Agent and each appointment of a successor Rights Agent. Such notice shall include the name and address of the successor Rights Agent. If Buyer fails to send such notice within ten days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent shall cause such notice to be mailed at the expense of Buyer.

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Section 3.4 Acceptance of Appointment by Successor.

Every successor Rights Agent appointed hereunder shall execute, acknowledge and deliver to Buyer, the Stockholders Representative and the retiring Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and thereupon such successor Rights Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Rights Agent; provided, that upon the request of Buyer, the Stockholders Representative or the successor Rights Agent, such retiring Rights Agent shall execute and deliver an instrument transferring to such successor Rights Agent all the rights, powers and trusts of the retiring Rights Agent and shall cooperate in the transfer of all relevant data, including the TR Beta CVR Register, to the successor Rights Agent.

ARTICLE IV

COVENANTS

Section 4.1 List of Holders.

Buyer shall furnish or cause to be furnished to the Rights Agent in such form as Buyer receives from its transfer agent (or other agent performing similar services for Buyer), the names, addresses and TR Beta CVR holdings of the Holders, within five Business Days after the effective time of the Merger. Buyer shall furnish or cause to be furnished supplementally to the Rights Agent the names, addresses and TR Beta CVR holdings of any persons acquiring TR Beta CVRs upon the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time, forthwith after each such exercise.

Section 4.2 Payment of TR Beta CVR Payment Amount.

Buyer shall duly and promptly pay the TR Beta CVR Payment Amount, if any, in immediately available funds, to the Rights Agent to be distributed to the Holders in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. The Rights Agent shall have no liability of any kind, and shall not be obligated to make any payments, unless and until it receives the TR Beta CVR Payment Amount from Buyer.

Section 4.3 Assignments.

Buyer shall not, in whole or in part, assign any of its obligations under this Agreement other than in accordance with the terms of Section 6.1 hereof.

Section 4.4 Availability of Information.

Buyer will comply with all applicable periodic public information reporting requirements of the SEC to which it may from time to time be subject. Buyer will provide to the Rights Agent all information in connection with this Agreement and the TR Beta CVRs that the Rights Agent may reasonably request.

ARTICLE V

AMENDMENTS

Section 5.1 Amendments Without Consent of Stockholders Representative/Holders.

(a) Without the consent of the Stockholders Representative or any Holders or the Rights Agent, Buyer, when authorized by a Board Resolution, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) to evidence the succession of another Person to Buyer and the assumption by any such successor of the covenants of Buyer herein in a transaction contemplated by Section 6.1 hereof; or

(ii) to evidence the termination of the TR Beta CVR Registrar and the succession of another Person as a successor TR Beta CVR Registrar and the assumption by any successor of the obligations of the TR Beta CVR Registrar herein.

(b) Without the consent of the Stockholders Representative or any Holders, Buyer, when authorized by a Board Resolution, and the Rights Agent, in the Rights Agent s sole and absolute discretion, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) to evidence the succession of another Person as a successor Rights Agent and the assumption by any successor of the covenants and obligations of the Rights Agent herein;

(ii) to add to the covenants of Buyer such further covenants, restrictions, conditions or provisions as the Board of Directors shall consider to be for the protection of the Holders; provided, that in each case, such provisions shall not adversely affect the interests of the Holders;

(iii) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement; provided, that in each case, such provisions shall not adversely affect the interests of the Holders; or

(iv) to add, eliminate or change any provision of this Agreement unless such addition, elimination or change is adverse to the interests of the Holders and/or to the interests of the Stockholders Representative.

(c) Promptly after the execution by Buyer and the Rights Agent of any amendment pursuant to the provisions of this Section 5.1, Buyer shall so notify the Stockholders Representative in writing.

Section 5.2 Amendments With Consent of Stockholders Representative or Holders.

(a) Subject to Section 5.1 (which amendments pursuant to Section 5.1 may be made without the consent of the Holders), with the consent of the Stockholders Representative or of the Holders of not less than a majority of the outstanding TR Beta CVRs, whether evidenced in writing or taken at a meeting of the Holders, Buyer, when authorized by a Board Resolution, and the Rights Agent may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, even if such addition, elimination or change is in any way adverse to the interests of the Holders and/or to the interests of the Stockholders Representative. Any such amendment shall be fully valid even if such amendment is signed only by Buyer and the Rights Agent.

(b) Promptly after the execution by Buyer and the Rights Agent of any amendment pursuant to the provisions of this Section 5.2, Buyer shall mail a notice thereof by first-class mail to the Holders at their addresses as they shall appear on the TR Beta CVR Register, setting forth in general terms the substance of such amendment.

Section 5.3 Execution of Amendments.

Before executing any amendment permitted by this Article V, the Rights Agent shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel stating that the execution of such amendment is authorized or permitted by this Agreement, and that all consents, if any, have been obtained in accordance with Section 5.2. The Rights Agent may, but is not obligated to, enter into any such amendment that affects the Rights Agent s own rights, privileges, covenants, immunities, obligations or duties under this Agreement or otherwise.

Section 5.4 Effect of Amendments.

Upon the execution of any amendment under this Article V, this Agreement shall be modified in accordance therewith, such amendment shall form a part of this Agreement for all purposes and the Stockholders Representative and every Holder shall be bound thereby.

ARTICLE VI

CONSOLIDATION, MERGER, SALE OR CONVEYANCE

Section 6.1 Buyer May Consolidate, Etc.

(a) Buyer shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

(i) the Person formed by such consolidation or into which Buyer is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of Buyer substantially as an entirety (the ***Surviving Person***) shall expressly assume payment (if and to the extent required hereunder) of amounts on all the TR Beta CVRs and the performance of every duty and covenant of this Agreement on the part of Buyer to be performed or observed; and

(ii) Buyer has delivered to the Rights Agent an Officer s Certificate, stating that such consolidation, merger, conveyance, transfer or lease complies with this Article VI and that all conditions precedent herein provided for relating to such transaction have been complied with.

(b) In the event Buyer conveys, transfers or leases its properties and assets substantially as an entirety in accordance with the terms and conditions of this Section 6.1, Buyer and the Surviving Person shall be jointly and severally liable for the payment of the TR Beta CVR Payment Amount and the performance of every duty and covenant of this Agreement on the part of Buyer to be performed or observed.

Section 6.2 Successor Substituted.

Upon any consolidation of or merger by Buyer with or into any other Person, or any conveyance, transfer or lease of the properties and assets substantially as an entirety to any Person in accordance with Section 6.1, the Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of, Buyer under this Agreement with the same effect as if the Surviving Person had been named as Buyer herein, and thereafter the predecessor Person shall be relieved of all obligations and covenants under this Agreement and the TR Beta CVRs.

ARTICLE VII

OTHER PROVISIONS OF GENERAL APPLICATION

Section 7.1 Notices to Rights Agent and Buyer.

Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement shall be sufficient for every purpose hereunder if in writing and delivered personally, or sent by email or sent by certified or registered mail (return receipt requested and first-class postage prepaid) or sent by a nationally recognized overnight courier (with proof of service), addressed as follows, and shall be deemed to have been given upon receipt:

(a) if to the Rights Agent, addressed to it at Mellon Investor Services LLC, 400 S. Hope Street, 4th Floor, Los Angeles, CA 90071, Attn: Mark Cano, or at any other address previously furnished in writing to the Stockholders Representative and Buyer by the Rights Agent in accordance with this Section 7.1 and Section 7.2, with a copy to Mellon Investor Services LLC, 480 Washington Boulevard, Jersey City, NJ 07310, Attn: Legal Department; or

(b) if to Buyer, addressed to it at 10275 Science Center Drive, San Diego, California 92121, email at jhiggins@ligand.com, or at any other address previously furnished in writing to the Rights Agent and the Stockholders Representative by Buyer in accordance with this Section 7.1 and Section 7.2.

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Section 7.2 Notice to Holders or Stockholders Representative.

Where this Agreement provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his, her or its address as it appears in the TR Beta CVR Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Agreement provides for notice to the Stockholders Representative, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and personally delivered or sent by email or sent by a nationally recognized overnight courier (with proof of service) or mailed, first-class postage prepaid, to the Stockholders Representative at 1042-B N. El Camino Real, Suite 430, Encinitas, CA 92024, email at dfhale@biopharmaventures.com, or at any other address previously furnished in writing to the Rights Agent and Buyer by the Stockholders Representative in accordance with Section 7.1 and this Section 7.2. Notwithstanding anything contained herein to the contrary, the information set forth in any notices delivered by Buyer hereunder related to a TR Beta CVR Payment Event or an amendment to this Agreement pursuant to Article V hereof and provided solely to the Stockholders Representative (or a summary of such information) shall also be reported by Buyer on a Form 8-K, 10-Q or 10-K of Buyer filed with the SEC.

Section 7.3 Effect of Headings.

The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 7.4 Successors and Assigns.

All covenants and agreements in this Agreement by Buyer shall bind its successors and assigns, whether so expressed or not.

Section 7.5 Benefits of Agreement.

Nothing in this Agreement, express or implied, shall give to any Person (other than the parties hereto, the Holders and their permitted successors and assigns hereunder) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto, the Holders and their permitted successors and assigns. The Holders shall have no rights or remedies hereunder except as expressly set forth herein.

Section 7.6 Governing Law.

This Agreement and the TR Beta CVRs shall be governed by and construed in accordance with the laws of the State of California without regards to its rules of conflicts of laws; *provided*, *however*, that all provisions, regarding the rights, duties, obligations and liabilities of the Rights Agent shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

Section 7.7 Legal Holidays.

In the event that a TR Beta CVR Payment Date shall not be a Business Day, then, notwithstanding any provision of this Agreement to the contrary, any payment required to be made in respect of the TR Beta CVRs on such date need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the TR Beta CVR Payment Date.

Section 7.8 Severability Clause.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein; *provided*, *however*, that if any such excluded term, provision, covenant or restriction shall adversely affect the rights, immunities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the court or other tribunal making such determination is authorized and instructed to modify this Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.

Section 7.9 Counterparts.

This Agreement may be signed in any number of counterparts (which may be effectively delivered by facsimile or other electronic means), each of which shall be deemed to constitute but one and the same instrument.

Section 7.10 Termination.

This Agreement shall terminate and be of no further force or effect, and the parties hereto shall have no liability hereunder, on the first day after the Outside Date on which no further dispute is possible. A dispute shall be considered possible if an Objection Period is in progress, or if a Section 7.12 process is in progress, or if any payment or other obligation required pursuant to a final determination made in accordance with Section 7.12 has not yet occurred.

Section 7.11 Entire Agreement.

As it relates to the Rights Agent, this Agreement represents the entire understanding of the parties hereto with reference to the TR Beta CVRs and this Agreement supersedes any and all other oral or written agreements made with respect to the TR Beta CVRs. As it relates to all other parties hereto, this Agreement and the Merger Agreement represent the entire understanding of the parties hereto with reference to the TR Beta CVRs and this Agreement supersedes any and all other oral or written agreements made with respect to the TR Beta CVRs, except for the Merger Agreement. If and to the extent that any provision of this Agreement is inconsistent or conflicts with the Merger Agreement, this Agreement shall govern and be controlling.

Section 7.12 Negotiation; Arbitration.

(a) Before any arbitration pursuant to Section 7.12(b), Buyer and (subject to Section 5.16(a) of the Merger Agreement) the Stockholders Representative shall negotiate in good faith for a period of 30 days to resolve any controversy or claim arising out of or relating to this Agreement or the breach thereof.

(b) After expiration of the 30-day period contemplated by Section 7.12(a), such controversy or claim, including any claims for breach of this Agreement, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Buyer and/or (subject to Section 5.16(a) of the Merger Agreement) the Stockholders Representative may initiate an arbitration for any matter relating to this Agreement. However, in the event of a dispute arising from the delivery of a Notice of Objection, the sole matter to be settled by arbitration shall be whether a TR Beta CVR Payment Event has occurred on or before the Outside Date or whether the calculation of the TR Beta CVR Payment Amount is in error, as applicable. The number of arbitrators shall be three. Within 15 days after the commencement of arbitration, each party shall

select one person to act as arbitrator, and the two selected shall select a third arbitrator within 15 days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The place of the arbitration shall be San Diego, California. The arbitrators shall be lawyers or retired judges with experience in the life sciences industry and with mergers and acquisitions. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both parties. Any award payable in favor of the Holders or the Stockholders Representative as a result of arbitration shall be paid by Buyer to the Rights Agent to be distributed to the Holders the next January 1 or July 1, in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. Buyer and Stockholders Representative shall pay in equal halves all fees and expenses of the arbitration forum, including the costs and expenses billed by the arbitrators in connection with the performance of their duties described herein; provided, however, that if the arbitrators rule in favor of Buyer, an amount equal to the half of the arbitrators fees and expenses paid by Buyer shall be offset against the soonest TR Beta CVR Payment Amount(s), if any, or any payment to be made thereafter under any of the other CVR Agreements, and if the arbitrators rule in favor of the Holders or the Stockholders Representative, an amount equal to the half of the arbitrators fees and expenses paid by the Stockholders Representative shall be paid by Buyer to the Rights Agent to be distributed to the Holders on the next January 1 or July 1, in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. Each party to the arbitration (which, for the avoidance of doubt, shall not include the Rights Agent) shall be responsible for its own attorney fees, expenses and costs of investigation.

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IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized officers as of the day and year first above written.

LIGAND PHARMACEUTICALS INCORPORATED

By:
Name:
Title:

METABASIS THERAPEUTICS, INC.

By:
Name:
Title:

MELLON INVESTOR SERVICES LLC, as Rights Agent

By:
Name: **Mark Cano**
Title: **Relationship Manager**

DAVID F. HALE, as Stockholders Representative

By:

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Annex D

Form of Glucagon CVR Agreement

CONTINGENT VALUE RIGHTS AGREEMENT*

THIS CONTINGENT VALUE RIGHTS AGREEMENT, dated as of [ ] (this ***Agreement*** , is entered into by and among Ligand Pharmaceuticals Incorporated, a Delaware corporation (***Buyer***), Metabasis Therapeutics, Inc., a Delaware corporation (***Target***), David F. Hale, as Stockholders Representative (the ***Stockholders Representative***), and Mellon Investor Services LLC, a New Jersey limited liability company, as Rights Agent (the ***Rights Agent***) and as initial Glucagon CVR Registrar (as defined herein).

Preamble

Buyer, Moonstone Acquisition, Inc., a Delaware corporation and wholly-owned subsidiary of Buyer (***Sub***), Target and the Stockholders Representative have entered into an Agreement and Plan of Merger dated as of October 26, 2009 (as amended to date, the ***Merger Agreement***), pursuant to which Sub will merge with and into Target (the ***Merger***), with Target surviving the Merger as a subsidiary of Buyer.

Pursuant to the Merger Agreement, Buyer agreed to create and issue to Target s stockholders of record immediately before the effective time of the Merger, contingent value rights as hereinafter described.

The parties have done all things necessary to make the contingent value rights, when issued pursuant to the Merger Agreement and hereunder, the valid obligations of Buyer and to make this Agreement a valid and binding agreement of Buyer, in accordance with its terms.

NOW, THEREFORE, for and in consideration of the premises and the consummation of the transactions referred to above, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders (as hereinafter defined), as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

(a) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(ii) all accounting terms used herein and not expressly defined herein shall have the meanings assigned to such terms in accordance with United States generally accepted accounting principles, as in effect on the date hereof;

(iii) the words herein, hereof and hereunder and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision;

* Including amendments made by Amendment to Agreement and Plan of Merger dated as of November 25, 2009. The amendments are to the first paragraph of the Preamble, Section 1.1(b) (the definitions of Landlord Agreement and Glucagon CVR Payment Amount), Section 2.6, Section 2.7(a), Section 2.7(e) (deleted) and Section 7.11.

(iv) unless the context otherwise requires, words describing the singular number shall include the plural and vice versa, words denoting any gender shall include all genders and words denoting natural Persons shall include corporations, partnerships and other Persons and vice versa; and

(v) all references to including shall be deemed to mean including without limitation.

(b) Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement. The following terms shall have the meanings ascribed to them as follows:

Achievement Certificate has the meaning set forth in Section 2.4(a).

Board of Directors means the board of directors of Buyer.

Board Resolution means a copy of a resolution certified by the secretary or an assistant secretary of Buyer to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Rights Agent.

Business Day means any day other than a Saturday, Sunday or a day on which the banks in New York, New Jersey or California are authorized or obligated by law or executive order to close.

Close of Business on any given date shall mean 5:00 P.M., California time, on such date; provided, however, that if such date is not a Business Day it shall mean 5:00 P.M., California time, on the next succeeding Business Day.

Competitor of Buyer has the same meaning as set forth in the Merger Agreement for Competitor of Parent.

Fraction means the quotient of (a) the number of Company Shares outstanding as of the Effective Time plus the number of Glucagon CVRs issued between the Effective Time and the occurrence of the applicable Glucagon CVR Payment Event pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time, minus the number of Dissenting Shares (determined as of the occurrence of the applicable Glucagon CVR Payment Event), divided by (b) the sum of the number of Company Shares outstanding as of the Effective Time plus the number of Glucagon CVRs issued between the Effective Time and the occurrence of the applicable Glucagon CVR Payment Event pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time.

Fund Distribution Date has the meaning set forth in Section 2.4(g).

Glucagon CVR Payment Amount means, as applicable, a Glucagon Licensing Option Payment Amount, a Glucagon Sale Option Payment Amount, a Glucagon Licensing Payment Amount or a Glucagon Sale Payment Amount; less in each case (i) 1% (or such lesser percentage as is the maximum permissible pursuant to the following proviso) of such Glucagon Licensing Option Payment Amount, Glucagon Sale Option Payment Amount, Glucagon Licensing Payment Amount or Glucagon Sale Payment Amount, as applicable, which amount shall be contributed to the Stockholders Representative Fund; provided that no such amount shall be contributed to the Stockholders Representative Fund to the extent that the sum of such amount and the amount then held in the Stockholders Representative Fund would exceed $300,000, (ii) to the extent applicable in respect thereof, any amount payable by Buyer or the Surviving Corporation to the Landlord pursuant to the terms of Section 10 of the Landlord Agreement and (iii) to the extent applicable in respect thereof, any contingent severance payments payable to the employees that were terminated in Target s May 2009 reduction in force.

Glucagon CVR Payment Date means the January 1 or July 1 next following the date (if any and if ever) that a Glucagon CVR Payment Amount is payable by Buyer to the Holders, which date shall be established pursuant to Section 2.4.

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Glucagon CVR Payment Event means, as applicable, a Glucagon Licensing Option Event, a Glucagon Licensing Event, a Glucagon Sale Option Event or a Glucagon Sale Event.

Glucagon CVR Register has the meaning set forth in Section 2.3(b).

Glucagon CVR Registrar has the meaning set forth in Section 2.3(b).

Glucagon CVRs means the Glucagon Contingent Value Rights issued by Buyer pursuant to the Merger Agreement and this Agreement.

Glucagon Licensing Event means the licensing by Buyer to any Person (other than to Buyer) of all or any portion of a drug candidate or technology or Intellectual Property from the Glucagon Program.

Glucagon Licensing Option Event means the grant of an option by Buyer to any Person (other than Buyer) to enter into a Glucagon Licensing Event.

Glucagon Licensing Option Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Licensing Option Event which occurs after the Effective Time and on or before the sixth anniversary of the Effective Time, (b) 40% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Licensing Option Event which occurs after the sixth anniversary of the Effective Time and on or before the seventh anniversary of the Effective Time, (c) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Licensing Option Event which occurs after the seventh anniversary of the Effective Time and on or before the eighth anniversary of the Effective Time, or (d) 20% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Licensing Option Event which occurs after the eighth anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with the Glucagon Licensing Option Event (including reasonable attorneys fees and brokers commissions).

Glucagon Licensing Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Licensing Event which occurs after the Effective Time and on or before the sixth anniversary of the Effective Time, (b) 40% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Licensing Event which occurs after the sixth anniversary of the Effective Time and on or before the seventh anniversary of the Effective Time, (c) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Licensing Event which occurs after the seventh anniversary of the Effective Time and on or before the eighth anniversary of the Effective Time, or (d) 20% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Licensing Event which occurs after the eighth anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with the Glucagon Licensing Event (including reasonable attorneys fees and brokers commissions).

Glucagon Program means the program conducted before the Merger by Target intended to create a glucagon receptor antagonist drug for the treatment of diabetes, and as may be continued after the Merger by Buyer.

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Glucagon Sale Event means the consummation of the sale or other similar transfer (that does not qualify as a Glucagon Licensing Event) by Buyer to any Person (other than Buyer) of all or any portion of a drug candidate or technology or Intellectual Property from the Glucagon Program.

Glucagon Sale Option Event means the grant of an option by Buyer to any Person (other than Buyer) to enter into a Glucagon Sale Event.

Glucagon Sale Option Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Sale Option Event which occurs after the Effective Time and on or before the sixth anniversary of the Effective Time, (b) 40% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Sale Option Event which occurs after the sixth anniversary of the Effective Time and on or before the seventh anniversary of the Effective Time, (c) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Sale Option Event which occurs after the seventh anniversary of the Effective Time and on or before the eighth anniversary of the Effective Time, or (d) 20% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Sale Option Event which occurs after the eighth anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with the Glucagon Sale Option Event (including reasonable attorneys fees and brokers commissions).

Glucagon Sale Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Sale Event which occurs after the Effective Time and on or before the sixth anniversary of the Effective Time, (b) 40% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Sale Event which occurs after the sixth anniversary of the Effective Time and on or before the seventh anniversary of the Effective Time, (c) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Sale Event which occurs after the seventh anniversary of the Effective Time and on or before the eighth anniversary of the Effective Time, or (d) 20% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a Glucagon Sale Event which occurs after the eighth anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with the Glucagon Sale Event (including reasonable attorneys fees and brokers commissions).

Holder means a Person in whose name a Glucagon CVR is registered in the Glucagon CVR Register.

Landlord means ARE-SD Region No. 24, LLC.

Landlord Agreement means the Agreement for Termination of Lease and Voluntary Surrender of Premises dated July 21, 2009 between the Company and the Landlord, including any amendments thereto entered into before the Effective Time.

Non-Achievement Certificate has the meaning set forth in Section 2.4(b).

Notice of Objection has the meaning set forth in Section 2.4(c).

Objection Period has the meaning set forth in Section 2.4(c).

Officer s Certificate means a certificate signed by the chief executive officer, president, chief financial officer, any vice president, the controller, the treasurer or the secretary, in each case, of Buyer, in his or her capacity as such an officer, and delivered to the Rights Agent.

Outside Date means the later to occur of (a) the 10th anniversary of the date hereof or (b) the last potential Glucagon CVR Payment Date pursuant to a Glucagon Payment Event which occurred before the 10th anniversary of the date hereof; provided, that in the event of a Glucagon Licensing Option Event or a Glucagon Sale Option Event, the Outside Date with respect to the optioned asset shall not occur before the earliest of the exercise, expiration or termination of such option.

Person shall mean any individual, firm, corporation, limited liability company, partnership, trust or other entity, and shall include any successor (by merger or otherwise) thereof or thereto.

Rights Agent means the Rights Agent named in the first paragraph of this Agreement, until a successor Rights Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter Rights Agent shall mean such successor Rights Agent.

Rights Agent Fees and Expenses means the agreed-upon fees and expenses of the Rights Agent to act in such capacity pursuant to the terms of this Agreement.

Surviving Person has the meaning set forth in Section 6.1(a)(i).

ARTICLE II

CONTINGENT VALUE RIGHTS

Section 2.1 Issuance of Glucagon CVRs; Appointment of Rights Agent.

(a) The Glucagon CVRs shall be issued pursuant to the Merger Agreement at the time and in the manner set forth in the Merger Agreement or pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time.

(b) Buyer hereby appoints the Rights Agent to act as rights agent for Buyer in accordance with the express terms and conditions hereinafter set forth in this Agreement (and no implied terms or conditions), and the Rights Agent hereby accepts such appointment.

(c) To the extent permitted by applicable Legal Requirements, it is expressly agreed that in no event shall any Holders (as opposed to the Stockholders Representative) or any former stockholders of Target (as opposed to the Stockholders Representative) have, after the Effective Time, any power or right to commence or join in any Legal Proceeding based on or arising out of this Agreement or the Merger Agreement.

Section 2.2 Transferability.

At the option of a respective holder thereof, the Glucagon CVRs may be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, but only in accordance with Section 2.3 hereof and in compliance with all applicable Legal Requirements.

Section 2.3 No Certificate; Registration; Registration of Transfer; Change of Address.

(a) The Glucagon CVRs shall be issued in book-entry form only and shall not be evidenced by a certificate or other instrument.

(b) The Rights Agent shall keep a register (the ***Glucagon CVR Register***) for the registration of Glucagon CVRs. The Rights Agent is hereby initially appointed Glucagon CVR registrar and transfer agent (***Glucagon CVR Registrar***) for the purpose of registering Glucagon CVRs and transfers of Glucagon CVRs as herein provided. Upon any change in the identity of the Rights Agent, the successor Rights Agent shall automatically also become the successor Glucagon CVR Registrar.

(c) Every request made to transfer a Glucagon CVR must be in writing and accompanied by a written instrument or instruments of transfer and any other documentation requested by Buyer or Glucagon CVR Registrar, in a form reasonably satisfactory to Buyer and the Glucagon CVR Registrar, properly completed and duly executed by the registered Holder or Holders thereof or by the duly appointed legal representative thereof or by a duly authorized attorney, such signature to be guaranteed by a participant in a recognized Signature Guarantee Medallion Program. Upon receipt of such written request and materials, and all other reasonably necessary information, the Glucagon CVR Registrar shall register the transfer of the Glucagon CVRs in the Glucagon CVR Register. All duly transferred Glucagon CVRs registered in the Glucagon CVR Register shall be the valid obligations of Buyer, evidencing the same right and shall entitle the transferee to the same benefits and rights under this Agreement, as those previously held by the transferor. No transfer of a Glucagon CVR shall be valid until registered in the Glucagon CVR Register, and any transfer not duly registered in the Glucagon CVR Register will not be honored by Buyer or the Rights Agent until it is so registered, and then it will be honored only prospectively. Any transfer or assignment of the Glucagon CVRs shall be without charge (other than the cost of any tax or charge that may be payable in respect of such transfer or assignment, which shall be the responsibility of the transferor) to the Holder. The Rights Agent shall have no duty or obligation under any Section of this Agreement that requires the payment of taxes or charges unless and until it is satisfied that such taxes and/or charges have been or will be paid.

(d) A Holder may make a written request to the Glucagon CVR Registrar to change such Holder s address of record in the Glucagon CVR Register. The written request must be duly executed by the Holder and conform to such other reasonable requirements as the Rights Agent may from time to time establish. Upon receipt of such proper written request, the Glucagon CVR Registrar shall promptly record the change of address in the Glucagon CVR Register.

(e) Upon reasonable written request of the Stockholders Representative, the Rights Agent shall (at the Stockholders Representative s expense) promptly provide a copy of the Glucagon CVR Register to the Stockholders Representative.

Section 2.4 Payment Procedures.

(a) Promptly following the occurrence of a Glucagon CVR Payment Event, but in no event later than five Business Days after the occurrence of a Glucagon CVR Payment Event, Buyer shall deliver to the Rights Agent and the Stockholders Representative a certificate (the ***Achievement Certificate***), certifying that the Holders are entitled to receive a Glucagon CVR Payment Amount (and setting forth the calculation of such Glucagon CVR Payment Amount), and shall also deliver to the Rights Agent the indicated Glucagon CVR Payment Amount in cash. Until such Achievement Certificate is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that a Glucagon CVR Payment Event has not occurred. No transaction described in Section 6.1(a) hereof shall give the Holders the right to receive a Glucagon CVR Payment Amount. Such cash amount deposited with the Rights Agent shall, pending its disbursement to such holders, be invested by the Rights Agent in (i) direct obligations of the United States of America, (ii) obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest, or (iii) money market funds investing solely in a combination of the foregoing. Any interest and other income resulting from such investments shall be applied first to the satisfaction of the Rights Agent Fees and Expenses, and any remainder (the ***Remainder***) shall be paid to the Holders as set forth in Section 2.4(e) below. The Rights Agent must receive federal or other immediately available funds before 1:00 p.m., Eastern Time, on the funding date in order for such funds to be so invested on such date. Funds received after such time on the funding

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date will not be so invested until the following Business Day. Except as expressly provided above, the Rights Agent will not be obligated to calculate or pay interest to any Holder or any other party.

(b) If no Glucagon CVR Payment Event has occurred on or before the Outside Date, then, within five Business Days after the Outside Date, Buyer shall deliver to the Rights Agent and the Stockholders Representative a certificate, stating that the Glucagon CVR Payment Event did not occur. Such certificate is herein referred to as the ***Non-Achievement Certificate***. Until such Non-Achievement Certificate is received by the Rights Agent, the Rights Agent shall have no duties or obligations with respect to the Outside Date, and the Rights Agent shall have no duties or obligations to monitor or determine the Outside Date.

(c) Subject to Section 5.16(a) of the Merger Agreement, within 45 calendar days after delivery by Buyer of a Non-Achievement Certificate or Achievement Certificate (the ***Objection Period***), the Stockholders Representative may deliver a written notice to Buyer (with a copy to the Rights Agent) specifying that the Stockholders Representative objects to (i) the determination of Buyer that no Glucagon CVR Payment Event occurred on or before the Outside Date or (ii) the calculation of the Glucagon CVR Payment Amount, as applicable (a ***Notice of Objection***), and stating the reason upon which the Stockholders Representative has determined that (A) the Glucagon CVR Payment Event has occurred on or before the Outside Date or (B) the calculation of the Glucagon CVR Payment Amount is in error, as applicable. Any dispute arising from a Notice of Objection shall be resolved in accordance with the procedure set forth in Section 7.12, which decision shall be binding on the parties hereto and every Holder.

(d) If a Notice of Objection with respect to a Non-Achievement Certificate has not been delivered to Buyer within the Objection Period, then the Holders shall have no right to receive the Glucagon CVR Payment Amount, and Buyer and the Rights Agent shall have no further obligations with respect to the Glucagon CVR Payment Amount. If a Notice of Objection with respect to an Achievement Certificate has not been delivered to Buyer within the Objection Period, then the Holders shall have no right to assert that the calculation of the Glucagon CVR Payment Amount is in error.

(e) If Buyer delivers an Achievement Certificate to the Rights Agent and the Stockholders Representative or if the Glucagon CVR Payment Amount is determined to be payable pursuant to Section 2.4(c) above, Buyer shall establish a Glucagon CVR Payment Date on the January 1 or July 1 which next follows the date of the Achievement Certificate or the date of final determination pursuant to Section 2.4(c) above, as applicable, and deliver written notice to the Rights Agent of such determination at least five (5) Business Days before such date. Until such notice is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that the Glucagon CVR Payment Date has not occurred. The Rights Agent shall have no duty or obligation to establish any payment amount or payment date with respect to the Glucagon CVR Payment Date. Upon receipt of such written notice and all other necessary information, the Rights Agent will, on such Glucagon CVR Payment Date, distribute the Glucagon CVR Payment Amount and the Remainder to the Holders (each Holder being entitled to receive its *pro rata* share of the Glucagon CVR Payment Amount and the Remainder based on the number of Glucagon CVRs held (as of the third Business Day before the Glucagon CVR Payment Date) by such Holder as reflected on the Glucagon CVR Register) by check mailed to the address of each such respective Holder as then reflected in the Glucagon CVR Register.

(f) Buyer shall be entitled to deduct and withhold, or cause to be deducted or withheld, from each Glucagon CVR Payment Amount otherwise payable pursuant to this Agreement, such amounts as Buyer or the applicable subsidiary of Buyer is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld or paid over to or deposited with the relevant governmental entity, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Holder in respect of which such deduction and withholding was made.

(g) On such date following the Outside Date as the holders of at least 20% of the outstanding General CVRs shall request via two Business Day prior written notice to the Stockholders Representative, the Stockholders Representative shall deliver to the Rights Agent in cash any amount remaining available in the Stockholders Representative Fund together with written instructions regarding the distribution of such amount (including the names and addresses of the applicable Holders and the breakdown of amounts to be distributed), and the Rights Agent will, within five Business Days of receipt of such instructions and amount (such date the ***Fund Distribution Date***), distribute such amount in accordance with such instructions to the Holders of the General CVRs, the Glucagon CVRs, the TR Beta CVRs and the Roche CVRs (each Holder being entitled to receive its *pro rata* share of such amount based on the number of General CVRs, Glucagon CVRs, TR Beta CVRs and Roche CVRs held (as of the Fund Distribution Date) by such Holder as reflected in the General CVR Register, the Glucagon CVR Register, the TR Beta CVR Register and the Roche CVR Register (as defined herein and in the General CVR Agreement, the TR Beta CVR Agreement and the Roche CVR Agreement) by check mailed to the address of each such respective Holder as reflected in the General CVR Register, the Glucagon CVR Register, the TR Beta CVR Register and the Roche CVR Register as of the Close of Business on the last Business Day before the Fund Distribution Date. Until such written instructions are received by the Rights Agent, the Rights Agent shall not be obligated to take any action with respect to this paragraph. After the Fund Distribution Date, the Stockholders Representative shall be relieved of any and all duties and obligations under the Merger Agreement or any of the CVR Agreements.

(h) Subject to prior execution and delivery by the Stockholders Representative to Buyer and Target of a reasonable and customary confidentiality/nonuse agreement, Buyer shall promptly furnish to the Stockholders Representative all information and documentation in connection with this Agreement and the Glucagon CVRs that the Stockholders Representative may reasonably request in connection with the determination of whether a Glucagon CVR Payment Event has occurred or whether the calculation of a Glucagon CVR Payment Amount is in error, as applicable. Subject to prior execution and delivery by the applicable Holders to Buyer and Target of a reasonable and customary confidentiality/nonuse agreement, the Stockholders Representative may forward any information and documentation it receives to the Holders who request such information, but the Stockholders Representative covenants and agrees that in no event shall the Stockholders Representative provide any such information or documentation to any Holder who (i) is a Competitor of Buyer or (ii) holds fewer than 1% of the total number of Glucagon CVRs.

Section 2.5 No Voting, Dividends or Interest; No Equity or Ownership Interest in Buyer.

(a) The Glucagon CVRs shall not have any voting or dividend rights, and interest shall not accrue on any amounts payable on the Glucagon CVRs to any Holder.

(b) The Glucagon CVRs shall not represent any equity or ownership interest in Buyer (or in any constituent company to the Merger) or in any drug development program or Intellectual Property or other asset. The rights of the holders of Glucagon CVRs are limited to those expressly set forth in this Agreement, and such holders sole right to receive property hereunder is the right to receive cash from Buyer through the Rights Agent in accordance with the terms hereof.

Section 2.6 Sole Discretion and Decision Making Authority; No Fiduciary Duty.

Notwithstanding anything contained herein to the contrary, Buyer shall have sole discretion and decision making authority, which shall be exercised in good faith and with commercial reasonableness, (i) over any continued operation of, development of or investment in the Glucagon Program, (ii) over when (if ever) and whether to pursue, or enter into, a licensing agreement and/or sale agreement and/or similar transfer agreement and/or agreement for the grant of an option to enter into any such transaction with respect to a drug candidate or technology or Intellectual Property from the Glucagon Program, and upon what terms and conditions, and (iii) over resolution of any third party claims relating to Contingent Payments.

Section 2.7 Satisfaction of Contingent Payments. Notwithstanding anything herein to the contrary:

(a) It is understood that upon the occurrence of certain payment events under this Agreement and the other CVR Agreements, the Landlord may be entitled to payments pursuant to the terms of Section 10 of the Landlord Agreement and the employees that were terminated in Target s May 2009 reduction in force may be entitled to contingent severance payments pursuant to their respective severance arrangements (together, and including any payments to resolve claims arising in connection therewith, the ***Contingent Payments***).

(b) In general, such Contingent Payments are to be satisfied first from amounts otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event, but in some instances the full amount payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event will be less than the Contingent Payments owing in respect of such payment event.

(c) In each case described in Section 2.7(b) above, 100% of the amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event will be paid by Buyer directly to the beneficiaries of the Contingent Payments rather than to or for the benefit of the holders of the CVRs under the applicable CVR Agreement, and the remainder of the Contingent Payments owing in respect of such payment event (the ***Excess***) shall be paid by Buyer directly to the beneficiaries of the Contingent Payments.

(d) If an Excess is paid by Buyer pursuant to Section 2.7(c) of this Agreement or of any of the other CVR Agreements, then upon the next payment event under this Agreement or under any of the other CVR Agreements (even if not the same CVR Agreement in connection with which the Excess was paid), Buyer shall withhold from any amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such (new) payment event, and shall keep for Buyer s own account to reimburse Buyer for having paid the Excess, an amount equal to 100% of the Excess (or, if less, 100% of the amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such (new) payment event). If Buyer is not thereby reimbursed for the entire Excess, the shortfall shall be rolled forward to be satisfied in the same manner by withholding from any amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of the next-to-occur payment event under any one of the CVR Agreements (even if not the same CVR Agreement in connection with which the Excess was paid or in connection with which the Excess was partially satisfied).

ARTICLE III

THE RIGHTS AGENT

Section 3.1 Certain Duties and Responsibilities. The Rights Agent shall be authorized and protected and shall not have any liability for, or in respect of any actions taken, suffered or omitted to be taken by it in connection with its acceptance and administration of this Agreement and the exercise and performance of its duties hereunder, except to the extent of its own willful misconduct, bad faith or gross negligence (each as determined by a final, non-appealable judgment of a court of competent jurisdiction). No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

Section 3.2 Certain Rights of Rights Agent.

The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Rights Agent. In addition:

(a) the Rights Agent may rely and shall be authorized and protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent,

order, power of attorney, endorsement, affidavit, letter or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Rights Agent shall not be deemed to have knowledge of any event of which it was supposed to receive notice thereof hereunder but as to which no notice was provided, and the Rights Agent shall be fully protected and shall incur no liability for failing to take any action in connection therewith unless and until it has received such notice;

(b) whenever the Rights Agent shall deem it necessary or desirable that any fact or matter be proved or established by Buyer before taking, suffering or omitting to take any action hereunder, the Rights Agent may, in the absence of willful misconduct, bad faith or gross negligence on its part (each as determined by a final, non-appealable judgment of a court of competent jurisdiction), request and rely upon an Officer s Certificate from Buyer with respect to such fact or matter; and such certificate shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Agreement in reliance upon such certificate. The Rights Agent shall be fully authorized and protected in relying upon the most recent instructions received from Buyer. In the event the Rights Agent believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Rights Agent hereunder, the Rights Agent, may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to Buyer or any other person or entity for refraining from taking such action, unless the Rights Agent receives written instructions from Buyer that eliminates such ambiguity or uncertainty to the satisfaction of the Rights Agent;

(c) the Rights Agent may engage and consult with counsel of its selection (who may be legal counsel for Buyer and/or an employee of the Rights Agent) and the advice of such counsel or any opinion of counsel shall be full and complete authorization and protection to the Rights Agent in respect of any action taken, suffered or omitted to be taken by it hereunder in reliance thereon in the absence of willful misconduct, bad faith or gross negligence on the part of the Rights Agent (as determined by a final, non-appealable judgment of a court of competent jurisdiction);

(d) in the event of arbitration, the Rights Agent may engage and consult with tax experts, valuation firms and other experts and third parties that it, in its sole and absolute discretion, deems appropriate or necessary to enable it to discharge its duties hereunder;

(e) the permissive rights of the Rights Agent to do things enumerated in this Agreement shall not be construed as a duty;

(f) the Rights Agent shall not be required to give any note or surety in respect of the execution of such powers or otherwise in respect of the premises;

(g) Buyer agrees to indemnify the Rights Agent for, and hold the Rights Agent harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, suit, settlement, cost or expense (including, without limitation, the fees and expenses of legal counsel), incurred without willful misconduct, bad faith or gross negligence on the part of the Rights Agent (each as determined by a final, non-appealable judgment of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Rights Agent in connection with the acceptance and administration of this Agreement, or the exercise or performance of its duties hereunder, including without limitation, the costs and expenses of defending against any claim of liability hereunder, directly or indirectly. The costs and expenses incurred in enforcing this right of indemnification shall be paid by Buyer. The provisions of this Article 3 shall survive the termination of this Agreement, the payment of any distributions made pursuant to this Agreement, and the resignation, replacement or removal of the Rights Agent hereunder, including, without limitation, the costs and expenses of defending a claim of liability hereunder;

(h) Except as paid pursuant to Section 2.4(a) of this Agreement, Buyer agrees to pay the Rights Agent Fees and Expenses in connection with this Agreement, as set forth on Schedule 1 hereto, and further including reimbursement of the Rights Agent for all taxes and charges, reasonable expenses and other charges of any kind and nature incurred by the Rights Agent in the execution of this Agreement (other than

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taxes measured by the Rights Agent s net income) and reimbursement for all reasonable and necessary out-of-pocket expenses (including reasonable fees and expenses of the Rights Agent s counsel and agent) paid or incurred by it in connection with the preparation, negotiation, delivery, amendment, administration and execution by the Rights Agent of this Agreement and its duties hereunder;

(i) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by Buyer only;

(j) The Rights Agent shall not have any liability for or be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof; nor shall it be responsible for any breach by Buyer of any covenant or failure by Buyer to satisfy conditions contained in this Agreement;

(k) Buyer agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of its duties under this Agreement;

(l) The Rights Agent and any stockholder, affiliate, director, officer, employee or agent of the Rights Agent may buy, sell or deal in any of the Rights or other securities of Buyer or become pecuniarily interested in any transaction in which Buyer may be interested, or contract with or lend money to Buyer or otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent or any stockholder, affiliate, director, officer, employee or agent from acting in any other capacity for Buyer or for any other Person; and

(m) The Rights Agent shall not be subject to, nor be required to comply with, or determine if any person or entity has complied with, the Merger Agreement or any other agreement between or among any of Buyer, Target, Stockholders Representative or any other parties hereto, even though reference thereto may be made in this Agreement, or to comply with any notice, instruction, direction, request or other communication, paper or document other than as expressly set forth in this Agreement.

Section 3.3 Resignation and Removal; Appointment of Successor.

(a) The Rights Agent may resign and be discharged from its duties at any time by giving written notice thereof to Buyer and the Stockholders Representative specifying a date when such resignation shall take effect, which notice shall be sent at least 30 days before the date so specified.

(b) If the Rights Agent shall resign, be removed or become incapable of acting, Buyer, by way of a Board Resolution, shall promptly appoint a qualified successor Rights Agent who may (but need not) be a Holder but shall not be an officer of Buyer. The successor Rights Agent so appointed shall, forthwith upon its acceptance of such appointment in accordance with this Section 3.3(b), become the successor Rights Agent.

(c) Buyer shall give notice to the Stockholders Representative of each resignation and each removal of a Rights Agent and each appointment of a successor Rights Agent. Such notice shall include the name and address of the successor Rights Agent. If Buyer fails to send such notice within ten days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent shall cause such notice to be mailed at the expense of Buyer.

Section 3.4 Acceptance of Appointment by Successor.

Every successor Rights Agent appointed hereunder shall execute, acknowledge and deliver to Buyer, the Stockholders Representative and the retiring Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and thereupon such successor Rights Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Rights Agent;

provided, that upon the request of Buyer, the Stockholders Representative or the successor Rights Agent, such retiring Rights Agent shall execute and deliver an instrument transferring to such successor Rights Agent all the rights, powers and trusts of the retiring Rights Agent and shall cooperate in the transfer of all relevant data, including the Glucagon CVR Register, to the successor Rights Agent.

ARTICLE IV

COVENANTS

Section 4.1 List of Holders.

Buyer shall furnish or cause to be furnished to the Rights Agent in such form as Buyer receives from its transfer agent (or other agent performing similar services for Buyer), the names, addresses and Glucagon CVR holdings of the Holders, within five Business Days after the effective time of the Merger. Buyer shall furnish or cause to be furnished supplementally to the Rights Agent the names, addresses and Glucagon CVR holdings of any persons acquiring Glucagon CVRs upon the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time, forthwith after each such exercise.

Section 4.2 Payment of Glucagon CVR Payment Amount.

Buyer shall duly and promptly pay the Glucagon CVR Payment Amount, if any, in immediately available funds, to the Rights Agent to be distributed to the Holders in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. The Rights Agent shall have no liability of any kind, and shall not be obligated to make any payments, unless and until it receives the Glucagon CVR Payment Amount from Buyer.

Section 4.3 Assignments.

Buyer shall not, in whole or in part, assign any of its obligations under this Agreement other than in accordance with the terms of Section 6.1 hereof.

Section 4.4 Availability of Information.

Buyer will comply with all applicable periodic public information reporting requirements of the SEC to which it may from time to time be subject. Buyer will provide to the Rights Agent all information in connection with this Agreement and the Glucagon CVRs that the Rights Agent may reasonably request.

ARTICLE V

AMENDMENTS

Section 5.1 Amendments Without Consent of Stockholders Representative/Holders.

(a) Without the consent of the Stockholders Representative or any Holders or the Rights Agent, Buyer, when authorized by a Board Resolution, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) to evidence the succession of another Person to Buyer and the assumption by any such successor of the covenants of Buyer herein in a transaction contemplated by Section 6.1 hereof; or

(ii) to evidence the termination of the Glucagon CVR Registrar and the succession of another Person as a successor Glucagon CVR Registrar and the assumption by any successor of the obligations of the Glucagon CVR Registrar herein.

(b) Without the consent of the Stockholders Representative or any Holders, Buyer, when authorized by a Board Resolution, and the Rights Agent, in the Rights Agent s sole and absolute discretion, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) to evidence the succession of another Person as a successor Rights Agent and the assumption by any successor of the covenants and obligations of the Rights Agent herein;

(ii) to add to the covenants of Buyer such further covenants, restrictions, conditions or provisions as the Board of Directors shall consider to be for the protection of the Holders; provided, that in each case, such provisions shall not adversely affect the interests of the Holders;

(iii) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement; provided, that in each case, such provisions shall not adversely affect the interests of the Holders; or

(iv) to add, eliminate or change any provision of this Agreement unless such addition, elimination or change is adverse to the interests of the Holders and/or to the interests of the Stockholders Representative.

(c) Promptly after the execution by Buyer and the Rights Agent of any amendment pursuant to the provisions of this Section 5.1, Buyer shall so notify the Stockholders Representative in writing.

Section 5.2 Amendments With Consent of Stockholders Representative or Holders.

(a) Subject to Section 5.1 (which amendments pursuant to Section 5.1 may be made without the consent of the Holders), with the consent of the Stockholders Representative or of the Holders of not less than a majority of the outstanding Glucagon CVRs, whether evidenced in writing or taken at a meeting of the Holders, Buyer, when authorized by a Board Resolution, and the Rights Agent may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, even if such addition, elimination or change is in any way adverse to the interests of the Holders and/or to the interests of the Stockholders Representative. Any such amendment shall be fully valid even if such amendment is signed only by Buyer and the Rights Agent.

(b) Promptly after the execution by Buyer and the Rights Agent of any amendment pursuant to the provisions of this Section 5.2, Buyer shall mail a notice thereof by first-class mail to the Holders at their addresses as they shall appear on the Glucagon CVR Register, setting forth in general terms the substance of such amendment.

Section 5.3 Execution of Amendments.

Before executing any amendment permitted by this Article V, the Rights Agent shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel stating that the execution of such amendment is authorized or permitted by this Agreement, and that all consents, if any, have been obtained in accordance with Section 5.2. The Rights Agent may, but is not obligated to, enter into any such amendment that affects the Rights Agent s own rights, privileges, covenants, immunities, obligations or duties under this Agreement or otherwise.

Section 5.4 Effect of Amendments.

Upon the execution of any amendment under this Article V, this Agreement shall be modified in accordance therewith, such amendment shall form a part of this Agreement for all purposes and the Stockholders Representative and every Holder shall be bound thereby.

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ARTICLE VI

CONSOLIDATION, MERGER, SALE OR CONVEYANCE

Section 6.1 Buyer May Consolidate, Etc.

(a) Buyer shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

(i) the Person formed by such consolidation or into which Buyer is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of Buyer substantially as an entirety (the ***Surviving Person***) shall expressly assume payment (if and to the extent required hereunder) of amounts on all the Glucagon CVRs and the performance of every duty and covenant of this Agreement on the part of Buyer to be performed or observed; and

(ii) Buyer has delivered to the Rights Agent an Officer s Certificate, stating that such consolidation, merger, conveyance, transfer or lease complies with this Article VI and that all conditions precedent herein provided for relating to such transaction have been complied with.

(b) In the event Buyer conveys, transfers or leases its properties and assets substantially as an entirety in accordance with the terms and conditions of this Section 6.1, Buyer and the Surviving Person shall be jointly and severally liable for the payment of the Glucagon CVR Payment Amount and the performance of every duty and covenant of this Agreement on the part of Buyer to be performed or observed.

Section 6.2 Successor Substituted.

Upon any consolidation of or merger by Buyer with or into any other Person, or any conveyance, transfer or lease of the properties and assets substantially as an entirety to any Person in accordance with Section 6.1, the Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of, Buyer under this Agreement with the same effect as if the Surviving Person had been named as Buyer herein, and thereafter the predecessor Person shall be relieved of all obligations and covenants under this Agreement and the Glucagon CVRs.

ARTICLE VII

OTHER PROVISIONS OF GENERAL APPLICATION

Section 7.1 Notices to Rights Agent and Buyer.

Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement shall be sufficient for every purpose hereunder if in writing and delivered personally, or sent by email or sent by certified or registered mail (return receipt requested and first-class postage prepaid) or sent by a nationally recognized overnight courier (with proof of service), addressed as follows, and shall be deemed to have been given upon receipt:

(a) if to the Rights Agent, addressed to it at Mellon Investor Services LLC, 400 S. Hope Street, 4th Floor, Los Angeles, CA 90071, Attn: Mark Cano, or at any other address previously furnished in writing to the Stockholders Representative and Buyer by the Rights Agent in accordance with this Section 7.1 and Section 7.2, with a copy to Mellon Investor Services LLC, 480 Washington Boulevard, Jersey City, NJ 07310, Attn: Legal Department; or

(b) if to Buyer, addressed to it at 10275 Science Center Drive, San Diego, California 92121, email at jhiggins@ligand.com, or at any other address previously furnished in writing to the Rights Agent and the Stockholders Representative by Buyer in accordance with this Section 7.1 and Section 7.2.

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Section 7.2 Notice to Holders or Stockholders Representative.

Where this Agreement provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his, her or its address as it appears in the Glucagon CVR Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Agreement provides for notice to the Stockholders Representative, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and personally delivered or sent by email or sent by a nationally recognized overnight courier (with proof of service) or mailed, first-class postage prepaid, to the Stockholders Representative at 1042-B N. El Camino Real, Suite 430, Encinitas, CA 92024, email at dfhale@biopharmaventures.com, or at any other address previously furnished in writing to the Rights Agent and Buyer by the Stockholders Representative in accordance with Section 7.1 and this Section 7.2. Notwithstanding anything contained herein to the contrary, the information set forth in any notices delivered by Buyer hereunder related to a Glucagon CVR Payment Event or an amendment to this Agreement pursuant to Article V hereof and provided solely to the Stockholders Representative (or a summary of such information) shall also be reported by Buyer on a Form 8-K, 10-Q or 10-K of Buyer filed with the SEC.

Section 7.3 Effect of Headings.

The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 7.4 Successors and Assigns.

All covenants and agreements in this Agreement by Buyer shall bind its successors and assigns, whether so expressed or not.

Section 7.5 Benefits of Agreement.

Nothing in this Agreement, express or implied, shall give to any Person (other than the parties hereto, the Holders and their permitted successors and assigns hereunder) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto, the Holders and their permitted successors and assigns. The Holders shall have no rights or remedies hereunder except as expressly set forth herein.

Section 7.6 Governing Law.

This Agreement and the Glucagon CVRs shall be governed by and construed in accordance with the laws of the State of California without regards to its rules of conflicts of laws; provided, however, that all provisions, regarding the rights, duties, obligations and liabilities of the Rights Agent shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

Section 7.7 Legal Holidays.

In the event that a Glucagon CVR Payment Date shall not be a Business Day, then, notwithstanding any provision of this Agreement to the contrary, any payment required to be made in respect of the Glucagon CVRs on such date need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Glucagon CVR Payment Date.

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Section 7.8 Severability Clause.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein; provided, however, that if any such excluded term, provision, covenant or restriction shall adversely affect the rights, immunities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the court or other tribunal making such determination is authorized and instructed to modify this Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.

Section 7.9 Counterparts.

This Agreement may be signed in any number of counterparts (which may be effectively delivered by facsimile or other electronic means), each of which shall be deemed to constitute but one and the same instrument.

Section 7.10 Termination.

This Agreement shall terminate and be of no further force or effect, and the parties hereto shall have no liability hereunder, on the first day after the Outside Date on which no further dispute is possible. A dispute shall be considered possible if an Objection Period is in progress, or if a Section 7.12 process is in progress, or if any payment or other obligation required pursuant to a final determination made in accordance with Section 7.12 has not yet occurred.

Section 7.11 Entire Agreement.

As it relates to the Rights Agent, this Agreement represents the entire understanding of the parties hereto with reference to the Glucagon CVRs and this Agreement supersedes any and all other oral or written agreements made with respect to the Glucagon CVRs. As it relates to all other parties hereto, this Agreement and the Merger Agreement represent the entire understanding of the parties hereto with reference to the Glucagon CVRs and this Agreement supersedes any and all other oral or written agreements made with respect to the Glucagon CVRs, except for the Merger Agreement. If and to the extent that any provision of this Agreement is inconsistent or conflicts with the Merger Agreement, this Agreement shall govern and be controlling.

Section 7.12 Negotiation; Arbitration.

(a) Before any arbitration pursuant to Section 7.12(b), Buyer and (subject to Section 5.16(a) of the Merger Agreement) the Stockholders Representative shall negotiate in good faith for a period of 30 days to resolve any controversy or claim arising out of or relating to this Agreement or the breach thereof.

(b) After expiration of the 30-day period contemplated by Section 7.12(a), such controversy or claim, including any claims for breach of this Agreement, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Buyer and/or (subject to Section 5.16(a) of the Merger Agreement) the Stockholders Representative may initiate an arbitration for any matter relating to this Agreement. However, in the event of a dispute arising from the delivery of a Notice of Objection, the sole matter to be settled by arbitration shall be whether a Glucagon CVR Payment Event has occurred on or before the Outside Date or whether the calculation of the Glucagon CVR Payment Amount is in error, as applicable. The number of arbitrators shall be three. Within 15 days after the commencement of arbitration, each party shall

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select one person to act as arbitrator, and the two selected shall select a third arbitrator within 15 days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The place of the arbitration shall be San Diego, California. The arbitrators shall be lawyers or retired judges with experience in the life sciences industry and with mergers and acquisitions. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both parties. Any award payable in favor of the Holders or the Stockholders Representative as a result of arbitration shall be paid by Buyer to the Rights Agent to be distributed to the Holders the next January 1 or July 1, in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. Buyer and Stockholders Representative shall pay in equal halves all fees and expenses of the arbitration forum, including the costs and expenses billed by the arbitrators in connection with the performance of their duties described herein; provided, however, that if the arbitrators rule in favor of Buyer, an amount equal to the half of the arbitrators fees and expenses paid by Buyer shall be offset against the soonest Glucagon CVR Payment Amount(s), if any, or any payment to be made thereafter under any of the other CVR Agreements, and if the arbitrators rule in favor of the Holders or the Stockholders Representative, an amount equal to the half of the arbitrators fees and expenses paid by the Stockholders Representative shall be paid by Buyer to the Rights Agent to be distributed to the Holders on the next January 1 or July 1, in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. Each party to the arbitration (which, for the avoidance of doubt, shall not include the Rights Agent) shall be responsible for its own attorney fees, expenses and costs of investigation.

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IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized officers as of the day and year first above written.

LIGAND PHARMACEUTICALS INCORPORATED

By:
Name:
Title:

METABASIS THERAPEUTICS, INC.

By:
Name:
Title:

MELLON INVESTOR SERVICES LLC, as Rights Agent

By:
Name: **Mark Cano**
Title: **Relationship Manager**

DAVID F. HALE, as Stockholders Representative

By:

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Annex E

Form of General CVR Agreement

CONTINGENT VALUE RIGHTS AGREEMENT*

THIS CONTINGENT VALUE RIGHTS AGREEMENT, dated as of [ ] (this ***Agreement*** , is entered into by and among Ligand Pharmaceuticals Incorporated, a Delaware corporation (***Buyer***), Metabasis Therapeutics, Inc., a Delaware corporation (***Target***), David F. Hale, as Stockholders Representative (the ***Stockholders Representative***), and Mellon Investor Services LLC, a New Jersey limited liability company, as Rights Agent (the ***Rights Agent***) and as initial General CVR Registrar (as defined herein).

Preamble

Buyer, Moonstone Acquisition, Inc., a Delaware corporation and wholly-owned subsidiary of Buyer (***Sub***), Target and the Stockholders Representative have entered into an Agreement and Plan of Merger dated as of October 26, 2009 (as amended to date, the ***Merger Agreement***), pursuant to which Sub will merge with and into Target (the ***Merger***), with Target surviving the Merger as a subsidiary of Buyer.

Pursuant to the Merger Agreement, Buyer agreed to create and issue to Target s stockholders of record immediately before the effective time of the Merger, contingent value rights as hereinafter described.

The parties have done all things necessary to make the contingent value rights, when issued pursuant to the Merger Agreement and hereunder, the valid obligations of Buyer and to make this Agreement a valid and binding agreement of Buyer, in accordance with its terms.

NOW, THEREFORE, for and in consideration of the premises and the consummation of the transactions referred to above, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders (as hereinafter defined), as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

(a) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(ii) all accounting terms used herein and not expressly defined herein shall have the meanings assigned to such terms in accordance with United States generally accepted accounting principles, as in effect on the date hereof;

(iii) the words herein, hereof and hereunder and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision;

* Including amendments made by Amendment to Agreement and Plan of Merger dated as of November 25, 2009. The amendments are to the first paragraph of the Preamble, Section 1.1(b) (the definitions of Landlord Agreement and General CVR Payment Amount), Section 2.6, Section 2.7(a) and Section 2.7(e) (deleted).

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(iv) unless the context otherwise requires, words describing the singular number shall include the plural and vice versa, words denoting any gender shall include all genders and words denoting natural Persons shall include corporations, partnerships and other Persons and vice versa; and

(v) all references to including shall be deemed to mean including without limitation.

(b) Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement. The following terms shall have the meanings ascribed to them as follows:

Achievement Certificate has the meaning set forth in Section 2.4(a).

Board of Directors means the board of directors of Buyer.

Board Resolution means a copy of a resolution certified by the secretary or an assistant secretary of Buyer to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Rights Agent.

Business Day means any day other than a Saturday, Sunday or a day on which the banks in New York, New Jersey or California are authorized or obligated by law or executive order to close.

Close of Business on any given date shall mean 5:00 P.M., California time, on such date; provided, however, that if such date is not a Business Day it shall mean 5:00 P.M., California time, on the next succeeding Business Day.

Competitor of Buyer has the same meaning as set forth in the Merger Agreement for Competitor of Parent.

DGAT-1 Program shall mean the Company s program for the development of diacylglycerol acyltransferase-1 (DGAT-1) inhibitors for the treatment of obesity and other metabolic diseases, including all related Intellectual Property and other related rights of the Company, and any and all non-clinical data compiled by the Company, in each case arising from the Company s operation of such program.

Extended Funding Shortfall shall mean the excess, if any, of $8,000,000 over the Funding Buyer incurs during the first 48 months following the Effective Time.

Extended Funding Shortfall Amount means the excess, if any, of (a) the product of the Fraction times 100% of the dollar amount of the Extended Funding Shortfall, minus (b) the sum of the General Program Funding Shortfall Amount, if any, paid by Buyer, and the First Funding Shortfall Amount, if any, paid by Buyer. If it is deemed that no Extended Funding Shortfall Event has occurred, the Extended Funding Shortfall Amount shall be deemed to be zero.

Extended Funding Shortfall Event means the occurrence of the date as of which, pursuant to the Merger Agreement, Buyer is obligated to calculate the Extended Funding Shortfall Amount. If no Funding Extension has been given pursuant to the provisions of *Section 5.15(d)* of the Merger Agreement, no Extended Funding Shortfall Event will be deemed to have occurred.

FBPase Inhibitor Program shall mean the Company s program on the development of fructose-1,6-bisphosphatase (FBPase) inhibitors for the treatment of diabetes, including all related Intellectual Property and other related rights of the Company, and any and all clinical and non-clinical data compiled by the Company, in each case arising from the Company s operation of such program.

First Funding Shortfall shall mean the excess, if any, of $7,000,000 over the Funding Buyer incurs during the first 30 months following the Effective Time.

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First Funding Shortfall Amount means the excess, if any, of (a) the product of the Fraction times 100% of the dollar amount of the First Funding Shortfall, minus (b) the General Program Funding Shortfall Amount, if any, paid by Buyer. If it is deemed that no First Funding Shortfall Event has occurred, the First Funding Shortfall Amount shall be deemed to be zero.

First Funding Shortfall Event means the occurrence of the date as of which, pursuant to the Merger Agreement, Buyer is obligated to calculate the First Funding Shortfall Amount. If such obligation is negated pursuant to the provisions of *Section 5.15(c)* of the Merger Agreement, no First Funding Shortfall Event will be deemed to have occurred.

Fraction means the quotient of (a) the number of Company Shares outstanding as of the Effective Time plus the number of General CVRs issued between the Effective Time and the occurrence of the applicable General CVR Payment Event pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time, minus the number of Dissenting Shares (determined as of the occurrence of the applicable General CVR Payment Event), divided by (b) the sum of the number of Company Shares outstanding as of the Effective Time plus the number of General CVRs issued between the Effective Time and the occurrence of the applicable General CVR Payment Event pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time.

Fund Distribution Date has the meaning set forth in Section 2.4(g).

Funding Shortfall shall mean the excess, if any, of $8,000,000 over the Funding Buyer incurs during the first 42 months following the Effective Time.

Funding Shortfall Amount means the excess, if any, of (a) the product of the Fraction times 100% of the dollar amount of the Funding Shortfall, minus (b) the sum of the General Program Funding Shortfall Amount, if any, paid by Buyer, and the First Funding Shortfall Amount, if any, paid by Buyer. If it is deemed that no Funding Shortfall Event has occurred, the Funding Shortfall Amount shall be deemed to be zero.

Funding Shortfall Event means the occurrence of the date as of which, pursuant to the Merger Agreement, Buyer is obligated to calculate the Funding Shortfall Amount. If a Funding Extension is given pursuant to the provisions of *Section 5.15(d)* of the Merger Agreement, no Funding Shortfall Event will be deemed to have occurred.

General CVR Payment Amount means, as applicable, a General Program Funding Shortfall Amount, a First Funding Shortfall Amount, a Funding Shortfall Amount, an Extended Funding Shortfall Amount, a General Licensing Option Payment Amount, a General Sale Option Payment Amount, a General Licensing Payment Amount, a General Sale Payment Amount, a 7133 Payment Amount, a PeriCor Amount, a QM/MM Amount or a Warrant Exercise Amount; less, in each case (i) 1% (or such lesser percentage as is the maximum permissible pursuant to the following proviso) of such General Program Funding Shortfall Amount, First Funding Shortfall Amount, Funding Shortfall Amount, Extended Funding Shortfall Amount, General Licensing Option Payment Amount, General Sale Option Payment Amount, General Licensing Payment Amount, General Sale Payment Amount, 7133 Payment Amount, PeriCor Amount, QM/MM Amount or Warrant Exercise Amount, as applicable, which amount shall be contributed to the Stockholders Representative Fund; provided that no such amount shall be contributed to the Stockholders Representative Fund to the extent that the sum of such amount and the amount then held in the Stockholders Representative Fund would exceed $300,000, (ii) to the extent applicable in respect thereof, any amount payable by Buyer or the Surviving Corporation to the Landlord pursuant to the terms of Section 10 of the Landlord Agreement and (iii) to the extent applicable in respect thereof, any contingent severance payments payable to the employees that were terminated in Target s May 2009 reduction in force.

General CVR Payment Date means the January 1 or July 1 next following the date (if any and if ever) that a General CVR Payment Amount is payable by Buyer to the Holders, which date shall be established pursuant to Section 2.4.

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General CVR Payment Event means, as applicable, a General Program Funding Shortfall Event, a First Funding Shortfall Event, a Funding Shortfall Event, an Extended Funding Shortfall Event, a General Licensing Option Event, a General Licensing Event, a General Sale Option Event, a General Sale Event, a 7133 Event, a PeriCor Event, a QM/MM Event or a Warrant Exercise Event.

General CVR Register has the meaning set forth in Section 2.3(b).

General CVR Registrar has the meaning set forth in Section 2.3(b).

General CVRs means the General Contingent Value Rights issued by Buyer pursuant to the Merger Agreement and this Agreement.

General Licensing Event means the licensing by Buyer to any Person (other than to Buyer) of all or any portion of a drug candidate or technology or Intellectual Property from a General Program.

General Licensing Option Event means the grant of an option by Buyer to any Person (other than Buyer) to enter into a General Licensing Event.

General Licensing Option Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a General Licensing Option Event with respect to a General Program in which Buyer has not at the time of such General Licensing Option Event made research and/or development investments (that would qualify as Funding expenditures) after the Effective Time of at least $700,000, or (b) 25% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a General Licensing Option Event with respect to a General Program in which Buyer has at the time of such General Licensing Option Event made research and/or development investments (that would qualify as Funding expenditures) after the Effective Time of at least $700,000, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with such General Licensing Option Event (including reasonable attorneys fees and brokers commissions).

General Licensing Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a General Licensing Event with respect to a General Program in which Buyer has not at the time of such General Licensing Event made research and/or development investments (that would qualify as Funding expenditures) after the Effective Time of at least $700,000, or (b) 25% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a General Licensing Event with respect to a General Program in which Buyer has at the time of such General Licensing Event made research and/or development investments (that would qualify as Funding expenditures) after the Effective Time of at least $700,000, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with such General Licensing Event (including reasonable attorneys fees and brokers commissions).

General Program means any one of the drug research and/or development programs conducted before the Merger by Target (including without limitation the DGAT-1 Program, FBPase Inhibitor Program, GK Program, HepDirect Program and Pradefovir Program) other than the Glucagon Program, the 7133 Program and the TR Beta Program (as each of those three programs are defined in the Merger Agreement), and as may be continued after the Merger by Buyer.

General Program Funding Shortfall shall mean the excess, if any, of $350,000 over the Funding Buyer incurs during the first 12 months following the Effective Time for the General Program for which Buyer has incurred the most Funding during the first 12 months following the Effective Time.

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General Program Funding Shortfall Amount means the product of the Fraction times 100% of the dollar amount of the General Program Funding Shortfall. If it is deemed that no General Program Funding Shortfall Event has occurred, the General Program Funding Shortfall Amount shall be deemed to be zero.

General Program Funding Shortfall Event means the occurrence of the date as of which, pursuant to the Merger Agreement, Buyer is obligated to calculate the General Program Funding Shortfall Amount. If such obligation is negated pursuant to the provisions of *Section 5.15(b)* of the Merger Agreement, no General Program Funding Shortfall Event will be deemed to have occurred.

General Sale Event means the consummation of the sale or other similar transfer (that does not qualify as a General Licensing Event) by Buyer to any Person (other than Buyer) of all or any portion of a drug candidate or technology or Intellectual Property from a General Program.

General Sale Option Event means the grant of an option by Buyer to any Person (other than Buyer) to enter into a General Sale Event.

General Sale Option Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a General Sale Option Event with respect to a General Program in which Buyer has not at the time of such General Sale Option Event made research and/or development investments (that would qualify as Funding expenditures) after the Effective Time of at least $700,000, or (b) 25% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a General Sale Option Event with respect to a General Program in which Buyer has at the time of such General Sale Option Event made research and/or development investments (that would qualify as Funding expenditures) after the Effective Time of at least $700,000, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with such General Sale Option Event (including reasonable attorneys fees and brokers commissions).

General Sale Payment Amount means a cash amount equal to the product of the Fraction times (a) 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a General Sale Event with respect to a General Program in which Buyer has not at the time of such General Sale Event made research and/or development investments (that would qualify as Funding expenditures) after the Effective Time of at least $700,000, or (b) 25% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a General Sale Event with respect to a General Program in which Buyer has at the time of such General Sale Event made research and/or development investments (that would qualify as Funding expenditures) after the Effective Time of at least $700,000, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with such General Sale Event (including reasonable attorneys fees and brokers commissions).

GK Program shall mean the Company s program for the development of glucose kinase (GK) activators for the treatment of type 2 diabetes and other metabolic diseases, including all related Intellectual Property and other related rights of the Company, and any and all non-clinical data compiled by the Company, in each case arising from the Company s operation of such program.

HepDirect Program means the Company s active program for the development of a liver-specific drug targeting technology for chemically modifying the molecule to render it inactive until the modification is cleaved off by a liver-specific enzyme, including all related Intellectual Property and other related rights of the Company, and any and all clinical and non-clinical data compiled by the Company, in each case arising from the Company s operation of such program.

Holder means a Person in whose name a General CVR is registered in the General CVR Register.

Landlord means ARE-SD Region No. 24, LLC.

Landlord Agreement means the Agreement for Termination of Lease and Voluntary Surrender of Premises dated July 21, 2009 between the Company and the Landlord, including any amendments thereto entered into before the Effective Time.

Non-Achievement Certificate has the meaning set forth in Section 2.4(b).

Notice of Objection has the meaning set forth in Section 2.4(c).

Objection Period has the meaning set forth in Section 2.4(c).

Officer s Certificate means a certificate signed by the chief executive officer, president, chief financial officer, any vice president, the controller, the treasurer or the secretary, in each case, of Buyer, in his or her capacity as such an officer, and delivered to the Rights Agent.

Outside Date means the later to occur of (a) the 10th anniversary of the date hereof or (b) the last potential General CVR Payment Date pursuant to a General CVR Payment Event which occurred before the 10th anniversary of the date hereof; provided, that in the event of a General Licensing Option Event or a General Sale Option Event, the Outside Date with respect to the optioned asset shall not occur before the earliest of the exercise, expiration or termination of such option.

PeriCor Agreements means together: (a) that certain License Agreement dated November 10, 2000 by and between Dennis T. Mangano, Ph.D., M.D. and Target, as amended by that certain License Agreement dated October 12, 2004 by and between Dennis T. Mangano, Ph.D., M.D. and Target; and (b) that certain Letter Agreement dated August 14, 2007, by and among Schering Corporation, Dennis T. Mangano, Ph.D., M.D., Advanced Genomic Therapeutics Company, LLC, PeriCor Therapeutics, Inc. and Target, each as amended from time to time.

PeriCor Amount means the product of the Fraction times 60% of the Proceeds to Buyer (net of any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with the PeriCor Event (including reasonable attorneys fees and brokers commissions)) of any PeriCor Event.

PeriCor Event means (a) the receipt by Buyer or the Surviving Corporation of cash from any dividend on or any sale or transfer of all or any portion of the 1,010,000 shares of common stock of PeriCor Therapeutics, Inc., which were owned by Target before the Merger, (b) the receipt by Buyer or the Surviving Corporation of a milestone payment or royalty payment pursuant to the PeriCor Agreements or (c) the full or partial sale, surrender or transfer by Buyer or the Surviving Corporation to PeriCor Therapeutics, Inc. or any other third party of rights to receive milestone payments under the PeriCor Agreements, rights to receive royalty payments under the PeriCor Agreements, or all or any portion of a drug candidate or technology or Intellectual Property from the drug development program licensed pursuant to the PeriCor Agreements.

Person shall mean any individual, firm, corporation, limited liability company, partnership, trust or other entity, and shall include any successor (by merger or otherwise) thereof or thereto.

Pradefovir Program shall mean the Company s program for the development of pradefovir for the treatment of patients with hepatitis B, including all related Intellectual Property and other related rights of the Company, and any and all clinical and non-clinical data compiled by the Company, or its collaboration partners, arising from the operation of such program.

QM/MM Amount means a cash amount equal to the product of the Fraction times 50% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time after the Effective Time and before the Outside Date, in connection with a QM/MM Event, less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates, in connection with such QM/MM Event (including reasonable attorneys fees and brokers commissions).

QM/MM Event means the consummation of the sale or other similar transfer by Buyer to any Person (other than Buyer) of all or any portion of the QM/MM Technology.

QM/MM Technology shall mean the Company s proprietary computer modeling technology used for the discovery and optimization of potential drug candidates, including all associated software code.

Rights Agent means the Rights Agent named in the first paragraph of this Agreement, until a successor Rights Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter Rights Agent shall mean such successor Rights Agent.

Rights Agent Fees and Expenses means the agreed-upon fees and expenses of the Rights Agent to act in such capacity pursuant to the terms of this Agreement.

7133 Event means, as applicable, a 7133 Licensing Option Event, a 7133 Licensing Event, a 7133 Sale Option Event or a 7133 Sale Event.

7133 Licensing Event means the licensing by Buyer to any Person (other than to Buyer) of all or any portion of a drug candidate or technology or Intellectual Property from either the HepDirect Program or the 7133 Program.

7133 Licensing Option Event means the grant of an option by Buyer to any Person (other than Buyer) to enter into a 7133 Licensing Event.

7133 Licensing Option Payment Amount means a cash amount equal to the product of the Fraction times (a) 90% of the aggregate Proceeds actually received by Target or by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Licensing Option Event which occurs after October 1, 2009 and on or before the sixth-month anniversary of the Effective Time, (b) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Licensing Option Event which occurs after the sixth-month anniversary of the Effective Time and on or before the 24th-month anniversary of the Effective Time, or (c) 10% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Licensing Option Event which occurs after the 24th-month anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates (including, but only from and after October 1, 2009, Target), in connection with the 7133 Licensing Option Event (including reasonable attorneys fees and brokers commissions).

7133 Licensing Payment Amount means a cash amount equal to the product of the Fraction times (a) 90% of the aggregate Proceeds actually received by Target or by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Licensing Event which occurs after October 1, 2009 and on or before the sixth-month anniversary of the Effective Time, (b) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Licensing Event which occurs after the sixth-month anniversary of the Effective Time and on or before the 24th-month anniversary of the Effective Time, or (c) 10% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Licensing Event which occurs after the 24th-month anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates (including, but only from and after October 1, 2009, Target), in connection with the 7133 Licensing Event (including reasonable attorneys fees and brokers commissions).

7133 Payment Amount means, as applicable, a 7133 Licensing Option Payment Amount, a 7133 Sale Option Payment Amount, a 7133 Licensing Payment Amount or a 7133 Sale Payment Amount.

7133 Program means the program conducted before the Merger by Target intended to create a HepDirect prodrug of AraCMP for the treatment of hepatocellular carcinoma, and as may be continued after the Merger by Buyer.

7133 Sale Event means the consummation of the sale or other similar transfer (that does not qualify as a 7133 Licensing Event) by Buyer to any Person (other than Buyer) of all or any portion of a drug candidate or technology or Intellectual Property from the 7133 Program.

7133 Sale Option Event means the grant of an option by Buyer to any Person (other than Buyer) to enter into a 7133 Sale Event.

7133 Sale Option Payment Amount means a cash amount equal to the product of the Fraction times (a) 90% of the aggregate Proceeds actually received by Target or by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Sale Option Event which occurs after October 1, 2009 and on or before the sixth-month anniversary of the Effective Time, (b) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Sale Option Event which occurs after the sixth-month anniversary of the Effective Time and on or before the 24th-month anniversary of the Effective Time, or (c) 10% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Sale Option Event which occurs after the 24th-month anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates (including, but only from and after October 1, 2009, Target), in connection with the 7133 Sale Option Event (including reasonable attorneys fees and brokers commissions).

7133 Sale Payment Amount means a cash amount equal to the product of the Fraction times (a) 90% of the aggregate Proceeds actually received by Target or by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Sale Event which occurs after October 1, 2009 and on or before the sixth-month anniversary of the Effective Time, (b) 30% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Sale Event which occurs after the sixth-month anniversary of the Effective Time and on or before the 24th-month anniversary of the Effective Time, or (c) 10% of the aggregate Proceeds actually received by Buyer, or any of its subsidiaries or Affiliates, at any time before the Outside Date, in connection with a 7133 Sale Event which occurs after the 24th-month anniversary of the Effective Time, in each case less any out-of-pocket costs and expenses reasonably incurred by Buyer, or any of its subsidiaries or Affiliates (including, but only from and after October 1, 2009, Target), in connection with the 7133 Sale Event (including reasonable attorneys fees and brokers commissions).

Surviving Person has the meaning set forth in Section 6.1(a)(i).

Warrant Exercise Amount means the product of the Fraction times 100% of the amount of cash received by Buyer or the Surviving Corporation upon a Warrant Exercise Event. (It is understood that net-exercise of a warrant will not be deemed to involve a Warrant Exercise Amount.)

Warrant Exercise Event means the receipt by Buyer or the Surviving Corporation of cash from the exercise, at any time after the Effective Time, of any common stock purchase warrants of Target which were outstanding as of the Effective Time.

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ARTICLE II

CONTINGENT VALUE RIGHTS

Section 2.1 Issuance of General CVRs; Appointment of Rights Agent.

(a) The General CVRs shall be issued pursuant to the Merger Agreement at the time and in the manner set forth in the Merger Agreement or pursuant to the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time.

(b) Buyer hereby appoints the Rights Agent to act as rights agent for Buyer in accordance with the express terms and conditions hereinafter set forth in this Agreement (and no implied terms or conditions), and the Rights Agent hereby accepts such appointment.

(c) To the extent permitted by applicable Legal Requirements, it is expressly agreed that in no event shall any Holders (as opposed to the Stockholders Representative) or any former stockholders of Target (as opposed to the Stockholders Representative) have, after the Effective Time, any power or right to commence or join in any Legal Proceeding based on or arising out of this Agreement or the Merger Agreement.

Section 2.2 Transferability.

At the option of a respective holder thereof, the General CVRs may be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, but only in accordance with Section 2.3 hereof and in compliance with all applicable Legal Requirements.

Section 2.3 No Certificate; Registration; Registration of Transfer; Change of Address.

(a) The General CVRs shall be issued in book-entry form only and shall not be evidenced by a certificate or other instrument.

(b) The Rights Agent shall keep a register (the ***General CVR Register***) for the registration of General CVRs. The Rights Agent is hereby initially appointed General CVR registrar and transfer agent (***General CVR Registrar***) for the purpose of registering General CVRs and transfers of General CVRs as herein provided. Upon any change in the identity of the Rights Agent, the successor Rights Agent shall automatically also become the successor General CVR Registrar.

(c) Every request made to transfer a General CVR must be in writing and accompanied by a written instrument or instruments of transfer and any other documentation requested by Buyer or General CVR Registrar, in a form reasonably satisfactory to Buyer and the General CVR Registrar, properly completed and duly executed by the registered Holder or Holders thereof or by the duly appointed legal representative thereof or by a duly authorized attorney, such signature to be guaranteed by a participant in a recognized Signature Guarantee Medallion Program. Upon receipt of such written request and materials, and all other reasonably necessary information, the General CVR Registrar shall register the transfer of the General CVRs in the General CVR Register. All duly transferred General CVRs registered in the General CVR Register shall be the valid obligations of Buyer, evidencing the same right and shall entitle the transferee to the same benefits and rights under this Agreement, as those previously held by the transferor. No transfer of a General CVR shall be valid until registered in the General CVR Register, and any transfer not duly registered in the General CVR Register will not be honored by Buyer or the Rights Agent until it is so registered, and then it will be honored only prospectively. Any transfer or assignment of the General CVRs shall be without charge (other than the cost of any tax or charge that may be payable in respect of such transfer or assignment, which shall be the responsibility of the transferor) to the Holder. The Rights Agent shall have no duty or obligation under any Section of this Agreement that requires the payment of taxes or charges unless and until it is satisfied that such taxes and/or charges have been or will be paid.

(d) A Holder may make a written request to the General CVR Registrar to change such Holder s address of record in the General CVR Register. The written request must be duly executed by the Holder and conform to such other reasonable requirements as the Rights Agent may from time to time establish. Upon receipt of such proper written request, the General CVR Registrar shall promptly record the change of address in the General CVR Register.

(e) Upon reasonable written request of the Stockholders Representative, the Rights Agent shall (at the Stockholders Representative s expense) promptly provide a copy of the General CVR Register to the Stockholders Representative.

Section 2.4 Payment Procedures.

(a) Promptly following the occurrence of a General CVR Payment Event, but in no event later than five Business Days after the occurrence of a General CVR Payment Event, Buyer shall deliver to the Rights Agent and the Stockholders Representative a certificate (the ***Achievement Certificate***), certifying that the Holders are entitled to receive a General CVR Payment Amount (and setting forth the calculation of such General CVR Payment Amount), and shall also deliver to the Rights Agent the indicated General CVR Payment Amount in cash. Until such Achievement Certificate is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that a General CVR Payment Event has not occurred. No transaction described in Section 6.1(a) hereof shall give the Holders the right to receive a General CVR Payment Amount. Such cash amount deposited with the Rights Agent shall, pending its disbursement to such holders, be invested by the Rights Agent in (i) direct obligations of the United States of America, (ii) obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest, or (iii) money market funds investing solely in a combination of the foregoing. Any interest and other income resulting from such investments shall be applied first to the satisfaction of the Rights Agent Fees and Expenses, and any remainder (the ***Remainder***) shall be paid to the Holders as set forth in Section 2.4(e) below. The Rights Agent must receive federal or other immediately available funds before 1:00 p.m., Eastern Time, on the funding date in order for such funds to be so invested on such date. Funds received after such time on the funding date will not be so invested until the following Business Day. Except as expressly provided above, the Rights Agent will not be obligated to calculate or pay interest to any Holder or any other party.

(b) If no General CVR Payment Event has occurred on or before the Outside Date, then, within five Business Days after the Outside Date, Buyer shall deliver to the Rights Agent and the Stockholders Representative a certificate, stating that the General CVR Payment Event did not occur (the ***Non-Achievement Certificate***). Until such Non-Achievement Certificate is received by the Rights Agent, the Rights Agent shall have no duties or obligations with respect to the Outside Date, and the Rights Agent shall have no duties or obligations to monitor or determine the Outside Date.

(c) Subject to Section 5.16(a) of the Merger Agreement, within 45 calendar days after delivery by Buyer of a Non-Achievement Certificate or Achievement Certificate (the ***Objection Period***), the Stockholders Representative may deliver a written notice to Buyer (with a copy to the Rights Agent) specifying that the Stockholders Representative objects to (i) the determination of Buyer that no General CVR Payment Event occurred on or before the Outside Date or (ii) the calculation of the General CVR Payment Amount, as applicable (a ***Notice of Objection***), and stating the reason upon which the Stockholders Representative has determined that (A) the General CVR Payment Event has occurred on or before the Outside Date or (B) the calculation of the General CVR Payment Amount is in error, as applicable. Any dispute arising from a Notice of Objection shall be resolved in accordance with the procedure set forth in Section 7.12, which decision shall be binding on the parties hereto and every Holder.

(d) If a Notice of Objection with respect to a Non-Achievement Certificate has not been delivered to Buyer within the Objection Period, then the Holders shall have no right to receive the General CVR Payment Amount, and Buyer and the Rights Agent shall have no further obligations with respect to the General CVR Payment

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Amount. If a Notice of Objection with respect to an Achievement Certificate has not been delivered to Buyer within the Objection Period, then the Holders shall have no right to assert that the calculation of the General CVR Payment Amount is in error.

(e) If Buyer delivers an Achievement Certificate to the Rights Agent and the Stockholders Representative or if the General CVR Payment Amount is determined to be payable pursuant to Section 2.4(c) above, Buyer shall establish a General CVR Payment Date on the January 1 or July 1 which next follows the date of the Achievement Certificate or the date of final determination pursuant to Section 2.4(c) above, as applicable, and deliver written notice to the Rights Agent of such determination at least five (5) Business Days before such date. Until such notice is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that the General CVR Payment Date has not occurred. The Rights Agent shall have no duty or obligation to establish any payment amount or payment date with respect to the General CVR Payment Date. Upon receipt of such written notice and all other necessary information, the Rights Agent will, on such General CVR Payment Date, distribute the General CVR Payment Amount and the Remainder to the Holders (each Holder being entitled to receive its *pro rata* share of the General CVR Payment Amount and the Remainder based on the number of General CVRs held (as of the third Business Day before the General CVR Payment Date) by such Holder as reflected on the General CVR Register) by check mailed to the address of each such respective Holder as then reflected in the General CVR Register.

(f) Buyer shall be entitled to deduct and withhold, or cause to be deducted or withheld, from each General CVR Payment Amount otherwise payable pursuant to this Agreement, such amounts as Buyer or the applicable subsidiary of Buyer is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld or paid over to or deposited with the relevant governmental entity, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Holder in respect of which such deduction and withholding was made.

(g) On such date following the Outside Date as the holders of at least 20% of the outstanding General CVRs shall request via two Business Day prior written notice to the Stockholders Representative, the Stockholders Representative shall deliver to the Rights Agent in cash any amount remaining available in the Stockholders Representative Fund together with written instructions regarding the distribution of such amount (including the names and addresses of the applicable Holders and the breakdown of amounts to be distributed), and the Rights Agent will, within five Business Days of receipt of such instructions and amount (such date the ***Fund Distribution Date***), distribute such amount in accordance with such instructions to the Holders of the General CVRs, the Glucagon CVRs, the TR Beta CVRs and the Roche CVRs (each Holder being entitled to receive its *pro rata* share of such amount based on the number of General CVRs, Glucagon CVRs, TR Beta CVRs and Roche CVRs held (as of the Fund Distribution Date) by such Holder as reflected in the General CVR Register, the Glucagon CVR Register, the TR Beta CVR Register and the Roche CVR Register (as defined herein and in the Glucagon CVR Agreement, the TR Beta CVR Agreement and the Roche CVR Agreement) by check mailed to the address of each such respective Holder as reflected in the General CVR Register, the Glucagon CVR Register, the TR Beta CVR Register and the Roche CVR Register as of the Close of Business on the last Business Day before the Fund Distribution Date. Until such written instructions are received by the Rights Agent, the Rights Agent shall not be obligated to take any action with respect to this paragraph. After the Fund Distribution Date, the Stockholders Representative shall be relieved of any and all duties and obligations under the Merger Agreement or any of the CVR Agreements.

(h) Subject to prior execution and delivery by the Stockholders Representative to Buyer and Target of a reasonable and customary confidentiality/nonuse agreement, Buyer shall promptly furnish to the Stockholders Representative all information and documentation in connection with this Agreement and the General CVRs that the Stockholders Representative may reasonably request in connection with the determination of whether a General CVR Payment Event has occurred or whether the calculation of a General CVR Payment Amount is in error, as applicable. Subject to prior execution and delivery by the applicable Holders to Buyer and Target of a

reasonable and customary confidentiality/nonuse agreement, the Stockholders Representative may forward any information and documentation it receives to the Holders who request such information, but the Stockholders Representative covenants and agrees that in no event shall the Stockholders Representative provide any such information or documentation to any Holder who (i) is a Competitor of Buyer or (ii) holds fewer than 1% of the total number of General CVRs.

Section 2.5 No Voting, Dividends or Interest; No Equity or Ownership Interest in Buyer.

(a) The General CVRs shall not have any voting or dividend rights, and interest shall not accrue on any amounts payable on the General CVRs to any Holder.

(b) The CVRs shall not represent any equity or ownership interest in Buyer (or in any constituent company to the Merger) or in any drug development program or Intellectual Property or other asset. The rights of the holders of General CVRs are limited to those expressly set forth in this Agreement, and such holders sole right to receive property hereunder is the right to receive cash from Buyer through the Rights Agent in accordance with the terms hereof.

Section 2.6 Sole Discretion and Decision Making Authority; No Fiduciary Duty.

Notwithstanding anything contained herein to the contrary, Buyer shall have sole discretion and decision making authority, which shall be exercised in good faith and with commercial reasonableness, (a) over any continued operation of, development of or investment in any or all of the General Programs, (b) over when (if ever) and whether to pursue, or enter into, a licensing agreement and/or sale agreement and/or similar transfer agreement and/or agreement for the grant of an option to enter into any such transaction with respect to a drug candidate or technology or Intellectual Property from any or all of the General Programs, the 7133 Program or the QM/MM Technology, and upon what terms and conditions, and (c) over resolution of any third party claims relating to Contingent Payments. Without limitation, in no event shall declining to effect a General Licensing Option Event, a General Licensing Event, a General Sale Option Event, a General Sale Event, a 7133 Event, a PeriCor Event or a QM/MM Event on terms and conditions that create a commercially unreasonable risk of liability on the part of Buyer be deemed not to satisfy the in good faith and with commercial reasonableness standard.

Section 2.7 Satisfaction of Contingent Payments. Notwithstanding anything herein to the contrary:

(a) It is understood that upon the occurrence of certain payment events under this Agreement and the other CVR Agreements, the Landlord may be entitled to payments pursuant to the terms of Section 10 of the Landlord Agreement and the employees that were terminated in Target s May 2009 reduction in force may be entitled to contingent severance payments pursuant to their respective severance arrangements (together, and including any payments to resolve claims arising in connection therewith, the ***Contingent Payments***).

(b) In general, such Contingent Payments are to be satisfied first from amounts otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event, but in some instances the full amount payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event will be less than the Contingent Payments owing in respect of such payment event.

(c) In each case described in Section 2.7(b) above, 100% of the amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such payment event will be paid by Buyer directly to the beneficiaries of the Contingent Payments rather than to or for the benefit of the holders of the CVRs under the applicable CVR Agreement, and the remainder of the Contingent Payments owing in respect of such payment event (the ***Excess***) shall be paid by Buyer directly to the beneficiaries of the Contingent Payments.

(d) If an Excess is paid by Buyer pursuant to Section 2.7(c) of this Agreement or of any of the other CVR Agreements, then upon the next payment event under this Agreement or under any of the other CVR Agreements (even if not the same CVR Agreement in connection with which the Excess was paid), Buyer shall withhold from any amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such (new) payment event, and shall keep for Buyer s own account to reimburse Buyer for having paid the Excess, an amount equal to 100% of the Excess (or, if less, 100% of the amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of such (new) payment event). If Buyer is not thereby reimbursed for the entire Excess, the shortfall shall be rolled forward to be satisfied in the same manner by withholding from any amount otherwise payable for the benefit of the holders of the CVRs under the applicable CVR Agreement in respect of the next-to-occur payment event under any one of the CVR Agreements (even if not the same CVR Agreement in connection with which the Excess was paid or in connection with which the Excess was partially satisfied).

ARTICLE III

THE RIGHTS AGENT

Section 3.1 Certain Duties and Responsibilities.

The Rights Agent shall be authorized and protected and shall not have any liability for, or in respect of any actions taken, suffered or omitted to be taken by it in connection with its acceptance and administration of this Agreement and the exercise and performance of its duties hereunder, except to the extent of its own willful misconduct, bad faith or gross negligence (each as determined by a final, non-appealable judgment of a court of competent jurisdiction). No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

Section 3.2 Certain Rights of Rights Agent.

The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Rights Agent. In addition:

(a) the Rights Agent may rely and shall be authorized and protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, power of attorney, endorsement, affidavit, letter or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Rights Agent shall not be deemed to have knowledge of any event of which it was supposed to receive notice thereof hereunder but as to which no notice was provided, and the Rights Agent shall be fully protected and shall incur no liability for failing to take any action in connection therewith unless and until it has received such notice;

(b) whenever the Rights Agent shall deem it necessary or desirable that any fact or matter be proved or established by Buyer before taking, suffering or omitting to take any action hereunder, the Rights Agent may, in the absence of willful misconduct, bad faith or gross negligence on its part (each as determined by a final, non-appealable judgment of a court of competent jurisdiction), request and rely upon an Officer s Certificate from Buyer with respect to such fact or matter; and such certificate shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Agreement in reliance upon such certificate. The Rights Agent shall be fully authorized and protected in relying upon the most recent instructions received from Buyer. In the event the Rights Agent believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Rights Agent hereunder, the Rights Agent, may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to Buyer or any other

person or entity for refraining from taking such action, unless the Rights Agent receives written instructions from Buyer that eliminates such ambiguity or uncertainty to the satisfaction of the Rights Agent;

(c) the Rights Agent may engage and consult with counsel of its selection (who may be legal counsel for Buyer and/or an employee of the Rights Agent) and the advice of such counsel or any opinion of counsel shall be full and complete authorization and protection to the Rights Agent in respect of any action taken, suffered or omitted to be taken by it hereunder in reliance thereon in the absence of willful misconduct, bad faith or gross negligence on the part of the Rights Agent (as determined by a final, non-appealable judgment of a court of competent jurisdiction);

(d) in the event of arbitration, the Rights Agent may engage and consult with tax experts, valuation firms and other experts and third parties that it, in its sole and absolute discretion, deems appropriate or necessary to enable it to discharge its duties hereunder;

(e) the permissive rights of the Rights Agent to do things enumerated in this Agreement shall not be construed as a duty;

(f) the Rights Agent shall not be required to give any note or surety in respect of the execution of such powers or otherwise in respect of the premises;

(g) Buyer agrees to indemnify the Rights Agent for, and hold the Rights Agent harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, suit, settlement, cost or expense (including, without limitation, the fees and expenses of legal counsel), incurred without willful misconduct, bad faith or gross negligence on the part of the Rights Agent (each as determined by a final, non-appealable judgment of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Rights Agent in connection with the acceptance and administration of this Agreement, or the exercise or performance of its duties hereunder, including without limitation, the costs and expenses of defending against any claim of liability hereunder, directly or indirectly. The costs and expenses incurred in enforcing this right of indemnification shall be paid by Buyer. The provisions of this Article 3 shall survive the termination of this Agreement, the payment of any distributions made pursuant to this Agreement, and the resignation, replacement or removal of the Rights Agent hereunder, including, without limitation, the costs and expenses of defending a claim of liability hereunder;

(h) Except as paid pursuant to Section 2.4(a) of this Agreement, Buyer agrees to pay the Rights Agent Fees and Expenses in connection with this Agreement, as set forth on Schedule 1 hereto, and further including reimbursement of the Rights Agent for all taxes and charges, reasonable expenses and other charges of any kind and nature incurred by the Rights Agent in the execution of this Agreement (other than taxes measured by the Rights Agent s net income) and reimbursement for all reasonable and necessary out-of-pocket expenses (including reasonable fees and expenses of the Rights Agent s counsel and agent) paid or incurred by it in connection with the preparation, negotiation, delivery, amendment, administration and execution by the Rights Agent of this Agreement and its duties hereunder;

(i) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by Buyer only;

(j) The Rights Agent shall not have any liability for or be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof; nor shall it be responsible for any breach by Buyer of any covenant or failure by Buyer to satisfy conditions contained in this Agreement;

(k) Buyer agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of its duties under this Agreement;

(l) The Rights Agent and any stockholder, affiliate, director, officer, employee or agent of the Rights Agent may buy, sell or deal in any of the Rights or other securities of Buyer or become pecuniarily interested in any transaction in which Buyer may be interested, or contract with or lend money to Buyer or

otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent or any stockholder, affiliate, director, officer, employee or agent from acting in any other capacity for Buyer or for any other Person; and

(m) The Rights Agent shall not be subject to, nor be required to comply with, or determine if any person or entity has complied with, the Merger Agreement or any other agreement between or among any of Buyer, Target, Stockholders Representative or any other parties hereto, even though reference thereto may be made in this Agreement, or to comply with any notice, instruction, direction, request or other communication, paper or document other than as expressly set forth in this Agreement.

Section 3.3 Resignation and Removal; Appointment of Successor.

(a) The Rights Agent may resign and be discharged from its duties at any time by giving written notice thereof to Buyer and the Stockholders Representative specifying a date when such resignation shall take effect, which notice shall be sent at least 30 days before the date so specified.

(b) If the Rights Agent shall resign, be removed or become incapable of acting, Buyer, by way of a Board Resolution, shall promptly appoint a qualified successor Rights Agent who may (but need not) be a Holder but shall not be an officer of Buyer. The successor Rights Agent so appointed shall, forthwith upon its acceptance of such appointment in accordance with this Section 3.3(b), become the successor Rights Agent.

(c) Buyer shall give notice to the Stockholders Representative of each resignation and each removal of a Rights Agent and each appointment of a successor Rights Agent. Such notice shall include the name and address of the successor Rights Agent. If Buyer fails to send such notice within ten days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent shall cause such notice to be mailed at the expense of Buyer.

Section 3.4 Acceptance of Appointment by Successor.

Every successor Rights Agent appointed hereunder shall execute, acknowledge and deliver to Buyer, the Stockholders Representative and the retiring Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and thereupon such successor Rights Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Rights Agent; provided, that upon the request of Buyer, the Stockholders Representative or the successor Rights Agent, such retiring Rights Agent shall execute and deliver an instrument transferring to such successor Rights Agent all the rights, powers and trusts of the retiring Rights Agent and shall cooperate in the transfer of all relevant data, including the General CVR Register, to the successor Rights Agent.

ARTICLE IV

COVENANTS

Section 4.1 List of Holders.

Buyer shall furnish or cause to be furnished to the Rights Agent in such form as Buyer receives from its transfer agent (or other agent performing similar services for Buyer), the names, addresses and General CVR holdings of the Holders, within five Business Days after the effective time of the Merger. Buyer shall furnish or cause to be furnished supplementally to the Rights Agent the names, addresses and General CVR holdings of any persons acquiring General CVRs upon the exercise of Target common stock purchase warrants which were outstanding as of the Effective Time, forthwith after each such exercise.

Section 4.2 Payment of General CVR Payment Amount.

Buyer shall duly and promptly pay the General CVR Payment Amount, if any, in immediately available funds, to the Rights Agent to be distributed to the Holders in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. The Rights Agent shall have no liability of any kind, and shall not be obligated to make any payments, unless and until it receives the General CVR Payment Amount from Buyer.

Section 4.3 Assignments.

Buyer shall not, in whole or in part, assign any of its obligations under this Agreement other than in accordance with the terms of Section 6.1 hereof.

Section 4.4 Availability of Information.

(a) Buyer will comply with all applicable periodic public information reporting requirements of the SEC to which it may from time to time be subject. Buyer will provide to the Rights Agent all information in connection with this Agreement and the General CVRs that the Rights Agent may reasonably request.

ARTICLE V

AMENDMENTS

Section 5.1 Amendments Without Consent of Stockholders Representative/Holders.

(a) Without the consent of the Stockholders Representative or any Holders or the Rights Agent, Buyer, when authorized by a Board Resolution, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) to evidence the succession of another Person to Buyer and the assumption by any such successor of the covenants of Buyer herein in a transaction contemplated by Section 6.1 hereof; or

(ii) to evidence the termination of the General CVR Registrar and the succession of another Person as a successor General CVR Registrar and the assumption by any successor of the obligations of the General CVR Registrar herein.

(b) Without the consent of the Stockholders Representative or any Holders, Buyer, when authorized by a Board Resolution, and the Rights Agent, in the Rights Agent s sole and absolute discretion, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) to evidence the succession of another Person as a successor Rights Agent and the assumption by any successor of the covenants and obligations of the Rights Agent herein;

(ii) to add to the covenants of Buyer such further covenants, restrictions, conditions or provisions as the Board of Directors shall consider to be for the protection of the Holders; provided, that in each case, such provisions shall not adversely affect the interests of the Holders;

(iii) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement; provided, that in each case, such provisions shall not adversely affect the interests of the Holders; or

(iv) to add, eliminate or change any provision of this Agreement unless such addition, elimination or change is adverse to the interests of the Holders and/or to the interests of the Stockholders Representative.

(c) Promptly after the execution by Buyer and the Rights Agent of any amendment pursuant to the provisions of this Section 5.1, Buyer shall so notify the Stockholders Representative in writing.

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Section 5.2 Amendments With Consent of Stockholders Representative or Holders.

(a) Subject to Section 5.1 (which amendments pursuant to Section 5.1 may be made without the consent of the Holders), with the consent of the Stockholders Representative or of the Holders of not less than a majority of the outstanding General CVRs, whether evidenced in writing or taken at a meeting of the Holders, Buyer, when authorized by a Board Resolution, and the Rights Agent may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, even if such addition, elimination or change is in any way adverse to the interests of the Holders and/or to the interests of the Stockholders Representative. Any such amendment shall be fully valid even if such amendment is signed only by Buyer and the Rights Agent.

(b) Promptly after the execution by Buyer and the Rights Agent of any amendment pursuant to the provisions of this Section 5.2, Buyer shall mail a notice thereof by first-class mail to the Holders at their addresses as they shall appear on the General CVR Register, setting forth in general terms the substance of such amendment.

Section 5.3 Execution of Amendments.

Before executing any amendment permitted by this Article V, the Rights Agent shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel stating that the execution of such amendment is authorized or permitted by this Agreement, and that all consents, if any, have been obtained in accordance with Section 5.2. The Rights Agent may, but is not obligated to, enter into any such amendment that affects the Rights Agent s own rights, privileges, covenants, immunities, obligations or duties under this Agreement or otherwise.

Section 5.4 Effect of Amendments.

Upon the execution of any amendment under this Article V, this Agreement shall be modified in accordance therewith, such amendment shall form a part of this Agreement for all purposes and the Stockholders Representative and every Holder shall be bound thereby.

ARTICLE VI

CONSOLIDATION, MERGER, SALE OR CONVEYANCE

Section 6.1 Buyer May Consolidate, Etc.

(a) Buyer shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

(i) the Person formed by such consolidation or into which Buyer is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of Buyer substantially as an entirety (the ***Surviving Person***) shall expressly assume payment (if and to the extent required hereunder) of amounts on all the General CVRs and the performance of every duty and covenant of this Agreement on the part of Buyer to be performed or observed; and

(ii) Buyer has delivered to the Rights Agent an Officer s Certificate, stating that such consolidation, merger, conveyance, transfer or lease complies with this Article VI and that all conditions precedent herein provided for relating to such transaction have been complied with.

(b) In the event Buyer conveys, transfers or leases its properties and assets substantially as an entirety in accordance with the terms and conditions of this Section 6.1, Buyer and the Surviving Person shall be jointly and severally liable for the payment of the General CVR Payment Amount and the performance of every duty and covenant of this Agreement on the part of Buyer to be performed or observed.

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Section 6.2 Successor Substituted.

Upon any consolidation of or merger by Buyer with or into any other Person, or any conveyance, transfer or lease of the properties and assets substantially as an entirety to any Person in accordance with Section 6.1, the Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of, Buyer under this Agreement with the same effect as if the Surviving Person had been named as Buyer herein, and thereafter the predecessor Person shall be relieved of all obligations and covenants under this Agreement and the General CVRs.

ARTICLE VII

OTHER PROVISIONS OF GENERAL APPLICATION

Section 7.1 Notices to Rights Agent and Buyer.

Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement shall be sufficient for every purpose hereunder if in writing and delivered personally, or sent by email or sent by certified or registered mail (return receipt requested and first-class postage prepaid) or sent by a nationally recognized overnight courier (with proof of service), addressed as follows, and shall be deemed to have been given upon receipt:

(a) if to the Rights Agent, addressed to it at Mellon Investor Services LLC, 400 S. Hope Street, 4th Floor, Los Angeles, CA 90071, Attn: Mark Cano, or at any other address previously furnished in writing to the Stockholders Representative and Buyer by the Rights Agent in accordance with this Section 7.1 and Section 7.2, with a copy to Mellon Investor Services LLC, 480 Washington Boulevard, Jersey City, NJ 07310, Attn: Legal Department; or

(b) if to Buyer, addressed to it at 10275 Science Center Drive, San Diego, California 92121, email at jhiggins@ligand.com, or at any other address previously furnished in writing to the Rights Agent and the Stockholders Representative by Buyer in accordance with this Section 7.1 and Section 7.2.

Section 7.2 Notice to Holders or Stockholders Representative.

Where this Agreement provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his, her or its address as it appears in the General CVR Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Agreement provides for notice to the Stockholders Representative, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and personally delivered or sent by email or sent by a nationally recognized overnight courier (with proof of service) or mailed, first-class postage prepaid, to the Stockholders Representative at 1042-B N. El Camino Real, Suite 430, Encinitas, CA 92024, email at dfhale@biopharmaventures.com, or at any other address previously furnished in writing to the Rights Agent and Buyer by the Stockholders Representative in accordance with Section 7.1 and this Section 7.2. Notwithstanding anything contained herein to the contrary, the information set forth in any notices delivered by Buyer hereunder related to a General CVR Payment Event or an amendment to this Agreement pursuant to Article V hereof and provided solely to the Stockholders Representative (or a summary of such information) shall also be reported by Buyer on a Form 8-K, 10-Q or 10-K of Buyer filed with the SEC.

Section 7.3 Effect of Headings.

The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

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Section 7.4 Successors and Assigns.

All covenants and agreements in this Agreement by Buyer shall bind its successors and assigns, whether so expressed or not.

Section 7.5 Benefits of Agreement.

Nothing in this Agreement, express or implied, shall give to any Person (other than the parties hereto, the Holders and their permitted successors and assigns hereunder) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto, the Holders and their permitted successors and assigns. The Holders shall have no rights or remedies hereunder except as expressly set forth herein.

Section 7.6 Governing Law.

This Agreement and the General CVRs shall be governed by and construed in accordance with the laws of the State of California without regards to its rules of conflicts of laws; provided, however, that all provisions, regarding the rights, duties, obligations and liabilities of the Rights Agent shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

Section 7.7 Legal Holidays.

In the event that a General CVR Payment Date shall not be a Business Day, then, notwithstanding any provision of this Agreement to the contrary, any payment required to be made in respect of the General CVRs on such date need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the General CVR Payment Date.

Section 7.8 Severability Clause.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein; provided, however, that if any such excluded term, provision, covenant or restriction shall adversely affect the rights, immunities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the court or other tribunal making such determination is authorized and instructed to modify this Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.

Section 7.9 Counterparts.

This Agreement may be signed in any number of counterparts (which may be effectively delivered by facsimile or other electronic means), each of which shall be deemed to constitute but one and the same instrument.

Section 7.10 Termination.

This Agreement shall terminate and be of no further force or effect, and the parties hereto shall have no liability hereunder, on the first day after the Outside Date on which no further dispute is possible. A dispute shall be considered possible if an Objection Period is in progress, or if a Section 7.12 process is in progress, or if any payment or other obligation required pursuant to a final determination made in accordance with Section 7.12 has not yet occurred.

Section 7.11 Entire Agreement.

As it relates to the Rights Agent, this Agreement represents the entire understanding of the parties hereto with reference to the General CVRs and this Agreement supersedes any and all other oral or written agreements made with respect to the General CVRs. As it relates to all other parties hereto, this Agreement and the Merger Agreement represent the entire understanding of the parties hereto with reference to the General CVRs and this Agreement supersedes any and all other oral or written agreements made with respect to the General CVRs, except for the Merger Agreement. If and to the extent that any provision of this Agreement is inconsistent or conflicts with the Merger Agreement, this Agreement shall govern and be controlling.

Section 7.12 Negotiation; Arbitration.

(a) Before any arbitration pursuant to Section 7.12(b), Buyer and (subject to Section 5.16(a) of the Merger Agreement) the Stockholders Representative shall negotiate in good faith for a period of 30 days to resolve any controversy or claim arising out of or relating to this Agreement or the breach thereof.

(b) After expiration of the 30-day period contemplated by Section 7.12(a), such controversy or claim, including any claims for breach of this Agreement, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Buyer and/or (subject to Section 5.16(a) of the Merger Agreement) the Stockholders Representative may initiate an arbitration for any matter relating to this Agreement. However, in the event of a dispute arising from the delivery of a Notice of Objection, the sole matter to be settled by arbitration shall be whether a General CVR Payment Event has occurred on or before the Outside Date or whether the calculation of the General CVR Payment Amount is in error, as applicable. The number of arbitrators shall be three. Within 15 days after the commencement of arbitration, each party shall select one person to act as arbitrator, and the two selected shall select a third arbitrator within 15 days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The place of the arbitration shall be San Diego, California. The arbitrators shall be lawyers or retired judges with experience in the life sciences industry and with mergers and acquisitions. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both parties. Any award payable in favor of the Holders or the Stockholders Representative as a result of arbitration shall be paid by Buyer to the Rights Agents to be distributed to the Holders on the next January 1 or July 1, in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. Buyer and Stockholders Representative shall pay in equal halves all fees and expenses of the arbitration forum, including the costs and expenses billed by the arbitrators in connection with the performance of their duties described herein; provided, however, that if the arbitrators rule in favor of Buyer, an amount equal to the half of the arbitrators fees and expenses paid by Buyer shall be offset against the soonest General CVR Payment Amount(s), if any, or any payment to be made thereafter under any of the other CVR Agreements, and if the arbitrators rule in favor of the Holders or the Stockholders Representative, an amount equal to the half of the arbitrators fees and expenses paid by the Stockholders Representative shall be paid by Buyer to the Rights Agent to be distributed to the Holders on the next January 1 or July 1, in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement. Each party to the arbitration (which, for the avoidance of doubt, shall not include the Rights Agent) shall be responsible for its own attorney fees, expenses and costs of investigation.

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IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized officers as of the day and year first above written.

LIGAND PHARMACEUTICALS INCORPORATED

By:
Name:
Title:

METABASIS THERAPEUTICS, INC.

By:
Name:
Title:

MELLON INVESTOR SERVICES LLC, as Rights Agent

By:
Name: **Mark Cano**
Title: **Relationship Manager**

DAVID F. HALE, as Stockholders Representative

By:

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Annex F

Section 262 of the General Corporation Law of the State of Delaware

§ 262. Appraisal rights.

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder s shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word stockholder means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words stock and share mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and the words depository receipt mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in § 251(f) of this title.

(2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this paragraph; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a., b. and c. of this paragraph.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

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(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for notice of such meeting with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) hereof of this section that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each stockholder electing to demand the appraisal of such stockholder s shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder s shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228 or § 253 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder s shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder s shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder s written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person s own name, file a petition or request from the corporation the statement described in this subsection.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder s certificates of stock to the Register in Chancery, if such is

required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court s decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney s fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder s demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e) of this section.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

Annex G

Merriman

Curhan

Ford

October 26, 2009

Board of Directors

Metabasis Therapeutics, Inc.

11119 North Torrey Pines Road

La Jolla, California 92037

Ladies and Gentlemen:

You have requested our opinion as to the fairness, from a financial point of view, to the holders of the common stock of Metabasis Therapeutics, Inc. (the Company) of the Consideration (as defined below) to be received by such stockholders pursuant to the terms of the proposed Agreement and Plan of Merger (the Merger Agreement) to be entered into by and among Ligand Pharmaceuticals Incorporated (Ligand), Moonstone Acquisition, Inc., a wholly owned subsidiary of Ligand (Merger Sub), the Company and David F. Hale as Stockholders Representative.

As more specifically set forth in the Merger Agreement, and subject to the terms, conditions and adjustments set forth therein, the Merger Agreement provides for the acquisition of the Company by Ligand through the merger of Merger Sub with and into the Company with the Company as the surviving entity thereof (the Merger). By virtue of the Merger, each share of common stock issued and outstanding as of the effective time of the Merger (other than shares held by Ligand, the Company or any of their wholly owned subsidiaries and any Dissenting Shares (as defined in the Merger Agreement) will be converted into the right to receive (i) approximately $0.05 per share in cash (subject to adjustment) and (ii) certain contingent value rights (the CVRs) (collectively, the Consideration).

In connection with our review of the proposed Merger, and in arriving at our opinion, we have: (i) reviewed a draft of the Merger Agreement dated October 24 2009, as well as a draft, dated October 24, 2009, of the form of agreement pursuant to which the CVRs will be issued (collectively, the Draft Transaction Documents); (ii) reviewed certain financial information regarding the Company s historical and projected financial performance provided to us by management, (iii) reviewed certain publicly available information concerning the Company; (iv) conducted interviews with members of current and former senior management concerning the matters described in clauses (ii) and (iii) above; (v) reviewed certain publicly available information regarding companies and transactions we deemed to be comparable, and (vi) reviewed such other financial studies and analyses and conducted such other investigations as we deemed necessary or appropriate for the purpose of rendering our opinion.

We have relied upon and assumed, without assuming liability or responsibility for independent verification, the accuracy and completeness of all information that was publicly available or was furnished, or otherwise made available, to us or discussed with or reviewed by or for us. We have further assumed that the financial information provided has been prepared on a reasonable basis in accordance with industry practice, and that management of the Company is not aware of any information or facts that would make any information provided to us incomplete or misleading. Without limiting the generality of the foregoing, for the purpose of this opinion, we have assumed that with respect to financial forecasts, estimates and other forward-looking information reviewed by us, that such information has been reasonably prepared based on assumptions reflecting the best currently available estimates and judgments of the management of the Company as to the expected future results of operations and financial condition of the Company. We express no opinion as to any such financial forecasts, estimates or forward-looking information or the assumptions on which they were based.

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In connection with our opinion, we have assumed and relied upon, without independent verification, the accuracy and completeness of all of the financial, legal, regulatory, tax, accounting and other information provided to, discussed with or reviewed by us. Our opinion does not address any legal, regulatory, tax or accounting issues.

In arriving at our opinion, we have assumed that the executed documents for the Merger (the Transaction Documents) will be in all material respects identical to the Draft Transaction Documents reviewed by us. We have relied upon and assumed, without independent verification, that (i) the representations and warranties of all parties set forth in the Transaction Documents and all related documents and instruments that are referred to therein are true and correct, (ii) each party to the Transaction Documents will fully and timely perform all of the covenants and agreements required to be performed by such party, (iii) the Merger will be consummated pursuant to the terms of the Transaction Documents without amendments thereto and (iv) all conditions to the consummation of the Merger will be satisfied without waiver by any party of any conditions or obligations thereunder. Additionally, we have assumed that all the necessary regulatory approvals and consents required for the Merger, including the approval of the stockholders of the Company, will be obtained in a manner that will not adversely affect the Company or the contemplated benefits of the Merger.

In arriving at our opinion, we have not performed any appraisals or valuations of any specific assets or liabilities (fixed, contingent or other) of the Company, and have not been furnished or provided with any such appraisals or valuations, nor have we evaluated the solvency of the Company under any state or federal law relating to bankruptcy, insolvency or similar matters. The analyses performed by us in connection with this opinion were going concern analyses. We express no opinion regarding the liquidation value of the Company or any other entity or the ability of the Company to operate as a going concern, whether or not the Merger is consummated. Without limiting the generality of the foregoing, we have undertaken no independent analysis of any pending or threatened litigation, regulatory action, possible unasserted claims or other contingent liabilities, to which the Company or any of its affiliates is a party or may be subject, and at the direction of the Company and with its consent, our opinion makes no assumption concerning, and therefore does not consider, the possible assertion of claims, outcomes or damages arising out of any such matters.

This opinion is necessarily based upon the information available to us and facts and circumstances as they exist and are subject to evaluation on the date hereof; events occurring after the date hereof could materially affect the assumptions used in preparing this opinion. We are not expressing any opinion herein as to the price at which shares of Common Stock may trade following announcement of the Merger or at any future time or as to the price at which the CVRs may trade at any time after their issuance. We have not undertaken to reaffirm or revise this opinion or otherwise comment upon any events occurring after the date hereof and do not have any obligation to update, revise or reaffirm this opinion.

We have been engaged by the Company to act as its financial advisor and we will receive a fee from the Company for providing such services, including the provision of this opinion. Our fee is not contingent upon the consummation of the Merger. The Company has also agreed to indemnify us against certain liabilities and reimburse us for certain expenses in connection with our services. In the future, we may also provide other financial advisory and investment banking services to the Company and its affiliates, including Ligand, for which we would expect to receive compensation. In addition, in the ordinary course of our business, we and our affiliates may actively trade securities of the Company and/or Ligand for our own account or the account of our customers and, accordingly, may at any time hold a long or short position in such securities.

Consistent with applicable legal and regulatory requirements, Merriman Curhan Ford & Co. has adopted policies and procedures to establish and maintain the independence of our research departments and personnel. As a result, our research analysts may hold views, make statements or investment recommendations and/or publish research reports with respect to the Company, Ligand and/or the Merger that differ from the views of our investment banking personnel.

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This opinion has been prepared solely for the information of the Board of Directors of the Company for its use in connection with its consideration of the Merger and is not intended to be and does not constitute a recommendation to any stockholder of the Company as to how such stockholder should vote on any matter relating to the Merger or any other matter. Except with respect to the inclusion of this opinion in the Company s proxy statement relating to the Merger in accordance with our engagement letter with the Company, this opinion shall not be disclosed, referred to, published or otherwise used (in whole or in part), nor shall any public references to us be made, without our prior written approval. This opinion has been approved for issuance by the Merriman Curhan Ford & Co. Fairness Opinion Committee.

This opinion addresses only the fairness, from a financial point of view, to the common stockholders of the Company of the proposed Consideration to be received by such stockholders in the Merger and does not address the relative merits of the Merger or any alternatives to the Merger, the Company s underlying decision to proceed with or effect the Merger, or any other aspect of the Merger. This opinion does not address the fairness of the Merger to the holders of any other class of securities, creditors or other constituencies of the Company. This opinion is not a valuation of the Company or its assets or any class of securities of the Company. We have not evaluated the solvency or fair value of the Company. We are not experts in, nor do we express an opinion on, legal, tax, accounting or regulatory issues. We do not express an opinion about the fairness of the amount or nature of any compensation payable or to be paid to any of the officers, directors or employees, of the Company, whether or not relative to the Merger.

Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the Consideration to be received by the common stockholders of the Company in the Merger is fair, from a financial point of view, to such stockholders.

Sincerely,

/s/ Merriman Curhan Ford & Co.

Merriman Curhan Ford & Co.

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 20. INDEMNIFICATION OF DIRECTORS AND OFFICERS

As permitted by Section 102 of the Delaware General Corporation Law, Ligand has adopted provisions in its certificate of incorporation and Bylaws that limit or eliminate the personal liability of its directors for a breach of their fiduciary duty of care as a director. The duty of care generally requires that, when acting on behalf of the corporation, directors exercise an informed business judgment based on all material information reasonably available to them. Consequently, a director will not be personally liable to Ligand or its stockholders for monetary damages or breach of fiduciary duty as a director, except for liability for: any breach of the director s duty of loyalty to Ligand or its stockholders; any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law; any act related to unlawful stock repurchases, redemptions or other distributions or payment of dividends; or any transaction from which the director derived an improper personal benefit.

These limitations of liability do not affect the availability of equitable remedies such as injunctive relief or rescission. As permitted by Section 145 of the Delaware General Corporation Law, the certificates of incorporation and Bylaws to be in effect upon the closing of this offering provide that: Ligand may indemnify its directors, officers, employees and agents to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; Ligand may advance expenses to its directors and officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; and the rights provided in the certificates of incorporation and Bylaws are not exclusive.

In addition, Ligand has entered into separate indemnification agreements with its directors and officers which may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements may require Ligand, among other things, to indemnify its officers and directors against liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct. These indemnification agreements also may require Ligand to advance any expenses incurred by the directors or officers as a result of any proceeding against them as to which they could be indemnified. In addition, Ligand has purchased a policy of directors and officers liability insurance that insures its directors and officers against the cost of defense, settlement or payment of a judgment in some circumstances. These indemnification provisions and the indemnification agreements may be sufficiently broad to permit indemnification of Ligand s officers and directors for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

In addition, for a period of six years following the effective time of the merger, Ligand will cause the surviving entity and its subsidiaries to fulfill and honor the obligations of Metabasis and its subsidiaries pursuant to each indemnification agreement in effect on the date of the merger agreement between Metabasis or any of its subsidiaries and each present or former director and officer of Metabasis and any indemnification provision and any exculpation provision in favor of each present or former director and officer of Metabasis that is set forth in the certificate of incorporation or bylaws of Metabasis and the equivalent organizational documents of any Metabasis subsidiary in effect as of the date of the merger agreement. The certificate of incorporation and bylaws of the surviving entity shall contain the provisions with respect to indemnification and exculpation from liability set forth in Metabasis certificate of incorporation and bylaws on the date of the merger agreement, and, from and after the effective time of the merger, such provisions shall not be amended, repealed or otherwise modified in any manner that could adversely affect the rights thereunder of any individual who is or was an officer or director of Metabasis at any time on or before the effective time of the merger.

Ligand will indemnify and hold harmless the present and former directors and officers of Metabasis against all liabilities arising out of the actions or omissions of such person s service, including the advancement of certain expenses, for a period of six years following the effective time of the merger or for claims for which a written notice asserting such claim for indemnification before the sixth anniversary of the effective time until such time as such claim is fully and finally resolved.

In addition, for a period of six years following the effective time of the merger, Ligand will cause the surviving entity to maintain in effect the current level and similar scope of directors and officers liability insurance coverage, provided that the surviving entity shall not be obligated to expend in any one year an amount in excess of $60,000.

ITEM 21. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES
(a) Exhibits

Exhibit Number	Exhibit Description
2.1	Agreement and Plan of Merger, dated as of October 26, 2009 (and as amended), by and among Ligand Pharmaceuticals Incorporated, Metabasis Therapeutics, Inc., Moonstone Acquisition, Inc. and Metabasis stockholders representative (included as *Annex A* to the proxy statement/prospectus).
2.2	Form of Roche Contingent Value Rights Agreement (included as *Annex B* to the proxy statement/prospectus).
2.3	Form of TR Beta Contingent Value Rights Agreement (included as *Annex C* to the proxy statement/prospectus).
2.4	Form of Glucagon Contingent Value Rights Agreement (included as *Annex D* to the proxy statement/prospectus).
2.5	Form of General Contingent Value Rights Agreement (included as *Annex E* to the proxy statement/prospectus).
3.1	Amended and Restated Certificate of Incorporation of Ligand Pharmaceuticals Incorporated dated May 17, 1995 (incorporated by reference to Exhibit 3.2 of Ligand Pharmaceuticals Incorporated s Registration Statement on Form S-4 (No. 333-58823) filed with the SEC on July 9, 1998), as amended by a Certificate of Amendment of Amended and Restated Certificate of Incorporation dated June 13, 2000 (incorporated by reference to Exhibit 3.5 of Ligand Pharmaceuticals Incorporated s Annual Report on Form 10-K for the year ended December 31, 2000), and as further amended by a Certificate of Amendment of Amended and Restated Certificate of Incorporation dated June 30, 2004 (incorporated by reference to Exhibit 3.6 of Ligand Pharmaceuticals Incorporated s Quarterly Report on Form 10-Q for the quarter ended June 30, 2004).
3.2	Amended Certificate of Designation of Rights, Preferences and Privileges of Series A Participating Preferred Stock of Ligand Pharmaceuticals Incorporated dated March 3, 1999 (incorporated by reference to Exhibit 3.3 of Ligand Pharmaceuticals Incorporated s Quarterly Report on Form 10-Q for the quarter ended March 31, 1999). Amends Certificate of Designation of Rights, Preferences and Privileges of Series A Participating Preferred Stock originally filed in the offices of the Delaware Secretary of State on September 30, 1996.
3.3	Amended and Restated Bylaws of Ligand Pharmaceuticals Incorporated dated November 25, 1992, as amended by a Certificate of Amendment of Bylaws dated December 11, 1997 (incorporated by reference to Exhibit 3.3 of Ligand Pharmaceuticals Incorporated s Registration Statement on Form S-4 (No. 333-5 8823) filed with the SEC on July 9, 1998), as further amended by an Amendment of the Bylaws dated November 8, 2005 (incorporated by reference to Exhibit 3.1 of Ligand Pharmaceuticals Incorporated s Current Report on Form 8-K filed with the SEC on November 14, 2005), and as further amended by an Amendment of Bylaws dated December 4, 2007 (incorporated by reference to Exhibit 3.1 of Ligand Pharmaceuticals Incorporated s Current Report on Form 8-K filed with the SEC on December 6, 2007).
5.1	Opinion of Stradling Yocca Carlson & Rauth regarding the legality and binding effect of the securities being registered.

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Exhibit Number	Exhibit Description
23.1	Consent of Grant Thornton LLP, independent registered public accounting firm of Ligand Pharmaceuticals Incorporated.
23.2	Consent of BDO Seidman, LLP, independent registered public accounting firm of Ligand Pharmaceuticals Incorporated.
23.3	Consent of Ernst & Young LLP, independent registered public accounting firm of Metabasis Therapeutics, Inc.
23.4	Consent of Stradling Yocca Carlson & Rauth (included in Exhibit 5.1).
24.1*	Powers of Attorney (included with the signature pages to this registration statement).
99.1	Opinion of Merriman Curhan Ford & Co. regarding the fairness of the merger consideration (included as *Annex G* to the proxy statement/prospectus).
99.2	Consent of Merriman Curhan Ford & Co.
99.3	Form of Metabasis proxy card.

* Previously attached.

ITEM 22. UNDERTAKINGS

The undersigned registrant hereby undertakes:

(1) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant s annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan s annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(2) That prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(3) That every prospectus (i) that is filed pursuant to paragraph (2) immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(4) To respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11 or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(5) To supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

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Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on December 17, 2009.

Ligand Pharmaceuticals Incorporated

By:	/s/ JOHN L. HIGGINS
Name:	**John L. Higgins**
Title:	***President and Chief Executive Officer***

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John L. Higgins and Charles S. Berkman and each of them, and any successor or successors to such offices held by each of them, acting individually, as such person s true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for such person in his name or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitutes, may do or cause to be done by virtue thereof. This power of attorney may be executed in counterparts.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ JOHN L. HIGGINS **John L. Higgins**	President, Chief Executive Officer and Director (Principal Executive Officer)	December 17, 2009
/s/ JOHN P. SHARP **John P. Sharp**	Vice President, Finance and Chief Financial Officer (Principal Financial and Accounting Officer)	December 17, 2009
/s/ JASON M. ARYEH* **Jason M. Aryeh**	Director	December 17, 2009
/s/ STEVEN J. BURAKOFF* **Steven J. Burakoff**	Director	December 17, 2009
/s/ TODD C. DAVIS* **Todd C. Davis**	Director	December 17, 2009
/s/ DAVID M. KNOTT* **David M. Knott**	Director	December 17, 2009

/s/ JOHN W. KOZARICH*	Chairman of the Board of Directors	December 17, 2009
John W. Kozarich		
/s/ STEPHEN L. SABBA*	Director	December 17, 2009
Stephen L. Sabba		

*By John L. Higgins, as attorney-in-fact

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