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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM 10-Q

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934:**

For the quarterly period ended January 31, 2003

OR

- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934:**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 0-27756

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# Alexion Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**13-3648318**  
(I.R.S. Employer  
Identification No.)

**352 Knottter Drive, Cheshire, Connecticut 06410**

(Address of principal executive offices) (Zip Code)

**203-272-2596**

(Registrant's telephone number, including area code)

**N/A**

(Former address of principal executive offices) (Zip Code)

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

**Common Stock, \$0.0001 par value**

**18,208,796 shares**

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**Class**

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**Outstanding at March 14, 2003**

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ALEXION PHARMACEUTICALS, INC.

INDEX

	<u>Page</u>
<b>PART I.</b>	<b>FINANCIAL INFORMATION</b>
<b>Item 1.</b>	<b>Consolidated Financial Statements (Unaudited)</b>
	<a href="#">Consolidated Balance Sheets as of January 31, 2003 and July 31, 2002</a>
	3
	<a href="#">Consolidated Statements of Operations for the three and six months ended January 31, 2003 and 2002</a>
	4
	<a href="#">Consolidated Statements of Cash Flows for the six months ended January 31, 2003 and 2002</a>
	5
	<a href="#">Notes to Consolidated Financial Statements</a>
	6
<b>Item 2.</b>	<a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>
	11
<b>Item 3.</b>	<a href="#">Quantitative and Qualitative Disclosures about Market Risk</a>
	17
<b>Item 4.</b>	<a href="#">Controls and Procedures</a>
	18
<b>PART II.</b>	<b><a href="#">OTHER INFORMATION</a></b>
	19
<b>Item 6.</b>	<b>Exhibits and Reports on Form 8-K</b>
<a href="#">SIGNATURES</a>	20
<a href="#">CERTIFICATIONS</a>	21

## ALEXION PHARMACEUTICALS, INC.

**Consolidated Balance Sheets**  
(UNAUDITED)  
(amounts in thousands)

	January 31, 2003	July 31, 2002
<b>ASSETS</b>		
Current Assets:		
Cash and cash equivalents	\$ 52,301	\$ 47,574
Marketable securities	200,882	261,010
Reimbursable contract costs	389	863
Prepaid expenses and other current assets	1,972	1,337
	<u>255,544</u>	<u>310,784</u>
Property, plant, and equipment, net	14,736	14,874
Goodwill	19,954	19,954
Deferred financing costs, net	2,406	2,692
Prepaid manufacturing costs	10,000	2,750
Other assets	3,197	3,015
	<u>305,837</u>	<u>354,069</u>
<b>TOTAL ASSETS</b>	<b>\$ 305,837</b>	<b>\$ 354,069</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current Liabilities:		
Accounts payable	\$ 6,289	\$ 9,843
Accrued expenses	2,991	4,303
Accrued interest	2,646	2,627
Deferred revenue	589	546
	<u>12,515</u>	<u>17,319</u>
Total current liabilities	12,515	17,319
Deferred revenue, less current portion included above	7,058	7,352
	<u>3,920</u>	<u>3,920</u>
Note payable	3,920	3,920
Convertible subordinated notes	120,000	120,000
	<u>162,344</u>	<u>205,478</u>
Stockholders' Equity:		
Preferred stock \$.0001 par value; 5,000 shares authorized; no shares issued or outstanding	—	—
Common stock \$.0001 par value; 145,000 shares authorized; 18,246 and 18,241 shares issued at January 31, 2003 and July 31, 2002, respectively	2	2
Additional paid-in capital	385,314	385,197
Accumulated deficit	(223,904)	(180,799)
Other comprehensive income	1,532	1,678
Treasury stock, at cost; 37 shares	(600)	(600)
	<u>162,344</u>	<u>205,478</u>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 305,837</b>	<b>\$ 354,069</b>

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

**ALEXION PHARMACEUTICALS, INC.****Consolidated Statement of Operations**

(UNAUDITED)

(amounts in thousands, except per share amounts)

	Three months ended January 31,		Six months ended January 31,	
	2003	2002	2003	2002
CONTRACT RESEARCH REVENUES	\$ 220	\$ 3,380	\$ 543	\$ 5,240
OPERATING EXPENSES:				
Research and development	19,304	15,043	38,981	24,714
General and administrative	2,058	1,836	4,250	3,435
Total operating expenses	21,362	16,879	43,231	28,149
Operating loss	(21,142)	(13,499)	(42,688)	(22,909)
OTHER INCOME AND EXPENSE				
Investment income	1,662	3,918	3,544	7,456
Interest expense	(1,926)	(1,929)	(3,853)	(3,846)
Net loss before (provision for) benefit from state income tax	(21,406)	(11,510)	(42,997)	(19,299)
(PROVISION FOR) BENEFIT FROM STATE INCOME TAX	(59)	700	(108)	700
Net loss	\$(21,465)	\$(10,810)	\$(43,105)	\$(18,599)
BASIC AND DILUTED NET LOSS PER SHARE	\$ (1.18)	\$ (0.60)	\$ (2.37)	\$ (1.03)
SHARES USED IN COMPUTING BASIC AND DILUTED NET LOSS PER COMMON SHARE	\$ 18,207	\$ 18,119	\$ 18,206	\$ 18,114

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

## ALEXION PHARMACEUTICALS, INC.

**Consolidated Statements of Cash Flows**  
(UNAUDITED)  
(amounts in thousands)

	Six months ended January 31,	
	2003	2002
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net loss	\$ (43,105)	\$ (18,599)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,809	1,932
Compensation expense related to grant of stock options	67	154
Change in assets and liabilities:		
Reimbursable contract costs	474	6,045
State income tax receivable	—	(700)
Prepaid expenses	(635)	(489)
Other assets	(182)	(2,970)
Prepaid manufacturing costs	(7,250)	—
Accounts payable	(3,554)	1,875
Accrued expenses	(1,312)	457
Accrued interest	19	—
Deferred revenue	(251)	(1,036)
Net cash used in operating activities	(53,920)	(13,331)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of marketable securities	(49,667)	(132,787)
Proceeds from marketable securities	109,649	180,951
Purchases of property, plant and equipment	(1,385)	(1,409)
Net cash provided by investing activities	58,597	46,755
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Net proceeds from issuance of common stock	50	182
Net cash provided by financing activities	50	182
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	<b>4,727</b>	<b>33,606</b>
<b>CASH AND CASH EQUIVALENTS, beginning of period</b>	<b>47,574</b>	<b>135,188</b>
<b>CASH AND CASH EQUIVALENTS, end of period</b>	<b>\$ 52,301</b>	<b>\$ 168,794</b>
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION</b>		
Cash paid for interest	\$ 3,568	\$ 3,568

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

**ALEXION PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

*1. Organization and Operations -*

Alexion Pharmaceuticals, Inc. (“Alexion” or the “Company”) was organized in 1992 and is engaged in the development of therapeutic products for the treatment of a wide array of severe diseases, including cardiovascular, autoimmune, and hematologic disorders, inflammation, and cancer.

The accompanying consolidated financial statements include Alexion Pharmaceuticals, Inc. and its wholly owned subsidiaries, Alexion Antibody Technologies (“AAT”) and Columbus Farming Corporation (“Columbus”). All significant intercompany balances and transactions have been eliminated in consolidation. Columbus was formed on February 9, 1999 to acquire certain manufacturing assets from United States Surgical Corporation (“US Surgical”).

The consolidated financial statements included herein have been prepared by the Company, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) and include, in the opinion of management, all adjustments, consisting of normal, recurring adjustments, necessary for a fair presentation of interim period results. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to such rules and regulations. The results for the interim periods presented are not necessarily indicative of results to be expected for any future period. These consolidated condensed financial statements should be read in conjunction with the audited financial statements and notes thereto included in the Company’s Form 10-K Annual Report for the fiscal year ended July 31, 2002. The year end balance sheet data presented does not include all disclosures required by accounting principles generally accepted in the United States of America.

*2. Procter & Gamble Pharmaceuticals Collaboration -*

The Company and Procter & Gamble Pharmaceuticals (“P&G”) entered into an exclusive collaboration in January 1999 to develop and commercialize pexelizumab. The Company granted P&G an exclusive license to the Company’s intellectual property related to pexelizumab, with the right to sublicense. P&G originally agreed to fund generally all clinical development and manufacturing costs relating to pexelizumab for the treatment of inflammation caused by cardiopulmonary bypass surgery, heart attack, and angioplasty (see below). Additionally, P&G agreed to pay the Company up to \$95 million in payments, which included a non-refundable up-front \$10 million license fee, milestone payments (including up to \$33 million in milestone payments for achievement of certain sales thresholds), and research and development support payments. The Company was also to receive royalties on worldwide sales of pexelizumab, if any, for all indications. The Company was to retain a preferred position relative to third-party manufacturers to manufacture pexelizumab worldwide. The Company was to share co-promotion rights with P&G to sell, market and distribute pexelizumab in the United States (“U.S.”), and granted P&G the exclusive rights to sell, market and distribute pexelizumab outside of the U.S.

In December 2001, the Company and P&G entered into a binding memorandum of understanding (“MOU”) pursuant to which they revised their January 1999 collaboration. Under the revised structure per the MOU, the Company and P&G will share decision-making and responsibility for all future U.S. development and commercialization costs for pexelizumab, including clinical, manufacturing, marketing, and sales efforts. Prior to December 2001, P&G was generally funding all clinical development and manufacturing costs for pexelizumab. The revised collaboration per the MOU provides that the Company and P&G each incur approximately 50% of all Phase III clinical trial, product development and manufacturing, and commercialization costs necessary for the potential approval and marketing of pexelizumab in the U.S. and that the Company will receive approximately 50% of the gross margin on U.S. sales, if any. P&G agreed to retain responsibility for future development and commercialization costs outside the U.S., with the Company receiving a royalty on sales to the rest of the world, if any. The Company is responsible for royalties on certain third party intellectual property worldwide, if such intellectual property is necessary. Additionally, as part of the MOU, the Company will receive milestone payments for achieving specified development steps, regulatory filings and approvals.

**ALEXION PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

The Company has agreed to bear the first 50% of projected costs associated with the U.S. coronary artery bypass graft surgery (“CABG”) – Phase III clinical trial costs and P&G will bear the second 50%, with a final adjustment to make even the 50% sharing costs. As of January 31, 2003 the Company has completed its obligation associated with the first 50% of the projected costs. P&G has the right to terminate the collaboration at any time. If P&G terminates the collaboration, P&G may not be required to contribute towards costs incurred after termination. In such circumstance, all rights and the exclusive license to the Company’s intellectual property related to pexelizumab will revert back to the Company and the Company will be entitled to all future pexelizumab revenues, if any, without any sharing of revenues, if any, with P&G.

As part of the revised collaboration per the MOU, P&G agreed to continue to fund 100% of the costs for the two recently completed acute myocardial infarction (“AMI”) Phase II clinical trials in myocardial infarction (“heart attack”) patients. The Company and P&G have agreed that each will share concurrently 50% of the ongoing U.S. pre-production and development manufacturing costs for pexelizumab as well as any future AMI-Phase III clinical trial costs.

**3. Net Loss Per Common Share -**

The Company computes and presents net loss per common share in accordance with SFAS No. 128, “Earnings Per Share.” Basic net loss per common share is based on the weighted average shares of common stock outstanding during the period. Diluted net loss per common share assumes in addition to the above, the dilutive effect of common share equivalents outstanding during the period. Common share equivalents represent stock options and convertible subordinated debt. These outstanding stock options and convertible subordinated debt entitled holders to acquire 4,732,749 and 4,724,625 shares of common stock at January 31, 2003 and 2002, respectfully. There is no difference in basic and diluted net loss per common share for the three and six months ended January 31, 2003 and 2002 as the effect of common share equivalents is anti-dilutive.

**4. Revenues -**

Contract research revenues recorded by the Company consist of research and development support payments and license fees under collaborations with third parties and amounts received under various government grants.

Up-front, non-refundable license fees received in connection with a collaboration are deferred and amortized into revenue based upon the terms of each collaborative arrangement.

Revenues derived from the achievement of milestones are recognized when the milestone is achieved, provided that the milestone is substantive and a culmination of the earnings process has occurred. Research and development support revenues are recognized as the related work is performed and expenses are incurred under the terms of the contracts for development activities.

Reimbursable contract costs as shown on the accompanying consolidated balance sheets represent reimbursable costs incurred in connection with research contracts. The Company bills these costs and recognizes the costs and related revenues in accordance with the terms of the contracts.

Deferred revenue results from cash received or amounts receivable in advance of revenue recognition under research and development contracts.

**ALEXION PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

Through January 31, 2003, the Company had received proceeds of approximately \$50.8 million from P&G. These proceeds included the non-refundable up-front license fee of \$10 million in fiscal 1999 and \$40.8 million for research and development support expenses, including a milestone payment of \$2 million for initiation of the CABG-Phase III trial. This does not include the costs of the Phase II CABG and Phase II MI trials funded directly by Procter & Gamble Pharmaceuticals. The Company is recognizing the \$10 million license fee as revenue over 17 years representing the average of the remaining patent lives of the underlying technologies.

The Company has been awarded various grants by agencies of the U.S. government to fund specific research projects. These projects have been completed as of January 31, 2003.

A summary of revenues generated from contract research collaboration, milestone payment, and grant awards is as follows for the three and six months ended January 31 (dollars in thousands):

	Three months ended January 31,		Six months ended January 31,	
	2003	2002	2003	2002
<u>Collaboration/Grant Awards</u>				
P&G	\$ 170	\$ 2,719	\$ 339	\$ 4,047
U.S. government grants	50	440	204	959
Other	—	221	—	234
	<u>\$ 220</u>	<u>\$ 3,380</u>	<u>\$ 543</u>	<u>\$ 5,240</u>

5. *Convertible Subordinated Notes* -

In March 2000, the Company completed a \$120 million private placement of 5.75% Convertible Subordinated Notes due March 15, 2007. The notes bear interest payable semi-annually on September 15 and March 15 of each year, beginning September 15, 2000. The holders may convert all or a portion of the notes into common stock at any time on or before March 15, 2007 at a conversion price of \$106.425 per share resulting in the issuance of 1,127,555 shares of common stock, in aggregate. The Company incurred interest expense of approximately \$1.7 million and \$3.5 million for the three and six months ended January 31, 2003 and 2002, respectively, related to these notes.

The Company incurred deferred financing costs related to this offering of approximately \$4.0 million, which are recorded in the consolidated balance sheet and are being amortized as a component of interest expense over the seven-year term of the notes. Amortization expense associated with the financing costs was approximately \$143,000 and \$286,000 for the three and six months ended January 31, 2003 and 2002, respectively.

6. *Comprehensive Income (Loss)* -

The Company reports and presents comprehensive income (loss) in accordance with SFAS No. 130 "Reporting Comprehensive Income" which establishes standards for reporting and the display of comprehensive income (loss) and its components in a full set of general purpose financial statements. The objective of the statement is to report a measure of all changes in equity of an enterprise that result from transactions and other economic events of the period other than transactions with owners (comprehensive income (loss)). The Company's other comprehensive income (loss) arises from net unrealized gains (losses) on marketable securities. The Company has elected to display comprehensive income (loss) as a component of the statements of stockholders' equity and comprehensive loss.

A summary of total comprehensive loss is as follows (dollars in thousands):



**ALEXION PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

	Three months ended January 31,		Six months ended January 31,	
	2003	2002	2003	2002
Net loss	\$ (21,465)	\$ (10,810)	\$ (43,105)	\$ (18,599)
Other comprehensive income	(306)	(2,438)	(146)	223
<b>Total comprehensive loss</b>	<b>\$ (21,771)</b>	<b>\$ (13,248)</b>	<b>\$ (43,251)</b>	<b>\$ (18,376)</b>

7. *Recently Issued Accounting Pronouncements -*

In June 2002, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Standard (SFAS) No. 146, "Accounting for Costs Associated with Exit or Disposal Activities". This Statement addresses financial accounting and reporting for costs associated with exit or disposal activities and nullifies Emerging Issues Task Force (EITF) Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)." The provisions of SFAS No. 146 are effective for exit or disposal activities that are initiated after December 31, 2002, with early application encouraged. The adoption of this new standard did not have a material impact on either the operating results or financial position of the Company.

In June 2002, the FASB issued SFAS No. 148, Accounting for Stock-Based Compensation – Transition and Disclosure, which amends SFAS No. 123, Accounting for Stock-Based Compensation to provide alternative methods of transition for a voluntary change to the fair value-based method of accounting for stock-based employee compensation. In addition, SFAS No. 148 amends the disclosure requirements of SFAS No. 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. SFAS No. 148 is effective for fiscal years ending after December 15, 2002 for annual statements and for interim periods beginning after December 15, 2002 for interim financial reports. The Company has not determined whether or not it will voluntarily adopt SFAS No. 123 and the related transition alternatives pursuant to SFAS No. 148.

In November 2002, the FASB issued FASB Interpretation No. 45 ("FIN 45"), Guarantor's Accounting and Disclosure Requirements for Guarantees, including Indirect Guarantees of Indebtedness of Others, an interpretation of FASB Statements No. 5, 57 and 107 and Rescission of FASB Interpretation No. 34. FIN 45 clarifies the requirements of FASB Statement No. 5, *Accounting for Contingencies* (FAS 5), relating to the guarantor's accounting for, and disclosure of, the issuance of certain types of guarantees. The Company does not believe that the adoption of FIN 45 will be material to the Company's operating results or financial position.

In November 2002, the Emerging Issue Task Force (EITF) issued abstract No. 00-21, "Revenue Arrangements with Multiple Deliverables." EITF No. 00-21 addresses certain aspects of the accounting for arrangements under which a vendor will perform multiple revenue-generating activities. The guidance in this issue is effective for revenue arrangements entered into in fiscal periods beginning after June 15, 2003.

8. *Lonza Large-Scale Product Supply Agreement -*

In January 2003, the Company remitted a cash advance or deposit of \$7.25 million to Lonza Biologics, plc pursuant to a large-scale product supply agreement for the long-term commercial manufacture of the Company's C5 inhibitor antibody, eculizumab. This advance, along with a previously paid commitment fee of \$2.75 million, will be amortized by the Company over the large-scale product manufacturing production. The amounts advanced are subject to refund or forfeiture pursuant to contractual terms related to cancellation, termination, or failure to purchase

**ALEXION PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

a minimum volume of product. These amounts are included within prepaid manufacturing costs within the accompanying balance sheets.

9. *Accrued Research and Development Expenses* –

Accrued research and development expenses are comprised of amounts owed to suppliers for research and development work performed on behalf of the Company. At each period end the Company evaluates the accrued expense balance related to these activities based upon information received from the supplier and estimated progress toward completion of the research or development objectives to ensure that the balance is appropriately stated. During the second quarter of fiscal 2003, based upon current information received from a supplier, the Company reversed previously recorded accrued research and development expenses of approximately \$1.3 million resulting in a reduction of research and development expense during the six months ended January 31, 2003. Such estimates are subject to changes as additional information becomes available.

**ALEXION PHARMACEUTICALS, INC.**

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

*This report contains forward-looking statements which involve risks and uncertainties. Such statements are subject to certain factors which may cause our plans and results to differ significantly from plans and results discussed in forward-looking statements. Factors that might cause or contribute to such differences include, but are not limited to, those discussed in "Risk Factors"—Exhibit 99.2 in our Annual Report on Form 10-K for the year ended July 31, 2002 and Quarterly Report on form 10-Q for the quarterly period ended October 31, 2002. The interim financial statements and this Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the Financial Statements and Notes thereto for the fiscal year ended July 31, 2002 and the related Management's Discussion and Analysis of Financial Conditions and Results of Operations, both of which are contained in our Annual report on Form 10-K for the fiscal year ended July 31, 2002.*

**Overview**

We are engaged in the discovery and development of therapeutic products aimed at treating patients with a wide array of severe disease states, including cardiovascular, autoimmune, and hematologic disorders, inflammation and cancer. Since our inception in January 1992, we have devoted substantially all of our resources to drug discovery, research, and product and clinical development. Additionally, through our wholly owned subsidiary, Alexion Antibody Technologies, Inc., or AAT, we are engaged in the discovery and development of a portfolio of additional antibody therapeutics targeting severe unmet medical needs.

Our two lead product candidates are antibodies that address specific diseases that arise when the human immune system attacks the human body itself and produces undesired inflammation. Antibodies are proteins that bind specifically to selected targets, or antigens, in the body. After the antibody binds to its target, it may activate the body's immune system against the target, block activities of the target or stimulate activities of the target.

One of our antibody product candidates, pexelizumab, is an antibody fragment under development in collaboration with Procter & Gamble Pharmaceuticals, or P&G, in acute cardiovascular disorders. Pexelizumab is currently in evaluation in a pivotal Phase III trial, PRIMO-CABG, in patients undergoing coronary artery bypass graft surgery, or CABG with cardiopulmonary bypass, or CPB. This study recently completed the target patient enrollment of approximately 3,000 patients in February 2003. This study remains ongoing as evaluation awaits completion of all follow-up patient visits, data collection, and subsequent data analysis. Also in collaboration with P&G, we conducted two Phase II clinical trials in acute myocardial infarction or heart attack patients: one study in patients receiving angioplasty, a procedure for opening up narrowed or blocked arteries that supply blood to the heart, the COMMA study, and the other in patients receiving thrombolytic therapy, a procedure for dissolving clots that block heart vessels, the COMPLY study. Results from both studies were reported at the November 2002 annual meeting of the American Heart Association. In both studies, the primary endpoint of myocardial infarction, or death of heart muscle, size reduction was not reached, however in the COMMA study pexelizumab treatment was associated with a significant, dose dependent reduction in mortality. Pending discussions with the FDA, our partner, P&G, and other development considerations, we expect to proceed with the Phase III clinical development of pexelizumab in acute MI patients.

Our other lead antibody product candidate, eculizumab, is in clinical development for the treatment of a variety of chronic autoimmune diseases. We completed enrollment in January 2003 for the ongoing Phase IIb study with eculizumab in approximately 350 rheumatoid arthritis patients. Evaluation of this rheumatoid arthritis study awaits completion of all patient dosing, follow-up patient visits, data collection, and subsequent data analysis. In November 2002, preliminary results were reported at the American Society of Nephrology annual meeting from two clinical trials evaluating eculizumab in patients with membranous nephritis, a kidney disease. Results from the first, randomized, placebo controlled double blind, membranous nephritis study showed that eculizumab was well tolerated but did not reach its primary clinical efficacy endpoint of reduction in proteinuria, an abnormal loss of substantial amounts of protein in a patient's urine, after four months of therapy. In the second membranous nephritis study, both placebo and eculizumab treated patients from the four month study were treated for an additional 12 months with eculizumab therapy. In this second study, eculizumab was well tolerated and associated with an increased remission rate at 12 months and with significant improvements in proteinuria and other important components of nephrotic syndrome.

**ALEXION PHARMACEUTICALS, INC.**

Eculizumab is also under evaluation in an open label 3 month Phase I pilot study in paroxysmal nocturnal hemoglobinuria or PNH patients in the United Kingdom. PNH is a rare blood disease characterized by severe anemia and risk of blood clotting or thrombosis. Preliminary results from this PNH study were presented at the American Society of Hematology meeting in December 2002. In this PNH study, eculizumab was well-tolerated and associated with a 68% reduction in the need for blood transfusions, up to 81% reduction in biochemical parameters of hemolysis or destruction of red cells, and 90% reduction in clinical paroxysms. A 12 month extension trial is ongoing in which all eleven PNH patients elected to enroll.

Through AAT, our wholly owned subsidiary with extensive combinatorial human and humanized antibody library technologies and expertise, we have developed important capabilities to discover and develop additional antibody product candidates for the treatment of inflammatory diseases and cancer. We have also developed therapies employing the transplantation of cells from other species into humans, known as xenotransplantation.

To date, we have not received any revenues from the sale of our products. We have incurred operating losses since our inception. As of January 31, 2003, we had an accumulated deficit of \$223.9 million. We expect to incur substantial and increasing operating losses for the next several years due to expenses associated with product research and development, pre-clinical studies and clinical testing, regulatory activities, manufacturing development, scale-up and commercial manufacturing, pre-commercialization activities and developing a sales and marketing force and we may need to obtain additional financing to cover these costs. Relative to scale-up and commercial manufacturing, we have executed a large-scale product supply agreement with Lonza Biologics, plc for the long-term manufacture of eculizumab.

We plan to develop and commercialize on our own those product candidates for which the clinical trials and commercialization requirements can be funded and accomplished by our own resources. For those products which require greater resources, our strategy is to form corporate partnerships with major pharmaceutical companies for product development and commercialization, where we will still play a major role.

In December 2001, the Company and P&G entered into a binding memorandum of understanding (“MOU”) pursuant to which they revised their January 1999 collaboration. Under the revised structure per the MOU, the Company and P&G will share decision-making and responsibility for all future U.S. development and commercialization costs for pexelizumab, including clinical, manufacturing, marketing, and sales efforts. Prior to December 2001, P&G was generally funding all clinical development and manufacturing costs for pexelizumab. The revised collaboration per the MOU provides that the Company and P&G each incur approximately 50% of all Phase III clinical trial, product development and manufacturing, and commercialization costs necessary for the potential approval and marketing of pexelizumab in the U.S. and that the Company will receive approximately 50% of the gross margin on U.S. sales, if any. P&G agreed to retain responsibility for future development and commercialization costs outside the U.S., with the Company receiving a royalty on sales to the rest of the world, if any. The Company is responsible for royalties on certain third party intellectual property worldwide, if such intellectual property is necessary. Additionally, as part of the MOU, the Company will receive milestone payments for achieving specified development steps, regulatory filings and approvals, but not receive previously agreed sales milestones and will generally forego further research and development support payments from P&G.

The Company has agreed to bear the first 50% of projected costs associated with the U.S. coronary artery bypass graft surgery (“CABG”) – Phase III clinical trial costs and P&G will bear the second 50%, with a final adjustment to make even the 50% sharing costs. As of January 31, 2003 the Company had completed its obligation associated with the first 50% of the projected costs. P&G has the right to terminate the collaboration at any time. If P&G terminates the collaboration, P&G may not be required to contribute towards costs incurred after termination. In such circumstance, all rights and the exclusive license to the Company’s intellectual property related to pexelizumab will revert back to the Company and the Company will be entitled to all future pexelizumab revenues, if any, without any sharing of revenues, if any, with P&G.

**ALEXION PHARMACEUTICALS, INC.**

As part of the revised collaboration per the MOU, P&G agreed to continue to fund 100% of the costs for the two recently completed acute myocardial infarction (“AMI”) Phase II clinical trials in myocardial infarction (“heart attack”) patients. The Company and P&G have agreed that each will share concurrently 50% of the ongoing U.S. pre-production and development manufacturing costs for pexelizumab as well as any future AMI-Phase III clinical trial costs.

The preparation of financial statements requires us to make estimates, assumptions and judgements that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent liabilities. On an on-going basis, we evaluate our estimates, including those related to intangible assets; collaborative, royalty and license arrangements; and other contingencies. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form our basis for making judgements about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from those estimates under different assumptions or conditions.

We believe the following critical accounting policies affect our more significant judgments and estimates used in the preparation of our consolidated financial statements:

**Revenues** – We record contract research revenues from research and development support payments, license fees and milestone payments under collaboration with third parties, and amounts received from various government grants. Up-front, non-refundable license fees received in connection with a collaboration are deferred and amortized into revenue over the life of the agreement or underlying technologies. Revenues derived from the achievement of milestones are recognized when the milestone is achieved, provided that the milestone is substantive and a culmination of the earnings process has occurred. Research and development support revenues are recognized as the related work is performed and expenses are incurred under the terms of the contracts for development activities. Revenues derived from the achievement of milestones or recognition of related work when performed under terms of a contract may cause our operating results to vary considerably from period to period. Deferred revenue results from cash received or amounts receivable in advance of revenue recognition under research and development contracts.

**Research and development expenses** – We record research and development expenses when they are incurred unless recoverable under contract. Research and development expenses include the following major types of costs: salaries and benefit costs, research license fees and various contractor costs, depreciation and amortization of lab facilities and leasehold improvements, building and utilities costs related to research space, and lab supplies. Research and development expenses can fluctuate significantly from milestone payments due to third parties upon the attainment or triggering of contractual milestones such as the grant of a patent, FDA filing, FDA approval, or achieving a manufacturing or sales objective. Accrued research and development expenses are comprised of amounts owed to suppliers for research and development work performed on behalf of the Company. At each period end we evaluate the accrued expense balance related to these activities based upon information received from the supplier and estimated progress toward completion of the research or development objectives to ensure that the balance is appropriately stated. These evaluations are subject to changes in estimate in subsequent periods.

**Goodwill, net** – At January 31, 2003, we carry \$20.0 million of goodwill, net, acquired in connection with our acquisition of Prolifaron, representing the excess cost over fair value of the net assets acquired. On a prospective basis, this goodwill or any long-lived investment asset is subject to annual impairment reviews. Impairment charges, if any, will be recorded as a component of operating expenses in the period in which the impairment is determined, if any.

**Prepaid manufacturing costs** – We record cash advances paid to secure future long term manufacturing production at third-party contract manufacturers as prepaid manufacturing costs. These costs will be amortized over the period of manufacturing production. These cash advances are subject to refund if the manufacturing facility is unavailable as scheduled or forfeiture if we terminate the scheduled manufacturing production pursuant to contractual terms.

## ALEXION PHARMACEUTICALS, INC.

**Results of Operations**

A summary of revenues generated from contract research collaboration, milestone payment, and grant awards is as follows for the three and six months ended January 31 (dollars in thousands):

	Three months ended January 31,		Six months ended January 31,	
	2003	2002	2003	2002
<u>Collaboration/Grant Awards</u>				
P&G	\$ 170	\$ 2,719	\$ 339	\$ 4,047
U.S. government grants	50	440	204	959
Other	—	221	—	234
<b>Contract Research Revenues</b>	<b>\$ 220</b>	<b>\$ 3,380</b>	<b>\$ 543</b>	<b>\$ 5,240</b>

Three Months Ended January 31, 2003Compared with Three Months ended January 31, 2002

We earned contract research revenues of \$220,000 for the three months ended January 31, 2003 and \$3.4 million for the same period ended January 31, 2002. The \$3.2 million decrease resulted primarily from the decreased research and development support payments, primarily a \$2.0 million milestone payment achieved in the second quarter of 2002, from P&G as compared to the same period a year ago and the reduction in grant reimbursable billings from our various government grants. Decreased research and development support payments resulted principally from our revised collaboration with P&G during the quarter ended January 31, 2002 (see preceding section, Overview), as well as the conclusion of certain government grants.

We incurred research and development expenses of \$19.3 million for the three months ended January 31, 2003 and \$15.0 million for the three months ended January 31, 2002. The \$4.3 million increase resulted primarily from ongoing pexelizumab CABG Phase III clinical trial costs incurred. Also contributing were eculizumab clinical trial costs, increased manufacturing costs associated with our lead C5 inhibitor candidates, pexelizumab and eculizumab, and increased payroll costs. Prior to December 2001, P&G was generally funding all clinical development and manufacturing costs for pexelizumab. Our revised collaboration (see preceding section, Overview) provides for us and P&G to each incur approximately 50% of all Phase III clinical trial, product development and manufacturing costs for pexelizumab. In addition, as part of our revised collaboration, we and P&G agreed that we would bear the first 50% of the ongoing PRIMO-CABG Phase III clinical trial costs and P&G will bear the second 50%. Beginning in our fiscal 3<sup>rd</sup> quarter, P&G will bear the second 50% of the PRIMO-CABG Phase III clinical trial costs since we have now spent our 50% portion of the trial's initial projected cost. As a result, we believe our CABG Phase III clinical trial costs will cease until the trial is completed when a final adjustment will be made to even the 50% sharing.

Our general and administrative expenses were \$2.1 million for the three months ended January 31, 2003 and \$1.8 million for the three months ended January 31, 2002. This increase resulted principally from higher personnel costs associated with providing support to the various research and development departments.

Total operating expenses were \$21.4 million and \$16.9 million for the three months ended January 31, 2003 and 2002, respectively.

Investment income was \$1.7 million for the three months ended January 31, 2003 and \$3.9 million for the three months ended January 31, 2002. The decrease in investment income of \$2.2 million resulted primarily from lower cash balances and lower market interest rates. Interest expense, primarily on our \$120 million convertible subordinated notes, was \$1.9 million for the quarters ended January 31, 2003 and 2002.

For the three months ended January 31, 2003, a provision for the Connecticut capital base tax of \$59,000 was recorded. Effective for tax years beginning on or after January 1, 2002 as a result of Connecticut legislation passed

**ALEXION PHARMACEUTICALS, INC.**

in July 2002, companies are required to pay on an annual basis a minimum of 30% of the capital base component of their Connecticut corporation business tax, notwithstanding available tax credit carry-forwards.

As a result of the above factors, we incurred a net loss of \$21.5 million or \$1.18 basic and diluted net loss per common share for the three months ended January 31, 2003 compared to a net loss of \$10.8 million or \$0.60 basic and diluted net loss per common share for the three months ended January 31, 2002.

*Six Months Ended January 31, 2003*

*Compared with Six Months ended January 31, 2002*

We earned contract research revenues of \$543,000 for the six months ended January 31, 2003 and \$5.2 million for the same period ended January 31, 2002. The \$4.7 million decrease resulted primarily from the decreased research and development support payments from P&G as compared to the same period a year ago and the reduction in grant reimbursable billings from our various government grants. Decreased research and development support payments resulted principally from our revised collaboration with P&G in December 2001.

We incurred research and development expenses of \$39.0 million for the six months ended January 31, 2003 and \$24.7 million for the six months ended January 31, 2002. The \$14.3 million increase resulted primarily from ongoing pexelizumab CABG Phase III clinical trial costs incurred. Also contributing were eculizumab clinical trial costs, increased manufacturing costs associated with our lead C5 inhibitor candidates, pexelizumab and eculizumab, and increased payroll costs.

Our general and administrative expenses were \$4.3 million for the six months ended January 31, 2003 and \$3.4 million for the six months ended January 31, 2002. This increase resulted principally from higher personnel costs associated with providing support to the various research and development departments.

Total operating expenses were \$43.2 million and \$28.1 million for the six months ended January 31, 2003 and 2002, respectively.

Investment income was \$3.5 million for the six months ended January 31, 2003 and \$7.5 million for the six months ended January 31, 2002. The decrease in investment income of \$4.0 million resulted primarily from lower cash balances and lower market interest rates. Interest expense, primarily on our \$120 million convertible subordinated notes, was \$3.9 million for the six months ended January 31, 2003 and 2002.

For the six months ended January 31, 2003, a provision for the capital base tax of \$108,000 was recorded.

As a result of Connecticut tax legislation passed in July 2002.

As a result of the above factors, we incurred a net loss of \$43.1 million or \$2.37 basic and diluted net loss per common share for the six months ended January 31, 2003 compared to a net loss of \$18.6 million or \$1.03 basic and diluted net loss per common share for the six months ended January 31, 2002.

**Liquidity and Capital Resources**

As of January 31, 2003, cash, cash equivalents, and marketable securities was \$253.2 million compared with \$308.6 million at July 31, 2002. The decrease was primarily due to funding our operating activities.

Net cash used in operating activities for the six months ended January 31, 2003 was \$53.9 million. This consisted primarily of our net loss of \$43.1 million and, an increase in prepaid manufacturing costs of \$7.25 million, representing deposits paid to secure commercial long-term large-scale product supply manufacturing.

Net cash provided by investing activities for the six months ended January 31, 2003 was \$58.6 million. This included \$60.0 million net of proceeds from the maturity and reinvestment in marketable securities and \$1.4 million of property, plant, and equipment additions.

**ALEXION PHARMACEUTICALS, INC.**

We anticipate that our existing capital resources together with the anticipated funding from our revised collaboration with P&G, as well as the addition of our interest and investment income earned on available cash and marketable securities should provide us adequate resources to fund our operating expenses and capital requirements as currently planned for at least the next twenty-four months. This should also provide us adequate funding for the clinical testing and manufacturing of our C5 Inhibitor product candidates and support for our broad research and development of our additional product candidates. Under terms of the agreement for Lonza Biologics plc or Lonza to manufacture commercial supplies of eculizumab, we could owe penalties for failure to purchase a minimum volume of product or if we terminate the agreement prior to its expiration. If we terminate the agreement, we could be required to complete the purchase of product scheduled to manufacture up to 18 months following termination, or at our election to make a termination payment of up to \$25,000,000, less partial return of the unused portion of prepaid manufacturing costs.

Our contractual obligations and commercial commitments consist principally of our \$120 million of convertible subordinated notes, a \$3.9 million note payable, and our annual payments of approximately \$2.0 million for operating leases—principally for facilities and equipment. We have no outstanding capital leases. In respect of our current clinical development programs, we have cancellable research and development, clinical development and manufacturing cost commitments along with anticipated supporting arrangements, subject to certain limitations and cancellation clauses. These cost commitments, aggregating approximately \$130 million over the next forty-two months, include approximately \$30 million in clinical development and manufacturing costs that may be incurred over the next eighteen months and approximately \$100 million representing commercial manufacturing costs beyond 18 months. The timing and level of these commercial manufacturing costs, which may or may not be realized, are contingent upon clinical development programs' progress as well as commercialization plans. These obligations, commitments and supporting arrangements represent payments based on current operating forecasts, which are subject to change.

In respect of our current pre-clinical development programs, additional payments, aggregating up to \$49 million, would be required if we elect to continue development under those programs and specified development milestones are reached (including achievement of commercialization). Approximately \$3 million of these costs may be incurred in the next 36 months.

Interest on our \$120 million 5.75% convertible subordinated notes due March 15, 2007 is payable semi-annually in September and March of each year. The holders may convert all or a portion of the notes into common stock any time on or before March 15, 2007 at a conversion price of \$106.425 per common share. Beginning March 20, 2003, we may redeem some or all of the notes per the declining redemption prices listed for the notes. We may also elect to pay the repurchase price for some or all the notes in cash or common stock. Our 5.75% convertible subordinated notes due March 2007 are trading at a discount to its face amount. Accordingly, in order to reduce future cash interest payments, as well as future payments due at maturity; we may, from time to time, depending on market conditions, repurchase some of our outstanding convertible debt for cash; exchange debt for shares of our common stock, preferred stock, debt or other consideration; or a combination of any of the foregoing. If Alexion exchanges shares of its capital stock, or securities convertible into or exercisable for its capital stock, for outstanding convertible debt, the number of shares that it might issue as a result of such exchanges would significantly exceed that number of shares originally issuable upon conversion of such debt and, accordingly, such exchanges could result in material dilution to holders of Alexion's common stock. There can be no assurance that Alexion will repurchase or exchange any outstanding convertible debt.

Interest on our \$3.9 million note payable due in May 2005, bearing interest at 6% per annum, is payable quarterly. This note payable was used to finance certain manufacturing assets acquired in February 1999, principally land, buildings and laboratory equipment, for the xenograft program developed by Tyco Healthcare, formerly known as U.S. Surgical Corporation. The principal balance under the note is due in May 2005. Security for this term note is the manufacturing assets that we purchased. We are looking to leverage our opportunities in this program with the completion of manufacturing methods to be used for the UniGraft cells/tissue to enable clinical development. At this time, we are minimizing expenditures in this program while awaiting the completion of an evaluation by an interested independent third party. If we are unable to secure a collaboration to share in the future funding of the development and clinical trials, we may be unable to maximize the value in this program; and subsequently, will reduce our financial commitment to the program in order to focus our resources on our other development programs. This may lead to a termination of our UniGraft program, and result in an impairment to our UniGraft manufacturing assets resulting in a write down of a portion of those assets by our fiscal year end. As of January 31, 2003, the carrying value of those assets was approximately \$4 million.



**ALEXION PHARMACEUTICALS, INC.**

We expect to continue to operate at a net loss for at least the next several years as we continue our research and development efforts and continue to conduct clinical trials and develop manufacturing, sales, marketing and distribution capabilities. Our operating expenses will depend on many factors, including:

- the progress, timing and scope of our research and development programs;
- the progress, timing and scope of our preclinical studies and clinical trials;
- the time and cost necessary to obtain regulatory approvals; the time and cost necessary to further develop manufacturing processes, arrange for contract manufacturing or build manufacturing facilities and obtain the necessary regulatory approvals for those facilities;
- the time and cost necessary to develop sales, marketing and distribution capabilities;
- changes in applicable governmental regulatory policies; and
- any new collaborative, licensing and other commercial relationships that we may establish.

We expect to incur substantial additional costs for research, pre-clinical and clinical testing, manufacturing process development, additional capital expenditures related to personnel and facilities expansion, clinical and commercial manufacturing requirements, secure commercial contract manufacturing capacity, and marketing and sales in order to commercialize our products currently under development. Furthermore, we will owe royalties to parties we have licensed intellectual property from, or may in the future license intellectual property from, in connection with the development, manufacture or sale of our products.

In addition to milestone payments we may receive from our collaboration with P&G and our interest and investment income that are subject to market interest rate fluctuations, we will need to raise or generate substantial additional funding in order to complete the development and commercialization of all of our product candidates. Furthermore, the development or expansion of our business or any acquired business or companies may require a substantial capital investment by us. Our additional financing may include public or private debt or equity offerings, equity line facilities, bank loans, collaborative research and development arrangements with corporate partners, and/or the sale or licensing of some of our property. There can be no assurance that funds will be available on terms acceptable to us, if at all, or that discussions with potential strategic or collaborative partners will result in any agreements on a timely basis, if at all. The unavailability of additional financing when and if required could require us to delay, scale back or eliminate certain research and product development programs or to license third parties to commercialize products or technologies that we would otherwise undertake ourselves, any of which could have a material adverse effect.

**Item 3. Quantitative and Qualitative Disclosure about Market Risks.**

We account for our marketable securities in accordance with SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities". All of the cash equivalents and marketable securities are treated as available-for-sale under SFAS No. 115.

Investments in fixed rate interest earning instruments carry a degree of interest risk. Fixed rate securities may have their fair market value adversely impacted due to a rise in interest rates. Due in part to these factors, our future investment income may fall short of expectations due to changes in interest rates or we may suffer losses in principal if forced to sell securities which have seen a decline in market value due to changes in interest rates. Our marketable securities are held for purposes other than trading and we believe that we currently have no material adverse risk exposure. The marketable securities as of January 31, 2003, had maturities of less than two years. The weighted-average interest rate on marketable securities at January 31, 2003 was approximately 1.9%. The fair value of marketable securities held at January 31, 2003 was \$200.9 million.

**ALEXION PHARMACEUTICALS, INC.**

**Item 4. Controls and Procedures.**

- a) *Evaluation of disclosure controls and procedures.* Based on their evaluation of the Company's disclosure controls and procedures (as defined in Rule 13a-14 (c) and 15d-14 (c) under the Securities Exchange Act of 1934) as of a date within 90 days of the filing date of this Quarterly Report on Form 10-Q, the Company's chief executive officer and chief financial officer have concluded that the Company's disclosure controls and procedures are designed to ensure that 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 are operating in an effective manner.
- b) *Changes in internal controls.* There were no significant changes in the Company's internal controls or in other factors that could significantly affect these controls subsequent to the date of the most recent evaluation.

**ALEXION PHARMACEUTICALS, INC.**

**PART II. OTHER INFORMATION**

**Item 4. Submission of Matters to a Vote of Security Holder**

At the Company's Annual Meeting of Stockholders held on December 12, 2002, the stockholders voted to nominate and elect the following directors by the votes indicated:

Leonard Bell, M.D.:	13,587,853 For, 442,355 Against or Withheld, 0 Abstaining
Jerry T. Jackson	13,322,954 For, 707,254 Against or Withheld, 0 Abstaining
David W. Keiser	13,590,853 For, 439,355 Against or Withheld, 0 Abstaining
Max Link, Ph.D.:	13,322,821 For, 707,387 Against or Withheld, 0 Abstaining
Joseph A. Madri, Ph.D., M.D.:	13,590,720 For, 439,488 Against or Withheld, 0 Abstaining
R. Douglas Norby:	13,590,553 For, 439,655 Against or Withheld, 0 Abstaining
Alvin S. Parven:	13,322,754 For, 707,454 Against or Withheld, 0 Abstaining

At the Company's annual Meeting of Stockholders held on December 12, 2002, the stockholders voted to approve an amendment to the Company's 1992 Stock Option Plan for Outside Directors; amended the Company's 2000 Stock Option Plan; and ratified the appointment of PricewaterhouseCoopers, LLP as the Company's independent public accountants. The votes were:

Amend 1992 Stock Option Plan For Outside Directors:	7,523,900 For, 2,496,934 Against, 59,118 Abstain, 3,950,256 Not Voted
Amend 2000 Stock Option Plan:	8,705,703 For, 1,814,786 Against, 59,463 Abstain, 3,450,256 Not Voted
Appointment of independent public accountants:	13,986,153 For, 38,660 Against, 5,395 Abstain

**Item 5.**

The 2003 Annual meeting of stockholders of the Company will be held on or about December 16, 2003. All stockholder proposals which are intended to be presented at the 2003 annual meeting of stockholders of the Company must be received by the Company no later than July 2, 2003 for inclusion in the Board of Directors' proxy statement and form of proxy relating to that meeting.

**Item 6. Exhibits and Reports**

(a) Exhibits

99.1	Statement pursuant to 18 U.S.C. Section 1350.
10.5	Company's 2000 Stock Option Plan, as amended
10.6	Company's 1992 Outside Directors Stock Option Plan, as amended
10.26	Large-Scale Production Supply Agreement with Lonza Biologics, PLC., as amended
10.27	Industrial Real Estate Lease-25 Science Park, New Haven, Connecticut, as amended

(b) Form 8-K

No reports on Form 8-K have been filed during the quarter for which this report is filed.

**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.

**ALEXION PHARMACEUTICALS, INC.**

Date: March 17, 2003

By: /s/ Leonard Bell, M.D.

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Leonard Bell, M.D.  
Chief Executive Officer, Secretary and Treasurer  
(principal executive officer)

Date: March 17, 2003

By: /s/ David W. Keiser

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David W. Keiser  
President and Chief Operating Officer  
(principal financial officer)

Date: March 17, 2003

By: /s/ Barry P. Luke

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Barry P. Luke  
Vice President of Finance and Administration  
(principal accounting officer)

**CERTIFICATIONS**

I, Leonard Bell, M.D., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Alexion Pharmaceuticals, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Dated: March 17, 2003

/s/ Leonard Bell, M.D.

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Leonard Bell, M.D.  
Chief Executive Officer  
(principal executive officer)

**CERTIFICATIONS**

I, David W. Keiser, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Alexion Pharmaceuticals, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a. Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - b. evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c. presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a. all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b. any fraud, whether or not material, that involves management or other employees who have significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Dated: March 17, 2003

/s/ David W. Keiser

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David W. Keiser  
President and Chief Operating Officer  
(principal financial officer)

**ALEXION PHARMACEUTICALS, INC.**  
**2000 STOCK OPTION PLAN**  
**(AS AMENDED)**

1. **Purpose.** The purpose of the Alexion Pharmaceuticals, Inc. 2000 Stock Option Plan (the “Plan”) is to establish a vehicle through which Alexion Pharmaceuticals, Inc. (the “Company”) can make discretionary grants of Options to purchase shares of the Company’s common stock, par value \$0.0001 (the “Common Stock”) to members of the Board of Directors of the Company (the “Board”), to officers and other employees of the Company and its Affiliates and to consultants and other independent contractors of the Company and its Affiliates, with a view toward promoting the long-term financial success of the Company and enhancing stockholder value.
2. **Definitions.** For purposes of the Plan, the following terms shall have the following meanings:
  - (a) “Affiliate” shall mean an affiliate within the meaning of Rule 12b-2 under the Exchange Act.
  - (b) “Cause” shall mean, unless otherwise determined by the Committee: (1) in the case where there is no employment or consulting agreement between the optionee and the Company or its Affiliates at the time of grant or where such an agreement exists but does not define “cause” (or words of like import), the optionee’s dishonesty, fraud, insubordination, willful misconduct, refusal to perform services, unsatisfactory performance of services or material breach of any written agreement between the optionee and the Company or its Affiliates, or (2) in the case where there is an employment or consulting agreement between the optionee and the Company or its Affiliates at the time of grant which defines “cause” (or words of like import), the meaning ascribed to such term under such agreement.
  - (c) “Code” shall mean the Internal Revenue Code of 1986, as amended.
  - (d) “Committee” shall mean the committee, consisting of at least two (2) directors, appointed by the Board from time to time to administer the Plan or, if no such committee is appointed, the Board.
  - (e) “Detrimental Activities” shall mean any of the following, unless authorized by the Company: (1) the rendering of services for any organization or engaging directly or indirectly in any business which is or becomes competitive with the Company or its Affiliates, or which organization or business, or the rendering of services to such organization or business, is or becomes otherwise prejudicial to or in conflict with the interests of the Company or its Affiliates, (2) the disclosure to anyone outside the Company or its Affiliates, or the use in other than the Company’s or its Affiliates’ business, without authorization from the Company, of any confidential information or material relating to the business of the Company or its Affiliates, acquired by the optionee either during or after employment or other service with the Company or its Affiliates, (3) the failure or refusal to disclose promptly and to assign to the Company or its Affiliates all right, title and interest in any invention or idea, patentable or not, made

or conceived by the optionee during employment by or other service with the Company or its Affiliates, relating in any manner to the actual or anticipated business, research or development work of the Company or its Affiliates or the failure or refusal to do anything reasonably necessary to enable the Company or its Affiliates to secure a patent where appropriate in the United States and in other countries insofar as any matter referred to in this clause (3) violates any obligation of the option holder to the Company or its Affiliates, or (4) any attempt directly or indirectly to induce any employee of the Company or its Affiliates to be employed or perform services elsewhere or any attempt directly or indirectly to solicit the trade or business of any current or prospective customer, supplier or partner of the Company or its Affiliates.

(f) "Disability" shall mean, unless as otherwise determined by the Committee or as provided in an employment agreement, the inability of an optionee to perform the customary duties of his or her employment or other service for the Company or its Affiliates by reason of a physical or mental incapacity which is expected to result in death or to be of indefinite duration.

(g) "Effective Date" shall mean the date on which the Plan was adopted by the Board, subject to the approval of the Company's stockholders within twelve (12) months of such date.

(h) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

(i) "Exchange Transaction" shall mean a merger (other than a merger of the Company in which the holders of Common Stock immediately prior to the merger have the same proportionate ownership of Common Stock in the surviving corporation immediately after the merger), consolidation, acquisition of property or stock, separation, reorganization (other than a mere reincorporation or the creation of a holding company) or liquidation of the Company, as a result of which the stockholders of the Company receive cash, stock or other property in exchange for or in connection with their shares of Common Stock.

(j) "Fair Market Value" as of any date shall mean, unless otherwise required by the Code or other applicable law, the closing sale price per share of Common Stock as published by the principal national securities exchange on which the Common Stock is traded on such date or, if there is no sale of Common Stock on such date, the average of the bid and asked prices on such exchange at the close of trading on such date, or if shares of the Common Stock are not listed on a national securities exchange on such date, the closing price or, if none, the average of the bid and asked prices in the over-the-counter market at the close of trading on such date, or if the Common Stock is not traded on a national securities exchange or the over-the-counter market, the value of a share of the Common Stock on such date as determined in good-faith by the Committee.

(k) "Incentive Stock Option" shall mean an Option that is intended to be an "incentive stock option" within the meaning of Section 422 of the Code.

(l) "Non-Qualified Stock Option" shall mean an Option that is not an Incentive Stock Option.



- (m) "Option" shall mean an Incentive Stock Option or a Non-Qualified Stock Option granted pursuant to the Plan.
- (n) "Securities Act" shall mean the Securities Act of 1933, as amended.
- (o) "Subsidiary" shall mean any "subsidiary corporation" of the Company within the meaning of Section 424(f) of the Code.
- (p) "Ten Percent Stockholder" shall mean a person owning, at the time of grant, stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any parent or subsidiary corporation within the meaning of Section 424 of the Code.

3. **Administration.**

- (a) Committee. The Plan shall be administered and interpreted by the Committee.
- (b) Authority of Committee. Subject to the limitations of the Plan, the Committee, acting in its sole and absolute discretion, shall have full power and authority to: (1) select the persons to whom Options shall be granted, (2) grant Options to such persons and prescribe the terms and conditions of such Options (including, but not limited to, the exercise and vesting conditions applicable thereto), (3) interpret and apply the provisions of the Plan and of any agreement or other instrument evidencing an Option, (4) carry out any responsibility or duty specifically reserved to the Committee under the Plan, and (5) make any and all determinations and interpretations and take such other actions as may be necessary or desirable in order to carry out the provisions, intent and purposes of the Plan. A majority of the members of the Committee shall constitute a quorum. The Committee may act by the vote of a majority of its members present at a meeting at which there is a quorum or by unanimous written consent. The determinations of the Committee, including with regard to questions of construction, interpretation and administration, shall be final, binding and conclusive on all persons.
- (c) Indemnification. The Company shall indemnify and hold harmless each member of the Committee and the Board and any employee of the Company who provides assistance with the administration of the Plan from and against any loss, cost, liability (including any sum paid in settlement of a claim with the approval of the Board), damage and expense (including the advancement of reasonable legal and other expenses incident thereto) arising out of or incurred in connection with the Plan, unless and except to the extent attributable to such person's fraud or willful misconduct.

4. **Eligibility.** Options may be granted under the Plan to any member of the Board (whether or not an employee of the Company or its Affiliates), to any officer or other employee of the Company or its Affiliates and to any consultant or other independent contractor who performs or will perform services for the Company or its Affiliates. Notwithstanding the foregoing, Incentive Stock Options may only be granted to persons who are employed by the Company or a Subsidiary at the time of grant.

5. **Available Shares.** Subject to adjustment as provided in Section 10, (a) the

maximum number of shares of Common Stock that may be issued under the Plan shall not exceed 2,400,000 shares, and the (b) maximum number of shares of Common Stock with respect to which Options may be granted to any employee of the Company or its Affiliates in any calendar year shall not cover more than 200,000 shares. Shares of Common Stock available for issuance under the Plan may be either authorized and unissued or held by the Company in its treasury. New Options may be granted under the Plan with respect to Shares of Common Stock which are covered by the unexercised portion of an Option which has terminated or expired by its terms, by cancellation or otherwise. No fractional shares of Common Stock may be issued under the Plan.

#### **6. Stock Options.**

- (a) **Type of Options.** Subject to the provisions hereof, the Committee may grant Incentive Stock Options and Non-Qualified Stock Options to eligible personnel upon such terms and conditions as the Committee deems appropriate.
- (b) **Option Term.** Unless sooner terminated, all Options shall expire not more than ten (10) years after the date the Option is granted (or, in the case of an Incentive Stock Option granted to a Ten Percent Stockholder, not more than five (5) years).
- (c) **Exercise Price.** The exercise price per share of Common Stock covered by an Option may not be less than one hundred percent (100%) of the Fair Market Value of a share of Common Stock on the date the Option is granted (or, in case of an Incentive Stock Option granted to a Ten Percent Stockholder, one hundred ten percent (110%) of the Fair Market Value of a share of Common Stock on the date the Option is granted).
- (d) **Exercise of Options.** The Committee may establish such vesting and other conditions and restrictions on the exercise of an Option and/or upon the issuance of Common Stock in connection with the exercise of an Option as it deems appropriate. All or part of the exercisable portion of an Option may be exercised at any time during the Option term, except that, without the consent of the Committee, no partial exercise of an option may be for less than one hundred (100) shares.
- (e) **Payment of Exercise Price.** An Option may be exercised by transmitting to the Company: (i) a written notice specifying the number of shares to be purchased, and (ii) payment of the exercise price, together with the amount, if any, deemed necessary by the Committee to enable the Company to satisfy its federal, state, foreign or other tax withholding obligations with respect to such exercise. The Committee may establish such rules and procedures as it deems appropriate for the exercise of Options. The exercise price of shares of Common Stock acquired pursuant to the exercise of an Option may be paid in cash, certified or bank check and/or such other form of payment as may be approved by the Committee and permitted by applicable law from time to time, including, without limitation, shares of Common Stock which have been owned by the holder for at least six (6) months (free and clear of any liens and encumbrances).
- (f) **Limitation on Repricing of Options.** Under no circumstances may the Board or the Committee, directly or indirectly, reprice or otherwise modify any outstanding Options granted pursuant to the Plan to effect a reduction in the exercise price thereof.

7. **Non-Transferability.** No Option shall be transferable by an optionee other than upon the optionee's death to a beneficiary designated by the optionee, or, if no designated beneficiary shall survive the optionee, pursuant to the optionee's will or by the laws of descent and distribution. All Options shall be exercisable during an optionee's lifetime only by the optionee. Any attempt to transfer any Option shall be void, and no such Option shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person who shall be entitled to such Option, nor shall it be subject to attachment or legal process for or against such person. Notwithstanding the foregoing, the Committee may, in its sole discretion, permit an optionee to transfer a Non-Qualified Stock Option, in whole or in part, to such persons and/or entities as are approved by the Committee from time to time and subject to such terms and conditions as the Committee may determine from time to time, including, without limitation, such terms and conditions as are necessary or desirable to comply with applicable law.

8. **Effect of Termination of Employment or Other Service.** Except as otherwise provided herein or determined by the Committee, the following rules shall apply with regard to Options held by an optionee at the time of his or her termination of employment or other service with the Company and its Affiliates:

(a) **Termination due to Death or Disability.** If an optionee's employment or other service terminates due to his or her death or Disability (or if the optionee's employment or other service is terminated by reason of his or her Disability and the optionee dies within one year of such termination of employment or other service), then: (i) that portion of an Option that is not exercisable on the date of termination shall immediately terminate, and (ii) that portion of an Option that is exercisable on the date of termination shall remain exercisable, to the extent exercisable on the date of termination, by the optionee (or the optionee's designated beneficiary or representative) during the one year period following the date of termination (or, during the one year after the later death of a disabled optionee) or, if sooner, until the expiration of the stated term thereof, and, to the extent not exercised during such period, shall thereupon terminate.

(b) **Termination for Cause or at a Time when Cause Exists.** If an optionee's employment or other service is terminated by the Company or an Affiliate for Cause or if, at the time of his or her termination, grounds for a termination for Cause exist, then any Option held by the optionee (whether or not then exercisable) shall immediately terminate and cease to be exercisable.

(c) **Other Termination.** If an optionee's employment or other service terminates for any reason or no reason, then, except as provided for in an employment agreement: (i) that portion of an Option held by the optionee that is not exercisable on the date of termination shall immediately terminate, and (ii) that portion of an Option that is exercisable on the date of termination shall remain exercisable, to the extent exercisable on the date of termination, by the optionee during the ninety (90) day period following the date of termination or, if sooner, until the expiration of the stated term thereof, and, to the extent not exercised during such period, shall thereupon terminate.

9. **Cancellation of Options.** Unless an Option agreement specifies otherwise, the Committee will cancel, rescind, suspend, withhold or otherwise limit or restrict any

unexpired Option at any time if the optionee is not in compliance with all material provisions of the award agreement and the Plan, or if the optionee engages in a Detrimental Activity. Upon exercise of an Option, the optionee shall certify in a manner acceptable to the Company that he or she is in compliance with the terms and conditions of the Plan and has not engaged in any Detrimental Activities. In the event an optionee engages in any Detrimental Activities prior to, or during the six (6) months after, any exercise, such exercise will be rescinded within two (2) years thereafter. In the event of any such rescission, the optionee shall pay to the Company, in the form of Company Common Stock, the amount of any gain realized as a result of the rescinded exercise, in such manner and on such terms and conditions as may be required, and the Company and its Affiliates shall be entitled to set-off against the amount of any such gain, any amount owed to the optionee by the Company or its Affiliates.

**10. Capital Changes; Reorganization; Sale.**

- (a) Adjustments upon Changes in Capitalization. The aggregate number and class of shares which may be issued under the Plan, the maximum number and class of shares with respect to which an Option may be granted to any employee during any calendar year and the number and class of shares and the exercise price per share in effect under each outstanding Option shall all be adjusted proportionately for any increase or decrease in the number of issued shares of Common Stock resulting from a split-up or consolidation of shares or any like capital adjustment, or the payment of any stock dividend.
- (b) Cash, Stock or other Property for Stock. Except as otherwise provided in this subparagraph, in the event of an Exchange Transaction, all optionees shall be permitted to exercise their outstanding Options (whether or not otherwise exercisable) at least fifteen (15) days prior to the Exchange Transaction (and the Board shall notify each optionee of such acceleration at least fifteen (15) days prior to the Exchange Transaction) and any outstanding Options not exercised before the consummation of the Exchange Transaction shall thereupon terminate. Notwithstanding the preceding sentence, if, as a part of the Exchange Transaction, the stockholders of the Company receive capital stock of another corporation ("Exchange Stock"), and if the Board, in its sole discretion, so directs, then all outstanding Options shall be converted into Options to purchase shares of Exchange Stock. The amount and price of the converted options shall be determined by adjusting the amount and price of the Options granted hereunder on the same basis as the determination of the number of shares of Exchange Stock the holders of Common Stock shall receive in the Exchange Transaction.
- (c) Fractional Shares. In the event of any adjustment in the number of shares covered by an Option, any fractional shares resulting from such adjustment shall be disregarded, and each such Option shall cover only the number of full shares resulting from the adjustment.
- (d) Determination of Board to be Final. All adjustments under this Section 10 shall be made by the Board, and its determination as to what adjustments shall be made, and the extent thereof, shall be final, binding and conclusive.

11. **Rights as a Stockholder.** No shares of Common Stock shall be issued in respect of the exercise of an Option until full payment therefor has been made, and the applicable income tax withholding obligation has been satisfied. The holder of an Option shall have no rights as a stockholder with respect to any shares covered by the Option until the date a stock certificate (or an equivalent) for such shares is issued to the holder. Except as otherwise provided herein, no adjustments shall be made for dividend distributions or other rights for which the record date is prior to the date such stock certificate (or an equivalent) is issued.

12. **Tax Withholding.** As a condition to the exercise of any Option or the lapse of restrictions on any shares of Common Stock, or in connection with any other event under the Plan that gives rise to a federal or other governmental tax withholding obligation on the part of the Company or its Affiliates: (a) the Company may deduct or withhold (or cause to be deducted or withheld) from any payment or distribution to an optionee whether or not pursuant to the Plan, and (b) the Company shall be entitled to require that the optionee remit cash to the Company (through payroll deduction or otherwise), in each case in an amount sufficient in the opinion of the Company to satisfy such withholding obligation. If the event giving rise to the withholding obligation involves a transfer of shares of Common Stock, then, unless the applicable agreement provides otherwise, at the discretion of the Committee, the optionee may satisfy the withholding obligation described under this Section 12 by electing to have the Company withhold shares of Common Stock (which withholding shall be at a rate not in excess of the statutory minimum rate) or by tendering previously-owned shares of Common Stock, in each case having a Fair Market Value equal to the amount of tax to be withheld (or by any other mechanism as may be required or appropriate to conform with local tax and other rules).

13. **Amendment and Termination.** The Board may amend or terminate the Plan at any time, provided that no such action may adversely affect the rights of the holder of any outstanding Option without his or her consent. Except as otherwise provided in Section 10, any amendment which increases the aggregate number of shares of Common Stock that may be issued under the Plan, modifies the class of employees eligible to receive Options under the Plan or otherwise requires stockholder approval shall, to the extent required by applicable law, be subject to the approval of the Company's stockholders. The Committee may amend the terms of any agreement or certificate made or issued hereunder at any time and from time to time provided that any amendment which would adversely affect the rights of the holder may not be made without his or her consent.

14. **Term of the Plan.** The Plan shall be effective on the Effective Date. The Plan will terminate on the tenth anniversary of the Effective Date, unless sooner terminated by the Board. The rights of any person with respect to an Option granted under the Plan that is outstanding at the time of the termination of the Plan shall not be affected solely by reason of the termination of the Plan and shall continue in accordance with the terms of the Option (as then in effect or thereafter amended) and the Plan.

15. **Miscellaneous.**

(a) Documentation. Each Option granted made under the Plan shall be evidenced by a

written agreement or other written instrument the terms of which shall be established by the Committee. To the extent not inconsistent with the provisions of the Plan, the written agreement or other instrument evidencing an Option shall govern the rights and obligations of the optionee (and any person claiming through the optionee) with respect to the Option.

(b) **No Rights Conferred.** Nothing contained herein shall be construed to confer upon any individual any right to be retained in the employ or other service of the Company or its Affiliates or to interfere with the right of the Company or its Affiliates to terminate an optionee's employment or other service at any time.

(c) **Governing Law.** The Plan shall be governed by the laws of the State of Delaware, without regard to its principles of conflicts of law.

(d) **Decisions and Determinations.** All decisions or determinations made by the Board and, except to the extent rights or powers under the Plan are reserved specifically to the discretion of the Board, all decisions and determinations of the Committee, shall be final, binding and conclusive.

(e) **Severability.** In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

(f) **Requirements of Law.** The grant of Options and issuance of shares under the Plan shall be subject to compliance with all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as the Committee deems necessary or desirable.

(g) **Listing and Other Conditions.** As long as the Common Stock is listed on a national securities exchange or system sponsored by a national securities association, the issue of any shares of Common Stock pursuant to an Option shall be conditioned upon such shares being listed on such exchange or system. If at any time counsel to the Company shall be of the opinion that any sale or delivery of shares of Common Stock pursuant to an Option is or may in the circumstances be unlawful or result in the imposition of excise taxes on the Company under the statutes, rules or regulations of any applicable jurisdiction, the Company shall have no obligation to make such sale or delivery, or to make any application or to effect or to maintain any qualification or registration under the Securities Act or otherwise with respect to shares of Common Stock or Options, and the right to exercise any Option shall be suspended until, in the opinion of said counsel, such sale or delivery shall be lawful or shall not result in the imposition of excise taxes on the Company.

SCHEDULE A

To Confidential Treatment Request

<u>Section Number</u>	<u>Nature</u>
1.1.5	Product Development and Commercialization
1.1.9(i)	Negotiated Business Terms; Product Development and Commercialization
1.1.9(ii)	Negotiated Business Term; Product Development and Commercialization
1.1.9(iii)	Negotiated Business Terms; Product Development and Commercialization
1.1.9(iv)	Negotiated Business Terms
1.1.9(v)	Negotiated Business Terms
1.1.9(vi)	Negotiated Business Terms
1.1.11	Product Development and Commercialization
1.1.13	Product Development and Commercialization
1.1.14	Product Development and Commercialization
1.1.15	Product Development and Commercialization
1.1.20	Product Development and Commercialization
1.1.21	Product Development and Commercialization
1.1.23	Negotiated Business Terms
1.1.24	Product Development and Commercialization
1.1.28	Product Development and Commercialization
1.1.29	Product Development and Commercialization
1.1.33	Negotiated Business Terms
1.1.34	Negotiated Business Terms
1.1.40	Negotiated Business Terms
1.1.42	Product Development and Commercialization
1.1.45	Product Development and Commercialization
1.1.46	Product Development and Commercialization
1.1.49	Product Development and Commercialization
1.1.50	Negotiated Business Terms; Product Development and Commercialization
2.1	Negotiated Business Terms
2.1.1	Negotiated Business Terms
2.1.2	Negotiated Business Terms
2.1.2(i)	Negotiated Business Terms
2.1.2(ii)	Negotiated Business Terms
3.2.2	Intellectual Property
4.1	Product Development and Commercialization
4.2.1	Product Development and Commercialization
4.2.3	Negotiated Business Terms
5.1	Negotiated Business Terms

<u>Section Number</u>	<u>Nature</u>
5.2	Negotiated Business Terms
6.2	Negotiated Business Terms
6.3	Product Development and Commercialization
6.5	Negotiated Business Terms
6.6	Negotiated Business Terms
6.7	Product Development and Commercialization
6.8	Negotiated Business Terms
6.8.1	Negotiated Business Terms
6.8.3	Negotiated Business Terms
7.2	Negotiated Business Terms
7.3	Negotiated Business Terms
7.5.2	Negotiated Business Terms
7.6	Negotiated Business Terms
8.2.1	Product Development and Commercialization
10.0	Product Development and Commercialization
10.1	Product Development and Commercialization
11.1	Negotiated Business Terms; Product Development and Commercialization
11.4	Negotiated Business Terms
11.5	Intellectual Property
12.2	Negotiated Business Terms
13.1.1	Negotiated Business Terms
13.1.2	Negotiated Business Terms
13.3.1	Negotiated Business Terms
13.3.2	Negotiated Business Terms
13.3.3	Negotiated Business Terms
13.4	Negotiated Business Terms
13.6.1	Negotiated Business Terms
13.6.2	Negotiated Business Terms
13.7	Negotiated Business Terms
13.8	Negotiated Business Terms
13.9	Negotiated Business Terms
13.10	Negotiated Business Terms; Product Development and Commercialization
13.12	Negotiated Business Terms
13.13	Negotiated Business Terms
13.15	Negotiated Business Terms
13.16	Milestones
13.17	Milestones
14.1	Negotiated Business Terms
14.2	Negotiated Business Terms
15.4.3	Negotiated Business Terms
15.4.5	Negotiated Business Terms



<u>Section Number</u>	<u>Nature</u>
15.7	Product Development and Commercialization
16.1.1	Negotiated Business Terms
16.2.1	Negotiated Business Terms
16.5.2	Product Development and Commercialization
16.5.3	Negotiated Business Terms
18.1.1	Negotiated Business Terms
18.1.2	Negotiated Business Terms
18.1.3	Negotiated Business Terms
18.2	Negotiated Business Terms
18.4	Negotiated Business Terms
18.4.1	Negotiated Business Terms
18.4.2	Negotiated Business Terms
18.4.3	Negotiated Business Terms
18.5.1	Negotiated Business Terms; Product Development and Commercialization
18.5.2	Negotiated Business Terms
18.5.5	Negotiated Business Terms; Product Development and Commercialization
18.5.6	Product Development and Commercialization
18.7.1	Negotiated Business Terms
18.7.2	Negotiated Business Terms
18.9	Product Development and Commercialization
18.9.1	Negotiated Business Terms; Product Development and Commercialization
Attachment 1	Intellectual Property
Attachment 2	Intellectual Property

**ALEXION PHARMACEUTICALS, INC.**  
**1992 STOCK OPTION PLAN FOR OUTSIDE DIRECTORS**  
**(As amended)**

**1. Purpose.**

The purpose of this 1992 Stock Option Plan for Outside Directors (the "Plan") of Alexion Pharmaceuticals, Inc. (the "Corporation") is to enable the Corporation to compensate eligible directors of the Corporation and to encourage the highest level of performance by providing such persons with a proprietary interest in the Corporation's success and progress by granting them shares of the Corporation's Common Stock, par value \$.0001 per share ("Common Stock").

**2. Administration of the Plan.**

The Plan shall be administered by a committee (the "Committee") of the Board of Directors of the Corporation (the "Board"), which shall consist of one or more members of the Board, appointed by the Board, who are outside directors (as defined below) or by the Board. The interpretation and construction by the Committee of any provisions of the Plan or of any other matters related to the Plan shall be final. The Committee may from time to time adopt such rules and regulations for carrying out the Plan as it may deem advisable. No member of the Board or the Committee shall be liable for any action or determination made in good faith with respect to the Plan. The Plan shall be interpreted and implemented such that the eligible outside directors will not fail, by reason of the Plan or its implementation, to be "non-employee directors" within the meaning of Rule 16b-3 of the Securities Exchange Act of 1934 (the "Exchange Act"), as such Rule and such Act may be amended.

**3. Eligibility and Issuances.**

(a) Eligibility. Directors of the Corporation who (i) are neither officers nor employees nor consultants of the Corporation or any of its subsidiaries (other than the Chairman of the Board of Directors of the Corporation who shall be eligible) and (ii) are not affiliated with any person referred to in (i) above ("outside directors") shall be eligible to receive options to purchase Common Stock under the Plan.

(b) Issuances.

(i) Each outside director shall be issued an option to purchase 12,000 shares of the Corporation's Common Stock (the "Initial Option") on the date of his initial election or appointment to the Board of Directors (the "Initial Grant Date") on the following terms:

(a) The option exercise price per share of Common Stock shall be the Fair Market Value (as defined below) of the Common Stock covered by such Initial Option on the Initial Grant Date.

(b) Except as provided herein, the term of an Initial Option shall be for a period of ten (10) years from the Initial Grant Date.

(ii) In addition, each outside director shall, on the date of each annual meeting of stockholders at which he is reelected as a director (the "Additional Grant Date"), if he is still an outside director on such date and has attended, either in person or by telephone, at least seventy-five percent (75%) of the meetings of the Board of Directors that were held while he was a director since the prior annual meeting of stockholders, be granted an option to purchase 7,500 shares of Common Stock (the "Additional Option" and, together with the Initial Option, an "Option") on the following terms:

(a) The option exercise price per share of Common Stock shall be the Fair Market Value (as defined below) of the Common Stock covered by such Additional Option on the Additional Grant Date.

(b) Except as provided herein, the term of an Additional Option shall be for a period of ten (10) years from the Additional Grant Date.

(iii) "Fair Market Value" shall mean, for each Initial Grant Date or Additional Grant Date (collectively, a "Grant Date"), (A) if the Common Stock is listed or admitted to trading on the New York Stock Exchange (the "NYSE") or the American Stock Exchange (the "ASE"), the last reported sale price of the Common Stock on such date or, if no sale takes place on such date, the closing asked prices of the Common Stock on such exchange as of such date, in each case as officially reported on the NYSE or the ASE, or (B) if no shares of Common Stock are then listed or admitted to trading on the NYSE or the ASE, the last reported sales price of the Common Stock on such date on the Nasdaq National Market ("NASDAQ") or, if no shares of Common Stock are then quoted on NASDAQ, the average of the closing bid and the highest asked prices of the Common Stock on such date on NASDAQ, or, if no shares of Common Stock are then quoted on NASDAQ, the average of the highest bid and the lowest asked prices of the Common Stock on such date as reported on the over-the-counter system. If no closing bid and lowest asked prices thereof are then so quoted or published in the over-the-counter market, "Fair Market Value" shall mean the fair value per share of Common Stock (assuming for the purposes of this calculation the economic equivalence of all shares of classes of capital stock), as determined on a fully diluted basis in good faith by the Board, as of a date which is 15 days preceding the Grant Date.

(iv) Options granted hereunder shall not be "incentive stock options" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended.

#### **4. Prohibition on Repricing of Options.**

Under no circumstances may the Board or the Committee, directly or indirectly, reprice or otherwise modify any outstanding Options granted pursuant to the Plan to effect a reduction in the exercise price thereof.

#### **5. Regulatory Compliance and Listing.**

The issuance or delivery of any Option may be postponed by the Corporation, and an Option shall not be exercisable, for such period as may be required to comply with the Federal securities laws, state "blue sky" laws, any applicable listing requirements of any applicable securities

exchange and any other law or regulation applicable to the issuance, delivery or exercise of such Options and the Corporation shall not be obligated to issue or deliver any Options or shares of Common Stock if the issuance or delivery of such Options or shares would constitute a violation of any law or any regulation of any governmental authority or applicable securities exchange.

**6. Restrictions on Exercisability.**

(a) Except as provided in Section 6(b) below, each Option granted under the Plan may be exercisable as to one-third of the total number of shares issuable under such Option on each of the three successive anniversaries of the Grant Date of such Option.

(b) If any event constituting a "Change in Control of the Corporation" shall occur, all Options granted under the Plan, which are outstanding at the time a Change of Control of the Corporation shall occur, shall immediately become exercisable. A "Change in Control of the Corporation" shall be deemed to occur if (i) there shall be consummated (x) any consolidation or merger of the Corporation in which the Corporation is not the continuing or surviving corporation or pursuant to which shares of the Corporation's Common Stock would be converted into cash, securities or other property, other than a merger of the Corporation in which the holders of the Corporation's Common Stock immediately prior to the merger have the same proportionate ownership of common stock of the surviving corporation immediately after the merger, or (y) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the assets of the Corporation, or (ii) the stockholders of the Corporation shall approve any plan or proposal for liquidation or dissolution of the Corporation, or (iii) any person (as such term is used in Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), shall become the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act) of 40% or more of the Corporation's outstanding Common Stock other than pursuant to a plan or arrangement entered into by such person and the Corporation, or (iv) during any period of two consecutive years, individuals who at the beginning of such period constitute the entire Board shall cease for any reason to constitute a majority thereof unless the election, or the nomination for election by the Corporation's stockholders, of each new director was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of the period.

**7. Cessation as Director.**

In the event that the holder of an Option granted pursuant to the Plan shall cease to be a director of the Corporation for any reason, such holder may exercise any portion of such Option that is exercisable by him at the time he ceases to be a director of the Corporation, but only to the extent such Option is exercisable as of such date, within six months after the date he ceases to be a director of the Corporation.

**8. Death.**

In the event that a holder of an Option granted pursuant to the Plan shall die, his beneficiary may exercise any portion of such Option that was exercisable by the deceased Optionee at the time of his death, but only to the extent such Option is exercisable as of such date, within twelve months after the date of his death.

**9. Stock Splits, Mergers, etc.**

In the event of any stock split, stock dividend or similar transaction which increases or decreases the number of outstanding shares of Common Stock, appropriate adjustment shall be made by the Board, whose determination shall be final, to the number and option exercise price per share of Common Stock which may be purchased under any outstanding Options. In the case of a merger, consolidation or similar transaction which results in a replacement of the Corporation's Common Stock and stock of another corporation but does not constitute a Change in Control of the Corporation, the Corporation will make a reasonable effort, but shall not be required, to replace any outstanding Options granted under the Plan with comparable options to purchase the stock of such other corporation, or will provide for immediate maturity of all outstanding Options, with all Options not being exercised within the time period specified by the Board of Directors being terminated.

**10. Transferability.**

Options are not assignable or transferable, except by will or the laws of descent and distribution to the extent set forth in Section 8 and during a director's lifetime may be exercised only by him. Notwithstanding the preceding sentence, the Committee may, in its sole discretion, permit an optionholder to transfer an Option granted pursuant to the Plan, in whole or in part, to such persons and/or entities as are approved by the Committee from time to time and subject to such terms and conditions as the Committee may determine from time to time, including, without limitation, such terms and conditions as are necessary or desirable to comply with applicable law.

**11. Exercise of Options.**

An optionholder electing to exercise an Option shall give written notice to the Corporation of such election and of the number of shares of Common Stock that he has elected to acquire. An optionholder shall have no rights of a stockholder with respect to shares of Common Stock covered by his Option until after the date of issuance of a stock certificate to him upon partial or complete exercise of his option.

**12. Payment.**

The Option exercise price shall be payable in cash, check or in shares of Common Stock upon the exercise of the Option. If the shares of Common Stock are tendered as payment of the Option exercise price, the value of such shares shall be the Fair Market Value as of the date of exercise. If such tender would result in the issuance of fractional shares of Common Stock, the Corporation shall instead return the difference in cash or by check to the employee.

**13. Term of Plan.**

The Plan shall terminate on August 26, 2007, and no Option shall be granted pursuant to the Plan after that date.

**14. *Obligation to Exercise Option.***

The granting of an Option shall impose no obligation on the director to exercise such Option.

**15. *Continuance as Director.***

Nothing in the Plan shall be deemed to create any obligation on the part of the Board to nominate any director for reelection by the Corporation's stockholders.

**16. *Amendment of the Plan.***

The Board may at any time and from time to time alter, amend, suspend or terminate the Plan in whole or in part, provided, however, that (i) any amendment which must be approved by the stockholders of the Company to comply with applicable law, shall not be effective unless and until such stockholder approval has been obtained in compliance with such law and, (ii) provisions of the Plan which govern the amount, price or timing of the award of an Option shall not be amended more than once every six months.

**17. *Withholding of taxes.***

The Company shall have the right, prior to the delivery of any certificate evidencing shares of Common Stock to be issued pursuant to an Option, to require the exercising outside director to remit to the Company an amount in cash sufficient to satisfy any Federal, state, or local tax withholding requirements.

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report on Form 10-Q of Alexion Pharmaceuticals, Inc. (the "Company") for the period ended January 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Leonard Bell M.D., Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 17, 2003

/s/ Leonard Bell, M.D.

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Leonard Bell, M.D.  
Chief Executive Officer  
(principal executive officer)

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report on Form 10-Q of Alexion Pharmaceuticals, Inc. (the "Company") for the period ended January 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, David W. Keiser, President and Chief Operating Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 17, 2003

/s/ David W. Keiser

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David W. Keiser  
President and Chief Operating Officer  
(principal financial officer)

CONFIDENTIAL TREATMENT  
REQUESTED PURSUANT TO RULE 24b-2

**Certain Portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934. The omitted materials have been filed with the Securities and Exchange Commission**

CONFIDENTIAL

Execution copy

LARGE-SCALE PRODUCT SUPPLY AGREEMENT

between

LONZA BIOLOGICS PLC

and

ALEXION PHARMACEUTICALS INC.



TABLE OF CONTENTS

<u>ARTICLE</u>	<u>TITLE</u>	<u>PAGE</u>
1	<a href="#">Definitions</a>	1
2	<a href="#">Term</a>	7
3	<a href="#">Supply by Alexion</a>	8
4	<a href="#">Agreement to Supply</a>	9
5	<a href="#">Order Quantities and Ordering Procedures</a>	9
6	<a href="#">Provision of the Services</a>	10
7	<a href="#">Delivery and Transportation of Large-Scale Products; Alexion Tests</a>	12
8	<a href="#">Steering Committee</a>	14
9	<a href="#">Process Changes</a>	15
10	<a href="#">Shared Manufacturing</a>	15
11	<a href="#">Regulatory Support and Quality Assurance</a>	15
12	<a href="#">Excess Capacity</a>	16
13	<a href="#">Price and Terms of Payment</a>	17
14	<a href="#">Recalls</a>	21
15	<a href="#">Representations and Warranties</a>	21
16	<a href="#">Limitation of Liabilities</a>	25
17	<a href="#">Alexion Information, LB Information and Patent Rights</a>	27
18	<a href="#">Termination</a>	28
19	<a href="#">Governing Law, Jurisdiction and Enforceability</a>	33
20	<a href="#">Miscellaneous</a>	34

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**ATTACHMENTS**

Attachment 1 – Alexion Patent Rights

Attachment 2 – LB Patent Rights

LARGE-SCALE PRODUCT SUPPLY AGREEMENT, dated December 18, 2002, between LONZA BIOLOGICS PLC, an English corporation (“LB”), with offices at 228 Bath Road, Slough, Berkshire SL1 4DY, England, and ALEXION PHARMACEUTICALS INC., a Delaware corporation (“Alexion”), with offices at 352 Knotter Drive, Cheshire, Connecticut 06410.

WITNESSETH:

WHEREAS, LB and Alexion have entered into the Services Agreements and the Letter of Intent (as herein defined);

WHEREAS, in consideration of the sums paid by Alexion to LB pursuant to the Letter of Intent, LB granted Alexion the right during the Exclusive Negotiation Period (as defined therein) to negotiate exclusively for the supply of Large-Scale Product (as defined herein) from the Large-Scale Manufacturing Suite (as defined herein), the supply of which is intended to utilize a portion of the fermentation capacity of the Large-Scale Manufacturing Suite for producing such product; and

WHEREAS, pursuant to the Letter of Intent, the Parties hereto have negotiated terms upon which LB agrees to supply and Alexion agrees to purchase the Services (as defined herein) on the terms and conditions set out herein;

NOW, THEREFORE, the Parties hereto agree as follows:

1. Definitions.

1.1. In this Agreement, the following terms have the meanings set forth below:

- 1.1.1. “Advance” means the cash advance of \$7,250,000 paid by Alexion pursuant to Section 13.15.
- 1.1.2. “Affiliate” means any corporation, partnership, limited liability company or other entity, which directly or indirectly controls, is controlled by or is under common control with the relevant Party to this Agreement, and “control” and its correlates means the ownership of more than fifty per cent (50%) of the issued voting shares, or the legal power to direct or cause the direction of the general management and policies, of the Party in question.
- 1.1.3. “Agreement” means this Large-Scale Product Supply Agreement between LB and Alexion.
- 1.1.4. “Alexion Information” means all technical and other information known to, controlled or owned by Alexion or its Affiliates from time to time, and not known to and at the free disposal of LB prior to its disclosure by Alexion to LB and not in the public domain.
- 1.1.5. “Alexion Materials” means the materials supplied by Alexion to LB pursuant to the Services Agreement between the Parties. Alexion Materials shall further include [\*\*\*\*\*]. Alexion shall retain all rights to Alexion Materials except as specifically provided in Section 3.2 or the foregoing sentence.

- 1.1.6. "Alexion Patent Rights" means all Patent Rights that are owned by or licensed to Alexion and are necessary or useful in the performance of the Services by LB as contemplated hereby. The Alexion Patent Rights are listed on Attachment 1 and attached hereto.
- 1.1.7. "Alexion Tests" means the tests to be carried out on the Large-Scale Product following receipt by Alexion, to be agreed in writing by the parties and, as modified from time to time by written agreement between the Parties.
- 1.1.8. "Batch" means the quantity of total bulk purified Large-Scale Product (including samples) which is produced as a result of the completion of one operation of the Large-Scale Process for the Large-Scale Product in the Large-Scale Manufacturing Suite in accordance with the Specifications and cGMP.
- 1.1.9. "Batch Price" means that part of the Price which is payable to LB in respect of the Services with respect to a Batch as determined pursuant to Section 13.1.1 hereto, which fee compensates LB for, among other things:
- (i) storage of the [\*\*\*\*\*]
  - (ii) preparation and maintenance of [\*\*\*\*\*] for the manufacture of bulk Large-Scale Product;
  - (iii) performance of the [\*\*\*\*\*]
  - (iv) analysis of [\*\*\*\*\*];
  - (v) review of [\*\*\*\*\*]; and
  - (vi) the costs of [\*\*\*\*\*].
- 1.1.10. "Binding Order" has the meaning ascribed to it by Section 5.2.
- 1.1.11. "Cell Line" means the cell line [\*\*\*\*\*] that is to be used in the manufacture of the Large-Scale Product in accordance with the provisions of this Agreement, as the same may be modified from time to time upon written agreement of the Parties.
- 1.1.12. "Certificate of Analysis" means a document certifying that the final bulk product has met all Large-Scale Product specifications and that the product was manufactured according to current Good Manufacturing Practices.
- 1.1.13. "Commencement" means with respect to the Commencement of a Batch or the Commencement of [\*\*\*\*\*] the removal of the first ampoule of the Cell Line from the relevant cell bank stocks with the intent that such cells shall be used in performance of the Services, and with respect to the Commencement of a Suite Use Period means the removal of the first ampoule of the Cell Line for the first Batch associated with such period.
- 1.1.14. "[\*\*\*\*\*] Batches" means batches that are produced to [\*\*\*\*\*]

- 1.1.15. “[\*\*\*\*\*] Suite Use Period” means the [\*\*\*\*\*] the First Suite Use Period after the Suite Use Commencement Date and is intended to be used for [\*\*\*\*\*].
- 1.1.16. “cGMP” means current Good Manufacturing Practices and General Biologics (i.e. LB) Product Standards as promulgated under and in accordance with the U.S. Federal Food, Drug and Cosmetic Act, 21CFR (Chapters 210, 211, 600 and 610) and the Guide to Good Manufacturing Practices for Medicinal Products as promulgated under European Directive 91/356/EEC.
- 1.1.17. “Credit” means a per Batch credit of a proportion of the Advance determined in accordance with Section 13.3.2.
- 1.1.18. “Deliver”, “Delivered” or “Delivery” has the meaning ascribed to it by Section 7.1.
- 1.1.19. “Effective Date” means the date of this Agreement set forth in page 1.
- 1.1.20. “Fermenter Train” means the [\*\*\*\*\*] reactors [\*\*\*\*\*] and the production reactor [\*\*\*\*\*].
- 1.1.21. “First Suite Use Period” means the first Suite Use Period after the Suite Use Commencement Date and shall be comprised of the [\*\*\*\*\*]. For the purposes of the Minimum Order the First Suite Use Period shall include both [\*\*\*\*\*].
- 1.1.22. “Force Majeure” means causes beyond the reasonable control of a Party or its Affiliates including, without limitation, acts of God (including but not limited to earthquake), laws or regulations of any government or agency thereof (that could not reasonably have been expected or anticipated on the Effective Date following diligent inquiry into current and proposed federal, state, local and other regulatory requirements), war, terrorism, civil commotion, damage to or destruction of production facilities or materials, scientific or technical events, labor disturbances (whether or not any such labor disturbance is within the power of the affected Party to settle), epidemic, and failure of suppliers, public utilities or common carriers.
- 1.1.23. “Large-Scale Development Services Agreement” means an agreement between the Parties, separate from this Agreement and [\*\*\*\*\*] the Large-Scale Process that is specific to the Large-Scale Product.
- 1.1.24. “Large-Scale Manufacturing Suite” means the large-scale cGMP manufacturing facility that LB [\*\*\*\*\*] Portsmouth, New Hampshire manufacturing site, [\*\*\*\*\*].
- 1.1.25. “Large-Scale Process” means the process operating parameters for the operation of the innoculum and the Fermenter Train used for the production of the Large-Scale Product from the Cell Line and the methods of harvesting and purification of the Large Scale Product.

- 1.1.26. "Large-Scale Product" means the anti C-5 monoclonal antibody claimed in U.S. Patent Number 6,355,245 (regardless of whether such patent later terminates or expires for any reason) that is expressed by the Cell Line.
- 1.1.27. "LB (NH)" means LB's Affiliate, Lonza Biologics, Inc. of Portsmouth, New Hampshire.
- 1.1.28. "LB Information" means all technical and other information known to, owned or controlled by LB or its Affiliates from time to time, and not known to and at the free disposal of Alexion prior to its disclosure by LB to Alexion and not in the public domain, including, without limitation, the [\*\*\*\*\*]
- 1.1.29. "LB [\*\*\*\*\*]" means LB's [\*\*\*\*\*] used in the Large-Scale Process.
- 1.1.30. "LB Patent Rights" means all Patent Rights that are owned by or licensed to LB and are necessary or useful in the performance of the Services as contemplated hereby. The LB Patent Rights are listed on Attachment 3.
- 1.1.31. "Letter of Intent" means the letter agreement, dated December 14, 2001, between LB and Alexion.
- 1.1.32. "Materials of Environmental Concern" means any hazardous substance, as that term is defined under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980; solid waste and hazardous waste, at those terms are defined in the federal Resource Conservation and Recovery Act (each as in effect on the Effective Date); and oil, petroleum and petroleum products.
- 1.1.33. "Maximum Order" shall mean [\*\*\*\*\*]
- 1.1.34. "Minimum Order" shall mean [\*\*\*\*\*]
- 1.1.35. "Net Sales" means, with respect to Large-Scale Product, the gross amount invoiced by Alexion, its Affiliates and/or its sublicensees on sales or other dispositions of Large-Scale Product to Third Parties as an arms length transaction without deceit or fraud, less the following deductions actually incurred:
- (i) Tariffs, duties, excises, sales taxes or other taxes imposed upon and paid directly by Alexion (its Affiliates or sublicensees) with respect to the production, sale, delivery or use of the Large-Scale Product (excluding national, state or local taxes based on income), as reflected in the amount invoiced;
  - (ii) Amounts repaid or credited by reason of rejections, defects, recalls, outdating or returns, or because of chargebacks, refunds, rebates, allowances or retroactive price reductions, including without limitation, any of the foregoing that are payable in respect of federal, state or other governmental programs;
  - (iii) Quantity and/or cash discounts actually allowed and taken directly with respect to such sales, as reflected in the amount invoiced; and

- (iv) Freight, insurance and other transportation charges incurred in shipping Large-Scale Product to Third Parties, as reflected in the amount invoiced.

Such amounts shall be determined from the books and records of Alexion, its Affiliates and/or its sublicensees, maintained in accordance with generally accepted accounting principles, consistently applied. Sales between or among Alexion, its Affiliates and sublicensees shall be excluded from the computation of Net Sales, but subsequent sales by such parties to Third Parties shall be included in such computation. In the case of any sale or disposal of Large-Scale Products for consideration other than cash, such as barter or countertrade, or sale or disposal other than on arms length terms without deceit or fraud, Net Sales shall be calculated on the fair market value of the Product or consideration received whichever is greater. For the avoidance of doubt, product samples, product provided for charitable purposes or compassionate use, and product supplied for clinical studies are not considered "sales" for the purposes of the preceding sentence.

In the event Large-Scale Product incorporates or is sold in combination with one or more other active ingredients ("Other Product"), Net Sales shall be calculated by multiplying the Net Sales of the combination product by a fraction " $A/(A+B)$ ," where "A" is the average gross selling price of the Large-Scale Product during the preceding calendar quarter sold separately by Alexion (or its Affiliate or sublicensee) and "B" is the average gross selling price during such quarter of the Other Product sold separately by such party or, in the event the Large-Scale Product and Other Product are not sold separately by such party, a fraction " $C/(C+D)$ ," where "C" is the cost of manufacture or acquisition by such party of the Large-Scale Product alone and "D" is the cost of manufacture or acquisition by such party of the Other Product.

- 1.1.36. "Party" means one of LB or Alexion.
- 1.1.37. "Parties" means both LB and Alexion.
- 1.1.38. "Patent Rights" means all patents and patent applications of any kind throughout the world.
- 1.1.39. "Presidents" has the meaning ascribed to it by Section 8.3.
- 1.1.40. "Price" means the price for the Services as specified in Article 13, consisting of the [\*\*\*\*\*].
- 1.1.41. "Producer Price Index" or "PPI" means the Producer Price Index for Pharmaceutical Prescription Preparations, Prescription ("PPI" Series ID PCU 2834#1), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor or, if such index is no longer available, such index by which it is replaced by the Bureau of Labor Statistics or any successor agency issuing such indices. If such index is discontinued and there is no

direct successor index, the Steering Committee shall designate an appropriate index that approximates as closely as possible the PPI.

- 1.1.42. "Raw Materials" means ingredients, additives, purification resins, and reagents (including without limitation the [\*\*\*\*\*], which are purchased or used by LB in the performance of the Services and the related costs of [\*\*\*\*\*], and other mutually agreed upon [\*\*\*\*\*] For purposes of clarity, it is currently contemplated that LB shall [\*\*\*\*\*], and the mutually agreed upon [\*\*\*\*\*] shall exclude any such [\*\*\*\*\*]
- 1.1.43. "Raw Materials Fee" means that part of the Price which is payable to LB by Alexion in respect of the Raw Materials utilized in the performance of the Services, calculated in accordance with Article 13.
- 1.1.44. "Services" means the services to be provided by LB which are the subject of this Agreement, including without limitation, the services described Section 4.2 below and the provision of personnel and operation of relevant plant and equipment.
- 1.1.45. "Services Agreement" means the agreement between the Parties dated August 7, 1997, pursuant to which LB agreed to provide [\*\*\*\*\*]
- 1.1.46. "Specifications" means the specifications of the Large-Scale Product, as agreed by the Parties during operation of [\*\*\*\*\*], as such specifications may be modified under such [\*\*\*\*\*] and from time pursuant to Section 9.2.
- 1.1.47. "Steering Committee" means the committee established pursuant to Section 8.1.
- 1.1.48. "Suite Year" means the 12-month period commencing on the Suite Use Commencement Date and each subsequent 12-month period commencing on an anniversary of the Suite Use Commencement Date.
- 1.1.49. "Suite Use Commencement Date" means the date of the first working day of the calendar month immediately following the date on which the [\*\*\*\*\*]. LB presently estimates that the Suite Use Commencement Date will be [\*\*\*\*\*]. LB will notify Alexion as soon as practicable of any changes in the anticipated Suite Use Commencement Date.
- 1.1.50. "Suite Use Period" means each period of approximately [\*\*\*\*\*] during which the Large-Scale Manufacturing Suite Fermenter Train is scheduled exclusively for use for the provision of Services and the manufacture of a [\*\*\*\*\*] of Large-Scale Product (assuming that the process time in the Fermenter Train is on average [\*\*\*\*\*]).
- 1.1.51. "Supply Deficiency" has the meaning ascribed to it by Section 6.4.
- 1.1.52. "Supply Failure" has the meaning ascribed to it by Section 6.8.
- 1.1.53. "Testing Laboratories" means any third party instructed by LB to carry out tests on the Alexion Materials or the Large-Scale Product.



1.1.54. "U.S. FDA" means the United States Food and Drug Administration or any successor governmental agency thereof.

1.2. Unless the context requires otherwise, references to the singular include the plural and vice versa, references to Attachments are references to attachments to this Agreement, and references to Articles and Sections are references to the articles and sections of this Agreement.

## 2. Term.

2.1. This Agreement shall take effect on the Effective Date and shall, unless sooner terminated pursuant to Article 18, remain in effect until the completion of the [\*\*\*\*\*] Suite Use Period. Notwithstanding the foregoing:

- 2.1.1. Upon written notice by Alexion to LB on or before the [\*\*\*\*\*] anniversary of the Suite Use Commencement Date, the term of this Agreement shall be extended for a [\*\*\*\*\*] (which [\*\*\*\*\*] period shall contain [\*\*\*\*\*] Suite Use Periods).
- 2.1.2. In the event that Alexion extends this Agreement pursuant to Section 2.1.1, then Alexion shall have the option to request that the term of the Agreement be extended for a [\*\*\*\*\*] period by providing written notice of such request to LB on or before the [\*\*\*\*\*] anniversary of the Suite Use Commencement Date. LB shall no later than the [\*\*\*\*\*] anniversary of the Suite Use Commencement Date, provide Alexion with a written statement regarding whether or not LB considers the Large-Scale Manufacturing Suite to have continuing usability and, if applicable the basis for why LB does not consider the Large-Scale Manufacturing Suite to have continuing usability. For purposes of clarity, LB agrees that a lack of continuing usability of the Large-Scale Manufacturing Suite shall not be based upon the possibility that LB could receive a greater profit from the manufacture of product for a third party customer, nor because LB desires to manufacture a product for itself or one of its Affiliates.
  - (i) In the event that Alexion requests the second extension of this Agreement and LB confirms the continuing usability of the Large-Scale Manufacturing Suite, then this Agreement shall be automatically extended by said [\*\*\*\*\*] period.
  - (ii) In the event that Alexion requests the second extension of this Agreement and LB provides a written statement that the Large-Scale Manufacturing lacks continuing usability, then should such lack of continuing usability arise from a requirement by any local or federal governmental regulatory body or other governmental authority for a significant capital investment by LB in order for the Large-Scale Manufacturing Suite to continue operations (that could not reasonably have been expected or anticipated on the Effective Date following diligent inquiry into current and proposed federal, state, local and other regulatory requirements), then Alexion shall have the option to pay the costs therefore [\*\*\*\*\*]. In the event that Alexion elects to pay the costs of such capital

investment, then this Agreement shall be automatically extended for a [\*\*\*\*\*] period. Notwithstanding anything to the contrary in the foregoing, LB's obligations to perform any Services under this Agreement shall be suspended until all necessary steps are completed for the continued operation of the Large-Scale Manufacturing Suite.

3. Supply by Alexion.

3.1. Supply of Alexion Materials. Pursuant to the Services Agreement, LB has possession of sufficient Alexion Materials, including sufficient purified reference standard for the Large-Scale Product and sufficient ampoules of the Cell Line from an appropriate cell bank for LB to provide the Services.

3.2. Rights in Alexion Information, Alexion Patent Rights and Alexion Materials.

3.2.1. Alexion hereby grants LB the non-exclusive right to use the Alexion Information, the Alexion Patent Rights and the Alexion Materials solely for the purpose of LB performing Services under this Agreement. Without prejudice to any rights vested in LB pursuant to pre-existing or future written agreements between the Parties or their Affiliates, LB and its Affiliates will not use the Alexion Information, Alexion Patent Rights or Alexion Materials (or any part thereof) for any other purpose without Alexion's prior written consent either during or after the term of this Agreement. Except as set forth in this Section 3.2, no licenses are granted to LB to use the Alexion Materials, the Alexion Patent Rights or the Alexion Information, and no licenses shall arise or be deemed to have arisen by default, estoppel or otherwise.

3.2.2. LB confirms that the Cell Line and all other cell lines and material [\*\*\*\*\*] pursuant to the Services Agreement are owned by Alexion [\*\*\*\*\*], and are included in the Alexion Material. LB hereby grants and agrees to grant to Alexion an exclusive, perpetual, royalty-free, worldwide license to utilize the Large-Scale Process for manufacture, use and sale of [\*\*\*\*\*] (regardless of whether such patent later terminates or expires for any reason). Except with respect to the performance of the Services under this Agreement, such license is exclusive even as to LB and its Affiliates. For purposes of clarity, LB retains the exclusive ownership and right to use the Large-Scale Process in connection with the manufacture, use and sale of all other products, including without limitation [\*\*\*\*\*]

3.3. LB Obligations regarding Alexion Materials. LB shall:

3.3.1. At all times use all reasonable endeavors to keep the Alexion Materials secure and safe from loss, damage, theft, misuse and unauthorized access in such manner as LB stores its own materials of similar nature;

3.3.2. Not part with possession of the Alexion Materials or the Large-Scale Product, save for the purpose of tests at the Testing Laboratories or as directed by Alexion; and

3.3.3. Cause all Testing Laboratories to be subject to confidentiality and non-use obligations no less onerous than those confidentiality and non-use obligations imposed on LB under this Agreement.

3.4. No Other License. Without prejudice to LB's right to receive payment of the Price hereunder or to LB's own proprietary rights in the Large-Scale Process, the LB Information and the LB Patent Rights, LB agrees that, except as expressly provided in Section 3.2 above, LB shall not by virtue of this Agreement acquire any right, license or title in, or to, the Alexion Patent Rights, the Alexion Information, the Alexion Materials or the Large-Scale Product.

#### 4. Agreement to Supply.

4.1. cGMP Manufacture. Subject to Section 6.3, LB will, in accordance with the terms of this Agreement, manufacture and Deliver to Alexion Batches of Large-Scale Product at [\*\*\*\*\*] scale in accordance with cGMP using the Large-Scale Process and the Large-Scale Manufacturing Suite. Any additional product-specific [\*\*\*\*\*] shall be conducted pursuant to the Large-Scale Development Agreement.

4.2. LB Services. For each Batch of Large-Scale Product ordered by Alexion hereunder, LB will perform the Services necessary to manufacture and Deliver the Large-Scale Product, including:

- 4.2.1. Recover ampoules of the cell bank for the Cell Line and expand cultures to complete stirred fermentation at [\*\*\*\*\*] scale in the Large-Scale Manufacturing Suite, using the Large-Scale Process for the Large-Scale Product. Each Batch shall be produced as one lot from one ampoule of the cell bank.
- 4.2.2. Clarify culture supernatant and purify using the Large-Scale Process for the Large-Scale Product.
- 4.2.3. Test the Large-Scale Product against the Specifications. Additional Large-Scale Product and in process samples may be taken at Alexion's request for further analysis. Alternatively, additional tests may be performed by LB [\*\*\*\*\*]
- 4.2.4. Review requirements (if any) for Large-Scale Process modifications in order to meet the Specifications for manufacture of subsequent Batches and notify Alexion of such proposed modifications. Any such Large-Scale Process modifications are subject to agreement between LB and Alexion.
- 4.2.5. Undertake cGMP review of lot documentation.
- 4.2.6. Issue a Certificate of Analysis.
- 4.2.7. Deliver the Large-Scale Product to Alexion.

#### 5. Order Quantities and Order Procedures.

5.1. Forecast Order. LB shall notify Alexion in writing of the projected commencement date of each Suite Use Period not less than [\*\*\*\*\*] months before such date (i.e., first associated out-of-freeze date). Not later than [\*\*\*\*\*] months before the projected

commencement of a Suite Use Period Alexion shall notify LB in writing of its "Forecast Order" for number of Batches it intends to order for such Suite Use Period. The Forecast Order shall be for a number of Batches that is no fewer than a Minimum Order and no greater than a Maximum Order, and shall be Alexion's best estimate of its ultimate order under Section 5.2. The projected commencement date may be revised by LB upon written notice thereof to Alexion.

5.2. Binding Order. Not later than [\*\*\*\*\*] months before the projected commencement date of a Suite Use Period, Alexion shall notify LB in writing of the actual number of Batches it is ordering for manufacture during such Suite Use Period, which number shall be no fewer than a Minimum Order and no greater than a Maximum Order. A "Binding Order" shall arise upon LB's receipt of such notice and LB shall be committed to supply the Services during the associated Suite Use Period (subject to the terms hereof) and Alexion shall be committed to pay for that number of Batches, in accordance with the terms of this Agreement. If thereafter LB revises its projected commencement date under Section 5.1 by more than [\*\*\*\*\*] months, Alexion will be provided [\*\*\*\*\*] in which to revise its Binding Order. LB shall reserve sufficient time in the Large-Scale Manufacturing Suite to satisfy such Binding Order, based on an [\*\*\*\*\*]% Batch success rate for the Large-Scale Process in Suite Use Period 1B and in the second Suite Use Period, and a [\*\*\*\*\*]% Batch success rate for the Large-Scale Process thereafter.

## 6. Provision of the Services.

6.1. Diligence. LB shall diligently carry out the Services as required pursuant to the terms of this Agreement.

6.2. Scheduling of Suite Use Periods. The Consistency Suite Use Period shall Commence on such date as may be consistent with LB's other contractual obligations to third Parties but in any event not later than [\*\*\*\*\*] after the Suite Use Commencement Date. Suite Use Period 1B and the second Suite Use Period shall commence on such date as may be consistent with LB's other contractual obligations to third parties and as the Parties may mutually agree to, but in any event such Suite Use Period 1B shall not Commence earlier than [\*\*\*\*\*] from the final fill associated with the last Batch of the Consistency Suite Use Period and the second Suite Use Period shall not Commence earlier than [\*\*\*\*\*] months, and not later than [\*\*\*\*\*] months, after Commencement of the Consistency Suite Use Period. The third and later Suite Use Periods shall each Commence within [\*\*\*\*\*] months prior to or following the anniversary of the second Suite Use Period. The actual Commencement date of each such Suite Use Period shall be established through consultations between LB and Alexion, taking account of, among other things, Alexion's production forecasts, LB's contractual obligations to third parties and the maintenance requirements of the Large-Scale Manufacturing Suite. Subject to the foregoing, the final decision on scheduling each Suite Use Period shall be at LB's sole discretion. The projected commencement dates referred to in Sections 5.1 and 5.2 are subject to the timing requirements of this Section 6.2.

6.3. [\*\*\*\*\*] Batches. The Parties acknowledge that in order for the [\*\*\*\*\*] Batches to be Delivered hereunder, they must satisfy the [\*\*\*\*\*]. The Parties agree that in the event of failure of one or more runs of the Large-Scale Process to produce a [\*\*\*\*\*] Batch which is suitable for Delivery, then LB shall continue to conduct runs of the Large-Scale Process until a sufficient number of [\*\*\*\*\*]. Notwithstanding the foregoing, in the event that LB has conducted the number of runs of the Large-Scale Process that is equal to [\*\*\*\*\*] and in the event that the

requisite number of successful [\*\*\*\*\*] Batches has not then been produced, then within [\*\*\*\*\*] of the completion of the last run of the Large-Scale Process the Steering Committee shall meet to review the results of the [\*\*\*\*\*] Batches. If the Parties mutually agree to not proceed with additional [\*\*\*\*\*] Batches then this Agreement shall automatically terminate and the provisions of Section 18.5 shall apply. If Alexion requests LB to continue with [\*\*\*\*\*] Batches then LB shall be obligated to produce additional [\*\*\*\*\*] Batches up to the number equal to the Maximum Order, provided however, that in the event that LB has conducted the number of runs of the Large-Scale Process that is equal to [\*\*\*\*\*] or more the number of [\*\*\*\*\*] and in the event that the requisite number of successful [\*\*\*\*\*] Batches has not then been produced, then Alexion shall have the right to terminate this Agreement and the provisions of Section 18.5 shall apply. The Parties further agree that the Price for undelivered [\*\*\*\*\*] Batches shall be as set forth in Section 13.10.

6.4. Supply Deficiencies. If LB fails to produce the number of Batches at least equal to the number specified in the relevant Binding Order during its associated Suite Use Period then, the difference between the number of Batches Delivered for such Suite Use Period and the number specified in such Binding Order shall constitute a "Supply Deficiency" for the purposes of this Agreement.

6.5. Procedure to Cure Supply Deficiencies. If there is a Supply Deficiency, LB shall increase the then current Suite Use Period (or if no longer current, then the next succeeding Suite Use Period if not remedied beforehand) by [\*\*\*\*\*] and take one or more of the following steps to remedy any remaining Supply Deficiency, as determined by the Steering Committee:

- 6.5.1. Utilize any capacity of the Large-Scale Manufacturing Suite which is not then committed to the performance of the Services or to performance of services for third party customers;
- 6.5.2. Utilize suitable production capacity (i.e., fully validated for production of Batches of the Large-Scale Product in accordance with this Agreement) of LB or its Affiliates (other than the Large-Scale Manufacturing Suite) not then committed to third party customers; and
- 6.5.3. Co-ordinate and co-operate with Alexion, through the Steering Committee, to re-schedule Batches of Large-Scale Product ordered hereunder in order to maximize LB's ability to rectify the Supply Deficiency while minimizing the disruption to any Binding Order then in force and any commitments to third party customers.

6.6. Pro Rata Allocation. If LB is able to utilize uncommitted capacity of the Large Scale Manufacturing Suite to remedy any Supply Deficiency pursuant to Section 6.5 but at the time when that capacity arises LB is under an obligation to endeavor to remedy similar deficiencies for any other customer(s) of the Large-Scale Manufacturing Suite, LB shall liaise with all customers concerned to try to agree on an appropriate arrangement for using that (or that and other) available capacity for all concerned. In the event that no agreement can be reached, then the capacity shall be [\*\*\*\*\*]

6.7. Large-Scale Product Yield. Alexion acknowledges that, due to the unpredictable nature of biological processes, Large-Scale Product yield cannot be guaranteed and may vary. The Parties agree that a production of at least [\*\*\*\*\*] kilograms of Large-Scale Product per

Batch is the expected average yield during Suite Use Period 1B. An average per Batch yield of Large-Scale Product will be determined from the results of each Suite Use Period [\*\*\*\*\*]. If during any Suite Use Period [\*\*\*\*\*] the cumulative average yield of Large-Scale Product for all Batches is less than [\*\*\*\*\*]. If during any Suite Use Period (excluding the Consistency Suite Use Period) the cumulative average yield of Large-Scale Product for all Batches is greater than [\*\*\*\*\*].

6.8. Supply Failure. If a Supply Deficiency arises such that LB is unable (or the Parties agree that there is no reasonable likelihood that LB will be able) to deliver to Alexion (a) a number of Batches of Large-Scale Product equal to at least [\*\*\*\*\*] of the relevant Binding Order, or (b) a number of Batches of Large-Scale Product equal to at least [\*\*\*\*\*] of the Minimum Order over two consecutive Suite Use Periods, such event shall constitute a “Supply Failure.”

6.8.1. Supply Failure shall entitle Alexion to elect within a [\*\*\*\*\*] day period from the Supply Failure to:

- (i) treat the Supply Failure as a Supply Deficiency; or
- (ii) terminate this Agreement and the provisions of Section 18.5 shall apply

6.8.2. In the event Alexion elects to treat the Supply Failure as a Supply Deficiency, the provisions of Section 6.5 shall apply and shall be Alexion’s sole remedy in respect of the Supply Failure.

6.8.3. Notwithstanding anything to the contrary in the foregoing, in the event that LB shall be unable to manufacture any Large-Scale Product for the foreseeable future (i.e., longer than [\*\*\*\*\*] from the Supply Failure) due to Force Majeure, LB shall have the right to elect within a [\*\*\*\*\*] period from the Supply Failure to terminate this Agreement upon written notice to Alexion and the provisions of Section 18.5 shall apply.

6.9. Exclusive Remedy. Except as provided in this Article 6, Alexion shall not be entitled to cancel any unfulfilled part of the Services or to refuse to accept the Services on grounds of late performance, late delivery or failure to produce the estimated quantities of Large-Scale Product for delivery. Except for the circumstances described in Section 16.5, the provisions of this Article 6 shall be the sole liability of LB and sole remedy of Alexion with respect to any Supply Deficiency, Supply Failure, or increases or decreases of the Large Scale Product Yield.

#### 7. Delivery and Transportation of Large-Scale Product; Alexion Tests.

7.1. Delivery. The Large-Scale Product shall be delivered EXW (ex-works) LB (NH)’s Portsmouth, New Hampshire manufacturing facility (as defined by Incoterms 2000) (“Deliver,” “Delivery,” or “Delivered,” as appropriate). Except as provided in Section 7.4 below, LB shall issue to Alexion a Certificate of Analysis on the day of Delivery.

7.2. Packaging and Labeling. Unless otherwise agreed, LB will package and label Large-Scale Product in accordance with its standard operating procedures. Alexion will inform LB in writing in advance of any special packaging and labeling requirements for the Large-Scale Product. All [\*\*\*\*\*] LB in complying with such special requirements [\*\*\*\*\*]

7.3. Transportation and Insurance. Alexion agrees that it shall pick up the Large-Scale Product within fourteen (14) days after notice of availability from LB. At Alexion's request, LB will (acting as agent for Alexion) arrange for insurance to cover the Large-Scale Product during such fourteen (14) day period. At Alexion's request, LB will (acting as agent for Alexion) arrange for the transportation of Large-Scale Product to a facility in the United States designated by Alexion together with insurance for the then applicable Price for the number of Batches transported. All [\*\*\*\*\*] arranging transportation and insurance [\*\*\*\*\*]. Transportation of the Large-Scale Product, whether or not under any arrangements made by LB on behalf of Alexion, shall be made at the sole risk and expense of Alexion. In cases where Alexion has not requested LB to arrange for transportation of Large-Scale Product, LB will provide reasonable co-operation with Alexion's transportation agents in coordinating the collection of Large-Scale Product from LB (NH)'s Portsmouth, New Hampshire facility.

7.4. Quarantine of Large-Scale Product. At Alexion's request, LB will Deliver Large-Scale Product Batches in quarantine prior to delivery of the Certificate of Analysis. Such request shall be accompanied by Alexion's written acknowledgement that the Batch has been Delivered without the transmittal to Alexion of a Certificate of Analysis, that accordingly the Batch cannot be administered to humans until transmittal of the Certificate of Analysis, and that Alexion nevertheless accepts full risk of loss, title and ownership of the Batch. The Delivery of a Batch in quarantine shall be subject to such testing requirements as LB may reasonably require, and the sixty (60) day period referred to in Section 7.6 shall run from Delivery in quarantine to Alexion of the relevant Batches.

7.5. Inspection of Large-Scale Product. Where LB has made arrangements for the transportation of Large-Scale Product under Section 7.3, LB shall use its reasonable endeavors to notify Alexion of shipment by facsimile on the date of dispatch. Alexion shall diligently examine the Large-Scale Product as soon as practicable after receipt. Notice of all claims arising out of:

- 7.5.1. Damage to or total or partial loss of Large-Scale Product in transit shall be given in writing to LB and the carrier within five (5) business days of receipt; or
- 7.5.2. Failure of a shipment of Large-Scale Product to arrive shall be given in writing within ten (10) business days of the date on which the shipment was made, as stated in LB's notice of shipment provided on the date of dispatch to Alexion.

Alexion shall make damaged Large-Scale Product available for inspection and shall comply with the requirements of any insurance policy covering the Large-Scale Product. LB shall offer Alexion all reasonable assistance, [\*\*\*\*\*], in pursuing any claims arising out of the transportation of Large-Scale Product, but LB's responsibility shall otherwise be limited by the EXW shipping term (Incoterms 2000).

7.6. Tests. Promptly following Delivery of a Batch of Large-Scale Product, or any sample intended to be representative thereof, Alexion shall carry out the Alexion Tests. If the Alexion Tests show that the Large-Scale Product fails to meet the applicable Specifications, then Alexion shall give LB written notice thereof within sixty (60) days from the date of Delivery of the Batch and shall, unless otherwise directed by LB, return the Batch for further testing. In the absence of such written notice, the Batch shall be deemed to have been accepted by Alexion as

meeting Specifications. If LB agrees, or it is determined pursuant to Section 7.7, that the returned Batch fails to meet Specifications and, to the extent that such failure is not due (in whole or in part) to acts or omissions of Alexion or any third party after Delivery of such Batch, the Batch in question shall be regarded as not having been Delivered and shall constitute or contribute towards a Supply Deficiency and entitle Alexion to the rights set forth in Article 6, including those associated with a Supply Deficiency. Alexion shall be entitled to a credit in respect of any [\*\*\*\*\*], to the extent such [\*\*\*\*\*] and the cancellation of [\*\*\*\*\*] to the extent not yet paid.

7.7. Disputes. If there is any dispute concerning whether a Batch meets the applicable Specifications and/or the reasons therefore, such dispute shall be referred for decision to an independent expert (acting as an expert and not as an arbitrator) to be appointed by agreement between LB and Alexion or, in the absence of agreement by operation of the provisions of Section 19.2. The costs of such independent expert shall be borne equally between LB and Alexion. The decision of such independent expert shall be in writing and, save for manifest error on the face of the decision, shall be binding on both LB and Alexion.

#### 8. Steering Committee.

8.1. Composition of Steering Committee. Promptly following the Effective Date, LB and Alexion shall establish a Steering Committee. The Steering Committee shall be comprised of equal numbers of representatives of each Party (not to exceed three representatives of each Party).

8.2. Function of Steering Committee. Without limiting the functions of the Steering Committee set out elsewhere in this Agreement, the role of the Steering Committee shall be to:

- 8.2.1. Assess the status of Large-Scale Process [\*\*\*\*\*] in connection with the Services and monitor the status [\*\*\*\*\*] and operation of the Large-Scale Manufacturing Suite;
- 8.2.2. Resolve disagreements regarding Large-Scale Product yield deficiencies pursuant to Section 6.7;
- 8.2.3. Resolve disputes arising between the Parties under this Agreement, as provided in Section 19.2;
- 8.2.4. Monitor the progress of the Services;
- 8.2.5. Plan and assess needs for future supply of Large-Scale Product;
- 8.2.6. Discuss and recommend any changes to the Large-Scale Process; and
- 8.2.7. Oversee the choice and qualification of vendors supplying Raw Materials;
- 8.2.8. Monitor and discuss the prices of Raw Materials.

8.3. Meetings. The Steering Committee shall meet at such times as the Steering Committee determines to resolve issues arising under and to perform its responsibilities under this Agreement, provided that the Steering Committee shall meet not less than four (4) times per calendar year unless otherwise mutually agreed. If any issue to be determined by the Steering Committee is not resolved within thirty (30) days after submission of the relevant issue to the Steering Committee, such issue shall be referred for resolution to the President or Chief



8.4. Limitations. The Steering Committee is not empowered to amend the terms of this Agreement.

9. Process Changes.

9.1. Large-Scale Process. LB shall not unreasonably refuse any written request from Alexion to make changes to the Large-Scale Process (for example, changes to the Large-Scale Process which are required by an applicable regulatory authority or applicable laws), but no change to the Large-Scale Process shall be made except by an agreement in writing signed by the authorized representatives of the Parties.

9.2. Specifications. LB shall not unreasonably refuse any written request from Alexion to make changes to the Specifications (for example, changes to the Specifications that are required by an applicable regulatory authority or applicable laws), but no change to Specifications shall be made except by an agreement in writing signed by the authorized representatives of the Parties.

9.3. Procedure. Unless a Party has designated an authorized representative by notice to the Steering Committee, changes to Large-Scale Process or Specifications must be approved in writing by an officer of the Party in question.

9.4. Adjustments resulting from Process and Specification Changes. Any changes to a Large-Scale Process or to the Specifications shall be implemented on terms and conditions to be agreed, which may include, but not be limited to, additional development services (to be performed on terms to be agreed), and reasonable adjustments to the Batch Price payable for Services.

10. [\*\*\*\*\*] Manufacturing.

10.1. The Parties intend that the Large-Scale Product produced pursuant to this Agreement which is approved by the appropriate regulatory body for marketing or sale shall be manufactured under a shared manufacturing arrangement as defined in "[\*\*\*\*\*]". A list of the responsibilities of each Party (including but not limited to those for raw material procurement and maintenance) under such an arrangement is set forth in the [\*\*\*\*\*] separately entered into by the Parties.

11. Regulatory Support and Quality Assurance.

11.1. Regulatory Support and Audits. LB shall provide regulatory support to Alexion, including [\*\*\*\*\*] by the U.S. FDA (or other regulatory authorities) or Alexion (in the case of Alexion's inspections, at mutually convenient times). Alexion shall be entitled to conduct, and the Price has been calculated to include LB regulatory support for, [\*\*\*\*\*] audits (at mutually convenient times) by Alexion personnel of up to [\*\*\*\*\*] days each prior to commencement of the Services and, thereafter, up to [\*\*\*\*\*] audits (at mutually convenient times) by Alexion personnel of up to [\*\*\*\*\*] days each in any one Suite Year. In addition, LB shall permit, and the Price has been further calculated to include, (a) an Alexion employee or consultant located at the Large-Scale Manufacturing Suite (i.e., a man-in-plant), and (b) Batch record audits of each Batch. Except as provided in Section 11.4, if additional regulatory support or ancillary development services are required by Alexion (including but not limited to [\*\*\*\*\*] to Alexion at

LB's standard rates for regulatory services and/or ancillary development services and for disbursements at the time the regulatory and/or ancillary development services are performed. LB shall inform Alexion of such charge and obtain Alexion's written consent to such charge before providing such additional support. Representatives of Alexion participating in inspections shall at all times adhere to the principles of LB Standard Operating Procedure Number 60753C (or such procedures as supersede or replace all or part of such document and which are provided to Alexion in writing).

11.2. Regulatory Submissions. Alexion shall advise LB of any regulatory submissions regarding the Large-Scale Product which may require responses from LB to questions from the regulatory authorities in a timely fashion, taking account of the amount of information LB is required to provide.

11.3. Amendments. If LB is required to amend the way it manufactures or tests the Large-Scale Product as a result of a change in any statutory or regulatory requirement after the Effective Date, it shall use all reasonable efforts to comply with such requirement. In this event the Parties shall negotiate in good faith any appropriate revision to the Price to reflect additional costs incurred by LB and any appropriate revision to the time schedules for providing the Large-Scale Product. LB shall not be required or entitled to amend the Services in any way unless and until the Parties have reached such agreement.

11.4. Additional Audits. If Alexion conducts an audit of the Large-Scale Manufacturing Suite pursuant to its rights under Section 11.1 and, as a result of default on the part of LB, Alexion has just cause to conduct further audits in order to satisfy itself as to the matters of default in question, Alexion shall be entitled, without additional payment to LB, to conduct up to [\*\*\*\*\*] additional audits (at mutually convenient times) in order to satisfy itself of the matters in question. Any further audits beyond this number shall be performed on reasonable terms and conditions and at a price to be agreed, based on LB's standard rates.

11.5. Assignment [\*\*\*\*\*]. Following termination or expiration of this Agreement, [\*\*\*\*\*]

## 12. Excess Capacity.

12.1. Request by Alexion. Alexion may notify LB in writing if it wishes LB to initiate discussions with LB's third party customers regarding the opportunity for such third party customers to purchase services to be provided from any fermentation capacity of the Large-Scale Manufacturing Suite which has been reserved for Alexion pursuant to a Binding Order, or which Alexion is obligated to reserve pursuant to this Agreement, in which case LB shall use commercially reasonable efforts to sell such capacity upon commercially reasonable terms.

12.2. Price Adjustment. Alexion's obligation to utilize or pay for such excess capacity will be waived to the extent that LB sells such excess capacity at a price, net of its reasonable personnel and associated costs in selling such excess capacity, that is equal to or greater than Alexion would have paid had it utilized such capacity. If LB is able to sell the excess capacity only at a price that will yield LB revenues, net of LB's reasonable personnel and associated costs in selling such excess capacity, that are less than Alexion would have paid had it utilized such capacity, it will only agree to such terms with Alexion's consent and Alexion shall then be responsible [\*\*\*\*\*]. Alexion may request verification from LB's accountants, based on a review of LB's records, of the amount received by and such costs incurred by LB.

13. Price and Terms of Payment.

13.1. Price for Services. In consideration for the performance of the Services, Alexion will pay LB the Price set forth below from the Suite Use Commencement Date until the end of the term or prior termination of this Agreement. The Price for the Services in respect of each Batch shall consist of:

- 13.1.1. The Batch Price shall initially be [\*\*\*\*\*] subject to adjustment as set forth in this Agreement;
- 13.1.2. [\*\*\*\*\*] later Batches Delivered to Alexion, and shall be subject to further adjustment as set forth in this Agreement; and
- 13.1.3. The Raw Materials Fee in respect of each Batch, as set forth in Sections 13.7, 13.8, 13.9 and 13.10 below.

Except as expressly provided for by the terms and conditions of this Agreement, Alexion shall not be obliged to make any further payments in respect of the Services or Raw Materials.

13.2. Minimum Requirements. Subject to the provisions of Article 12 and Article 18, Alexion shall be obligated to pay the Batch Price for the Minimum Order or the Binding Order (if any), whichever is greater, in each Suite Use Period during the term of this Agreement.

13.3. Batch Price Adjustments. The Batch Price set forth above is subject to adjustment as follows:

- 13.3.1. The Batch Price shall be adjusted, on the Suite Use Commencement Date and thereafter effective January 1 of each year during the term of this Agreement, [\*\*\*\*\*]. Any adjustment in the Batch Price under this Section 13.3.1 shall be made [\*\*\*\*\*] information is available, and shall be retroactive to January 1<sup>st</sup> of the year in question, and Alexion shall pay any deficiency that may be due as a result of such adjustment within thirty (30) days of written notice thereof. The Batch Price applicable to any particular Batch shall be determined on the date of recovery of an ampoule of the Cell Line from the working cell bank for such Batch.
- 13.3.2. The Batch Price, calculated in accordance with the foregoing provisions of this Article 13, that is payable with respect to each of the [\*\*\*\*\*] invoiced by LB hereunder, shall be reduced by [\*\*\*\*\*] reflect the Credit. The Credit is intended to constitute the crediting, over [\*\*\*\*\*], of the Advance and in the event that the number of Batches to be delivered during [\*\*\*\*\*] for any reason, corresponding [\*\*\*\*\*] shall be made to the per Batch amount credited hereunder.
- 13.3.3. Each Suite Use Period is based on the production of a Batch of Large-Scale Product by the Large-Scale Process [\*\*\*\*\*] In the event that the Large-Scale Process [\*\*\*\*\*] agreed upon by the Parties, [\*\*\*\*\*] and in the event that the Large-Scale Process [\*\*\*\*\*] shall be premised on [\*\*\*\*\*] during one Suite Use Period. By way of example, at the initial [\*\*\*\*\*] from use of the Large-Scale Manufacturing Suite to produce [\*\*\*\*\*] one Suite Use Period. If, because the Large-Scale Process [\*\*\*\*\*]

13.4. Batch Price Adjustments [\*\*\*\*\*]. In addition to Batch Price changes pursuant to Section 13.3, the Batch Price shall be changed to reflect: (a) [\*\*\*\*\*] (including without limitation [\*\*\*\*\*], but excluding [\*\*\*\*\*] incurred by LB in the performance of the Services; and (b) changes in the Batch Price caused by mutually agreed alteration of a Large-Scale Process or Specifications, provided that, in each case, Alexion has received a written estimate of the increase in costs and a reasonable demonstration of the items of cost or expense in question. Such additional Batch Price changes shall be made at the time the Batch Price is fixed each year. Notwithstanding the foregoing, in the event that the Batch Price is, then the Batch Price shall be decreased to reflect such decreased cost.

13.5. Compliance with Regulatory Requirements. LB shall comply with all regulatory requirements from time to time applicable to the Services and in accordance with the other applicable legal requirements of the jurisdiction in which the Large-Scale Manufacturing Suite is located. Such compliance shall be at LB's cost except to the extent that such requirements (that could not reasonably have been expected or anticipated as of the Effective Date following diligent inquiry into current and proposed federal, state, local and other regulatory requirements) cause LB to engage in significant modifications to the Large-Scale Manufacturing Suite then in such instances the Parties shall negotiate in good faith any appropriate revision to the Batch Price to reflect additional costs incurred by LB and any appropriate revision to the time schedules for providing the Large-Scale Product (other than revision to Section 18.4, which is subject to Section 18.4.4). In this event if Alexion requests LB to comply with any other legal or regulatory requirements, LB shall use reasonable commercial efforts to do so provided that:

- 13.5.1. Alexion shall be responsible for informing LB in writing of the precise requirements which Alexion is requesting LB to observe;
- 13.5.2. Such requirements do not conflict with any mandatory requirements under the laws of the location of the manufacture of the Large-Scale Product;
- 13.5.3. LB shall be under no obligation to ensure that the information furnished by Alexion pursuant to Section 13.5.1 complies with the applicable requirements of any jurisdiction; and
- 13.5.4. All costs and expenses properly incurred by LB in complying with Alexion's requests regarding the requirements referred to in Sections 13.5.1 through 13.5.3 shall be charged to Alexion, in addition to the Price.

13.6. Payment of Batch Price. Alexion shall pay LB the Batch Price against LB's invoices therefor, as follows:

- 13.6.1. LB shall invoice Alexion for [\*\*\*\*\*] of the Batch Price upon Line from; and
- 13.6.2. LB shall invoice Alexion [\*\*\*\*\*] of the Batch Price on, provided, however, in the case of an undeliverable Consistency Batch LB shall invoice Alexion for the remaining Batch Price due (pursuant to the sharing of risk principles set forth in Section 13.10) on the date such Consistency Batch is determined to be undeliverable.

13.7. Raw Materials Fee. The Raw Materials Fee shall be equal to the actual third party costs to LB of the Raw Materials for use in the Large-Scale Process, plus a handling charge of [\*\*\*\*\*] percent ([\*\*\*\*\*]%) of such costs. LB shall provide copies of Raw Material invoices to

Alexion and shall use reasonable endeavors to purchase Raw Materials at a fair market price. LB shall maintain records pertaining to the calculation of the Raw Materials Fee. Alexion may audit such records, not more often than [\*\*\*\*\*] in any calendar year, using independent auditors, provided such auditors have accepted the same obligations of confidentiality as Alexion hereunder in respect of such records. In the event that the independent auditor determines that the Raw Materials Fee invoiced by LB is more than 105% of the amount actually owed to LB for the period that is subject to the audit, the costs of such audit shall be reimbursed by LB.

13.8. Payment of Raw Materials Fee. LB shall invoice Alexion for the Raw Materials Fee in respect to all consumable Raw Materials to be used for the production of each Batch of Large-Scale Product upon [\*\*\*\*\*]. LB will invoice Alexion for the Raw Materials Fee in respect to reusable Raw Materials, including but not limited to, which are purchased for use in performing the Large-Scale Process to produce more than one Batch at [\*\*\*\*\*]. In the event of damage or destruction of any such reusable Raw Material as a result of the negligence or willful misconduct of LB, LB will be responsible for the remaining value of such Raw Material. For example, if the Large-Scale Process requires column matrices which can be used for one hundred (100) Batches but which, due to the negligence or willful misconduct of LB, are damaged or destroyed after being used for sixty (60) Batches, LB shall be responsible for forty percent (40%) of the cost of replacing such column matrices as a credit against the Raw Materials Fee. For purposes of determining the Parties' share of the cost for replacing reusable Raw Materials as set forth in this Section 13.8, the Steering Committee shall from time to time determine the anticipated life of such Raw Materials. At the end of each Suite Use Period LB shall review the records of Raw Materials consumed during the performance of the Large-Scale Process and shall within 60 days of the end of such Suite Use Period provide Alexion with an accounting of any adjustments, either increases or decreases, to the Raw Materials Fee based upon actual usage of Raw Materials for the Batches produced. In the event that the total Raw Materials Fee for a Suite Use Period is greater than the amount already invoiced by LB, then Alexion shall pay to LB such amount due within thirty days of receipt of the accounting and an invoice therefore. In the event that the total Raw Materials Fee for a Suite Use Period is less than the amount already invoiced, then LB shall refund to Alexion the sum equal to such amount within thirty (30) days following receipt by Alexion of such accounting.

13.9. Price for Undelivered Large-Scale Product. Subject to Section 13.10 below, no Batch Price shall be payable in respect of Services that do not result in Delivery of a Batch of Large-Scale Product. Alexion shall pay (a) for the avoidance of doubt the Raw Material Fee for all of the Batches actually Delivered, plus (b) the Raw Materials Fee in respect of the following runs of Large-Scale Process which do not result in the delivery of Large-Scale Product:

[\*\*\*\*\*]% of the number of Batches ordered pursuant to a Binding Order in; and

[\*\*\*\*\*]% of the number of Batches ordered pursuant to a Binding Order in the.

By way of example:

In the Suite Use Period, if the Binding Order is for [\*\*\*\*\*] Batches Alexion shall pay the Raw Materials Fee for each Batch actually Delivered, plus up to [\*\*\*\*\*] additional Batches run either during such Suite Use Period or in order to remedy any resulting Supply Deficiency

(so Alexion would at most pay the Raw Materials Fee for [\*\*\*\*\*] Batches).

The value of any such Batch Price or Raw Materials Fee (including, for the avoidance of doubt, the pro rata portion of any prepaid reusable Raw Materials) which proves to be not payable by Alexion, shall be credited to Alexion against future payment obligations if Alexion shall have actually already paid such Batch Price (or part thereof) or Raw Materials Fee to LB.

13.10. [\*\*\*\*\*]. In respect of each [\*\*\*\*\*] which is manufactured by LB but not Delivered to Alexion, or that otherwise does not satisfy the Specifications, Alexion shall pay [\*\*\*\*\*]% of the Batch Price plus [\*\*\*\*\*]% of the Raw Materials Fee [\*\*\*\*\*]; provided, however, that Alexion shall not pay such amounts in respect of Batches that are not Delivered or do not satisfy the Specifications due to the breach, gross negligence, or willful misconduct of LB, and provided further that the Batch Price invoiced for any Consistency Batch that is not Delivered due to a failure of the Batch in a reactor prior to the first seed reactor of the Fermenter Train shall be [\*\*\*\*\*] thereof. Notwithstanding the foregoing, in the event that LB has conducted a number of runs of the Large-Scale Process that is equal to [\*\*\*\*\*] of Consistency Batches required by the U.S. FDA and in the event that pursuant to Section 6.3 Alexion requests LB to conduct additional runs of the Large-Scale Process, then Alexion shall pay [\*\*\*\*\*]% of the Batch Price plus [\*\*\*\*\*]% of the Raw Materials Fee [\*\*\*\*\*] in respect of each additional [\*\*\*\*\*] which is manufactured by LB but not Delivered to Alexion, or that otherwise does not satisfy the Specifications; provided, however, that Alexion shall not pay such amounts in respect of Batches that are not Delivered or do not satisfy the Specifications due to the breach, gross negligence, or willful misconduct of LB, and provided further that the Batch Price invoiced for any [\*\*\*\*\*] Batch that is not Delivered due to a failure of the Batch in a reactor [\*\*\*\*\*]

13.11. Taxes. Unless otherwise indicated in writing by LB, all prices and charges are exclusive of any other taxes, levies, imposts, duties and fees of whatever nature imposed by or under the authority of any government or public authority in respect of the Services and delivery of Large-Scale Product (other than taxes on LB's income), which shall be paid by Alexion.

13.12. Invoices. All invoices are strictly net and payment must be made within [\*\*\*\*\*] days of date of invoice. LB may defer production of further Batches if timely payment of outstanding invoices is not made within [\*\*\*\*\*] days of a second written demand (i.e., a written demand issued after failure to settle an invoice which invoice shall count as the first written demand) for payment to Alexion. If either Party disputes the validity of any item or part of an item included in an invoice, the matter may be referred to the Steering Committee who shall resolve such dispute and may determine whether pending resolution an extension of time for payment of such disputed item is appropriate.

13.13. Interest on Late Payments. Interest on late payments of invoices and other amounts from time to time owed by either Party to the other hereunder shall accrue at the rate of [\*\*\*\*\*] percent ([\*\*\*\*\*]%) above the U.S. prime rate from time to time as quoted in *The Wall Street Journal*.

13.14. Unutilized Credits. LB shall immediately reimburse to Alexion the amount of any credits owed to Alexion hereunder that remain outstanding for more than three months (and in any event shall be reimbursed to Alexion immediately upon termination or expiration of this Agreement for any reason).

13.15. Advance. Within thirty (30) days of the Effective Date, Alexion will pay to LB the sum of seven million two hundred and fifty thousand dollars (\$7,250,000), which sum is the Advance hereunder.

13.16. [\*\*\*\*\*]. Alexion will [\*\*\*\*\*] the first year in which Alexion [\*\*\*\*\*]. Such [\*\*\*\*\*], beginning on the first relevant [\*\*\*\*\*]

13.17. [\*\*\*\*\*]. Notwithstanding the provisions of Section 6.7, following the first Suite Use Period in which LB's [\*\*\*\*\*] subject to a Binding Order in respect of such Suite Use Period (including any Batch Prices paid in respect of Batches that are not Delivered), Alexion will [\*\*\*\*\*] each succeeding Suite Use Period in which [\*\*\*\*\*] following Delivery of the last Batch ordered in respect of the relevant Suite Use Period, and possession by both Parties of sufficient information to confirm that the required cost per kilogram was achieved.

#### 14. Recalls.

14.1. Assistance of LB. Subject to Section 14.2, if Alexion recalls the Large-Scale Product (voluntarily or by order of a regulatory body) or is required to respond to inquiries of regulatory bodies relating to the Services hereunder, LB agrees to provide reasonable assistance to Alexion [\*\*\*\*\*]. Any assistance to be provided by LB in response to inquiries of regulatory authorities shall be provided [\*\*\*\*\*].

14.2. Reimbursement by LB. Subject to the limitations of LB's liability to Alexion set out in this Agreement, LB agrees to reimburse Alexion for reasonable, direct, documented expenses incurred by Alexion as a result of recall of a Large-Scale Product mandated by law or by an applicable regulatory body, but only to the extent LB's negligence or willful misconduct in performing the Services has caused such recall to be required and [\*\*\*\*\*]

#### 15. Representations and Warranties; Indemnification.

15.1. LB Representations and Warranties. LB represents and warrants that:

15.1.1. LB has the corporate power and authority to enter into this Agreement;

15.1.2. The Services shall be performed in accordance with this Agreement;

15.1.3. The Large-Scale Product delivered to Alexion pursuant to Services performed under this Agreement (including, without limitation, Consistency Batches) shall be manufactured pursuant to cGMP and shall meet Specifications when Delivered;

15.1.4. Unencumbered title to all Large-Scale Product will be conveyed to Alexion upon Delivery;

15.1.5. As of the Effective Date the LB Information and the LB Patent Rights are owned by LB or LB is otherwise entitled to use them for the purposes of providing Services under this Agreement and during the term of this Agreement. LB shall not do or cause anything to be done which would adversely affect their ownership or entitlement to use the same for those purposes;

15.1.6. To the best of LB's knowledge and belief, the use by LB of the Large-Scale Process (excluding any modifications or steps made or developed by Alexion) and LB Patent Rights and LB Information for the performance of the Services as provided herein will not infringe any rights (including

- 15.1.7. without limitation any intellectual or industrial property rights) vested in any third party;
- 15.1.8. LB will promptly notify Alexion in writing if it receives a claim or allegation from a third party that the use by LB of the Large-Scale Process and/or the LB Information or the LB Patents Rights for Services infringes any intellectual property rights vested in such third party; and
- 15.1.9. LB has and shall maintain, during the term of this Agreement, all government permits, including but not limited to health, safety and environmental permits, necessary for the conduct of the Services.
- 15.1.10. THESE WARRANTIES ARE EXPRESSLY IN LIEU OF AND EXCLUDE, AND LB HEREBY EXPRESSLY DISCLAIMS AND NEGATES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF THAT PURPOSE IS KNOWN TO LB), TITLE AND NON-INFRINGEMENT.
- 15.2. Alexion Representations and Warranties. Alexion represents and warrants that:
- 15.2.1. Alexion has the corporate power and authority to enter into this Agreement;
- 15.2.2. Alexion has, and subject to Section 15.2.5 below, shall at all times throughout the term of this Agreement have, the right to supply the Cell Line, the other Alexion Materials and the Alexion Information to LB;
- 15.2.3. Any of the Cell Line, the other Alexion Materials, Alexion Information and Alexion Patent Rights not owned by Alexion are licensed to Alexion under a license which will permit their use by LB to perform the Services;
- 15.2.4. To the best of Alexion's knowledge and belief, the use by LB of the Cell Line, other Alexion Materials, Alexion Information and Alexion Patent Rights for the Services (including without limitation the manufacture of the Large-Scale Product) will not infringe any rights (including without limitation any intellectual or industrial property rights) vested in any third party;
- 15.2.5. Alexion will promptly notify LB in writing if it receives a claim or allegation from a third party that the Cell Line, other Alexion Materials, Alexion Information or the Alexion Patents, or that the use by LB of any of the foregoing for the provision of the Services, infringes any intellectual property rights of such third party; and
- 15.2.6. THESE WARRANTIES ARE EXPRESSLY IN LIEU OF AND EXCLUDE, AND ALEXION HEREBY EXPRESSLY DISCLAIMS AND NEGATES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE.



15.3. Indemnification by Alexion. Alexion shall indemnify, defend and hold LB and its Affiliates (the “LB Indemnified Parties”) harmless against all claims, actions, costs, expenses (including reasonable legal fees and disbursements) or other liabilities whatsoever in respect of third party claims, demands or actions arising out of or relating to:

- 15.3.1. Alexion’s breach of any of its representations and warranties set forth in Section 15.2;
- 15.3.2. Infringement of any intellectual property of a third party by the manufacture, use and sale of the Large-Scale Product (except to the extent LB has indemnified Alexion under Section 15.4.3);
- 15.3.3. Any claims alleging LB’s use of: (i) the Cell Line, (ii) other Alexion Materials, (iii) the Alexion Information, (iv) Alexion Patent Rights, or (v) any Large-Scale Process steps or components which are or become part of the Large-Scale Process by virtue of written requests by Alexion following the Effective Date that they should be included in the Large-Scale Process, in the course of the Services infringes or is alleged to infringe any rights (including without limitation any intellectual property rights) of a third party or misappropriates or is alleged to misappropriate the trade secrets of a third party;
- 15.3.4. Any product liability (including personal injuries or economic losses) in respect of the Large-Scale Product, except to the extent that LB has indemnified Alexion under Section 15.4.5;
- 15.3.5. Any claims by employees, agents or vendors of Alexion unless such claim is caused by the gross negligence or willful misconduct of LB; and
- 15.3.6. Any negligent or willful act or omission of Alexion in relation to the use, processing, storage or sale of the Large-Scale Product, the application of the Alexion Tests or the marketing of the pharmaceutical product in which the Large-Scale Product is used.

15.4. Indemnification by LB. LB shall indemnify, defend and hold Alexion and its Affiliates harmless against all claims, actions, costs, expenses (including reasonable legal fees and disbursements) or other liabilities whatsoever in respect of third party claims, demands or actions arising out of or relating to:

- 15.4.1. LB’s breach of any of its representations and warranties set forth in Section 15.1;
- 15.4.2. The release by LB of any Materials of Environmental Concern into the ambient environment from the Large-Scale Manufacturing Suite in connection with the performance of the Services in violation of applicable environmental law unless such violation is caused by a misrepresentation of Alexion hereunder, or LB’s violation of any applicable environmental law in connection with the performance of the Services unless such violation is caused by a misrepresentation of Alexion hereunder;

15.4.3. Any claims alleging that the Large-Scale Process or the LB [\*\*\*\*\*], the LB Information or the LB Patent Rights infringe any intellectual property of a third party or misappropriate any trade secret of a third party;

15.4.4. Any claims by employees, agents or vendors of LB, unless such claim is caused by the gross negligence or willful misconduct of Alexion; and

15.4.5. Any product liability (including personal injuries or economic losses) suffered by a third party solely as a result of a defect in the Large-Scale Product Delivered by LB which defect arose from the negligent act, negligent omission or willful misconduct of LB in the performance of the Services and [\*\*\*\*\*].

15.5. Procedure for Indemnification. In the event of a Party seeking indemnification from the other Party, with the exception of indemnification sought by Alexion under Section 15.4.5 which shall proceed in accordance with Section 15.6, the Party seeking indemnification (the “Indemnified Party”) shall promptly notify the other Party (the “Indemnitor”) in writing of the claim and the Indemnitor shall manage and control, at its sole expense, the defense of the claim and its settlement. Upon timely notice, once the Indemnitor assumes responsibility for such defense, the Indemnitor shall not be liable for any litigation costs or expenses incurred by the Indemnified Party without the prior written consent of the Indemnitor, provided, however, that the Indemnified Party may: (i) engage counsel to review and comment on the actions undertaken by Indemnitor in the defense of any claim and Indemnitor shall pay the reasonable costs of such counsel; and (ii) may otherwise participate in the defense of any claim through its own counsel at its own expense. The Indemnified Party shall cooperate fully with the Indemnitor in the defense of any such claim. The Indemnitor shall not accept any settlement which imposes liability not covered by this indemnification or restrictions on the Indemnified Party without the prior written consent of the Indemnified Party. The Indemnified Party shall at the Indemnitor’s cost take such action as the Indemnitor may reasonably and properly require to defend any such claim, unless such action conflicts with or prejudice the Indemnified Party’s proper business interests, or might reasonably be expected to do so. Nothing contained in this Section 15.5 shall oblige the Indemnified Party to take any action or steps in its own name in defending any claim, action or proceedings. Notwithstanding any other rights of LB under this Agreement, in the event that any such claim against Alexion and for which Alexion is the Indemnitor results in the inability or prohibition of LB to manufacture the Large-Scale Product, then any lost Batch Price in respect of Batches that were scheduled for manufacture during the period of such inability or prohibition and cannot be later rescheduled for production without disruption to LB’s obligations to Alexion or its other customers shall be included in the losses and damages resulting from such claim.

15.6. Procedure for Product Liability Claims. Notwithstanding anything to the contrary in Section 15.5, in the event Alexion seeks indemnification from LB under Section 15.4.5, then the Parties, each at its own expense, shall cooperate in the defense and settlement of such claim, provided, however, that in the event that it is determined that such product liability was not the result of an action of LB for which LB has indemnified Alexion pursuant to Section 15.4.5 then Alexion shall reimburse LB for all reasonable fees and expenses incurred by LB (including without limitation attorneys’ fees) in the defense and settlement of such claim and provided further in the event that it is determined that such product liability was the result of an action of LB for which LB has indemnified Alexion pursuant to Section 15.4.5 then LB shall reimburse

Alexion for all reasonable fees and expenses (including without limitation attorneys' fees) incurred by Alexion in the defense and settlement of such claim. Notwithstanding the foregoing, in the event that it is determined that such product liability was only partially the result of an action of LB for which LB has indemnified Alexion pursuant to Section 15.4.5, any payments and reasonable attorney fees incurred in connection with such claims are to be apportioned between the Parties in accordance with the degree of cause attributable to each Party.

15.7. Abatement. Notwithstanding anything to the contrary in this Agreement, in the event that the use of the Large-Scale Process or the [\*\*\*\*\*] is held in a suit or proceeding to infringe any intellectual property rights of a third party (or to constitute the misappropriation of a trade secret of a third party) and the use of the Large-Scale Process and/or the LB Media Formulations is enjoined, or LB has an objective basis (confirmed by an opinion of its legal counsel) for believing that it is likely to be found to infringe or constitute a misappropriation, or is likely to be enjoined, then LB shall, at its sole cost and expense, and at its option, either (i) procure the right to continue the use of the Large-Scale Process and/or LB Media Formulations or (ii) modify the Large-Scale Process and/or LB Media Formulations so that it becomes non-infringing or no longer constitutes a misappropriation, provided that such modification has no adverse affect on Alexion hereunder; provided, however, that if (i) and (ii) are not reasonably practicable then either Party shall have the right, in its sole discretion, to terminate this Agreement by giving the other two (2) years prior written notice upon which notice the provisions of Section 18.5 shall apply.

15.8. Insurance. LB shall obtain and maintain insurance coverage of the types and in the amounts customary and consistent with chemical industry standards. Without limiting the foregoing, LB shall obtain and maintain insurance which covers business interruption. Alexion shall obtain and maintain insurance coverage which is customary and consistent with pharmaceutical industry standards, naming LB and its Affiliates as named insureds and providing that LB shall be notified at least thirty (30) days in advance of termination of such coverage.

## 16. Limitations of Liability

### 16.1. LB Limitation of Liability.

16.1.1. WITH THE EXCEPTION OF AMOUNTS DUE TO ALEXION PURSUANT TO SECTIONS 13.14, 18.4.3, 18.5.8 OR 18.7.2, THE LIABILITY OF LB TO ALEXION FOR ANY LOSS SUFFERED BY ALEXION AS A RESULT OF A BREACH OF THIS AGREEMENT BY LB OR OF ANY OTHER LIABILITY ARISING OUT OF THIS AGREEMENT AND THE SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO THE PAYMENT OF DAMAGES WHICH SHALL NOT EXCEED \$[\*\*\*\*\*] PER EVENT OR DIRECTLY CONNECTED SERIES OF EVENTS.

16.1.2. The limitations in Section 16.1.1 above shall not apply if and to the extent such liability arises out of third party claims, demands or actions for which: (i) LB is required to indemnify Alexion for a breach of the representation set forth in Section 15.1.4 in which instance LB's liability shall be no greater than the dollar amount of any such encumbrance, (ii) LB is required to pay a third party as a result of a breach of the

representation set forth in Section 15.1.8 (subject to Section 13.5); (iii) LB is required to indemnify Alexion under Section 15.4.2; (iv) LB is required to indemnify Alexion under Section 15.4.3 (subject to Section 15.7), (v) LB is required to indemnify Alexion under Section 15.4.4, or (vi) LB is required to indemnify Alexion under Section 15.4.5 (subject to Section 15.6).

16.2. Alexion Limitation of Liability.

16.2.1. WITH THE EXCEPTION OF AMOUNTS DUE TO LB PURSUANT TO THE TERMS OF ARTICLES, THE LIABILITY OF ALEXION TO LB FOR ANY LOSS SUFFERED AS A RESULT OF A BREACH OF THIS AGREEMENT OR OF ANY OTHER LIABILITY ARISING OUT OF THIS AGREEMENT AND SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO THE PAYMENT OF DAMAGES WHICH SHALL NOT EXCEED \$[\*\*\*\*\*] PER EVENT OR DIRECTLY CONNECTED SERIES OF EVENTS.

16.2.2. The limitations in Section 16.2.1 above shall not apply if and to the extent such liability arises out of third party claims, demands or actions for which Alexion is required to indemnify LB under Section 15.3.

16.3. Disclaimer of Consequential Damages. WITH THE EXCEPTION OF THE CLAIMS UNDER OR AMOUNTS DUE PURSUANT TO THE TERMS OF ARTICLES AND CLAIMS BY LB UNDER OR AMOUNTS DUE TO LB PURSUANT TO SECTIONS, NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR THE FOLLOWING LOSSES OR DAMAGES HOWSOEVER CAUSED (EVEN IF FORESEEABLE OR IN THE CONTEMPLATION OF LB OR ALEXION SHOULD HAVE BEEN FORESEEABLE):

16.3.1. LOSS OF PROFITS, BUSINESS OR REVENUE, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES SUFFERED BY THE OTHER PARTY OR ANY OTHER PERSON; OR

16.3.2. PUNITIVE, EXEMPLARY, OR MULTIPLE DAMAGES WHETHER SUFFERED BY THE OTHER PARTY OR ANY OTHER PERSON.

16.4. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN THE EVENT OF ANY BREACH OF THE REPRESENTATIONS AND WARRANTIES OF LB IN SECTION, LB'S LIABILITY SHALL BE LIMITED TO ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION.

16.5. Exceptions to Limitations of Liability.

16.5.1. The limitations in Sections 16.1 and 16.3 shall not apply if and to the extent that a liability arises out of a claim by Alexion that is directly related to an intentional action or omission of LB that in the reasonable anticipation of LB would result in failure of LB to Deliver the number of Batches ordered by Alexion pursuant to a Binding Order or that Alexion is otherwise entitled to order hereunder. For purposes of clarity:

(a) The limitations in Sections 16.1 and 16.3 shall apply so long as LB has used and continues to use commercially reasonable efforts to

comply with the provisions of this Agreement with respect to the performance of the Services.

- (b) The limitations of Sections 16.1 and 16.3 shall apply and LB shall be excused from performance of the Services to the extent it is unable or prohibited from doing so due to (a) a Force Majeure, (b) any injunction or other order which prohibits or otherwise limits LB's ability to produce Batches of the Large-Scale Product which injunction or other order is a direct result of Alexion's breach of any representation or warranty under Section 15.1, (c) an event described in Section, unless such event is a direct result of LB's (or its Affiliate's) negligence, or (d) any event described in Section, provided that LB is in compliance with Section 15.7.
- (c) The limitations of Sections 16.1 and 16.3 shall apply and LB shall be excused from performance of the Services in the event that LB terminates this Agreement pursuant to the provisions of Sections (except terminations for a payment default by Alexion where Alexion has escrowed with a third party any disputed amount).

16.5.2. The limitations in Sections 16.1 and 16.3 shall not apply if and to the extent that a liability arises out of a claim by Alexion that is directly related to an intentional failure of LB to disclose to Alexion the composition of the [\*\*\*\*\*] in the event that LB and its suppliers are unable to provide LB Media Formulations to Alexion as contemplated under Section 18.5.5.

16.5.3. WITH THE EXCEPTION OF AMOUNTS DUE TO ALEXION PURSUANT TO SECTIONS, in no event shall LB be liable under this Agreement for more than an aggregate amount of \$[\*\*\*\*\*] during the term of this Agreement or thereafter.

17. Alexion Information, LB Information and Patent Rights.

17.1. Confidential Information. Alexion acknowledges that LB Information and LB acknowledges that Alexion Information delivered pursuant to this Agreement are delivered subject to obligations of confidentiality. Each agrees to keep the LB Information or the Alexion Information secret and confidential, respect the other's proprietary rights therein and to make use of and permit to be made use of such information only for the purposes of performing the Services hereunder, and not without the other Party's prior written consent disclose or permit the LB Information or such Alexion Information to be disclosed to any third party except as expressly provided herein.

17.2. Disclosure to Affiliates, employees, etc. Alexion and LB shall grant access to confidential LB Information or confidential Alexion Information only to Affiliates, employees, consultants, marketing collaborators and contractors who reasonably need to know such information for legitimate purposes and who are subject to the same obligations of confidentiality as LB and Alexion under appropriate secrecy agreements.

17.3. Third Parties. LB and Alexion each undertake not to disclose or permit to be disclosed to any third party, or otherwise make use of or permit to be made use of, any trade secrets or confidential information relating to the technology, business affairs or finances of the other, any Affiliate of the other, or of any suppliers, agents, distributors, licensees or other customers of the other which come into its possession under this Agreement.

17.4. Exceptions. The confidentiality obligations under this Article 17 shall not extend to any information which:

- 17.4.1. Is or becomes generally available to the public otherwise than by reason of a breach by the receiving Party of the provisions of this Article 17;
- 17.4.2. Is known to the receiving Party prior to its receipt from the disclosing Party free of any confidentiality obligation to any third party;
- 17.4.3. Is subsequently disclosed to the receiving Party without being made subject to an obligation of confidence by a third party;
- 17.4.4. LB or Alexion may be required to (or is advised by counsel that it is highly advisable to) disclose under any statutory, regulatory, stock exchange or similar legislative requirement or court order; provided however, that (i) the receiving Party gives the disclosing Party prior written notice of such required disclosure and assists the disclosing Party in its reasonable efforts to prevent or limit such disclosure; and (ii) the information so disclosed pursuant to this Section 17.4.4 otherwise remains LB Information or Alexion Information, as the case may be, for the purposes of this Article 17; or
- 17.4.5. The receiving Party can demonstrate by competent evidence was independently discovered by the receiving Party or its employees without reference to any information received from the other Party hereto.

17.5. No License. Each Party acknowledges that, except as expressly provided herein or pursuant to a separate agreement between the Parties existing now or entered into in the future, such Party shall not by virtue of this Agreement at any time have any right, title, license or interest in or to the LB Information or Alexion Information as the case may be, Patent Rights or any other intellectual property rights relating to the Large-Scale Process which are owned by the other Party or its Affiliates or to which the other Party or its Affiliates is otherwise entitled.

18. Termination.

18.1. Termination Without Cause. Alexion shall be entitled to terminate this Agreement at any time without cause by notice in writing.

- 18.1.1. If Alexion terminates this Agreement pursuant to this Section 18.1, on or prior to [\*\*\*\*\*], then LB will [\*\*\*\*\*].
- 18.1.2. If Alexion terminates this Agreement pursuant to this Section 18.1.2 after [\*\*\*\*\*], but prior to [\*\*\*\*\*], Alexion will pay LB [\*\*\*\*\*] for all Batches scheduled for start of manufacture within [\*\*\*\*\*] of such notice, and [\*\*\*\*\*] for all Batches scheduled for start of manufacture between [\*\*\*\*\*] and [\*\*\*\*\*] of such notice, up to a maximum total payment of \$25 million. Uncredited amounts of the Advance would be credited against

any such termination payment. LB may retain amounts paid under this provision in [\*\*\*\*\*] such amounts [\*\*\*\*\*].

18.1.3. If Alexion terminates this Agreement pursuant to this Section 18.1.3 after [\*\*\*\*\*], then Alexion will have the option to accept delivery of Batches which have been ordered and are scheduled for start of manufacture within eighteen (18) months of such notice or to pay Lonza a termination payment in the amount of \$25 million dollars. Uncredited amounts of the Advance would be credited against any such termination payment. LB may retain any amount paid under this provision in [\*\*\*\*\*] such amount [\*\*\*\*\*]

18.2. Decrease in Minimum Order. Alexion may order fewer than [\*\*\*\*\*] Batches in its Binding Order with at least [\*\*\*\*\*] months notice from the first day of the relevant Suite Use Period. In such event, Alexion will pay Lonza a percentage of the Batch Price for each Batch fewer than [\*\*\*\*\*] as calculated by the following method:

Batches Below Minimum	Cancellation Fee
[*****]	[*****]
[*****]	[*****]
[*****]	[*****]

By way of example, if Alexion ordered [\*\*\*\*\*] Batches then the cancellation fee is calculated as follows; [\*\*\*\*\*]. Such amounts will be paid on the first day of the relevant Suite Use Period, and Lonza [\*\*\*\*\*] such amounts [\*\*\*\*\*]

18.3. Sole Remedy of LB. Sections 18.1 and 18.2 set forth LB's sole and exclusive remedy for termination of this Agreement or cancellation of Batches by Alexion pursuant to those provisions. Alexion agrees that concurrently with any notice of termination under Section 18.1 it shall transmit to LB all amounts due to LB under this Agreement. In stipulating the amounts due upon such termination or cancellation by Alexion under Sections 18.1 and 18.2, the Parties intend to provide for damages to be paid to LB, rather than a penalty to be paid by Alexion. The Parties agree that the amounts stipulated are a reasonable pre-estimate of the probable losses which would be suffered by LB.

18.4. Right to Terminate. Subject to the proviso below, in the event that (a) the Suite Use Commencement Date does not occur by [\*\*\*\*\*] or (b) circumstances arise whereby there becomes no reasonable prospect that the Suite Use Commencement Date will occur by [\*\*\*\*\*]:

18.4.1. LB shall promptly refund [\*\*\*\*\*] percent ([\*\*\*\*\*]%) of the Advance, and if the Suite Use Commencement Date does not occur by [\*\*\*\*\*] or circumstances arise whereby there becomes no reasonable prospect that the Suite Use Commencement Date will occur by [\*\*\*\*\*], LB shall also promptly pay Alexion the sum of \$[\*\*\*\*\*]; and

18.4.2. Alexion shall be entitled to terminate this Agreement (by written notice on or before [\*\*\*\*\*]) and if Alexion so elects to terminate this Agreement, (a) none of the termination fees that would otherwise be payable to LB

upon termination or cancellation under the provisions of Section 18.1 or 18.2 shall apply and (b) the provisions of Section 18.5 shall apply.

18.4.3. Provided, however, that if the Suite Use Commencement Date is delayed beyond [\*\*\*\*\*] by reason solely of a regulatory requirement which could not reasonably have been expected or anticipated as of the Effective Date following diligent inquiry into current and proposed federal, state, local and other regulatory requirements, then the [\*\*\*\*\*] date shall be extended as reasonably required to comply with such requirement, but in no event later than [\*\*\*\*\*]

18.5. Consequences of Termination under Sections 6.3, 6.8, 15.7, 18.4 or 18.6. In the event that this Agreement is terminated pursuant to Section 6.3, 6.8, 15.7, 18.4, or 18.6:

18.5.1. Alexion shall have a non-exclusive right and license (with the right to sublicense to any third party) to utilize the LB Patent Rights, LB Information (specifically excluding [\*\*\*\*\*]) and Large-Scale Process for the production of Large-Scale Product. Alexion shall pay to LB as consideration for such licenses a [\*\*\*\*\*] of Large-Scale Product produced under such license for the time period that is the longer of: [\*\*\*\*\*] years from the date of first commercial sale of Large Scale Products by Alexion, its Affiliates or sublicensee; or (ii) the [\*\*\*\*\*]. The Parties understand and agree that during the Large-Scale Development Agreement, additional intellectual property (whether or not patentable) that is owned or controlled by LB prior to undertaking the Large-Scale Development Agreement (or that is otherwise developed outside the Large-Scale Development Agreement) may be incorporated into the Large-Scale Process. The Parties agree that prior to the incorporation of any patentable intellectual property the royalty, if any, which would be associated with such intellectual property shall be disclosed to Alexion and Alexion shall have the option to include or exclude such patentable intellectual property within the Large-Scale Process. In the event that Alexion agrees to incorporate any additional patentable intellectual property within the Large-Scale Process then the royalty associated with such patentable intellectual property shall be in addition to the [\*\*\*\*\*] and such intellectual property shall be included within the non-exclusive license stated above. Intellectual property developed under the Large Scale Development Agreement shall be licensed non-exclusively to Alexion, without further consideration (in either case with a reservation by LB of all rights therein for the manufacture of products other than the Large-Scale Product).

18.5.2. LB shall provide the technology transfer (including technical training) necessary or beneficial for an alternate manufacturer to produce Large-Scale Product using some or all of the Large-Scale Process, which technology transfer shall be provided on commercially reasonable terms negotiated in good faith between LB and Alexion. Notwithstanding the foregoing, LB shall not be obligated to provide such technology transfer to more than [\*\*\*\*\*] alternate manufacturers;



- 18.5.3. LB shall allow Alexion reasonable access to, and rights to cross-reference LB's drug master files and other regulatory submissions and approvals to the extent necessary or useful for the production of Large-Scale Product using some or all of the Large-Scale Process;
- 18.5.4. LB shall, upon written request by Alexion, supply a list of the names of all suppliers of Raw Materials;
- 18.5.5. LB shall supply to Alexion the [\*\*\*\*\*] at a price which is no greater than [\*\*\*\*\*], plus freight, taxes and insurance, or at Alexion's option shall instruct its supplier(s) to supply the [\*\*\*\*\*] to Alexion. [\*\*\*\*\*]; provided, however, if LB and its suppliers are unable to provide [\*\*\*\*\*] to Alexion in amounts reasonably required by Alexion, [\*\*\*\*\*] under terms to be negotiated in good faith, including terms of confidentiality reasonably satisfactory to LB. In the event Alexion acquires any [\*\*\*\*\*] or information under this Section, Alexion's right to manufacture and use the same will be limited exclusively to the manufacture and use in connection with the Large-Scale Product). In consideration for the supply of such [\*\*\*\*\*], Alexion shall [\*\*\*\*\*] a volume of [\*\*\*\*\*] similar to those required to produce [\*\*\*\*\*]
- 18.5.6. except with respect to the [\*\*\*\*\*] which are subject to Section 18.5.5, LB shall at Alexion's written request and option and to the extent consistent with LB's prior written contractual obligations to such suppliers, assign all or part of the written agreements and purchase orders for Raw Materials or give Alexion reasonable assistance in securing Raw Material supplies from LB's existing vendors; and
- 18.5.7. LB shall, upon written request by Alexion, supply a statement setting forth all unused Raw Materials, and (a) offer to Alexion, without further consideration, all Raw Materials previously paid for by Alexion hereunder and (b) offer Alexion the right to purchase other unused Raw Materials from LB on commercially reasonable terms negotiated in good faith.
- 18.5.8. LB shall within five days of such notice of termination transmit to Alexion the amount of any of the Advance remaining uncredited hereunder.

18.6. Termination for Cause. In addition to Alexion's rights of termination pursuant to Sections 6.8, 18.1, and 18.4, LB and Alexion may each terminate this Agreement forthwith by notice in writing to the other upon the occurrence of any of the following events:

- 18.6.1. If the other materially breaches this Agreement, and (in the case of a breach capable of remedy) such breach is not remedied within ninety (90) days of the receipt by the other of notice identifying the breach and requiring its remedy or, if such breach is incapable of remedy within ninety (90) days, the other Party fails to commence actions within such ninety (90) days to remedy such breach pursuant to a plan reasonably acceptable to the complaining Party; or
- 18.6.2. If the other ceases for any reason to carry on business, dissolves, liquidates, winds up, or files or is petitioned into bankruptcy, liquidation,

rehabilitation or dissolution or becomes insolvent or fails generally to pay its debts or obligations or a petition is filed seeking the appointment of or the taking possession by a receiver custodian, trustee or similar official.

18.7. Effect of Termination for Cause.

18.7.1. In the event of termination by LB pursuant to Section 18.6, Alexion shall within five days of such notice of termination transmit to LB the sum of [\*\*\*\*\*] U.S. dollars (\$[\*\*\*\*\*]), less the amount of the Advance remaining uncredited hereunder as of the date of such termination. In stipulating the amount due upon termination by LB under this Section 18.7.1, the Parties intend to provide for damages to be paid to LB, rather than a penalty to be paid by Alexion. The Parties agree that the amounts stipulated are a reasonable pre-estimate of the probable losses which would be suffered by LB; and

18.7.2. In the event of termination by Alexion pursuant to Section 18.6 LB shall (a) promptly [\*\*\*\*\*] and (b) comply with the terms of Section 18.5, except that the [\*\*\*\*\*] referred to in Section 18.5 shall be [\*\*\*\*\*].

18.8. Effect of Termination Generally. Upon the termination of the Agreement for whatever reason:

18.8.1. LB shall promptly return all Alexion Information to Alexion (to the extent legal or regulatory requirements permit) and shall dispose of, or return to Alexion the Alexion Materials and any materials derived therefrom, as directed by Alexion;

18.8.2. Subject to any rights granted to Alexion pursuant to Sections 18.5 or 18.9 shall promptly return to LB (to the extent legal and regulatory requirements permit) all LB Information it has received from LB;

18.8.3. Subject to any rights granted to Alexion pursuant to Sections 18.5 or 18.9 shall not thereafter use or exploit the LB Patent Rights or the LB Information in any way whatsoever. No licenses shall arise or be deemed to have arisen hereunder either by default, estoppel or otherwise except as expressly set forth herein;

18.8.4. LB may thereafter use or exploit the LB Patent Rights or the LB Information in any way whatsoever without restriction; and

18.8.5. LB and Alexion shall do all such acts and things and shall sign and execute all such deeds and documents as the other may reasonably require to evidence compliance with this Section 18.8.

18.9. Access to LB Intellectual Property. In the event that during the term of or upon expiration or prior termination of this Agreement, Alexion notifies LB of its wish to obtain a license from LB (with the right to sublicense) to utilize the LB Patent Rights, LB Information, Large-Scale Process, the [\*\*\*\*\*], or any part thereof for the production of Large-Scale Product either at its own facility or that of a third party, or any other intellectual property of LB or its Affiliates (whether or not patentable) reasonably necessary for the manufacture of the Large-Scale Product, the Parties shall negotiate in good faith the commercially reasonable terms upon

which such a license shall be granted and related technology shall be transferred, and shall thereafter enter into the same. Such negotiations shall be based on LB's standard terms for the grant of such licenses and the transfer of such technology applying at the time in question; provided, that

18.9.1. In no event shall the total consideration for such a license to the Large-Scale Process, LB Patent Rights and LB Information which are existing as of the Effective Date and are necessary or useful to manufacture the Large-Scale Product [\*\*\*\*\*] of the Large-Scale Product if utilized by Alexion or licensed to its co-development or co-marketing partners (without cumulative royalties due to the licensing of multiple items of intellectual property) [\*\*\*\*\*] of the Large-Scale Product if [\*\*\*\*\*] to a contract manufacturing organization (without cumulative royalties due to the licensing of multiple items of intellectual property). The Parties understand and agree that during the Large-Scale Development Agreement, additional intellectual property (whether or not patentable) that is owned or controlled by LB may be incorporated into the Large-Scale Process. The Parties agree that prior to the incorporation of any patentable intellectual property the royalty, if any, which would be associated with such patentable intellectual property shall be disclosed to Alexion and Alexion shall have the option to include or exclude such patentable intellectual property within the Large-Scale Process. In the event that Alexion agrees to incorporate any additional patentable intellectual property within the Large-Scale Process then the royalty associated with such patentable intellectual property shall be in addition to the net sales royalty stated in the prior sentence and such intellectual property shall be included within the non-exclusive license stated above. Intellectual property developed under the Large Scale Development Agreement shall be licensed non-exclusively to Alexion, without further consideration (in either case with a reservation by LB of all rights therein for the manufacture of products other than the Large-Scale Product.

18.9.2. The terms of Sections 18.5.2, 18.5.3, 18.5.4, 18.5.5 and 18.5.6 shall apply.

18.10. Accrued Rights. The end of the term or prior termination of this Agreement for whatever reason shall not affect the accrued rights of either LB or Alexion arising under this Agreement and the provisions of Articles 1, 14, 15, 16, 17, 19 and 20 and Sections 7.7, 18.5, 18.7, 18.8, 18.9, and 18.10 shall remain in full force and effect.

19. Governing Law, Jurisdiction and Enforceability.

19.1. Governing Law. The construction, validity, performance and enforcement of this Agreement shall be governed by the laws of State of New York, without giving effect to the principles of conflicts of law thereof.

19.2. Dispute Resolution. In the event of the failure on the part of any required representative of the Parties hereto or the Steering Committee to resolve any matter required by this Agreement to be agreed, or in the event of any other dispute or claim arising between the Parties under this Agreement, the Parties shall attempt by good faith negotiations to resolve such dispute or claim between them by reference to the Presidents, who shall negotiate in good faith

19.3. during a period of not less than sixty (60) days to resolve such matter, dispute or claim. In the event the Parties are unable to resolve such dispute or claim within the required time, the dispute shall be settled by binding arbitration, in accordance with the Center for Public Resources Rules for Non-Administered Arbitration of Business Disputes, by three arbitrators, none of whom shall be appointed by Parties. The place of arbitration shall be New York, New York. The arbitrators shall be selected from the CPR Panels of Distinguished Neutrals and shall be attorneys with at least fifteen (15) years experience in commercial law. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16. The arbitrators may proceed to an award notwithstanding the failure of a Party to participate in the proceedings. Discovery shall be limited to mutual exchange of documents relevant to the dispute, controversy or claim; depositions shall not be permitted unless agreed to by both Parties. In no event shall punitive damages (including without limitation multiple damages) be assessed against either Party. Both Parties shall bear equally the cost of the arbitration (exclusive of legal fees and expenses), provided, however, that the prevailing Party shall be entitled to an award of reasonable attorney fees incurred in connection with the arbitration in such amount as may be determined by the arbitrators. The award of the arbitrators shall be the sole and exclusive remedy of the Parties and shall be final and binding on both Parties and enforceable in any court having jurisdiction thereof, subject only to revocation on the grounds of fraud or clear bias on the part of the arbitrators. Notwithstanding anything contained in this Section to the contrary, each Party shall have the right to institute judicial proceedings against the other Party or anyone acting, by, through or under such other Party, in order to enforce the instituting Party's rights hereunder through injunction or similar equitable relief in aid of arbitration.

19.4. No Waiver. No failure or delay on the part of either LB or Alexion to exercise or enforce any rights conferred on it by the Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege or further exercise thereof operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

19.5. Severability. The illegality or invalidity of any provision (or any part thereof) of this Agreement shall not affect the legality, validity or enforceability of the remainder of its provisions or the other parts of such provision, as the case may be.

## 20. Miscellaneous.

20.1. Assignment. Neither Party shall be entitled to assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, except that both Parties shall be entitled without the prior written consent of the other to assign this Agreement to an Affiliate or to any joint venture company of which that Party is the beneficial owner of more than fifty per cent (50%) of the issued voting share capital thereof or to any company to which that Party may transfer all or substantially all of its assets or capital stock relating to the activities contemplated under this Agreement, whether through purchase, merger, consolidation or otherwise. Any assignment not permitted by this Section 20.1 shall be void and of no effect whatsoever.

20.2. Ability to Direct LB (NH) to Perform Services. LB has, and during the Term shall have, the right to and, during the Term, shall direct LB (NH) to perform the Services contemplated under and in accordance with this Agreement pursuant to inter-company agreements between LB and LB (NH). LB and LB (NH) shall enter into such intercompany agreements prior to or simultaneously with execution of this Agreement, and such intercompany

agreements will provide that LB (NH) shall not take any actions that are reasonably likely to adversely affect LB's ability to satisfy its obligations hereunder. LB hereby guarantees the performance by LB (NH) of any of the Services performed on behalf of LB pursuant to such inter-company agreements as principal and surety, and shall be responsible for LB (NH)'s actions and omissions as if they were the actions and omissions of LB.

20.3. Publicity. The text of any press release or other communication to be published by or in the media concerning the subject matter of this Agreement (not previously published pursuant to this Section 20.3) shall require the prior written approval of LB and Alexion, except to the extent required by law.

20.4. Entire Agreement. This Agreement embodies the entire agreement and understanding between LB and Alexion relating to the subject matter hereof and there are no promises, terms, conditions or obligations, oral or written, expressed or implied, other than those contained in this Agreement. The terms of this Agreement supersede all previous agreements and understandings between LB and Alexion relating to the Services, including without limitation the Letter of Intent.

20.5. Independent Contractor. Each Party to this Agreement acts as an independent contractor and nothing in this Agreement shall be construed to create a relationship of partnership, principal and agent, or joint venture between the Parties.

20.6. Notices. Any notice or other communication to be given under this Agreement shall be delivered personally or sent by first class pre-paid registered or certified mail, return receipt requested, nationally recognized courier service or facsimile transmission addressed as follows:

If to Alexion, to:

Alexion Pharmaceuticals Inc.  
352 Knotter Drive  
Cheshire, Connecticut 06410  
For the attention of: President  
Facsimile: (203) 271-8198

with a copy to:

Alexion Pharmaceuticals Inc.  
352 Knotter Drive  
Cheshire, Connecticut 06410  
For the attention of: Vice President and General Counsel  
Facsimile: (203) 271-8198

If to LB, to:

Lonza Biologics plc  
228 Bath Road  
Slough  
Berkshire SL1 4DY  
England  
For the attention of: Company Secretary  
Facsimile: (011) 44 1753 777001

with a copy to:

Lonza Biologics, Inc.  
Pease International Tradeport  
101 International Drive  
Portsmouth, New Hampshire 03801-2833  
For the attention of: Head of Operations  
Facsimile: 001 603 334 6262

or to such other address as either Party hereto may hereafter notify the other in accordance with the provisions of this clause. All such notices or other communications shall be deemed to have been delivered as follows:

- 20.6.1. If delivered personally, at the time of such delivery;
- 20.6.2. If sent by registered or certified mail, five (5) business days (Saturdays, Sundays and public holidays excluded) after mailing;
- 20.6.3. If sent by facsimile, upon receipt of the transmission confirmation slip showing completion of the transmission;
- 20.6.4. If sent by courier service, two (2) days after being dispatched.

20.7. Headings. The headings in this Agreement are for convenience of reference only and shall not constitute part of this Agreement.

20.8. Counterparts. This Agreement may be executed in several counterparts, each of which is an original but all of which shall constitute one instrument.

20.9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

LONZA BIOLOGICS PLC

By \_\_\_\_\_  
Name:  
Title:

ALEXION PHARMACEUTICALS INC

By \_\_\_\_\_  
Name:  
Title:

Alexion Patent RightsIssued Patents

U.S. Patent [\*\*\*\*\*]  
U.S. Patent [\*\*\*\*\*]  
U.S. Patent [\*\*\*\*\*]  
U.S. Patent [\*\*\*\*\*]  
Australian Patent [\*\*\*\*\*]

U.S. Patent [\*\*\*\*\*]  
Canadian Patent [\*\*\*\*\*]  
European Patent [\*\*\*\*\*]  
Japanese Patent [\*\*\*\*\*]  
United Kingdom Patent [\*\*\*\*\*]  
U.S. Patent [\*\*\*\*\*]

European Patent [\*\*\*\*\*]  
Japanese Patent [\*\*\*\*\*]  
United Kingdom Patent [\*\*\*\*\*]

Patent Applications

Patent Applications related to U.S. [\*\*\*\*\*] and [\*\*\*\*\*] are pending in other countries as listed below:

Brazil Application [\*\*\*\*\*]  
Canadian Application [\*\*\*\*\*]  
European Application publication [\*\*\*\*\*]  
Japanese Application [\*\*\*\*\*]  
Korean Application [\*\*\*\*\*]  
Mexican Application [\*\*\*\*\*]

U.S. Patent Application [\*\*\*\*\*]  
Australian Application [\*\*\*\*\*]  
Australian Application [\*\*\*\*\*]  
Canadian Application [\*\*\*\*\*]  
European Application publication number [\*\*\*\*\*]  
Japanese Application [\*\*\*\*\*]

U.S. Patent Application [\*\*\*\*\*]

European Patent Application [\*\*\*\*\*]

LB Patent Rights

Title: [\*\*\*\*\*]

<u>Territory</u>	<u>Patent Number</u>	<u>Patent Expiry Date</u>
Australia	[*****]	[*****]
Bulgaria	[*****]	[*****]
Canada	[*****]	[*****]
Europe*	[*****]	[*****]
Russia	[*****]	[*****]
United Kingdom	[*****]	[*****]
USA (cont III)	[*****]	[*****]

\* includes: Austria, Belgium, France, Germany, Italy, Luxembourg, Netherlands, Sweden and Switzerland.

Title: [\*\*\*\*\*]

<u>Territory</u>	<u>Patent Number</u>	<u>Patent Expiry Date</u>
Australia	[*****]	[*****]
Canada	[*****]	[*****]
*Europe	[*****]	[*****]
Japan	[*****]	[*****]
USA	[*****]	[*****]
USA (divisional)	[*****]	[*****]
USA (divisional)	[*****]	[*****]

\* includes: Austria, Belgium, France, Germany, Italy, Liechtenstein, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom

Title: [\*\*\*\*\*]

<u>Territory</u>	<u>Patent Number</u>	<u>Patent Expiry Date</u>
*Europe	[*****]	[*****]
Japan	[*****]	[*****]
USA (cont II)	[*****]	[*****]
USA (divisional)	[*****]	[*****]

\* includes: Austria, Belgium, France, Germany, Italy, Luxembourg, Netherlands, Sweden, Switzerland and United Kingdom

Title: [\*\*\*\*\*]

<u>Territory</u>	<u>Patent Number</u>	<u>Patent Expiry Date</u>
Australia	[*****]	[*****]
Canada	[*****]	[*****]
*Europe	[*****]	[*****]
Japan	[*****]	[*****]
USA (cont I)	[*****]	[*****]
USA (cont II)	[*****]	[*****]



\* includes: Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, Netherlands, Spain, Sweden, Switzerland and United Kingdom

Title: [\*\*\*\*\*]

<u>Territory</u>	<u>Application No.</u>	<u>Patent No.</u>	<u>Expiry Date</u>
<sup>1</sup> Australia	[*****]	[*****]	[*****]
<sup>1</sup> Canada	[*****]		
<sup>1</sup> *Europe	[*****]	[*****]	[*****]
<sup>1</sup> Japan	[*****]	[*****]	[*****]
<sup>1</sup> USA Cont.	[*****]	[*****]	

\* includes: Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Monaco, Netherlands, Portugal, Spain, Sweden, Switzerland, United Kingdom

<sup>1</sup> ex PCT

\*CONFIDENTIAL

**ALEXION PHARMACEUTICALS, INC.**  
**25 SCIENCE PARK**  
**INDUSTRIAL REAL ESTATE LEASE**

TABLE OF CONTENTS

<b>ARTICLE</b>		<b>Page</b>
<b>ARTICLE 1: BASIC TERMS</b>		1
<b>ARTICLE 2: PREMISES AND APPURTENANT RIGHTS</b>		6
2.01	Lease of Premises; Appurtenant Rights	6
2.01(a)	Exclusions	7
2.01(b)	Appurtenant Rights	7
2.01(c)	Reservations	7
2.01(d)	Parking	7
<b>ARTICLE 3: LEASE TERM</b>		8
3.01	Lease Term	8
3.02	Hold Over	8
3.03	Right to Extend	9
3.03(a)	Extension Term	9
3.03(b)	Extension Term Base Rent and Site Pad Rent	9
3.03(c)	Arbitration of Market Rent	10
3.03(d)	CPI Adjustment	11
3.03(e)	Rent Continuation	11
<b>ARTICLE 4: RENT</b>		11
4.01	Base Rent	11
4.02	Additional Rent	12
4.02(a)	General	12
4.02(b)	Allocation of Certain Operating Costs	12
4.03	Late Charge	13
4.04	Interest	13
4.05	Method of Payment	13
4.06	Tenant's Pro Rata Share	14
<b>ARTICLE 5: TAXES</b>		14
5.01	Taxes	14
5.02	Definition of "Taxes"	14
5.03	Personal Property Taxes	15
<b>ARTICLE 6: UTILITIES</b>		15
6.01	Utility Services	15
<b>ARTICLE 7: INSURANCE</b>		17
7.01	Coverage	17
7.02	Avoid Action Increasing Rates	17
7.03	Waiver of Subrogation	18
7.04	Landlord's Insurance	18
<b>ARTICLE 8: OPERATING EXPENSES</b>		19
8.01	Operating Expenses	19
<b>ARTICLE 9: USE OF PREMISES</b>		20

9.01	Permitted Uses	20
9.02	Indemnification	20
9.03	Compliance With Legal Requirements	21
9.04	Environmental Substances	22
9.05	Signs and Auctions	24
9.06	Landlord's Access	24
<b>ARTICLE 10: CONDITION AND MAINTENANCE OF PREMISES AND PROPERTY</b>		25
10.01	Existing Conditions	25
10.02	Exemption and Limitation of Landlord's Liability	26
	10.02(a) Exemption of Landlord from Liability	26
	10.02(b) Limitation On Landlord's Liability	26
10.03	Landlord's Obligations	27
	10.03(a) Landlord Work	27
	(i) Base Building Work	27
	(ii) Alexion Related Work	27
	10.03(b) Repair and Maintenance	27
	10.03(c)	27
10.04	Tenant's Obligations	29
	10.04(a) Repair and Maintenance	29
	10.04(b) Landlord's Right to Cure	29
10.05	Tenant Work	30
	10.05(a) General	30
	10.05(b) Construction Documents	30
	10.05(c) Performance	31
	10.05(d) Payment	32
	10.05(e) Other	32
	10.05(f). Finish Work	33
	10.05(g) Mechanical Equipment Space	33
	10.05(h) Tenant Delays	34
10.06	Condition upon Termination	34
10.07	Decommissioning of the Premises	35
<b>ARTICLE 11: INTENTIONALLY OMITTED</b>		36
<b>ARTICLE 12: DAMAGE OR DESTRUCTION; CONDEMNATION</b>		36
12.01	Damage or Destruction of Premises	36
12.02	Eminent Domain	38
<b>ARTICLE 13: ASSIGNMENT AND SUBLETTING</b>		38
13.01	Landlord's Consent Required	38
13.02	Terms	39
13.03	Right of Termination or Recapture	39
13.04	Procedures	39
13.05	Excess Rents	40
13.06	No Release	40

<b>ARTICLE 14: EVENTS OF DEFAULT AND REMEDIES</b>		41
14.01	Events of Default	41
14.02	Remedies for Default	42
14.02(a)	Reletting Expenses Damages	42
14.02(b)	Termination Damages	42
14.02(c)	Lump Sum Liquidated Damages	42
14.02(d)	Remedies Cumulative; Jury Waiver; Late Performance	43
14.02(e)	Waivers; Accord and Satisfaction	43
14.02(f)	Landlord's Curing	44
<b>ARTICLE 15: SECURITY DEPOSIT</b>		44
15.01	Security Deposit	44
<b>ARTICLE 16: PROTECTION OF LENDERS/GROUND LESSOR</b>		45
16.01	Subordination and Superiority of Lease	45
16.02	Rent Assignment	46
16.03	Other Instruments	46
16.04	Estoppel Certificates	46
16.05	Tenant's Financial Condition	46
16.06	Ground Lease	47
16.06(a)	Recognition of Ground Lease; Subordination	47
16.06(b)	Ground Lessor's Enforcement Rents	47
16.06(c)	Compliance with Ground Lease	48
<b>ARTICLE 17: MISCELLANEOUS PROVISIONS</b>		48
17.01	Landlord's Consent Fees	48
17.02	Notice of Landlord's Default	48
17.03	Quiet Enjoyment	49
17.04	Interpretation	49
17.05	Notices	49
17.06	No Recordation	49
17.07	Waivers	49
17.07(a)	Waiver of Notice to Quit	49
17.07(b)	Prejudgment Remedy Wavier	49
17.07(c)	Waiver of Right of Reinstatement	50
17.08	Corporate Authority	50
17.09	Joint and Several Liability	50
17.10	Force Majeure	50
17.11	Limitation of Warranties	51
17.12	No Other Brokers	51
17.13	Applicable Law and Construction	51
17.14	Construction on the Property or Adjacent Property	52
17.15	Intentionally Omitted	53
17.16	Security	53

INDEX OF DEFINED TERMS

<u>TERM</u>	<u>Page</u>
Additional Rent	3
Address of Property	1
Administrative Charge	45
Alexion Related Work	27
Arbitrator	10
Base Building Work	27
Base Price Index	11
Base Rent	3
Broker(s)	2
Building	1
Building and Property	1
Building's Pro Rata Share	20
Clean Room	29
Complex	6
Complex Common Elements	19
Construction Coordination Plan	29
Construction Documents	31
Core Building Systems	30
CPI	11
CPI Adjusted Base Rent and Site Pad Rent	10
Date of Lease	1
Environmental Law(s)	22
Environmental Substances	23
Event of Default	42
Exhibits	4
Extension Term	9
Extension Terms	9
Finish Work	34
Ground Landlord	6
Ground Lease	48
Ground Lessor	48
Guarantor	1
Indemnitees	21
Landlord	1
Lease Year	2
Legal Requirement	21
Management Company	2
Market Rent	11
mortgage	45
mortgagee	45
non-monetary default	52

Notice to Quit	50
Operating Costs	12
Operating Expenses	19
Original Address of Guarantor for Notices	4
Original Address of Landlord for Notices	3
Original Address of Tenant for Notices	4
Parking	2
Parking License	8
Permitted Uses	2
Premises	1
Premises Delivery Date	2
Project	53
Property	1
Related Party Transfer	40
Reletting Expenses	43
Rent	12
Right of Reinstatement	51
Security Deposit	2
Site Pad Rent	7
Taxes	14
Tenant	1, 50
Tenant Contractor	32
Tenant Delay	34
Tenant Property	35
Tenant Work	30
Tenant Work Threshold Amount	30
Tenant's Architect	31
Tenant's Pro Rata Share	1
Term	2, 53
Term Commencement Date	2
Third Arbitrator	10
Total Operating Costs	12
Transfer	39
Transfer Expenses	41
Utility Service	15
Utility Service Provider	16
Utility Services	16
Utility Switching Points	15

## ARTICLE 1: BASIC TERMS

The following terms used in this Lease shall have the meanings set forth below.

<b>Date of Lease:</b>	January 1, 2003
<b>Landlord:</b>	SP-K Development, LLC a Delaware Limited Liability Company
<b>Tenant:</b>	Alexion Pharmaceuticals, Inc., a Delaware corporation
<b>Guarantor:</b>	N/A
<b>Address of Property:</b>	25 Science Park 150 Munson Street New Haven, CT 06511
<b>Building and Property:</b>	The building now having six (6) stories plus penthouse currently containing approximately 211,000 rentable square feet (as it may be renovated and expanded by Landlord from time to time, and is anticipated to contain approximately 266,000 rentable square feet upon completion of Landlord's Renovation Program (the " <u>Building</u> ")) in the City of New Haven, CT, constructed on a parcel of land described in <u>Exhibit A</u> attached hereto and known as 25 Science Park, 150 Munson Street, (the Building and such parcel of land hereinafter being collectively referred to as the " <u>Property</u> ").
<b>Premises:</b>	32,331 rentable square feet of the Building (as previously certified to Tenant by Landlord's Architect using the ANSI/BOMA Z65.1 – 1996 method of measurement), located on portions of the second (2 <sup>nd</sup> ), fourth (4 <sup>th</sup> ) and fifth (5 <sup>th</sup> ) floors of the Building, as described in <u>Exhibit B</u> .
<b>Tenant's Pro Rata Share:</b>	Initially, 12.15% for the entire Premises (based on a 266,000 rentable-square-foot Building), subject to adjustment under Section 4.06.



**Term:**

Initial Term: Five (5) Lease Years from the Term Commencement Date defined below.

Extension Terms: Three (3) additional terms of one (1) year each.

**Lease Year:** The first Lease Year begins at 12:01 a.m. on the Term Commencement Date and ends at 11:59 p.m. on December 31, 2003. Each subsequent Lease Year ends at 11:59 p.m. twelve months after the preceding Lease Year, except the fifth Lease Year, which ends at 11:59 p.m. on October 31, 2007.

**Term Commencement Date:** Date of Lease.

**Premises Delivery Date:** Date of Lease.

**Permitted Uses:** Technical office for pharmaceutical or biomedical research and development, and laboratory (including "wet lab" space), subject to the requirements of applicable law.

**Broker(s):** None.

**Management Company:** The Legacy Management Group, Inc.

**Security Deposit:** \$118,385.35. Landlord acknowledges that it currently holds \$28,775.32 as Security Deposit. The balance due Landlord on the Date of Lease is \$89,610.03.

**Parking:** As set forth in Section 2.01(d) of the Lease and in the Parking License attached hereto as Exhibit B-2.

**Base Rent:**

Initial Term:

Lease Year	Base Rent Per Rentable Square Foot	Base Rent	Base Rent Monthly Installment
1*	\$8.47	\$273,843.57	\$22,820.30
1**	\$13.50	\$436,468.50	\$36,372.38
2***	\$14.50	\$468,799.50	\$39,066.63
3	\$15.50	\$501,130.50	\$41,760.88
4	\$16.50	\$533,461.50	\$44,455.13
5	\$18.50	\$598,123.50	\$49,843.63

\* Through December 31, 2002 only

\*\* January 1, 2003 through December 31, 2003

\*\*\* Provided the Substantial Completion Date of Base Building Work occurs on or before December 31, 2003; if the Substantial Completion Date of Base Building Work does not occur on or before December 31, 2003, then Base Rent shall remain payable at \$13.50 per Rentable Square Foot until the Substantial Completion Date of Base Building Work and, thereafter, shall be payable at the rate for the applicable Lease Year as set forth above.

**Additional Rent:**

All amounts payable by Tenant under this Lease other than Base Rent, including Site Pad Rent, Tenant's Pro Rata Share of Taxes (Article 5); Utilities (Article 6); Insurance premiums (Article 7); and Operating Expenses (Article 8) (See Section 4.02).

**Site Pad Rent:**

\$5,000 per annum.

**Original Address of Landlord for Notices:**

c/o Lyme Properties, LLC  
 25 Science Park  
 150 Munson Street  
 New Haven, CT 06511  
 Attn: Project Manager

with copies to:

Lyme Properties, LLC  
101 Main Street, 18th Floor  
Cambridge, MA 02142  
Attn: General Counsel or Managing Member

Hill & Barlow  
One International Place  
Boston, MA 02116  
Attn: Greg D. Peterson, Esquire

**Original Address of Tenant for Notices:**

Alexion Pharmaceuticals, Inc.  
352 Knotter Drive  
Cheshire, CT 06410  
Attn: Mr. Barry Luke

with a copy to:

Wiggin & Dana  
One Century Tower  
New Haven, CT 06510  
Attn: D. Terence Jones, Esquire

**Original Address of Guarantor for Notices:**

N/A

**Finish Work:**

To be constructed by Tenant as set forth in Section 10.05.

**Base Building Work:**

As set forth in Section 10.03(a).

**Exhibits:**

Exhibit A:	Property
Exhibit B:	Premises
Exhibit B-1:	Parking Plan
Exhibit B2:	Parking License Agreement
Exhibit B-3:	Site Pad Location
Exhibit C:	Rules and Regulations
Exhibit D:	Form of Confirmation of Delivery
Exhibit E:	Clean Room and Technical Areas Location

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Exhibit F:	Exceptions to Decommissioning Requirements
Exhibit G:	Environmental Substances
Exhibit H:	Base Building Work
Exhibit H-1:	Alexion Related Work
Exhibit I:	Finish Work
Exhibit J:	Construction Documents
Exhibit K:	Tenant Work Insurance Schedule
Exhibit K-1:	Tenant Contractor and Subcontractor Insurance Limit Requirements
Exhibit L:	Reserved
Exhibit M:	Lender's Form of Subordination, Nondisturbance and Attornment Agreement
Exhibit N:	Ground Lessor's Form of Subordination, Nondisturbance and Attornment Agreement
Exhibit O:	Approved Tenant Contractors
Exhibit P:	Property that Must Remain in the Premises
Exhibit P-1:	Property that Must Be Removed from Premises

## ARTICLE 2: PREMISES AND APPURTENANT RIGHTS

**2.01 Lease of Premises; Appurtenant Rights.** Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, for the Term, subject to all matters of record and matters referred to below. Subject to Landlord's reasonable rules of general applicability from time to time adopted and of which Tenant is given notice, Tenant shall have access to the Premises twenty-four (24) hours a day, seven (7) days a week. The Property is located in a contemplated multi-building project, of which the Building is part, located in the area approximately bounded by Division Street, Mansfield Street, Shelton Avenue, and Munson Street together with the area abutting Munson Street to the south (such elements of the multi-building project as are owned or ground leased by Landlord or an affiliate of Landlord, from time to time, the "Complex").

Landlord reserves the right to relocate the Premises (other than the portion located on the 2<sup>nd</sup> floor of the Building) to other space within the Building and/or to relocate the portion of the Premises located on the second floor to other space located on a lower floor of the Building than the Clean Room (as it may be relocated pursuant to this paragraph), and in either instance, the space shall be of comparable or superior quality, fit-out and finish, provided that Landlord uses reasonable efforts to accommodate Tenant's business operations and limit any disruption of the same in connection with such relocation. Landlord shall give Tenant at least 90 days' prior notice of such intention to relocate and following said notice, Landlord and Tenant shall use good faith efforts to reach an agreement on the space to which the Premises (or a portion thereof) are to be relocated and the timing of such relocation. Said agreement shall address any special measures required due to the relocation, such as the waterproofing above Tenant's Clean Room (as defined in Section 10.03(c)) or any other special construction measures necessary to protect the Clean Room, notice of which Tenant shall provide Landlord, and the cost of which shall be borne entirely by Landlord to the extent that such measures have been implemented in the Premises prior to the relocation and entirely by Tenant to the extent that such measures are in addition to those measures implemented in the Premises prior to the relocation. If within one month after receipt of such notice Tenant and Landlord have not reached said agreement then Landlord shall have the option to withdraw its relocation notice.

If Landlord and Tenant do so agree on relocation, then, effective on the date of such relocation, this Lease shall be amended by deleting (or modifying, as applicable) the description of the original Premises set forth in Article 1 and substituting therefor information relating to such relocation space. Landlord agrees to pay the reasonable cost of moving Tenant to such other space and finishing such space to a condition comparable to the then condition of the Premises.

Landlord and Tenant acknowledge that Tenant is currently in possession of a portion of the Premises and that prior to the Term Commencement Date, Tenant was a tenant at will with respect to such portion of the Premises. Following the Date of Lease, Tenant shall have no further rights in the Building except as set forth herein.

2.01(a) Exclusions. The Premises exclude common areas and facilities of the Property, including without limitation exterior faces of exterior walls, the common stairways and stairwells (subject to Tenant's rights to use the stairways for access between portions of the Premises pursuant to Section 2.01(b)), entranceways and the main lobby, elevators and elevator wells, fan rooms, electric and telephone closets located physically outside the perimeter of the Premises as such perimeter is shown in Exhibit B, janitor closets, freight elevator vestibules, and pipes, ducts, conduits, wires and appurtenant fixtures serving other parts of the Property (exclusively or in common) and other common areas and facilities from time to time designated as such by Landlord. If the Premises include less than the entire rentable area of any floor, then the Premises also exclude the common corridors, elevator lobby and toilets located physically outside the perimeter of the Premises as such perimeter is shown in Exhibit B that are located on such floor.

2.01(b) Appurtenant Rights. Tenant shall have, as appurtenant to the Premises, rights to use in common with others (subject to reasonable rules of general applicability of which Tenant is given notice) the common areas and facilities of the Property. Landlord's initial rules are set forth in Exhibit C. Effective as of the Term Commencement Date, Landlord grants Tenant the appurtenant, exclusive, and irrevocable (except upon the expiration or earlier termination of this Lease) right at the rent set forth in Article 1 (the "Site Pad Rent") and otherwise subject to the terms and conditions of this Lease, to use the site pad located as shown on Exhibit B-3 for the sole purpose of locating an emergency generator appurtenant to Tenant's use and occupancy of the Premises.

2.01(c) Reservations. In addition to other rights reserved herein or by law, and subject to the provisions of Section 9.06, Landlord reserves the right from time to time, without unreasonable (except in emergency) interruption of Tenant's use: (i) to make additions to or reconstructions of the Building and to install, use, maintain, repair, replace and relocate for service to the Premises and other parts of the Building, or either, pipes, ducts, conduits, wires and appurtenant fixtures, wherever located in the Premises, the Building, or elsewhere in the Property; (ii) to alter or relocate any other common area or facility, including the drives, lobbies and entrances and (iii) to grant easements and other rights with respect to the Property. Installations, replacements and relocations within the Premises referred to in clause (i) shall be located as far as practicable in the core areas of the Building, above ceiling surfaces, below floor surfaces or within perimeter walls of the Premises. All such work pursuant to clauses (i) and (ii), above, shall be conducted in such a manner as is consistent with accepted construction practices to minimize interference with Tenant's business operations.

2.01(d) Parking. Landlord shall provide Tenant with three (3) unreserved parking spaces per 1,000 rentable square feet of the Premises for standard size automobiles and small utility vehicles without any additional charge with respect to such use during the Initial Term of this Lease. If Tenant desires to use any or all of the allotted parking spaces (not to exceed three (3) spaces per 1,000 rentable square feet of Premises) during any of the Extension Terms set forth in Section 3.03 of this Lease, then at the time Tenant sends Landlord the required notification ("Tenant's Notice") exercising its option for the applicable Extension Term,

Tenant shall include in Tenant's Notice the number of parking spaces Tenant requires for use during the applicable Extension Term. Tenant's failure to do so shall be deemed a waiver by Tenant of its right to use any parking spaces during the applicable Extension Term. If Tenant's Notice does include the number of parking spaces Tenant requires for use during the applicable Extension Term, then Tenant shall pay for such spaces (whether or not so used) at prevailing market rates, or such other rates to which the parties may mutually agree which shall in no event exceed the lowest parking rates charged by Landlord to other tenants of the Building (excluding any free parking granted to other tenants during the five (5) years following the completion of the Base Building Work). The parking spaces may be located on the Property and/or within the Complex, and the location of said parking spaces is subject to change from time to time. Such parking spaces may, at Landlord's discretion, be subject to a specific license agreement substantially in the form attached as Exhibit B-2 and Tenant's right to use such parking spaces shall be non-exclusive. Initially, Landlord's affiliate shall grant Tenant a license in the form attached hereto as Exhibit B-2 (the "Parking License") to use the non-exclusive, unreserved parking spaces in the locations shown on Exhibit B-1. The Parking License shall not be assigned or sublicensed except in connection with a Transfer permitted under Article 13. Tenant acknowledges that Landlord has informed Tenant that Landlord intends to allocate in its tenant leases more than the actual parking spaces servicing the Property in a reasonable manner consistent with accepted management of commercial parking facilities. It is further acknowledged and agreed that as a consequence of such over-allocation of parking spaces, there may occasionally occur instances in which the number of parking spaces actually available to Tenant shall be less than the Parking Spaces to which Tenant is entitled under this Lease. Landlord shall incur no liability to Tenant as a consequence of such over-allocation of parking spaces.

### **ARTICLE 3: LEASE TERM**

**3.01 Lease Term.** The Initial Term of this Lease is set forth in Article 1. Landlord and Tenant shall execute and deliver a Confirmation of Delivery in the form of Exhibit D, but Rent shall commence on the Term Commencement Date whether or not such confirmation is executed. Landlord's failure to deliver the Premises to Tenant on or before the Term Commencement Date, for any reason, shall not give rise to any liability of Landlord hereunder, shall not constitute a Landlord's default, shall not affect the validity of this Lease, and shall have no effect on the beginning or end of the Term as otherwise determined hereunder or on Tenant's obligations associated therewith.

**3.02 Hold Over.** If Tenant (or anyone claiming through Tenant) shall remain in occupancy of the Premises or any part thereof after the expiration or early termination of the Term without a written agreement therefor executed and delivered by Landlord, then without limiting Landlord's other rights and remedies the person remaining in possession shall be deemed a tenant at sufferance, and Tenant shall thereafter pay monthly rent (pro rated for such portion of any partial month as Tenant shall remain in possession) for the first thirty (30) days at a rate equal to 150%, and thereafter 200%, of the greater of (a) the fair market rent then being quoted by Landlord for the Premises or comparable space in the Building, or (b) the amount payable as Base Rent for the twelve-month period immediately preceding such

expiration or termination, and in either case with all Additional Rent (which shall not be multiplied by the aforementioned percentage) also payable as provided in this Lease. After Landlord's acceptance of the full amount of such rent for the first month of such holding over, the person remaining in possession shall be deemed a tenant at will at such rent and otherwise subject to all of the provisions of this Lease. Notwithstanding the foregoing, if Landlord desires to regain possession of the Premises promptly after the termination or expiration hereof and prior to acceptance of rent for any period thereafter, Landlord may, at its option, forthwith re-enter and take possession of the Premises or any part thereof without process if a waiver of such right by Tenant is permitted by law or by any legal process in force in the state where the Property is located. In any case, Tenant shall be liable to Landlord for all actual damages resulting from any failure by Tenant to vacate the Premises or any portion thereof when required hereunder, which shall include without limitation any costs incurred by Landlord as a result of Landlord's failure to deliver the Premises in a timely fashion to another tenant due to such failure by Tenant (provided, however, that in no event shall Tenant be liable for lost rents to the extent Landlord actually receives rental income with respect to the Premises).

### **3.03 Right to Extend.**

3.03(a) Extension Term. The Term of this Lease of all of the Premises may be extended for three (3) additional one (1) year periods (any of such one (1) year period, an "Extension Term;" together, the "Extension Terms") by unconditional written notice from Tenant to Landlord at least twelve (12) (but not more than fifteen (15)) months before the end of the Initial Term, or the respective Extension Term, as applicable, time being of the essence. If Tenant does not timely exercise this option, or if on the date of such notice or at the beginning of the applicable Extension Term (i) a monetary default exists, (ii) a non-monetary default beyond any applicable notice and cure periods exists, or (iii) Tenant has sublet in excess of 25% of the Premises, Tenant's right to extend shall irrevocably lapse, Tenant shall have no further right to extend, and this Lease shall expire at the end of the Initial Term or applicable Extension Term. In the event that Tenant exercises its right to extend the Term pursuant to this Section 3.03, Tenant shall deposit with Landlord upon the commencement of the applicable Extension Term an amount sufficient to provide Landlord, together with amounts then being held by Landlord as the Security Deposit, with a Security Deposit equal to four (4) months of the then-applicable Base Rent and four (4) months of the then-applicable estimate of Tenant's Pro Rata Share of Total Operating Costs, which aggregate amount shall continue to be held as a Security Deposit pursuant to Article 15 of this Lease.

All references to the Term shall mean the Initial Term as it may be extended by the applicable Extension Terms. The Extension Terms shall be on all the same terms and conditions except that the Base Rent for the respective Extension Term shall be as set forth below.

3.03(b) Extension Term Base Rent and Site Pad Rent. Base Rent and Site Pad Rent for each year of the applicable Extension Term shall be established as the higher of (x) one-hundred percent (100%) of the Market Rent (as defined in Section 3.03(c)) or (y) the Base Rent and Site Pad Rent last in effect prior to the applicable Extension Term adjusted at the



Commencement Date of the applicable Extension Term to reflect any increase in CPI, as defined below (the “CPI Adjusted Base Rent and Site Pad Rent”). If Tenant gives Landlord timely notice of its exercise of an Extension Term option, then within sixty (60) days thereafter, Landlord shall give Tenant written notice of Landlord’s determination of Market Rent for the Premises for the applicable Extension Term. Within ten (10) days after Tenant receives such notice, Tenant shall notify Landlord of its agreement with or objection to Landlord’s determination of the Market Rent, whereupon in the case of Tenant’s objection, Market Rent shall be determined by arbitration conducted in the manner set forth below. If Tenant does not notify Landlord within such ten (10) day period of Tenant’s agreement with or objection to Landlord’s determination of the Market Rent, then (except as set forth in the following sentence) the Market Rent for the applicable Extension Term shall be deemed to be Landlord’s determination of the Market Rent as set forth in Landlord’s notice to Tenant. If at the Commencement Date of the applicable Extension Term the CPI Adjusted Base Rent and Site Pad Rent exceeds the Market Rent for the applicable Extension Term, the Base Rent and Site Pad Rent for the Extension Term shall be equal to the CPI Adjusted Base Rent and Site Pad Rent.

3.03(c) Arbitration of Market Rent. If Tenant timely notifies Landlord of Tenant’s objection to Landlord’s determination of Market Rent under the preceding subsection with respect to any Extension Term, such notice shall also set forth a request for arbitration and Tenant’s appointment of a commercial real estate appraiser having at least ten (10) years experience in the commercial leasing market in the municipality where the Premises are located (an “Arbitrator”). Within five (5) days thereafter, Landlord shall by notice to Tenant appoint a second Arbitrator. Each Arbitrator shall determine the Market Rent for the applicable Extension Term within thirty (30) days after Landlord’s appointment of the second Arbitrator. On or before the expiration of such thirty-(30) day period, the two Arbitrators shall confer to compare their respective determinations of the Market Rent. If the difference between the amounts so determined by the two Arbitrators is less than or equal to ten percent (10%) of the lower of said amounts then the final determination of the Market Rent shall be equal to the arithmetical average of said amounts. If such difference between said amounts is greater than ten percent (10%), then the two arbitrators shall within ten (10) days thereafter to appoint a similarly qualified third Arbitrator (“Third Arbitrator”), who shall determine the Market Rent within ten (10) days after his or her appointment by selecting one or the other of the amounts determined by the other two Arbitrators. The Market Rent so determined shall be the Market Rent for the Extension Term unless otherwise determined pursuant to the last sentence of Section 3.03(b). Each party shall bear the cost of the Arbitrator selected by such party. The cost for the Third Arbitrator, if any, shall be shared equally by Landlord and Tenant.

“Market Rent” shall be the fair market rent that willing parties would pay and receive as the Base Rent and Site Pad Rent, to lease similar space in the Building and similar space in similar buildings in the same geographic area during the applicable Extension Term and under the terms and conditions of this Lease.

3.03(d) CPI Adjustment. The Consumer Price Index for all Urban Wage Earners and Clerical Workers, all items, for the metropolitan New York area (including Connecticut) published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84 = 100) is the "CPI". If, as of the third month prior to the month in which the commencement of the applicable Extension Term occurs, if any, there is a change in the CPI (or any comparable successor or substitute index reasonably designated by the Landlord, appropriately adjusted) reflecting an increase in the cost of living over and above the cost of living as reflected by the CPI for the month in which the Lease Commencement Date occurs (or, with respect to subsequent Extension Terms, the CPI for the month in which the prior Extension Term commenced) (hereinafter called the "Base Price Index"), Base Rent and Site Pad Rent shall be calculated as follows for the purposes set forth in Section 3.03(b), if, by virtue of such calculation, the Base Rent and Site Pad Rent as adjusted by the CPI is higher than the Market Rent as determined above: the Base Rent and Site Pad Rent shall be multiplied by a fraction, the numerator of which shall be the CPI for the third month prior to the month in which the applicable Extension Term commences, and the denominator of which (for each such fraction) shall be the Base Price Index. In the event that Landlord determines that the CPI ceases to use the 1982-84 average of 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the CPI, then the CPI shall be adjusted to the figure that would have been arrived at had the manner of computing the CPI in effect at the date of this Lease not been changed. In the event that within one (1) year following the date that the CPI figure for any month used in calculating the Base Rent and Site Pad Rent shall have been published, the federal government shall revise such figure, then: (x) such revised CPI figure shall thereafter be deemed to be the correct CPI figure for all purposes (unless the federal government shall yet again revise such figure, in which case the most recently revised CPI figure shall be deemed to be correct); and (y) any retroactive adjustment or recomputation resulting from such revised CPI figure shall be limited to encompass only the year immediately preceding the date upon which the revision of such CPI figure shall have first been published.

3.03(e) Rent Continuation. For any part of the Extension Term during which the Base Rent and Site Pad Rent is in dispute or has otherwise not finally been determined, Tenant shall make payment on account of Base Rent and Site Pad Rent at the CPI Adjusted Base Rent and Site Pad Rent, and the parties shall adjust for any overpayments or underpayments upon the final determination of Base Rent and Site Pad Rent. The failure by the parties to complete the process contemplated under this Section prior to commencement of the Extension Term shall not affect the continuation of the Term or the parties' obligation to make any adjustments for any overpayments or underpayments for the Base Rent and Site Pad Rent due for the Extension Term promptly after the determination thereof is made.

#### **ARTICLE 4: RENT**

**4.01 Base Rent.** On the Term Commencement Date and thereafter on the first day of each month during the Term, Tenant shall pay Landlord the monthly installment of Base Rent, Site Pad Rent and the monthly installment of Tenant's Pro Rata Share of Total Operating Costs required by Section 4.02, in each case in advance. Rent shall be payable at Landlord's address

or otherwise as Landlord may designate in writing from time to time. In the event the Term Commencement Date is other than on the first day of the month, such amounts due shall be pro-rated and adjusted (up or down, as applicable) for any amounts paid (or owed) to Landlord for the period prior to the Term Commencement Date on account of the month in which the Term Commencement Date occurs, taking into account any difference between the rate charged for prior rent during Tenant's occupancy of the Premises as a tenant at will and the amount of Base Rent due under this Lease.

#### **4.02 Additional Rent.**

4.02(a) General. "Rent" means Base Rent and Additional Rent. Landlord shall estimate in advance (i) all Taxes under Article 5, (ii) all utility costs (unless separately metered to or separately contracted for by Tenant) under Article 6, (iii) all insurance premiums to be paid by Landlord under Article 7 and (iv) all Operating Expenses under Section 8.04 (individually, all such items in clauses (i) through (iv) being "Operating Costs" and collectively, being "Total Operating Costs") and Tenant shall pay one-twelfth of Tenant's Pro Rata Share of such estimated Total Operating Costs monthly in advance together with Base Rent. Landlord may adjust its estimates of Total Operating Costs at any time based upon its experience and reasonable anticipation of costs. Such adjustments shall be effective as of the next Rent payment date after notice to Tenant. Within ninety (90) days after the end of each fiscal year of the Property during the Term, Landlord shall endeavor to give to Tenant (and in any event shall give to Tenant within one hundred eighty (180) days after the end of each fiscal year) a reasonably detailed statement of the Total Operating Costs paid or incurred by Landlord during the preceding fiscal year and Tenant's Pro Rata Share of such expenses. Within the next thirty (30) days, Tenant shall pay Landlord any underpayment, or Landlord shall credit Tenant with any overpayment, of Tenant's Pro Rata Share of such Total Operating Costs. If the Term expires or the Lease is terminated as of a date other than the last day of a fiscal year, Tenant's payment of Additional Rent pursuant to this Section for such partial fiscal year shall be based on Landlord's best estimate of the items otherwise includable in Total Operating Costs and shall be made on or before the later of (a) ten (10) days after Landlord delivers such estimate to Tenant or (b) the last day of the Term, with an appropriate payment or refund to be made within thirty (30) days of Tenant's receipt of Landlord's statement of Total Operating Costs for such fiscal year. This Section shall survive the expiration or earlier termination of the Term.

This Lease requires Tenant to pay directly to suppliers, vendors, carriers, contractors, etc., certain insurance premiums, utility costs, personal property taxes, maintenance and repair costs and other expenses. If Landlord pays any of these amounts in accordance with this Lease, Tenant shall reimburse such costs, without mark-up or any administrative fee, in full with the next monthly Rent payment. Unless this Lease provides otherwise, Tenant shall pay all Additional Rent then due on or before the date for the next monthly Rent payment.

4.02(b) Allocation of Certain Operating Costs. If at any time during the Term Landlord provides services only with respect to particular portions of the Building or particular portions of the Complex that include the Premises or incurs other Operating Costs allocable to

particular portions of the Building that include the Premises alone, then such Operating Costs shall be charged entirely to those tenants, including Tenant, if applicable, of such portions, notwithstanding the provisions hereof referring to Tenant's Pro Rata Share. If, during any period for which Landlord's Operating Costs are being computed, less than all of the Building or Complex is occupied by tenants, or if Landlord is not supplying all tenants with the services being supplied hereunder, Operating Costs shall be reasonably estimated and extrapolated by Landlord to determine the Operating Costs that would have been incurred if the Building or Complex were fully occupied for such year and such services were being supplied to all tenants, and such estimated and extrapolated amount shall be deemed to be the Operating Costs for such period.

**4.03 Late Charge.** Tenant acknowledges that if it pays Rent late, Landlord shall incur unanticipated costs, which shall be extremely difficult to ascertain exactly. Such costs include processing and accounting charges, and late charges that may be imposed on Landlord by any mortgage on the Property. Accordingly, if Landlord does not receive any Rent payment within five (5) days following its due date, Tenant shall pay Landlord a late charge equal to five (5%) percent of the overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs Landlord shall incur by reason of Tenant's payment default. Payment of the late charge shall not cure Tenant's payment default or prevent Landlord from exercising other rights and remedies.

**4.04 Interest.** Any late Rent shall bear interest from the date due until paid at the rate of 15% per annum except to the extent such interest would cause the total interest to be in excess of that legally permitted. Payment of interest shall not cure Tenant's payment default or prevent Landlord from exercising other rights and remedies.

**4.05 Method of Payment.** Tenant shall pay the Base Rent to Landlord in advance in equal monthly installments by the first of each calendar month during the Term. Tenant shall make a ratable payment of Base Rent and Additional Rent for any period of less than a month at the beginning or end of the Term. All payments of Base Rent, Additional Rent and other sums due shall be paid in current U.S. exchange by check at the Original Address of Landlord or such other place as Landlord may from time to time direct (or if requested by Landlord in the case of Base Rent, by electronic fund transfer), without demand, set-off or other deduction.

Without limiting the foregoing, Tenant's obligation to pay Rent shall be absolute, unconditional, and independent and shall not be discharged or otherwise affected by any law or regulation now or hereafter applicable to the Premises, or any other restriction on Tenant's use, or, except as expressly provided in herein, any casualty or taking, or any failure by Landlord to perform or other occurrence; and Tenant assumes the risk of the foregoing and waives all rights now or hereafter existing to quit or surrender this Lease or the Premises or any part thereof, or to assert any defense in the nature of constructive eviction to any action seeking to recover Rent. Subject to the provisions of this Lease, however, Tenant shall have the right to seek judgments for direct money damages occasioned by Landlord's breach of its Lease covenants (but may not set-off any such judgment against any Rent or other amount owing hereunder).

It is intended that Base Rent payable hereunder shall be a net return to Landlord throughout the Term, free of expense, charge, offset, diminution or other deduction whatsoever on account of the Premises (excepting Landlord's financing expenses, federal and state income taxes of general application, and those expenses that this Lease expressly makes the responsibility of Landlord), and all provisions hereof shall be construed in terms of such intent.

**4.06 Tenant's Pro Rata Share.** Tenant's Pro Rata Share is calculated by dividing the rentable square foot area on the Premises by the rentable square foot area of the Building, as of the date of the computation. Tenant's Pro Rata Share initially as set forth in Article 1 is subject to adjustment by Landlord if the rentable square footage of the Premises or the Building changes.

#### **ARTICLE 5: TAXES**

**5.01 Taxes.** Tenant covenants and agrees to pay to Landlord as Additional Rent Tenant's Pro Rata Share of the Taxes for each fiscal tax period, or ratable portion thereof, included in the Lease Term. The foregoing notwithstanding, prior to January 1, 2003, Tenant shall have no obligation to pay Tenant's Pro Rata Share of Taxes. If Landlord receives a refund of any such Taxes, Landlord shall pay Tenant's Pro Rata Share of the refund after deducting Landlord's costs and expenses incurred in obtaining the refund. Tenant shall make estimated payments on account of Taxes in monthly installments on the first day of each month, in amounts reasonably estimated from time to time by Landlord pursuant to Section 4.02(a).

**5.02 Definition of "Taxes."** "Taxes" means all taxes, assessments, betterments, excises, user fees and all other governmental charges and fees of any kind or nature, or impositions or agreed payments in lieu thereof or voluntary payments made in connection with the provision of governmental services or improvements of benefit to the Building or the Property (including any so-called linkage, impact, or voluntary betterment payments), and all penalties and interest thereon (if due to Tenant's failure to make timely payments), assessed or imposed against the Premises or the property of which the Premises are a part (including without limitation any personal property taxes levied on such property or on fixtures or equipment used in connection therewith), other than a federal or state income tax of general application. If during the Term the present system of ad valorem taxation of property shall be changed so that, in lieu of or in addition to the whole or any part of such ad valorem tax there shall be assessed, levied or imposed on such property or Premises or on Landlord any kind or nature of federal, state, county, municipal or other governmental capital levy, income, sales, franchise, excise or similar tax, assessment, levy, charge or fee (as distinct from the federal and state income tax in effect on the Date of Lease) measured by or based in whole or in part upon Building valuation, mortgage valuation, rents, services or any other incidents, benefits or measures of real property or real property operations, then any and all of such taxes, assessments, levies, charges and fees shall be included within the term of Taxes. Taxes shall also include expenses, including fees of attorneys, appraisers and other consultants, incurred in connection with any efforts to obtain abatements or reduction or to assure maintenance of Taxes for any year wholly or

partially included in the Term, whether or not successful and whether or not such efforts involved filing of actual abatement applications or initiation of formal proceedings.

**5.03 Personal Property Taxes.** Tenant shall pay directly all taxes charged against Tenant's Property (as defined in Section 10.06). Tenant shall use its best efforts to have personal property taxed separately from the Property. Landlord shall notify Tenant if any of Tenant's personal property is taxed with the Property, and Tenant shall pay such taxes to Landlord within fifteen (15) days of such notice.

## **ARTICLE 6: UTILITIES**

### **6.01 Utility Services.**

(a) Except as expressly set forth herein, Tenant shall pay all charges for water, sewer, gas, electricity ("Utility Service") and any other utilities or like services used or consumed on the Premises, whether called use charge, tax, assessment, fee or otherwise as the same become due. It is understood and agreed that, in connection with the Base Building Work, (i) Landlord shall be responsible for bringing Utility Services to a common switching point(s) at the Building (collectively, "Utility Switching Points") and for installing direct meters or other measuring devices for such services to the Building (as opposed to individual tenant spaces) at Landlord's cost; (ii) Tenant shall pay for any and all costs to install and connect such Utility Services from such Utility Switching Points to the Premises; (iii) Landlord shall be under no obligation as to any Utility Services beyond the foregoing responsibility to bring such Utility Services to the Utility Switching Points; and (iv) Landlord shall not be liable for any interruption or failure in the supply of any utilities or Utility Services. Any utilities that are separately metered for Tenant, such as telephone service, shall be paid by Tenant directly to the utility authorities charged with the collection thereof.

(b) Tenant shall install temporary meters for measuring Tenant's usage of gas, electricity and water in the Premises no later than February 1, 2003. Prior to February 1, 2003, Tenant shall use the now-existing gas service to the Premises at no charge and shall pay to Landlord the cost of electricity and water service dependant upon Tenant's usage in accordance with Landlord's periodic reading of the temporary meters installed in the Premises on the Date of Lease. Following February 1, 2003, until such time as the check meters described in Section 6.01(c) have been installed by Tenant, Tenant shall pay to Landlord the cost of electricity, gas and water service to the Premises dependant upon Tenant's usage in accordance with Landlord's periodic reading of the temporary meters installed by Tenant or, to the extent such meters have not been installed, based on Landlord's reasonable estimate of Tenant's usage of such services.

(c) Tenant, at Tenant's sole expense, shall install check meters for the Utility Services to the Premises, Tenant's Utility Services shall be check metered in full no later than September 1, 2003. Tenant shall pay the costs of Utility Services directly to Landlord as Total Operating Costs pursuant to Section 4.02 dependent upon Tenant's usage in accordance with Landlord's periodic check meter readings.

(d) To the extent permitted by law, Landlord shall have the right at any time and from time to time during the Term to contract for or purchase one or more Utility Services from any company or third-party providing Utility Services (“Utility Service Provider”). Tenant agrees reasonably to cooperate with Landlord and the Utility Service Providers and at all times as reasonably necessary, and on reasonable advance notice, shall allow Landlord and the Utility Service Providers reasonable access to any utility lines, equipment, feeders, risers, fixtures, wiring and any other such machinery or personal property within the Premises and associated with the delivery of Utility Services subject to the provisions of Section 9.06.

(e) Notwithstanding anything to the contrary in Sections 2.01(c), 6.01(a), or 17.14, Landlord shall not voluntarily shut down the electric, natural gas, water and sewer services serving the Clean Room (the “Essential Clean Room Services”) during a period in which the Clean Room is in use for production or validation (“validation” meaning, for the purposes of this Lease, establishing whether a specific process will consistently produce a product meeting its pre-determined specifications and quality attributes) purposes without first giving Tenant at least thirty (30) days’ notice of the anticipated date of such shutdown and fourteen (14) days’ actual notice of such shutdown (in either case, a “Landlord Shutdown Notice”). Notwithstanding the provisions of Section 17.05 of this Lease to the contrary, Landlord’s notices pursuant to the foregoing sentence may be given by e-mail or facsimile provided that, in either event, automated confirmation of delivery is received by Landlord. Tenant’s e-mail address is carond@alxn.com and its facsimile number is 203-271-8198 for the purpose of such notices, which e-mail address and facsimile number are subject to change upon written notice to Landlord. Landlord shall use good faith efforts to verbally confirm that Tenant has received any notice sent by e-mail or facsimile pursuant to the immediately preceding sentence by calling Dan Caron at 203-271-8230 (which person and phone number are subject to change upon written notice to Landlord), provided, however, that Landlord’s failure to confirm such notice verbally shall not be deemed to invalidate the applicable e-mail or facsimile notice.

Within five (5) business days following Tenant’s receipt of any Landlord Shutdown Notice, Tenant shall notify Landlord if, in fact, production or validation will be taking place in the Clean Room during the period specified in the Landlord Shutdown Notice. Tenant’s failure to respond to the Landlord Shutdown Notice shall be deemed to be notice to Landlord that production or validation will be taking place during such period. Tenant and Landlord shall cooperate to provide for temporary alternative utility services to the Clean Room, if possible, during any such shutdown so as to minimize any interference with the conduct of Tenant’s business. Tenant’s sole and exclusive remedy in the event of a breach of Landlord’s obligations under this paragraph shall be an abatement of Base Rent equal to the duration of the utility service shut down resulting in such breach provided that such breach actually results in an interruption of Essential Clean Room Services during a period in which production or validation is occurring in the Clean Room, Tenant has given Landlord prompt written notice of such breach, such breach results from the willful disregard by Landlord of the provisions of this Section 6.01(e).

In case of emergency, Landlord may, notwithstanding any provision of this Section 6.01(e) to the contrary, shut down the Essential Clean Room Services without prior notice provided that Landlord makes reasonable efforts to notify Tenant (which notice may be telephonic) of such shut down promptly thereafter.

## **ARTICLE 7: INSURANCE**

**7.01 Coverage.** Tenant shall maintain during the Term insurance for the benefit of Tenant and Landlord (as their interests may appear) from insurers rated at least A-/VII by A. M. Best, on an occurrence basis and with terms and coverages otherwise reasonably satisfactory to Landlord and with such increases in limits as Landlord may from time to time reasonably request or as may be required under any mortgages or the Ground Lease. Initially, Tenant shall maintain the following:

(i) Commercial general liability insurance naming Landlord, Ground Lessor, Landlord's management, leasing and development agents and Landlord's mortgagee(s) from time to time as additional insureds, with coverage for premises/operations, personal injury, and contractual liability with combined single limits of liability of not less than \$5,000,000 for bodily injury and property damage per occurrence.

(ii) Property insurance covering property damage and business interruption. Covered property shall include all tenant improvements in the Premises (including the Finish Work and Tenant Work) and all other items of Tenant Property (as defined in Section 10.06). Such insurance, with respect only to tenant improvements, shall name Landlord, Ground Lessor and Landlord's mortgagees from time to time as additional loss payees as their interests may appear. Such insurance shall be written on an "all risk" of physical loss or damage basis including the perils of fire, extended coverage, windstorm, vandalism, malicious mischief, sprinkler leakage, flood and earthquake, and such other risks Landlord may from time to time designate, for the full replacement cost value of the covered items and in amounts that meet any co-insurance clause of the policies of insurance, with a deductible amount not to exceed \$5,000.

(iii) Workers' compensation insurance with statutory benefits and employers' liability insurance in the following amounts: each accident, \$500,000; disease (policy limit), \$500,000; disease (each employee), \$500,000.

Prior to the Term Commencement Date (or, if earlier, the time that Tenant enters onto the Property pursuant to Section 10.04(g)) and on each anniversary of that date (or on the policy renewal date), Tenant shall give Landlord certificate(s) evidencing such coverage and stating that it may not be changed or canceled without at least thirty (30) days' prior written notice to Landlord and Tenant. Insurance maintained by Tenant shall be deemed to be primary insurance, and any insurance maintained by Landlord shall be deemed secondary to it.

**7.02 Avoid Action Increasing Rates.** Tenant shall comply with Sections 9.01, 9.02, 9.03, and 9.04 and in addition shall not, directly or indirectly, use the Premises in any way that is



prohibited by law or dangerous to people or property or that may jeopardize or increase the cost of any insurance coverage or require additional insurance. Tenant shall cure any breach of this Section within ten (10) days after notice from Landlord by (i) stopping any use that jeopardizes any insurance coverage or increases its cost and (ii) paying the increased cost of insurance (provided that, if Tenant stops such use, Landlord shall use commercially reasonable efforts (at no out-of-pocket cost to Landlord) to obtain a reduction in the cost of such insurance). Tenant shall have no further notice or cure right under Article 14 for any such breach. Tenant shall reimburse Landlord for all of Landlord's costs incurred in providing any insurance that is attributable to any special endorsement or increase in premium resulting from the business or operations of Tenant, and any special or extraordinary risks or hazards resulting therefrom, including without limitation, any risks or hazards associated with the generation, storage and disposal of medical waste.

**7.03 Waiver of Subrogation.** Landlord and Tenant each waive any and every claim for recovery from the other for any and all loss of or damage to the Property or any part of it, or to any of its contents, which loss or damage is covered by valid and collectible property insurance. Landlord waives any and every such claim against Tenant that would have been covered had the insurance policies required to be maintained by Landlord by this Lease been in force, to the extent that such loss or damage would have been recoverable under such policies. Tenant waives any and every such claim against Landlord that would have been covered had the insurance policies required to be maintained by Tenant under this Lease been in force, to the extent that such loss or damage would have been recoverable under such policies. This mutual waiver precludes the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), and Landlord and Tenant each agree to give written notice of this waiver to each insurance company that has issued or shall issue any property insurance policy to it, and to have the policy properly endorsed, if necessary, to prevent invalidation of the insurance coverage because of this waiver.

**7.04 Landlord's Insurance.** Landlord shall purchase and maintain during the Term with insurance companies qualified to do business in the state where the Property is located insurance on an occurrence basis that shall include the following: (i) commercial general liability insurance for incidents occurring in the common areas, with coverage for premises/operations, personal and advertising injury, products/completed operations and contractual liability with combined single limits of liability of not less than \$5,000,000 for bodily injury and property damage per occurrence, together with such other coverages and risks as Landlord shall reasonably decide or a mortgagee or ground lessor may require; and (ii) property insurance covering property damage to the Building, excluding any Tenant Work, and loss of rental income, on an "all risk" of physical loss or damage basis, for full replacement cost value of the Building with co-insurance waived by inclusion of an agreed amount endorsement, together with such other coverages and risks as Landlord shall reasonably decide or a mortgagee or a ground lessor may require. As set forth in Section 4.02, the cost thereof shall be borne by Tenant and other tenants. Landlord may use blanket or excess umbrella coverage to satisfy any of the requirements in this Section 7.04.

## ARTICLE 8: OPERATING EXPENSES

**8.01 Operating Expenses.** “Operating Expenses” shall mean all costs and expenses associated with the ownership, operation, maintenance and repair of the Building and Property and of all heating, ventilating, air conditioning, plumbing, electrical, utility and safety systems for the Building and the “Building Pro Rata Share” of such costs and expenses associated with the Complex Common Elements. “Complex Common Elements” shall mean all areas in the Complex available for the common use of tenants of the Complex and not leased or held for the exclusive use of Tenant or other tenants, including common parking areas, driveways, sidewalks, access roads, plazas, landscaping and planted areas located in the Complex. Operating Expenses include without limitation the costs and expenses incurred in connection with the following: compliance with Landlord’s obligations under Section 10.03(b); planting and landscaping; snow removal; utility, water and sewage services; maintenance of signs; supplies, materials and equipment purchased or rented, total wage and salary costs paid to, and all contract payments made on account of, all persons up to the level of site or building manager engaged in the operation, maintenance, security, cleaning and repair of the Property and Complex Common Elements, including Social Security, old age and unemployment taxes and so-called “fringe benefits”; services generally furnished to tenants of the Building; maintenance, repair and replacement of Building and Complex Common Elements equipment and components; utilities consumed and expenses incurred in the operation, maintenance and repair of the Property and Complex Common Elements; costs incurred by Landlord to comply with the terms and conditions of any governmental approvals affecting operations of the Property; workers’ compensation insurance and property, liability and other insurance premiums; personal property taxes; rental or lease payments paid by Landlord for rented or leased personal property used in the operation or maintenance of the Property and Complex Common Elements; fees for required licenses and permits; routine maintenance and repair of parking areas and paving (including sweeping, striping, repairing, resurfacing, and repaving); refuse removal; security; reasonable reserves, including for roof replacement and exterior painting; property management fees; and capital repairs or replacements (except to the extent otherwise excluded below), provided that capital repairs or replacements shall be amortized in accordance with generally accepted accounting principles over the useful economic life of such item as reasonably determined by Landlord, with interest at the so-called base rate or prime rate from time to time announced by Fleet National Bank (or any comparable financial institution) at the head office in Boston, Massachusetts. Landlord may use third parties or affiliates to perform any of these services, and the cost thereof shall be included in Operating Expenses provided costs of work performed by affiliates does not exceed the reasonable costs a third party would have charged. Costs referred to in this Section shall be ascertained in accordance with generally accepted accounting principles, including allowances for appropriate reserves, and allocated to appropriate fiscal periods on the accrual method of accounting. Landlord shall make a reasonable allocation of the cost of any Operating Expenses incurred jointly for the Property and any other property. The “Building’s Pro Rata Share” of Operating Expenses incurred with respect to Complex Common Elements means a fraction equal to the rentable floor area of the Building divided by the rentable floor area of all buildings in the Complex then in active use and sharing such costs and expenses, as determined in Landlord’s reasonable discretion from time to time.

Operating Expenses shall not include: the cost of performing Landlord's obligations under Section 10.03 (a); the cost of casualty repairs to the extent covered by insurance, (except for reasonable deductibles paid by Landlord under insurance policies maintained by Landlord); costs associated with the operation of the business of Landlord and/or the sale and/or financing of the Building, as distinguished from the cost of Building operations, maintenance and repair; and costs of disputes between Landlord and its employees, tenants or contractors.

In addition, Operating Expenses shall not include costs of tenant improvements, depreciation charges, interest and principal payments on mortgages, ground rental payments, real estate brokerage and leasing commissions, expenses incurred in enforcing obligations of tenants of the Building, salaries and other compensation of executive officers of the managing agent of the Building senior to the site or building manager, costs of any special service provided to any one tenant of the Building but not to tenants of the Building generally, and costs of marketing or advertising the Building or the Complex. Operating Expenses shall also exclude capital repairs or replacements (i) incurred to comply with any building code or other law, regulation, or legal requirement existing as of the Date of this Lease, (ii) voluntarily incurred by Landlord to bring the Building into compliance with a law, building code, regulation or legal requirement from which the Building is otherwise excepted by so-called "grandfathering" provisions as of the Date of this Lease, or (iii) incurred in connection with new development of improvements at the Building, Property, or Complex; (b) the costs of providing any services at the Building for which Tenant is required to pay a separate charge; (c) legal fees and expenses incurred in connection with negotiation of leases, mortgages or ground leases; and (d) costs associated with financing, refinancing or ground leases.

Tenant shall pay Tenant's Pro Rata Share of Operating Expenses in accordance with Section 4.02. The foregoing to the contrary notwithstanding, prior to January 1, 2003, Operating Expenses, for the purposes of Tenant's Pro Rata Share of Operating Expenses, shall be deemed to include only security costs of the Building and Complex.

#### **ARTICLE 9: USE OF PREMISES**

**9.01 Permitted Uses.** Tenant may use the Premises only for the Permitted Uses described in Article 1. Landlord acknowledges and agrees that the uses in the Premises as of the Date of Lease are Permitted Uses.

**9.02 Indemnification.** Tenant shall assume exclusive control of all areas of the Premises, including all improvements, utilities, equipment, and facilities therein. Tenant is responsible for the Premises and any Tenant's improvements, equipment, facilities and installations, wherever located on the Property and all liabilities, including without limitation tort liabilities, incident thereto. Tenant shall indemnify, save harmless and defend Landlord, Ground Lessor's, and Landlord's members, managers, officers, mortgagees, agents, employees, independent contractors, invitees and other persons acting under them (collectively, "Indemnitees") from and against all liability, claim or cost (including reasonable attorneys' fees) arising in whole or in part out of (i) any injury, loss, theft or damage (except to the extent

due to the gross negligence or willful misconduct of Landlord or its employees) to any person or property while on or about the Premises, (or while on or about the Property or the Complex, other than the Premises, if due to the act or negligent omission of Tenant); (ii) any condition within the Premises, (or within the Property or the Complex, other than the Premises, if due to the act or negligent omission of Tenant); (iii) failure to comply with any Lease covenant by Tenant; (iv) the use of the Premises, by, or any act or omission of, Tenant or persons claiming by, through or under Tenant, or any of its agents, employees, independent contractors, suppliers or invitees or (v) the negligent use of the Property or the Complex, other than the Premises, by Tenant or persons claiming by, through or under Tenant, or any of its agents, employees, independent contractors, suppliers or invitees, in each case paying any cost to Landlord on demand as Additional Rent. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

**9.03 Compliance With Legal Requirements.** Tenant shall not cause the Premises, the Property or the Complex or permit the Premises to be used in any way that violates any law, code, ordinance, restrictive covenant, encumbrance, governmental regulation, order, permit, approval or any provision of the Lease and Ground Lease (each a "Legal Requirement"), annoys or interferes with the rights of tenants of the Building or Complex, or constitutes a nuisance or waste. Tenant shall obtain and pay for all permits and shall promptly take all actions necessary to comply with all Legal Requirements, including without limitation the Occupational Safety and Health Act, applicable to Tenant's use of the Premises, the Property or the Complex. Tenant shall maintain in full force and effect all certifications or permissions to provide its services required by any authority having jurisdiction to authorize, franchise or regulate such services. Tenant shall be solely responsible for procuring and complying at all times with any and all necessary permits directly relating or incident to: the conduct of its activities on the Premises; its scientific experimentation, transportation, storage, handling, use and disposal of any chemical or radioactive or biological or pathological substances or organisms or other hazardous wastes or environmentally dangerous substances or materials or medical waste. Within ten (10) days of a request by Landlord, which request shall be made not more than once during each period of twelve (12) consecutive months during the Term hereof, unless otherwise requested by any mortgagee of Landlord, Tenant shall furnish Landlord with copies of all such permits that Tenant possesses or has obtained together with a certificate certifying that such permits are all of the permits that Tenant possesses or has obtained with respect to the Premises. Tenant shall promptly give notice to Landlord of any violations relative to the above received from any federal, state or municipal agency or by any court of law and shall promptly cure the conditions causing any such violations. Tenant shall not be deemed to be in default of its obligations under the preceding sentence to cure promptly any condition causing any such violation in the event that, in lieu of such cure, Tenant shall contest the validity of such violation by appellate or other proceedings permitted under applicable law, provided that: (i) any such contest is made reasonably and in good faith, (ii) Tenant makes provisions, including, without limitation, posting bond(s) or giving other security, acceptable to Landlord to protect Landlord, the Building and the Property from any liability, costs, damages or expenses arising in connection with such violation and failure to cure, (iii) Tenant shall agree to indemnify, defend (with counsel reasonably acceptable to Landlord) and hold Landlord harmless from and against any and all liability, costs, damages,

or expenses arising in connection with such condition and/or violation, (iv) Tenant shall promptly cure any violation in the event that its appeal of such violation is overruled or rejected, and (v) Tenant shall certify to Landlord's satisfaction that Tenant's decision to delay such cure shall not result in any actual or threatened bodily injury or property damage to Landlord, any tenant or occupant of the Building or the Property, or any other person or entity.

**9.04 Environmental Substances.** "Environmental Law(s)" means all statutes, laws, rules, regulations, codes, ordinances, standards, guidelines, authorizations and orders of federal, state and local public authorities pertaining to any of the Environmental Substances or to environmental compliance, contamination, cleanup or disclosures of any release or threat of release to the environment, of any hazardous, biological, chemical, radioactive or toxic substances, wastes or materials, any pollutants or contaminants that are included under or regulated by any municipal, county, state or federal statutes, laws, rules, regulations, codes, ordinances, standards, guidelines, authorizations or orders, including, without limitation, the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f-300j, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1321, et seq.; the Solid Waste Disposal Act, 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 (signed into law October 17, 1986); Title 22a of the Connecticut General Statutes, as any of the same are from time to time amended, and the rules and regulations promulgated thereunder, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, and all other federal, state and local statutes, laws, rules, regulations, codes, ordinances, standards, guidelines, authorizations and orders regulating the generation, storage, containment or disposal of any Environmental Substances, including but not limited to those relating to lead paint, radon gas, asbestos, storage and disposal of oil, biological, chemical, radioactive and hazardous wastes, substances and materials, and underground and above ground oil storage tanks; and any amendments, modifications or supplements of any of the foregoing.

"Environmental Substances" means, but shall not be limited to, any hazardous substances, hazardous waste, environmental, biological, chemical, radioactive substances, oil, petroleum products and any waste or substance, which because of its quantitative concentration, chemical, biological, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including without limitation any asbestos (whether or not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials that are mentioned under or regulated by any Environmental Law; and the regulations adopted under these acts, and including any other

products or materials subsequently found by an authority of competent jurisdiction to have adverse effects on the environment or the health and safety of persons.

Tenant shall neither cause or permit any Environmental Substances to be generated, produced, brought upon, used, stored, treated or disposed of in or about or on the Building or the Complex by Tenant, nor permit or suffer persons acting under Tenant, to do the same, whether with or without negligence, without (i) Landlord's prior written consent, which consent shall not be unreasonably withheld, and (ii) complying with all applicable Environmental Laws and Legal Requirements pertaining to the transportation, storage, use or disposal of such Environmental Substances, including obtaining proper permits. Landlord may take into account any factors or facts that Landlord reasonably believes relevant in determining whether to grant its consent provided that it shall be reasonable for Landlord to deny its consent because such Environmental Substances are not compatible with a mixed-use office, light industrial, retail and laboratory project adjacent to residential areas in an urban environment. Landlord consents to Tenant's use of the Environmental Substances listed in Exhibit G. From time to time at Landlord's request, Tenant shall execute affidavits, representations and the like concerning Tenant's best knowledge and belief regarding the presence or absence of Environmental Substances on the Premises, or on the Property or the Complex (other than the Premises) due to Tenant's acts or omissions. Tenant agrees to pay the cost of any environmental inspection or assessment requested by any lender that holds a security interest in the Property or this Lease, or by any insurance carrier, to the extent that such inspection or assessment pertains to any release, contamination, violation of Environmental Laws, loss or damage in the Premises not caused by Landlord and not arising prior to Tenant's occupancy of the Premises.

If any transportation, storage, use or disposal of Environmental Substances on or about the Property or Complex by Tenant, its agents, employees, independent contractors, or invitees results in any escape, or release, threat of release, contamination of the soil or surface or ground water or any loss or damage to person or property (any of the foregoing, an "Occurrence"), Tenant agrees to: (a) notify Landlord immediately of the Occurrence; (b) after consultation with Landlord, clean up the Occurrence in full compliance with all applicable statutes, regulations and standards and (c) indemnify, defend and hold Landlord, and the Indemnitees harmless from and against any claims, suits, causes of action, costs and fees, including attorneys' fees and costs, arising from or connected with any such Occurrence. In the event of such Occurrence, Tenant agrees to cooperate fully with Landlord and provide such documents, affidavits, information and actions as may be requested by Landlord (1) to comply with any Environmental Law or Legal Requirement, (2) to comply with any request of any mortgagee, ground lessor or tenant and/or (3) for any other reason deemed necessary by Landlord in its reasonable discretion. In the event of any such Occurrence that is required to be reported to a governmental authority under any Environmental Law or Legal Requirement, Tenant shall simultaneously deliver to Landlord copies of any notices given or received by Tenant and shall promptly pay when due any fine or assessment against Landlord, Tenant or the Premises or Property relating to such Occurrence.

Tenant acknowledges that, under the Ground Lease, Landlord is required to notify Ground Lessor of the full legal name, the state of incorporation or formation, the address of the headquarters, the name and business telephone number of the chief local operating officer, and the general business of Tenant to be carried on as well as the specific uses to which the Premises shall be put, and that such identification and documentation must include a personal declaration by the chief local operating officer of Tenant to be renewed annually identifying and itemizing (by chemical name) any Environmental Substances that such Tenant will use, store, produce, generate, or emit while occupying the Premises if the quantity, either at any one point in time or over the course of the year, is expected or reasonably should be expected to exceed a reportable quantity (or at Landlord's election, if Tenant's quantity, together with quantities arising from other tenants' uses of the Building would exceed a reportable quantity), and Tenant agrees to furnish Landlord with said documentation. For purposes of the preceding sentence, a "reportable quantity" means a quantity of any substance the presence of which in the environment could require investigation or remediation under any Environmental Law or Legal Requirement. Notwithstanding the foregoing, an Environmental Substance need not be listed, in Landlord's written election to Tenant from time to time (a) if used solely for clerical office equipment such as photocopiers, facsimile machines and computer printers, or (b) used solely for laboratory purposes in quantities not exceeding normal and customary laboratory standards. Such personal declaration shall contain a commitment to similarly notify Landlord in a timely fashion if any Environmental Substances in addition to those initially disclosed or disclosed in the last previous annual declaration are to be produced, generated or emitted. Such notification and initial declaration shall be made in writing on or before the earlier of (i) ten (10) business days after the Lease is executed and delivered, or (ii) the date of first occupancy of the Premises.

**9.05 Signs and Auctions.** Except as provided in this Section, no sign, antenna or other structure or thing, shall be erected or placed on (i) the Premises or (ii) any part of the exterior of the Building, in either case (i) or (ii), so as to be visible from the exterior of the Building without first securing the written consent of the Landlord. Tenant shall not conduct or permit any auctions or sheriff's sales at the Property. Landlord at Landlord's cost, shall provide Building standard lobby and floor signage identifying Tenant.

**9.06 Landlord's Access.**

(a) Landlord or its agents may enter the Premises at all reasonable times to show the Premises to potential buyers, investors or other parties (but if to tenants, then only within the final twelve (12) months of the Term); to inspect and conduct tests in order to monitor Tenant's compliance with Legal Requirements governing Environmental Substances; for purposes described in Sections 2.01, 9.04 and/or 10.04(b) or for any other purpose Landlord reasonably deems necessary. Landlord shall give Tenant prior notice (which may be oral) of such entry and shall not enter the Clean Room or Tenant's technical areas (if Tenant has previously notified Landlord in writing of the location and extent of such technical areas) unless accompanied by Tenant's representative (whom Tenant shall promptly provide). Landlord acknowledges that, as of the Date of Lease, Tenant has notified Landlord that

Tenant's representative must accompany Landlord prior to any Landlord entry into any of the laboratory areas delineated on Exhibit E as "Technical Areas".

(b) In addition to the provisions set forth in Section 9.06(a), any access to Tenant's Clean Room during a period in which the Clean Room is in use for production or validation purposes shall be (i) scheduled so as to minimize cost, expense and interference to Tenant, to the extent reasonably practicable for Landlord, (ii) limited to the extent required by applicable law to individuals who have received applicable "Good Manufacturing Practice" training, which training shall be provided, or arranged, by Tenant at a location in the New Haven area at no cost to Landlord during regular business hours and in a manner that does not unduly delay such access, and (iii) if such access is reasonably likely to result in an interruption of Tenant's production or validation activities in the Clean Room, shall require that Landlord give at least 30 days prior written notice ("Landlord Access Notice") of the anticipated date of such entry, and no less than 14 days notice of the actual date of such entry. Notwithstanding the provisions of Section 17.05 of this Lease to the contrary, Landlord's notices pursuant to the foregoing sentence may be given by e-mail or facsimile (at the e-mail address or facsimile number designated pursuant to Section 6.01(e) of this Lease) provided that, in either event, automated confirmation of delivery is received by Landlord. Landlord shall use good faith efforts to verbally confirm that Tenant has received any notice sent by e-mail or facsimile pursuant to the immediately preceding sentence by calling Dan Caron at 203-271-8230 (which person and phone number are subject to change upon written notice to Landlord), provided, however, that Landlord's failure to confirm such notice verbally shall not be deemed to invalidate the applicable e-mail or facsimile notice. Within five (5) business days following Tenant's receipt of any Landlord Access Notice, Tenant shall notify Landlord if, in fact, production or validation will be taking place in the Clean Room during the period specified in the Landlord Access Notice. Tenant's failure to respond to the Landlord Access Notice shall be deemed to be notice to Landlord that production or validation will be taking place during such period.

(c) However, in case of emergency threatening life, safety or property, Landlord may enter any part of the Premises (including the Clean Room, whether or not in use for production) without prior notice or being accompanied by Tenant's representative, or otherwise being subject to the provisions of this Section 9.06(b), provided that Landlord make reasonable efforts to notify Tenant (which notice may be telephonic) of such entry promptly thereafter.

#### **ARTICLE 10: CONDITION AND MAINTENANCE OF PREMISES AND PROPERTY**

**10.01 Existing Conditions.** Tenant shall accept the Premises and Property in their condition as of the Term Commencement Date "as is" and subject to all recorded matters and Legal Requirements. Tenant acknowledges that except for any express representations in this Lease, neither Landlord nor any person acting under Landlord has made any representation as to the condition of the Property or the suitability of the Property for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection and inquiry regarding



the Property and is not relying on any representations of Landlord or any Broker or persons acting under either of them.

#### **10.02 Exemption and Limitation of Landlord's Liability.**

10.02(a) Exemption of Landlord from Liability. Tenant shall insure its personal property under an all risk full replacement cost property insurance policy. Landlord shall not be liable for any damage or injury to the person, property or business (including loss of revenue, profits or data) of Tenant, Tenant's employees, agents, contractors, or invitees, or any other person on or about the Property or the Complex; provided, however, that, subject to Section 7.03 and Section 10.02(b), this Section 10.02(a) shall not exempt Landlord from liability for Landlord's negligence or willful misconduct. This exemption shall apply whether such damage or injury is caused by (among other things): (i) fire, steam, electricity, water, gas, sewage, sewer gas or odors, snow, ice, frost or rain; (ii) the breakage, leakage, obstruction or other defects of pipes, faucets, sprinklers, wires, appliances, plumbing, windows, air conditioning or lighting fixtures or any other cause; (iii) any other casualty or any Taking; (iv) theft; (v) conditions in or about Property or the Complex or from other sources or places; or (vi) any act or omission of any other tenant.

10.02(b) Limitation On Landlord's Liability. Tenant agrees that Landlord shall be liable only for breaches of its covenants occurring while it is owner of the Property (provided, however, that if Landlord from time to time is lessee of the ground or improvements constituting the Building, then Landlord's period of ownership of the Property shall be deemed to mean only that period while Landlord holds such leasehold interest). Upon any sale or transfer of the Building, the transferor Landlord (including any mortgagee) shall be freed of any liability or obligation thereafter arising provided the transferee Landlord has assumed said liability or obligation from and after the date of said transfer and, subject to Section 16.01, Tenant shall look solely to the transferee Landlord as aforesaid for satisfaction of such liability or obligation. The foregoing sentence shall not apply to the Security Deposit, the transfer of which is addressed in Article 15. Tenant and each person acting under Tenant agrees to look solely to Landlord's interest from time to time in the Property for satisfaction of any claim against Landlord. No owner, trustee, beneficiary, partner, member, manager, agent, or employee of Landlord (or of any mortgagee or any lender or ground or improvements lessor) nor any person acting under any of them shall ever be personally or individually liable to Tenant or any person claiming under or through Tenant for or on account of any default by Landlord or failure by Landlord to perform any of its obligations hereunder, or for or on account of any amount or obligations that may be or become due under or in connection with this Lease or the Premises; nor shall it or they ever be answerable or liable in any equitable judicial proceeding or order beyond the extent of their interest in the Property. No deficit capital account of any member or partner of Landlord shall be deemed to be a liability of such member or partner or an asset of Landlord. Any lien obtained to enforce any judgment against Landlord shall be subject and subordinate to any mortgage encumbering the Property. In no event shall Landlord (or any such persons) ever be liable to Tenant for indirect or consequential damages (including loss of revenue, profits or data).

### 10.03 Landlord's Obligations.

#### 10.03(a) Landlord Work.

(i) Base Building Work. Tenant acknowledges that Landlord is in the process of performing major renovations to the Building that are generally described in the plans listed on Exhibit H, with such changes as Landlord may determine in its discretion (the "Base Building Work"). Tenant acknowledges that portions or all of the Base Building Work may be done before, simultaneously with, and/or after Alexion Related Work and Finish Work, each as hereinafter defined. The Base Building Work shall be done at Landlord's cost.

(ii) Alexion Related Work. Landlord shall complete certain Base Building Work described in Exhibit H-1 for the express benefit of the Premises ("Alexion Related Work"). Subject to delays caused by force majeure or any act or omission of Tenant, Landlord shall use reasonable diligence to cause that portion of the Alexion Related Work to be completed as soon as reasonably practicable.

The Substantial Completion Date of Base Building Work, for the purposes of Article 1, shall be the date of a certificate of Landlord's Architect that Base Building Work has been completed, other than minor or insubstantial details of construction, decoration or mechanical adjustments, and items of a seasonal nature.

Except for Alexion Related Work to be completed by Landlord, Tenant acknowledges that it accepts the Premises in "as is" condition on the Date of Lease.

10.03(b) Repair and Maintenance. Subject to the provisions of Article 12, and except for damage caused by any act or omission of Tenant or persons acting under Tenant, Landlord shall keep the Building and the foundation, roof, Building systems (to the extent not serving the Premises exclusively), structural supports, exterior windows and exterior walls of the Building in good order, condition and repair reasonable wear and tear excepted. Landlord shall not be obligated to maintain or repair any interior windows, doors, plate glass, the surfaces of walls or other fixtures, components or equipment within the Premises, but the same shall be Tenant's obligation. Tenant shall promptly report in writing to Landlord any defective condition known to it that Landlord is required to repair. Tenant waives the benefit of any present or future law that provides Tenant the right to repair the Premises or Property at Landlord's expense or to terminate this Lease because of the condition of the Property or Premises to the extent such benefit of law may be waived by Tenant.

10.03(c) Tenant further agrees that Landlord or any contractor, employee or agent of Landlord shall have the right to enter the Premises at any time, including during normal business hours, and from time to time to complete Base Building Work and Alexion Related Work and that such entry shall not constitute a default under Section 17.03 of the Lease, nor constructive eviction, nor breach of any other right of Tenant under common law provided that such entry is conducted in accordance with Section 9.06 of this Lease. Tenant shall not interfere in any way with construction of, nor damage, the Base Building Work or Alexion

Related Work, and shall do all things reasonably requested by Landlord to expedite construction of the Base Building Work and Alexion Related Work (provided that such things are consistent with the Construction Coordination Plan, defined below and the provisions of Section 6.01(e) and 9.06(b) of this Lease). Tenant shall not cause any labor disharmony, and Tenant shall be responsible for all costs required to produce labor harmony in connection with its tenancy. In all events, Tenant shall indemnify the Indemnitees in the manner provided in Section 9.02 of the Lease against any claim, loss or cost arising out of any interference with, or damage to, the Base Building Work, Alexion Related Work or any other work in the Building, or any delay thereto, or any increase in the cost thereof on account in whole or in part of any act, omission, neglect or default by Tenant or any Tenant Contractor or Tenant's breach of this Section 10.03(c) (provided that no claim, loss, cost or delay resulting from Landlord's obligation to comply with the provisions of Sections 6.01(e), 9.06(b), or the express provisions of the Construction Coordination Plan, shall trigger Tenant's duty to indemnify the Indemnitees pursuant to this sentence). In no event shall this Section 10.03(c) be deemed to relieve Landlord from liability for personal injury or damage to Tenant Property resulting from Landlord's negligence or willful misconduct in the course of construction of Alexion Related Work and Base Building Work.

Landlord acknowledges that Tenant is conducting its business operations in the Premises and will continue to do so during the construction of the Base Building Work and Alexion Related Work. For the purpose of ensuring that Landlord is using accepted construction practices to minimize any interference with Tenant's business operations, Tenant may attend Landlord's weekly tenant coordination meetings, and Landlord and Tenant will, prior to Landlord's commencement of any Alexion Related Work and Base Building Work in the Premises, agree on a construction coordination plan (the "Construction Coordination Plan") to provide for the coordination of Tenant's operations in the Premises with Landlord's construction of, and schedule for, the Alexion Related Work and Base Building Work that will require Landlord to enter the Premises. Landlord shall prepare the Construction Coordination Plan and submit the Construction Coordination Plan to Tenant for Tenant's review and approval, which shall not be unreasonably withheld, conditioned or delayed. If Tenant does not respond to Landlord's request for comments or approval of the Construction Coordination Plan within ten (10) business days of Landlord's initial request for comment or approval or within five (5) days of any subsequent submission to Tenant, the Construction Coordination Plan shall be deemed approved. The Construction Coordination Plan shall provide at a minimum that (i) Landlord shall give Tenant advance notice of any Alexion Related Work or Base Building Work involving penetration from the floor above into the ceiling spaces above Tenant's so-called "Clean Room" as delineated on Exhibit E (the "Clean Room"), (ii) a party designated by Tenant shall be permitted to observe such work above the Clean Room, and (iii) special instructions regarding the hours of Tenant's business operations. Landlord shall perform all Alexion Related Work and Base Building Work within the Premises in accordance with the Construction Coordination Plan.

#### **10.04 Tenant's Obligations.**

10.04(a) Repair and Maintenance. Except for work that Section 10.03 or Article 12 requires Landlord to do, Tenant at its sole cost and expense shall keep the Premises including without limitation all fixtures, systems and equipment now or hereafter on the Premises, or elsewhere exclusively serving the Premises, in good order, condition and repair and at least as good order, condition and repair as they are in on the Term Commencement Date or may be put in during the Term, reasonable wear and tear excepted; shall keep in a safe, secure and sanitary condition all trash and rubbish temporarily stored at the Premises; and shall make all repairs and replacements and to do all other work necessary for the foregoing purposes whether the same may be ordinary or extraordinary, foreseen or unforeseen. The foregoing shall include without limitation Tenant's obligation to maintain floors and floor coverings, to paint and repair walls and doors, to replace and repair all interior glass and windows, ceiling tiles, lights and light fixtures, pipes, drains and the like in the Premises. Without limitation, Tenant shall be responsible for heating, ventilating and air-conditioning systems and Utility Services serving the Premises from the point where such systems serve the Premises exclusively (including, upon completion of the Base Building Work, from the Utility Switching Points to the Premises), and Tenant shall secure, pay for, and keep in force contracts with appropriate and reputable service companies approved by Landlord providing for the regular maintenance of such heating, ventilating and air-conditioning and Utility Services systems serving the Premise to the extent that such systems are not part of the base Building systems. Landlord hereby approves the Tenant contractors listed on Exhibit O for the purposes of the preceding sentence.

If anything required pursuant to this Section 10.04(a) to be repaired cannot be fully repaired or restored, (i) Tenant upon prior notice to Landlord shall replace it at Tenant's cost, even if the benefit or useful life of such replacement extends beyond the Term provided, however, that (x) the replacement has been approved in advance and in writing by Landlord, and (y) the property subject to replacement will become the property of Landlord pursuant to the terms of this Lease at the conclusion of the Term, and (ii) if such replacement has been so approved by Landlord, then within ninety (90) days after the expiration of the Term, Landlord shall reimburse Tenant for the unamortized portion of the capital replacement calculated as follows: upon receipt of notice from Tenant of the need for such capital replacement, Landlord and Tenant shall cooperate to determine the estimated cost of such replacement. The actual cost of the replacement, as documented by Tenant (or Landlord, if applicable) and subject to Landlord's approval (which shall not be unreasonably withheld), shall be amortized on a straight line basis over the useful life of such replacement as reasonably determined by Landlord, without interest. Tenant shall transfer to Landlord all of its rights and interests in any warranties related to said replacement at the conclusion of the Term. Tenant acknowledges that Landlord has the right, but not the obligation, to reduce the amount payable at the conclusion of the Term to Tenant pursuant to this paragraph by any amounts of Rent then due and payable to Landlord.

10.04(b) Landlord's Right to Cure. If Tenant does not perform any of its obligations under Section 10.04(a), Landlord upon ten (10) days' prior notice to Tenant (or without prior

notice in the case of an emergency) may perform such maintenance, repair or replacement on Tenant's behalf, and Tenant shall reimburse Landlord for all costs reasonably incurred together with an Administrative Charge (as defined in Section 14.02(f)), immediately upon demand.

#### **10.05 Tenant Work.**

10.05(a) General. "Tenant Work" shall mean all work including demolition, improvements, additions and alterations in or to the Premises, including the Finish Work, but excluding any Base Building Work and Alexion Related Work. Without limitation, Tenant Work includes any penetrations in the walls, partitions, ceilings or floors and all attached carpeting, all signs visible from the exterior of the Premises, and any change in the exterior appearance of the windows in the Premises (including shades, curtains and the like). All Tenant Work shall be subject to Landlord's prior written approval and shall be arranged and paid for by Tenant all as provided herein; provided that any interior, non-structural Tenant Work (including any series of related Tenant Work projects) that (a) costs less than the "Tenant Work Threshold Amount" (which shall be \$30,000), (b) does not affect any fire-safety, telecommunications, electrical, mechanical, ventilation or plumbing systems of the Building ("Core Building Systems"), and (c) does not affect any penetrations in or otherwise affect any walls, floors, roofs, or other structural elements of the Building or any signs visible from the exterior of the Premises or any change in the exterior appearance of the windows in the Premises (including shades, curtains and the like) shall not require Landlord's prior approval if Tenant delivers the Construction Documents (as defined in Section 10.05(b)) for such work to Landlord at least five (5) business days' prior to commencing such work. Whether or not Landlord's approval is required, Tenant shall not undertake any Tenant Work that in Landlord's reasonable judgment (i) adversely affects any structural component of the Building, (ii) would be incompatible with the Core Building Systems, (iii) affects the exterior or the exterior appearance of the Building or common areas within or around the Building or other property than the Premises, (iv) diminishes the value of the Premises, or (v) requires any unusual expense to readapt the Premises. Prior to commencing any Tenant Work affecting air dispersion from ventilation systems serving Tenant or the Building, including without limitation the installation of Tenant's exhaust systems, Tenant shall provide Landlord with a third party report from a consultant, and in a form, reasonably acceptable to Landlord, showing that such work will not adversely affect the ventilation systems of the Building (or of any other tenant in the Building) and shall, upon completion of such work, provide Landlord with a certification reasonably satisfactory to Landlord from such consultant confirming that no such adverse effects have resulted from such work.

10.05(b) Construction Documents. No Tenant Work shall be effected except in accordance with complete, coordinated construction drawings and specifications ("Construction Documents") prepared in accordance with Exhibit J. Before commencing any Tenant Work requiring Landlord's approval hereunder, Tenant shall obtain Landlord's prior written approval of the Construction Documents for such work, which approval shall not be unreasonably withheld. The Construction Documents shall be prepared by an architect or mechanical, electrical and plumbing engineer, as applicable, ("Tenant's Architect") registered

in the State of Connecticut experienced in the construction of tenant space improvements in comparable buildings and, if the value of such Tenant Work will equal or exceed the Tenant Work Threshold Amount or will affect any Core Building Systems or structural components of the Building, the identity of such Architect shall be approved by Landlord in advance, such approval not to be unreasonably withheld. Tenant shall be solely responsible for the liabilities associated with and expenses of all architectural and engineering services relating to Tenant Work and for the adequacy, accuracy, and completeness of the Construction Documents even if approved by Landlord (and even if Tenant's Architect has been otherwise engaged by Landlord in connection with the Building). The Construction Documents shall set forth in detail the requirements for construction of the Tenant Work and shall show all work necessary to complete the Tenant Work including all cutting, fitting, and patching and all connections to the mechanical, electrical, and plumbing systems and components of the Building. Submission of the Construction Documents to Landlord for approval shall be deemed a warranty that all Tenant Work described in the Construction Documents (i) complies with all applicable laws, regulations, building codes, and highest design standards, (ii) does not adversely affect any structural component of the Building, (iii) is compatible with and does not adversely affect the Core Building Systems, (iv) does not affect any property other than the Premises, (v) conforms to floor loading limits specified by Landlord, (vi) and with respect to all materials, equipment and special designs, processes or products, does not infringe on any patent or other proprietary rights of others. The Construction Documents shall comply with Landlord's requirements for the uniform exterior appearance of the Building, including without limitation the use of Building standard window blinds and Building standard light fixtures within fifteen (15) feet of each exterior window or such other window and lighting treatments appropriate for clean rooms and laboratory facilities as is reasonably approved by Landlord. Landlord's approval of Construction Documents shall signify only Landlord's consent to the Tenant Work shown and shall not result in any responsibility of Landlord concerning compliance of the Tenant Work with laws, regulations, or codes, or coordination or compatibility with any component or system of the Building, or the feasibility of constructing the Tenant Work without damage or harm to the Building, all of which shall be the sole responsibility of Tenant.

10.05(c) Performance. The identity of any person or entity (including any employee or agent of Tenant) performing or designing any Tenant Work ("Tenant Contractor") shall, if the cost of such work in any instance is in excess of the Tenant Work Threshold Amount or will affect any Core Building Systems or structural components of the Building or involves any work other than interior, nonstructural alterations, be approved in advance by Landlord, such approval not to be unreasonably withheld. Landlord hereby approves the Tenant Contractors listed on Exhibit O for the Finish Work. Once any Tenant Contractor has been approved, then the same Tenant Contractor may thereafter be used by Tenant for the same type of work until Landlord notifies Tenant that such Tenant Contractor is no longer approved. Tenant shall procure at Tenant's expense all necessary permits and licenses before undertaking any Tenant Work but shall not take any plans for Tenant Work to the municipal inspection services or fire departments, without on each occasion obtaining Landlord's prior written consent. Tenant shall perform all Tenant Work at Tenant's risk in compliance with all applicable laws and in a good and workmanlike manner employing new materials of good

quality and producing a result at least equal in quality to the other parts of the Premises. When any Tenant Work is in progress, Tenant shall cause to be maintained insurance as described in the Tenant Work Insurance Schedule attached as Exhibits K and K-1 and such other insurance as may be reasonably required by Landlord covering any additional hazards due to such Tenant Work, and, if the cost of such Tenant Work exceeds the Tenant Work Threshold Amount also such bonds or other assurances of satisfactory completion and payment as Landlord may reasonably require, in each case for the benefit of Landlord. If the Tenant Work in any instance requires Landlord's approval hereunder, Tenant shall reimburse Landlord for its reasonable out-of-pocket, third party costs of reviewing the proposed Tenant Work and inspecting installation of the same. Landlord agrees that it shall review the proposed Tenant Work and inspect installations of the same using Landlord's employees to the extent such employees are reasonably qualified to do so. At all times while performing Tenant Work, Tenant shall require any Tenant Contractor to comply with all applicable laws, regulations, permits and Landlord's rules and regulations relating to such work, including without limitation use of loading areas, elevators and lobbies. Each Tenant Contractor working on the roof of the Building shall coordinate with Landlord's roofing contractor, shall comply with its requirements and shall not violate existing roof warranties. Each Tenant Contractor shall work on the Premises without causing labor disharmony, coordination difficulties, or delay to or impairing of any guaranties, warranties or the work of any other contractor. Each Tenant Contractor shall, by entry into the Building, be deemed to have agreed to indemnify and hold the Indemnitees harmless from any claim, loss or expense arising in whole or in part out of any act or neglect committed by or under such person while on or about the Premises or Building to the same extent as Tenant has so agreed in this Lease, the indemnities of Tenant and Tenant Contractor being joint and several.

10.05(d) Payment. Tenant shall pay the entire cost of all Tenant Work so that the Premises, including Tenant's leasehold, shall always be free of liens for labor or materials. If any such lien is filed that is claimed to be attributable to Tenant or persons acting under Tenant, then Tenant shall promptly (and always within thirty (30) days) discharge the same.

10.05(e) Other. Tenant must schedule and coordinate all aspects of work with the Building manager and Building engineer and shall make prior arrangements for elevator use with the Building manager. If an operating engineer is required by any union regulations, Tenant shall pay for such engineer. If shutdown of risers and mains for electrical, mechanical and plumbing work is required, such work shall be supervised by Landlord's representative at Tenant's cost. If special security arrangements must be made (e.g., in connection with work outside normal business hours), Tenant Contractor shall pay the actual cost of such security. No work shall be performed in Building mechanical or electrical equipment rooms without Landlord's approval, which approval shall not be unreasonably withheld or delayed, and all such work shall be performed under Landlord's supervision. Except in case of emergency, at least forty-eight (48) hours' prior notice must be given to the Building management office prior to the shutdown of fire, sprinkler and other alarm systems, and in case of emergency, prompt notice shall be given. In the event that such work unintentionally alerts the Fire or Police Department or any private alarm monitoring company through an alarm signal, Tenant shall be liable for any fees or charges levied in connection with such alarm. Tenant shall pay

to Landlord such charges as may from time to time be in effect with respect to any such shutdown. All demolition, installations, removals or other work that is reasonably likely to inconvenience other tenants or disturb Building operations must be scheduled with the Building manager at least twenty-four (24) hours in advance.

Installations within the Premises (and elsewhere where Tenant is permitted to make installations) shall not interfere with existing services and shall be installed so as not to unreasonably interfere with subsequent installation of ceilings or services for other tenants. Redundant electrical, control and alarm systems and mechanical equipment and sheet metal used or placed on the Property during construction and not maintained as part of Tenant's use of the Premises must be removed as part of the work.

Each Tenant Contractor shall take all reasonable steps to assure that any work is carried out without disruption from labor disputes arising from whatever cause, including disputes concerning union jurisdiction and the affiliation of workers employed by said Tenant Contractor or its subcontractors. Tenant shall be responsible for, and shall reimburse Landlord for, all actual costs and expenses, including reasonable attorneys' fees incurred by Landlord in connection with the breach by any Tenant Contractor of such obligations. If Tenant does not promptly resolve any labor dispute caused by or relating to any Tenant Contractor, Landlord may in its sole discretion request that Tenant remove such Tenant Contractor from the Property, and if such Tenant Contractor is not promptly removed, Landlord may prohibit such Tenant Contractor from entering the Property.

Upon completion of any Tenant Work, Tenant shall give to Landlord (i) a permanent certificate of occupancy (if one is legally required) and any other final governmental approvals required for such work, (ii) copies of "as built" plans and all construction contracts and (iii) proof of payment for all labor and materials.

10.05(f) Finish Work. Tenant shall perform all work, other than Base Building Work and Alexion Related Work, required to prepare the Premises for Tenant's use and occupancy (the "Finish Work"). The Finish Work shall consist, at a minimum, of the work described on Exhibit I. Any Finish Work constructed by Tenant shall be performed in accordance with, and subject to, the provisions of this Section 10.05 of the Lease. Landlord shall not be responsible for any aspects of the design or construction of Finish Work, the correction of any defects therein, or any delays in the completion thereof. Tenant shall complete the check metering of its Utility Services (as required by Section 6.01) no later than September 1, 2003 and the remainder of the Finish Work described on Exhibit I no later than the expiration of the Initial Term.

Tenant shall be solely responsible for the liabilities and expenses of all architectural and engineering services relating to the Finish Work and for the adequacy and completeness of the Construction Documents submitted to Landlord.

10.05(g) Mechanical Equipment Space. Tenant shall have the appurtenant right to install mechanical equipment within the mechanical penthouse currently located on the roof of



the Building provided that such equipment is reasonably necessary for the specialized heating, ventilation and air conditioning systems, if any, installed by Tenant in connection with Tenant Work and further that Tenant's use of such mechanical penthouse shall be limited to Tenant's Pro Rata Share of that portion of the penthouse made available to all tenants in the Building as reasonably determined by Landlord. The location of any such equipment shall be subject to Landlord's approval, such approval not to be unreasonably withheld, conditioned or delayed. In the event Tenant has fully utilized its entire share of the mechanical penthouse and Tenant reasonably requires additional space for the installation of such mechanical equipment in connection with Tenant Work, Landlord shall permit Tenant to install additional mechanical equipment on the roof of the mechanical penthouse, subject to the continued availability of such space and to all of the terms and conditions of this Lease governing Tenant's alterations and additions.

10.05(h) Tenant Delays. A delay in the commencement, performance or completion of the Base Building Work or Alexion Related Work as a result of any of the following is referred to as a "Tenant Delay":

(i) any request by Tenant that Landlord delay the commencement of, or suspend the performance of, any Base Building Work or Alexion Related Work (it being agreed that Landlord is not required to comply with such request and may decline to comply therewith in its sole discretion) other than as expressly permitted pursuant to the Construction Coordination Plan and the terms of Section 6.01(e) and 9.06(b) of this Lease, or

(ii) any other act or omission of Tenant, any Tenant Contractor (as defined in Section 10), or any of their officers, employers, agents, or contractors actually resulting in a delay of the Base Building Work or Alexion Related Work.

For each day of Tenant Delay actually resulting in a delay of the Base Building Work, the Substantial Completion Date of Base Building Work shall be deemed to be one day earlier than the actual date thereof.

**10.06 Condition upon Termination.** At the expiration or earlier termination of the Term, Tenant (and all persons claiming through Tenant) shall without the necessity of notice, deliver the Premises (including all Finish Work and Tenant Work, and all replacements thereof, except such additions, alterations, and other Tenant Work as the Landlord may direct to be removed at the time the Landlord approves the plans thereof, or, in the case of Tenant Work not subject to Landlord approval, at the time of expiration or earlier termination of the Term) broom-clean, in compliance with the requirements of Section 10.07 and in good and tenantable condition reasonable wear and damage by casualty or taking (to the extent provided in Article 12 only) excepted. The Premises shall be surrendered to Landlord free and clear of any mechanic's liens (or any similar lien related to labor or materials) filed against any part of the Premises and free and clear of any financing or other encumbrance on any equipment and/or Finish Work or Tenant Work to be surrendered with the Premises. Landlord acknowledges that in the event of early termination pursuant to Section 14.01, certain Tenant Property may be encumbered by purchase money financing. As part of such delivery, Tenant shall also provide all keys (or lock combinations, codes or electronic passes) to the Premises to

Landlord; remove all signs wherever located; and, except as provided in this Section 10.06, remove all Tenant Property whether or not bolted or otherwise attached. As used herein, "Tenant Property" shall mean all trade fixtures, furnishings, equipment, inventory, and other personal property owned by Tenant or any person acting under Tenant at the Premises but specifically excluding the items listed in Exhibit P which shall remain on the Premises and become property of Landlord. The items listed on Exhibit P-1 are considered Tenant Property and shall be removed by Tenant at the conclusion of the Term. Tenant shall repair all damage that results from such removal and restore the Premises substantially to a fully functional and tenable condition (including the filling of all floor and wall holes, the removal of all disconnected wiring back to junction boxes and the replacement of all damaged ceiling tiles). Any of Tenant Property not so removed shall be deemed abandoned, shall at once become the property of Landlord, and may be disposed of in such manner as Landlord shall see fit; and Tenant shall pay the cost of removal and disposal to Landlord upon demand (which demand shall be made no later than within 120 days of termination). The covenants of this Section shall survive the expiration or earlier termination of the Term.

**10.07 Decommissioning of the Premises.** Prior to the expiration of this Lease (or within thirty (30) days after any earlier termination), Tenant shall decommission (including cleaning, to the extent necessary) all interior surfaces (including floors, walls, ceilings, and counters), piping, supply lines, waste lines and plumbing to the extent exclusively serving the Premises, and all exhaust or other ductwork to the extent exclusively serving the Premises, in each case which has carried or released or been exposed to any Environmental Substances during the Term of the Lease or during any period of Tenant's prior occupancy of the Premises, so as to permit the report hereinafter called for by this Section 10.07 to be issued except as otherwise set forth on Exhibit E. Prior to the expiration of this Lease (or within thirty (30) days after any earlier termination), Tenant, at Tenant's expense, shall obtain for Landlord a report addressed to Landlord (and, at Tenant's election, Tenant) by a reputable licensed environmental engineer that is designated by Tenant and acceptable to Landlord in Landlord's reasonable discretion, which report shall be based on the environmental engineer's inspection of the Premises and shall show:

(i) that the Environmental Substances (to the extent arising from Tenant's use or occupancy of the Premises during the Term of the Lease or during Tenant's occupancy of the Premises prior to the commencement of the Term) have been removed as necessary so that the interior surfaces of the Premises (including floors, walls, ceilings, and counters), piping, supply lines, waste lines and plumbing, and all such exhaust or other ductwork to the extent exclusively serving the Premises, may be reused by a subsequent tenant or disposed of in compliance with applicable Environmental Laws (as defined in Section 9.04 hereof) without taking any special precautions for Environmental Substances, without incurring special costs or undertaking special procedures for disposal, investigation, assessment, cleaning or removal of Environmental Substances and without incurring regulatory compliance requirements or giving notice in connection with Environmental Substances except as otherwise set forth on Exhibit E; and

(ii) that the Premises may be reoccupied for office or laboratory use (and that the portions of the Premises subject to decommissioning activity pursuant to this Section 10.07 may be used) without taking any special precautions for Environmental Substances (to the extent arising from Tenant's use or occupancy of the Premises during the Term of the Lease or during Tenant's occupancy of the Premises prior to the commencement of the Term), without incurring special costs or undertaking special procedures for disposal, investigation, assessment, cleaning or removal of Environmental Substances and without incurring regulatory requirements or giving notice in connection with Environmental Substances except as otherwise set forth on Exhibit F.

Further, for purposes of clauses (i) and (ii): "special costs" or "special procedures" shall mean material costs or procedures, as the case may be, that would not be incurred but for the nature of the Environmental Substances (other than Environmental Substances that would typically be found upon the surrender of premises in an office building that is similar in age, condition, and type of construction to the Building) as Environmental Substances instead of non-hazardous materials. The report shall include reasonable detail concerning the clean-up location, the tests run and the analytic results.

If Tenant fails to perform its obligations under this Section, without limiting any other right or remedy, Landlord may, on five (5) business days' prior written notice to Tenant perform such obligations at Tenant's expense, and Tenant shall promptly reimburse Landlord upon demand for all costs and expenses reasonably incurred together with an Administrative Charge, as defined in Section 14.02(f). Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

**ARTICLE 11: INTENTIONALLY OMITTED.**

**ARTICLE 12: DAMAGE OR DESTRUCTION; CONDEMNATION**

**12.01 Damage or Destruction of Premises.** If the Premises or any part thereof shall be damaged by fire or other insured casualty, then, subject to the last paragraph of this Section, Landlord shall proceed with diligence, subject to then applicable statutes, building codes, zoning ordinances and regulations of any governmental authority, and at the expense of Landlord (but only to the extent of insurance proceeds made available to Landlord by any mortgagee of the Building and any ground lessor) to repair or cause to be repaired such damage (other than any Tenant Work, which Tenant shall promptly commence, and proceed with diligence, to restore at Tenant's sole cost and expense). All repairs to and replacements of Tenant Property and any Tenant Work shall be made by and at the expense of Tenant. If the Premises or any part thereof shall have been rendered unfit for use and occupation hereunder by reason of such damage, the Base Rent and Additional Rent or a just and proportionate part thereof, according to the nature and extent to which the Premises shall have been so rendered unfit, shall be abated until the Premises (except as to Tenant Property and any Tenant Work) shall have been restored as nearly as practicable to the condition in which they were immediately prior to such fire or other casualty; provided, however, that if and to the extent Landlord shall be unable to collect the insurance proceeds (including rent insurance proceeds)

applicable to such damage because of some action or inaction on the part of Tenant triggering Tenant's duty to indemnify Landlord pursuant to the provisions of this Lease, the cost of repairing such damage shall be paid by Tenant and there shall be no abatement of rent. Landlord shall not be liable for delays in the making of any such repairs that are due to government regulation, casualties, and strikes, unavailability of labor and materials, delays in obtaining insurance proceeds, and other causes beyond the reasonable control of Landlord.

If (i) the Premises are so damaged by fire or other casualty (whether or not insured) at any time during the last thirty (30) months of the Term that the cost to repair such damage is reasonably estimated to exceed one-third of the total Base Rent payable hereunder for the period from the estimated completion date of repair until the end of the Term, (ii) at any time the Building (or any portion thereof, whether or not including any portion of the Premises) is so damaged by fire or other casualty (whether or not insured) that substantial alteration or reconstruction or demolition of the Building (or a portion thereof) shall in Landlord's judgment be required, (iii) at any time damage to the Building occurs by fire or other insured casualty and any mortgagee or ground lessor shall refuse to permit insurance proceeds to be utilized for the repair or replacement of such property and Landlord determines not to repair such damage, or (iv) the repair of such damage will, in Landlord's reasonable judgment, require more than twelve (12) months from the date of such casualty to complete, then and in any of such events, this Lease and the term hereof may be terminated at the election of Landlord by a notice from Landlord to Tenant within six (6) months, or such longer period as is required to complete arrangements with any mortgagee or ground lessor regarding such situation, following such fire or other casualty; the effective termination date pursuant to such notice shall be not less than thirty (30) days after the day on which such termination notice is received by Tenant. If any mortgagee or ground lessor refuses without fault by Tenant to permit insurance proceeds to be applied to replacement of the Premises, and neither Landlord, such mortgagee or ground lessor has commenced such replacement within 120 days following adjustment of such casualty loss with the insurer, then Tenant may, until any such replacement commences, terminate this Lease by giving at least thirty (30) days prior written notice thereof to Landlord and such termination shall be effective on the date specified if such replacement has not then commenced. In the event Landlord is obligated or elects to repair or restore the Premises in accordance with the requirements of this Section 12.01, but said restoration of the Premises is not substantially completed within twelve (12) months subsequent to said fire or other casualty, then Tenant shall have the right to terminate this Lease upon 30 days' prior written notice to Landlord; provided, however, so long as Landlord commenced said repair or restoration of the Premises within ninety (90) days after all insurance claims with respect to such fire or casualty are settled, and proceeded diligently to complete said repair or restoration of the demised premises thereafter, Tenant shall have the right to terminate this lease upon 30 days' prior written notice to Landlord only if said repair or restoration of the Premises is not substantially completed within eighteen (18) months from the date all insurance claims arising from such casualty are settled. In the event of any termination, the Term shall expire as though such effective termination date were the date originally stipulated in Article 1 for the end of the Term and the Base Rent and Additional Rent for Total Operating Costs (to the extent not abated as set forth above) shall be apportioned as of such date.

**12.02 Eminent Domain.** In the event that all of the Property is taken (other than for temporary use, hereafter described) by public authority under power of eminent domain (or by conveyance in lieu thereof), then this Lease shall terminate as of the date of such taking, and Base Rent and Tenant's share of Total Operating Costs shall be apportioned as of the date of termination. In the event that all or any substantial part of the Premises or the Building or its common areas is taken (but not all of the Property, or other than for temporary use) by public authority under power of eminent domain (or by conveyance in lieu thereof), then by notice given within three months following the recording of such taking (or conveyance) in the appropriate registry of deeds, this Lease may be terminated as of the date of such taking, and Base Rent and Tenant's share of Total Operating Costs shall be apportioned as of the date of termination. If this Lease is not terminated as aforesaid, subject to the rights of mortgagees Landlord shall within a reasonable time thereafter, diligently restore what may remain of the Premises (excluding any Tenant Property or other items installed or paid for by Tenant that Tenant is permitted or may be required to remove upon expiration and any Tenant Work) to a tenable condition. In the event some portion of rentable floor area of the Premises is taken (other than for temporary use) and this Lease is not terminated, Base Rent shall be proportionally abated for the remainder of the Term. In the event of any taking of the Premises or any part thereof for temporary use, (i) this Lease shall be and remain unaffected thereby and rent shall not abate, and (ii) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking that is within the Term, provided that if such taking shall remain in force at the expiration or earlier termination of this Lease, then Tenant shall pay to Landlord a sum equal to the reasonable cost of performing Tenant's obligations hereunder with respect to surrender of the Premises and upon such payment shall be excused from such obligations.

So long as Tenant is not then in breach of any covenant or condition of this Lease, any specific damages that are expressly awarded to Tenant on account of its relocation expenses, or any Tenant Property, and specifically so designated, shall belong to Tenant. Except as provided in the preceding sentence of this paragraph, Landlord reserves to itself, and Tenant releases and assigns to Landlord, all rights to damages accruing on account of any taking or by reason of any act of any public authority for which damages are payable. Tenant agrees to execute such further instruments of assignment as may be reasonably requested by Landlord, and to turn over to Landlord any damages that may be recovered in any proceeding or otherwise.

#### **ARTICLE 13: ASSIGNMENT AND SUBLETTING**

**13.01 Landlord's Consent Required.** Except as set forth in this Article, Tenant shall not directly or indirectly assign this Lease, or sublet or license the Premises or any portion thereof, or advertise the Premises for assignment or subletting or permit the occupancy of all or any portion of the Premises by any person other than Tenant (each of the foregoing actions are collectively referred to as a "Transfer") without obtaining, on each occasion, the prior written consent of Landlord, which consent shall not be unreasonably withheld provided that Tenant complies with the provisions of this Article. It shall be reasonable for Landlord to withhold consent if the proposed Transferee does not have a creditworthiness, financial backing and/or a

business plan that is acceptable to Landlord in light of the obligations being assumed by the Transferee. A Transfer shall include, without limitation, any transfer of Tenant's interest in this Lease by operation of law, merger or consolidation of Tenant into any other firm or corporation, and the transfer or sale of a controlling interest in Tenant, whether by sale of its capital stock or otherwise or any sale of all or a substantial part of Tenant's assets. Any Transfer shall be subject to this Lease, all of the provisions of which shall be conditions to such Transfer and be binding on any transferee. No transferee shall have any right further to transfer its interest in the Premises except back to Tenant, and nothing herein shall impose any obligation on Landlord with respect to a further Transfer. Notwithstanding the foregoing to the contrary, so long as Tenant is a publicly traded company on a nationally recognized stock exchange, the transfer of Tenant's capital stock shall not be deemed a Transfer.

**13.02 Terms.** Except for Related Party Transfers, Tenant shall not offer to make a Transfer (i) to any tenant in the Building or the Complex or any prospective tenant with whom Landlord has commenced negotiations for space (or any affiliate of such tenant or prospective tenant) in the Building or the Complex, (ii) to any person or entity that in Landlord's reasonable judgment would be of such type, character or condition as to be inappropriate as a tenant of a building comparable to the Building or the Complex, or (iii) until such time as at least 90% of the Complex is leased for a term of years, unless the aggregate rent payable to Tenant under such Transfer equals or exceeds the prevailing market rate rent and other changes quoted by Landlord for space in the Building comparable to the Premises.

**13.03 Right of Termination or Recapture.** If Tenant proposes a Transfer of all or part of the Premises, in Tenant's request for consent under Section 13.04 Tenant shall offer to Landlord in writing the right to terminate this Lease as to the area in question. If Landlord shall elect in writing to accept the offer to terminate within twenty (20) days after receipt of such offer, this Lease shall so terminate as to the area in question of the date specified in such offer as of the date specified in the offer (or, if later and Landlord so elects in such acceptance, as of a date not later than sixty (60) days after such offer), and all of the provisions of this Lease governing termination shall apply to such space. If Landlord shall not so elect, Tenant shall then comply with the provisions of this Article applicable to a Transfer. Landlord shall have the right to separate any portion of the Premises recaptured pursuant to this Section 13.03 from the remainder of the Premises by constructing demising walls at Tenant's sole cost and expense. This Section 13.03 shall not apply to Related Party Transfers.

**13.04 Procedures.** At least twenty (20) days prior to the effective date of any Transfer, Tenant shall give Landlord in writing the details of the proposed Transfer, including: (i) the name, business, and financial condition of the prospective transferee, (ii) a true and complete copy of the proposed instrument containing all of the terms and conditions of such Transfer, (iii) a written agreement of the assignee, subtenant or licensee agreeing with Landlord to perform and observe all of the terms, covenants, and conditions of this Lease undertaken by such transferee and such other matters as are contained in Landlord's standard form of consent to a Transfer, and (iv) any other information Landlord reasonably deems relevant. Tenant shall pay to Landlord, as Additional Rent, Landlord's reasonable attorneys' fees in reviewing any Transfer. Tenant may make a Related Party Transfer without the consent of Landlord

provided that Tenant gives Landlord at least ten (10) days' prior notice thereof together with evidence reasonably satisfactory to Landlord that the proposed Transfer is a Related Party Transfer and such Related Party Transfer is subject to all of the other terms and conditions for this Article. A "Related Party Transfer" shall mean one or more of the following: (1) a sublease to any subsidiary in which Tenant owns substantially all voting stock and control or to any parent owning substantially all voting stock and control of Tenant, (2) any assignment incident to the sale of substantially all of Tenant's assets or stock, or (3) a merger or consolidation of Tenant with any other entity, provided that in either case of clause (2) or (3) the person succeeding to Tenant's interest immediately thereafter has a net worth equal to or in excess of that of Tenant at the Commencement Date or immediately prior to the Related Party Transfer, whichever is greater.

**13.05 Excess Rents.** Except for Related Party Transfers, if the consideration, rent, or other amounts payable to Tenant under any other Transfer exceed the Rent and Tenant's Transfer Expenses (pro rated based (a) on floor area in the case of a subletting, license or other occupancy of less than the entire area of the Premises and (b) over the remaining Term), then Tenant shall pay to Landlord, as Additional Rent, 50% of the amount of such excess when and as received. Tenant's "Transfer Expenses" shall mean (a) Tenant's reasonable and necessary payments to third parties in connection with such a Transfer on account of brokerage, legal and fit-up costs and (b) the unamortized cost of any Tenant Work, such amortization to be determined over a 10-year period at a discount rate equal to the Prime Rate published in the Wall Street Journal on the Date of Lease. Without limiting the generality of the first sentence of this section, any lump-sum payment or series of payments (including without limitation for the purchase or use of so-called leasehold improvements or Tenant Property and any separate charges for services in excess of fair market value for such leasehold improvements, Tenant Property or charges for services) on account of any Transfer shall be included in the consideration paid to Tenant for the purpose of determining Landlord's share of such consideration by amortizing such lump sum amounts over the Term without interest and on a straight-line basis and adding such amount to all other regular monthly payments of consideration due to Tenant. To the extent such consideration, including the amortized lump sum amounts, exceeds the Rent and Tenant's Transfer Expenses, the Tenant shall pay Landlord a share of such lump sum amount equal to such excess attributable to the lump sum at the time Tenant receives such lump sum. If Tenant does transfer more than 25% of the Premises with (or without) Landlord's consent, any option or other right that Tenant may have relating to the Premises, including any right to extend the Term or lease other premises, shall automatically be terminated.

**13.06 No Release.** Notwithstanding any Transfer and whether or not the same is a Related Party Transfer or is consented to, the liability of Tenant to Landlord shall remain direct and primary. Any transferee of all or substantially all of Tenant's interest in the Premises, (including any such transferee under a Related Party Transfer shall be jointly and severally liable with Tenant to Landlord for the performance of all of Tenant's covenants under this Lease; and such assignee shall upon request execute and deliver such instruments as Landlord reasonably requests in confirmation thereof (and agrees that its failure to do so shall be a default). Tenant hereby irrevocably authorizes Landlord to collect Rent from any transferee

(and upon notice any transferee shall pay directly to Landlord) and apply the net amount collected to the rent and other charges reserved under this Lease. No Transfer shall be deemed a waiver of the provisions of this Section, or the acceptance of the transferee as a tenant, or a release of Tenant from direct and primary liability for the performance of all of the covenants of this Lease. Notwithstanding anything to the contrary in the documents effecting the Transfer, no Transfer shall alter in any manner whatsoever the terms of this Lease, to which any Transfer at all times shall be subject and subordinate. The breach by Tenant or any transferee of any covenant in this Article shall be a default for which there is no cure period.

Anything contained in the foregoing provisions of this section to the contrary notwithstanding, neither Tenant nor any transferee nor any other person having an interest in the possession, use, occupancy or utilization of the Premises shall enter into any lease, sublease, assignment, license, concession or other agreement for use, occupancy or utilization of space in the Premises that provides for rental or other payment for such use, occupancy or utilization based, in whole or in part, on the net income or profits derived by any person from the Premises leased, used, occupied or utilized (other than an amount based on a fixed percentage or percentages of receipts or sales), and any such purported lease, sublease, assignment, license, concession or other agreement shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, occupancy or utilization of any part of the Premises.

#### **ARTICLE 14: EVENTS OF DEFAULT AND REMEDIES**

**14.01 Events of Default.** If Tenant fails to pay Rent when due and such default continues for five (5) days after notice, or if more than two default notices are properly given in any twelve-month period, or if Tenant vacates substantially all of the Premises (provided that the mere absence of persons in the Premises shall not be deemed a "vacancy" for the purposes of this sentence so long as it is consistent with Tenant's customary business operations), or if Tenant (or any transferee of Tenant) makes any transfer of the Premises in violation of this Lease, or if a petition is filed by Tenant (or any transferee) for insolvency or for appointment of a receiver, trustee or assignee or for adjudication, reorganization or arrangement under any bankruptcy act, or if any similar petition is filed against Tenant (or any transferee) and such petition filed against is not dismissed within thirty (30) days thereafter, or if any representation or warranty made by Tenant is untrue in any material respect, or if Tenant fails to perform any other covenant or condition hereunder and such default continues longer than any period expressly provided for the correction thereof (and if no period is expressly provided then for thirty (30) days after notice is given, provided, however, that such period shall be reasonably extended in the case of any such non-monetary default that cannot be cured within such period only if the matter complained of can be cured, Tenant begins promptly and thereafter diligently completes the cure, and Tenant gives Landlord notice of such intent to cure within ten (10) days after notice of such default), then, and in any such case, Landlord and its agents lawfully may, in addition to any remedies for any preceding breach, immediately or at any time thereafter without demand or notice and with or without process of law, enter upon any part of the Premises in the name of the whole or mail or deliver a notice of termination of the Term of this Lease addressed to Tenant at the Premises or any other address herein, and



thereby terminate the Term and repossess the Premises as of Landlord's former estate. Any default beyond applicable notice and cure periods by Tenant is referred to herein as an "Event of Default". At Landlord's election such notice of termination may be included in any notice of default. Upon such entry or mailing the Term shall terminate, all executory rights of Tenant and all obligations of Landlord will immediately cease, and Landlord in accordance with applicable law (to the extent Tenant's rights under applicable law cannot be waived) may expel Tenant and all persons claiming under Tenant and remove their effects without any trespass and without prejudice to any remedies for arrears of Rent or prior breach; and Tenant waives all statutory and equitable rights to its leasehold (including rights in the nature of further cure or redemption, if any) to the extent such rights can be waived under applicable law. Without implying that other provisions do not survive, the provisions of this Article shall survive the Term or earlier termination of this Lease.

#### **14.02 Remedies for Default.**

14.02(a) Reletting Expenses Damages. If the Term of this Lease is terminated for default, Tenant covenants, as an additional cumulative obligation after such termination, to pay all of Landlord's reasonable costs, including reasonable attorneys fees, related to Tenant's default and in collecting amounts due and all reasonable expenses in connection with reletting, including tenant inducements to new tenants, brokerage commissions, fees for legal services, expenses of preparing the Premises for reletting and the like together with an administrative charge of 5% of all the foregoing costs ("Reletting Expenses"). It is agreed that Landlord may (i) relet the Premises or part or parts thereof for a term or terms that may be equal to, less than or exceed the period that would otherwise have constituted the balance of the Term, and may grant such tenant inducements, including free rent, as Landlord in its reasonable discretion considers advisable, and (ii) make such alterations to the Premises as Landlord in its reasonable discretion considers advisable, and no failure to relet or to collect rent under any reletting shall operate to reduce Tenant's liability. Any obligation to relet imposed by law will be subject to Landlord's reasonable objectives of developing its property in a harmonious manner with appropriate mixes of tenants, uses, floor areas, terms and the like. Landlord's Reletting Expenses together with all other sums provided for whether incurred prior to or after such termination will be due upon demand.

14.02(b) Termination Damages. If the Term of this Lease is terminated for default, unless and until Landlord elects lump sum liquidated damages described in the next paragraph, Tenant covenants, as an additional, cumulative obligation after any such termination, to pay punctually to Landlord all the sums and perform all of its obligations in the same manner as if the Term had not been terminated. In calculating such amounts Tenant will be credited with the net proceeds of any rent then actually received by Landlord from a reletting of the Premises after deducting all Rent that has not then been paid by Tenant, provided that Tenant shall never be entitled to receive any portion of the re-letting proceeds, even if the same exceed the Rent originally due hereunder.

14.02(c) Lump Sum Liquidated Damages. If this Lease is terminated for default, Tenant covenants, as an additional, cumulative obligation after any such termination, to pay

forthwith to Landlord at Landlord's election made by written notice at any time after termination, as liquidated damages a single lump sum payment equal to the sum of (i) all sums to be paid by Tenant and not then paid at the time of such election, plus either, as Landlord elects, (ii) the excess of the present value of all of the Rent reserved for the residue of the Term in each year on a compounding basis) over the present value of the aggregate fair market rent (including the costs and expenses included in Rent hereunder) (if less than the Rent payable hereunder) on account of the Premises during such period, which fair market rent shall be reduced by reasonable projections of vacancies and by Landlord's Reletting Expenses described above to the extent not theretofore paid to Landlord), or (iii) an amount equal to the sum of all of the Rent and other sums due under the Lease with respect to the twelve (12)-month period next following the date of termination. (The Federal Reserve discount rate (or equivalent) shall be used in calculating such present values under clause (ii), and in the event the parties are unable to agree on such fair market rent, the matter shall be submitted, upon the demand of either party, to the office of the American Arbitration Association (or successor) closest to the Property, with a request for arbitration in accordance with the rules of the Association by a single arbitrator who shall be a licensed real estate broker with at least 10 years experience in the leasing of 1,000,000 or more square feet of floor area of buildings similar in character and location to the Premises, whose decision shall be conclusive and binding on the parties.)

14.02(d) Remedies Cumulative; Jury Waiver; Late Performance. The remedies to which Landlord may resort under this Lease, and all other rights and remedies of Landlord are cumulative, and any two or more may be exercised at the same time. Nothing in this Lease shall limit the right of Landlord to prove and obtain in proceedings for bankruptcy or insolvency an amount equal to the maximum allowed by any statute or rule of law in effect at the time. Tenant shall also indemnify and hold Landlord harmless in the manner provided elsewhere herein if Landlord shall become or be made a party to any claim or action (a) instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person claiming under Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person claiming under Tenant; (c) otherwise arising out of or resulting from any act or transaction of Tenant or such other person claiming under Tenant; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. LANDLORD AND TENANT WAIVE TRIAL BY JURY IN ANY ACTION TO WHICH THEY ARE PARTIES.

14.02(e) Waivers; Accord and Satisfaction. No consent by Landlord or Tenant to any act or omission that otherwise would be a default shall be construed to permit other similar acts or omissions. Neither party's failure to seek redress for violation or to insist upon the strict performance of any covenant, nor the receipt by Landlord of Rent with knowledge of any breach of covenant, shall be deemed a consent to or waiver of such breach. No breach of covenant shall be implied to have been waived unless such is in writing, signed by the party benefiting from such covenant and delivered to the other party; and no acceptance by Landlord of a lesser sum than the Rent due shall be deemed to be other than on account of the earliest installment of such Rent. Nor shall any endorsement or statement on any check or in any letter

accompanying any check or payment be deemed an accord and satisfaction; and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other right or remedy. The acceptance by Landlord of any Rent following the giving of any default and/or termination notice shall not be deemed a waiver of such notice. Tenant shall not interpose any counterclaim or counterclaims in a summary proceeding or in any action based on non-payment of Rent.

14.02(f) Landlord's Curing. If Tenant fails to perform any covenant within any applicable cure period, then Landlord at its option may (without waiving any right or remedy for Tenant's non-performance) at any time thereafter perform the covenant for the account of Tenant. Tenant shall upon demand reimburse Landlord's cost (including reasonable attorneys' fees) of so performing, together with an administrative charge equal to 5% of such cost ("Administrative Charge") on demand as Additional Rent. Notwithstanding any other provision concerning cure periods, Landlord may cure any non-performance for the account of Tenant after such notice to Tenant, if any, as is reasonable under the circumstances if curing prior to the expiration of the applicable cure period is reasonably necessary to prevent likely damage to the Premises or possible injury to persons, or to protect Landlord's interest in the Premises.

#### **ARTICLE 15: SECURITY DEPOSIT.**

**15.01 Security Deposit.** On the execution of this Lease, Tenant shall pay to Landlord as a security deposit for the performance of the obligations of Tenant hereunder the amount specified therefor in Article 1. Said security deposit may be mingled with other funds of Landlord and no fiduciary relationship shall be created with respect to such deposit, nor shall Landlord be liable to pay Tenant interest thereon. If Tenant shall fail to perform any of its obligations under this Lease, Landlord may, but shall not be obliged to, apply the security deposit to the extent necessary to cure the default, and Tenant shall be obliged to reinstate such security deposit to the original amount thereof upon demand. Within sixty (60) days after expiration or sooner termination of the Term the security deposit, to the extent not applied, shall be returned to the Tenant without interest.

In the event of a sale of the Building or lease, conveyance or transfer of the Building, Landlord shall have the right to transfer the security to the transferee and Landlord shall thereupon be released by Tenant from all liability for the return of such security; and subject to Section 10.02(b), Tenant agrees to look to the transferee solely for the return of said security. The provisions hereof shall apply to every transfer or assignment made of the security to such a transferee. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security, and that neither Landlord nor its successors or assigns shall be bound by any assignment, encumbrance, attempted assignment or attempted encumbrance.

## ARTICLE 16: PROTECTION OF LENDERS/GROUND LESSOR

**16.01 Subordination and Superiority of Lease.** Tenant agrees that this Lease and the rights of Tenant hereunder will be subject and subordinate to any lien of the holder of any existing or future mortgage, and to the rights of any lessor under any ground or improvements lease of the Building (all mortgages and ground or improvements leases of any priority are collectively referred to in this Lease as “mortgage,” and the holder or lessor thereof from time to time as a “mortgagee”), and to all advances and interest thereunder and all modifications, renewals, extensions and consolidations thereof. With respect to future liens of any mortgage hereafter granted, Landlord will request that the mortgagee execute and deliver to Tenant an agreement (in the form of Exhibit M or in such other form as such mortgagee may request) in which the mortgagee agrees that such mortgagee shall not disturb Tenant in its possession of the Premises upon Tenant’s execution thereof and attornment to such mortgagee as Landlord and performance of its Lease covenants (which conditions Tenant agrees with all mortgagees to perform). Upon such attornment, this Lease shall continue in full force and effect as a direct lease between the mortgagee and Tenant upon all of the terms, conditions and covenants as are set forth in this Lease, except that the mortgagee shall not be (i) liable in any way to Tenant for any act or omission, neglect or default on the part of Landlord under this Lease, (ii) responsible for any monies owing by or on deposit with Landlord to the credit of Tenant, (iii) subject to any counterclaim or setoff which theretofore accrued to Tenant against Landlord, (iv) bound by any amendment or modification of this Lease subsequent to such mortgage, or by any previous prepayment of Rent for more than one (1) month, which was not approved in writing by the mortgagee, (v) liable beyond mortgagee’s interest in the Property, (vi) responsible for the performance of any work to be done by the Landlord under this Lease to render the Premises ready for occupancy by the Tenant, or (vii) required to remove any person occupying the Premises or any part thereof, except if such person claims under the mortgagee. Tenant agrees that any present or future mortgagee may at its option unilaterally elect to subordinate, in whole or in part and by instrument in form and substance satisfactory to such mortgagee alone, the lien of its mortgagee (or the priority of its ground lease) to some or all provisions of this Lease.

Tenant agrees that this Lease shall survive the merger of estates of ground (or improvements) lessor and lessee. Until a mortgagee (either superior or subordinate to this Lease) forecloses Landlord’s equity of redemption (or terminates or succeeds to a new lease in the case of a ground or improvements lease) no mortgagee shall be liable for failure to perform any of Landlord’s obligations (and such mortgagee shall thereafter be liable only after it succeeds to and holds Landlord’s interest and then only as limited herein). Tenant shall, if requested by Landlord or any mortgagee, give notice of any alleged non-performance on the part of Landlord to any such mortgagee provided that an address for such mortgagee has been designated to Tenant in writing, and Tenant agrees that such mortgagee shall have a separate, consecutive reasonable cure period of no less than thirty (30) days (to be reasonably extended in the same manner Landlord’s cure period is to be extended and for such additional periods as is necessary to allow such Mortgagee to take possession of the Property but not to exceed 180 days) following Landlord’s cure period during which such mortgagee may, but need not, cure any non-performance by Landlord. The agreements in this Lease with respect to the rights and

powers of a mortgagee constitute a continuing offer to any person that may be accepted by taking a mortgage (or entering into a ground or improvements lease) of the Premises. This Section shall be self-operative, but in confirmation thereof, Tenant shall execute and deliver the subordination agreement in the form of Exhibit M (or in such other form as such mortgagee may request).

**16.02 Rent Assignment.** If from time to time Landlord assigns this Lease or the rents payable hereunder to any person, whether such assignment is conditional in nature or otherwise, such assignment shall not be deemed an assumption by the assignee of any obligations of Landlord; but, subject to the limitations herein including Sections 16.01 and 10.02(b), the assignee shall be responsible only for non-performance of Landlord's obligations that occur after it succeeds to, and only during the period it holds possession of, Landlord's interest in the Premises after foreclosure or voluntary deed in lieu of foreclosure.

**16.03 Other Instruments.** The provisions of this Article shall be self-operative; nevertheless, Tenant agrees to execute, acknowledge and deliver any subordination, attornment or priority agreements or other instruments conforming to the provisions of this Lease (and being otherwise commercially reasonable) from time to time requested by Landlord or any mortgagee, and further agrees that its failure to do so within ten (10) business days after written request shall be a default for which this Lease may be terminated without further notice. Without limitation, where Tenant in this Lease indemnifies or otherwise covenants for the benefit of mortgagees, such agreements are for the benefit of mortgagees as third-party beneficiaries; and at the request of Landlord, Tenant from time to time will confirm such matters directly with such mortgagee.

**16.04 Estoppel Certificates.** Within ten (10) days after Landlord's request, Tenant shall execute, acknowledge and deliver to Landlord a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how); (ii) that this Lease has not been canceled or terminated; (iii) the last date of payment of Base Rent and other charges and the time period covered; (iv) that Landlord is not in default under this Lease (or if Tenant states that Landlord is in default, describing it in reasonable detail); and (v) such other information with respect to Tenant or this Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Landlord may deliver any such statement by Tenant to any such prospective purchaser or encumbrancer, which may rely conclusively upon such statement as true and correct. If Tenant does not deliver such statement to Landlord within such ten (10) day period, Landlord, and any such prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as represented by Landlord; (ii) that this Lease has not been canceled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's Base Rent or other charges have been paid in advance; and (iv) that Landlord is not in default under this Lease. In such event, Tenant shall be estopped from denying the truth of such facts.

**16.05 Tenant's Financial Condition.** Unless Tenant is then a publicly traded company on a nationally recognized stock exchange and Tenant's annual and quarterly financial reports are

then publicly reported, Tenant, within ten (10) days after request from Landlord from time to time, shall deliver to Landlord Tenant's annual audited financial statements for the latest available two (2) fiscal years, including the year ending no more than six (6) months prior to Landlord's request, and quarterly financial statements certified in writing by Tenant's chief financial officer. Landlord may deliver such financial statements to its mortgagees and lenders and prospective mortgagees, lenders and purchasers. Tenant represents and warrants to Landlord that each such financial statement shall be true and accurate as of its date. Except for publicly available information, financial statements shall be confidential and shall be used only for the purposes set forth in this Section 16.05. So long as Tenant is a publicly traded company on a nationally recognized stock exchange, it shall give to Landlord Tenant's most recently filed annual and quarterly financial reports on request.

#### **16.06 Ground Lease.**

16.06(a) Recognition of Ground Lease; Subordination. Tenant understands that the Landlord herein is also a lessee/tenant under a ground lease dated November 14, 2000 of the real property of which the premises demised herein form a part (as it may be amended from time to time, the "Ground Lease"). Provided that the lessor/landlord under such Ground Lease (the "Ground Lessor") shall execute and deliver to Tenant a subordination, nondisturbance and attornment agreement, substantially in the form attached hereto as Exhibit N ("SNDA"), then Tenant hereby covenants and agrees that this Lease and the rights of Tenant hereunder are and shall at all times remain subject and subordinate to the terms, covenants and conditions of the Ground Lease and any extensions or modifications thereof. Tenant further covenants and agrees to execute and deliver to the Ground Lessor the SNDA, confirming such subordination; provided, however, that this Lease and the rights of Tenant hereunder are and shall at all times remain subject and subordinate to the terms, covenants and conditions of the Ground Lease and any extensions or modifications thereof, regardless of whether Tenant shall execute and deliver the SNDA. Tenant further covenants and agrees (subject to receipt of the SNDA) that if by reason of any default upon the part of Landlord herein as lessee/tenant under the Ground Lease, the Ground Lease is terminated by summary proceedings, voluntary agreement or otherwise, Tenant herein agrees to recognize the Ground Lessor as Tenant's lessor/landlord under this Lease. Tenant further covenants and agrees (subject to receipt of the SNDA) to execute and deliver upon request of the Ground Lessor an instrument to evidence such attornment once such termination occurs. Tenant waives the provisions of any law now or hereafter in effect which may give Tenant any right or election to terminate this Lease or to surrender possession of the Premises demised hereby in the event any proceeding is brought by the Ground Lessor to terminate such Ground Lease or in the event that any proceeding is brought by any mortgagee to foreclose any mortgage affecting the fee title to the Premises or the Ground Lease.

16.06(b) Ground Lessor's Enforcement Rents. Tenant acknowledges that Ground Lessor has reserved the right, at its option (but without obligation or any diminution or negation of Landlord's rights and obligations in this regard), to enforce the terms and provisions of this Lease insofar as they are germane to, in compliance with, and in fulfillment of the terms of the conditions and obligations of the Ground Lease. Landlord further agrees

that Ground Lessor may, subject to the prior rights of any leasehold mortgagee, in the event of any monetary Event of Default or any delinquency in the curing of any other Event of Default, directly collect rent from Tenant during the continuation of such Event of Default, and Landlord hereby agrees, upon request of Ground Lessor following and during the continuation of an Event of Default, to execute and deliver any assignments to Ground Lessor needed to effectuate such collection right. Tenant hereby agrees to execute an estoppel agreement wherein Tenant acknowledges the right of Ground Lessor, subject to the rights of any Leasehold Mortgagee, to enforce directly the Lease upon written notification from Ground Lessor that Landlord is in default under the Ground Lease. Until such notification is rescinded by written notice from Ground Lessor after cure of the breach (which notice Ground Lessor shall provide promptly upon such cure), Ground Lessor shall be entitled to receive all rents from Tenant. Ground Lessor will hold and apply any money so collected to said rent delinquencies or to the curing of any Event of Default and shall remit the excess funds, if any, to Landlord, without interest.

16.06(c) Compliance with Ground Lease. Tenant covenants that during the Term of this Lease, Tenant shall not commit or suffer (on the part of any person acting for or under Tenant) to be committed any act or act of omission in violation of the terms and provision of the Ground Lease. Tenant shall neither do nor permit (on the part of any person acting for or under Tenant) anything to be done which would cause the Ground Lease to be terminated or forfeited by reason of any right of termination or forfeiture reserved or vested in Ground Lessor under the Ground Lease.

#### **ARTICLE 17: MISCELLANEOUS PROVISIONS**

**17.01 Landlord's Consent Fees.** In addition to fees and expenses in connection with Tenant Work, as described in Section 10.05, Tenant shall pay Landlord's reasonable out-of-pocket third party fees and expenses, including legal, engineering and other consultants' fees and expenses, incurred in connection with Tenant's request for Landlord's consent under Article 13 (Assignment and Subletting). Landlord agrees that it shall review the proposed request for Landlord's consent under Article 13 using Landlord's employees to the extent such employees are reasonably qualified to do so (but in no event shall Landlord be required to use in-house counsel for such purposes).

**17.02 Notice of Landlord's Default.** Tenant shall give notice of Landlord's failure to perform any of its obligations under this Lease to Landlord and to Ground Lessor and to any mortgagee or beneficiary under any deed of trust encumbering the Property whose name and address have been given to Tenant. Landlord shall not be in default under this Lease unless Landlord (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is begun within such thirty-(30)-day period and diligently completed. In no event shall Landlord be liable for indirect or consequential damages arising out of any default by Landlord under this Lease.

**17.03 Quiet Enjoyment.** Landlord agrees that, so long as (i) Tenant is not in default under the terms of this Lease and (ii) this Lease is in full force and effect, Tenant shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without disturbance by Landlord or by any person claiming through or under Landlord, subject to the terms of this Lease.

**17.04 Interpretation.** In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" includes Tenant's agents, employees, contractors, invitees, successors or others using the Premises with Tenant's expressed or implied permission.

**17.05 Notices.** All notices, requests and other communications required under this Lease shall be in writing, addressed as specified in Article 1, and shall be (i) personally delivered, (ii) sent by certified mail, return receipt requested, postage prepaid, (iii) delivered by a national overnight delivery service that maintains delivery records or (iv) sent by telecopier or facsimile machine ("fax") that automatically generates a transmission report, with a copy also sent as described in clause (i), (ii) or (iii). All notices shall be effective upon delivery (or refusal to accept delivery); provided, however, that notice by fax or telecopy shall be effective when transmitted. Either party may change its notice address upon written notice to the other party.

**17.06 No Recordation.** Tenant shall not record this Lease. Either Landlord or Tenant may require that a statutory notice, short form or memorandum of this Lease executed by both parties be recorded. Tenant may record any subordination agreement (notifying Landlord of the date and book and page number) or request Landlord to record it on Tenant's behalf. The party requesting or requiring such recording shall pay all expenses, transfer taxes and recording fees.

**17.07 Waivers.**

17.07(a) Waiver of Notice to Quit. Tenant hereby waives the right to a formal demand to leave the Premises upon expiration of this Lease by lapse of time, known as a "Notice to Quit" under §47a-25 of the Connecticut General Statutes, should Landlord use summary process to evict Tenant or regain possession of the Premises.

17.07(b) Prejudgment Remedy Waiver. TENANT HEREBY REPRESENTS, COVENANTS AND AGREES THAT THE TRANSACTION OF WHICH THIS LEASE IS A PART IS A "COMMERCIAL TRANSACTION" AS DEFINED BY THE STATUTES OF THE STATE OF CONNECTICUT. TENANT HEREBY WAIVES ALL RIGHTS TO NOTICE AND PRIOR COURT HEARING OR COURT ORDER UNDER CONNECTICUT GENERAL STATUTES, SECTIONS 52-278a et seq., AS AMENDED, OR UNDER ANY OTHER STATE OR FEDERAL LAW WITH RESPECT TO ANY AND ALL PREJUDGMENT REMEDIES LANDLORD MAY EMPLOY TO ENFORCE ITS RIGHTS AND REMEDIES HEREUNDER. MORE SPECIFICALLY, TENANT ACKNOWLEDGES THAT LANDLORD'S ATTORNEY MAY, PURSUANT TO CONNECTICUT GENERAL STATUTES SECTION 52-278f, ISSUE A WRIT FOR A PREJUDGMENT REMEDY



WITHOUT SECURING A COURT ORDER. TENANT ACKNOWLEDGES AND RESERVES ITS RIGHT TO NOTICE AND A HEARING SUBSEQUENT TO THE ISSUANCE OF A WRIT FOR PREJUDGMENT REMEDY BY LANDLORD'S ATTORNEY, AND LANDLORD ACKNOWLEDGES TENANT'S RIGHT TO SAID HEARING SUBSEQUENT TO THE ISSUANCE OF SAID WRIT. TENANT FURTHER HEREBY WAIVES ANY REQUIREMENT OR OBLIGATION OF LANDLORD TO POST A BOND OR OTHER SECURITY IN CONNECTION WITH ANY PREJUDGMENT REMEDY OBTAINED BY LANDLORD AND WAIVES ANY OBJECTIONS TO ANY PREJUDGMENT REMEDY OBTAINED BY LANDLORD BASED ON ANY OFFSETS, CLAIMS, DEFENSES OR COUNTERCLAIMS OF TENANT OR ANY OTHER PARTY PRIMARILY OR SECONDARILY LIABLE UNDER THE LEASE TO ANY ACTION BROUGHT BY LANDLORD. TENANT ACKNOWLEDGES AND AGREES THAT ALL OF THE WAIVERS CONTAINED IN THIS ARTICLE 33 HAVE BEEN MADE KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY, AND WITH THE ADVISE OF ITS COUNSEL.

17.07(c) Waiver of Right of Reinstatement. Tenant hereby waives any right, under existing or future law, to gain back the Premises once Tenant is legally removed (known as "Right of Reinstatement").

**17.08 Corporate Authority.** If Tenant is a business entity, then the person or persons executing this Lease on behalf of Tenant jointly and severally warrant and represent in their individual capacities that (a) Tenant is duly organized, validly existing and in good standing under the laws of the jurisdiction in which such entity was organized; (b) Tenant has the authority to own its property and to carry on its business as contemplated under this Lease; (c) Tenant is in compliance with all laws and orders of public authorities applicable to Tenant; (d) Tenant has duly executed and delivered this Lease; (e) the execution, delivery and performance by Tenant of this Lease (i) are within the powers of Tenant, (ii) have been duly authorized by all requisite action, (iii) will not violate any provision of law or any order of any court or agency of government, or any agreement or other instrument to which Tenant is a party or by which it or any of its property is bound, and (iv) will not result in the imposition of any lien or charge on any of Tenant's property, except by the provisions of this Lease; and (f) the Lease is a valid and binding obligation of Tenant in accordance with its terms. Tenant, if a business entity, agrees that breach of the foregoing warranty and representation shall at Landlord's election be a default under this Lease for which there shall be no cure. This warranty and representation shall survive the termination of the Term.

**17.09 Joint and Several Liability.** If more than one party signs this Lease as Tenant, they shall be jointly and severally liable for all obligations of Tenant.

**17.10 Force Majeure.** If a party cannot perform any of its obligations due to events beyond its reasonable control (other than the inability to make payments when due), the time provided for performing such obligations shall be extended by a period of time equal to the duration of the events. Events beyond a party's reasonable control include acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of or the inability to

obtain labor or material from customary sources on customary terms, government regulation or restriction, weather conditions or acts, neglects or delays of the other party.

**17.11 Limitation of Warranties.** Landlord and Tenant expressly agree that there are and shall be no implied warranties of merchantability, habitability, suitability, fitness for a particular purpose or of any other kind arising out of this Lease, and there are no warranties that extend beyond those expressly set forth in this Lease.

**17.12 No Other Brokers.** Landlord and Tenant represent and warrant to each other that the brokers named in Article 1 are the only agents, Broker(s), finders or other parties with whom such party has dealt who may be entitled to any commission or fee with respect to this Lease or the Premises or the Property. Landlord and Tenant agree to indemnify and hold the other harmless from any claim, demand, cost or liability, including attorneys' fees and expenses, asserted by any party other than the brokers named in Article 1 based upon dealings of that party with the indemnifying party. Landlord shall be responsible for the payment of any brokerage fees to the brokers named in Article 1. The provisions of this Section shall survive the Term or early termination of this Lease.

**17.13 Applicable Law and Construction.** This Lease may be executed in counterparts, shall be construed as a sealed instrument, and shall be governed exclusively by the provisions hereof and by the laws of the state where the Property is located without regard to principles of choice of law or conflicts of law. A facsimile signature to this Lease shall be sufficient to prove the execution by a party. The covenants of Landlord and Tenant are independent, and such covenants shall be construed as such in accordance with the laws of the State of Connecticut. If any provisions shall to any extent be invalid, the remainder shall not be affected. Other than contemporaneous instruments executed and delivered of even date, if any, this Lease contains all of the agreements between Landlord and Tenant relating in any way to the Premises and supersedes all prior agreements and dealings between them. There are no oral agreements between Landlord and Tenant relating to this Lease or the Premises. This Lease may be amended only by instrument in writing executed and delivered by both Landlord and Tenant. The provisions of this Lease shall bind Landlord and Tenant and their respective successors and assigns, and shall inure to the benefit of Landlord and its successors and assigns and of Tenant and its permitted successors and assigns, subject to Article 13. As used herein, "non-monetary default" shall mean a default that cannot be substantially cured by the payment of money. The titles are for convenience only and shall not be considered a part of the Lease. This Lease shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that both Landlord and Tenant have contributed substantially and materially to the preparation of this Lease. If Tenant is granted any extension or other option, to be effective the exercise (and notice thereof) shall be unconditional; and if Tenant purports to condition the exercise of any option or to vary its terms in any manner, then the option granted shall be void and the purported exercise shall be ineffective. The enumeration of specific examples of a general provisions shall not be construed as a limitation of the general provision. Unless a party's approval or consent is required by the express terms of this Lease not to be unreasonably withheld, such approval or consent may be withheld in the

party's sole discretion. The submission of a form of this Lease or any summary of its terms shall not constitute an offer by Landlord to Tenant; but a leasehold shall only be created and the parties bound when this Lease is executed and delivered by both Landlord and Tenant and approved by the holder of any mortgagee of the Premises having the right to approve this Lease. Nothing herein shall be construed as creating the relationship between Landlord and Tenant of principal and agent, or of partners or joint venturers or any relationship other than landlord and tenant. This Lease and all consents, notices, approvals and all other related documents may be reproduced by any party by any electronic means or by facsimile, photographic, microfilm, microfiche or other reproduction process and the originals may be destroyed; and each party agrees that any reproductions shall be as admissible in evidence in any judicial or administrative proceeding as the original itself (whether or not the original is in existence and whether or not reproduction was made in the regular course of business), and that any further reproduction of such reproduction shall likewise be admissible. If any payment in the nature of interest provided for in this Lease shall exceed the maximum interest permitted under controlling law, as established by final judgment of a court, then such interest shall instead be at the maximum permitted interest rate as established by such judgment. The term "Term" includes the Initial Term as it may be extended pursuant to Section 3.03.

**17.14 Construction on the Property or Adjacent Property.** Tenant acknowledges that Landlord is undertaking major renovations in the Building, on the Property, and elsewhere in the Complex (the "Project"). Subject to the provisions of Section 6.01(e) and Section 9.06(b) of this Lease and the Construction Coordination Plan, each to the extent applicable, Landlord shall have the right, in connection with the development, redevelopment, alteration, improvement, operation, maintenance, or repair of the Building, the Property and/or the Complex, to subject the Property to easements for the construction, reconstruction, alteration, improvement, operation, repair or maintenance of elements thereof, for access and egress for parking, for the installation, maintenance, repair, replacement or relocation of utilities serving the Building, Property and/or Complex and to subject the Property to such other rights, agreements, and covenants for such purposes as Landlord may determine. Tenant hereby agrees that this Lease shall be subject and subordinate to any such matters that do not unreasonably interrupt Tenant's use of the Premises. Neither Tenant nor any persons acting under Tenant shall take any action to oppose the Project, nor shall the Tenant knowingly permit any persons acting under Tenant to take any action in opposition to the Project.

Subject to the provisions of Section 6.01(e) and Section 9.06(b) of this Lease and the Construction Coordination Plan, each to the extent applicable, Landlord and its agents, employees, licensees and contractors shall also have the right to enter on the Property or Building to undertake work pursuant to any easement granted pursuant to the above paragraph; to shore up the foundations and/or walls of the Building; to erect scaffolding and protective barricades around, within or adjacent to the Building; and to do any other act necessary for the safety of the Building or the expeditious completion of such work. Landlord shall not be liable to Tenant for any compensation or reduction of Rent by reason of inconvenience or annoyance or for loss of business resulting from any act by Landlord pursuant to this Section. Landlord shall use reasonable efforts to minimize the extent and duration of any inconvenience,

annoyance or disturbance to Tenant resulting from any work pursuant to this Section in or about the Building, consistent with accepted construction practice.

**17.15 Intentionally Omitted.**

**17.16 Security.** Landlord is currently providing for security services to the Complex by contract with the Complex management company as an amenity to Complex occupants. Landlord shall use commercially reasonable efforts to continue to arrange for commercially reasonable security services to the Complex, which service shall include as a minimum security personnel onsite at the Complex. Notwithstanding the fact that Landlord provides security services at the Complex at anytime during the term of this Lease, (i) Tenant hereby releases Landlord from any claim for injury to person or damage to property asserted by Tenant or any personnel, employee, guest, invitee or agent of Tenant that is suffered or occurs in or about the Premises or in or about the Building, Property or the Complex or the common areas appurtenant thereto by reason of the act of any intruder or any other person in or about the Premises, Building, Property or Complex, and (ii) Landlord shall not be deemed to owe Tenant, or any person claiming by, through or under Tenant, any special duty or standard of care as a result of Landlord's provision of such security services other than the duty or standard of care that would have applied without such services.

[The remainder of this page has been intentionally left blank]

Signed on: \_\_\_\_\_

at: \_\_\_\_\_

Signed on: \_\_\_\_\_

at: \_\_\_\_\_

LANDLORD:

SP-K DEVELOPMENT, LLC, a Delaware  
limited liability company

BY: Lyme Properties, LLC, a New Hampshire limited liability company,  
its manager

By: \_\_\_\_\_

David E. Clem, Member

TENANT:

ALEXION PHARMACEUTICALS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**THE PROPERTY**

**Building 25 (Tract K)**

All that certain piece or parcel of land situated in the City of New Haven, County of New Haven and State of Connecticut, as shown on a map entitled: "Property Map, 25 Science Park To Be Conveyed to Science Park Development Corporation, Munson Street & Winchester Avenue, New Haven, Connecticut", by Grenier, scale 1" = 20', dated Feb. 1985, said parcel being more particularly bounded and described as follows:

Commencing at a point marking the intersection of the Southerly Street line of Munson Street and the Westerly street line of Winchester Avenue, said point having the coordinates North 177,851.51 and East 550,741.29 on the Connecticut Coordinate System;

Thence running South 18° - 39' - 00" East 509.38 feet along the Westerly Street line of Winchester Avenue;

Thence running South 79° - 57' - 30" West 149.01 feet along land now or formerly of Bert J. Haberfeld, d/b/a Swald Realty and land now or formerly of Penn Central Transportation Company, partly by each;

Thence running North 18° - 28' - 40" West 259.39 feet, to a point;

Thence running North 79° - 57' - 30" East 3.30 feet, to a point;

Thence running North 17° - 30' - 40" West 130.90 feet, to a point;

Thence running North 18° - 28' - 40" West 156.70 feet, to a point in the southerly line of Munson Street, the last four boundaries being along land now or formerly of Penn Central Transportation Company;

Thence running South 85° - 41' - 40" East 152.29 feet along the Southerly Street line of Munson Street to the point and place of point of commencement.

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**EXHIBIT B**  
**THE PREMISES**

B-1

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**EXHIBIT B-1**  
**PARKING PLAN**

B-2-1



**EXHIBIT B-2**  
**PARKING LICENSE AGREEMENT**

License dated \_\_\_\_\_, 2003, between SP-B1 Development, LLC (“Licensor”) and Alexion Pharmaceuticals, Inc., a \_\_\_\_\_ (“Licensee”).

Reference is made to a Lease dated \_\_\_\_\_, 2003 (the “Lease”) between Licensor as landlord and Licensee as tenant. Terms used herein and defined in the Lease shall have the same meaning given in the Lease.

In consideration of the mutual covenants herein contained, Licensor and Licensee hereby agree as follows:

Commencing on the Term Commencement Date of the Lease, Licensor shall provide Licensee with a license for the use of three (3) public parking spaces per 1,000 rentable square feet of Premises at no charge during the Initial Term of the Lease. Use of the parking spaces shall be on a non-exclusive, non-reserved basis. If Tenant desires to use any or all of the allotted parking spaces (not to exceed three (3) spaces per 1,000 rentable square feet of Premises) during any of the Extension Terms under (and as defined in) the Lease, then at the time Tenant sends Landlord the required notification (“Tenant’s Notice”) exercising its option for the applicable Extension Term, Tenant shall include in Tenant’s Notice the number of parking spaces Tenant requires for use during the applicable Extension Term. Tenant’s failure to do so shall be deemed a waiver by Tenant of its right to use any parking spaces during the that Extension Term. If Tenant’s Notice includes the number of parking spaces Tenant requires for use during the applicable Extension Term, then Licensee shall pay for such spaces (whether or not so used) at Licensor’s then current prevailing monthly rate for parking spaces, or such other rates to which the parties may mutually agree which shall in no event exceed the lowest parking rates charged by Licensor to other tenants of the building known and numbered as 25 Science Park (excluding any free parking granted to other tenants during the five (5) years following the completion of the Base Building Work). The prevailing monthly rate for parking spaces, if in effect under this License, shall be subject to change from time to time without notice to Licensee. Such payments shall constitute additional charges for purposes of the Lease. Payments under this License shall be made at the places and times and subject to the conditions specified for payments of Base Rent in Article 4 of the Lease, or at such other places and times as Licensor shall specify in writing. To the extent applicable to Licensee’s use of the parking spaces, the provisions of the Lease shall apply, including rules and regulations from time to time promulgated by Licensor.

This License shall terminate upon the expiration or earlier termination of the Lease. If Licensee shall fail to perform or observe any of Licensee’s covenants under this License and such failure shall continue for more than 10 days after notice of such failure in the case of any monetary payment, or in any other case, for more than 30 days after notice of such failure, then this License may be terminated immediately upon notice by Licensor.

Any failure to perform or observe any of Licensee's covenants under this License shall be deemed to be a failure of Licensee to perform or observe a covenant under the Lease including, without limitation, for purposes of Article 14 of the Lease.

Licensor's liability under this License shall be limited to the extent provided in Section 10.02 of the Lease, which is incorporated in this Parking License by reference, as if references to "Landlord" thereunder were to Licensor.

Executed to take effect as a sealed instrument.

LICENSOR:

SP-B1 DEVELOPMENT, LLC

By: \_\_\_\_\_

Name:

Title:

LICENSEE:

ALEXION PHARMACEUTICALS, INC.

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

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**EXHIBIT B-3**  
**SITE PAD LOCATION**

B-3

**EXHIBIT C**  
**RULES AND REGULATIONS**

In the event of a conflict between these Rules and Regulations and the terms of the Lease, the terms of the Lease shall govern.

**BUILDING HOURS OF OPERATION**

The Building is open 24 hours a day, 7 days a week, and 365 days a year. Normal working hours for Building Services are 8 A.M. to 5 P.M., Monday through Friday except for Building Holidays. Building Holidays shall include: New Year's Day, Memorial Day, The Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.

**COMMERCIAL DELIVERY SERVICES**

Small UPS, FedEx, packages, and envelopes may be delivered through the main entrance. Those making the delivery must check-in through the security desk prior to proceeding to the individual suite. All other deliveries shall be made through the freight entrance. An Intercom is located at the loading dock for communication with the security desk. Drivers must sign in with the security officer and show proper picture ID. Security officer will notify Tenant of deliveries for acceptance by Tenant.

**ELEVATORS AND DELIVERIES**

A. In the case of all deliveries, care should be exercised while moving material in the Building. Tenant shall coordinate special or large deliveries or Tenant moves with Building Management, 800-416-2488. Appropriate certificate of insurance must be submitted to Building Management prior to acceptance of deliveries. Access to the freight elevator will be denied to those deliveries where Building Management has not received valid certificates of insurance.

B. The freight or service elevator is available to the tenants of the Building on a non-exclusive basis at any time. Exclusive use of freight or service elevators on Building Holidays and for after-hours deliveries may be scheduled with the Building Management forty-eight (48) hours in advance on a first-come, first-serve basis.

C. For after-hour deliveries, Building Management shall provide on site Security at Tenant's cost.

D. All hand trucks used for interior deliveries must be equipped with rubber bumpers and tires.

E. The freight entrance shall be used for Tenant moves on a scheduled basis. Tenant shall be responsible for providing protection for elevators, walls, floors and corners.

F. The loading area may be used only for deliveries. No vehicles are allowed to stand in or obstruct this area after unloading. Vehicles are not allowed to park at the loading area for service calls. Vendors and suppliers should be advised of this rule. Any vehicles abusing the truck docking privileges are subject to being towed at the owner's expense.

G. All carrier providers are to check in with the Security Officer. Tenant shall provide, at a minimum, primary and secondary designates for acceptance of all deliveries. The Building Management Office has no responsibility for locating Tenant representatives regarding acceptance of deliveries or pick-ups by Tenant's vendors.

H. Tenant is responsible for ensuring that all pick-ups and deliveries are in accordance with all local, state, and federal mandated safety regulations.

#### **PARKING**

A. There are no assigned spaces other than for handicapped parking. If for business reasons you wish to leave your vehicle overnight or for the weekend, Building Security must be notified. Vehicles found improperly parked, obstructing exits, fire lanes, etc. will be towed at the owner's expense.

B. The speed limit for private driveways and roadways within Science Park is 15 mph. This speed limit must be obeyed for the safety of everyone walking and driving within the park.

C. Tenants will be issued parking identification forms to be completed and returned to the security office. Information requested will include employee's name, vehicle make and model. All vehicles will be issued Science Park parking identification in the form of decals, or such other form of identification as Landlord may select, that must be displayed.

D. If Tenant wants to leave a vehicle overnight or the weekend Building security must be notified or the vehicle will be towed at the Tenant's expense.

#### **REPAIRS AND MAINTENANCE**

A. To the extent set forth in the Lease, Tenant is responsible for all general repairs and maintenance of its premises including, but not limited to, floor coverings, windows, ceiling tiles, lights and fixtures, pipes and drains, HVAC systems, and utility services. All repairs, installations or alterations to the building or its fixtures must first be approved and scheduled by the building management.

B. Building management may be contacted for HVAC services, tenant fit out and improvements, cleaning services, general repairs and maintenance. All requests for work to be done in tenant's premises by the building management will be submitted in writing to building management.

C. Tenant will refer to Building Management all contractors, contractor's representatives and installation technicians rendering any service to Tenant for Landlord's supervision, approval, and control before performance of any contractual service. Except for the hanging of pictures, no boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord and as Landlord may direct. This provision shall apply to all work performed in the Building including installations of telephones, telegraph equipment electrical devices and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment or any other physical portion of the Building. Tenants need to request in writing their intent to modify leased premises.

**EXHIBIT D**  
**FORM OF CONFIRMATION OF DELIVERY**

Reference is made to the Lease dated \_\_\_\_\_ between \_\_\_\_\_, as landlord, and \_\_\_\_\_, as tenant (the "Lease"). The terms listed below are used as defined in the Lease.

Landlord and Tenant confirm the following:

Term Commencement Date: \_\_\_\_\_

Rent Commencement Date: \_\_\_\_\_

Expiration of Initial Term: \_\_\_\_\_

Tenant's fax number for purposes of notice: \_\_\_\_\_

LANDLORD:

SP-K DEVELOPMENT, LLC, a Delaware  
limited liability company

BY: Lyme Properties, LLC, a New Hampshire limited  
liability company, its manager

By: \_\_\_\_\_  
David E. Clem, Member

TENANT:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT E**  
**CLEAN ROOM AND TECHNICAL AREAS LOCATION**

E-1



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**EXHIBIT F**  
**DECOMMISSIONING EXCEPTIONS**

1. Asbestos containing materials to the extent present prior to Tenant's first occupancy of the Premises.
2. PCBs to the extent present prior to Tenant's first occupancy of the Premises.

**EXHIBIT G**  
**ENVIRONMENTAL SUBSTANCES**

1. Usual and customary office and cleaning supplies, in quantities normally maintained in offices of the same size and nature as the Premises.
2. Usual and customary office equipment (including copiers and printers).
3. The following substances in the amounts in use by Tenant as of the date of this Lease and in compliance with the terms and conditions of the Lease:

Acetic acid	L-cysteine
Anhydrous sodium sulfate	L-glutamine
Carbon dioxide USP	LpHst cleaner
Cellgro free w/o L-GLN (Cell culture media)	Magnesium sulfate
Cholesterol lipid supplement formula 1000x	Manganese chloride
Citric acid	Medical air
Cobalt chloride	Mycophenolic acid
Cupric sulfate	Nitrogen NF
Decon-Spor cleaner	PBS (phosphate buffer solution)
DMSO-hybrimax (dimethyl sulfoxide)	Phosphoric acid
EDTA	Polysorbate 20
Ethanol	ProCHC -4 CDM w/o phenol red (cell culture media)
Excell 302 media (cell culture)	Sodium acetate trihydrate
Excell 302 media w/o phenol red (cell culture)	Sodium chloride
Glycerol, Ethylene	Sodium hydroxide (<50%)
Glycine	Sodium phosphate
Glycol	Soft cide hand cleanser
Gram Crystal Violet	Spor-klenz cleaner
Gram Decolorizer	Tris base
Gram Iodine 100X	Tris HCl
Gram Safranin	Vesphene II cleaner
Hydrochloric acid	Xanthine sodium salt
Isopropyl alcohol	Zinc sulfate

**EXHIBIT H**

**BASE BUILDING WORK**

25 Science Park Drawing List

Project # 00-069

Science Park at Yale

11/8/02

COVER SHEET

CIVIL

C1	EXISTING CONDITIONS PLAN	REV#1
C2	DEMOLITION PLAN	REV#1
C3	SITE PLAN	REV#2
C4	LAYOUT PLAN	REV#2
C5	GRADING, DRAINAGE & UTILITIES	REV#2
C6	EROSION CONTROL PLAN	REV#2
C7	EROSION CONTROL NOTES & DETAILS	REV#1
C8	LIGHTING AND LANDSCAPING PLAN	REV#2
C9	MISCELLANEOUS DETAILS	REV#2
C10	MISCELLANEOUS DETAILS	REV#1

ARCHITECTURAL

DA0	BASEMENT DEMOLITION PLAN	REV#7
DA0.1	BASEMENT DEMOLITION PLAN	REV#6
DA1	FIRST FLOOR DEMOLITION PLAN	REV#9
DA1.1	FIRST FLOOR DEMOLITION PLAN	REV#8
DA2	SECOND FLOOR DEMOLITION PLAN	REV#7
DA2.1	SECOND FLOOR DEMOLITION PLAN	REV#6
DA3	THIRD FLOOR DEMOLITION PLAN	REV#7
DA3.1	THIRD FLOOR DEMOLITION PLAN	REV#6
DA4	FOURTH FLOOR DEMOLITION PLAN	REV#7
DA4.1	FOURTH FLOOR DEMOLITION PLAN	REV#6
DA5	FIFTH FLOOR DEMOLITION PLAN	REV#7
DA5.1	FIFTH FLOOR DEMOLITION PLAN	REV#6
DA6	SIXTH FLOOR DEMOLITION PLAN	REV#7

DA6.1	SIXTH FLOOR DEMOLITION PLAN	REV#6
DA7	ROOF DEMOLITION PLAN	REV#6
DA7.1	ROOF DEMOLITION PLAN	REV#6
DA7.2	ROOF DEMOLITION PLAN	REV#4
DA8	NORTH ELEV DEMOLITION PLAN	REV#6
DA8.1	EAST & WEST ELEVS. DEMO. PLAN	REV#6
DA8.2	SOUTH ELEV. & BLDG. SECT. DEMO.	REV#6
DA8.3	COURTYARD ELEV DEMOLITION PLAN	REV#8
A0	BASEMENT FLOOR PLAN	REV#6
A0.1	BASEMENT FLOOR PLAN	REV#5
A1	FIRST FLOOR PLAN	REV#8
A1.1	FIRST FLOOR PLAN	REV#7
A2	SECOND FLOOR PLAN	REV#6
A2.1	SECOND FLOOR PLAN	REV#6
A3	THIRD FLOOR PLAN	
A3.1	THIRD FLOOR PLAN	REV#6
A4	FOURTH FLOOR PLAN	REV#6
A4.1	FOURTH FLOOR PLAN	REV#6
A5	FIFTH FLOOR PLAN	REV#6
A5.1	FIFTH FLOOR PLAN	REV#6
A6	SIXTH FLOOR PLAN	REV#6
A6.1	SIXTH FLOOR PLAN	REV#6
A7	SEVENTH FLOOR PLAN	REV#10
A7.1	SEVENTH FLOOR PLAN	REV#4
A8	ROOF PLAN	REV#5
A8.1	ROOF PLAN	REV#5
A9	EXTERIOR ELEVATIONS	REV#11
A9.2	EXT. CONC. RESTORATION PHOTOS	DELETED
A9.3	EXT. CONC. RESTORATION PHOTOS	DELETED
A10	BUILDING SECTIONS	REV#4
A10.1	BUILDING SECTIONS	REV#4
A10.2	BUILDING SECTIONS	REV#4
A10.3	SEVENTH FLR. & STAIR TOWER ELEV.	REV#7
A10.4	SEVENTH FLR. & STAIR TOWER ELEV.	REV#2
A11	SECTION DETAILS	REV#7
A11.1	SECTION DETAILS	REV#6
A11.2	DETAILS	REV#4
A12	ENLARGED ELEVATOR PLANS	REV#7
A12.1	PLANS AT STAIR TOWER	REV#3
A12.2	STAIR SECTIONS AND DETAILS	REV#4
A12.3	NOT ISSUED	

A12.4	TOILET ROOMS LARGE PLANS & DETAILS	REV#4
A12.5	TOILET ROOM INTERIOR ELEVATIONS	REV#3
A12.6	ROOF DETAILS	REV#1
A13	WINDOW SCHEDULE & DETAILS	REV#7
A13.1	STOREFRONT ELEVATIONS & SECTIONS	REV#4
A13.2	STOREFRONT SECTIONS & PLAN DETAILS	REV#2
A14	DOOR SCHEDULE & DETAILS	REV#7
A15	LOBBY PLANS & INTERIOR ELEVATIONS	REV#1
A15.1	INTERIOR DETAILS	REV#1
A16	FINISH SCHEDULE	REV#1
A17	REFLECTED CEILING PLANS	REV#3
A17.1	REFLECTED CEILING PLANS	REV#3
A17.2	REFLECTED CEILING PLANS	REV#3

#### STRUCTURAL

S1	FIRST FLOOR FRAMING PLAN	REV#6
S1.1	FIRST & SECOND FLOOR FRAMING PLN.	REV#4
S2	SECOND FLOOR FRAMING PLAN	REV#8
S3	THIRD FLOOR FRAMING PLAN	REV#7
S4	FOURTH FLOOR FRAMING PLAN	REV#7
S5	FIFTH FLOOR FRAMING PLAN	REV#7
S6	SIXTH FLOOR FRAMING PLAN	REV#7
S7	SEVENTH FLOOR FRAMING PLAN	REV#8
S8	ROOF & COOLING TOWER FRAMING	REV#8
S9	EAST AND WEST ELEVATION PLANS	REV#5
S10	TYPICAL DETAILS	REV#5
S11	SECTIONS AND DETAILS	REV#8
S12	SECTIONS AND DETAILS	REV#8
S13	SECTIONS AND DETAILS	REV#5
S14	COLUMN SCHEDULE AND TYP DETAILS	REV#6

#### FIRE PROTECTION

DFP0	FIRST FLR FIRE PROT. DEMO. PLAN	REV#2
DFP0.1	FIRST FLR FIRE PROT. DEMO. PLAN	REV#2
DFP1	FIRST FLR FIRE PROT. DEMO. PLAN	REV#3
DFP1.1	FIRST FLR FIRE PROT. DEMO. PLAN	REV#3
DFP2	SECOND FLR FIRE PROT. DEMO. PLAN	REV#3

DFP2.1	SECOND FLR FIRE PROT. DEMO. PLAN	REV#2
DFP3	THIRD FLR FIRE PROT. DEMO. PLAN	REV#2
DFP3.1	THIRD FLR FIRE PROT. DEMO. PLAN	REV#2
DFP4	FOURTH FLR FIRE PROT. DEMO. PLAN	REV#2
DFP4.1	FOURTH FLR FIRE PROT. DEMO. PLAN	REV#2
DFP5	FIFTH FLR FIRE PROT. DEMO. PLAN	REV#2
DFP5.1	FIFTH FLR FIRE PROT. DEMO. PLAN	REV#2
DFP6	SIXTH FLR FIRE PROT. DEMO. PLAN	REV#2
DFP6.1	SIXTH FLR FIRE PROT. DEMO. PLAN	REV#2
FP0	BASEMENT FIRE PROTECTION PLAN	REV#2
FP0.1	BASEMENT FIRE PROTECTION PLAN	REV#2
FP1	FIRST FLOOR FIRE PROTECTION PLAN	REV#4
FP1.1	FIRST FLOOR FIRE PROTECTION PLAN	REV#5
FP2	SECOND FLOOR FIRE PROTECTION PLAN	REV#4
FP2.1	SECOND FLOOR FIRE PROTECTION PLAN	REV#2
FP3	THIRD FLOOR FIRE PROTECTION PLAN	REV#4
FP3.1	THIRD FLOOR FIRE PROTECTION PLAN	REV#3
FP4	FOURTH FLOOR FIRE PROTECTION PLAN	REV#4
FP4.1	FOURTH FLOOR FIRE PROTECTION PLAN	REV#2
FP5	FIFTH FLOOR FIRE PROTECTION PLAN	REV#4
FP5.1	FIFTH FLOOR FIRE PROTECTION PLAN	REV#2
FP6	SIXTH FLOOR FIRE PROTECTION PLAN	REV#4
FP6.1	SIXTH FLOOR FIRE PROTECTION PLAN	REV#2
FP7	SEVENTH FLOOR FIRE PROTECTION PLAN	REV#2
FP7.1	SEVENTH FLOOR FIRE PROTECTION PLAN	DELETED
FP9	FIRE PROT. SYMBOLS AND ABBREV.	REV#4
FP9.1	FIRE PROTECTION RISER DETAIL	REV#3

PLUMBING

DP0	BASEMENT PLUMBING DEMOLITION PLAN	REV#2
DP0.1	BASEMENT PLUMBING DEMOLITION PLAN	REV#2
DP1	FIRST FLOOR PLUMBING DEMOLITION PLAN	REV#3
DP1.1	FIRST FLOOR PLUMBING DEMOLITION PLAN	REV#3
DP2	SECOND FLOOR PLUMBING DEMO. PLAN	REV#2
DP2.1	SECOND FLOOR PLUMBING DEMO. PLAN	REV#2
DP3	THIRD FLOOR PLUMBING DEMOLITION PLAN	REV#2
DP3.1	THIRD FLOOR PLUMBING DEMOLITION PLAN	REV#2
DP4	FOURTH FLOOR PLUMBING DEMO. PLAN	REV#2
DP4.1	FOURTH FLOOR PLUMBING DEMO.PLAN	REV#2

DP6	SIXTH FLOOR PLUMBING DEMOLITION PLAN	REV#2
DP6.1	SIXTH FLOOR PLUMBING DEMOLITION PLAN	REV#2
DP8	ROOF PLUMBING DEMOLITION PLAN	REV#2
DP8.1	ROOF PLUMBING DEMOLITION PLAN	REV#2
P0	BASEMENT FLOOR PLUMBING PLAN	REV#2
P0.1	BASEMENT FLOOR PLUMBING PLAN	REV#3
P1	FIRST FLOOR PLUMBING PLAN	REV#4
P1.1	FIRST FLOOR PLUMBING PLAN	REV#3
P2	SECOND FLOOR PLUMBING PLAN	REV#4
P2.1	SECOND FLOOR PLUMBING PLAN	REV#5
P3	THIRD FLOOR PLUMBING PLAN	REV#4
P3.1	THIRD FLOOR PLUMBING PLAN	REV#2
P4	FOURTH FLOOR PLUMBING PLAN	REV#4
P4.1	FOURTH FLOOR PLUMBING PLAN	REV#2
P5	FIFTH FLOOR PLUMBING PLAN	REV#4
P5.1	FIFTH FLOOR PLUMBING PLAN	REV#2
P6	SIXTH FLOOR PLUMBING PLAN	REV#4
P6.1	SIXTH FLOOR PLUMBING PLAN	REV#2
P7	SEVENTH FLOOR PLUMBING PLAN	REV#5
P7.1	SEVENTH FLOOR PLUMBING	DELETED
P9	PLUMBING SYMBOLS AND ABBREVIATIONS	REV#2
P9.1	PLUMBING SCHEDULES	REV#5

MECHANICAL

DM0	BASEMENT MECHANICAL DEMOLITION PLAN	REV#2
DM0.1	BASEMENT MECHANICAL DEMOLITION PLAN	REV#2
DM1	FIRST FLR MECHANICAL DEMOLITION PLAN	REV#2
DM1.1	FIRST FLR MECHANICAL DEMOLITION PLAN	REV#2
DM1.2	FIRST FLR MECHANICAL DEMOLITION PLAN	REV#4
DM2	SECOND FLR MECHANICAL DEMO. PLAN	REV#2
DM2.1	SECOND FLR MECHANICAL DEMO. PLAN	REV#2
DM2.2	SECOND FLR MECHANICAL DEMO. PLAN	REV#3
DM3	THIRD FLR MECHANICAL DEMO. PLAN	REV#2
DM3.1	THIRD FLOOR MECHANICAL DEMO. PLAN	REV#3
DM3.2	THIRD FLOOR MECHANICAL DEMO. PLAN	REV#2
DM4	FOURTH FLOOR MECHANICAL DEMO. PLAN	REV#3
DM4.1	FOURTH FLOOR MECHANICAL DEMO. PLAN	REV#3
DM4.2	FOURTH FLOOR MECHANICAL DEMO. PLAN	REV#2

DM5	FIFTH FLOOR MECHANICAL DEMO. PLAN	REV#4
DM5.1	FIFTH FLOOR MECHANICAL DEMO. PLAN	REV#4
DM5.2	FIFTH FLOOR MECHANICAL DEMO. PLAN	REV#2
DM6	SIXTH FLOOR MECHANICAL DEMO. PLAN	REV#3
DM6.1	SIXTH FLOOR MECHANICAL DEMO. PLAN	REV#4
DM6.2	SIXTH FLOOR MECHANICAL DEMO. PLAN	REV#2
DM8	ROOF MECHANICAL DEMOLITION PLAN	REV#3
DM8.1	ROOF MECHANICAL DEMOLITION PLAN	REV#3
DM8.2	ROOF MECHANICAL DEMOLITION PLAN	REV#4
M0	BASEMENT MECHANICAL PLAN	REV#3
M1	FIRST FLOOR MECHANICAL PLAN	REV#5
M1.1	FIRST FLOOR MECHANICAL PLAN	REV#4
M2	SECOND FLOOR MECHANICAL PLAN	REV#4
M2.1	SECOND FLOOR MECHANICAL PLAN	REV#2
M3	THIRD FLOOR MECHANICAL PLAN	REV#4
M3.1	THIRD FLOOR MECHANICAL PLAN	REV#2
M4	FOURTH FLOOR MECHANICAL PLAN	REV#5
M4.1	FOURTH FLOOR MECHANICAL PLAN	REV#2
M5	FIFTH FLOOR MECHANICAL PLAN	REV#6
M5.1	FIFTH FLOOR MECHANICAL PLAN	REV#2
M6	SIXTH FLOOR MECHANICAL PLAN	REV#5
M6.1	SIXTH FLOOR MECHANICAL PLAN	REV#2
M7	SEVENTH FLOOR MECHANICAL PLAN	REV#4
M7.1	SEVENTH FLOOR MECHANICAL PLAN	REV#3
M7.2	SEVENTH FLOOR MECHANICAL PLAN	REV#4
M7.3	SEVENTH FLOOR MECHANICAL SECTION	SREV#2
M7.4	MECHANICAL SECTIONS	DELETED
M7-2	SEVENTH FLOOR MECHANICAL PLANS	DELETED
M8	ROOF MECHANICAL PLAN	REV#4
M8.1	ROOF MECHANICAL PLAN	REV#2
M9	MECH. ABBREV.'S, SYM.'S SCHED.'S	REV#5
M9.1	MECH. HTG. SYS PIPING DIAGRAMS	REV#3
M9.2	MECH. COND. WATER PIPING DIAGRAMS	REV#3
M9.3	MECH. CHILLED WATER PIPING DIAGRAMS	REV#3
M9.4	MECHANICAL DETAILS	REV#2
M9.5	MECHANICAL DETAILS	DELETED
M10	MECH. TEMP. CONTROL DIAGRAMS	REV#3
M10.1	HTG SYS. TEMP. CONTROL DIAG.'S	REV#4
M10.2	MECH. COND. WATER CONT. DIAG.'S	REV#4



ELECTRICAL

DE0	BASEMENT ELECTRICAL DEMOLITION PLAN	REV#2
DE0.1	BASEMENT ELECTRICAL DEMOLITION PLAN	REV#3
DE1	FIRST FLOOR ELECTRICAL DEMOLITION PLAN	REV#5
DE1.1	FIRST FLOOR ELECTRICAL DEMOLITION PLAN	REV#3
DE1.2	FIRST FLOOR ELECTRICAL DEMOLITION PLAN	REV#3
DE2	SECOND FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE2.1	SECOND FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE3	THIRD FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE3.1	THIRD FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE3.2	THIRD FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE4	FOURTH FLOOR ELECTRICAL DEMO.PLAN	REV#3
DE4.1	FOURTH FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE4.2	FOURTH FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE5	FIFTH FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE5.1	FIFTH FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE5.2	FIFTH FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE6	SIXTH FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE6.1	SIXTH FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE6.2	SIXTH FLOOR ELECTRICAL DEMO. PLAN	REV#2
DE8	ROOF ELECTRICAL DEMOLITION PLAN	REV#4
DE8.1	ROOF ELECTRICAL DEMOLITION PLAN	REV#2
DE8.2	ROOF ELECTRICAL DEMOLITION PLAN	REV#3
DE9	ELECTRICAL SPECIFICATIONS & SCHEDULES	DELETED
E0.1	BASEMENT ELECTRICAL PLAN	REV#4
E1	FIRST FLOOR POWER PLAN	REV#5
E1.1	FIRST FLOOR POWER PLAN	REV#3
E1.2	FIRST FLOOR LIGHTING PLAN	REV#4
E1.3	FIRST FLOOR LIGHTING PLAN	REV#4
E2	SECOND FLOOR ELECTRICAL PLAN	REV#4
E2.1	SECOND FLOOR ELECTRICAL PLAN	REV#2
E3	THIRD FLOOR ELECTRICAL PLAN	REV#4
E3.1	THIRD FLOOR ELECTRICAL PLAN	REV#2
E4	FOURTH FLOOR ELECTRICAL L PLAN	REV#4
E4.1	FOURTH FLOOR ELECTRICAL L PLAN	REV#2
E5	FIFTH FLOOR ELECTRICAL PLAN	REV#4
E5.1	FIFTH FLOOR ELECTRICAL PLAN	REV#2

E6	SIXTH FLOOR ELECTRICAL PLAN	REV#4
E6.1	SIXTH FLOOR ELECTRICAL PLAN	REV#2
E7.1	SEVENTH FLOOR POWER PLAN	REV#4
E7.2	SEVENTH FLOOR LIGHTING PLAN	REV#3
E8	ROOF ELECTRICAL PLAN	REV#4
E8.1	ROOF ELECTRICAL PLAN	REV#2
E9	ELECTRICAL SCHEDULES AND DETAILS	REV#5
E9.1	ELECTRICAL ABBREVIATIONS AND SYMBOLS	REV#3
E9.2	ELECTRICAL RISER DIAGRAM	REV#3
E9.3	ELECTRICAL POWER RISER DIAGRAMS	REV# 3
E9.4	ELECTRICAL RISER DIAGRAMS	REV#2
E-9.2	ELECTRICAL RISER DIAGRAMS	DELETED
SE1	SITE ELECTRICAL PLAN	REV#4

**EXHIBIT H-1**

**ALEXION RELATED WORK**

1. Relocation and reconnection of tenant's roof-mounted chillers and associated controls to the mechanical penthouse, in an area to be designated, on the attached Appendix 1 labeled "Seventh Floor Plan".
2. Remove existing generator from the north bridge and install it based upon Tenant's specifications to be provided to Landlord [Tenant will pay the installation differential based upon its new generator requirement]. Tenant shall handle permitting.
3. Relocate and reconnect the air-cooled chiller and associated pumps and controls from the south bridge to the mechanical penthouse, in an area to be designated.
4. At Landlord's discretion, Landlord will provide a conduit between the third floor phone closet north of the ladies room to the fourth floor server closet, if required.
5. Landlord will repair interior concrete spalling within Tenant's premises in connection with the window replacement work.
6. Dedicated data pipe from the 4<sup>th</sup> floor, if required. Tenant may leave its existing dedicated data/telecommunications conduits in their existing locations. If Landlord's renovation work requires that the conduits be relocated, then Landlord will relocate the conduits at its expense.
7. Demise 5<sup>th</sup> floor laboratory/storage premises and provide a new entrance along common corridor. Tenant needs a double door at this location- or elsewhere into the Premises with access to the freight elevators at 6'-0" W and 7'-6"H since its Premises will be separately demised from direct access to the freight elevator. Landlord shall provide sketches of said work to Tenant for Tenant's approval, which approval shall not be unreasonably withheld, conditioned or delayed.
8. Demise and provide building standard door at 4<sup>th</sup> floor entrance off of the freight elevator lobby. This should be a double door of the size and for the reasons noted above.
9. Provide common area demising at laboratory and pH room as may be required.
10. Provide connections for services that supply and control the 4<sup>th</sup> floor administrative air handler.
11. Connect existing ductwork to the 4<sup>th</sup> floor AHU.
12. Relocate and reconnect existing 2<sup>nd</sup> floor fans and ductwork.
13. Relocate and reconnect pilot plant ductwork for AHUs and exhaust fans.

14. Landlord to provide modifications at the freight area necessary as a result of its demising of the area on the 5<sup>th</sup> floor. Landlord shall provides sketches of said work to Tenant for Tenant's approval, which approval shall not be unreasonably withheld, conditioned or delayed.
15. Landlord shall ensure that the existing perimeter fin tube heating systems for Tenant premises in those areas where existing baseboard heat will be disconnected as a result of the base building renovations including the 4<sup>th</sup> floor administrative area will remain operational.
16. Landlord will install and connect Tenant's existing rental generator.
17. Remove drain piping (including "u" trap) serving all of the existing sinks located within the 2<sup>nd</sup> floor of the Premises and replace with new drain pipe.
18. Landlord shall repair the floor in the 5<sup>th</sup> floor space and the leaks that caused the damage to said floor.

H-1-2

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**EXHIBIT I**

**FINISH WORK**

1. Tenant will separately meter its Premises by September 1, 2003.
2. Relocate door and access controls on the 4th floor administrative area to demise the Premises.
3. pH room to remain on 2nd floor.
4. Tenant to relocate its 3rd floor equipment to the second floor premises and evacuate all but one pipe chase, the location of which shall be coordinated with Landlord, but will remain within the vicinity of suite 380.

## EXHIBIT J

### CONSTRUCTION DOCUMENTS

(a) Preparation of Construction Documents. The Construction Documents shall include all architectural, mechanical, electrical and structural drawings and detailed specifications for the Tenant Work and shall show all work necessary to complete the Tenant Work including all cutting, fitting, and patching and all connections to the mechanical and electrical systems and components of the Building. Tenants leasing partial floors shall design entrances, doors and any other elements which visually integrate with the elevator lobbies and common areas in a manner and with materials and finishes which are compatible with the common area finishes for such floor. Landlord reserves the right to reject Construction Documents which in its reasonable opinion fail to comply with this provision. The Construction Documents shall include:

(i) Major Work Information: A list of any items or matters which might require structural modifications to the Building, including the following:

- (1) Location and details of special floor areas exceeding 150 pounds of live load per square foot;
- (2) Location and weights of storage file areas, batteries, HVAC units and technical areas;
- (3) Location of any special soundproofing requirements;
- (4) Existence of any extraordinary HVAC requirements necessitating perforation of structural members; and
- (5) Existence of any requirements for heavy loads, dunnage or other items affecting the structure.

(ii) Plans Submission: Two blackline drawings and one (1) CAD disk showing all architectural, mechanical and electrical systems, including cutsheets, specifications and the following:

#### CONSTRUCTION PLANS:

- (1) All partitions shall be shown; indicate ratings of all partitions; indicate all non-standard construction and details referenced;
- (2) Dimensions for partition shall be shown to face of stud; critical tolerances and  $\pm$  dimensions shall be clearly noted;
- (3) All doors shall be shown on and shall be numbered and scheduled on door schedule; indicate ratings of all doors;
- (4) All non-standard construction, non-standard materials and/or installation shall be explicitly noted; equipment and finishes shall be shown and details referenced; and

- (5) All plumbing fixtures or other equipment requirements and any equipment requiring connection to Building plumbing systems shall be noted.

REFLECTED CEILING PLAN:

- (1) Layout suspended ceiling grid pattern in each room, describing the intent of the ceiling working point, origin and/or centering; and
- (2) Locate all ceiling-mounted lighting fixtures and air handling devices including air dampers, fan boxes, etc., lighting fixtures, supply air diffusers, wall switches, down lights, special lighting fixtures, special return air registers, special supply air diffusers, and special wall switches.

TELECOMMUNICATIONS AND ELECTRICAL EQUIPMENT PLAN:

- (1) All telephone outlets required;
- (2) All electrical outlets required; note non-standard power devices and/or related equipment;
- (3) All electrical requirements associated with plumbing fixtures or equipment; append product data for all equipment requiring special power, temperature control or plumbing considerations;
- (4) Location of telecommunications equipment and conduits; and
- (5) Components and design of the Antennas (including associated equipment) as installed, in sufficient detail to evaluate weight, bearing requirements, wind-load characteristics, power requirements and the effects on Building structure, moisture resistance of the roof membrane and operations of pre-existing telecommunications equipment.

DOOR SCHEDULE:

- (1) Provide a schedule of doors, sizes, finishes, hardware sets and ratings; and
- (2) Non-standard materials and/or installation shall be explicitly noted.

HVAC:

- (1) Areas requiring special temperature and/or humidity control requirements;
- (2) Heat emission of equipment (including catalogue cuts), such as copy machines, etc.;
- (3) Special exhaust requirements – conference rooms, pantry, toilets, etc.; and
- (4) Any extension of system beyond demised space.

ELECTRICAL:

- (1) Special lighting requirements;
- (2) Power requirements and special outlet requirements of equipment;
- (3) Security requirements;
- (4) Supplied telephone equipment and the necessary space allocation for same; and
- (5) Any extensions of tenant equipment beyond demised space.

PLUMBING:

- (1) Remote toilets;
- (2) Pantry equipment requirements;
- (3) Remote water and/or drain requirements such as for sinks, ice makers, etc.; and
- (4) Special drainage requirements, such as those requiring holding or dilution tanks.

ROOF:

Detailed plan of any existing and proposed roof equipment showing location and elevations of all equipment.

SITE:

Detailed plan, including fencing, pads, conduits, landscaping and elevations of equipment.

SPECIAL SERVICES:

Equipment cuts, power requirements, heat emissions, raised floor requirements, fire protection requirements, security requirements, and emergency power.



(b) Plan Requirements. The Construction Documents shall be fully detailed and fully coordinated with each other and with existing field conditions, shall show complete dimensions, and shall have designated thereon all points of location and other matters, including special construction details and finish schedules. All drawings shall be uniform size and shall incorporate the standard electrical and plumbing symbols and be at a scale of 1/8" = 1'0" or larger. Materials and/or installation shall be explicitly noted and adequately specified to allow for Landlord review, building permit application, and construction. All equipment and installations shall be made in accordance with standard materials and procedures unless a deviation outside of industry standards is shown on the Construction Documents and approved by Landlord. To the extent practicable, a concise description of products, acceptable substitutes, and installation procedures and standards shall be provided. Product cuts must be provided and special mechanical or electrical loads noted. Landlord's approval of the plans, drawings, specifications or other submissions in respect of any work, addition, alteration or improvement to be undertaken by or on behalf of Tenant shall create no liability or responsibility on the part of Landlord for their completeness, design sufficiency or compliance with requirements of any applicable laws, rules or regulations of any governmental or quasi-governmental agency, board or authority.

(c) Drawing and Document Production. Landlord shall provide Tenant with two (2) blackline drawings and one (1) CAD disk showing the Building and site outline, core walls and columns, together with corridor and demising wall location plans.

(d) Change Orders. The Construction Documents shall not be materially changed or modified by Tenant after approval by Landlord without the further approval in writing by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall not be obligated to approve any change or modification of the Construction Documents which in Landlord's sole opinion shall cause any additional cost or expense to Landlord for which Tenant has not agreed to reimburse Landlord.

EXHIBIT K

TENANT WORK INSURANCE SCHEDULE

Tenant's Liability Insurance

Tenant shall be responsible for requiring all Tenant Contractors doing construction or renovation work to purchase and maintain such insurance as shall protect it from the claims set forth below which may arise out of or result from any Tenant Work whether such Tenant Work is completed by Tenant or by any Tenant Contractor or by any person directly or indirectly employed by Tenant or any Tenant Contractor, or by any person for whose acts Tenant or any Tenant Contractor may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Tenant Work to be performed.
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of employees under any applicable employer's liability law.
3. Claims for damages because of bodily injury, or death of any person other than Tenant's or Tenant Contractor's employees.
4. Claims for damages insured by usual personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by the Tenant or Tenant Contractor or (b) by any other person.
5. Claims for damages, other than to the Tenant Work itself, because of injury to or destruction of tangible property, including loss of use therefrom.
6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

Such Tenant's Contractors' Commercial General Liability Insurance shall include premises/operations (including explosion, collapse and underground coverage if such Tenant Work involves any underground work), elevators, independent contractors, completed operations, and blanket contractual liability on all written contracts, all including broad form property damage coverage.

Tenant's Contractors' Commercial General, Automobile, Employers and Umbrella Liability Insurance shall be written for not less than limits of liability as follows:

- a. Commercial General Liability:

	Bodily Injury and Property Damage	As Required by <u>Exhibit K-1</u> .
b.	Comprehensive Automobile Liability:	
	Bodily Injury and Property Damage	\$1,000,000 Each Person \$1,000,000 Each Occurrence
c.	Employer's Liability:	
	Each Accident	\$ 500,000
	Disease - Policy Limit	\$ 500,000
	Disease - Each Employee	\$ 500,000
d.	Umbrella Liability:	
	Bodily Injury and Property Damage	As Required by <u>Exhibit K-1</u> (excess of coverages a,b & c above)

All subcontractors for such Tenant Contractors shall carry the same coverages and limits as specified above, unless different limits are specifically negotiated with Landlord.

The foregoing policies shall contain a provision that coverages afforded under the policies shall not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the Landlord. Certificates of Insurance showing such coverages to be in force shall be filed with the Landlord prior to the commencement of any Tenant Work and prior to each renewal. Coverage for Completed Operations must be maintained for three years following completion of the work and certificates evidencing this coverage must be provided to the Landlord.

The minimum A.M. Best's rating of each insurer shall be A-/VII. Landlord shall be named as an Additional Insured under such Tenant's Contractors' Commercial General and Umbrella Liability Insurance policies.

Such Tenant Contractors' responsibilities include:

- Insuring all materials, on an All Risks basis for the full replacement cost, in transit and until delivered to the project site;
- insuring all tools and equipment used in the installation process;
- assuming costs within the deductible(s) if a property loss is caused by any Tenant Contractor's failure to take reasonable steps to prevent the loss; and
- protecting the site to prevent both natural and man-caused (i.e., arson, theft, vandalism) losses.

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Property Insurance Loss Adjustment

Any insured loss shall be adjusted with the Landlord and made payable to the Landlord, subject to any applicable mortgagee clause.

EXHIBIT K-1

TENANT CONTRACTOR AND SUBCONTRACTOR INSURANCE LIMIT REQUIREMENTS

Division	Trade Description	Trade Number for Limits Required (See Attached)
1. Sitework	Earthwork	3
	Excavation	5
	Grading	2
	Paving	2
	Piling/Caisson	3
	Retention	4
2. Concrete	Formwork	5
	Precasts	5
	Structural	5
3. Masonry	Masonry	5
4. Metal and Structural	Metal Deck	4
	Miscellaneous Metals	2
	Structural Steel	5
5. Carpentry	Millwork	2
	Rough Carpentry	2
	Wood Doors	2
6. Moisture Protection	Caulking	3
	Dampproofing	3
	Roofing/Sheet Metal	5
	Waterproofing	3

Division	Trade Description	Trade Number for Limits Required (See Attached)
7. Doors, Windows and Glass	Curtainwall Glass, Glazing and Aluminum Hardware Hollow Metal Work	5 3 1 1
8. Finishes	Acoustic Ceramic & Quarry Covering Lathe, Plaster & Drywall Resilient Floor Paint & Vinyl Wall	2 2 2 2 2 2
9. Specialties	Access Flooring Partitions Toilet Accessories	1 1 1
10. Equipment	Crane Operations	4
11. Furnishings	Suppliers	1
12. Special Construction	Asbestos Abatement Blasting	5 5
13. Conveying Systems	Elevators Escalators Conveyers Dumbwaiters	5 5 3 3
14. Mechanical	Fire Protection System Plumbing	4 4

	Division	Trade Description	Trade Number for Limits Required (See Attached)
15.	HVAC		5
16.	Electrical	Electrical	5
17.	Demolition	More than 3 stories	10
		Three (3) stories or less	5
	General Contractor	Major Project	50
	General Contractor	Performing the following Work: (a) new construction under 4 stories and less than 150,000 sq. ft.; (b) construction contract up to \$15,000,000; and (c) renovation less the 15% of existing structure.	10

Any unusual or specialized renovation or repair work undertaken by Tenant's General Contractor with respect to this Lease may require other limits of liability than those listed above. Landlord shall make any determination of revised liability limits in consultation with its risk management staff.

**Contractor and Subcontractor Insurance Limit Requirements by Trade Number**

The following are Limits of Liability required depending on the Trade Number of the Contractor.

1. \$1,000,000 Each Occurrence  
\$1,000,000 General Aggregate  
\$1,000,000 Products & Completed Operations Aggregate
2. \$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products & Completed Operations Aggregate

- 3. \$2,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products & Completed Operations Aggregate  
\$1,000,000 Umbrella Each Occurrence/Aggregate

OR

- \$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products & Completed Operations Aggregate  
\$2,000,000 Umbrella Each Occurrence/Aggregate

- 4. \$2,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products & Completed Operations Aggregate  
\$2,000,000 Umbrella Each Occurrence/Aggregate

OR

- \$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products & Completed Operations Aggregate  
\$3,000,000 Umbrella Each Occurrence/Aggregate

- 5. \$2,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products & Completed Operations Aggregate  
\$3,000,000 Umbrella Each Occurrence/Aggregate

OR

- \$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products & Completed Operations Aggregate  
\$4,000,000 Umbrella Each Occurrence/Aggregate

- 10. \$2,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products & Completed Operations Aggregate  
\$8,000,000 Umbrella Each Occurrence/Aggregate

OR

- \$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate



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\$2,000,000 Products & Completed Operations Aggregate  
\$9,000,000 Umbrella Each Occurrence/Aggregate

50. \$ 2,000,000 Each Occurrence  
\$ 2,000,000 General Aggregate  
\$ 2,000,000 Products & Completed Operations Aggregate  
\$49,000,000 Umbrella Each Occurrence/Aggregate

OR

\$ 1,000,000 Each Occurrence  
\$ 2,000,000 General Aggregate  
\$ 2,000,000 Products & Completed Operations Aggregate  
\$50,000,000 Umbrella Each Occurrence/Aggregate

K-1-5

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**EXHIBIT L**  
**RESERVED**

L-1

**EXHIBIT M**  
**LENDER'S FORM OF SUBORDINATION, NONDISTURBANCE**  
**AND ATTORNMENT AGREEMENT**

**LEASE SUBORDINATION, NON-DISTURBANCE**  
**OF POSSESSION AND ATTORNMENT AGREEMENT**

This Lease Subordination, Non-Disturbance of Possession and Attornment Agreement (hereinafter, the "Subordination, Non-Disturbance and Attornment Agreement" or "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2003, among Anglo Irish Bank Corporation plc, a banking corporation organized under the laws of the Republic of Ireland having a place of business at 18/21 St. Stephen's Green, Dublin 2, Ireland (the "Agent"), as agent for itself and any other lenders (collectively, the "Lenders") which may become parties to that certain Construction and Interim Loan Agreement by and among the Borrower, the Agent, and the Lenders, SP-K Development, LLC, a Delaware limited liability company having an address at c/o Lyme Properties, LLC, 101 Main Street, Cambridge, Massachusetts 02142 (hereinafter, the "Landlord" or "Borrower"), and Alexion Pharmaceuticals, Inc., a \_\_\_\_\_, corporation, having a place of business at \_\_\_\_\_ (hereinafter, the "Tenant").

Introductory Provisions

A. The Agent and the Lenders are relying on this Agreement as an inducement to Lender in making and maintaining a loan (hereinafter, the "Loan") secured by, among other things, a **certain Open-End Leasehold Construction Mortgage Deed and Security Agreement** dated as of \_\_\_\_\_, 2002 (hereinafter, the "Mortgage") given by Borrower covering property located and known as Building 25, 150 Munson Street, New Haven, Connecticut, more particularly described on Exhibit A hereto (hereinafter, the "Property"). The Agent is also the "Assignee" under an Assignment of Leases and Rents (hereinafter, the "Assignment") dated as of \_\_\_\_\_, 2002, from Borrower with respect to the Property.

B. Tenant is the tenant under that certain lease (hereinafter, the "Lease") dated \_\_\_\_\_, \_\_\_\_\_, made with Landlord, covering certain premises (hereinafter, the "Premises") at the Property as more particularly described in the Lease.

C. Agent and Lenders require, as a condition to the making and maintaining of the Loan, that the Mortgage be and remain superior to the Lease and that its rights under the Assignment be recognized.

D. Tenant requires as a condition to the Lease being subordinate to the Mortgage that its rights under the Lease be recognized.

E. Agent, Landlord, and Tenant desire to confirm their understanding with respect to the Mortgage and the Lease.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other valuable consideration, the receipt and adequacy of

which are hereby acknowledged, and with the understanding by Tenant that Lender shall rely hereon in making and maintaining the Loan, the Agent, the Landlord, and the Tenant agree as follows:

- I. Subordination. The lien of the Lease and the rights of Tenant thereunder are subordinate and inferior to the lien of the Mortgage and any amendment, renewal, substitution, extension or replacement thereof and each advance made thereunder as though the Mortgage, and each such amendment, renewal, substitution, extension or replacement were executed and recorded, and the advance made, before the execution of the Lease.
- II. Non-Disturbance. So long as Tenant is not in default (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed or observed, (i) Tenant's occupancy of the Premises shall not be disturbed by Agent in the exercise of any of its rights under the Mortgage during the term of the Lease, or any extension or renewal thereof made in accordance with the terms of the Lease, and (ii) Agent will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage.
- III. Attornment and Certificates. In the event Agent succeeds to the interest of Borrower as Landlord under the Lease, or if the Property or the Premises are sold pursuant to the power of sale under the Mortgage, Tenant shall attorn to Agent, or a purchaser upon any such foreclosure sale, and shall recognize Agent, or such purchaser, thereafter as the Landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage, or upon request of any such purchaser, (a) any instrument or certificate which, in the reasonable judgment of such holder(s), or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment, and (b) an instrument or certificate regarding the status of the Lease, consisting of statements, if true (and if not true, specifying in what respect), (i) that the Lease is in full force and effect, (ii) the date through which rentals have been paid, (iii) the duration and date of the commencement of the term of the Lease, (iv) the nature of any amendments or modifications to the Lease, (v) that no default, or state of facts, which with the passage of time, or notice, or both, would constitute a default, exists on the part of either party to the Lease, and (vi) the dates on which payments of additional rent, if any, are due under the Lease.
- IV. Limitations. If Agent exercises any of its rights under the Assignment or the Mortgage, or if Agent shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Property, or the Premises, upon or after any

foreclosure of the Mortgage, or any deed in lieu thereof, Agent or such purchaser, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants and conditions of the Lease on Tenant's part to be paid, performed or observed that the Landlord had or would have had if Agent or such purchaser had not succeeded to the interest of the present Landlord. From and after any such attornment, Agent or such purchaser shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after such attornment to Agent, or to such purchaser, have the same remedies against Agent, or such purchaser, for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord, if Agent or such purchaser had not succeeded to the interest of Landlord; provided, however, that Agent or such purchaser shall only be bound during the period of its ownership, and that in the case of the exercise by Agent of its rights under the Mortgage, or the Assignment, or any combination thereof, or a foreclosure, or deed in lieu of foreclosure, all Tenant claims shall be satisfied only out of the interest, if any, of Agent, or such purchaser, in the Property, and Agent and such purchaser shall not be (a) liable for any act or omission of any prior landlord (including the Landlord); or (b) liable for or incur any obligation with respect to the construction of the Property or any improvements of the Premises or the Property; or (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including the Landlord); or (d) bound by any rent or additional rent which Tenant might have paid for more than the then current rental period to any prior landlord (including the Landlord); or (e) bound by any amendment or modification of the Lease, made without Agent's prior written consent; (f) except any assignment or sublet permitted under the Lease as to which Landlord's consent is not required, bound by any assignment or sublet, made without Agent's prior written consent; or (g) bound by or responsible for any security deposit or proceeds of any letter of credit not actually received by Agent; or (h) liable for or incur any obligation with respect to any breach of warranties or representations of any nature under the Lease or otherwise including without limitation any warranties or representations respecting use, compliance with zoning, landlord's title, landlord's authority, habitability and/or fitness for any purpose, or possession; or (i) liable for or incur any obligation with respect to the payment of any amounts due and owing to the Tenant by the Landlord including, without limitation, payment of any Tenant Allowance (as defined in the Lease); or (j) liable for consequential damages.

- V. Rights Reserved. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of: (a) the Landlord under the Lease, or any subsequent Landlord, against the Tenant in the event of any default by Tenant (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed or observed; or (b) the Tenant under the Lease against the original or any prior Landlord in the event

of any default by the original Landlord to pursue claims against such original or prior Landlord whether or not such claim is barred against Agent or a subsequent purchaser.

- VI. Notice and Right to Cure. Tenant agrees to provide Agent with a copy of each notice of default under the Lease or failure of Landlord to satisfy a condition precedent to Tenant's obligations under the Lease, at the same time as Tenant provides Landlord with such notice, and that in the event of any default or failure by the Landlord under the Lease, Tenant will take no action to terminate the Lease (a) if the default or failure is not curable by Agent (so long as the default does not interfere with Tenant's use and occupation of the Premises), or (b) if the default or failure is curable by Agent, unless the default or failure remains uncured for a period of thirty (30) days after written notice thereof shall have been given, postage prepaid, to Landlord at Landlord's address, and to Agent at the address provided in Section 7 below; provided, however, that if any such default or failure is such that it reasonably cannot be cured within such thirty (30) day period, such period shall be extended for such additional period of time as shall be reasonably necessary (including, without limitation, a reasonable period of time to obtain possession of the Property and to foreclose the Mortgage), if Agent gives Tenant written notice within such thirty (30) day period of Agent's election to undertake the cure of the default or failure and if curative action (including, without limitation, action to obtain possession and foreclose) is instituted within a reasonable period of time and is thereafter diligently pursued. Agent shall have no obligation to cure any default or failure under the Lease.
- VII. Notices. Any notice or communication required or permitted hereunder shall be in writing, and shall be given or delivered: (i) by United States mail, registered or certified, postage fully prepaid, return receipt requested, or (ii) by recognized courier service or recognized overnight delivery service; and in any event addressed to the party for which it is intended at its address set forth below:

To Agent:

Anglo Irish Bank Corporation plc  
84 State Street – 4<sup>th</sup> Floor  
Boston, Massachusetts 02109  
Attention: Mr. Paul Doyle, Vice President

and

Anglo Irish Bank Corporation, plc  
18/21 St. Stephen's Green  
Dublin 2, Ireland  
Attn: William Barrett, Director

with copies by regular mail or such hand delivery:

Riemer & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts 02108  
Attention: Steven J. Weinstein, Esquire

If to the Landlord:

SP-K Development, LLC  
c/o Lyme Properties, LLC  
101 Main Street, 18<sup>th</sup> Floor  
Cambridge, Massachusetts 02142  
Attention: Robert L. Green, Esquire

with copies by regular mail or such hand delivery or facsimile transmission to:

Hill & Barlow  
One International Place  
Boston, Massachusetts 02110  
Attention: Greg D. Peterson, Esquire

If to Tenant:

Alexion Pharmaceuticals, Inc.

\_\_\_\_\_

Attention: \_\_\_\_\_

with a copy to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

or such other address as such party may have previously specified by notice given or delivered in accordance with the foregoing. Any such notice shall be deemed to have been given and received on the date delivered or tendered for delivery during normal business hours as herein provided.

- VIII. No Oral Change. This Agreement may not be modified orally or in any manner than by an agreement in writing signed by the parties hereto or their respective successors in interest.
- IX. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, personal representatives, successors and

assigns, and any purchaser or purchasers at foreclosure of the Property or any portion thereof, and their respective heirs, personal representatives, successors and assigns.

- X. Payment of Rent To Agent. Tenant acknowledges that it has notice that the Lease and the rent and all sums due thereunder have been assigned to Agent, on behalf of the Lenders, as part of the security for the obligations secured by the Mortgage. In the event Agent notifies Tenant of a default under the Loan and demands that Tenant pay its rent and all other sums due under the Lease to Agent, Tenant agrees that it will honor such demand and pay its rent and all other sums due under the Lease to Agent, or Agent's designated agent, until otherwise notified in writing by Agent. Borrower unconditionally authorizes and directs Tenant to make rental payments directly to Agent following receipt of such notice and further agrees that Tenant may rely upon such notice without any obligation to further inquire as to whether or not any default exists under the Mortgage or the Assignment, and that Borrower shall have no right or claim against Tenant for or by reason of any payments of rent or other charges made by Tenant to Agent following receipt of such notice.
- XI. No Amendment or Cancellation of Lease. So long as the Mortgage remains undischarged of record, Tenant shall not amend, modify, cancel or terminate the Lease, or consent to an amendment, modification, cancellation or termination of the Lease, or agree to subordinate the Lease to any other mortgage, without Agent's prior written consent in each instance.
- XII. Options. With respect to any options for additional space provided to Tenant under the Lease, Agent agrees to recognize the same if Tenant is entitled thereto under the Lease after the date on which Agent succeeds as Landlord under the Lease by virtue of foreclosure or deed in lieu of foreclosure or Agent takes possession of the Premises; provided, however, Agent shall not be responsible for any acts of any prior landlord under the lease, or the act of any tenant, subtenant or other party which prevents Agent from complying with the provisions hereof and Tenant shall have no right to cancel the Lease or to make any claims against Agent on account thereof.
- XIII. Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.
- XIV. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.
- XV. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.



XVI. Parties Bound. The provisions of this Agreement shall be binding upon and inure to the benefit of Tenant, Agent, Lender and Borrower and their respective successors and assigns; provided, however, reference to successors and assigns of Tenant shall not constitute a consent by Landlord or Borrower to an assignment or sublet by Tenant, but has reference only to those instances in which such consent is not required pursuant to the Lease or for which such consent has been given.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

AGENT:

Anglo Irish Bank Corporation plc

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT:

Alexion Pharmaceuticals, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

COMMONWEALTH OF MASSACHUSETTS

, ss.

, 2003

Then personally appeared before me \_\_\_\_\_, a \_\_\_\_\_ of Anglo Irish Bank Corporation plc and acknowledged the foregoing to be his free act and deed and the free act and deed of said Anglo Irish Bank Corporation plc.

\_\_\_\_\_  
, Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_

, ss.

\_\_\_\_\_, 2003

Then personally appeared before me \_\_\_\_\_, a \_\_\_\_\_ of \_\_\_\_\_, and acknowledged the foregoing to be such person's free act and deed and the free act and deed of said \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
My Commission Expires: \_\_\_\_\_

SP-K Development, LLC, as Landlord under the Lease, and Borrower under the Mortgage, the Loan Agreement and the other Loan Documents, agrees for itself and its successors and assigns that:

XVII. The above agreement does not:

- A. constitute a waiver by Agent of any of its rights under the Mortgage or any of the other Loan Documents; or
- B. in any way release Borrower from its obligations to comply with the terms, provisions, conditions, covenants and agreements and clauses of the Mortgage and other Loan Documents;

XVIII. The provisions of the Mortgage remain in full force and effect and must be complied with by Borrower;

XIX. Tenant shall have the right to rely on any notice or request from Agent which directs Tenant to pay rent to Agent without any obligation to inquire as to whether or not a default exists and notwithstanding any notice from or claim of Borrower to the contrary. Borrower shall have no right or claim against Tenant for rent paid to Agent after Agent so notifies Tenant to make payment of rent to Agent; and

XX. The Borrower shall be bound by all of the terms, conditions and provisions of the foregoing Agreement in all respects.

Executed and delivered as a sealed instrument as of the \_\_\_\_ day of \_\_\_\_\_, 2003.

BORROWER:

SP-K Development, LLC  
By its manager,

Lyme Properties, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

M-9

STATE OF \_\_\_\_\_

, ss.

, 20\_\_

Then personally appeared the above-named \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ and  
acknowledged the foregoing to be his (her) free act and deed as the \_\_\_\_\_ of \_\_\_\_\_ and the free act and deed of said  
\_\_\_\_\_.

\_\_\_\_\_  
, Notary Public  
My Commission Expires: \_\_\_\_\_

EXHIBIT N

GROUND LESSOR'S FORM OF SUBORDINATION, NONDISTURBANCE AND  
ATTORNMEN T AGREEMENT

Date: \_\_\_\_\_

Ground Landlord:

Ground Tenant:

Subtenant:

Ground Lease:

Dated as of \_\_\_\_\_, between Ground Landlord, and Ground Tenant, notice of which is recorded with the City of New Haven Land Records (the "Land Records") at Volume \_\_\_\_\_, Page \_\_\_\_\_.

Sublease:

Dated as of \_\_\_\_\_, 20\_\_, between Tenant and Subtenant, notice of which is recorded with the City of New Haven Land Records at Volume \_\_\_\_\_, Page \_\_\_\_.

Premises:

(i) A parcel consisting of the land known as \_\_\_\_\_, together with \_\_\_\_\_ and other improvements constructed or to be constructed thereon, all as more particularly described in the Ground Lease, (capitalized terms in this description, not otherwise defined, shall have the same meaning as assigned in the Ground Lease.)

Subleased Premises:

The portion of the Premises described in the Sublease.

Ground Landlord is owner of the Premises which are subject to the Ground Lease and the Sublease.

Tenant and Subtenant have entered into, or are about to enter into, the Sublease, a copy of which is attached as Exhibit A (provided that a copy of the Sublease shall not be attached to any counterpart of this Agreement to be recorded at the Registry of Deeds).

In consideration of the agreements contained herein, the parties agree as follows:

I. Subordination

Subtenant confirms and agrees that the Sublease and any extensions, renewals, amendments, modifications, consolidations, replacements and expansions thereof, and all right, title and interest of Subtenant thereunder in and to the Subleased Premises, are and shall be subject and subordinate to the Ground Lease and to all the terms and conditions contained therein, and to all extensions, renewals, amendments, modifications, consolidations, replacements and expansions thereof as though each such extension, renewal, amendment, modification, consolidation, replacement and expansion were executed, delivered and notice thereof recorded before the execution of the Sublease. Without limiting the foregoing and notwithstanding any other term or provision of this Agreement, Subtenant's rights with respect to proceeds of insurance and eminent domain awards are expressly made subject and subordinate to the Ground Landlord's obligations to permit such proceeds to be applied to the restoration of the Premises, in the manner and to the extent set forth in the Ground Lease, and the disposition of such proceeds shall be governed by the Ground Lease in all respects.

II. Non-Disturbance

- A. Ground Landlord consents to the execution and delivery of the Sublease in the form attached as Exhibit A.
- B. Provided that the Sublease is then in full force and effect, Ground Landlord agrees that, in the event of a termination or expiration of any Ground Lease or the exercise by Ground Landlord of any of its rights thereunder to take possession of and to operate the Premises, Ground Landlord shall not disturb Subtenant's right of possession of the Subleased Premises or any of Subtenant's other rights in the Premises under the terms of the Sublease so long as Subtenant is not in default beyond any applicable notice and/or grace period of any term, covenant or condition of the Sublease.

III. Attornment

- A. Subtenant agrees that, in the event of a termination or expiration of the Ground Lease or the exercise by Ground Landlord of any of its rights thereunder to take possession of and to operate the Premises, Subtenant will attorn to and recognize Ground Landlord as its direct landlord under the Sublease for the remainder of the term thereof (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Sublease, and Subtenant hereby agrees to pay and perform all of the obligations of Subtenant pursuant to the Sublease. Ground Landlord agrees that, in the event of a termination or expiration of the Ground Lease or the exercise by Ground Landlord of any of its rights thereunder to take possession of and to operate the Premises, Ground Landlord shall succeed to the position of Sublandlord under the Sublease and recognize Subtenant as its direct tenant under the Sublease for the remainder of the term thereof (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Sublease and shall perform all of the obligations of Sublandlord pursuant to the Sublease, except as set forth in Section III.B below.
- B. Subtenant agrees that, in the event Ground Landlord succeeds to the position of Sublandlord under the Sublease, Ground Landlord shall not be:
1. liable for any act or omission of any prior Sublandlord under the Sublease (including, without limitation, Ground Tenant or Subtenant); provided that, subject to Section III.B.6 below, the foregoing shall not relieve Ground Landlord of the obligation to remedy or cure any conditions at the Premises the existence of which constitutes a default by Sublandlord under the Sublease and which continue at the time of such succession;
  2. liable for the return of any security deposit unless Ground Landlord is holding the same;
  3. bound by any rent or additional rent which Subtenant may have prepaid for more than one (1) month under the Sublease that was not set forth in the Sublease or otherwise approved in writing by Ground Landlord;
  4. bound by any amendments or modifications of the Sublease that were not set forth in the Sublease or otherwise approved in writing by Ground Landlord;
  5. subject to any offsets, claims or defenses which Subtenant might have against any prior Sublandlord (including, without limitation, Ground Tenant or Subtenant), except as expressly provided in the Sublease;

6. responsible for Sublandlord's performance of the initial construction and delivery of the Subleased Premises or any portion thereof or any improvement thereof or to indemnify Subtenant for any loss resulting from a failure to timely deliver the Subleased Premises; provided that the foregoing shall not derogate from any off-set, rent credit, and termination rights of the Subtenant that are expressly set forth in the Sublease;
  7. liable to Subtenant beyond Ground Landlord's interest in the Premises and the rents, income, receipts, revenues, issues and profits issuing from the Premises;
  8. liable for or incur any obligations with respect to any breach of warranties or representations of any nature under the Sublease or otherwise including, without limitation, any warranties or representations regarding use, compliance with or applicability of zoning, title, authority or possession; or
  9. liable for consequential damages.
- C. Ground Landlord will have the same remedies for the nonperformance of any agreement contained in the Sublease which Ground Tenant had or would have had if the ground Lease had not been terminated. Subject to Section III.B above, Subtenant will have the same remedies for the nonperformance of any agreement contained in the Sublease which Subtenant had or would have had if the Ground Lease had not been terminated. The limitations set forth in Section III.B above as to Ground Landlord shall not affect, impair, or abrogate any claims or remedies that Subtenant may have against the prior Sublandlord.



IV. Notice and Cure

Subtenant agrees to give Ground Landlord a copy of any notice of default under the Sublease served upon Ground Tenant, at the same time as such notice is given to Ground Tenant. Subtenant further agrees that if Tenant shall have failed to cure such default then Ground Landlord (provided that Ground Landlord is not acting in the capacity as Subtenant and, within thirty (30) days after written notice thereof shall have been given to Ground Landlord, Ground Landlord gives Subtenant notice of its intention to cure the default) shall have an additional sixty (60) days beyond the time period set forth in the Sublease for the curing of defaults within which to cure such default, or, if no such cure period is set forth in the Sublease, shall have sixty (60) days from date notice is first given to Subtenant to cure such default. Nothing in this Section IV shall otherwise affect the rights of Subtenant (or extend the time periods) set forth in the Sublease, including without limitation in Article 3 (initial construction and delivery of the Subleased Premises), Section 5.2 (interruption of services), or Article 7 (casualty and taking). Ground Landlord agrees to give Subtenant a copy of any notice of default under the Lease served upon Ground Tenant, at the same time as such notice is given to Subtenant.

V. Further Assurances

The subordination provisions hereof are effective upon execution hereof and the non-disturbance and attornment provisions hereof shall operate immediately upon Ground Landlord succeeding to the position of Sublandlord as aforesaid provided that the Sublease is then in full force and effect and Subtenant is not then in default beyond any applicable grace period of any term, covenant or condition of the Sublease, in either event without execution of any further instrument. Ground Landlord and Subtenant agree, however, to execute and deliver from time to time such further documentation as any such party deems necessary or appropriate to evidence their agreement hereunder.

VI. Modification of Sublease

As set forth in Section III.B above, any agreement made by either Subtenant or its successors or assigns that amends or modifies the Sublease except as expressly set forth in the Lease, without the prior written consent of Ground Landlord, shall not be binding on Ground Landlord or its successors or assigns.

VII. Options

With respect to any options or rights of first refusal for additional space provided to Subtenant under the Sublease, Ground Landlord agrees to recognize the same if Subtenant is entitled thereto under the Sublease after the date on which Ground Landlord succeeds to the interest of Sublandlord under the Sublease; provided that Ground Landlord shall not be liable in damages to Subtenant for any acts of any prior Sublandlord (including, without limitation, Ground Tenant) or the acts of any other party (whether or not consented to by Ground Landlord) that prevent Ground Landlord from complying with the provisions hereof.

VIII. Successors and Assigns

- A. The term “Ground Landlord“ as used in this Agreement means only the owner (or the owner’s nominee) for the time being of the fee title to the Premises. In the event of any sale or other transfer of an interest in the Premises, the Ground Landlord named herein shall be and hereby is entirely relieved of all covenants and obligations of the Ground Landlord hereunder from and after the date of such transfer, provided that the transferee assumes all of the covenants and obligations of Ground Landlord hereunder.
- B. Except as otherwise provided, this Agreement is binding upon and shall inure to the benefit of the parties hereto and their heirs, successors, personal representatives, and assigns.

IX. Non-Recourse

Subtenant agrees that execution by Ground Landlord of this Agreement and execution of the Ground Lease by Ground Landlord does not constitute an assumption by Ground Landlord of any obligations or liabilities under the Sublease, and that Ground Landlord is not bound to perform Tenant’s obligations under the Sublease unless and until Ground Landlord succeeds to Tenant’s position under the Sublease as set forth above, it being understood that Ground Landlord cannot be bound by any act or omission of Tenant, its successors or assigns. Subtenant further agrees that, in the event Ground Landlord succeeds to Tenant’s position under the Sublease as aforesaid, Ground Landlord’s liability under the Sublease shall be enforceable only out of Ground Landlord’s interest in the Premises and the rents, income, receipts, revenues, issues and profits issuing from the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment against, Ground Landlord or any other assets of Ground Landlord, nor shall there be any personal liability on the part of any member of its board of directors or any officer or employee of Ground Landlord, with respect to any obligations to be performed under the Sublease.

X. Validity of Provisions

The invalidity of any provision of this agreement shall in no way affect the validity of any other provision.

XI. Governing Law

This agreement shall be interpreted in accordance with and governed by the laws of The State of Connecticut.

XII. Jurisdiction

The parties submit to personal jurisdiction in The State of Connecticut and waive any and all personal rights to object to such jurisdiction. The parties agree service of process may

be made and personal jurisdiction obtained by serving them at the addresses stated on the first page hereof.

XIII. Notices

All notices given hereunder shall be in writing and shall be deemed received at the earlier of when delivered in hand or seventy two (72) hours after the same have been deposited in the United States mails, postage prepaid, certified or registered mail, return receipt requested, addressed to any party at its address appearing on the first page hereof (and, with respect to Subtenant after the term commencement date of the Sublease, at the Sublease Premises), or to such other address or addresses as the parties may from time to time specify by notice so given.

XIV. Changes in Writing

This Agreement may not be changed, waived, or terminated except in a writing signed by the party against whom enforcement of the change, waiver, or termination is sought.

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Executed under seal as of the date first written above.

GROUND LANDLORD:

[SPDC Entity]

By: \_\_\_\_\_

TENANT:

[Lyme Entity]

By: \_\_\_\_\_

SUBTENANT:

[Subtenant Entity]

By: \_\_\_\_\_

THE STATE OF CONNECTICUT

County of \_\_\_\_\_

\_\_\_\_\_

[Insert Date]

Then personally appeared the above named \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, and acknowledged the foregoing instrument to be \_\_\_\_\_ free act and deed and the free act and deed of the \_\_\_\_\_, before me,

\_\_\_\_\_  
Notary Public  
My commission expires:

THE STATE OF CONNECTICUT

County of \_\_\_\_\_

\_\_\_\_\_

[Insert Date]

Then personally appeared the above named \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, and acknowledged the foregoing instrument to be \_\_\_\_\_ free act and deed and the free act and deed of the \_\_\_\_\_, before me,

\_\_\_\_\_  
Notary Public  
My commission expires:

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**EXHIBIT O**

**APPROVED TENANT CONTRACTORS**

Controlled Air  
Creative Builders  
Integrated Process Technolitics  
MIS-MacDonald Industrial Services  
Professional Security Bureau

**EXHIBIT P**

**PROPERTY THAT MUST REMAIN IN THE PREMISES**

**LEAVE:**

Air-cooled condensing units  
AHU's with supply & exhaust fans  
Chillers + pumps and tanks (NON-PROCESS)  
Clean cold rooms and associated equipment  
Control systems  
Walk-in controlled environment enclosures + rooms  
Fume hoods  
Humidifiers (NON-PROCESS)  
Kitchen casework  
Lab casework  
Security systems  
Stainless steel piping/valves/pumps to the extent attached to floors, walls or ceilings  
Steam pressure reducing stations (NON-PROCESS)  
Variable frequency drivers (NON-PROCESS)

**EXHIBIT P-1**

**PROPERTY THAT MUST BE REMOVED FROM THE PREMISES**

**REMOVE:**

Air compressor  
Air dryers - compressed air  
Autoclaves  
Automated transfer switches  
Back-up generators  
Bio-safety cabinets  
Ceiling-mounted HEPA filter modules  
Chillers and related pumps and tanks (PROCESS ONLY)  
Boilers and check valves (PROCESS ONLY)  
Clothes washers/dryers  
Compressed gas storage racks & portable closets  
Corrosive/acid/base storage cabinets  
Glassware washer  
Lab ice maker  
Water filters (PROCESS ONLY)  
Water softeners (PROCESS ONLY)  
Water systems (PROCESS ONLY)