

Portions of this exhibit marked [\*] are omitted and requested to be treated confidentially.

**AMENDMENT NO. 2**  
to  
**DEVELOPMENT AND LICENSE AGREEMENT**  
between  
**GLAXO GROUP LIMITED**  
and  
**ADHEREX TECHNOLOGIES INC.**

THIS AMENDMENT NO. 2 (this “Second Amendment”) effective on this 23<sup>rd</sup> day of June, 2006 (the “Second Amendment Effective Date”), is entered into by and between **Glaxo Group Limited**, a company organized under the laws of England and Wales, having its registered office at GlaxoWellcome House, Berkeley Avenue, Greenford, Middlesex, UB6 0NN United Kingdom (“GGL”) and **Adherex Technologies Inc.**, a company organized under the laws of Canada and having an office located at 4620 Creekstone Drive, Suite 200, Durham, North Carolina, 27703 USA (“Adherex”):

**RECITALS**

- A. The Parties entered into the Development and License Agreement, effective as of July 14, 2005 (the “Agreement”).
- B. The Parties entered into Amendment No. 1 to the Agreement, effective December 20, 2005, relating to the Exherin™ Option.
- C. The Parties now desire to further amend the Agreement in certain respects on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below, the Parties, intending to be legally bound, hereby amend the Agreement and otherwise agree as follows:

1. Defined Terms. All terms used in this Second Amendment but not defined herein shall have the same meaning as set forth in the Agreement.
  2. Addition of Section 1.98. The following definition is hereby added to the end of Article 1 of the Agreement to read in its entirety as follows:
 

“1.98 **“Option E”** means the GGL Option described in Section 2.4.8.”
  3. Addition of Section 1.99. The following definition is hereby added to the end of Article 1 of the Agreement to read in its entirety as follows:
 

“1.99 **“Eniluracil [\*] Clinical Trials”** means those [\*] Clinical Trials referred to hereunder as [\*] and [\*] for Eniluracil conducted by Adherex, as further described in Appendix 9, attached hereto and incorporated herein. For greater certainty, it does not include the [\*] Clinical Trial referred to hereunder as [\*], as further described in Appendix 9.”
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4. Addition of Section 1.100. The following definition is hereby added to the end of Article 1 of the Agreement to read in its entirety as follows:
 

“1.100 **“[\*] Studies”** means those [\*] studies on Eniluracil conducted by Adherex as further described in Appendix 10, attached hereto and incorporated herein.”
  5. Addition of Section 1.101. The following definition is hereby added to the end of Article 1 of the Agreement to read in its entirety as follows:
 

“1.101 **“[\*] Trial”** means the clinical trial to be conducted by Adherex as further described in Appendix 11, the current outline of which is attached hereto and incorporated herein.”
  6. Amendment of Section 1.36. Section 1.36 is hereby amended and restated in its entirety to read follows:
 

“1.36. **“GGL Option(s)”** means any of Option B, Option C, or Option E which permit GGL to assume Development and Commercialization of Eniluracil and Products from Adherex as set forth in Section 2.4.”
  7. Deletion of Section 1.64. Section 1.64 (“Option A”) is hereby deleted in its entirety from the Agreement.
  8. Deletion of Section 1.82. Section 1.82 (“[\*] Trial”) is hereby deleted in its entirety from the Agreement.
  9. Amendment of Section 1.95. Section 1.95 of the Agreement is hereby amended and restated in its entirety to read follows:
 

“1.95 **“Trials”** means Phase I, Phase II, Phase III, and [\*] Trial, as applicable.”

10. Amendment of Section 2.1.1. Section 2.1.1 of the Agreement is hereby amended and restated in its entirety to read follows:

“2.1.1. [\*] Trial. Adherex shall conduct the [\*] Trial in accordance with the specifics set forth in Appendix 11.”

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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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11. Amendment of Section 2.2.1. Section 2.2.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

“2.2.1 Diligence Milestones

<u>Milestone</u>	<u>Milestone Date</u>
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]

With respect to the second and fourth milestones described above, the accomplishment of such milestone in [\*] shall be deemed to be the achievement of such milestone, and Licensee shall not be required to satisfy such milestone for [\*] under this Section 2.2.1. If and when Adherex is the Licensee, the dates specified above as applied to Adherex assume the materials transferred to Adherex by GGL under Section 2.5 below conform to the specifications of study drug in the GGL US IND (as defined in Section 7.2) and may reasonably be used by Adherex in Development for the accomplishment of such milestones. If such materials do not conform to such specifications, or cannot otherwise reasonably be used by Adherex for the accomplishment of such Development milestones, the dates specified above as they apply to Adherex shall be extended by a reasonable period of time as necessary to permit Adherex to obtain alternative supplies of such materials in quantities and of qualities reasonably sufficient to accomplish those Development milestones. Similarly, if, at the time GGL exercises a GGL Option, GGL does not have sufficient quantities of materials to resume Development of a Product, the dates above as they apply to GGL shall be extended by a reasonable period of time as necessary to permit GGL to obtain alternative supplies of such materials in quantities and of qualities reasonably sufficient to accomplish those Development milestones.”

12. Amendment to Section 2.4.1. Section 2.4.1 of the Agreement is hereby deleted in its entirety thereby making Option A null and void.

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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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13. Amendment to Section 2.4.2. Section 2.4.2 of the Agreement is hereby amended and restated in its entirety to read as follows:

“2.4.2 Option B. Following completion by Adherex of [\*], GGL shall have the right, for a limited period of time as further described below, to terminate Adherex’s license to the Product set forth in Section 4.1 in its entirety and be granted an exclusive license by Adherex under Section 4.2 to research, Develop, make, have made, use, and Commercialize Eniluracil and Products for all indications in all dosage forms and combinations, formulations, presentations, line extensions and package configurations in all countries of the Territory in which there is a Valid Claim of the GGL Patents, Adherex Patents, or any Joint Invention Patents. Adherex shall notify GGL in writing within ten (10) business days of completion of [\*] (such notice, the “Option B Notice”), and shall promptly provide GGL with information regarding [\*] reasonably necessary for GGL to decide whether or not to exercise its Option including, at a minimum, [\*], and any further information in Adherex’s possession reasonably requested by GGL. Upon GGL’s exercise of Option B within the time period described below, Adherex shall cease all development and commercialization of Eniluracil and the Product in all countries of the Territory in which there is a Valid Claim of the GGL Patents, Adherex Patents, or any Joint Invention Patents. GGL shall provide Adherex with written notice of its decision whether to exercise Option B within [\*] of Adherex’s notice to GGL of completion of [\*] and provision to GGL by Adherex of [\*] in accordance with this Section 2.4.2. If GGL does not exercise Option B within such [\*] period, Option B shall expire, and GGL shall have no further rights under this Section 2.4.2.”

14. Amendment to Section 2.4.3. Section 2.4.3 is hereby amended and restated in its entirety to read as follows:

“2.4.3 Option C. Upon Adherex’s [\*] and [\*], if GGL has not exercised Option B or Option E, GGL shall have the right, for a limited period of time as further described below, to terminate Adherex’s license to the Product set forth in Section 4.1 in its entirety and be granted an exclusive license by Adherex under Section 4.2 to research, Develop, make, have made, use, and Commercialize Eniluracil and Products for all indications in all dosage forms and combinations, formulations, presentations,

line extensions and package configurations in all countries of the Territory in which there is a Valid Claim of the GGL Patents, Adherex Patents, or any Joint Invention Patents. Adherex shall notify GGL within ten (10)

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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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business days of the [\*] (such notice, the “Option C Notice”). Adherex shall also promptly provide GGL with [\*] if and as requested by GGL. Upon GGL’s exercise of Option C within the time period described below and subject to Section 2.4.6, Adherex shall cease all Development and Commercialization of Eniluracil and the Product in all countries of the Territory in which there is a Valid Claim of the GGL Patents, Adherex Patents, or any Joint Invention Patents. GGL shall provide Adherex with written notice of its decision whether to exercise Option C within [\*] of receipt of the Option C Notice from Adherex. If GGL does not exercise Option C within such [\*] period, Option C shall expire, and GGL shall have no further rights under this Section 2.4.3.”

15. Amendment to Section 2.4.7. Section 2.4.7 is hereby amended and restated in its entirety to read as follows:

“2.4.7 Reimbursement of Costs Incurred With Respect to GGL Option Period. If GGL exercises Option B, Option C or Option E, respectively, GGL shall reimburse Adherex for all amounts approved by GGL in writing and incurred or expended by Adherex during the [\*] period following Adherex’s provision of the Option B Notice, Option C Notice, or the Option E Notice, respectively, with respect to the Development or Commercialization of Eniluracil and any Products during the applicable time period, including but not limited to any amounts incurred under the contracts referenced in Section 4.3.3 that are assumed by GGL, following provision to GGL of the Option B Notice, Option C Notice or Option E Notice, respectively.”

16. Addition of Section 2.4.8. Section 2.4.8 is hereby added to the Agreement to read in its entirety as follows:

“2.4.8 Option E. Following completion by Adherex of the [\*] Trial, if GGL has not exercised Option B or Option C, GGL shall have the right, for a limited period of time as further described below, to terminate Adherex’s license to the Product set forth in Section 4.1 in its entirety and be granted an exclusive license by Adherex under Section 4.2 to research, Develop, make, have made, use, and Commercialize Eniluracil and Products for all indications in all dosage forms and combinations, formulations, presentations, line extensions and package configurations in all countries of the Territory in which there is a Valid Claim of the GGL Patents, Adherex Patents, or any Joint Invention Patents. Adherex shall notify GGL in writing within ten (10) business days of completion of the

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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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[\*] Trial for Eniluracil, [\*] (such notice, the “Option E Notice”), and shall promptly provide GGL with information regarding such trial reasonably necessary for GGL to decide whether or not to exercise its Option including, at a minimum, [\*], and any further information in Adherex’s possession reasonably requested by GGL. Upon GGL’s exercise of Option E within the time period described below, Adherex shall cease all development and commercialization of Eniluracil and the Product in all countries of the Territory in which there is a Valid Claim of the GGL Patents, Adherex Patents, or any Joint Invention Patents. GGL shall provide Adherex with written notice of its decision whether to exercise Option E within [\*] of Adherex’s notice to GGL of completion of the [\*] Trial for Eniluracil and provision to GGL by Adherex of [\*] regarding such Trial in accordance with this Section 2.4.8. If GGL does not exercise Option E within such [\*] period, Option E shall expire, and GGL shall have no further rights under this Section 2.4.8.”

17. Amendment to Section 3.1.1. Section 3.1.1 is hereby amended and restated in its entirety to read as follows:

“3.1.1 Formation of Transition Team. If GGL exercises Option C or Option E, the Joint Steering Committee shall form a Transition Team (the “Transition Team”) comprised of equal representatives of Adherex and GGL. The Transition Team shall oversee the orderly and efficient transition of Development and Commercialization on Eniluracil and Products from Adherex to GGL and shall ensure the transfer of materials and information and provision of assistance from Adherex to GGL as set forth in Section 7.8. The Transition Team shall determine which ongoing Trials of Adherex shall be transferred to GGL and shall work to ensure uninterrupted provision of Eniluracil to patients receiving Eniluracil under any Trials conducted by Adherex at the time GGL exercises Option C or Option E.”

18. Amendment to Section 4.1.1. Section 4.1.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

“4.1.1 Termination of License to Adherex. Notwithstanding Section 4.1, the license granted by GGL to Adherex pursuant to Section 4.1 shall terminate immediately upon the earliest to occur of:

(a) the date GGL exercises Option B, Option C, or Option E, in accordance with the provisions of Section 2.4.2, 2.4.3 or 2.4.8, as applicable;

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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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(b) the date Adherex notifies GGL that Adherex does not intend to Develop or Commercialize, or continue to Develop or Commercialize, any Products, such notice to be made promptly after Adherex makes such determination; or

(c) in the event Adherex has not exercised Diligent Efforts to Develop or Commercialize a Product, the date GGL notifies Adherex that Adherex has not exercised Diligent Efforts to Develop or Commercialize a Product, subject to the applicable cure period provided in Section 15.2 and the dispute resolution provisions in Section 16.6.”

19. Amendment to Section 7.8.1. Section 7.8.1 is hereby amended and restated in its entirety to read follows:

“7.8.1 By Adherex. Within forty-five (45) days after GGL’s written notification to Adherex that it has chosen to exercise either Option B, Option C or Option E, Adherex shall immediately transfer to GGL, at Adherex’s cost and expense, all available amounts of Eniluracil drug substance and all other Adherex Know How reasonably available to Adherex that will assist GGL in the Development and Commercialization of Eniluracil and Products; provided, however, that Adherex shall be able to retain a reasonable amount of Eniluracil and/or Product for its internal research purposes; provided, further, that any research to be conducted by Adherex after exercise by GGL of an Option shall be done only with the prior written consent of GGL, such consent not to be unreasonably withheld. In addition, on GGL’s exercise of an Option, Adherex will provide, at a minimum, the materials and assistance set forth in Appendix 6, attached hereto and incorporated herein. On GGL’s exercise of an Option, at GGL’s request and Adherex’s expense, Adherex shall also transfer to GGL all INDs and other regulatory filings including any [\*] made by Adherex or its Affiliates relating to Eniluracil or a Product free and clear of any and all liens, claims, and encumbrances. If, pursuant to Section 2.4.6, GGL requests that Adherex continue to prosecute and defend [\*] after GGL’s exercise of Option C, GGL and Adherex shall agree in good faith on a reasonably appropriate timeframe for the transfer of [\*]. After GGL’s exercise of a GGL Option and in connection with the transfer of any regulatory filings or information, Adherex shall provide GGL, at no cost to GGL as detailed in Appendix 7, and subject to GGL’s use of commercially reasonable efforts to become enabled with respect to the Development and Commercialization of Products, reasonable assistance as requested by GGL to permit GGL to respond to any governmental inquiries regarding any regulatory filings transferred by Adherex to GGL.”

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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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20. Amendment to Section 8.1. Section 8.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

“8.1 Development Milestone Payments. In consideration for the license granted to Adherex under the GGL Patents and GGL Know How and the license which may be granted to GGL under the Adherex Patents and Adherex Know How, each Party will pay to the other the non-refundable, non-creditable Milestone Payments as specified in Section 8.1.1 and 8.1.2 within forty-five (45) days following notification of achievement of the particular milestone and receipt from the other Party of an invoice for the milestone amount. In the event a Party achieves a Development milestone specified below, such Party will promptly, but in no event more than ten (10) days after the achievement of each such milestone, notify the other Party in writing of the achievement of same. Notwithstanding the foregoing, if one or more milestone(s) do(es) not occur (e.g., for Option B, [\*], but a later milestone is achieved (e.g., [\*]), then all previous milestone(s) for which the applicable milestone payment(s) has (have) not been made will be paid at the time of achievement of such subsequent milestone (e.g., if [\*] is received without the requirement of completing the [\*], then both [\*] milestone and the [\*] milestone would be paid following receipt of the [\*]). The Milestone Payments will be made only one time for a Product regardless of how many times such Development milestones are achieved for such Product and will be payable only for the first Product to reach that milestone; provided, however, that, notwithstanding the foregoing, where a Milestone Payment is payable for [\*] as specifically identified below, the Milestone Payment will be made each time a Product [\*]. All milestone payments will apply whether Products are single or Combination Products; provided, however, that if a particular milestone has already been achieved for a Product, the same milestone shall not be payable for a Combination Product which incorporates the Product or incorporates as one of its constituent APIs an API incorporated in the Product.”

21. Amendment to Section 8.1.2. Section 8.1.2 is hereby amended and restated in its entirety to read follows:

“8.1.2 Development Milestones to Adherex. If GGL exercises any of the GGL Options, it shall make the following Milestone Payments to Adherex upon the achievement of the indicated Development milestone

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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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under such Option for the first Product to achieve such milestone and, as indicated, for each [\*]. For clarity, if GGL exercises an Option, it shall have no obligation to pay any Development milestone identified under an Option that GGL did not exercise, but GGL shall be required to pay all Development milestones identified under the Option exercised regardless of when the milestones were achieved, prior to or after exercise of the Option.

**GGL exercises OPTION B:**

<u>Milestone</u>	<u>Amount</u>
[*]	US\$[*]
[*]	US\$[*]
[*]	US\$[*]
[*]	US\$[*]

**GGL exercises OPTION C:**

<u>Milestone</u>	<u>Amount</u>
[*]	US\$[*]
[*]	US\$[*]
[*]	US\$[*]

**GGL exercises OPTION E:**

<u>Milestone</u>	<u>Amount</u>
[*]	US\$[*]
[*]	US\$[*]
[*]	US\$[*]

22. Amendment of Section 8.4. Section 8.4 is hereby amended and restated in its entirety to read follows:

“8.4 Royalties to Adherex on GGL Exercise of GGL Option. As further consideration for the acquisition of license rights under the Adherex Patents under Section 4.2, and in those countries of the Territory

[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

in which there is a Valid Claim of a GGL Patent or an Adherex Patent claiming the manufacture, use or sale of Product in the country of sale at the time such Net Sales occur, and if GGL exercises any of the GGL Options, GGL shall pay Adherex, within forty-five (45) days following the end of each calendar quarter, a tiered royalty based on year-to-date, Annual Net Sales of each Product, on a Product by Product basis, for the previous calendar quarter, at the rates specified below. For the avoidance of doubt, different Products containing the same API(s) (including but not limited to Combination Products and novel formulations) will not be deemed to be one and the same Product for the purposes of calculating total aggregate Net Sales and associated royalties on Annual Net Sales for purposes of this Section 8.4. All royalties on Annual Net Sales will apply whether a Product is Developed and Commercialized as a single or Combination Product.

**If GGL exercises OPTION B:**

<u>Annual Net Sales</u>	<u>Percentage of Annual Net Sales</u>
Annual Net Sales [*]	[*]%
Annual Net Sales [*]	[*]%

**If GGL exercises OPTION C:**

<u>Annual Net Sales</u>	<u>Percentage of Annual Net Sales</u>
Annual Net Sales [*]	[*]%
Annual Net Sales [*]	[*]%

**If GGL exercises OPTION E:**

<u>Annual Net Sales</u>	<u>Percentage of</u>
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	<u>Annual Net Sales</u>
Annual Net Sales [*]	[*]%
Annual Net Sales [*]	[*]%

For clarification, the royalty rates set forth in this Section 8.4 are meant to be applied in turn, with the higher royalty rate to be applied on incremental Net Sales above the lower threshold. By way of example, under Option B, [\*], subject to Sections 8.4.1 and 8.4.2.”

23. Amendment of Section 8.4.2. Section 8.4.2 is hereby amended and restated in its entirety to read follows:

“8.4.2 [\*].”

[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

24. Amendment to Section 13.2. Section 13.2 of the Agreement is hereby amended and restated in its entirety to read follows:

“13.2 Royalties to Adherex on Exercise or Expiration of GGL Option. If GGL exercises any of the GGL Options, GGL will pay Adherex the following percentages of any royalties that GGL receives from [\*] on Net Sales by [\*] of Product in the [\*] Territory:

- (a) If GGL exercises Option B, GGL will pay Adherex [\*] percent ([\*]%) of any royalties received by GGL from [\*];
- (b) If GGL exercises Option C, GGL will pay Adherex [\*] percent ([\*]%) of any royalties received by GGL from [\*]; and
- (c) If GGL exercises Option E, GGL will pay Adherex [\*] percent ([\*]%) of any royalties received by GGL from [\*].”

25. Amendment to Section 15.4.1. Section 15.4.1 is hereby amended and restated in its entirety to read follows:

“15.4.1 Effect of Termination for Material Breach.

(a) Material Breach by GGL. In the event this Agreement is terminated by Adherex pursuant to Section 15.3 for material breach by GGL:

(i) Prior to exercise of a GGL Option, all licenses granted by GGL to Adherex and its Affiliates under this Agreement prior to termination will survive, subject to Adherex’s continued obligation to pay milestones, royalties, portions of any amounts recovered from Third Parties in settlement or as recovery for infringement, and a portion of any amounts received under the [\*] Agreements to GGL hereunder if Adherex continues the Development and Commercialization of Eniluracil or a Product consistent with Sections 8.1.1, 8.2.2, 8.3, 8.5.3, 12.2, and 13.1.1, subject to any adjustments to such amounts consistent with Sections 8.6 through 8.10; or

(ii) After exercise of a GGL Option, Adherex shall become the Licensee by virtue of such termination and shall have the right to continue Development and Commercialization of Eniluracil or a Product, by itself or its Affiliates or through a Third Party, subject to

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Adherex’s continued obligation to pay milestones, royalties, portions of any amounts recovered from Third Parties in settlement or as recovery for infringement, and a portion of any amounts received under the [\*] Agreements to GGL hereunder consistent with Sections 8.1.1, 8.2.2, 8.3, 8.5.3, 12.2, and 13.1.1, subject to any adjustments to such amounts consistent with Sections 8.6 through 8.10; and

(iii) Regardless of timing,

(I) All licenses granted by Adherex to GGL or its Affiliates under this Agreement will terminate;

(II) Adherex will retain all of its rights to bring an action against GGL for damages and any other available remedies in law or equity and will be entitled to set-off against any monies payable to GGL hereunder against all amounts Adherex reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement;

(III) GGL, at its sole expense, will promptly transfer to Adherex, or will cause its designee(s) to transfer to Adherex, ownership of all regulatory filings, approvals, correspondence, and conversation logs made or filed for each Product (to the extent that any are held in GGL’s or such designee(s)’s name and to the extent not previously transferred to Adherex) (collectively, “GGL Filings”), such transfer to be as permitted by applicable Laws, and GGL will otherwise fully cooperate to permit Adherex to fully exercise its rights hereunder; and

(IV) GGL, at its sole expense, promptly shall return to Adherex, or destroy at Adherex's request, all relevant records and materials in its possession or control containing Confidential Information of Adherex; provided, however, that GGL may keep one copy of such Confidential Information for archival purposes only in accordance with Section 10.5.

(b) Material Breach by Adherex. In the event this Agreement is terminated by GGL pursuant to Section 15.3 for material breach by Adherex:

(1) Termination by GGL for Material Breach Prior to Exercise or Expiration of GGL Option B and GGL Option E:

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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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(i) All licenses granted by Adherex to GGL or its Affiliates under this Agreement prior to termination will terminate;

(ii) All licenses granted by GGL to Adherex under this Agreement will terminate;

(iii) GGL shall have the right, in the absence of any Valid Claims of any Adherex Patents which would be infringed by, or the use of any Adherex Know-How which is not in the public domain in, the Development or Commercialization of Eniluracil or a Product, to continue Development and Commercialization of Eniluracil or a Product, by itself or its Affiliates or through a Third Party, provided,

(I) GGL shall not by virtue of such termination have or be granted any licenses from Adherex; and

(II) GGL shall not be obligated to pay any milestones or royalties to Adherex hereunder if, in the absence of any Valid Claims of any Adherex Patents which would be infringed by, or the use of any Adherex Know-How which is not in the public domain in, the Development or Commercialization of Eniluracil or a Product, GGL continues the Development and Commercialization of Eniluracil or a Product other than royalties pursuant to Section 8.5.3, which shall be payable to Adherex based on any Net Sales of any Product enjoying Regulatory Exclusivity due to an [\*];

(iv) GGL will retain all of its rights to bring an action against Adherex for damages and any other available remedies in law or equity and will be entitled to set-off against any monies payable to Adherex hereunder against all amounts GGL reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement;

(v) Adherex, at its sole expense, promptly shall return to GGL, or destroy at GGL's request, all relevant records and materials in its possession or control containing Confidential Information of GGL; provided, however, that Adherex may keep one copy of such Confidential Information for archival purposes only in accordance with Section 10.5.

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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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(2) Termination by GGL for Material Breach at Any Time After Expiration of GGL Option B and GGL Option E:

(i) All licenses granted by Adherex to GGL or its Affiliates under this Agreement prior to termination will survive, subject to GGL's continued obligation to pay milestones and royalties to Adherex hereunder if GGL continues the Development and Commercialization of Eniluracil or a Product consistent with Sections 8.1.2 (Option C), 8.2.1, 8.4, 8.5.3, 12.2, and 13.2, subject to any adjustments to such amounts consistent with Sections 8.6 through 8.10;

(ii) All licenses granted by GGL to Adherex under this Agreement will terminate;

(iii) GGL shall have the right to continue Development and Commercialization of Eniluracil or a Product, by itself or its Affiliates or through a Third Party, provided,

(I) if, at the time of such termination, GGL does not have any licenses from Adherex, GGL shall become the Licensee by virtue of such termination, and

(II) GGL shall be obligated to pay milestones, royalties, portions of any amounts recovered from Third Parties in settlement or as recovery for infringement, and a portion of any amounts received under the [\*] Agreements to Adherex hereunder if GGL continues the Development and Commercialization of Eniluracil or a Product consistent with Sections 8.1.2 (Option C), 8.2.1, 8.4, 8.5.3, 12.2, and 13.2, subject to any adjustments to such amounts consistent with Sections 8.6 through 8.10;

(iv) GGL will retain all of its rights to bring an action against Adherex for damages and any other available remedies in law or equity and will be entitled to set-off against any monies payable to Adherex hereunder against all amounts GGL reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement;

(v) Adherex, at its sole expense, will promptly transfer to GGL, or will cause its designee(s) to transfer to GGL, ownership of all regulatory filings, approvals, correspondence, all Trial information and data, and conversation logs made or filed for each Product (to the extent that any are held in Adherex's or such designee(s)'s name)

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and information and data set forth in Appendix 7, to the extent not previously transferred to GGL (collectively, "Adherex Filings"), such transfer to be as permitted by applicable Laws, and Adherex will otherwise fully cooperate to permit GGL to fully exercise its rights hereunder; and

(vi) Adherex, at its sole expense, promptly shall return to GGL, or destroy at GGL's request, all relevant records and materials in its possession or control containing Confidential Information of GGL; provided, however, that Adherex may keep one copy of such Confidential Information for archival purposes only in accordance with Section 10.5."

26. Deletion of Appendix 5. Appendix 5 is hereby deleted in its entirety from the Agreement.

27. Amendment to Appendix 7. Appendix 7 is hereby amended and restated in its entirety to read as follows:

**"APPENDIX 7**

**MATERIALS AND SUPPORT TO BE PROVIDED TO GGL OR ITS  
AFFILIATE BY ADHEREX ON EXERCISE OF GGL OPTIONS**

**On Exercise of Option B:**

- [\*];
- [\*]
- [\*].

**On Exercise of Option C\*:**

- [\*]
- [\*]
- [\*];  
[\*];  
[\*];  
[\*];  
[\*];

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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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  - [\*];
  - [\*];
  - [\*];
  - [\*];
  - [\*];
  - [\*];
  - [\*];

- [\*]
- [\*]

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\* [\*]

**On Exercise of Option E:**

- [\*,
- [\*]
- [\*]
- [\*]
- [\*]
- [\*]
- [\*]
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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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- [\*]
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  - [\*]
  - [\*]
  - [\*]

28. Addition of Appendices. Appendices 9, 10 and 11 attached hereto are hereby added in their entirety to the Agreement by this Second Amendment and incorporated by reference herein.

29. Binding Effect. This Second Amendment shall be binding upon and inure to the benefit of the Parties hereto, their permitted successors, legal representatives and assigns.

30. Waiver. No waiver of any term or condition of this Second Amendment will be effective unless set forth in a written instrument that explicitly refers to this Second Amendment that is duly executed by or on behalf of the waiving Party. No waiver by any Party of any term or condition of this Second Amendment, in any one or more instances, will be deemed to be or construed as a waiver of the same or any other term or condition of this Second Amendment on any prior, concurrent or future occasion. Except as expressly set forth in this Second Amendment, all rights and remedies available to a Party, whether under this Second Amendment or afforded by Law or otherwise, will be cumulative and not in the alternative to any other rights or remedies that may be available to such Party.

31. Severability. If any provision of this Second Amendment is held to be invalid, illegal or unenforceable in any respect, that provision will be limited or eliminated to the minimum extent necessary so that this Second Amendment will otherwise remain in full force and effect and enforceable.

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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

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32. Governing Law. This Second Amendment will be construed, and the respective rights of the Parties determined, according to the substantive law of the State of North Carolina without regard to the provisions governing conflict of laws.



- [\*]
- [\*]
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[\*] Confidential treatment requested; certain information omitted and filed separately with the SEC.

Portions of this exhibit marked [ \* ] are omitted and requested to be treated confidentially.

AMENDMENT NO. 4

to

DEVELOPMENT AND LICENSE AGREEMENT

between

GLAXO GROUP LIMITED

and

ADHEREX TECHNOLOGIES INC.

THIS AMENDMENT NO. 4 (this "Fourth Amendment") effective on this 23<sup>rd</sup> day of May, 2007 (the "Fourth Amendment Effective Date"), is entered into by and between **Glaxo Group Limited**, a company organized under the laws of England and Wales, having its registered office at GlaxoWellcome House, Berkeley Avenue, Greenford, Middlesex, UB6 0NN United Kingdom ("GGL") and **Adherex Technologies Inc.**, a company organized under the laws of Canada and having an office located at 4620 Creekstone Drive, Suite 200, Durham, North Carolina, 27703 USA ("Adherex"):

RECITALS

- A. The Parties entered into the Development and License Agreement, effective as of July 14, 2005 (the "Agreement").
- B. The Parties entered into Amendment No. 1 to the Agreement, effective December 20, 2005, relating to the Exherin™ Option.
- C. The Parties entered into Amendment No. 2 to the Agreement, effective June 23, 2006, relating to Eniluracil.
- D. The Parties entered into Amendment No. 3 to the Agreement, effective January 16, 2007, relating to the expiration of the GGL Options.
- E. The Parties now desire to further amend the Agreement on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below, the Parties, intending to be legally bound, hereby amend the Agreement and otherwise agree as follows:

1. Defined Terms. All terms used in this Fourth Amendment but not defined herein shall have the same meaning as set forth in the Agreement.

2. Amendment to Section 13.2 Section 13.2 is hereby amended and restated in its entirety to read as follows:

"13.2 Royalties to Adherex on Exercise or Expiration of GGL Option. If GGL exercises any of the GGL Options, GGL will pay Adherex the following percentages of any royalties that GGL receives from [ \* ] on Net Sales by [ \* ] of Product in the [ \* ] Territory:

(a) If GGL exercises Option B, GGL will pay Adherex [ \* ] percent ([ \* ]%) of any royalties received by GGL from [ \* ];

[ \* ] Confidential treatment requested; certain information omitted and filed separately with the SEC

(b) If GGL exercises Option C, GGL will pay Adherex [ \* ] percent ([ \* ]%) of any royalties received by GGL from [ \* ]; and

(c) If GGL exercises Option E, GGL will pay Adherex [ \* ] percent ([ \* ]%) of any royalties received by GGL from [ \* ].

If all GGL Options expire, and unless and until the [ \* ] License is assigned to Adherex, beginning on the date of the last to expire GGL Option, GGL will pay Adherex [ \* ] percent ([ \* ]%) of any royalties received by GGL from [ \* ] under the [ \* ] License."

3. Amendment to Section 13.3. Section 13.3 is hereby amended and restated in its entirety to read as follows:

"13.3 Sharing of Data with [ \* ]. GGL shall have the right to share with [ \* ], without the prior written consent of Adherex, any data and Adherex Know How received from Adherex regarding Eniluracil or Products to assist [ \* ] in its Development and Commercialization of Eniluracil and Products in the [ \* ] Territory. Unless and until GGL exercises one of the GGL Options, if

and as specifically requested by Adherex, GGL shall promptly provide to Adherex any data and information received from [ \* ] regarding Eniluracil or Products to assist Adherex in its Development and Commercialization of Eniluracil and Products in the Territory to the extent GGL may do so pursuant to the terms of the applicable [ \* ] Agreements and, to the extent GGL may do so pursuant to the terms of the applicable [ \* ] Agreements, GGL hereby grants Adherex a right of reference for regulatory approval purposes with respect to such data and information. Upon expiration of all of the GGL Options, and continuing for the remainder of the Term unless and until the [ \* ] Agreements are assigned to Adherex, if and as specifically requested by GGL, Adherex shall promptly provide GGL with all Adherex Know How and GGL shall have the right to share with [ \* ] under conditions of confidentiality substantially equivalent to those established under Section 9 hereof, without the prior written consent of Adherex, any data and Adherex Know How received from Adherex regarding Eniluracil or Products to assist [ \* ] in its Development and Commercialization of Eniluracil and Products in the [ \* ] Territory.”

4. Amendment of Section 15.4.1(b)(2). Section 15.4.1(b)(2) is hereby amended and restated in the entirety to read as follows:

“(2) Termination by GGL for Material Breach at Any Time After Expiration of GGL Option B and GGL Option E and Prior to the Expiration of All GGL Options:

(i) All licenses granted by Adherex to GGL or its Affiliates under this Agreement prior to termination will survive, subject to GGL’s continued obligation to pay milestones and royalties to Adherex hereunder if GGL continues the Development and Commercialization of Eniluracil or a Product consistent with Sections 8.1.2 (Option C), 8.2.1, 8.4, 8.5.3, 12.2, and 13.2, subject to any adjustments to such amounts consistent with Sections 8.6 through 8.10;

[ \* ] Confidential treatment requested; certain information omitted and filed separately with the SEC

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(ii) All licenses granted by GGL to Adherex under this Agreement will terminate;

(iii) GGL shall have the right to continue Development and Commercialization of Eniluracil or a Product, by itself or its Affiliates or through a Third Party, provided,

(I) if, at the time of such termination, GGL does not have any licenses from Adherex, GGL shall become the Licensee by virtue of such termination, and

(II) GGL shall be obligated to pay milestones, royalties, portions of any amounts recovered from Third Parties in settlement or as recovery for infringement, and a portion of any amounts received under the [ \* ] Agreements to Adherex hereunder if GGL continues the Development and Commercialization of Eniluracil or a Product consistent with Sections 8.1.2 (Option C), 8.2.1, 8.4, 8.5.3, 12.2, and 13.2, subject to any adjustments to such amounts consistent with Sections 8.6 through 8.10;

(iv) GGL will retain all of its rights to bring an action against Adherex for damages and any other available remedies in law or equity and will be entitled to set-off against any monies payable to Adherex hereunder against all amounts GGL reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement; Adherex, at its sole expense, will promptly transfer to GGL, or will cause its designee(s) to transfer to GGL, ownership of all regulatory filings, approvals, correspondence, all Trial information and data, and conversation logs made or filed for each Product (to the extent that any are held in Adherex’s or such designee(s)’s name) and information and data set forth in Appendix 7, to the extent not previously transferred to GGL (collectively, “Adherex Filings”), such transfer to be as permitted by applicable Laws, and Adherex will otherwise fully cooperate to permit GGL to fully exercise its rights hereunder; and

[ \* ] Confidential treatment requested; certain information omitted and filed separately with the SEC

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(v) Adherex, at its sole expense, promptly shall return to GGL, or destroy at GGL’s request, all relevant records and materials in its possession or control containing Confidential Information of GGL; provided, however, that Adherex may keep one copy of such Confidential Information for archival purposes only in accordance with Section 10.5.”.

5. Addition of Section 15.4.1(b)(3). Section 15.4.1(b)(3) is hereby added to the Agreement to read in the entirety as follows:

“(3) Termination by GGL for Material Breach at Any Time After Expiration of all GGL Options:

(i) All licenses granted by GGL to Adherex under this Agreement will terminate;

(ii) GGL shall have the right, in the absence of any Valid Claims of any Adherex Patents which would be infringed by, or the use of any Adherex Know-How which is not in the public domain in, the Development or Commercialization of Eniluracil or a Product, to continue Development and Commercialization of Eniluracil or a Product, by itself or its Affiliates or through a Third Party, provided,

(I) GGL shall not by virtue of such termination have or be granted any licenses from Adherex; and

(II) GGL shall not be obligated to pay any milestones or royalties to Adherex hereunder if, in the absence of any Valid Claims of any Adherex Patents which would be infringed by, or the use of any Adherex Know-How which is not in the public domain in, the Development or Commercialization of Eniluracil or a Product, GGL continues the Development and Commercialization of Eniluracil or a Product other than royalties pursuant to Section 8.5.3, which shall be payable to Adherex based on any Net Sales of any Product enjoying Regulatory Exclusivity due to an Orphan Drug Designation or similar designation or equivalent obtained by Adherex in the Territory;

(ii) GGL will retain all of its rights to bring an action against Adherex for damages and any other available remedies in law or equity and will be entitled to set-off against any monies payable to Adherex hereunder against all amounts GGL reasonably believes constitute its damages incurred by such breach, subject to final judicial resolution or settlement; and

(vi) Adherex, at its sole expense, promptly shall return to GGL, or destroy at GGL's request, all relevant records and materials in its possession or control containing Confidential Information of GGL; provided, however, that Adherex may keep one copy of such Confidential Information for archival purposes only in accordance with Section 10.5."

[ \* ] Confidential treatment requested; certain information omitted and filed separately with the SEC

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6. Amendment of Section 15.5. Section 15.5 is hereby amended and restated in its entirety to read as follows:

15.5 Accrued Rights; Surviving Obligations. Except as provided elsewhere, termination or expiration of this Agreement for any reason will be without prejudice to any rights that will have accrued to the benefit of any Party prior to such termination or expiration. Such termination or expiration will not relieve any Party from obligations which are expressly or by implication intended to survive termination or expiration of this Agreement, including but not limited to, definitions, rights to payment, and Sections 7.5, 8.12, 8.13, 8.14, 8.15, 8.16, 8.17 (for the period stated therein), 9, 10, 11, 12.2 (with respect to actual or alleged infringement occurring prior to such termination or expiration), 12.3, 12.4, 12.5, 15.1, 15.2, 15.3, 15.4, and 16 and will not affect or prejudice any provision of this Agreement which is expressly or by implication provided to come into effect on, or continue in effect after, such termination or expiration. The following additional sections will also survive in the event of termination for material breach: (a) by GGL under Section 15.4.1(a), Sections 4.1, 4.3.1, 7.5.1, 7.8.3, 8.1.1, 8.2.2, 8.2.3, 8.3, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 12.1, 12.2, 13.1.1, 13.2 and 13.3; (b) by Adherex under Section 15.4.1(b)(1), Section 8.5.3; (c) by Adherex under Section 15.4.1(b)(2), Sections 4.2, 8.1.2 (Option C), 8.2.1, 8.2.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, and 13.2; and (d) by Adherex under Section 15.4.1(b)(3), Section 8.5.3.

7. Binding Effect. This Fourth Amendment shall be binding upon and inure to the benefit of the Parties hereto, their permitted successors, legal representatives and assigns.

8. Waiver. No waiver of any term or condition of this Fourth Amendment will be effective unless set forth in a written instrument that explicitly refers to this Fourth Amendment that is duly executed by or on behalf of the waiving Party. No waiver by any Party of any term or condition of this Fourth Amendment, in any one or more instances, will be deemed to be or construed as a waiver of the same or any other term or condition of this Fourth Amendment on any prior, concurrent or future occasion. Except as expressly set forth in this Fourth Amendment, all rights and remedies available to a Party, whether under this Fourth Amendment or afforded by Law or otherwise, will be cumulative and not in the alternative to any other rights or remedies that may be available to such Party.

9. Severability. If any provision of this Fourth Amendment is held to be invalid, illegal or unenforceable in any respect, that provision will be limited or eliminated to the minimum extent necessary so that this Fourth Amendment will otherwise remain in full force and effect and enforceable.

[ \* ] Confidential treatment requested; certain information omitted and filed separately with the SEC

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10. Governing Law. This Fourth Amendment will be construed, and the respective rights of the Parties determined, according to the substantive law of the State of North Carolina without regard to the provisions governing conflict of laws.

11. Counterparts. This Fourth Amendment may be executed in any two counterparts, each of which, when executed, will be deemed to be an original and both of which together will constitute one and the same document.

12. Continuing Effect. All other terms and conditions of the Agreement shall remain in full force and effect.

[Remainder of page intentionally left blank. Signature page follows.]

[ \* ] Confidential treatment requested; certain information omitted and filed separately with the SEC

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IN WITNESS WHEREOF, Glaxo Group Limited and Adherex Technologies Inc., by their duly authorized representatives, have executed this Amendment No. 4 as of the Fourth Amendment Effective Date.

**GLAXO GROUP LIMITED**

**ADHEREX TECHNOLOGIES INC.**

By: /s/ Paul Williamson

By: /s/ D. Scott Murray

Name: Paul Williamson

Name: D. Scott Murray

For and on behalf of

Edinburgh Pharmaceutical Industries Ltd

Title: Corporate Director

Title: SVP, General Counsel

[ \* ] Confidential treatment requested; certain information omitted and filed separately with the SEC

General Collaboration Agreement  
Between  
McGill University  
and  
Adherex Technologies, Inc.

## 1 PREAMBLE

### 1.1 Identification of the Parties

This GENERAL COLLABORATION AGREEMENT (“the “AGREEMENT”) is entered into between McGill University (hereinafter referred to as “McGILL”), an institution of learning with an office at 3550 University Street, Montreal, Quebec, H3A 2A7, and Adherex Technologies Inc. a corporation incorporated and existing under the laws of Canada, having its principal office at 600 Peter Morand Crescent, Suite 340, Ottawa, Ontario K1G 5Z3, (hereinafter referred to as “ADHEREX”).

This AGREEMENT is effective upon signature of both parties. This AGREEMENT supersedes all prior agreements or understandings between McGILL and ADHEREX concerning the LICENSED TECHNOLOGY.

### 1.2 Background of the Agreement - Licensee Representations

ADHEREX desires to enter into collaboration with McGILL for the purpose of further research, and for developing and commercializing the TECHNOLOGY IN THE FIELD, and to obtain exclusive license rights to the LICENSED PATENT in the TERRITORY under the terms and conditions of this AGREEMENT.

### 1.3 Background of the Agreement — McGILL Representations

McGILL, which represents to be the owner of the entire right, title and interest in the LICENSED PATENT, desires to grant an exclusive license in the LICENSED PATENT to ADHEREX in accordance to the terms of this AGREEMENT, and to enter into collaboration with ADHEREX for the purpose of further research, and for developing and commercializing the TECHNOLOGY IN THE FIELD under the terms and conditions of this AGREEMENT.

**Now Therefore**, in consideration of the foregoing premises, the mutual covenants and obligations hereinafter contained, and other good and valuable consideration, McGILL and ADHEREX agree as follows:

## 2 DEFINITIONS

### 2.1 Usage

For the purposes of this AGREEMENT, the following terms, words, and phrases, when used in the singular or plural, shall have the meanings given to them in this Section.

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### 2.2 McGill University

“McGill University,” as abbreviated “McGILL,” means the institution of education having its principal office at 853 Sherbrooke Street, Montreal, Qc, H3A 2T6, and shall also include all McGILL AFFILIATES. McGILL is the licensor of the LICENSED PATENT in this AGREEMENT.

### 2.3 Adherex Technologies Inc.

“ADHEREX TECHNOLOGIES Inc.,” as abbreviated “ADHEREX,” means the Corporation by that name having its principal office at 600 Peter Morand Crescent, Suite 340, Ottawa, Ontario K1G 5Z3, and shall include all ADHEREX AFFILIATES. ADHEREX is the licensee of the LICENSED PATENT in this AGREEMENT.

### 2.4 Affiliate

“AFFILIATE” means, with respect to a party of this AGREEMENT, any ENTITY which directly or indirectly controls or is controlled by or is under common control with such party. The term “control” means possession, direct or indirect, of the powers to direct or cause the direction of the management or policies of the ENTITY; whether through ownership of equity participation, voting securities, or beneficial interests; by contract or by agreement or otherwise;

### 2.5 Calendar Quarter

“CALENDAR QUARTER” means a period of three (3) months in the Gregorian calendar ending on the last day of March, June, September, or December.

## 2.6 Calendar Year

“CALENDAR YEAR” means a period of twelve (12) months beginning on January 1 and ending on December 31.

## 2.7 Effective Date

“EFFECTIVE DATE” means the date upon which this AGREEMENT is executed and dated by all the parties hereto. In the event that all of the parties do not execute and date this AGREEMENT on the same date, the EFFECTIVE DATE shall be the date upon which the last party hereto executes and dates this AGREEMENT.

## 2.8 Field

“FIELD” means agents and methods for modulating classical cadherin-mediated processes including, without restricting the foregoing, the HAV sequence and uses thereof, any molecule designed to interact with or mimic the HAV sequence, and any other molecule that targets the classical cadherins.

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## 2.9 Gross Revenues

“GROSS REVENUES” means all incomes, revenues, receipts, monies, up-front payments, fees and considerations paid to ADHEREX by a third party and that are directly or indirectly attributable to: (i) the sale, by ADHEREX, of PRODUCTS IN THE FIELD; (ii) the provision of SERVICES by ADHEREX; (iii) option agreements, licenses or sublicenses granted by ADHEREX to a third party with respect to PRODUCTS IN THE FIELD or to the TECHNOLOGY IN THE FIELD; (iv) manufacturing payments for PRODUCTS IN THE FIELD, whether received in cash or by way of other benefit, advantage, or concession. GROSS REVENUES shall however exclude all revenues from research and development agreements and all material transfer agreements, provided that such agreements do not include license grants or commercialization rights with respect to any aspect of the TECHNOLOGY IN THE FIELD. If received in a form other than cash, the applicable revenue will be the monetary equivalent or FAIR MARKET VALUE of the benefit, advantage, or concession. For greater certainty, GROSS REVENUES do not include amounts paid to Adherex Technologies, Inc from any AFFILIATE, amounts paid by Adherex Technologies, Inc to any AFFILIATE or any amount paid from one AFFILIATE to another AFFILIATE.

## 2.10 Earned Royalties

“EARNED ROYALTIES” shall have the meaning given in clause 6.1 herein.

## 2.11 Entity

“ENTITY” means a corporation, an association, a joint venture, a partnership, a trust, a business, including an agency, or any other organization that can exercise independent legal standing.

## 2.12 Fair Market Value

“FAIR MARKET VALUE” means the gross sales price or value which ADHEREX would realize from an unaffiliated, unrelated buyer in an arm’s length sale or exchange of consideration for an identical product or service sold or provided in the same quantity and at the same time and place as the sale or exchange for which the FAIR MARKET VALUE is to be determined.

## 2.13 General Collaboration Agreement

“GENERAL COLLABORATION AGREEMENT” or “AGREEMENT” means this general collaboration agreement. This GENERAL COLLABORATION AGREEMENT is between McGill University and Adherex Technologies, Inc. Also included in this AGREEMENT are all Exhibits attached hereto and all amendments that may be made thereto.

## 2.14 Licensed Patent

“LICENSED PATENT” means, collectively: (i) US Patent Number 6,031,072, filed on July 11, 1997 entitled “Compounds and Methods for Modulating Cell Adhesion”; (ii) the US non-provisional patent application number 09/057,363 filed on April 8, 1998, entitled “Compounds and Methods for Inhibiting the Interaction between alpha-catenin and beta-catenin”, (iii) any other patent application in the FIELD, based on inventions made jointly by ADHEREX and

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McGILL, arising from research in the FIELD sponsored by ADHEREX pursuant to this AGREEMENT, (iv) any patent which shall issue on any of the above-described patent applications, or on any improvements thereof, and any reissue and extension thereof; (v) Any divisional, continuation or substitute patent application which shall be based on any of the above-described patent application or on any such patent; (vi) Patents and patent applications corresponding to each of the above-described patents and patent applications which are issued, filed, or to be filed in any and all foreign countries, any patents (including but not limited to patents of importation,

improvement, or addition, utility models and inventors' certificates) which shall subsequently issue thereof and (vii) any renewals, continuations, continuations-in-part, substitutions, inventors' certificates, divisions, national, international and PCT filings, reissues, reexaminations or extensions thereof.

### **2.15 Licensed Product**

"LICENSED PRODUCT" shall specifically include a composition of compounds and elements where one or more of the compounds and/or elements or the combination of compounds and/or elements is produced, manufactured, sold, leased, used or practiced subject to and within the scope of the LICENSED PATENT claims or the description of the LICENSED TECHNOLOGY.

### **2.16 Licensed Technology**

"LICENSED TECHNOLOGY" means all technology improvements within the scope of the LICENSED PATENT; including, without limitation, computer programs, data, apparatus, whether patentable (but not effectively patented) or unpatentable, owned or controlled by MCGILL, as of the EFFECTIVE DATE.

### **2.17 Patents In The Field**

"PATENTS IN THE FIELD" means, collectively; (i) LICENSED PATENTS; (ii) the US non-provisional patent application number 09/113,977, filed July 10, 1998, entitled "Compounds and Methods for Modulating Adhesion Molecule Function", and (iii) the US non-provisional patent application number 09/491,078, filed January 24, 2000, entitled "Peptidomimetic Modulators of Cell Adhesion"; (iv) any patent which shall issue on any of the above-described patent applications, or on any improvements thereof, and any reissue and extension thereof; (v) Any divisional, continuation or substitute patent application which shall be based on any of the above-described patent application or on any such patent; (vi) Patents and patent applications corresponding to each of the above-described patents and patent applications which are issued, filed, or to be filed in any and all foreign countries, any patents (including but not limited to patents of importation, improvement, or addition, utility models and inventors' certificates) which shall subsequently issue thereof as well as (vii) any renewals, continuations, continuations-in-part, substitutions, inventors' certificates, divisions, national, international and PCT filings, reissues, reexaminations or extensions thereof.

### **2.18 Product(s) In The Field**

"PRODUCT(S) IN THE FIELD" shall specifically include any composition(s) of compounds and elements where one or more of the compounds or the combination of compounds and/or elements is produced, manufactured, used or practiced subject to and within the scope of the PATENTS IN THE FIELD claims or description of the TECHNOLOGY IN THE FIELD.

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### **2.19 Technology in the Field**

"TECHNOLOGY IN THE FIELD" means the PATENTS IN THE FIELD, all technology improvements, and intellectual property, within the scope of the PATENTS IN THE FIELD; including, without limitation, inventions, computer programs, data, apparatus, whether patentable or unpatentable, owned or controlled by ADHEREX or MCGILL, as of the EFFECTIVE DATE.

### **2.20 Net Sales**

"NET SALES" means the GROSS REVENUES less qualifying costs directly attributable to such GROSS REVENUES and actually allowed and borne by ADHEREX. Such qualifying costs shall be limited to costs of the following:

Discounts and allowances actually shown on the invoice;

Packaging;

Prepaid outbound transportation expenses;

Handling charges;

Taxes; including sales, use, turnover, excise, import, export, and other taxes or duties, separately billed or invoiced, and borne by ADHEREX, imposed by a government agency on such use, sales, lease, or transfer;

Credits, allowances or refunds given on account of returned goods;

Agents' commissions paid for the sale of PRODUCTS IN THE FIELD;

Bona fida rebates;

Credit refunds, or uncollected amounts, provided however that, with respect to such uncollected amounts, ADHEREX has taken all commercially prudent steps necessary to collect such amounts;

PRODUCTS IN THE FIELD used for quality control testing for the purposes of verifying aspects of performance, e.g. sensitivity, specificity, stability, etc., either by ADHEREX or through ADHEREX's collaborators;

Any consideration received for the use of or the sale, lease or transfer made for the purpose of obtaining regulatory approval of any PRODUCTS IN THE FIELD including, without limitation, providing samples for clinical trials.

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### 2.21 Service

"SERVICE" means, if used as a noun, any use of the TECHNOLOGY IN THE FIELD to facilitate the desires of another party.

### 2.22 Territory

"TERRITORY" means the World.

## 3 LICENSE RIGHTS GRANTED/RESERVED

### 3.1 Grant of Rights

Subject to the terms and conditions of this AGREEMENT, McGILL hereby grants to ADHEREX exclusive royalty bearing license rights to practice in the FIELD, in the TERRITORY, the LICENSED PATENT for the term of the LICENSED PATENT, with the right to manufacture, have manufactured, use, sell, lease or otherwise exploit or transfer, LICENSED PRODUCT, and non-exclusive royalty bearing license rights to practice in the FIELD, in the TERRITORY, the LICENSED TECHNOLOGY for the term of the AGREEMENT, with the right to manufacture, have manufactured, use, sell, lease or otherwise exploit or transfer LICENSED PRODUCT. Notwithstanding the rights granted hereunder, University shall retain the right to use the LICENSED PATENT for non-commercial academic and scholarly purposes, subject to confidentiality requirements.

### 3.2 Rights to Sublicense

The license rights granted under this AGREEMENT shall specifically include the right for ADHEREX to grant sublicenses to the LICENSED PATENT and the LICENSED TECHNOLOGY. ADHEREX agrees that any sublicense it grants to the LICENSED PATENT or the LICENSED TECHNOLOGY to any third party shall be granted under the following conditions:

(a) For the purposes of ensuring that McGILL's rights under section 5 and 6 of this AGREEMENT are respected, any sublicense agreement proposed by ADHEREX that includes the right to grant sublicenses must be approved in writing by McGILL prior to its execution. McGILL's consent shall not be unreasonably withheld;

(b) Upon termination of this Agreement and provided the obligations of ADHEREX pursuant to sections 5.3 and 5.5 of this Agreement have been satisfied within sixty (60) days following termination, McGILL will honour any sublicense granted by ADHEREX, but only in respect of the grant of rights in relation to the LICENSED PATENT and LICENSED TECHNOLOGY, provided any sublicensee availing itself of such right agrees to be bound in respect of McGILL, by the terms of its sublicense with ADHEREX relating to the payment of royalties and fees, including, without limiting the generality of the foregoing, provisions dealing with term, reporting, default and breach, and termination. Sublicensees shall have no obligation to McGILL to keep their sublicenses in force, in which case the sublicense shall immediately terminate and sublicensee shall immediately cease to use, manufacture or have manufactured, sell, lease or otherwise exploit or transfer the LICENSED PATENT and LICENSED

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TECHNOLOGY. Should a sublicensee intend to continue to use, manufacture or have manufactured, sell, lease or otherwise exploit or transfer the LICENSED PATENT or LICENSED TECHNOLOGY, it shall provide McGILL with written notice of such intent, along with a copy of the sublicense agreement to which it is a party within sixty (60) days of termination of this Agreement. The above shall be part of all sublicense agreements.

(c) Within thirty (30) days after the execution of a sublicense agreement, as authorized herein, ADHEREX shall forward to McGILL a fully executed copy of such sublicense agreement, which shall be treated by McGILL as being confidential information of ADHEREX and of the relevant sublicensee. In addition to providing McGILL with a copy of the executed sublicense agreement, should such sublicense agreement be written in a language other than English and French, ADHEREX shall provide McGILL with an English translation of the sublicense agreement.

(d) The "Research and License Agreement" sublicense entered into and made on August 17, 2000 by and among BIOCHEM PHARMA INC., and ADHEREX, is deemed to be in accordance with the terms and conditions of this AGREEMENT. In the event of termination of this AGREEMENT ADHEREX shall exert its best effort to cause BIOCHEM PHARMA INC., to stop using, manufacturing or having manufactured, selling, leasing or otherwise exploiting or transferring the LICENSED PATENTS, and LICENSED TECHNOLOGY, unless BIOCHEM PHARMA INC. agrees to comply with section 3.2 (b).

## **4 TERM AND TERMINATION**

### **4.1 Term of Agreement**

The term of this AGREEMENT shall commence on its EFFECTIVE DATE and shall end September 23, 2028, unless it earlier terminates by operation of law.

### **4.2 ADHEREX's Rights to Termination**

After September 25, 2006, ADHEREX may terminate this AGREEMENT, by giving written notice of its intent to terminate at least sixty (60) days prior to actual termination provided that no EARNED ROYALTIES are due or are being earned as of the date of termination. ADHEREX may not terminate this AGREEMENT for the purpose of, or in a way that would deprive MCGILL of future EARNED ROYALTIES.

Upon any material breach of or default under this AGREEMENT by MCGILL, ADHEREX may terminate this GENERAL COLLABORATION AGREEMENT.

ADHEREX shall give MCGILL written notice of termination prior to terminating this GENERAL COLLABORATION AGREEMENT. Such notice shall state the cause(s) for termination and the procedures, if any, that ADHEREX considers that MCGILL must follow to remedy such a breach. MCGILL shall have sixty (60) days after the effective date of the notice to remedy the stated cause(s) for termination.

Any disagreements between the parties on whether or not the default has been remedied, shall be subject to Dispute Resolution pursuant to clause 12.2 herein. In the event that MCGILL does not

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attempt to remedy the default, this LICENSE AGREEMENT shall become fully paid up and ADHEREX shall then have an unrestricted right to the LICENSED TECHNOLOGY, including the LICENSED PATENTS.

### **4.3 MCGILL's Rights to Termination**

Upon any material breach of or default under this AGREEMENT by ADHEREX, MCGILL may terminate this AGREEMENT.

MCGILL shall give ADHEREX written notice of termination prior to terminating this AGREEMENT. Such notice shall state the cause(s) for termination and the procedures, if any, that MCGILL considers that ADHEREX must follow to remedy such a breach. ADHEREX shall have sixty (60) days after the effective date of the notice to remedy the stated cause(s) for termination.

Any disagreements between the parties on whether or not the default has been remedied, shall be subject to Dispute Resolution pursuant to clause 12.2 herein. In the event that ADHEREX does not attempt to remedy the default, the AGREEMENT and all rights granted ADHEREX, shall automatically terminate at the end of the sixtieth (60) day following the giving of the notice described in the previous paragraph.

In the event ADHEREX ceases conducting business in a normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal bankruptcy Act or any other statute of any state or country relating to insolvency or the protection of creditor rights, this AGREEMENT shall immediately and automatically terminate at the occurrence of any such event.

## **5 LICENSING CONSIDERATIONS**

### **5.1 Equities**

Within sixty (60) days following the EFFECTIVE DATE, ADHEREX shall issue to MCGILL 2,542,084 Common Shares of Adherex Technologies Inc. common stock equivalent to 10.6% of the total issued preferred and common shares.

### **5.2 Diligence Payments**

If ADHEREX or a sublicensee authorised hereunder has not filed an investigational new drug (IND) or similar application with the Canadian Health and Welfare Canada (Health Protection Branch) or, the U.S. Food and Drug Administration, or the European equivalent or any other recognized agency, relating to a PRODUCT IN THE FIELD, prior to September 23, 2002, ADHEREX shall pay MCGILL \$100,000 in order to maintain its rights under this AGREEMENT.

If ADHEREX or a sublicensee authorised hereunder has not commenced Phase II Clinical Trials in the United States or Canada or Europe or in any other recognized jurisdiction on any PRODUCT IN THE FIELD prior to September 23, 2004, ADHEREX shall pay MCGILL \$100,000 in order to maintain its rights under this AGREEMENT.

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If ADHEREX or a sublicensee authorised hereunder has not commenced Phase III Clinical Trials in the United States or Canada or Europe or in any other recognized jurisdiction on any PRODUCT IN THE FIELD prior to September 23, 2006, ADHEREX shall pay McGILL \$200,000 in order to maintain its rights under this AGREEMENT.

### 5.3 Sponsored Research

ADHEREX undertakes to fund mutually agreed upon research at McGILL through Research Agreements. This will include a 10-year research contract to be initiated within one year of the EFFECTIVE DATE in support of Dr. Orest Blaschuk in the amount of \$100,000 per year plus 40% overhead for a total of \$1.4 million for ten years.

### 5.4 Additional Research

ADHEREX will support additional mutually agreed upon research through Research Agreements in support of McGILL researchers (which may or may not include Dr. Blaschuk) to bring the total sponsored research amount to \$200,000 in the first year following the EFFECTIVE DATE. The yearly amounts of this additional research commitment will be:

Year 1	Year 2	Year 3	Year 4	Year 5
\$60,000	\$82,000	\$105,000	\$132,000	\$160,000
Year 6	Year 7	Year 8	Year 9	Year 10
\$193,000	\$228,000	\$268,000	\$312,000	\$360,000

If the total financial commitment for additional research exceeds 5% of ADHEREX's cash and cash equivalents as shown in the December 31 balance sheet of the preceding year, support for new additional research will be deferred until such time that the total financial commitment for all additional research no longer exceeds 5% of ADHEREX's cash and cash equivalents, with the condition that ADHEREX's financial obligations pursuant to ongoing research agreements will be respected and will not be deferred.

### 5.5 CIHR University/Industry chair

In addition to funding described in 5.3 and upon approval by the CIHR, ADHEREX will provide financial support for a CIHR university/industry chair supporting studies in cell adhesion for Dr. Orest Blaschuk for which McGILL will apply.

## 6 ROYALTIES

### 6.1 Earned Royalties

In consideration for the license granted in this AGREEMENT, ADHEREX shall pay to McGILL, in the manner designated below, an earned royalty of 2% of the GROSS REVENUE received by ADHEREX.

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For more certainty, no royalty shall be payable to McGILL hereunder on amounts paid to Adherex Technologies, Inc. from any AFFILIATE other than Adherex Technologies, Inc., on any amount paid by Adherex Technologies, Inc. to any AFFILIATE other than Adherex Technologies, Inc., or on any amount paid from one AFFILIATE other than Adherex Technologies, Inc. to another AFFILIATE other than Adherex Technologies, Inc.

## 7 PAYMENTS AND REPORTS

### 7.1 Payments

Any amount due McGILL as the result of each PRODUCT IN THE FIELD being used, sold, or transferred pursuant to the terms of this AGREEMENT- shall accrue either i) in the case of direct sales by ADHEREX at the time ADHEREX receives payment for such PRODUCT IN THE FIELD; or, ii) in the case of sales by sublicensees at the time ADHEREX receives payment from such sublicensee. All amounts accrued for the benefit of McGILL shall be deemed held in trust for the benefit of McGILL until payment of such amounts is made pursuant to this AGREEMENT.

Unless otherwise specified in this AGREEMENT, all payment amounts due McGILL under this AGREEMENT shall be paid within forty-five (45) business days following the end of the CALENDAR QUARTER in which such payment accrues or ADHEREX otherwise incurs the obligation to pay such amounts.

All payments due McGILL based upon sales in countries outside of Canada shall accrue in the currency of the country in which the sales are made. ADHEREX shall utilise its best efforts to effect Canadian dollar transfers with respect to such royalties. However, any and all loss of exchange value, taxes, or other expenses incurred in the transfer or conversion of foreign currency into Canadian dollars, and any income, remittance, or other taxes on such royalties required to be withheld at the source shall be borne by McGILL.

All such payments shall be remitted to McGILL's address given in the notification provision of this AGREEMENT or to such other address as McGILL shall direct.

## 7.2 Late Fees

ADHEREX shall pay to McGILL interest on any amounts not paid when due. Such interest will accrue from the fifteenth (15th) day after the payment was due at a rate two percent (2%) above the daily prime interest rate, as determined by the Royal Bank of Canada or its successor entity, on each day the payment is delinquent, and the interest payment will be due and payable on the first day of each month after interest begins to accrue, until full payment of all amounts due to McGILL is made.

## 7.3 Reports

ADHEREX shall keep, at its own expense, accurate books of account, using accepted accounting procedures, detailing all data necessary to calculate and easily audit any payments due to McGILL from ADHEREX under this AGREEMENT.

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Each payment made to McGILL shall be accompanied by a written report summarizing, in sufficient detail to allow McGILL to verify all payment amounts, the data used to calculate the amounts paid. Each report pertaining to royalty payments for the applicable accounting period shall specifically include the following, as applicable:

GROSS REVENUES and NET SALES amounts.

Royalties due, broken down by category, including earned, pass through, and minimum royalty categories.

Annually, ADHEREX shall submit to McGILL a copy of its audited financial statement.

## 7.4 Examination of Records

Upon at least fifteen (15) days' written notice, McGILL shall have the right, through an independent, accounting firm to examine such records and books of account of ADHEREX and AFFILIATES as are necessary to verify compliance with the terms of this LICENSE AGREEMENT. Such right may be exercised only once during any twelve-month period. Such examination may be performed at any time within three (3) years after the end of the reporting period to which the books of account pertain, and shall be performed during normal business hours at ADHEREX's major place of business or at such other site as may be agreed upon by McGILL and ADHEREX. The accounting firm may make abstracts or copies of such books of account solely for its use in performing the examination. McGILL shall require prior to any such examination, such accounting firm to agree in writing that such firm will maintain all information, abstracts, and copies acquired during such examination in strict confidence and will not make any use of such material other than to confirm to McGILL the accuracy of ADHEREX's compliance hereunder. McGILL shall provide ADHEREX with a copy of any reports and conclusions resulting from any such examination upon receipt of same.

## 7.5 Results of Examination

If any examination of ADHEREX'S records shows that ADHEREX has paid more than required under the Agreement, any excess amounts shall, at ADHEREX'S option, be promptly refunded or credited against future royalties with interest from the date of overpayment at the Royal Bank of Canada's Prime Rate minus 1%. If any examination of ADHEREX'S records show that ADHEREX has paid less than required under this agreement, ADHEREX shall promptly pay the additional amount due together with interest and late fees as required under this agreement for late payments. If the amount of underpayment exceeds ten percent (10%) of the amount that should have been paid, ADHEREX shall also pay all reasonable costs of such examination. For more certainty, in the case of disagreement between the Parties with respect to the conclusions resulting from examination of ADHEREX'S records, such disagreement shall be subject to section 12 herein.

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# 8 PERFORMANCE

## 8.1 Reasonable Efforts

During the term of this AGREEMENT, ADHEREX shall use its commercially reasonable efforts to commercialize a PRODUCT IN THE FIELD within the TERRITORY, consistent with sound and reasonable judgment in the industry

## 8.2 Performance

ADHEREX shall use reasonable efforts to bring the TECHNOLOGY IN THE FIELD or PATENTS IN THE FIELD to a point of practical application and make a PRODUCT(S) IN THE FIELD reasonably available to the public within a period of ten (10) years following the EFFECTIVE DATE. In the event that ADHEREX does not substantially meet the performance criteria set forth herein, McGILL may give ADHEREX written notice of its intention to terminate this AGREEMENT. Such notice shall state the cause(s) for

termination and procedures, which ADHEREX must follow to prevent such termination. ADHEREX shall have sixty (60) days after the effective date of the notice to remedy the stated cause(s) for termination. Any disagreements between the parties as to whether or not the default has been remedied shall be subject to Dispute Resolution pursuant to section 12.2 herein. In the event that a disagreement between the parties as to whether or not the default has been remedied is not resolved, and that ADHEREX does not submit this matter for arbitration, this AGREEMENT and all rights granted ADHEREX may, at McGILL's option, be terminated or modified in any manner, according to the termination and modification provisions herein.

## **9 PATENT COST, MAINTENANCE AND MARKINGS**

### **9.1 Patent Cost and Maintenance**

ADHEREX shall be responsible for all costs and expenses relating to the filing and maintenance of PATENTS IN THE FIELD. ADHEREX shall be responsible for filing, prosecution and maintenance in force of all patents and patent applications included in the PATENTS IN THE FIELD. McGILL shall review and comment on the filing and maintenance of the LICENSED PATENTS. The filing, prosecution and maintenance of patents and patent applications for the LICENSED PATENTS pursuant to this Section shall be completed through patent counsel selected by ADHEREX with the consent of McGILL. ADHEREX shall keep McGILL reasonably informed of all office actions, proposed responses or other patent prosecution activities involving the LICENSED PATENT. All patent applications included in the LICENSED PATENT shall be filed, prosecuted and maintained in the name of McGILL, provided that ADHEREX shall have the right to file, prosecute and maintain additional patents and patent applications that do not fall within the LICENSED PATENT.

For more certainty, and notwithstanding anything to the contrary herein, McGILL acknowledges and agrees that ADHEREX shall have the right to file, prosecute and maintain in force, in its own name, all patents and patent applications included in the PATENTS IN THE FIELD, others than LICENSED PATENTS, through patent counsel selected by ADHEREX alone, and without any obligations towards McGILL. ADHEREX nevertheless agrees to keep McGILL reasonably informed of all office actions, proposed responses or other patent prosecution activities involving PATENTS IN THE FIELD other than LICENSED PATENTS.

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## **10 WARRANTIES**

### **10.1 Warranties, Rights and Liabilities**

McGILL WARRANTS THAT: (i) IT IS THE OWNER OF THE LICENSED PATENT AND THE LICENSED TECHNOLOGY; (ii) THAT IT HAS THE RIGHT AND POWER TO GRANT THE LICENSES GRANTED HEREIN; (iii) THAT THERE ARE NO OTHER AGREEMENTS WITH ANY OTHER PARTY IN CONFLICT WITH SUCH GRANT.

WITH THE EXCEPTION OF THE ABOVE WARRANTIES SET OUT IN THIS SECTION, McGILL MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE LICENSED TECHNOLOGY, NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. McGILL DOES NOT WARRANT THAT THE LICENSED TECHNOLOGY IS ERROR FREE OR THAT IT WILL MEET ADHEREX REQUIREMENTS. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED AND EXCLUDED. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF LICENSED PRODUCT, DELIVERABLES, AND ANY PRODUCTS, SERVICES OR METHODS BASED ON THE LICENSED TECHNOLOGY IS ASSUMED BY ADHEREX.

WITH THE EXCEPTION OF THE ABOVE WARRANTIES SET OUT IN THIS SECTION, McGILL MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES, EXPRESS OR IMPLIED, AND ASSUMES NO LIABILITIES OR RESPONSIBILITIES WITH RESPECT TO THE USE, SALE, OR OTHER DISPOSITION BY ADHEREX, ANY AFFILIATE, VENDEES, TRANSFEREES, OR END USERS OF LICENSED PRODUCT(S) OR THE LICENSED TECHNOLOGY.

Notwithstanding any provision to the contrary herein, ADHEREX shall have the right to deduct from royalties payable to McGILL hereunder, any damages, costs or other amounts (including reasonable attorney's fees and costs) incurred by ADHEREX by reason of any claim or suit against ADHEREX alleging that the use, manufacture, sale, lease or other exploitation of the LICENSED PATENT or LICENSED TECHNOLOGY infringes the rights of any third party.

## **11 INFRINGEMENT**

### **11.1 Infringement by a Third Party**

In the event of the infringement or potential infringement of the LICENSED PATENT or of the LICENSED TECHNOLOGY by any person, the following terms and conditions shall apply: (a) Upon learning of any infringement, the party learning of such infringement or potential infringement shall forthwith provide written notice to the other party, providing particulars of which it is aware; (b) McGILL and ADHEREX shall use their reasonable best efforts, in cooperation with each other, to terminate such infringement, without litigation; (c) ADHEREX may enjoin McGILL to support proceedings if necessary in which case ADHEREX shall reimburse

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For more certainty ADHEREX shall be entitled to retain any damages, costs or other amounts paid to ADHEREX by reason of any claim or suit against any third party based on infringement or potential infringement of the LICENSED PATENT or of the LICENSED TECHNOLOGY, and (ii) no royalty shall be paid by ADHEREX on any such damages, costs or other amounts.

## **12 DISPUTE RESOLUTION**

### **12.1 Cooperation**

It is the intent of this AGREEMENT that both parties should benefit from the continued development and commercialization of the TECHNOLOGIES IN THE FIELD, and that it is in both parties' best interests to ensure a healthy spirit of cooperation in which neither the financial stability nor the good public perception or reputation of either party is threatened.

### **12.2 Negotiation**

In any dispute, controversy or difference that may arise between the Parties out of or in relation to or in connection with this Agreement, or for the breach thereof, the Parties shall seek to resolve such dispute amicably by mutual consultation. A Party shall first give notice to the other Party stating that the notifying Party believes that a dispute exists and providing a full and complete written statement setting forth the nature of the dispute, the notifying Party's position with respect to that dispute, and any resolution proposed by the notifying Party. Upon the delivery of such notice, the Parties shall then cause their senior management or their designee to meet in person as soon as possible, but in no event more than sixty (60) days after the delivery of such notice, to discuss the dispute and to make a good faith effort to resolve the matter in an amicable fashion.

### **12.3 Mediation**

In the event the parties fail to resolve such dispute by negotiations, the matter shall be submitted first to mediation by a mediator whose expertise appears relevant to the matter in question. Such mediator shall be chosen jointly by the parties involved and the mediation costs shall be equally shared by the parties to this AGREEMENT. If, after ninety (90) days, the dispute has not been resolved by mediation, the dispute shall automatically go to arbitration in accordance with the following subsection.

### **12.4 Arbitration**

(a) In the event the parties fail to resolve such dispute by negotiation or mediation the parties hereby agree to refer the dispute to arbitration. In the event that the parties cannot agree upon the appointment of a single arbitrator within thirty (30) days of written notice from one party to the other requesting arbitration, the party requesting the arbitration shall appoint an arbitrator and send a written notice thereof to the other party, which shall have ten (10) days from the receipt thereof to appoint a second arbitrator. The two (2) arbitrators so appointed shall appoint a third arbitrator and in the event that they cannot agree, the third arbitrator shall be appointed by a court of competent jurisdiction.

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(b) The arbitration hearing shall take place within thirty (30) days following the final appointment of the arbitrators and may be heard with the participation of and in the presence of only one party if the other party fails to appear. The decision of the arbitrators shall be final and binding upon the parties. The rules of the Quebec Code of Civil Procedure on arbitration shall apply.

(c) There shall be no appeal or judicial review of such decision.

(d) The decision of the arbitrators, if more than one, shall be by majority and the responsibility for the costs and expenses of the arbitration shall be paid by the parties as determined by the arbitrator(s). The arbitrators shall render their decision in writing within two (2) weeks of the hearing.

(e) The parties agree to the homologation of the arbitration decision at the request of either party.

## **13 GENERAL PROVISIONS**

### **13.1 Assignment**

Without prior written approval from McGILL's authorized representative, this AGREEMENT may not be assigned or transferred by ADHEREX, except to the successor or assignee of ADHEREX's entire business interest. In the event ADHEREX's entire business interest is to be assigned or transferred, ADHEREX shall give McGILL not less than forty-five (45) days advance notification. McGILL shall be given the opportunity to express its concerns over any ethical issues related to the takeover, and those concerns will be addressed before transfer or assignment of this AGREEMENT can be completed. For greater certainty ADHEREX may assign any technology other than the LICENSED TECHNOLOGY without the prior written approval of McGILL.

### 13.2 Entire Agreement

This AGREEMENT constitutes the entire agreement and understanding between MCGILL and ADHEREX with respect to the LICENSED TECHNOLOGY, and any modification of this AGREEMENT shall be in writing and shall be signed by a duly authorized representative of both MCGILL and ADHEREX. There are no understandings, representations, or warranties between MCGILL and ADHEREX concerning the LICENSED TECHNOLOGY except as expressly set-forth in this AGREEMENT.

As of the coming into force of this AGREEMENT, this AGREEMENT supersedes all prior agreements or understandings between MCGILL and ADHEREX concerning the LICENSED TECHNOLOGY including, for more certainty, the Licence Agreement entered into between the parties September 23, 1998.

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### 13.3 Force Majeure

Neither MCGILL nor ADHEREX shall be in default of the terms of this AGREEMENT because the party delays performance or fails to perform such terms; provided such delay or failure is not the result of the party's intentional or negligent acts or omissions, but the result of causes beyond the reasonable control of such party. Causes reasonably beyond the control of MCGILL and ADHEREX shall include, but not be limited to, revolutions; civil disobedience; fires; acts of God, war, or public enemies; blockades; embargoes; strikes; labour disputes; laws; governmental, administrative or judicial orders, proclamations, regulations, ordinances, demands, or requirements; delays in transit or deliveries; actions or inactions of regulatory bodies or inability to secure necessary permits, permissions, raw materials, or equipment.

### 13.4 Governing Law

This AGREEMENT shall be deemed to have been made in Province of Quebec and shall be governed and construed in accordance with the laws of the Province of Quebec.

### 13.5 Notices

All notices, reports, payments, requests, consents, demands and other communications between MCGILL and ADHEREX, pertaining to subjects related to this AGREEMENT, shall be in writing and shall be deemed duly given and effective (A) when actually received by mail or personal delivery, or (B) when mailed by prepaid registered or certified mail to the receiving party at the address set forth below, or to such other address as may be later designated by written notice from either party to the other party:

MCGILL's Notification Address:

Director, Office of Technology Transfer, McGill University, 3550 University St., Montreal, QC, H3A 2A7.

ADHEREX's Notification Address:

President, ADHEREX Technologies Inc., 600 Peter Morand Crescent, Suite 340, Ottawa, Ontario K1G 5Z3.

### 13.6 Use of Name

ADHEREX shall not, without prior written consent from MCGILL in each specific case, use MCGILL's name, trademark(s), or any adaptations thereof.

MCGILL shall not, without prior written consent from ADHEREX in each specific case, use ADHEREX's name, trademarks, or any adaptations thereof.

### 13.7 Confidentiality

Each party ("Receiving Party") agrees to keep in strict confidence any information provided by the other party ("Disclosing Party") that is not generally known among or readily accessible to

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persons that normally deal with the kind of information in question, that has actual or potential commercial value because of its confidential or secret nature, that Disclosing Party has taken reasonable steps under the circumstances to keep confidential or secret, and that, where disclosed in tangible or electronic form, has been marked or otherwise identified by Disclosing Party, at the time of disclosure, as being "confidential", "proprietary", "for internal use only" or with a similar legend, provided that in no event shall the absence of such a mark or legend shall preclude disclosed information which would be considered confidential by a person exercising reasonable business judgement from being treated as confidential by Receiving Party such as, but not limited to, unpatented inventions, know-how, ideas, methods, formulas and all technical, marketing, pricing, financial and other business data and information of the Disclosing Party, ("Confidential Information").

The Receiving Party shall take reasonable measures to prevent unauthorized access, disclosure, possession, alteration, transfer, use, and reproduction of Disclosing Party's Confidential Information and, except as may be required for the exercise of its rights or the performance of its obligation hereunder, Receiving Party shall neither disclose Disclosing Party's Confidential Information to anyone save to officers, directors, employees, or representatives of Receiving Party who need to know such Confidential Information for the purposes of exercising Receiving Party's rights or performing Receiving Party's obligations hereunder, provided each person to whom Disclosing Party's Confidential Information is so disclosed is informed by the Receiving Party of the confidential nature of Disclosing Party's Confidential Information and undertakes to treat Disclosing Party's Confidential Information in accordance with the provisions of this Section, nor copy or otherwise use any such Confidential Information without the prior written consent of the Disclosing Party.

The obligations of confidentiality shall not apply to information which (i) is or becomes publicly available through no wrongful act or breach of confidentiality by Receiving Party under this Agreement; (ii) was already in the rightful possession of the Receiving Party prior to its disclosure; (iii) is independently developed by the Receiving Party without use of any Disclosing Party's Confidential Information; (iv) is or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, provided that such source is not known by the Receiving Party to be subject to any confidentiality obligation towards the Disclosing Party, or (v) is required to be disclosed by law, by the order of a government agency or by a court of competent jurisdiction, provided that the Receiving Party gives prior written notification to the Disclosing Party of its intention to disclose such information.

For more certainty, this agreement and its terms and all information and reports provided to McGILL in the future must be maintained as confidential by both parties, provided that parties may disclose such information to potential business partners, investors or investment bankers that are not Disclosing Party's competitors nor affiliates or subsidiaries of such Disclosing Party's competitors, including to their officers, directors, employees or to their attorneys, accountants, financial or other professional advisors which are bound by the law to keep Disclosing Party's Confidential Information in confidentiality to, at least, the same extent as the Receiving Party in bound to keep Disclosing Party's Confidential Information in confidentiality hereunder, in connection with the due diligence review of Receiving Party by such business partners, investors, or investment bankers.

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### 13.8 Language

This Agreement is drawn up in English at the request of both parties. Les parties aux présentes conviennent que ce document soit rédigé en anglais.

### 14 SUCCESSORS

This Agreement and the provisions hereof shall enure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns.

### 15 SIGNATURES

IN WITNESS WHEREOF, McGILL and ADHEREX have caused this LICENSE AGREEMENT to be executed in duplicate originals by their duly authorized representative.

For MCGILL UNIVERSITY:

Pierre Belanger /s/ Pierre Belanger

Vice President, Research

Date: February 26, 2001

For ADHEREX TECHNOLOGIES, INC:

John Brooks /s/ John Brooks

CEO

Date: February 26, 2001

EXCLUSIVE LICENSE AGREEMENT  
 BETWEEN OREGON HEALTH & SCIENCE UNIVERSITY  
 AND  
 OXIQUANT, INC.

This Agreement, effective as of September 26, 2002, (“Effective Date”) is entered into by and between the Oregon Health & Science University (“OHSU”), having offices at 2525 S. W. First Avenue, Suite 120, Portland, Oregon 97201-4753, and Oxiquant, Inc. (“OXIQUANT”), a Delaware corporation, having offices at 787 Seventh Avenue, New York, New York 10019.

1. BACKGROUND

- 1.01 OHSU owns certain inventions, conceived at OHSU and assigned by the inventors to OHSU as described in Appendix A, wherein such inventions, as well as any related confidential matter, pertain to thiol-based chemoprotectant compounds and chemosensitizers their use in oncology and other disorders, pharmaceutical compositions and other thiol-based technologies (the “Technology”).
- 1.02 OHSU has the right to grant licenses to the Licensed Patents Rights (defined in Section 3.01), subject only to any applicable royalty-free, nonexclusive licenses heretofore granted to the United States Government.
- 1.03 OHSU desires to have the Licensees Patents Rights utilized in the public interest and is willing to grant a license thereunder.
- 1.04 OXIQUANT now desires to obtain a license to the Licensed Patents Rights exclusive within the Fields of Use upon the terms and conditions hereinafter set forth.

2. DEFINITIONS

- 2.01 “Affiliate” means any corporation, company or other legal entity that directly or indirectly controls, or is controlled by, or is under common control with OXIQUANT.
- 2.02 “First Commercial Sale” means the initial transfer by or on behalf of OXIQUANT or its sublicensees of licensed Products or the initial practice of a Licensed Process by or on behalf of OXIQUANT or its sublicensees in exchange for cash or some equivalent to which value can be assigned for the purpose of determining Net Sales.
- 2.03 “Government” means the government of the United States of America.
- 2.04 “Improvements” shall mean any modification of a Licensed Process or Licensed Product or any inventions (whether patentable or not), information and data, in the Field of Use that, during the term of this Agreement, the manufacture use or sale of which would infringe an issued or pending claim within the Licensed Patent Rights.
- 2.05 “Know-how” shall mean all tangible information (other than those contained in the Patent Rights) whether patentable or not (but which have not been patented) and physical objects related to the Licensed Patents Rights, including but not limited to formulations, materials, data, drawings and sketches, designs, testing and test results, regulatory information of a like nature, owned by OHSU, which OHSU has the right to disclose and license to OXIQUANT, and which arose in one or more of the Principal Investigators’ laboratories under the direction of one or more of the Principal Investigators prior to the Effective Date of this Agreement.
- 2.06 “Patent Rights” shall mean:
- a) U.S. and foreign patent applications and patents listed in Appendix A or subsequently added to Appendix A by agreement of the parties, all divisions and continuations of these applications, all patents issuing from such applications, divisions, and continuations, and any reissues, reexaminations, and extensions of all such patents; and
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- b) to the extent that the following contain one or more claims directed to the invention or inventions claimed in (a) above: (i) continuations-in-part of (a) above; (ii) all divisions and continuations of these continuations-in-part; (iii) all patents issuing from such continuations-in-part, divisions, and continuations; and (iv) any reissues, reexaminations, and extensions of all such patents; and
  - c) any later-filed foreign patent applications filed by or on behalf of OHSU, to the extent that the claimed subject matter of such applications is the same as the patents or patent applications referred to in (a) above, together with all all divisions and continuations of these applications, all patents issuing from such applications, divisions, and continuations, and any reissues, reexaminations, and extensions of all such patents.

- 2.07 “Principal Investigators” means the OHSU laboratory of Dr. Edward Neuwelt and the researchers and laboratory personnel under

his supervision, while such individuals are in the employment of OHSU.

- 2.08 “Licensed Product(s)” means tangible materials which, in the course of manufacture, use, sale or importation would be covered, in whole or in part, by one or more claims of the Licensed Patent Rights that have not been held invalid or unenforceable by an unappealed or unappealable judgment of a court of competent jurisdiction.
- 2.09 “Licensed Process(es)” means processes or methods which, in the course of being practiced would be covered, in whole or in part, by one or more claims of the Licensed Patent Rights that have not been held invalid or unenforceable by an unappealed or unappealable judgment of a court of competent jurisdiction.
- 2.10 “Net Sales” means the total gross receipts for sales of Licensed Products or practice of Licensed Processes by or on behalf of OXIQUNT, its Affiliates, and/or their sublicensees, and from leasing, renting, or otherwise making Licensed Products or Licensed Processes available to others without sale or other dispositions, whether invoiced or not, less discounts, returns and allowances actually granted to customers and commissions actually paid to third-party distributors and other third-party sales agencies, and freight charges. No deductions shall be made for any cost incurred by OXIQUNT, its Affiliates, and/or their sublicensees related to the research and development of Licensed Products or practice of the Licensed Processes, including, without limitation, any royalties payable to third parties.
- 2.11 “Fields of Use” means the use of the Technology for all human therapeutic purposes.
- 2.12 “Trigger Event” means (a) if OXIQUNT shall become bankrupt, or shall file a petition in bankruptcy, or if the business of OXIQUNT shall be placed in the hands of a receiver, assignee or trustee for the benefit of creditors, whether by the voluntary act of OXIQUNT or otherwise, or (b) if OXIQUNT fails to make commercially reasonable efforts to cure any breach by a sublicensee of its agreement with OXIQUNT related to the Licensed Patent Rights, or if after OXIQUNT makes such commercially reasonable efforts and sublicensee is still in breach, OXIQUNT fails to terminate such sublicensee agreement within a reasonable period of time, but in no event longer than one hundred and twenty (120) days.
- 2.13 “License Period” shall mean the term of this Agreement as set forth in Article 14 of this Agreement.
- 2.14 “Qualified Financing” shall mean the first sale of equity securities of OXIQUNT that results in gross proceeds to OXIQUNT of not less than \$6,000,000, provided that the holders of a majority of the shares issued in the Qualified financing are not Affiliates of OXIQUNT, and provided further, that if the equity security issued in the Qualified Financing is preferred stock, each share issued is convertible into one share of common stock.
- 2.15 “New Developments” means any inventions (whether patentable or not), information and data in the Field of Use that (a) are developed in one or more of the Principal Investigators laboratories under the direction of one or more of the Principal Investigators, (b) relates directly to the Technology, and (c) do not otherwise constitute an Improvement or Licensed Patent Right.

### 3. GRANT OF RIGHTS

- 3.01 OHSU hereby grants to OXIQUNT, and OXIQUNT accepts, subject to the terms and conditions of this Agreement, an exclusive worldwide license, in the Field of Use under the Patent Rights and to utilize the Know-how

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and Improvements, throughout the License Period, to (a) make, have made, use, lease, offer for sale, sell and import any Licensed Products and to practice and have practiced any Licensed Processes; and (b) sublicense to third parties, in accordance with Article 4 below, the rights granted under subparagraph (a) of this Paragraph 3.01 (together with (a), the “Licensed Patent Rights”).

- 3.02 For a period of three (3) years after the Effective Date, OXIQUNT will have the first right to negotiate for the license of any additional patent rights arising out of New Developments, subject to any rights previously granted by OHSU to third-parties in the course of conceiving or otherwise acquiring such additional patent rights or New Developments. With respect to each additional New Development to which the right of first negotiation is applicable, OHSU shall notify OXIQUNT of the creation of such New Development. Upon receipt of such notice, OXIQUNT and OHSU shall negotiate in good faith to arrive at terms and conditions (including royalty terms) under which OHSU would license the patent rights to such New Development to OXIQUNT. If, within sixty (60) days after OXIQUNT is provided notice of the New Development from OHSU, the parties do not agree in writing on terms and conditions for the license of the patent rights to such New Development, then the rights of OXIQUNT under this Section 3.02 shall be of no further force or effect with respect to such New Development.
- 3.03 This Agreement confers no license or rights by implication, estoppel, or otherwise under any patent applications or patents of OHSU other than Licensed Patent Rights. Subject to the other provisions of this Agreement (including without limitation the licenses granted in Paragraph 3.01), all intellectual property that each party owns as of the Effective Date of this Agreement, and all intellectual property developed or acquired by each party hereafter (whether or not based on or derived from the Licensed

Patents Rights) shall remain the property of such party.

- 3.04 The Licensed Patent Rights are exclusive in the Field of Use, except that OHSU may use the Licensed Patent Rights and Know-how solely for educational and research purposes (a) by itself or (b) in collaboration with third party academic or non-profit research organizations. Further, the Government may use the Licensed Patent Rights and Know-how as provided for in Paragraph 5.01. OHSU retains the right to use and license the Licensed Patent Rights outside of the Field of Use.
- 3.05 OHSU hereby warrants and represents that, to the knowledge and belief of the Principal Investigator and the technology transfer office of OHSU, the US and foreign patent applications and patents itemized on Appendix A and described in section 2.06(a) sets forth all of the patents and patent applications relating to the Technology in the Field of Use owned by or licensed by OHSU on the Effective Date, other than the US and foreign patents applications and patents itemized on Appendix B.
- 3.06 To knowledge and belief of the Principal Investigator and the technology transfer office of OHSU, and excluding any rights granted to the Government or the Principal Investigator that have been disclosed to OXIQUNT, OHSU has all right, title, and interest in and to the Licensed Patent Rights, including exclusive, absolute, irrevocable right, title and interest thereto, free and clear of all liens, charges, encumbrances or other restrictions or limitations of any kind whatsoever and to OHSU's knowledge and belief there are no licenses, options, restrictions, liens, rights of third parties, disputes royalty obligations, proceedings or claims relating to, affecting, or limiting its rights or the rights of OXIQUNT under this Agreement with respect to, or which may lead to a claim of infringement or invalidity regarding, any part or all of the Licensed Patent Rights and their use as contemplated in the underlying patent applications as presently drafted.
- 3.07 To the knowledge and belief of the Principal Investigator and the personnel of the technology transfer office of OHSU, there is no claim, pending or threatened, of infringement, interference or invalidity regarding, any part or all of the Licensed Patent Rights and their use as contemplated in the underlying patent applications as presently drafted.

#### 4. SUBLICENSING

- 4.01 OXIQUNT agrees that any sublicenses granted by it shall provide that the obligations to OHSU of Paragraphs 5.01, 5.02, 9.01, 11.01, 11.02, 13.01-13.03, 14.01-14.09, 15.01 and 17.08-17.11 of this Agreement shall be binding upon any sublicensee as if it were a party to this Agreement. OXIQUNT further agrees to attach copies of these Paragraphs to all sublicense agreements. OXIQUNT further agrees that each sublicense shall contain a provision requiring sublicensee to provide reports to OXIQUNT sufficient to permit OXIQUNT to meet its obligations under Article 10 hereof.

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- 4.02 OXIQUNT agrees to prohibit any sublicensee from further sublicensing, without the consent of OXIQUNT.
- 4.03 Any sublicenses granted by OXIQUNT shall provide for the termination of the sublicense, or the conversion to a license directly between such sublicensees and OHSU, at the option of the sublicensee, upon termination of this Agreement under Article 14. Such conversion is contingent upon acceptance by the sublicensee of the terms of this Agreement; provided, that each such conversion shall be upon substantially the same royalty rates as were in effect between OXIQUNT and the applicable sublicensee prior to conversion.
- 4.04 OXIQUNT agrees to forward to OHSU a copy of each fully executed sublicense agreement postmarked within thirty (30) days of the execution of such agreement.
- 4.05 In the event of a default by OXIQUNT under Article 14 hereunder that is not cured pursuant to the terms of this Agreement, all payments then or thereafter due to OXIQUNT from each of its sublicensees shall, upon notice from OHSU to any such sublicensee, become owed directly to OHSU for the account of OXIQUNT; provided that OHSU shall remit to OXIQUNT the amount by which such payments in the aggregate exceed the total amount owed by OXIQUNT to OHSU. Upon cure of the applicable default by OXIQUNT in accordance with the terms and conditions of this Agreement, such direct payment from sublicensee to OHSU shall cease, and OXIQUNT shall receive payment from the sublicensee pursuant to the terms of the sublicense agreement between OXIQUNT and such sublicensee.
- 4.06 If OXIQUNT enters into sublicenses, OXIQUNT remains primarily liable to OHSU for all of OXIQUNT's duties and obligations contained in this Agreement.

#### 5. STATUORY AND OHSU REQUIREMENTS AND RESERVED GOVERNMENT RIGHTS

- 5.01 OXIQUNT acknowledges that the Government has provided certain funding support for the invention and development of the Licensed Patents Rights. Accordingly, under 35 U.S.C. 200-212, §37 CFR 401, and any other regulations issued thereunder, as amended, and any other applicable law, regulation or grant, the Government retains certain rights in, and imposes certain conditions on, the Licensed Patents Rights and their use or exploitation, including without limitation the requirement that Licensed Products to be sold or used in the United States must be substantially manufactured in the United States. The license grants under this Agreement are expressly subject to all of such Government rights and conditions, which are hereby

incorporated into this Agreement by this reference.

5.02 OXIQANT agrees that products used or sold in the United States embodying Licensed Products shall be manufactured substantially in the United States, unless a written waiver is obtained in advance from the Government.

## 6. ROYALTIES AND OTHER CONSIDERATION

6.01 OXIQANT shall pay, throughout the License Period, royalties to OHSU as set forth below,

- a) Two and one-half percent (2.5%) of Net Sales.
- b) In the event that a Licensed Product is sold in the form of a combination product containing one or more products or technologies which are themselves not a Licensed Product, the Net Sales for such combination product shall be calculated by multiplying the sales price of such combination product by the fraction  $A/(A+B)$  where A is the invoice price of the Licensed Product or the Fair Market Value of the Licensed Product if sold to an Affiliate and B is the total invoice price of the other products or technologies or the Fair Market Value of the other products or technologies if purchased from an Affiliate. However, in no event shall OHSU's royalty be less than one percent (1%) of Net Sales of such combination product.

6.02 Licensee agrees to pay OHSU the following milestone and payments;

- a) \$5,000 upon execution of this Agreement.
- b) \$50,000 upon successful completion of Phase I safety trials for any Licensed Product.

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- c) \$200,000 upon successful completion of Phase II clinical trials for any Licensed Product.
  - d) \$500,000 upon successful completion of Phase III clinical trials for any Licensed Product. In the event that any Licensed Product fails Phase III clinical trials, and a substitute product (backup compound) that is also a Licensed Product must be substituted for the same indication, two additional Phase I or II milestone payments shall be due for such backup compound(s).
  - e) \$260,000 upon First Commercial Sale for any Licensed Product.
  - f) Milestone payments set forth in Paragraphs 6.02(b)—(d) are nonrefundable, and shall have no credit or offset against future royalties. First Commercial Sale payments set forth in Paragraph 6.02(e) are to be fully credited against future royalties due.

6.03 OXIQANT shall pay to OHSU a sublicensing fee of fifteen percent (15%) of any monies or other consideration received by OXIQANT or its Affiliates from any sublicensing of the Licensed Patent Rights, including without limitation any sublicense initiation fees, milestone payments, and any premium on any equity investment by sublicensees. Any non-cash consideration received by OXIQANT or its Affiliates from such sublicensees shall be valued at its fair market value as of the date of receipt. However, said payments from any sublicensee shall not include consideration received for research & development ("R&D") services, and no amount shall be due to OHSU from OXIQANT for consideration received for R&D services. This provision shall not be applied to royalty payments received by OXIQANT from sublicensees as OHSU's royalty for such sales shall be based solely on Paragraph 6.01.

6.04 A claim of a patent or patent application licensed under this Agreement shall cease to fall within the Licensed Patent Rights for the purpose of computing the earned royalty payments in any given country on the earliest of the dates that (a) the claim has been abandoned but not continued, (b) the patent expires, (c) the patent is no longer maintained by OHSU, or (d) the claim of the Licensed Patent Rights has been held to be invalid or unenforceable by an unappealed or unappealable decision of a court of competent jurisdiction or administrative agency.

6.05 No multiple royalties shall be payable to OHSU because any Licensed Products or Licensed Processes are covered by more than one of the Licensed Patent Rights.

6.06 On sales of Licensed Products and Licensed Processes by OXIQANT to an Affiliate or otherwise in other than an arm's-length transaction, the value of the Net Sales attributed under this Article 6 to such a transaction shall be the greater of the actual sales price and that which would have been received in an arm's-length transaction, based on sales of similar quantity and quality products on or about the time of such transaction. Notwithstanding the foregoing, in no event will OXIQANT be obligated to pay a royalty on any transaction involving the sale of Licensed Products or Licensed Processes from OXIQANT to its Affiliate where such transaction occurs for the purpose of effecting a further sale of such Licensed Products or Licensed Processes to a third party which sale will be subject to the payment of royalties hereunder, OXIQANT shall notify OHSU of its intention to enter into any transaction between OXIQANT and its Affiliates prior to entering into such transaction.

6.07 Royalties due under this Article 6 shall be paid in U.S. dollars. For conversion of foreign currency to U.S. dollars, the conversion rate shall be the rate quoted in The Wall Street Journal on the last business day of the applicable calendar quarter or half-year, as applicable, that the payment is due. All checks and bank drafts shall be drawn on United States banks and shall be payable to Oregon Health & Sciences University at the address shown on the Signature Page below. Any loss of exchange, value, taxes, or other expenses incurred in the transfer or conversion to U.S. dollars shall be paid entirely by OXIQANT.

6.08 Amounts which are not paid by their due date and which are not the subject of a bona fide dispute shall accrue interest from the due date until paid, at a rate equal to 1.0 percent per month, subject to applicable usury law.

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## 7. EQUITY

### 7.01 Issuance of Common Stock

In consideration of the license granted pursuant to this Agreement upon execution of this Agreement, OXIQANT will issue 250,250 shares of its common stock, par value \$0.001 per share (the "Common Stock") to OHSU, and will deliver to OHSU a certificate representing the Common Stock that OHSU is purchasing.

### 7.02 Additional Issuance of Common Stock

- a) In the event that OXIQANT issues equity securities in the Qualified Financing at a price less than \$1.998 per share (appropriately adjusted to reflect any stock splits, reverse splits, stock dividends, recapitalizations and the like), then, simultaneously with the issuance of such shares, OXIQANT shall issue to OHSU, that number of additional shares of Common Stock equal to the quotient of (i) \$500,000 minus the product of 250,250 shares (appropriately adjusted to reflect any stock splits; reverse splits, stock dividends, recapitalizations and the like) and the Qualified Financing Price; divided by (ii) the Qualified Financing Price. The "Qualified Financing Price" shall equal the price per share at which OXIQANT sells securities in the Qualified Financing, and will take into account all consideration paid by investors in the Qualified Financing and all value received by investors (including, without limitation, warrants) in the Qualified Financing, with the fair market value of non-cash items determined by the good faith judgment of OXIQANT's board of directors.
- b) OXIQANT shall provide copies of all transaction documents relating to the Qualified Financing to OHSU at least ten business days prior to the closing of the Qualified Financing.
- c) The provisions of this Section 7.02 shall terminate in the event of a corporate transaction in which OHSU receives in exchange for its shares of OXIQANT, cash and/or shares of a publicly traded corporation (including, without limitation a corporation whose shares are traded on the Toronto Stock Exchange) that have an aggregate fair market value of at least \$500,000 as determined by the average closing price of the stock for the ten days prior to the execution of a definitive merger or acquisition agreement.

### 7.03 Representations of OXIQANT

OXIQANT hereby represents and warrants to OHSU that:

- a) OXIQANT is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted. OXIQANT is duly qualified to transact business as a foreign corporation in each jurisdiction in which it conducts its business, except where failure to be so qualified would not have a material adverse effect on OXIQANT's financial condition, business, operations or property.
- b) As of the date of this Agreement, the authorized, issued and outstanding capital stock of OXIQANT, on a fully diluted basis, and including the shares to be issued pursuant to Section 7.01, is 5,005,000 shares of Common Stock, and all issued and outstanding shares of OXIQANT are validly issued, fully paid and nonassessable. There are no options, warrants, conversion privileges or other rights (or agreements for any such rights) outstanding to purchase or otherwise obtain from OXIQANT any of OXIQANT's securities. There exists no obligation (contingent or other) by OXIQANT to purchase, redeem or otherwise acquire any of its equity securities or any interest therein.
- c) All corporate action on the part of OXIQANT, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement, the performance of all obligations of OXIQANT hereunder, and the authorization, issuance, sale and delivery of the Common Stock has been taken, and this Agreement constitutes valid and legally binding obligations of OXIQANT, enforceable in accordance with its terms.
- d) OXIQANT is not in violation or default in any material respect of any provision of its charter or bylaws, of in any material respect of any instrument, judgment, order, writ, decree or contract to which it is a party or by

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which it is bound, or, to the best of its knowledge, of any provision of any federal or state statute, rule or regulation applicable to OXIQUNT. The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree or contract or an event that results in the creation of any lien, charge or encumbrance upon any assets of OXIQUNT or the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license, authorization or approval applicable to OXIQUNT, its business or operations or any of its assets or properties.

- e) OXIQUNT has provided OHSU with all information OXIQUNT believes is reasonably necessary in connection with OHSU's decision to acquire the Common Stock. To OXIQUNT's knowledge, there are no facts that (either individually or in the aggregate) materially adversely affect the business, assets, financial condition, or prospects of OXIQUNT that have not been disclosed, in writing, to OHSU.

#### 7.04 Representations of OHSU

The Common Stock will be acquired by OHSU for investment purposes only, for an indefinite period of time, for its own account, not as a nominee or agent for any other entity, and not with a view to the sale or distribution of all or any part thereof, and OHSU has no present intention of selling, granting any participation in, or otherwise distributing, any or all of the common Stock. OHSU does not have any contract, undertaking, agreement or arrangement with any entity to sell, transfer or grant participation to such person, firm or corporation, with respect to any or all of the Common Stock.

#### 7.05 Registration Rights

- a) If the board of directors of OXIQUNT shall authorize the filing of a registration statement under the Securities Act of 1933, as amended (the "Act") in connection with the proposed offer of any of OXIQUNT's securities by any of OXIQUNT's stockholders (other than a registration statement on Form S-8 or Form S-4 or any other form which does not include substantially the same information as would be required in a form for the general registration of securities), OXIQUNT will, (i) promptly notify OHSU that such registration statement will be filed and that the common stock then held by OHSU will be included in such registration statement at OHSU's request; (ii) cause the shares requested by OHSU to be included in such registration statement, subject to cut back to the extent reasonably required by OXIQUNT or its underwriters so long as all of OXIQUNT's stockholders with registration rights are cut back in proportion to their holding of OXIQUNT equity securities; (iii) use its reasonable best efforts to cause such registration statement to become effective as soon as practicable and (iv) take all other action necessary under federal or state law or regulation to permit all such registered shares to be sold or otherwise disposed of, and will maintain such compliance with each such federal or state law or regulation for the period necessary for OHSU to effect the proposed sale or other disposition.
- b) If OHSU's Common Stock is or becomes freely tradeable without restriction then OHSU shall have no right to the registration rights described in this Section.
- c) Notwithstanding paragraph 7.05(a), OXIQUNT may at any time, abandon or delay any registration commenced by it.

#### 7.06 Market Standoff

OHSU agrees that, in connection with the initial underwritten public offering registered under the Act of shares of common stock or other equity securities of OXIQUNT by or on behalf of OXIQUNT, they shall not sell or transfer, or offer to sell or transfer, any equity securities of OXIQUNT not included in such offering for such period as the managing underwriter of such offering determines is necessary to effect the underwritten public offering (not to exceed 180 days) and OHSU further agrees that it will sign an agreement as requested by the managing underwriter of such offering to effect the foregoing. The foregoing provisions of this Section 7.06 shall be applicable to OHSU only if all officers, directors and greater than five percent stockholders of OXIQUNT enter into similar agreements.

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## 8. DOMESTIC AND FOREIGN PATENT FILING, PROSECUTION, AND MAINTENANCE

8.01 OXIQUNT, upon execution of this Agreement, shall reimburse OHSU for all of out-of-pocket expenses OHSU has incurred for the preparation, filing, prosecution and maintenance of Licensed Patent Rights prior to execution of this Agreement and shall reimburse OHSU for all future, reasonable out-of-pocket expenses incurred for the preparation, filing, prosecution and maintenance of Licensed Patent Rights within sixty (60) days from notice to OXIQUNT of reasonable documentation of such expenses by OHSU.

8.02 OHSU shall diligently prosecute and maintain the Licensed Patent Rights as set forth in Appendix A hereto (as the same may be amended or supplemented from time to time after the date hereof). OXIQUNT shall have the right to select OHSU's patent prosecution counsel subject to approval by OHSU, such approval not to be unreasonably withheld. OHSU agrees to instruct

patent prosecution counsel to follow any instructions that are simultaneously provided by OXIQUNT to patent prosecution counsel and OHSU, unless OHSU reasonably objects to such instructions within 10 days of the notice of such instructions (provided that such notice period shall be deemed waived to the extent necessary to avoid material prejudice to the Licensed Patent Rights. OHSU agrees to keep OXIQUNT reasonably well informed with respect to the status and progress of any such applications, prosecutions and maintenance activities, including, without limitation, providing a copy to OXIQUNT of all correspondence between patent counsel and the filing offices, and to consult in good faith with OXIQUNT and take into account OXIQUNT's comments and requests with respect thereto. Both parties agree to provide reasonable cooperation to each other to facilitate the application and prosecution of patents pursuant to this Agreement.

8.03 OHSU may, in its discretion, elect to abandon any patent applications or issued patent comprising the Licensed Patent Rights, in which case OXIQUNT shall have no further royalty obligation to OHSU in respect of any Licensed Products and Licensed Processes the manufacture, use or sale of which is covered by an issued claim of such abandoned Licensed Patent Rights. Prior to any such abandonment, OHSU shall give OXIQUNT at least sixty (60) days notice and a reasonable opportunity to take over prosecution of such Licensed Patent Rights. In such event, OXIQUNT shall have the right, but not the obligation, to commence or continue such prosecution and to maintain any such Licensed Patent Rights under its own control and at its expense. OHSU agrees to cooperate in such activities including execution of any assignments or other documents necessary to enable OXIQUNT to obtain and retain sole ownership and control of such Licensed Patent Rights.

8.04 Each party shall promptly inform the other as to all matters that come to its attention that may affect the preparation, filing, prosecution, or maintenance of the Licensed Patent Rights and permit each other to provide comments and suggestions with respect to the preparation, filing, and prosecution of Licensed Patent Rights, which comments and suggestions shall be considered by the other party.

## 9. RECORD KEEPING

9.01 OXIQUNT agrees to keep, and cause its sublicensees to keep accurate and correct records of Licensed Products made, used, or sold and Licensed Processes practiced under this Agreement appropriate to determine the amount of royalties due OHSU. Such records shall be retained at OXIQUNT's principle place of business and shall be available up to twice per year upon reasonable notice to OXIQUNT, for two (2) years following the end of the calendar year to which they pertain, during normal business hours, for inspection at the expense of OHSU by an accountant or other designated auditor selected by OHSU, except one to whom OXIQUNT has reasonable objection, for the sole purpose of verifying reports and payments hereunder. The accountant or auditor shall only disclose to OHSU information relating to the accuracy of reports and payments made under this Agreement. If an inspection shows an under-reporting or underpayment in excess of five percent (5%) for any twelve (12) month period, then OXIQUNT shall reimburse OHSU for the cost of the inspection at the time OXIQUNT pays the unreported royalties, including any interest charges as required by Paragraph 6.08 of this Agreement. All payments required under this paragraph 9.01 shall be due on the date OHSU provides OXIQUNT notice of the payment due.

## 10. REPORTS

10.01 Within sixty (60) days from the end of each quarter of each calendar year, OXIQUNT shall deliver to OHSU complete and accurate reports, giving such particulars of the business conducted by OXIQUNT during the preceding

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quarter under this Agreement as shall be pertinent to a royalty accounting hereunder. These shall include at least the following:

- a) All Licensed Products and Licensed Processes used, leased or sold, by or for OXIQUNT, its Affiliates and its sublicensees.
- b) Total amounts invoiced for Licensed Products and Licensed Processes used, leased or sold, by or for OXIQUNT, its Affiliates or sublicensees.
- c) Deductions applicable in computed Net Sales.
- d) Total royalties due based on Net Sales by or for OXIQUNT, its Affiliates or sublicensees.
- e) Total fees due based on sublicensing revenue earned by OXIQUNT or its Affiliates.
- f) Details of any non-cash equivalent transactions involving the transfer or other disposition of Licensed Products or practicing of Licensed Processes, as well as non-cash equivalent transactions involving any sublicense of the rights granted to OXIQUNT hereunder, and the method by which OXIQUNT determined the fair market value of the applicable non-cash equivalent consideration.
- g) Names and addresses of all sublicensees and Affiliates of OXIQUNT.
- h) On an annual basis, OXIQUNT's year-end financial statements.

- 10.02 With each such quarterly report submitted, OXIQANT shall pay to OHSU the royalties due and payable under this Agreement, if any.
- 10.03 OXIQANT agrees to forward to OHSU annually a copy of any report, which is in substance similar to the report required by this Article 10, received from any sublicensee and other documents received from any sublicensee as OHSU may reasonably request, as may be pertinent to an accounting of fees and royalties.
- 10.04 OHSU agree to hold in confidence each report delivered by OXIQANT pursuant to this Article 10 until three (3) year subsequent to the termination of this Agreement. Notwithstanding the foregoing, OHSU may disclose any such information required to be disclosed pursuant to any judicial, administrative or governmental request, subpoena, requirement or order, provided that OHSU take reasonable steps to provide OXIQANT with prompt notice of such obligation to disclose so that OXIQANT has the opportunity to contest such request, subpoena, requirement or order.

## 11. DUE DILIGENCE

- 11.01 OXIQANT shall use its reasonable best efforts to introduce the Licensed Products into the commercial market or apply the Licensed Processes to commercial use as soon as practicable. The efforts of a sublicensee shall be considered the efforts of OXIQANT for the purposes of this Section 11.01.
- 11.02 Upon the First Commercial Sale until the expiration of this Agreement, OXIQANT shall use its reasonable best efforts to keep Licensed Products and Licensed Processes reasonably accessible to the public.

## 12. INFRINGEMENT AND PATENT ENFORCEMENT

- 12.01 OXIQANT and OHSU shall promptly provide written notice, to the other party, of any alleged infringement by a third party of the Licensed Patent Rights and provide such other party with any available evidence of such infringement.
- 12.02 During the term of this Agreement, OXIQANT shall have the right, but not the obligation, to prosecute and/or defend, at its own expense and utilizing counsel of its choice, any infringement of, and/or challenge to, the Licensed Patent Rights. In furtherance of such right, OXIQANT hereby agrees that QHSU may join OXIQANT as a party in

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any such suit, without expense to OHSU. No settlement, consent judgment or other voluntary final disposition of any such suit which would adversely affect the rights of OHSU may be entered into without the consent of OHSU, which consent shall not be unreasonably withheld.

- 12.03 In the event that a claim or suit is asserted or brought against OXIQANT alleging that the manufacture or sale of any Licensed Product by OXIQANT, an Affiliate of OXIQANT, or any sublicensee, or the use of such Licensed Product by any customer of any of the foregoing, infringes proprietary rights of a third party, OXIQANT shall give written notice thereof to OHSU. OXIQANT may, in its sole discretion, modify such Licensed Product to avoid such infringement and/or may settle on terms that it deems advisable in its sole discretion, subject to Paragraph 12.02; provided, that OXIQANT shall not enter into any settlement affecting the validity of the Licensed Patents Rights or that would otherwise have a materially adverse impact on OHSU without OHSU's prior written consent. Otherwise, OXIQANT shall have the right, but not the obligation, to defend any such claim or suit. In the event OXIQANT elects not to defend such suit within sixty (60) days after the filing thereof, OHSU shall have the right, but not the obligation to do so at its sole expense.
- 12.04 Without limiting either party's obligation to cooperate with the other under Section 12.08, OXIQANT shall take no action to compel OHSU either to initiate or to join in any suit brought under Paragraphs 12.02 or 12.03. OXIQANT may request OHSU to initiate or join any such suit if necessary to avoid dismissal of the suit. Should OHSU be made a party to any such suit, OXIQANT shall reimburse OHSU for any costs, expenses, or fees which OHSU incurs as a result of such motion or other action, including any and all costs incurred by OHSU in opposing any such motion or other action.
- 12.05 Any recovery of damages by OXIQANT, in any such suit, shall be applied first in satisfaction of any unreimbursed expenses and legal fees of OXIQANT relating to the suit and then to OHSU for any royalties credited in accordance with Paragraph 12.06. The balance remaining from any such recovery shall be treated as payments received by OXIQANT from sublicensees and shared by OHSU and OXIQANT in accordance with Paragraph 6.03 hereof.
- 12.06 OXIQANT may credit any litigation costs incurred by OXIQANT in any country pursuant to this Article 12 and all amounts paid in judgement or settlement of litigation within the scope of this Article 12 against royalties thereafter payable to OHSU hereunder for such country and apply the same toward one-half of its actual, reasonable out-of-pocket litigation costs. If such litigation costs in such country exceeds 50% of royalties payable to OHSU in any year in which such costs are incurred than the amount of such costs, expenses and amounts paid in judgement or settlement, in excess of such 50% of the royalties payable shall be carried over and credited against royalty payments in future years for such country.

12.07 If within six (6) months after receiving notice of any alleged infringement, OXIQANT shall have been unsuccessful in persuading the alleged infringer to desist, or shall not have brought and shall not be diligently prosecuting an infringement action, or if OXIQANT shall notify OHSU, at any time prior thereto, of its intention not to bring suit against the alleged infringer, then, and in those events only, OHSU shall have the right, but not the obligation, to prosecute, at its own expense and utilizing counsel of its choice, any infringement of the Licensed Patent Rights, and OXIQANT may, for such purposes, join OHSU as a party plaintiff. The total cost of any such infringement action commenced solely by OHSU shall be borne by OHSU and OHSU shall keep any recovery or damages for infringement or otherwise derived therefrom and such shall not be applicable to any royalty obligation of OXIQANT.

12.08 In any suit to enforce and/or defend the Licensed Patent Rights pursuant to this License Agreement, the party not in control of such suit shall, at the request and expense of the controlling party, cooperate in all reasonable respects and, to the extent practicable, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

### 13. DISCLAIMER OF WARRANTIES AND INDEMNIFICATION

13.01 Subject to Sections 3.05 through 3.07, OHSU does not warrant the validity of the Licensed Patent Rights and makes no representations whatsoever with regard to the scope of the Licensed Patent Rights, or that the Licensed Patent Rights or Know-How may be exploited without infringing other patents or other intellectual property rights of third parties.

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13.02 OHSU MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY SUBJECT MATTER DEFINED BY THE CLAIMS OF THE LICENSED PATENT RIGHTS OR BY THE KNOW-HOW.

13.03 OXIQANT shall indemnify and hold OHSU, its directors, trustees, officers, employees, students, fellows, agents, and consultants harmless from and against all liability, demands, damages, expenses, and losses, including but not limited to death, personal injury, illness, or property damage (collectively, "Losses") in connection with or arising out of (a) the use of the Licensed Patent Rights or Know-how by or on behalf of OXIQANT, its Affiliates, or the sublicensees, agents, independent contractors, directors, employees, or third parties of any of the foregoing, or (b) the design, manufacture, distribution, or use of any Licensed Products, Licensed Processes or materials, or other products or processes developed in connection with or arising out of the Licensed Patent Rights or Know-How, or (c) otherwise arising out of exercise of Licensed Patent Rights granted under this Agreement, to the extent such Losses are not the result of OHSU's gross negligence or willful misconduct or a misrepresentation of the representations set forth in Sections 3.05 through 3.07. OXIQANT shall, at all times following the Qualified Financing, carry commercial liability insurance or self-insurance sufficient to cover its contractual obligations with respect to activities performed under this Agreement. In no event shall such insurance cover less than \$5,000,000 in the aggregate and \$2,000,000 per occurrence. OXIQANT shall cause OHSU to be named as an additional insured on any such policy, and shall cause the applicable insurance provider to notify OHSU of any cancellation of such policy or any reduction in the coverage limits of such policy below those required herein. OXIQANT shall provide evidence of this coverage to OHSU upon request.

### 14. TERM, TERMINATION AND MODIFICATION OF RIGHTS

14.01 The term of this Agreement is effective as of the Effective Date and shall extend to the expiration of the last to expire claim contained in the Licensed Patent Rights (the "Term") unless sooner terminated as provided in this Article 14.

14.02 In the event that OXIQANT is in default in the performance of any material obligations under this Agreement, and if the default has not been remedied within sixty (60) days after the date of notice in writing from OHSU to OXIQANT of such default, OHSU may terminate the Term by written notice to OXIQANT.

14.03 OXIQANT may, upon sixty (60) days written notice to OHSU, terminate this Agreement by doing all of the following:

- a) Ceasing to make, have made, use, import, sell and offer for sale any Licensed Products and/or use of Licensed Processes;
- b) Terminating all sublicenses, and causing all sublicensees to cease making, having made, using, importing, selling and offering for sale any Licensed Products and/or use of Licensed Processes; and
- c) Paying all monies owed to OHSU under this Agreement.

14.04 OHSU shall specifically have the right, but not the obligation, to terminate this Agreement if OHSU determines that: 1) OXIQANT is more than sixty (60) days late in paying to OHSU any consideration due under this Agreement and OXIQANT does not immediately pay OHSU in full upon OHSU's written demand, 2) OXIQANT experiences a Trigger Event, or 3) OXIQANT materially breaches this Agreement (other than a breach solely under 14.04 (1)) and does not cure the breach within sixty (60) days after written notice of the breach.

14.05 Within ninety (90) days of expiration or termination of this Agreement under this Article 14, a final report shall be submitted by OXIQUNT. Any royalty payments, including those related to patent expense, due to OHSU shall become immediately due and payable upon termination or expiration. If this Agreement is terminated under this Article 14, sublicensees may elect to convert their sublicenses to direct licenses with OHSU subject to Paragraph 4.03.

14.06 Upon termination of this Agreement, OXIQUNT and any sublicensee shall, at OHSU's request, return to OHSU any data generated during the term of this Agreement that will facilitate the development of the technology licensed under this Agreement, provided, however, that OXIQUNT may keep one copy for archival purposes only.

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14.07 Upon termination of this Agreement, OXIQUNT shall cause physical inventories to be taken immediately of: (a) all completed Licensed Product(s) on hand under the control of OXIQUNT or any Affiliate or sublicensee; and (b) such Licensed Product(s) as are in the process of manufacture and component parts thereof as of the date of termination of this Agreement, which inventories shall be reduced to writing. OXIQUNT shall deliver copies of such written inventories, verified by an officer of OXIQUNT forthwith to OHSU. OHSU shall have 45 days after receipt of such verified inventories within which to challenge the inventory and request an audit. Upon five days written notice to OXIQUNT, OHSU and its agents shall be given access during business hours to the premises of OXIQUNT or its Affiliates or sublicensees for the purpose of conducting an audit. Upon the termination of this Agreement, OXIQUNT shall, at its own expense forthwith remove, efface or destroy all references to OHSU from all advertising or other materials used in the promotion of OXIQUNT's business or the business of any Affiliate or sublicensee and OXIQUNT and any Affiliate or sublicensee shall not thereafter represent in any manner that it has rights in or to the Licensed Patent Rights or Licensed Product(s) or Licensed Processes.

14.08 Notwithstanding the foregoing, OXIQUNT shall have a period of six (6) months after termination to sell off its inventory of Licensed Product(s) existing on the date of termination of this Agreement and shall pay royalties to OHSU with respect to such Licensed Product(s) within thirty (30) days following the expiration of such six-month period ("Sell Off Right").

14.09 Paragraphs 4.03, 4.05, 6.04-6.08, 7.02, 7.05, 7.06, 9.01, 10.04, 12.01-12.08, 13.01-13.03, 14.05-14.09, 15.01 and 17.01-17.12 of this Agreement shall survive termination of this Agreement. OXIQUNT's obligation to pay all monies owed accruing under this Agreement shall survive termination of this Agreement.

## 15. CONFIDENTIALITY

15.01 Any proprietary or confidential information (including but not limited to information related to the Patent Rights and Know-how) collectively constitute the "Confidential Information". OXIQUNT and OHSU agree that they will not use the Confidential Information of the other party for any purpose unrelated to this Agreement, and will hold it in confidence during the term of this Agreement and for a period of five (5) years after the termination or expiration date of this Agreement. OXIQUNT shall exercise with respect to OHSU's Confidential Information the same degree of care as OXIQUNT exercises with respect to its own confidential or proprietary information of a similar nature (which in no event shall be less than reasonable care), and shall not disclose it or permit its disclosure to any third party (except to those of its employees, consultants, or agents who are bound by the same obligation of confidentiality as OXIQUNT is bound by pursuant to this Agreement). However, such undertaking of confidentiality by OXIQUNT shall not apply to any information or data which:

- a) OXIQUNT receives at any time from a third-party lawfully in possession of same and having the right to disclose same.
- b) Is, as of the date of this Agreement, in the public domain, or subsequently enters the public domain through no fault of OXIQUNT.
- c) Is independently developed by OXIQUNT as demonstrated by written evidence without reference to information disclosed to OXIQUNT by OHSU.
- d) Is disclosed pursuant to the prior written approval of OHSU.
- e) Is required to be disclosed pursuant to law or legal process (including, without limitation, to a governmental authority) provided, in the case of disclosure pursuant to legal process, prompt notice of the impending disclosure is provided to OHSU so that OHSU may, in its discretion and at its own cost and expense, contest such disclosure.

## 16. USE OF NAMES AND PUBLICATION

16.01 Nothing contained in this Agreement shall be construed as granting any right to OXIQUNT or its Affiliates to use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of OHSU

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or any of its units (including contraction, abbreviation or simulation of any of the foregoing) without the prior, written consent of OHSU, provided, however, that OHSU acknowledge and agree that OXIQUNT may use the names of OHSU and the names of

the Principal Investigators in various documents used by OXIQUNT for capital raising and financing without such prior written consent where the use of such names is required by law and in any such event OXIQUNT shall use reasonable efforts to notify OHSU and the Principal Investigator of any such use prior to the use or, if prior notification is not possible, promptly thereafter. OHSU acknowledge that the Principal Investigators may act as consultants and scientific advisors to OXIQUNT with respect to the licenses granted to OXIQUNT hereunder, subject to the respective policies of OHSU.

16.02 Nothing herein shall be deemed to establish a relationship of principal and agent between OHSU and OXIQUNT, nor any of their agents or employees for any purpose whatsoever. This Agreement shall not be construed as creating a partnership between OHSU and OXIQUNT, or as creating any other form of legal association or arrangement which would impose liability upon one party for the act or failure to act of the other party.

16.03 In the event that OHSU or Principal Investigators desire, individually or as a group, to publish or disclose, by written, oral or other presentation, Know-how, Licensed Patent Rights, or any material information related thereto then OHSU or the Principal Investigator(s) shall notify OXIQUNT and in writing by facsimile where confirmed by the receiving party, and/or by certified or registered mail (return receipt requested) of their intention at least sixty (60) days prior to any speech, lecture or other oral presentation and at least sixty (60) days before any written or other publication or disclosure. The Principal Investigator(s) shall include with such notice a description of any proposed oral presentation or, in any proposed written or other disclosure, a current draft of such proposed disclosure or abstract. OXIQUNT may request that the Principal Investigator(s) and OHSU, no later than thirty (30) days following the receipt of such notice, delay such presentation, publication or disclosure for a period of not more than thirty (30) days, in order to enable OHSU to file, or have filed on their behalf, a patent application, copyright or other appropriate form of intellectual property protection related to the information to be disclosed or request that OHSU do so. Upon receipt of such request to delay such presentation, publication or disclosure, OHSU and the Principal Investigator(s) shall arrange for a delay of such presentation, publication or disclosure for the period requested by OXIQUNT, not to exceed thirty (30) days from the original proposed date of publication or disclosure. If neither the Principal Investigator(s) nor OHSU receive any such request from OXIQUNT to delay such presentation, publication or disclosure, OHSU or the Principal Investigator(s) may submit such material for presentation, publication or other form of disclosure.

## 17. MISCELLANEOUS PROVISIONS

17.01 Neither party may waive or release any of its rights or interests in this Agreement except in writing. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

17.02 This Agreement embodies the entire understanding of the parties with regard to the subject matter hereof, and shall supersede all previous communications, representations or understandings, either oral or written, between the parties relating thereto.

17.03 The provisions of this Agreement are severable, and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of law, such determination shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.

17.04 If either party desires a modification to this Agreement, the parties shall, upon reasonable notice of the proposed modification by the party desiring the change, confer in good faith to determine the desirability of such modification. No modification will be effective until a written amendment is signed by the signatories to this Agreement or their designees.

17.05 Each party hereby irrevocably consents to the personal jurisdiction and venue of the state and federal courts located in the states of Oregon and New York with respect to any suit, claim, action or other proceeding of any kind arising out of this Agreement or the transactions contemplated hereby. This Agreement shall be governed by the laws of the State of Oregon, without regard to the principle of conflicts of laws to the contrary.

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17.06 All notices required or permitted by this Agreement shall be in writing and shall be deemed given if delivered personally or upon obtaining written confirmation of receipt following facsimile transmission, or one (1) business day after being sent by reputable overnight courier service or five (5) business days after being mailed by prepaid, first class, registered or certified mail (return receipt requested), in each case properly sent to the other party at the address or facsimile number designated on the following Signature Page, or to such other address as may be designated by like notice.

17.07 This Agreement and the rights and duties appertaining hereto may not be assigned, directly or by operation of law, by either party without first obtaining the written consent of the other which consent shall not be unreasonably withheld. Any such purported assignment, without the written consent of the other party, shall be null and of no effect. Notwithstanding the foregoing, OXIQUNT may assign this Agreement to a purchaser, merging or consolidating corporation, or acquirer of substantially all of OXIQUNT's assets or business and/or pursuant to any reorganization qualifying under section 368 of the Internal Revenue Code of 1986 as amended, as may be in effect at such time.

17.08 Licensee agrees in its use of any OHSU-supplied materials to comply with all applicable statutes, regulations, and guidelines.

17.09 OXIQUANT acknowledges that it is subject to and agrees to abide by the United States laws and regulations (including the Export Administration Act of 1979 and Arms Export Control Act) controlling the export of technical data, computer software, laboratory prototypes, biological material, and other commodities. The transfer of such items may require a license from the cognizant agency of the Government or written assurances by OXIQUANT that it shall not export such items to certain foreign countries without prior approval of such agency. OHSU neither represents that a license is or is not required or that, if required, it shall be issued.

17.10 OXIQUANT agrees to use its best efforts to mark the Licensed Products or their packaging sold in the United States with all applicable U.S. patent numbers and similarly to indicate "Patent Pending" status. OXIQUANT agrees that it will use its best efforts to mark all Licensed Products manufactured in, shipped to, or sold in other countries in such a manner as to preserve OHSU patent rights in such countries.

17.11 By entering into this Agreement, OHSU does not directly or indirectly endorse any product or service provided, or to be provided, by OXIQUANT whether directly or indirectly related to this Agreement. OXIQUANT shall not state or imply that this Agreement is an endorsement by OHSU, or its employees. Additionally, OXIQUANT shall not use the names of OHSU or their employees in any advertising, promotional, or sales literature without the prior written consent of OHSU. No party hereto may issue a press release regarding this Agreement without obtaining the written consent of the other party and provided, further, that the contents of said press release are mutually agreed to by the parties, except as required by law.

17.12 The parties agree to attempt to settle amicably any controversy or claim arising under this Agreement or a breach of this Agreement.

[SIGNATURES BEGIN ON NEXT PAGE.]

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EXCLUSIVE LICENSE AGREEMENT  
SIGNATURE PAGE

FOR OHSU:

by: /s/ Todd T. Sherer  
Todd T. Sherer, Ph.D.  
Director, Technology and Research Collaborations,  
Oregon Health & Science University

Date: September 26, 2002

Mailing Address for Notices:

Technology and Research Collaborations, AD120  
Oregon Health & Science university  
2525 S.W. First Avenue, Suite 120  
Portland, Oregon 97201-4753

FOR OXIQUANT, Inc.

by: /s/ Fred Mermelstein  
Fred Mermelstein, Ph.D.  
President

Date: September 26, 2002

Mailing Address for Notices:

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APPENDIX A

Licensed Patent or Patent Applications

Item #	Patent No	Application No.	Serial No.	Country	Title	Inventors	Filing Date	Issue Date	Current Status	Uni Ref No.
1	5,124,146	644,331	N/A	US Int'l	Differential delivery of therapeutic agents	Neuwelt	22-Jan-91	23-Jun-92	Published	OHSU #120

					across the blood brain barrier						
2	N/A	N/A	PCT/US01/40624 WO 01/80832 60/199,936 60/229/870	US Int'l	Administration of a thiol based chemoprotectant compount	Neuwelt	26-Apr-00	N/A	Nationalization due 26 Oct 2002 Draft of claims written to be filed Oct 16	OHSU # 493	
2 a)	N/A	N/A	60/229,870	Provisional	Chemoprotectant compounds for protection against organ damage	Neuwelt Muldoon	30-Aug-00	N/A	Pending	OHSU #493 continued	
2 b)	N/A	N/A	60/199,936	Provisional	Localised administration of a thiol based chemoprotectant compount against myelosuppression	Newwelt Muldoon Pagel	26-Apr-00	N/A	Pending	OHSU #493 continued	
3	N/A	N/A	PCT/USO1/27296 60/229,869	US Int'l	Chemoprotectant for gastric toxicity	Neuwelt Muldoon	30-Aug-00	N/A	Nationalization due Feb 28, 2003	OHSU # 512	
3 a)	N/A	N/A	60/229,869	Provisional	Chemoprotectant for gastric toxicity	Neuwelt Muldoon	30-Aug-00	N/A	Pending	OHSU # 512 continued	
4	N/A	N/A	In progress	Provisional	Prevention of mucositis and related diseases along the GI tract	Neuwelt	In progress	N/A	In progress	493-B	
5	N/A	N/A	Pending	Provisional	Administration of NAC to diminish infarction volume	Neuwelt	20-Sep-02	N/A	Pending	493-A	
6	4,800,042	122,027	07/122,027	US Int'l	Method for the delivery of genetic material across the blood brain barrier	Neuwelt	18-Nov-87	12- Sep-89	Published	OHSU # 121	
7	5,059,415	314,940	07/314,940	US Int'l	Method for diagnostically imaging lesions in the brain inside a blood brain barrier	Newwelt	21-Feb-89	22- Oct-91	Published	OHSU # 131	

## APPENDIX B

## Patent or Patent Application not included in License

Rem #	Tech ID#	Title	Country	Status	Application Type	File Date	Social Number	Patent No.
1	120	Differential delivery of Therapeutic agents across the	US	Abandoned	Parent	11/18/1987	07/112024	
1a	120	Differential delivery of Therapeutic agents across the	Canada	Abandoned	Foreign non-PCT	11/17/1988	CA/583,428	
1b	120	Differential delivery of therapeutic agents	European	Abandoned	PCT	11/17/1998	EP/89905613.6	

		across the	patent conversion		Regional Phase –BPC		
1c	120	Differential delivery of therapeutic agents across the	Japan	Abandoned	Nationalized PCT	11/17/1998	500,563/89
1d	120	Differential delivery of therapeutic agents across the	Patent Cooperation Treaty	Published	PCT	11/17/1988	PCT/US88/04119
2	121	Method for the delivery of genetic material across the blood brain barrier	US	Published		11/18/1988	PCT/US88/04128
2	121	Method for the delivery of genetic material across the blood brain barrier	Canada	Abandoned	Foreign non-PCT	11/17/1988	583,427
2	121	Method for the delivery of genetic material across the blood brain barrier	European	Abandoned	PCT Regional Phase	11/18/1988	89900518

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Rem #	Tech ID#	Title	Country	Status	Application Type	File Date	Social Number	Patent No.
2	121	Method for the delivery of genetic material across the blood brain barrier	Japan	Abandoned	Nationalized PCT	11/18/1988	500,978/89	
3	128	Method for the delivery of therapeutic agents to [ ] brain	US	Abandoned	Parent	5/18/1988	07/195,969	
3a	128		US	Abandoned	Continuation	11/20/1990	07/615,716	
3b	128		Patent Conv	Abandoned	PCT	5/16/1989	PCT/US110	
3c	128		Canada	Abandoned	Nationalized PC	5/12/1989	599,521	
3d	128		European	Abandoned	PCT Regional phase	5/16/1989	89906963	
4	132	Cell surface antigen for binding with L6 mono antibody	US	Abandoned	Parent	5/4/1989	07/348,048	
5	173		US	Expired		12/12/1991	07/607,767	5,200506
5a	173		Canada			5/1/1990	2,015,862	
5b	173		European	Status		5/2/1990	90103158	
5c	173		Japan			5/7/1990	117,296/90	
5d	173		US		C/P	2/22/1990	07/483,512	
6	254	Method for delivery of white blood cells to the CNS for enzyme transfer						
7	295	Iron-Oxide Particles Capable of uptake by Neurons	US	Abandoned	C/P	3/21/1994	06/216,525	

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Commercial Park West  
**Realmark-Commercial, LLC**  
 Lease

**Date:** March 10, 2004

**To:** John Stubbs  
 Corporate Realty Advisors  
 5511 Capital Center Drive, Suite 320  
 Raleigh, NC 27606  
 (919) 851-9111

**From:** Douglas Marshall  
 Property Manager  
 Commercial Park West  
 2327 Englert Drive, Suite 101  
 Durham, NC 27713  
 (919) 361-8838

**Landlord:** Realmark-Commercial, LLC (“Landlord”)  
 2350 N. Forest Road  
 Getzville, NY 14068  
 (716) 636-0280

**Tenant:** Adherex Technologies, Inc. (“Tenant”)  
 Dr. William Peters, Dr. Robin Norris, & Eric Karl  
 2530 Meridian Parkway, Suite 200  
 Durham, NC 27713

**Premises:** Commercial Park West  
 2300 Englert Drive, Suite G  
 Durham, NC 27713

Commercial Lease Agreement

BETWEEN

**Realmark-Commercial, LLC**

**Lessor**

AND

**Adherex, Inc.**

**Lessee**

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**Commercial Lease Agreement**

**THIS LEASE AGREEMENT** is made and entered into as of the

1st day of April 2004

by and between

**Realmark-Commercial LLC**

hereinafter referred to as "Lessor"

AND

**Adherex, Inc.**

hereinafter referred to as "Lessee".

**WITNESSETH:**

1. **PREMISES:** In consideration of the mutual covenants and agreements herein stated, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following described premises (the "Premises"), together with the appurtenances thereto:

**5,700 rentable square feet (RSF)** of space situated at Commercial Park West, 2300 Englert Dr., Suite G; Durham, NC 27713 (sometimes referred to as the "building" or the "project"). **Within sixty (60) days after the Commencement Date, Lessee shall have the right to have its architect remeasure the Premises in accordance with BOMA Standards. If Lessee's measurements discloses a different square footage than that set forth above, the parties hereto shall amend the Lease to reflect the change in square footage and the rental amounts and Lessee's proportionate share of shared expenses hereunder shall likewise be amended to reflect the correct rental of square footage of the Premises in which case measurements shall be from the center of each demising wall between tenants and to the glass line on any exterior walls or outside of the exterior wall if a glass line dose not exist. In the event the Lessee remeasures the space the Lessor will have the right of reasonable review.**

The location of the Premises within the building shall be as shown on Exhibit A attached hereto and made a part hereof by this reference.

Lessor acknowledges and agrees that Lessee shall have the non-exclusive right to use free of charge, any and all Common Areas, as hereinafter defined, but not limited to, all parking areas. With respect thereto, Lessor acknowledges and agrees that it shall maintain at all times during the Lease term parking serving the building, at a ratio of not less than five (5) parking spaces per 1,000 square feet of rentable area within the building.

For purposes of prorating various expenses, the Premises represent 5.76% percent of the building or project.

2. **TERM:** (a) Subject to and upon the conditions set forth below, the term of the Lease shall commence on \_\_\_\_\_ ~~March 1, 2004~~ (the "commencement date") and shall expire on ~~February 28, 2010~~ (which shall be that date which is the later of (i) the date of substantial completion of the Lessor's Work as defined in Exhibit D or (ii) **June 1, 2004** (the "Commencement Date") and shall expire on the last day of the **seventy-second (72<sup>nd</sup>) full** calendar month thereafter, unless sooner terminated as hereinafter provided. ~~Lessor shall use its reasonable efforts to establish the "completion date" as March 1, 2004 or sooner.~~ **Notwithstanding any other provision contained herein to the contrary, Lessor acknowledges and agrees that it has assured Lessee that it shall achieve substantial completion the Lessor's Work and deliver possession of the Premises to Lessee on or before June 1, 2004** (the "Completion Date Deadline"). Accordingly, in the event Lessor fails to deliver possession of the Premises to Lessee having substantially completed such Lessor's Work on or before said Completion Date Deadline for any reason other than Lessee caused delays or Act of God events, then, in such event, Lessee shall be entitled to a credit equal to two (2) days base rent (at the monthly rental rate applicable to the 7<sup>th</sup> through 12<sup>th</sup> months of Lease term) for each day beyond the Completion Date Deadline that Lessor has failed to deliver possession of the Premises to Lessee with Lessor's Work having been substantially completed. Furthermore, Lessor acknowledges and agrees that in the event it has failed to deliver the Premises to Lessee having substantially completed the Lessor's Work on or before **September 1<sup>st</sup>, 2004** for any reason other than Lessee caused delays or Act of God, Lessee shall be entitled to terminate this Lease by providing written notice of such election to Lessor any time on or before **September 10<sup>th</sup>, 2004**.

(b) If the Premises are not available for occupancy on the "commencement date" or "completion date", the Lease shall not be affected thereby and Lessee shall have no claim against Lessor as a result of the postponement of such date.

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3. **RENT:** (a) Lessee agrees to pay monthly as base rental during the term of this Lease (~~as shown on the in accordance with the base rental schedule attached rent schedule~~) hereto which amounts shall be payable to Lessor at the address shown below on the first day of the month. One monthly installment of rent shall be due and payable on the ~~date of execution of this Lease~~ **Commencement Date** by Lessee for the first month's rent and a like monthly installment shall be due and payable on or before the first day of each calendar month succeeding the "Commencement Date" during the demised term; provided, that if the "Commencement Date" should be a date other than the first day of a calendar month, the monthly rental set forth above shall be prorated to the end of that calendar month, and all succeeding installments of rent shall be payable on or before the first day of each succeeding calendar month during the demised term. Lessee shall pay, as additional rental, all other sums due under this Lease. All rent and sums to be paid under this Lease are to be paid without demand, set-off, abatement or deduction, except as specifically provided in the Lease. If the Lease terminates on a day other than the last day of a calendar month, the rent for said month will be prorated.

(b) On the date of execution of this Lease by Lessee, there shall be due and payable by Lessee a security deposit in an amount equal to **Six Thousand Dollars 00/100 (\$6,000.00)** ~~monthly rental installment(s)~~ to be held as security for the performance by Lessee of Lessee's covenants and obligations under this Lease, it being expressly understood that the deposit shall not be considered an advance payment of rental or a measure of Lessor's damage in case of default by Lessee. Upon the occurrence of any event of default by Lessee or breach by Lessee of Lessee's covenants under this Lease, Lessor may, from time to time, without prejudice to any other remedy, use the security deposit to the extent necessary to make good any arrears of rent and/or damage, injury, expense or liability caused to Lessor by the event of default or breach of covenant, any remaining balance of the security deposit to be returned by Lessor to Lessee upon termination of this Lease.

(c) If any increase in the fire or other insurance premiums paid by Lessor for the building in which Lessee occupies space is caused solely by Lessee's use and occupancy of the Premises, including without limitation Lessee's use, storage, production or handling of any Hazardous Material (as hereinafter defined in Paragraph 11), or if Lessee vacates the Premises and causes an increase in such premiums, the Lessee shall pay as additional rent, upon demand, the amount of such increase to Lessor.

(d) Other remedies for nonpayment of rent notwithstanding, if the monthly rental payment is not received by Lessor on or before the tenth day of the month for which rent is due, or if any other payment due Lessor by Lessee is not received by Lessor on or before the tenth day following the date it was due, a late charge of five percent (5%) of such past due amount shall become due and payable in addition to such amounts owed under this Lease.

(e) Beginning with the Commencement Date, Lessee agrees to pay to Lessor, as additional rental each year, Lessee's proportionate share (**5.76%**) of any direct expenses (as defined below) incurred by or accrued as an expense of Lessor or its agents on account of the operation or maintenance of the building (and all appurtenances thereto) in which the Premises are situated and including a portion of any charges attributable to the Common Areas. ("Common Areas" shall mean all areas, improvements, space, equipment, signs and

special services provided by Lessor for the common or joint use and benefit of **all of** the occupants of the building, their employees, agents, servants, customers, and other invitees, including, without limitation, parking areas, entranceways, exits, walkways, service roads, driveways, retaining walls, landscaped areas and truck serviceways.) ~~Of which is estimated at One Dollar 85/100 (\$1.85)~~ **With respect to the foregoing, Lessor represents and warrants that its good faith estimate of the direct expenses for the year 2004 shall be \$1.85 per rentable square foot. In no event shall the direct expenses charged to Lessee exceed \$1.90 per square foot for 2004.** Such additional rental shall be paid on the first day of each calendar month throughout the term, without deduction or set-off, in equal monthly installments of an amount based on Lessor's projections of direct expenses for the applicable calendar year, and all such monthly payments shall be credited to Lessee's rental account for such calendar year. Lessor shall, within nine months following the close of each calendar year during the term of the Lease, invoice Lessee for the additional rental. The invoice shall include in reasonable detail all computations of the additional rental. If this Lease shall terminate on a day other than the last day of a year, the amount of any additional rental payable by Lessee applicable to the year in which such termination shall occur shall be prorated on the ratio that the number of days from the commencement of such year to and including such termination date bears to 365. If such invoice shows an amount owing by Lessee that is less than the sum of the monthly payments made by Lessee in the previous calendar year, Lessor shall credit such excess to installments of rent (both base and additional) next due from Lessee until such has been exhausted, or if this Lease shall expire prior to the application of such excess, Lessor shall pay Lessee the balance not theretofore applied against rent. If such invoice shows an amount owing by Lessee, which is more than the sum of the monthly payments made by Lessee in the previous calendar year, Lessee shall pay such deficiency to Lessor within ten days after receipt of the invoice. Lessee shall have the right, at its own expense and at a reasonable time, to audit Lessor's books relevant to the additional rentals under this Paragraph 3. **In the event an audit by Lessee discloses that Lessee has been overcharged by ten percent (10%) or more in any given year, Lessor shall reimburse Lessee for the reasonable cost of such audit. Furthermore, Lessor acknowledges and agrees that should Lessor or any other tenant of Lessor perform an audit of direct expenses which discloses that Lessee was overcharged then, in such event Lessor shall be obligated to provide Lessee a credit in the amount of the overcharge as disclosed by such audit.** The provisions herein shall survive the expiration or sooner termination of the Lease.

(f) The term "direct expenses" as used above includes all **reasonable and customary** direct costs of operation and maintenance of the building and/or project of which the Premises are a part, including, but not limited to, utility and service charges attributable to Common Areas ~~or and~~ paid by Lessor, the costs of building supplies, repairs, maintenance and service contracts for the building, Common Areas and all related mechanical equipment, property management charges, the costs of grounds maintenance, landscaping, parking maintenance and striping, all real property taxes and installments of special assessments, including special assessments due to deed restrictions and/or owner's associations which accrue against the building and/or project of which the Premises are a part during the term of this Lease, as well as all insurance premiums Lessor is required to pay or deems necessary to pay, including all risk property, general liability and sign insurance. The term "direct expenses" shall also include capital improvements (amortized on a basis reasonably determined by Lessor) that are required by governmental law, rule or regulation, which law, rule or regulation was not applicable to the building at the time it was originally constructed, or that result in cost savings in connection with the operation or maintenance of the building, but only to the extent of such expected cost savings. The term "direct expenses" does not include any capital

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improvements to the building and/or project of which the Premises are a part, other than as specifically provided hereinabove, nor shall it include income and franchise taxes of Lessor, expenses incurred in leasing to or procuring of tenants, leasing commissions, advertising expenses, expenses for the renovation of space for new tenants, interest or principal payments on any mortgage or other indebtedness of Lessor, compensation paid to any employee of Lessor above the grade of building superintendent, ~~nor~~ any depreciation allowance or expense, **legal expenses, expenses for services provided by Lessor's affiliates to the extent in excess of what would have been incurred in an arm-length's transaction.**

(g) Lessee shall pay all taxes or assessments of any nature imposed or assessed upon its trade fixtures, equipment, machinery, inventory, merchandise or other personal property located on the Premises and owned by or in the custody of Lessee as promptly as all such taxes or assessments may become due and payable without delinquency.

**(h) For the purposes of this subsection, (h) direct expenses are comprised of "controllable expenses" and "non-controllable expenses". Controllable expenses are those components of direct expenses that are not related to taxes or insurance. Non-controllable expenses are those components of direct expenses that are not controllable expenses. Notwithstanding any other provision to this Lease to the contrary, during the Term of this Lease, for the purpose of calculating Lessee's proportionate share of direct expenses each year, the items of controllable expenses shall be deemed not to increase by more than three percent (3%) per calendar year for each calendar year from and after calendar year 2004. There shall be no cap on non-controllable expenses.**

4. **SIGNS:** Any signs or advertising to be used in connection with the Premises shall be first submitted to Lessor for approval before installation of same, and all signs, advertising or markings on the Premises shall be permitted only in the area designated by Lessor. **Lessor will provide reasonable signage on the building, subject to all governmental approvals and an allowance of \$3,000.00. Any cost for such building signage in excess to the allowance shall be paid for by the Lessee. Signage will be the same as the current exterior signage for 2300 Englert Dr.**

5. **USAGE AND INSURANCE:** The Premises are to be used by the Lessee for the purpose of **general office, lab, design, testing and developing cancer focused therapy and Tumor vascular targeting platforms and developing non-cancer related applications for such technology** and for no other purpose without the prior written consent of the Lessor **which approval will not be unreasonably withheld or delayed. Lessor hereby represents and warrants that the foregoing permitted use of the Premises is permissible under applicable zoning ordinances governing the use of the Premises. Lessee shall have the right to access the Premises twenty-four (24) hours a day, seven (7) days a week throughout the term of this Lease.**

Lessee shall not use the Premises (or fail to maintain them) in any manner constituting a violation of any ordinance, statute, regulation or order of any governmental agency, including, but not limited to, zoning ordinances, nor will the Lessee maintain or permit any nuisance to occur on the Premises, or make void or voidable any insurance then in force on the Premises.

Lessee covenants and agrees that the Lessee will use, maintain and occupy the Premises in a careful, safe and proper manner and will not commit waste thereon.

6. **SERVICES TO THE PREMISES:** Lessor shall, subject to interruptions which are normal and to the scheduling of repairs by providers of such services, cause to be furnished to the Premises in common with other lessees, the following connections: water and sewer connections, phone line connections providing access to the local public telephone company, **T-1 connections** and normal electrical connections and natural gas connections.

7. **UTILITIES:** Lessee agrees that it will pay all charges for gas, electricity or other illumination used on the Premises, and will pay in addition directly to Lessor all water and sewage charges described hereafter. **With respect to the foregoing, Lessor represents and warrants to Lessee that the Premises are separately metered for gas and electricity services.** If the Premises are recognized as part of a building containing a number of tenants, the Lessee agrees to pay its proportionate share of the total water and sewage bill for the entire building based upon the ratio of the number of square feet demised herein to the total square footage contained in the entire building as set forth hereinabove Paragraph 1. It is expressly agreed that all water and sewage charges are considered as rent as defined in this Lease. ~~Should any of the above described charges herein provided for at any time remain due and unpaid for a period of five (5) days after the same shall have become due, Lessor may, at its option, consider Lessee a tenant at sufferance, and immediately re-enter upon the Premises, and the entire rental for the rental period shall at once be due and payable and may forthwith be collected by distress or otherwise.~~ **Notwithstanding any other provision contained herein to the contrary, Lessor acknowledges and agrees that in the event utility services to the Premises are interrupted as a result of the negligence of Lessor, its agents or contractors for a period in excess of two days, then, from and after such time, Lessee shall be entitled to an abatement of all rental amounts due hereunder until such time as such interrupted utility service is restored. Furthermore, in the event such interruption continues for a period in excess of 20 consecutive days, then, in such event, Lessee shall be entitled to terminate this Lease by providing written notice of such election to Lessor.** If the Premises consist of an entire building, Lessee shall pay the full cost of water and sewage charges applicable to said building directly to the utility providing the same. In the event Lessee's use of any utilities on a common meter is irregular or disproportionate, either Lessor or Lessee shall have the option as to future charges to have installed at its expense separate meters for the utilities in question.

8. **RELOCATION:** ~~In the event Lessor determines to utilize the Premises for other purposes during the term of this Lease, Lessee agrees to relocate to other space in the building and/or project designated by Lessor, provided such other space is of equal or larger size than the Premises and has at least the same number of windows. Lessor shall pay all out of pocket expenses of any such relocation, including the expenses of moving and reconstruction of all Lessee furnished and Lessor furnished improvements. In the event of such relocation, this Lease shall continue in full force and effect without any change in the terms or other conditions, but with the new location substituted for the old location set forth in Paragraph 1 of this Lease.~~

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9. **REPAIRS AND MAINTENANCE:** (a) Unless otherwise expressly provided, Lessor shall not be required to make any improvements, replacements or repairs of any kind or character to the Premises during the term of this Lease. **Notwithstanding the foregoing, Lessor acknowledges and agrees that it shall be solely responsible for the repair and maintenance of all structural elements of the building, including, but not limited to the floor slab, exterior and all other load bearing walls and roof thereof as well as the underground components of all utility systems serving the Premises. In addition, Lessor acknowledges and agrees that it shall maintain such components of the building for which it is responsible hereunder and all Common Areas in accordance with the standards then applicable to other similarly situated first-class office buildings in the Durham, North Carolina area.** Lessor shall not be liable to Lessee, except as expressly provided in this Lease, for any damage or inconvenience, and Lessee shall not be entitled to any abatement or deduction of rent by reason of any repairs, alterations or additions made by Lessee under this Lease, **provided same are conducted in such a manner so as to minimize any interference with Lessee's business operations.** Lessee will be required to maintain and repair all damage to each and every part of the Premises, **which are not the responsibility of Lessor hereunder** including without limitation, the water apparatus, HVAC, electric lights or any other fixtures, appliances or appurtenances of the Premises such as walls, doors, corridors, windows and other structures and equipment within and serving the Premises, unless the same are necessitated by Lessor's negligence **or the negligence of its agents or contractors (in which event Lessor shall be responsible for the repair thereof).** Lessee shall enter into and keep in force throughout the term of the Lease a maintenance/service contract with respect to the HVAC system and, at Lessor's request, shall submit proof of such contract. **Notwithstanding the foregoing, or any other provision contained herein to the contrary, Lessor acknowledges and agrees that**

Lessee's responsibility with respect to the HVAC system serving the Premises shall be limited to the maintenance of the required service contract and for repairs required thereto costing less than \$750.00 per occurrence. Lessor acknowledges and agrees that it shall be solely responsible for any repairs or replacements required to the HVAC system costing in excess of \$750.00 per occurrence. Lessee agrees to keep the Premises trash-free and to pay the cost of trash and debris removal as related to Lessee's operation. Lessee agrees to use a trash removal service designated by Lessor (**provided same is competitively priced**) and Lessee shall be billed directly for such service. Lessee shall remove all liens of record that may result from Lessee's performance of any repairs or maintenance required under this Paragraph 9 and shall make all such repairs and perform all such maintenance in a good and workmanlike manner. Lessee agrees that all such repair and maintenance work shall be in compliance with federal, state and local law, including, but not limited to, the Americans with Disabilities Act (**the "ADA"**). **Notwithstanding any other provision contained herein to the contrary, Lessor represents and warrants to Lessee that as of the Commencement Date and for a period of sixty (60) days thereafter, all utility systems serving the Premises, including, but not limited to the HVAC system shall be in good working order. In addition, Lessor represents and warrants that as of the Commencement Date the building and Premises shall comply in all material respects with all laws, rules and regulations governing the same including, but not limited to the ADA. Furthermore, in addition to Lessor's obligations elsewhere in this Lease, Lessor shall at Lessor's sole cost and expense, and with reasonable diligence perform all the following repairs or improvements: (a) repairs which are required as a result of latent or hidden defects present in the Premises as of the Commencement Date, (b) any repairs or improvements which are necessary to comply with any law, ordinance, order or restriction now or hereafter imposed by any federal, state or local government or governmental body, exclusive of any repair or improvement made necessary solely as a result of Lessee's use of the Premises.**

(b) Lessee shall, at its own cost and expense, repair or replace any damage or injury to all or any part of the Premises caused by Lessee or Lessee's agents, employees, invitees, licensees or visitors; provided, however, if Lessee fails to make the repairs or replacements promptly **following its receipt of notice from Lessor**, Lessor may, at its option, make the repairs or replacements and Lessee shall pay Lessor the cost thereof plus an overhead charge equal to ten percent (10%) of the cost of such repairs or replacements; and payment of such cost and overhead shall be made on demand.

(c) Lessee shall not allow any damage to be committed on any portion of the Premises **by Lessee, its employees, agents, contractors or invitees**, and at the termination of this Lease, by lapse of time or otherwise, Lessee shall deliver the Premises to Lessor in as good condition as existed at the commencement date or completion date of this Lease, casualty ordinary wear and tear excepted. The cost and expense of any repairs necessary to restore the condition of the Premises shall be borne by Lessee, and if Lessor undertakes to restore the Premises, it shall have a right of reimbursement against Lessee.

(d) All requests for repairs or maintenance that are the responsibility of Lessor pursuant to any provision of this Lease must be made in writing to the Lessor at the address set forth below. **With respect to the foregoing, Lessor agrees to make all such repairs as are Lessor's responsibility hereunder with a commercially reasonable time frame following its receipt of notice of the need thereof and in a manner designed to minimize any interruption with Lessee's business operations.**

10. **COMPLIANCE WITH LAWS, RULES AND REGULATIONS:** Lessee, at Lessee's sole expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities now in force or which may hereafter be in force, **with respect to its use of the Premises**, and with any lawful direction of any public officer or officers, which shall impose any duty upon the Lessor or Lessee with respect to ~~the Lessee's~~ use, occupation or alteration of the Premises, including without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as hereinafter defined), waste disposal, air emissions and other environmental matters, all zoning and other land-use matters, and utility availability. Lessee **shall**, at Lessee's sole expense, ~~shall also~~ comply with any governmental authority imposed recorded covenants, conditions and restrictions, ~~regardless of when they become effective~~, which shall impose such a duty upon Lessor or Lessee. Lessee shall use all reasonable efforts to fully comply with the ~~Americans with Disabilities Act~~ **ADA**; **provided, however, in no event shall Lessee have any obligation to make any alterations, additions or improvements to the Premises unless same are required as a direct result of Lessee's use of the Premises. Lessor shall be required to make any alterations, additions or improvements to the Premises necessary to comply with the ADA to the extent same are not imposed as a direct result of Lessee's specific use of the Premises prior to commencement.** Lessee will comply with the rules of the building adopted by Lessor which

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are set forth on a schedule attached to this Lease and with all **commercially reasonable** recommendations or requirements of Lessor's insurance carrier relating to prevention of fires or other hazardous conditions. Lessor shall have the right at all times to change the rules and regulations of the building or to amend them in any reasonable **non-discriminatory** manner as may be deemed advisable for the safety, care and cleanliness, and for the preservation of good order, of the Premises. All changes and amendments in the rules and regulations of the building will be sent by Lessor to Lessee in writing and shall thereafter be carried out and observed by Lessee.

11. **HAZARDOUS SUBSTANCES – GENERAL:** The term "Hazardous Substances", as used in the Lease, shall mean pollutants, contaminants, toxic or hazardous wastes, or any other substances the use and/or removal of which is required or the use of which is restricted, prohibited or penalized by any "Environmental Law", which term shall mean any federal, state or local law, ordinance or other statute of governmental or quasi-governmental authority relating to pollution or protection of the environment. The term

“Hazardous Substances” as used in this Lease shall also mean any petroleum products or byproducts, including crude oil or any fraction thereof and any other liquid hydrocarbon, which are not specifically designated, defined, listed, or have no characteristics identified in, under or pursuant to any Environmental Law. Lessee hereby agrees that (i) no activity will be conducted on the Premises that will use or produce any Hazardous Substance, except for such activities that are part of the ordinary course of Lessee’s business activities (the “Permitted Activities”) provided said Permitted Activities are conducted in accordance with all Environmental Laws and have been approved in advance in writing by Lessor **which will not be unreasonably withheld or delayed**; Lessee shall be responsible for obtaining any required permits and paying any fees and providing any testing required by any governmental agency; (ii) the Premises will not be used in any manner for the storage of any Hazardous Substances, except for the temporary storage of such materials that are used in the ordinary course of Lessee’s business (the “Permitted Materials”) provided such Permitted Materials are properly stored in a manner and location meeting all Environmental Laws and approved in advance in writing by Lessor **which will not be unreasonably withheld or delayed**; Lessee shall be responsible for obtaining any required permits and paying any fees and providing any testing required by any governmental agency; (iii) no portion of the Premises will be used as a landfill or a dump; (iv) Lessee will not install any underground tanks of any type; (v) Lessee will not allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance; (vi) Lessee will not permit any Hazardous Substances to be brought onto the Premises, except for Permitted Materials provided such Permitted Materials are properly handled in a manner meeting all Environmental Laws and approved in advance in writing by Lessor **which will not be unreasonably withheld or delayed**, and if so brought or found located thereon, the same shall be immediately removed by Lessee, with proper disposal, at Lessee’s sold cost and expense, and all required cleanup procedures shall be diligently undertaken pursuant to all Environmental Laws. Lessor or Lessor’s representative shall have the right but not the obligation to enter the Premises **after providing Lessee at least twenty-four (24) hours prior written notice** for the purpose of inspecting the storage, use and disposal of Permitted Materials to ensure compliance with all Environmental Laws. Should it be determined, in Lessor’s ~~sole~~ **reasonable** opinion, that said Permitted Materials are at any time being improperly stored, used or disposed of, then Lessee shall immediately take such corrective action as requested by Lessor. Should Lessee fail to take such corrective action within 24 hours, Lessor shall have the right to perform such work and Lessee shall promptly reimburse Lessor for any and all costs associated with said work. Lessor shall use its best efforts to minimize interference with Lessee’s business while performing such work but shall not be liable for any interference caused thereby. If at any time during or after the term of this Lease the Premises are found to be so contaminated or subject to said conditions, Lessee shall diligently institute proper and thorough cleanup procedures at Lessee’s sole cost.

Upon the expiration or termination of this Lease, Lessee shall render the Premises in clean condition free and clear of any actual or threatened presence of, or contamination, pollution, damage or injury by, any Hazardous Substance **caused by Lessee, its employees, agents, contractors or invitees. Lessor hereby represents and warrants to Lessee, to the best Lessor’s knowledge and belief, that as of the date of this Lease, there exists no violations of Environmental Laws with respect to the building or the Premises, nor are the Premises contaminated with toxic mold.** If any of the Permitted Activities involves storage, production or use of a Hazardous Substance or if Lessor has evidence that Lessee has stored, produced or used a Hazardous Substance on the Premises or has brought onto the Premises such a substance, then at the request of Lessor, Lessee shall provide to Lessor, at Lessee’s sole cost and expense, a report (an “Environmental Report”) conducted and prepared by a competent licensed environmental engineer or consultant acceptable to Lessor which affirms, based on reasonable, ~~rigorous and detailed~~ testing, that no adverse, detrimental or harmful condition occurred or is present in, at, on, under, about or surrounding the Premises or otherwise in connection with Lessee’s (or others at Lessee’s sufferance or with Lessee’s permission) operations thereon or use or occupancy thereof and that the Premises are free and clear of any actual or threatened contamination, pollution, damage, injury or harm by any Hazardous Substance and any threat or risk to human health, safety and welfare attributable to Lessee’s (or others at Lessee’s sufferance or with Lessee’s permission) operations thereon or use or occupancy thereof. Such Environmental Report shall be provided to Lessor **within sixty (60) days of request of Lessor or otherwise at least four (4) weeks prior to the expiration or sooner termination of this Lease. In the event such indicates that there is no such condition, Lessor shall reimburse the cost of obtaining such report to Lessee. with the investigation upon which such Environmental Report is based occurring no earlier than eight (8) weeks prior to the expiration or sooner termination of this Lease.**

For the purposes of applying the covenants provided under this Paragraph 11, the Premises shall also mean, refer to and include the building, the project, the land on which the building or project is situated including all common areas (hereinafter, the “land”), and the soil, ground water, and surface water of the land. Lessee agrees to indemnify and hold Lessor harmless from and against any and all claims, demands, actions, liabilities or losses (including, without limitation, those arising from any diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing, **selling, financing** or leasing of space, and sums paid in settlement of claims), costs, expenses (including, without limitation, attorneys’ fees and environmental engineers’ or consultants’ fees), damages and obligations of any nature arising from or as result of the use of the Premises by Lessee. The foregoing indemnification and the responsibilities of Lessee under this Paragraph 11 shall survive the termination or expiration of this Lease.

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12. **LESSOR IMPROVEMENTS:** ~~If construction to the Premises is to be performed by Lessor prior to Lessee’s occupancy, Lessor will, at its expense, commence and/or complete the construction of improvements constituting the Premises in accordance with the floor plan (attached Exhibit A), attached work letter and specifications, which plan, letter and specifications shall be approved and signed by the parties upon execution of this Lease and are~~ **Lessor agrees to make improvements to the Premises (the “Lessor’s**

Work”) in accordance with the Work Letter attached hereto as Exhibit ”D”, which Work Letter is hereby made a part hereof by this reference. Any changes or modifications to the approved plan and specifications shall be made and accepted by written change order signed by Lessor and Lessee and shall constitute and amendment to this Lease. Upon **substantial** completion of the **Lessor’s Work in accordance with the Plans** ~~building and other improvements in accordance with the plans and specifications~~, Lessee agrees to execute and deliver to Lessor a letter accepting delivery of the Premises, **subject only to latent defects** All Lessor’s Work contemplated under this paragraph shall constitute improvements to the Premises which shall remain part of the Premises upon expiration of the term of this Lease. If no improvements are to be made or construction to be done to the Premises, Lessee hereby accepts the Premises in the condition they are in at the beginning of this Lease.

Lessor hereby reserves the right at any time and from time to time to make alterations or additions to, and build additions on the building in which the Premises are contained and to build adjoining the same, and to install, maintain, use and repair and replace pipes, ducts, conduits and wires leading through the Premises in locations serving other parts of the building ~~which provided such alterations or additions will not (i) materially interfere with Lessee’s use of the Premises. or (ii) materially detract from the aesthetics of the Premises.~~ Lessor also reserves the right to construct other buildings or improvements from time to time and to make alterations thereof or additions thereto and to build additional stories on the building or on other buildings and to build adjoining same and to construct such parking facilities as may be necessary or desirable.

13. **ALTERATIONS AND IMPROVEMENTS:** Lessee at its own cost and expense shall fully equip the Premises with all ~~lighting fixtures,~~ furniture, operating equipment, and any other equipment necessary for the proper operation of Lessee’s business. All fixtures installed by Lessee shall be new or completely reconditioned. Lessee shall not do any alternations or construction work or install any equipment without first obtaining Lessor’s written approval and consent, such consent not to be unreasonably withheld or delayed. Lessee shall present to Lessor plans and specifications for such work at the time approval is sought. Lessor reserves the right before approving such work to require Lessee to furnish Lessor with evidence satisfactory to Lessor of financial arrangements made by Lessee to promptly pay for any work Lessee causes to be done in or on the Premises. Lessor’s approval of any plans, specifications or work drawings shall create no responsibility or liability on the part of the Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of governmental agencies or authorities. **Lessee shall be entitled to make interior, non-structural alterations, additions or improvements to the Premises without Lessor’s consent, provided such alterations, additions or improvements do not adversely affect the utility systems serving the Premises.** Lessee shall remove all liens of record that may result from the performance of any alternations or additions. Lessee agrees that all alternations, physical additions or improvements to the Premises made by Lessee shall be completed in a good and workmanlike manner and shall be in compliance with the ~~Americas with Disabilities Act (the “ADA”)~~ ADA and, upon the request of Lessor, Lessee shall provide Lessor with evidence reasonably satisfactory to Lessor that such work was performed in compliance with the ADA.

Any alternations, physical additions or improvements to the Premises made by Lessee shall at once become the property of Lessor and shall be surrendered to Lessor upon the termination of this Lease, except that the forgoing shall not apply to moveable equipment or furniture owned by Lessee which may be removed by Lessee at **any time during the Lease term or** the end of the term of this Lease ~~if Lessee is not then in default and if such equipment and furniture is not then subject to any other rights, liens and interests of Lessor.~~ Lessor, at its option, may require Lessee to remove any physical additions and/or repair any alternations in order to restore the Premises to the condition existing at the time the Lessee took possession, all costs of removal and/or alternations to be borne by Lessee. **Notwithstanding the foregoing, under circumstances where Lessor has an approval right over the alterations or additions being made by Lessee hereunder and if Lessor has approved same, Lessee shall not be obligated to so remove any such alterations or additions unless and except under circumstances where Lessor advised Lessee of such removal requirement at the time of its approval of the subject alterations or additions.** If Lessee does not remove moveable equipment or furniture or other personal property not owned by Lessor from the Premises after Lessor’s written request at the end of the term of the Lease, such property will be deemed abandoned by Lessee and Lessor may dispose of such property as Lessor sees fit and, if Lessor disposes of such property, Lessor shall recover its costs incurred for the removal and disposal thereof. The provisions of this Paragraph 13 shall survive the expiration or sooner termination of this Lease.

14. **CONDEMNATION:** (a) If, during the term (or any extension or renewal) of this Lease, all or a substantial part of the Premises or the building (other than the Premises) **or the Common Areas** is taken for any public or quasi—public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and the taking would prevent or materially interfere with the use of the Premises for the purpose for which they are then being used, this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease effective on the date physical possession is taken by the condemning authority. Lessee shall have no claim to the condemnation award. **Notwithstanding the foregoing, Lessee shall be permitted to maintain a separate action against the condemning authority for loss of business, moving expenses and unamortized cost of any improvements or trade fixtures made by Lessee to the Premises.** In no event shall Lessor be liable to Lessee for any business interruption or diminution in the use or the value of any unexpired term of this Lease.

(b) If possession of a portion of the Premises is taken or condemned by public authority for public use so as not to make the remaining portion of the Premises unusable for the purpose leased, this Lease will not be terminated but shall continue. In such case, the rent shall be equitably and fairly reduced or abated for the remainder of the term in proportion to the amount of the Premises taken. Lessee shall have no claim to the condemnation award. **Notwithstanding the foregoing, Lessee shall be permitted to maintain a separate action against the condemning authority for loss of business, moving expenses and unamortized cost of any improvements or**

**trade fixtures made by Lessee to the Premises.** In no event shall Lessor be liable to Lessee for any business interruption or diminution in the use or the value of any unexpired term of this Lease.

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15. **FIRE AND CASUALTY:** (a) If the Premises or a portion of the building other than the Premises should be totally destroyed by fire or other casualty, or if the Premises or a portion of the building other than the Premises should be so damaged so that rebuilding cannot reasonably be completed within one hundred and ~~twenty (120)~~ **fifty (150)** working days after the date of written notification by Lessee to Lessor of the destruction, this Lease shall terminate and the rent shall be abated for the unexpired portion of the Lease, effective as of the date of the written notification.

(b) If the Premises should be partially damaged by fire or other casualty, and rebuilding or repairs can reasonably be completed within one hundred ~~twenty (120)~~ **fifty (150)** days from the date of written notification by Lessee to Lessor of the destruction, this Lease shall not terminate, but Lessor shall at its sole risk and expense proceed with reasonable diligence to rebuild or repair the building or other improvements (other than improvements which Lessor is not obligated to insure pursuant to Paragraph-18) to substantially the same condition w\in which they existed prior to the damage. If the Premises are to be rebuilt or repaired and are untenantable in whole or in part following the damage, ~~and the damage or destruction was not caused or contributed to by act or negligence of Lessee, its agents, employees, invitees or those for whom Lessee is responsible,~~ the rent payable under this Lease during the period for which the Premises are untenantable shall be adjusted to such an extent as may be fair and reasonable under the circumstances. In the event that Lessor fails to complete the necessary repairs or rebuilding within one hundred ~~twenty (120)~~ **fifty (150)** days from the date of written notification by Lessee to Lessor of the destruction plus the number of days by which such repairs or rebuilding are delayed by reason of acts of God or force majeure, Lessee may at its option terminate this Lease by delivering written notice of termination to Lessor, whereupon all rights and obligations under this Lease shall cease to exist.

16. **INSURANCE BY LESSEE:** Lessee shall, during the term of the Lease, procure at its expense and keep in force the following insurance:

(a) Commercial general liability insurance naming the Lessor as an additional insured against any and all claims for bodily injury and property damage, occurring in or about the Premises, arising out of Lessee's use and occupancy of the Premises. Such insurance shall have a combined single limit of not less than One Million Dollars (1,000,000) per occurrence with a Two Million Dollar (\$2,000,000) aggregate limit and excess umbrella liability insurance in the amount of Two Million Dollars (\$2,000,000). If the Lessee has other locations that it owns or leases, the policy shall include an aggregate limit per location endorsement. Such liability insurance shall be primary and not contributing to any insurance available to Lessor and Lessor's insurance shall be in excess thereto. In no event shall the limits of such insurance be considered as limiting the liability of Lessee under this Lease.

(b) Personal property insurance insuring all equipment, trade fixtures, inventory, fixtures and personal property located on or in the Premises for perils covered by the causes of loss – special form (all risk) and in addition, coverage for flood, ~~earthquake~~ and boiler and machinery (if applicable). Such insurance shall be written on a replacement cost basis in an amount equal to one hundred percent (100%) of the full replacement value of the aggregate of the foregoing, **subject to a commercially reasonable deductible.**

(c) Worker's compensation insurance in accordance with statutory law and employers' liability insurance with a limit of not less than \$100,000 per employee and \$500, 000 per occurrence.

(d) Such other insurance as Lessor deems necessary and prudent **in its reasonable discretion or is reasonably** required by Lessor's beneficiaries or mortgages of any deed of trust or mortgage encumbering the Premises **and which are available at a commercially reasonable premium.**

The policies required to be maintained by Lessee shall be with companies rated **AVII** or better in the most current Issue of Best's Insurance Reports. Insurers shall be licensed to do business in the state in which the Premises are located and domiciled in the USA. Any deductible amounts under any insurance policies required hereunder shall not exceed ~~\$1,000~~ **a commercially reasonable amount.** Certificates of Insurance (certified copies of the policies may be required) shall be delivered to Lessor prior to the commencement date and annually thereafter at least thirty (30) days prior to the expiration date of the old policy. Lessee shall have the right to provide insurance coverage, which it is obligated to carry pursuant to the terms hereof in a blanket policy, provided such blanket policy expressly affords coverage to the Premises and to Lessor as required by this Lease. Each policy of insurance shall provide notification to Lessor at least thirty (30) days prior to any cancellation or modification to reduce the insurance coverage.

17. **WAIVER OF SUBROGATION:** Lessor and Lessee hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either party's property, to the extent that such loss or damage is insured by an insurance policy issued by its insurer ~~whereby the insurer waives its rights of subrogation against the other party. The provisions of this clause shall not apply in those instances in which waiver of subrogation would cause either party's insurance coverage to be voided or otherwise made uncollectable or is required to be insured hereunder.~~ **Lessor and Lessee will cause their respective insurance companies to endorse their respective insurance policies to permit a waiver of subrogation rights.**

18. **INSURANCE BY LESSOR:** Lessor shall, during the term of this Lease, procure and keep in force the following insurance, the cost of which shall be deemed as Additional Rent payable by Lessee pursuant to Paragraph 3 hereinabove:

(a) Property insurance insuring the building and improvements and rental value insurance for perils covered by the causes of loss – special form (all risk) and in addition, coverage for flood, earthquake and boiler and machinery (if applicable). Such coverage (except for flood and earthquake) shall be written on a replacement cost basis equal to ninety percent (90%) of the full insurable replacement value of the foregoing, **subject to a commercially reasonable deductible** and shall not cover Lessee's equipment, trade fixtures, inventory, fixtures or personal property located on or in the Premises.

(b) Commercial general liability insurance against any and all claims for bodily injury and property damage occurring in or about the building or the land. Such insurance shall have a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence per location with a Two Million Dollar (\$2,000,000) aggregate limit.

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(c) Such other insurance as Lessor **in its reasonable discretion** deems necessary and prudent or is required by Lessor's beneficiaries or mortgages of any deed of trust or mortgage encumbering the Premises.

19. **INDEMNIFICATION:** The Lessee will indemnify and hold harmless the Lessor from and against any and all claims arising from or caused by (i) Lessee's occupancy of the Premises (including, by not limited to, statutory liability and liability under workers' compensation laws, (ii) any breach or default in the performance of any obligation on the Lessee's part to be performed under the terms of this Lease, (iii) **to the extent caused by Lessee, its employees, agents, contractors or invitees**, the buildings and improvements located on the Premises becoming out of repair, or the leakage of gas, oil, water or steam, or the occurrence of electricity emanating from the Premises, ~~or any cause whatsoever~~ and (iv) any act or negligence of the Lessee, or any officer, agent, employee, guest, or invitee of the Lessee. The Lessee will indemnify and hold harmless the Lessor from and against any and all costs, attorneys' fees, expenses and liabilities incurred with respect to any such claim or any case, action or proceeding brought against the Lessor by reason of any such claim. The Lessee upon notice from the Lessor will defend the same at the Lessee's expense by counsel approved in writing by the Lessor. **The Lessor will indemnify and hold harmless the Lessee from and against any and all claims arising from or caused by (i) any breach or default in the performance of any obligation on Lessor's part to be performed under the terms of this Lease and (ii) any act or negligence of Lessor, or its employees, agents, contractors or invitees. The Lessor will indemnify and hold harmless the Lessee from and against any all reasonable and necessary costs, attorney's fees, expenses and liabilities incurred with respect to any such claim or any case, action or proceeding brought against the Lessee by reason of any such claim. The Lessor upon notice from the Lessee will defend the same at Lessor's expense by counsel approved in writing by the Lessee.**

The Lessee, as a material part of the consideration to the Lessor, assumes all risk of damage to property or injury to persons, in, upon or about the Premises (except that the Lessee does not assume any risk of damage to the Lessee resulting from the willful misconduct of the Lessor or its authorized representatives) from any cause whatsoever except that which is caused by **either (i) the failure of the Lessor to observe any of the terms and conditions of the Lease if such failure has persisted for an unreasonable period of time after written notice of such failure or (ii) the negligence of Lessor, its employees, agents, contractors or invitees.**

The Lessor is not liable for any claims, costs or liabilities arising out of or in connection with the acts or omissions of any other lessees in the building. The Lessee waives all of its claims in respect thereof against the Lessor.

20. **QUIET ENJOYMENT:** Lessor warrants that it has full right to execute and to perform this Lease and to grant the estate demised and that Lessee, upon payment of the required rents and performing the terms, conditions, covenants and agreements contained in this Lease shall peaceably and quietly have, hold and enjoy the Premises during the full term of this Lease as well as any extension or renewal thereof, subject to the provisions of this Lease. Lessor shall not be responsible for the acts or omissions of any other lessee or third party that may interfere with Lessee's use and enjoyment of the Premises. **Notwithstanding the foregoing, Lessor acknowledges and agrees that in the event any other tenant of Lessor defaults with respect to its obligations under such tenant's lease and such default materially adversely interferes with Lessee's use and enjoyment of the Premises, then, if requested by Lessee, Lessor shall, at no out-of-pocket cost or expense to Lessor, take such commercially reasonable actions as may be necessary to require the subject tenant to comply with the terms of its lease so as to eliminate such interference with Lessee's use and enjoyment of its Premises.**

21. **LESSOR'S RIGHT OF ENTRY:** Lessor shall have the right **upon providing 24 hours prior written notice to Lessee (except in the event of an emergency where no such prior notice shall be required)**, at all reasonable hours, to enter the Premises for the following reasons: cleaning or making repairs; making alternations or additions as Lessor may deem necessary or desirable **provided same do not adversely affect Lessee's business operations or materially detract from the aesthetics of the Premises;** determining Lessee's use of the Premises, determining if an act of default under this Lease has occurred, or for the purpose of showing the Premises to prospective purchasers, mortgagees and, **during the last six (6) months of the Lease term only**, tenants. The right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alternations or additions that do not conform to this Lease or to the rules and regulations of the building. **In relation to the foregoing, Lessor acknowledges and agrees that all entries by Lessor or its agents or contractors into the Premises shall be conducted at such times and in such a manner so as to minimize any interference with Lessee's business operations.**

22. **ASSIGNMENT OR SUBLEASE:** Lessor shall have the right to transfer and assign, in whole or in part, its rights and obligations in the building and property that are the subject of this Lease. Lessee shall not assign this Lease or sublet all or any part of the Premises **without Lessor's prior written consent which consent will not be unreasonably withheld or delayed.** The transfer of a majority of shares, or partnership interests, or any other beneficial interests in the Lessee in Lessee will be deemed an assignment in violation of this Lease. ~~Without limiting the generality of the foregoing, Lessor shall have the option, upon receipt from Lessee of written request for Lessor's consent to subletting or assignment, setting forth the date that the requested subletting or assignment is to be effective, to cancel this Lease as of such date. The option shall be exercised, if at all, within fifteen (15) days following Lessor's receipt of such written request by delivery to Lessee of written notice of Lessor's intention to exercise the option.~~ **Notwithstanding the foregoing or any other provision contained herein to the contrary, Lessor acknowledges and agrees that Lessee may assign its interest under this Lease or sublet all or any portion of the Premises to any entity controlling or controlled by or under common control with Lessee or any successor to Lessee by purchase, merger, consolidation or reorganization (hereinafter, collectively referred to as a "Permitted Transfer"); provided (i) Lessee is not then in default under this Lease beyond any applicable notice and cure**

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**period, (ii) the Premises are not in any way adversely affected by the assignment or subletting.** In the event of any assignment of subletting, Lessee shall nevertheless at all times remain fully responsible and liable for the payment of the rent and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. In the event of any sublease or assignment of all or any portion of the Premises where the rent in the sublease or assignment exceeds the rent or pro rate portion of the rent, as the case may be, for such space in the Lease, Lessee shall pay the Lessor monthly, as additional rent, at the same time as the monthly installments or rent hereunder, one-half (1/2) of the excess rent paid for the sublease or assignment over the rent in this Lease applicable to the subleased or assigned space. Lessor's approval of any subtenant or assignee is conditioned upon there being no additional compliance required with all laws, rules and regulations of any governmental authority required of either the Lessor or the Lessee and such approval shall create no responsibility or liability on the part of the Lessor for any non-compliance with laws, rules and regulations of any governmental authority. Upon the occurrence of an "event of default" as defined below, if all or any part of the Premises are then assigned or sublet, Lessor, in addition to any other remedies provided by this Lease or provided by law, may at its option, collect directly from the assignee or subtenants all rents becoming due to Lessee by reason of the assignment or sublease, and Lessor shall have a security interest in all properties on the Premises to secure payment of such sums. Any collection directly by Lessor from any assignee or subtenant shall not be construed to constitute a novation or a release of Lessee from the further performance of its obligations under this Lease.

23. **LANDLORD'S LIEN:** ~~As security for payment of rent, damages and all other payments required to be made by this Lease, Lessee hereby grants to Lessor a lien upon all property of Lessee now or subsequently located upon the Premises. If Lessee abandons or vacates any substantial portion of the Premises or is in default in the payment of any rentals, damages or other payments required to be made by this Lease or is in default of any other provision of this Lease. Lessor may enter upon the Premises, by picking or changing locks if necessary, and take possession of all or any part of the personal property, and may, on behalf of Lessee, sell all or any part of the personal property at a public or private sale, in one or successive sales, with or without notice, to the highest bidder for cash, delivering to the highest bidder all of Lessee's title and interest in the personal property sold to him. The proceeds of the sale of the personal property shall be applied by Lessor toward the reasonable costs and expenses of the sale, including attorney's fees, and then toward the payment of all sums then due by Lessee to Lessor under the terms of this Lease; any excess remaining shall be paid to Lessee or any other person entitled thereto by law.~~ **Lessor acknowledges and agrees that Lessee shall have the right at any time to encumber all or any portion of its interest in and to any furniture, trade fixtures or equipment located in the Premises with a lien to secure financing, and Lessor agrees to execute such Lessor's lien waiver or other agreement as Lessee's lender may reasonably require in connection with such financing.**

24. **UNIFORM COMMERCIAL CODE:** ~~This Lease is intended as and constitutes a security agreement within the meaning of the Uniform Commercial Code of the state in which the Premises are situated and, Lessor, in addition to the rights prescribed in this Lease, shall have all of the rights, titles, liens and interests in and to Lessee's property now or hereafter located upon the Premises which are granted a secured party, as that term is defined under the Uniform Commercial Code, to secure the payment to Lessor of the various amounts provided in this Lease. Lessee will on request execute and deliver to Lessor a financing statement for the purpose of perfecting Lessor's security interest under this Lease or Lessor may file this Lease or a copy thereof as a financing statement.~~

25. **DEFAULT BY LESSEE:** The following shall be deemed to be events of default by Lessee under this Lease:

- (a) Lessee shall fail to pay when due any installment of rent or any other payment required pursuant to this Lease; **within ten days of the due date and any such failure to pay shall continue for a period of at least five (5) days after the date Lessor provides Lessee written notice of such failure to timely pay such amounts due (however, Lessor shall not be required to send written notice more than two (2) times in any one calendar year and in such, no notice shall be required).**
- (b) ~~Lessee shall abandon any substantial portion of the Premises;~~
- (c) Lessee shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rent, and the failure is not cured within ~~five (5) days after written notice to Lessee;~~ **fifteen (15) days after written notice to Lessee; provided,**

**however, if any such failure by Lessee to comply with this Lease cannot reasonably be corrected within such fifteen (15) day period as a result of non-financial circumstances outside of Lessee's control, and if Lessee has commenced substantial corrective actions within such fifteen (15) day period and is diligently pursuing such corrective actions, such fifteen (15) day period shall be extended for such additional time as reasonably necessary to allow completion of actions to correct Lessee's noncompliance.**

- (d) Lessee shall file a petition or be adjudged bankrupt or insolvent under federal bankruptcy law or any similar law or statute of the United States or any state; or a receiver or trustee shall be appointed for all or substantially all of the assets of Lessee or Lessee shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; or
- (e) Lessee shall do or permit to be done any act, which results in a lien being filed against the Premises or the building and/or project of which the Premises are a part **and such lien is not released or bonded off within fifteen (15) days of the date Lessee is notified of the filing of such lien.**

26. **REMEDIES FOR LESSEE'S DEFAULT:** Upon the occurrence of any event of default set forth in this Lease, Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand:

(a) Terminate this Lease, in which event Lessee shall immediately surrender the Premises to Lessor, and if Lessee fails to surrender the Premises, Lessor may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises, by picking or changing locks if necessary, and lock out, expel, or remove Lessee and any other person who may be occupying all or any part of the Premises without being liable for prosecution of any claim for damages. Lessee agrees to pay on demand the amount of all loss and damage which Lessor may suffer by reason of the termination of the Lease under this subparagraph, whether through inability to relet the Premises on satisfactory terms or otherwise.

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(b) Enter upon and take possession of the Premises, by picking or changing locks if necessary, and lock out, expel or remove Lessee and any other person who may be occupying all or any part of the Premises without being liable for any claim for damages, and relet the Premises on behalf of Lessee and receive directly the rent by reason of the reletting. Lessee agrees to pay Lessor on demand any deficiency that may arise by reason of any reletting of the Premises; further, Lessee agrees to reimburse Lessor for any **commercially reasonable** expenditures made by it for remodeling or repairing in order to relet the Premises.

(c) Enter upon the Premises, by picking or changing locks if necessary, without being liable for prosecution of any claim for damages, and do whatever Lessee is obligated to do under the terms of this Lease. Lessee agrees to reimburse Lessor on demand for any expenses which Lessor may incur in effecting compliance with Lessee's obligation under this Lease; further, Lessee agrees that Lessor shall not be liable for any damages caused by the negligence of Lessor or otherwise resulting to Lessee from effecting compliance with Lessee's obligations under this subparagraph.

**Notwithstanding any other provision contained herein to the contrary, Lessor acknowledges and agrees that in the event of a Lessee default hereunder; Lessor shall use commercially reasonable efforts to mitigate its damages.**

27. **WAIVER OF DEFAULT OR REMEDY:** Failure of ~~Lessor~~ **either party hereunder** to declare an event of default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not constitute a waiver of the default, but ~~Lessor~~ **such non-defaulting party** shall have the right to declare the default at any time and take such action as is lawful or authorized under this Lease. Pursuit of anyone or more of the remedies set forth in ~~Paragraph 26 above~~ **any section of this Lease** shall not preclude pursuit of any one or more of the other remedies provided elsewhere in this Lease or provided by law, nor shall pursuit of any remedy provided constitute forfeiture or waiver of any rent or damages accruing to ~~Lessor~~ **the non-defaulting party** by reason of the violation of any of the terms, provisions or covenants of this Lease. Failure by ~~Lessor~~ **either party** to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of the default or of any other violation or breach of any of the terms, provisions and covenants contained in this Lease.

28. **LESSOR'S LIABILITY:** In the event of any liability of Lessor, Lessee agrees to look solely to Lessor's interest in the building or the project, the leases of the building or of the project, and the Premises for the satisfaction of any right or remedy of Lessee including the collection of a judgment (or other judicial process) requiring the payment of money by Lessor, and no other property or assets of Lessor shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of Lessee's remedies under or with respect to the Lease, the relationship of Lessor and Lessee hereunder, or Lessee's use and occupancy of the demised premises, or any other liability of Lessor to Lessee.

29. **ELECTION OF ARBITRATION:** Lessor shall have the right to elect that any controversy or claim arising out of or relating to this Lease, or the breach thereof, be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered in such an arbitration may be entered in any court having jurisdiction thereof.

30. **ACTS OF GOD:** ~~Lessor shall not be required to perform any covenant or obligation in this Lease, or~~ **Neither party shall be** liable in damages to ~~Lessee~~ **the other party**, so long as the performance or non-performance of the covenant or obligation is delayed,

caused by or prevented by an Act of God or force majeure; **provided, however, in no event shall an Act of God or force majeure be deemed to excuse the failure of the payment of sums of money by one party to the other party due hereunder.**

31. **ATTORNEY'S FEES:** In the event Lessee ~~either party~~ defaults in the performance of any of the terms, covenants, agreements or conditions contained in this Lease and Lessor ~~the non-defaulting party~~ places in the hands of an attorney the enforcement of all or any part of this Lease or the collection of any rent due or to become due or recovery of the possession of the Premises, then in any of such events, ~~Lessee the defaulting party~~ agrees to pay Lessor reasonable attorney's fees **actually incurred** for the services of the attorney, whether suit is actually filed or not. ~~In no event shall the attorney's fees be less than fifteen percent of the outstanding balance owed by Lessee to Lessor.~~

32. **HOLDING OVER:** In the event of holding over by Lessee after the expiration or termination of this Lease, the hold over shall be as a tenant at will and all of the terms and provisions of this Lease shall be applicable during that period except that Lessee shall pay Lessor as rental for the period of such hold over an amount equal to one and one ~~half~~ **fourth** the rent which would have been payable by Lessee had the hold over period been a part of the original term of this Lease. Lessee agrees to vacate and deliver the Premises to Lessor upon Lessee's receipt of notice from Lessor to vacate. The rental payable during the hold over period shall be payable to Lessor on demand. No holding over by Lessee, whether with or without consent of Lessor, shall operate to extend this Lease except as otherwise expressly provided.

33. **RIGHTS OF FIRST MORTGAGEE:** This Lease is and shall be subject and subordinate to all ground or underlying leases which may now or hereafter affect the building and to all mortgages and deeds of trust which may now or hereafter affect such leases or the building, and to all renewals, refinancings, modifications, replacements and extensions thereof (each, a 'superior instrument'), and to any lien created thereby. Lessee shall promptly execute and deliver any certificate that the holder of a superior instrument (the "Holder") may reasonably request to confirm the subordination ~~and Lessor is hereby irrevocably designated as attorney in fact for Lessee to deliver any such certificate to the Holder in the name, place and stead of Lessee.~~ **Notwithstanding the foregoing, Lessor shall use reasonable efforts in obtaining from the holder any or future mortgage agreement in writing reasonably satisfactory to Lessee providing that for so long as the Lessee is not in default under this Lease**

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**beyond any applicable notice and cure period, the Holder of such superior instrument shall not disturb Lessee's use and occupancy of the Premises.** In the event the Holder succeeds to the interest of Lessor under this Lease, it shall not (i) have any liability for refusal or failure to perform or complete any work required to be done by Lessor under this Lease or any work letter attached hereto, to prepare the Premises for Lessee's occupancy, or otherwise to prepare the Premises for occupancy in accordance with the provisions of this Lease, or have any liability under any guaranty of indemnification with respect to such work, (ii) be liable for any act, omission or default of any prior Lessor under this Lease **provided, however, the foregoing shall not be deemed to release such party from any obligation it might otherwise have to cure defaults of a continuing nature,** (iii) be subject to any offsets, claims or defenses which shall have theretofore accrued to Lessee against any prior Lessor, (iv) be bound by any rent or additional rent which Lessee might have paid to any prior Lessor for more than one month in advance, (v) be bound by any modification, amendment, abridgment, cancellation or surrender of this Lease to which the Holder shall not have consented in writing. In the case of any foreclosure or conveyance by deed in lieu of foreclosure under any superior instrument, the rights and remedies of Lessee in respect of any obligations of any successor Lessor under this Lease shall be nonrecourse as to any assets of such successor Lessor other than its equity in the building. In the event the Holder shall succeed to the interest of Lessor under this lease, whether through possessory or foreclosure action or deed in lieu of foreclosure, this Lease shall, ~~at the option of the Holder,~~ not be terminated or affected by such foreclosure or any of such proceedings and Lessee shall attorn to and recognize the Holder as its Lessor upon the terms, covenants, conditions and agreements contained in this Lease to the same extent and in the same manner as if this Lease was a direct lease between the Holder and Lessee, except as otherwise provided above.

34. **ESTOPPEL CERTIFICATES:** Lessee agrees to furnish promptly, from time to time, upon request of Lessor or any mortgagee, an estoppel certificate to Lessor, any person designated or any mortgagee, in the form attached hereto as Exhibit B, **with such modifications thereto as are required to make the same true and correct. Likewise, Lessor agrees that upon written request by Lessee, Lessor shall deliver to Lessee an estoppel certificate covering such matters of fact with respect to the Lease as are reasonably requested by Lessee.**

35. **FINANCIAL INFORMATION:** **If then requested by Lessor,** Lessee agrees to submit to Lessor, within **160** days from Lessee's fiscal year end, audited annual financial statements of its parent company for the previous fiscal year. If Lessee does not have annual financial statements which are audited, Lessee agrees to submit to Lessor unaudited annual financial statements within the same time frame. **With respect to the foregoing, if requested by Lessee, Lessor shall execute and deliver such commercially reasonable form of confidentially agreement as Lessee may require as a condition to its release of any financial statements, which are not otherwise publicly available.**

36. **COST OF LIVING INCREASE:** ~~At the end of each calendar year of the term hereof, the monthly rent to be paid by Lessee for the upcoming calendar year will increase in accordance with the cost of living, as follows:~~

An estimate of the cost of living will be made by calculating the percentage of variation of the current year from the previous calendar year, as indicated by the Consumer Price Index—U.S. City Average—Clerical and Wage Earner (1967 = 100), published by the Bureau of Labor Statistics from September to September. Said percentage will be multiplied by the existing monthly rent, as illustrated in the sample formula below:

$$\frac{2005 \text{ CPI} - 2004 \text{ CPI}}{2004 \text{ CPI}} \times 2004 \text{ monthly rent} = \text{estimated adjustment in 2005 rent}$$

The resulting figure will be the amount of increase in the upcoming year's monthly rent. In no event shall the rent ever be reduced by reason of this Paragraph 36 and in no event be less than three percent.

Within 90 days after the first day of the new calendar year, Lessor shall provide Lessee with a notice of actual rental adjustment for the previous year, as indicated by the CPI for that year. If said notice is above the amount prepaid by Lessee, the remainder shall be due and payable with the next month's rent.

In the event that (A) the Consumer Price Index ceases to use the 1967 base of 100, or (B) a substantial change is made in the number of items used in determining the Consumer Price Index such that Lessor and Lessee agree that the Consumer Price Index does not accurately reflect the purchasing power of the dollar, or (C) the Consumer Price Index shall be discontinued for any reason, Lessor shall reasonably designate a new index or base that measures the cost of living, with appropriate adjustment in such base or index to make the same comparable to CPI (1967) — U.S. City Average — All Items — Urban Wage Earners and Clerical Workers.

37. **SUCCESSORS:** This Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, successors and assigns. It is hereby covenanted and agreed that should Lessor's interest in the Premises cease to exist for any reason during the term of this Lease, then notwithstanding the happening of such event this Lease nevertheless shall remain unimpaired and in full force and effect and Lessee hereunder agrees to attorn to the owner of the Premises.

38. **RENT TAX:** If applicable in the jurisdiction where the Premises are situated, Lessee shall pay and be liable for all rental, sales and use taxes or other similar taxes, if any, levied or imposed by any city, state, county or other governmental body having authority, such payments to be in addition to all other payments required to be paid to Lessor by Lessee under the terms of this Lease. Any such payment shall be paid concurrently with the payment of the rent upon which the tax is based as set forth above.

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39. **DEFINITIONS:** The following definitions apply to the terms set forth below as used in this Lease:

(a) "Abandon" means the vacating of all or a substantial portion of the Premises by Lessee, whether or not Lessee is in default of the rental payments due under this Lease.

(b) An "act of God" or "force majeure" is defined for purposes of this Lease as strikes, lockouts, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, expulsions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, insurrections and any other cause not reasonably within the control of ~~Lessor~~ **the applicable party** and which by the exercise of due diligence ~~Lessor~~ **of the applicable party** is unable, wholly or in part, to prevent or overcome.

(c) The "commencement date" shall be the date set forth in Paragraph 2. The "commencement date" shall constitute the commencement of this Lease for all purposes, whether or not Lessee has taken possession.

(d) ~~Subject to the provisions of Paragraph 4(d) of the Work Letter Agreement attached hereto, the "completion date" shall be the date on which the improvements erected and to be erected upon the Premises shall have been substantially completed in accordance with the plans and specifications described in Paragraph 12. Lessor shall use its reasonable efforts to establish the "completion date" as the date set forth in Paragraph 2. In the event that the improvements have not in fact been completed as of that date, Lessee shall notify Lessor in writing of its objections. Lessor shall have a reasonable time after delivery of the notice in which to take such corrective action as may be necessary, and shall notify Lessee in writing as soon as it deems such corrective action has been completed so that the improvements are completed and ready for occupancy. Taking of possession by Lessee shall be deemed to establish conclusively that the improvements have Lessor's Work has been substantially completed and that the Premises are in good and satisfactory condition, as of the date possession was so taken by Lessee, except for latent defects and incomplete punch list items, if any.~~

(e) "Real property tax" means all school, city, state and county taxes and assessments, including special district taxes or assessments.

(f) "Square feet" or "square foot" as used in this Lease includes the area contained within the space occupied by Lessee together with a common area percentage factor of Lessee's space proportionate to the total building area.

(g) "Lessor" as used in this Lease means only the owner, or the Mortgagee in possession, for the time being of the building or the land on which the building is situated (the "land") (or the owner of a lease of the building or of the land and the building), so that in the event of any transfer of title to said land and building or said lease, or in the event of a lease of the building, or of the land and

building, upon notification to Lessee of such transfer or lease the said transferor Lessor shall be and hereby is entirely freed and relieved of all existing or future covenants, obligations and liabilities of Lessor hereunder.

40. **MISCELLANEOUS:** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraph. If any provision of this Lease shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Lease, and such other provisions shall continue in full force and effect.

41. **NOTICE:** (a) All rent and other payments required to be made by Lessee shall be payable to Lessor at the address set forth below.

(b) All payments required to be made by Lessor to Lessee shall be payable to Lessee shall be payable at the address set forth below, or at any other address within the United States as Lessee may specify from time to time by written notice.

(c) Any notice or document required or permitted to be delivered by this Lease shall be deemed to be delivered (whether or not actually received) **five (5) days after the date being** deposited in the United States Mail, ~~or hand delivered~~, postage prepaid, certified mail, return receipt requested, **at the time of delivery if hand delivered or one (1) day following the day same is deposited with a reputable overnight courier service for next day delivery**, addressed to the parties at the respective addresses set out below:

Lessor:  
Realmark-Commercial LLC  
c/o Realmark Properties, Inc.  
2350 N. Forest Road  
Getzville, NY 14068

Lessee:  
Adherex, Inc.  
2300 Englert Dr., Suite G  
Durham, NC 27713  
Att: Legal Department

42. **ENTIRE AGREEMENT AND LIMITATION OF WARRANTIES: IT IS EXPRESSLY AGREED BY LESSEE, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS LEASE, THAT THIS LEASE, WITH THE SPECIFIC REFERENCES TO WRITTEN EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; THAT THERE ARE AND WERE NO VERBAL REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS LEASE OR THE EXPRESSLY MENTIONED WRITTEN EXTRINSIC DOCUMENTS NOT INCORPORATED IN WRITING IN THIS LEASE. LESSOR AND LESSEE EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS LEASE OR THE EXPRESSLY MENTIONED WRITTEN EXTRINSIC DOCUMENTS NOT INCORPORATED IN WRITING IN THIS LEASE. LESSOR AND LESSEE EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS LEASE. IT IS LIKEWISE**

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**AGREED THAT THIS LEASE MAY NOT BE ALTERED, WAIVED, AMENDED OR EXTENDED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY BOTH LESSOR AND LESSEE. THE FOLLOWING DOCUMENTS ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCES:**

43. **OTHER PROVISIONS:** "See attached Exhibit C."

Signed at \_\_\_\_\_, this 1<sup>st</sup> day of April, 2004.

Lessor: **REALMARK – COMMERCIAL, LLC**

Lessee: **ADHEREX, INC.**

/s/ David Shipston

/s/ William P. Peters

By:  
(Name and Title) David Shipston, Vice President

By:  
William P. Peters, Chief Executive Officer

Attest:

Attest:

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**Exhibit A**

**Floor Plan**

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**Exhibit B**

## Form of Estoppel Certificate

The undersigned \_\_\_\_\_ (“Lessee”), in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby certifies to \_\_\_\_\_ (“Lessor”), [the holder or prospective holder of any mortgage or deed of trust covering the property] (the “Mortgagee”) and [the vendee under any contract of sale with respect to the Property] (the “Purchaser”) as follows:

1. Lessee executed and exchanged with Lessor a certain lease (the “Lease”), dated \_\_\_\_\_, 20\_\_\_\_, covering the \_\_\_\_\_ floor shown attached on the plan annexed hereto as Exhibit A (the “leased premises”) in the building located in the \_\_\_\_\_ known as and by the street number \_\_\_\_\_ (the “Property”), for a term to commence (or which commenced) on \_\_\_\_\_, 20\_\_\_\_, and to expire on \_\_\_\_\_.
2. The Lease is in full force and effect and has not been modified, changed, altered or amended in any respect.
3. Lessee has accepted and is now in possession of the leased premises and is paying the full rental under the Lease.
4. The base rental payable under the Lease is \$\_\_\_\_\_ per month. The base rental and all additional rent and other charges required to be paid under the Lease have been paid for the period up to and including \_\_\_\_\_.
5. No rent under the Lease has been paid for more than thirty (30) days in advance of its due date.
6. All work required under the Lease to be performed by Lessor has been completed to the full satisfaction of Lessee.
7. ~~There~~ **To Lessee’s current actual knowledge, there** are no defaults existing under the Lease on the part of either Lessor or Lessee.
8. ~~There~~ **To Lessee’s current actual knowledge, there** is no existing basis for Lessee to cancel or terminate the Lease.
9. As of the date hereof, there exists no valid defense, offsets, credits, deductions in rent or claims against the enforcement of any of the agreements, terms, covenants or conditions of the Lease.
10. Lessee affirms that any disputes with Lessor giving rise to a claim against Lessor is a claim under the Lease only ~~and is subordinate to the rights of the holder of all mortgages or deeds of trust of the fee or leasehold of the building and shall be subject to all the terms, conditions and provisions thereof. Any such claims are not offsets to or defense against enforcement of the Lease.~~
11. ~~Lessee affirms that any dispute with Lessor giving rise to a claim against Lessor is a claim under the Lease only and is subordinate to the rights of the Purchaser pursuant to any contract of sale. Any such claims are not offsets to or defense against enforcement of the Lease.~~
12. Lessee affirms that any claims pertaining to matters in existence at the time Lessee took possession and which are known to or which were then readily ascertainable by Lessee shall be enforced solely by money judgment and/or specific performance against Lessor named in the Lease and **except as otherwise specifically set forth in the Lease**, may not be enforced as an offset to or defense against enforcement of the Lease.
13. There are no actions, whether voluntary or otherwise, pending against Lessee under the bankruptcy laws of the United States or any state thereof.
14. ~~There has been no material adverse change in Lessee’s financial condition between the date hereof and the date of execution and delivery of the Lease.~~
15. Lessee acknowledges that Lessor has informed Lessee that an assignment of Lessor’s interest in the Lease has been or will be made to the Mortgagee and that no modifications, revision or cancellation of the Lease or amendments thereto shall be effective unless a written consent thereto of the Mortgagee is first obtained, and that until further notice payments under the Lease may continue as heretofore.
16. Lessee acknowledges that Lessor has informed Lessee that Lessor has entered into a contract to sell the Property to Purchaser and that no modification, revision or cancellation of the Lease or amendments thereto shall be effective unless a written consent thereto of the Purchaser has been obtained.
17. This certification is made to induce Purchaser to consummate a purchase of the Property and to induce Mortgagee to make and maintain a mortgage loan secured by the Property and/or to disburse additional funds to Lessor under the terms of its agreement with Lessor, knowing that said Purchaser and Mortgagee rely upon the truth of this certification in making and/or maintaining such purchase or mortgage or disbursing such funds, as applicable.
18. Except as modified herein, all other provisions of the Lease are hereby ratified and confirmed.

By:

\_\_\_\_\_  
Lessee

\_\_\_\_\_  
Date

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**Exhibit C**

**Other Provisions**

1. **RENEWAL OPTION.** (a) Provided the Lessee is not then in uncured default under this Lease beyond applicable notice and cure periods, Lessee shall have the option to renew this Lease as to the entire Premises for one (1) successive three (3) year terms, each of such terms commencing upon the expiration of the then current term hereof (the "Renewal Options"). If Lessee exercises a Renewal Option, Lessee agrees to pay rent during the respective Renewal Option period at the Fair Market Rental Rate (as hereinafter determined and defined) per month under the same terms and conditions as set forth in the Lease.
  - (b) As used in this Lease, the term "Fair Market Rental Rate" shall mean the then prevailing monthly rental rate per square foot of space comparable in use, area and location to the space for which the Fair Market Rental Rate is being determined and being leased for a duration comparable for which such space is leased for periods commencing on or about the commencement of the term of such space. The Fair Market Rental Rate shall be determined by taking into consideration comparable fact situations during the prior 12-month period or any more recent relevant period in comparable buildings in Durham, North Carolina.
  - (c) Lessor shall notify Lessee of Lessor's determination of the Fair Market Rental Rate within fifteen (15) days after receipt of Lessee's written request therefore (which shall be made by Lessee no later than one hundred eighty (180) days prior to the expiration of the Term or any previous Renewal Option term exercised by Lessee). If Lessee agrees with Lessor's determination of the Fair Market Rental Rate, then, Lessee may exercise its Renewal Option by providing Lessor written notice thereof within fifteen (15) days of its receipt of Lessor's notice of determination of the Fair Market Rental Rate. If Lessee disagrees with Lessor's determination of the Fair Market Rental Rate, Lessee shall notify Lessor of Lessee's disagreement within fifteen (15) days after Lessee's receipt of Lessor's notice of its determination of the Fair Market Rental Rate. If Lessee so notifies Lessor, that Lessor's determination of the Fair Market Rental Rate is not acceptable to Lessee, Lessor and Lessee shall, during the fifteen (15) day period after Lessee's notice, attempt to agree on the Fair Market Rental Rate. If Lessor and Lessee are unable to agree, then the Fair Market Rental Rate shall be determined as provided below: Lessor and Lessee shall each select an expert (as hereinafter described) within fifteen (15) days after the expiration of the aforementioned fifteen (15) day period. Such expert shall be independent and experienced in leasing similar-class space in the Durham, North Carolina, and shall be instructed to form their opinions based on the criteria specified above. Both experts so selected shall within ten (10) days after their selection, select a third (3<sup>rd</sup>) expert who shall also meet the same qualifications. The three (3) experts so selected shall within fifteen (15) days after the selection of the third (3<sup>rd</sup>) expert each independently formulate their opinion of the Fair Market Rental Rate for the space and period in question. The three (3) opinions shall then be averaged and such average shall be the Fair Market Rental Rate; provided, however, that if any experts opinion is more than ten percent (10%) greater or less than the middle opinion, then such greater or lesser opinion (or both if each is more a variance from the middle opinion than ten percent (10%)), shall be disregarded and the remaining number of opinions shall be added together with the sum thereof divided by the remaining number of opinions and the quotient thereof shall be the Fair Market Rental Rate. The determination of the Fair Market Rental Rate by the three (3) experts (or such lesser number of experts as may be applicable in accordance with the above provisions) shall be binding upon Lessor and Lessee; Lessor and Lessee shall each pay for the services of its expert and shall share equally in the cost of the third expert. In the event Lessee fails to timely exercise its Renewal Option, the Renewal Option of Lessee shall lapse unexercised.
2. **RIGHT OF FIRST REFUSAL ON ADJACENT SPACE.** Lessee shall have a right of first refusal to rent all or any portion of the building lying adjacent to the Premises (the "Adjacent Space") subject to the terms of this Section 2. Accordingly, provided no uncured event of default then exists with respect to Lessee, Lessor will provide Lessee written notice (the "Adjacent Space Notice"), in the event Lessor either issues a proposal to a third party to lease space within the building which includes all or any portion of the Adjacent Space or in the event Lessor receives a written third party proposal acceptable to Lessor for lease of any space which includes all or any portion of the Adjacent Space. Such Adjacent Space Notice shall set forth the terms of the subject third (3<sup>rd</sup>) party proposal. The party to whom Lessor issues the subject proposal to lease or from whom Lessor has received a proposal to lease which is acceptable to Lessor shall be

referred to herein as the “Proposed Adjacent Space Lessee”. Lessee shall have ten (10) days following its receipt of such Adjacent Space Notice to provide Lessor written notice of Lessee’s acceptance or rejection to lease the area, which is the subject of the third (3<sup>rd</sup>) proposal (the “Adjacent Space Right of Refusal Space”) in accordance with all the terms and provisions of the subject third (3<sup>rd</sup>) party proposal. In the event Lessee fails to provide Lessor notice of its election to lease the Adjacent Space Right of Refusal Space within said ten (10) day period, then, Lessor shall be free to execute a lease for the subject Adjacent Space Right of Refusal Space with the Proposed Adjacent Space Lessee under the terms set forth in the Adjacent Space Notice. In the event Lessee provided the Lessor timely notice of its election to lease the subject Adjacent Space Right of Refusal Space,

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then, in such event, Lessee shall enter into a lease with Lessor within fifteen (15) days thereafter upon the terms and conditions set forth in such third (3<sup>rd</sup>) party proposal. The form of such Lease shall be the same form of this Lease except to the extent inconsistent with the terms and conditions of the Adjacent Space Notice.

3. **EXPANSION OPTION.** Lessee shall have a right at anytime during the term of the Lease to expand into any portion of the building lying adjacent to the Premises which is not then occupied and not subject to any lease or active lease proposal then being negotiated by Lessor and a prospective tenant (“Expansion Space”). Lessee’s lease of such Expansion Space shall be upon the same terms and conditions as Lessee’s lease of the original Premises hereunder, except that Lessee shall take such Expansion Space and it’s then “as is” condition without any obligation on part of Lessor to make improvements thereto. In the event Lessee so desires to take any such Expansion Space, Lessee shall provide Lessor thirty (30) days prior written notice of its election to take such Expansion Space. Accordingly, the rent commencement for such Expansion Space shall be that date which thirty (30) days is following the date of Lessee’s notice to Lessor of its election to take such Expansion Space. Upon Lessee’s election to so take such Expansion Space, Lessor and Lessee shall enter into an amendment to this Lease acknowledging the incorporation of the subject Expansion Space into the Premises. Following such time as Lessor and Lessee enter into such amendment acknowledging the incorporation of the Expansion Space into the Premises, Lessor shall make the Expansion Space available to Lessee for its build out of such Expansion Space. Lessee’s lease of the Expansion Space shall be coterminous with the lease of the original Premises.
4. **LIMITED SELF HELP RIGHT.** Notwithstanding any other language contained herein to the contrary, Lessor acknowledges and agrees that in the event either (i) Lessor fails to perform any of its maintenance obligations under this Lease within thirty (30) days of its receipt of notice from Lessee, or (ii) Lessor, after commencing such performance, thereafter fails to diligently and continuously pursue the completion of same, then, in either such event, Lessee shall have the right to cure Lessor’s nonperformance and charge Lessor for Lessee’s reasonable actual out of pocket cost thereof. Furthermore, in addition to the rights set forth above, in the event emergency repairs are needed to elements of the Premises for which Lessor is responsible under the Lease in order to prevent imminent damage to Lessee’s property or business operations, then, under such circumstances, if Lessor has failed to commence and thereafter diligently pursue such repairs within a reasonable period following its receipt of Lessee’s notice of the need thereof (the reasonableness of said period to be determined based upon the attendant facts and circumstances), Lessee shall have the right to cure Lessor’s nonperformance and charge Lessor Lessee’s reasonable actual out of pocket cost thereof. In relation to the foregoing, Lessee acknowledges and agrees that even as to emergency repairs; Lessee’s notice to Lessor shall be in writing.

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**EXHIBIT D**  
**Work Letter**

1. The “Plans” consist of the following described items, which are hereby approved by Lessee and Lessor:
  - A. The floor plan attached hereto as Exhibit D-1 showing Lessor’s required build out of the Premises.
  - B. the list of improvements attached hereto as Exhibit D-2, which is to be made as part of Lessor’s required build out of the Premises.
2. Lessor shall promptly begin construction of the improvements described and shown in the Plans (the “Lessor’s Work”), and shall pursue such construction with reasonable diligence to completion. Construction of Lessor’s Work shall be accomplished by contractors selected and employed by Lessor.
3. Lessor shall be solely responsible for all costs and expenses incurred in connection with the construction of Lessor’s Work in accordance with the Plans.
4. Lessor acknowledges and agrees that Lessee shall have the right to change the scope of Lessor’s Work in accordance with the provisions of this Section 4 with the approval of the Lessor which approval will not be unreasonably withheld or delayed. In the event Lessee requests any changes to the scope of Lessor’s Work, Lessee shall submit revised drawings and/or revised specifications, as applicable, to Lessor for approval. Upon its receipt thereof, Lessor shall incorporate such changes into the Plans and they shall thereafter become a part of Lessor’s Work. However, Lessee acknowledges and agrees that Lessee shall be solely responsible for any and all increases in cost incurred in completing the Lessor’s Work which are attributable to

Lessee's requested changes in the scope of the Lessor's Work. With respect thereto, Lessor acknowledges and agrees that Lessee shall have a right to amortize up to \$28,500.00 of any such increases in costs over the term of the Lease by an increase in the monthly base rental amounts due hereunder as necessary to so amortize such excess over the term of the Lease at an interest rate of six percent (6%). An example of the foregoing would be where Lessee requests change orders to the scope of Lessor's Work which have the effect of increasing the cost of Lessor's Work by \$35,000.00, Lessee would be responsible to pay \$6,500.00 of such cost to Lessor on or before the Commencement Date and would have the right to amortize the remaining \$28,500.00 of such cost over the initial six (6) year term of the Lease at said six percent (6%) interest rate, which would result in each monthly base rental payment of Lessee hereunder during the initial six (6) year term being increased by \$472.34.

5. Substantial completion of Lessor's Work shall be deemed to occur on the earlier of (i) the date the Lessor's Work is substantially completed in all material respects in substantial compliance with the Plans (including any Lessee requested changes thereto) excepting only minor finish and touch-up work that does not interfere in any material respect with the occupancy of the Premises by Lessee (ii) the issuance of a Certificate of Occupancy or, (iii) the issuance of a Temporary Certificate of Occupancy. After the date of substantial completion, Lessor shall proceed with reasonable promptness to complete any minor finish and touch-up work and any other work required to finally complete the Lessor's Work.

6. Lessor acknowledges and agrees that Lessee shall be entitled to access the Premises for purposes of installation of its trade fixtures and wiring for a two (2) week period prior to the date Lessor achieves substantial completion of the Lessor's Work. Accordingly, Lessor shall provide Lessee written notice of its target substantial completion date approximately three (3) weeks prior to the date it anticipates substantial completion shall be achieved to enable Lessee to schedule such fixturing and wiring activities. Further related thereto, Lessor acknowledges and agrees that it shall provide Lessee temporary storage space for the full thirty (30) day period proceeding the date it substantially completes the Lessor's Work for purposes of storage by Lessee of trade fixtures and/or equipment.

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#### EXHIBIT D-2

- Paint seven (7) poles around entrance on perimeter of building
- Entrance: general touch-ups at suite entry
- Repair cracked soffit
- Cove base - carpet throughout
- Microscope room
- Flip door to server/phone room to swing out to open instead of in
- Add vent to server/phone room
- Wallpaper with building standard (\$8.00 per sq. yd. Including installation): conference room, reception area, hallway, and first three offices to left of reception area (shown on plan)
- Chair rail: conference room, reception area, hallway, and first three offices to left of reception area (shown on plan)
- Conference room to have two (2) sets of can lights, on separate dimmers [lights over table separate from perimeter lights]
- Building standard carpet borders for conference room, reception area, hallway, and first three offices to left of reception area (shown on plan)
- New carpet with building standard and rubber base board (\$14.00 per sq. yd including installation and rubber base board) throughout, except as stated above
- New paint throughout
- New building standard VCT throughout
- Restrooms within suite (Men's room with toilet and urinal; Women's with one toilet, where shown on plan)
- Hoods - repaired and in operating condition
- Fix all blinds (all matching)
- Replace all ceiling tiles (other than in the lab) with Armstrong Ultima acoustic ceiling tiles
- Refinish doors as required
- Replace/refinish hardware as required

- Electrical:** five (5) 220 volt electrical outlets, location TBD
  - Storage** as shown on drawing
  - Fix** sidewalk
  - Signage** - Landlord shall provide exterior building signage agreed upon by Landlord and Tenant
  - Replace** upper and lower cabinets in kitchenette as shown on plan
  - New** wall with door in kitchenette/proposed conference room area, as shown on plan
  - Convert** lab area to area for cubes; carpet, paint, electrical for cubes with building standards
  - Take** wall out between offices as shown on plan
- 
- Create** one large conference room as shown on plan
  - Remove** sink as shown on plan
  - Provide** a 1 1/2 ton dedicated HVAC unit of which the tenant allowance is \$6,000.00

### Exhibit C

#### Rent Schedule

##### Monthly Lease Payments

1 – 6	\$1,007.63
7 – 12	\$4,868.75
13 – 24	\$5,014.81
25 – 36	\$5,165.26
37 – 42	\$5,320.21
43 – 60	\$5,479.82
61 – 72	\$5,644.22

#### Rules and Regulations

1. Lessor agrees to Lessee ~~two~~ **twenty-five (25)** keys without charge. Additional keys will be furnished at a nominal charge.
2. Lessee will refer all contractors, contractor's representatives and installation technicians rendering any service on or to the leased premises for Lessee, to Lessor for Lessor's approval and supervision before performance of any contractual service. This provision shall apply to all work performed on or about the leased premises or project, including installation of telephones, telegraph equipment, electrical devices and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment or any other physical portion of the premises or project. Lessor may charge a supervisory fee equal to ten percent (10%) of the cost of all such ~~services~~ **contractual services under circumstances where the total cost of the contractual service is in excess of \$10,000.00.**
3. Lessee shall not at any time occupy any part of the leased premises or project as sleeping or lodging quarters.
4. **Except to the extent necessary for the conducting of Lessee's business operations,** Lessee shall not place, install or operate on the leased premises or in any part of the building, any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the leased premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material without written consent of Lessor. **Notwithstanding the foregoing, Lessee shall be entitled to utilize microwave ovens in the Premises.**
5. Lessor will not be responsible for lost or stolen personal property, equipment, money or jewelry from the leased premises or the project regardless of whether such loss occurs when the area is locked against entry or not.
6. No dogs, cats, fowl or other animals shall be brought into or kept in or about the leased premises or project.
7. Employees of Lessor shall not receive or carry messages for or to any Lessee or other person, not contract with or render free or paid services to any Lessee or Lessee's agents, employees or invitees.
8. None of the parking, plaza, recreation or lawn areas, entries, passages, doors, elevators, hallways or stairways shall be blocked or obstructed, or any rubbish, litter, trash or material of any nature will be placed, emptied or thrown into these areas or such area be used by Lessee's agents, employees or invitees at any time for purposes inconsistent with their **reasonable** designation by

Lessor.

9. The water closets and other water fixtures shall not be used for any purpose other than those for which they were constructed, and any damage resulting to them from misuse, or by the defacing or injury of any part of the building shall be borne by the person who shall occasion it. No person shall waste water by interfering with the faucets or otherwise.
10. No person shall disturb occupants of the building by the use of any radios, record players, tape recorders, musical instruments, the making of unseemly noises, or any unreasonable use.
11. Nothing shall be thrown out of the windows of the building or down the stairways or other passages.
12. Lessee shall notify the Building Manager when safes or other heavy equipment are to be taken into or out of the Building. Moving of such items shall be done under the supervision of the Building Manager, after receiving written permission from him. Lessor agrees that there will be no charge for such supervision if such moving occurs during normal working hours.
13. Lessor shall have the power to prescribe the weight and position of safes or other heavy equipment, which may overstress the floor. All damage done to the Building by the improper placing of heavy items that overstress the floor will be repaired at the sole expense of Lessee.
14. No additional locks shall be placed upon any doors without the prior written consent of Lessor. All necessary keys shall be furnished by Lessor, and the same shall be surrendered upon termination of this Lease, and Lessee shall then give Lessor or his agent an explanation of the combination of all locks on the doors or vaults.
15. Corridor doors, when not in use, shall be kept closed.
16. Lessee shall comply with **reasonable** parking rules and regulations as may be posted and distributed from time to time.
17. Vending machines or dispensing machines of any kind will not be placed in the leased premises by Lessee unless prior written approval has been obtained from Lessor.
18. Prior written approval, which shall be at Lessor's sole discretion, must be obtained for installations of any solar system material, window shades, blinds, drapes, awnings, window ventilators, or other similar equipment and any window treatment of any kind whatsoever. Lessor will control all internal lighting that may be visible from the exterior of the Building and shall have the right to change any unapproved lighting, without notice to the Lessor, at Lessee's expense.
19. Lessee shall be required to furnish and install a chair mat for each desk chair in the leased premises.
20. The building shall be closed for the following legal holidays: New Year's Day, the Fourth of July, Labor Day, Thanksgiving Day and Christmas Day, **however, Lessee shall still be entitled to access and utilize the Premises on such dates.**

It is Lessor's desire to maintain in the building or project the highest standard of dignity and good taste consistent with comfort and convenience for Lessees. Any action or condition not meeting this high standard should be reported directly to Lessor. Your cooperation will be mutually beneficial and sincerely appreciated. Lessor reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary, for the safety, care and cleanliness of the leased premises, and for the preservation of good order therein.

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#### GUARANTY OF LEASE

LESSOR: Realmark – Commercial LLC

LESSEE: Adherex, Inc.

LEASE DATED: \_\_\_\_\_

GUARANTOR: Adherex Technologies, Inc  
\_\_\_\_\_  
\_\_\_\_\_

GUARANTY DATE: \_\_\_\_\_

Lessee wishes to enter into a lease with Lessor. Lessor is unwilling to enter into the Lease unless Guarantor assures Lessor of the full performance of Lessee's obligations under the Lease. Guarantor is willing to do so.

Accordingly, in order to induce Lessor to enter into the Lease with Lessee and for good and valuable consideration, the receipt and adequacy of which are acknowledged by Guarantor:

1. Guarantor unconditionally guarantees to Lessor, its successors and assigns, Lessee's full and punctual performance of Lessee's obligations under the Lease, including without limitation payment of rent and all other charges due under the Lease. Guarantor

waives notice of any breach or default by Lessee under the Lease. If Lessee defaults in the performance of its obligations, upon Lessor's demand, Guarantor will perform Lessee's obligation under the Lease.

2. Any act of Lessor, its successors and assigns, consisting of a waiver of any of the terms and conditions of the Lease, or the giving of consent to any matter related to or thing related to the Lease, or granting of any indulgences or extensions of time to Lessee, may be done without notice to Guarantor and without affecting the obligations of Guarantor under this guaranty.
3. The obligations of Guarantor under this guaranty will not be affected by Lessor's receipt, application, or release of security given for the performance of Lessee's obligations under the Lease nor by any modification of the Lease including without limitation, the alteration, enlargement or change of the premises described in the Lease except in the case of any modification, the liability of Guarantor will be deemed modified in accordance with the terms of such modification.
4. The liability of Guarantor under this guaranty will not be affected by:
  - (a) release or discharge of Lessee from its obligations under the Lease in any creditors' receivership, bankruptcy or other proceedings, or the commencement or pendency of such proceedings;
  - (b) the impairment, limitation of the liability of Lessee or the estate of Lessee in bankruptcy, or any remedy for the enforcement of Lessee's liability under the Lease resulting from the operation of any future bankruptcy code or other statute or from the decision of any court;
  - (c) the rejection or disaffirmance of the Lease in any such proceedings;

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  - (d) the assignment or transfer of the Lease or sublease of all or part of the premises described in the Lease by Lessee;
  - (e) any disability or defense of Lessee;
  - (f) the cessation from any cause whatsoever of the liability of Lessee under the Lease.
5. Until all of the Lessee's obligations under the Lease are fully performed, Guarantor:
  - (a) waives any right of subrogation against Lessee by reason of any payments or acts of performance by Guarantor in compliance with the obligations of Guarantor under this guaranty;
  - (b) waives any other right that Guarantor may have against Lessee by reason of any one or more payments or acts in compliance with obligations of Guarantor under this guaranty; and
  - (c) subordinates any liability or indebtedness of Lessee held by Guarantor to the obligations of Lessee to Lessor under this Lease.
6. The guaranty will apply to the Lease, any extensions or renewal of such Lease and any holdover term following the term of the Lease or any such extension or renewal.
7. This guaranty may not be changed, modified, discharged or terminated orally or in any manner other than by written agreement signed by Guarantor and Lessor.
8. Guarantor is directly obligated under the Lease. Lessor may at its option, proceed against Guarantor without proceeding against Lessee or anyone else obligated under the Lease or against any security for any of Lessee's or Guarantor's obligations.
9. Guarantor will pay on demand the reasonable attorney's fees and costs incurred by Lessor, its successors or assigns, in connection with the enforcement of this guaranty.
10. Guarantor irrevocably appoints Lessee as its agent for service of process related to this guarantee.
11. Guarantor agrees to provide Lessor with the same information and on the same terms as required of Lessee under Section 35 of the Lease.

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Guarantor, Adherex Technologies, Inc.

by \_\_\_\_\_

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE (the "Second Amendment") is entered into this 14th day of September 2004, by and between Realmark-Commercial LLC and (hereinafter called "Lessor") and Adherex, Inc. (hereinafter called "Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a certain Commercial Lease Agreement April 9, 2004, which agreement was dated March 8, 2004 and first amended July 27, 2004 for the Premises known as 2300 Englert Drive, Suite G, Durham, NC 27713 consisting of 5,700 rentable square feet of space (the "Lease").

WHEREAS, Lessor and Lessee desire to enter into this Second Amendment to Lease Agreement to modify the Premises, the rent and other terms of the Lease as more particularly set forth below.

NOW, THEREFORE, in consideration of the above premises and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree to amend the Lease as follows.

Para 1. PREMISES: The Premises are hereby expanded by 1,936 rentable square feet of office space known as 2300 Englert Drive, Suite J, Durham, NC (the "Expansion Space") and made part of 2300 Englert Drive, Suite G, Durham, NC (sometimes referred to as the "building" or the "project"). The Premises shall now consist of 7,636 rentable square feet (RSF) of space.

For the purposes of pro-rating various expenses, the Premises represent 7.72% of the building or project.

Para 2. Term: Subject to and upon the conditions set forth below, the term of the Lease shall commence on that date which is the later of (i) the date of substantial completion of Lessor's work as defined in Exhibit D of the Lease or (ii) forty-five (45) days after the receipt of the building permit from the Town of Durham, NC (the "Commencement date") and shall expire on the last day of the seventy-second (72nd) full calendar month thereafter. Notwithstanding any other provision contained herein to the contrary, Lessor acknowledges and agrees that it shall use its best efforts to achieve substantial completion of Lessor's work and to deliver possession of the Premises to the Lessee on or before said forty-five (45) days after receipt of the building permit from the Town of Durham, NC, (the "Completion Date Deadline"). In the event Lessor fails to deliver possession of

the Premises to Lessee within an additional fourteen (14) days of the Completion Date Deadline, for any reason other than Lessee caused delays or an Act of God, Lessee shall be entitled to a credit equal to one(1) day base rent (at the monthly rental rate applicable to the 7th month through the 12th month of the Lease term) for each day beyond the initial 45 days and then between days fifteen (15) and thirty (30), two (2) days base rent (at the monthly rental rate applicable to the 7th month through the 12th month of the Lease term) until Lessor's Work is substantially completed.

The Term of this expansion space, Suite J, and the original Suite G shall be coterminious and under no circumstances expire no later than 9/30/10.

Para 3. RENT: See Rent Schedule attached.

Para 3 (b): On the date of the execution of this Second Amendment to Lease by Lessee, Lessee shall deposit with the Lessor an additional One Thousand Six Hundred Fifty Three Dollars (\$1,653.00) as a security deposit on the Expansion Space.

Para 12. WORK LETTER: The Lessor shall perform the improvements to the Expansion Space specified in the Work Letter attached.

The Lessor grants the Lessee an improvement allowance of \$36,600 for the specified improvements to the Expansion Space including architectural fees. The cost of any improvements over the allowance, which overage as of September 7, 2004 is estimated to be \$3,481.54, shall be paid for by the Lessee upon completion of the improvements.

Para 44, Commission: Upon commencement of this second amendment of this lease, Lessor shall pay Corporate Realty Advisors a commission of \$15,974.98, which includes the second (2nd) one-half of the broker commission payable on the original 5,700 sq ft of space and 100% of the broker commission on the Expansion Space. The commission shall be secured by the rent from Lessee.

Except as modified herein, all other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby have executed this First Amendment to Lease Agreement as of the day and year first written above.

**Lessor:** Realmark-Commercial, LLC

**Lessee:** Adherex, Inc.

\_\_\_\_\_  
/s/  
(Signature)

\_\_\_\_\_  
/s/ James A. Klein Jr.  
(Signature)

By: \_\_\_\_\_  
(Print Name & Title)

By: \_\_\_\_\_ James A. Klein Jr., CFO  
(Print Name & Title)

Date: 9/24/04

Date: 9/14/04

**RENT SCHEDULE  
for 2300 Englert Drive, Suite J, Durham, NC**

Lease Month	Base Monthly Lease Payments
1-6	No monthly base rent due.
7-12	One Thousand Six Hundred Fifty Three and 67/100 Dollars (\$1,653.67) per month
13-24	One Thousand Seven Hundred Three and 68/100 Dollars (\$1,703.68) per month
25-36	One Thousand Seven Hundred Fifty Three and 69/100 Dollars (\$1,753.69) per month
37-48	One Thousand Eight Hundred Six and 93/100 Dollars (\$1,806.93) per month
49-60	One Thousand Eight Hundred Sixty One and 79/100 Dollars (\$1,861.79) per month
61-72	One Thousand Nine Hundred Sixteen and 64/100 Dollars (\$1,916.64) per month

Additional Rent as defined in Para 3 (e), (f), (g) and (h) of the Lease are due and payable to the Lessor during the free rent period.

**Work Letter**

The Lessor shall perform the following improvements to the Expansion Space for the Lessee:

- The expansion space shall be configured for the Lessee as shown on the attached diagram.
- Patch and point up all walls as needed
- Provide new carpet throughout the expansion space, tenant's choice of color and pattern.
- Lessor grants the Lessee a \$20.00 per sq yd allowance for the carpet.
- Provide new rubber cove base throughout the expansion space.
- Provide electrical service to the expansion space as appropriate.
- Paint the expansion space, tenant's choice of reasonable color.
- Provide four new hollow metal interior door frames
- Four new interior doors with hardware
- Install doors, frames and hardware
- Provide acoustical ceiling tile in a 2 x 2 pattern with 2 x 2 flat tile

Lessor shall promptly begin the improvements described herein and shown in the plans prepared by Lessor's contractor's architect and approved by the Lessee in writing.