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

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2008

OR

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

For the transition period from to

Commission File No. 0-14710

XOMA Ltd.

(Exact name of registrant as specified in its charter)

Bermuda	**52-2154066**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
2910 Seventh Street, Berkeley, California 94710	**(510) 204-7200**
(Address of principal executive offices, including zip code)	**(Telephone Number)**

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

Securities registered pursuant to Section 12(g) of the Act:
Common Shares, U.S. $0.0005 par value
Preference Share Purchase Rights

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☒

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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

Large Accelerated Filer ☐ Accelerated Filer ☒ Non-Accelerated filer ☐ Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act of 1934). Yes ☐ No ☒

The aggregate market value of voting shares held by non-affiliates of the registrant is $223,028,144 as of June 30, 2008

Number of Common Shares outstanding as of March 6, 2009: 142,244,227

DOCUMENTS INCORPORATED BY REFERENCE:

Portions of the Company's Proxy Statement for the Company's 2009 Annual General Meeting of Shareholders are incorporated by reference into Part III of this Report.

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XOMA Ltd.

2008 FORM 10-K ANNUAL REPORT

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PART I

Item 1. Business

Overview

XOMA Ltd. ("XOMA" or the "Company"), a Bermuda company, is a leading biopharmaceutical company focused on the discovery, development and manufacture of therapeutic antibodies and other agents designed to treat inflammatory, autoimmune, infectious and oncological diseases. XOMA uses its expertise, technologies and capabilities to build a product pipeline that includes multiple proprietary and collaborative development programs. The Company's lead product candidate is XOMA 052, a potent monoclonal antibody with the potential to improve the treatment of patients with a wide variety of diseases in which inflammation is either the cause or plays a significant role.

XOMA has multiple revenue streams and generates revenues from product royalties, technology licenses, development collaborations and biodefense contracts. The Company receives royalties on three approved products, RAPTIVA®, which is marketed globally for the treatment of chronic moderate-to-severe plaque psoriasis, LUCENTIS®, which is marketed globally for the treatment of neovascular (wet) age-related macular degeneration, and CIMZIA®, which is approved in the U.S. and Switzerland for the treatment of Crohn's disease. XOMA has established on-going technology licensing programs for certain of its proprietary technologies, which have attracted numerous significant licensees including Pfizer Inc. ("Pfizer"). The Company's development collaborations include arrangements with Takeda Pharmaceutical Company Limited ("Takeda"), Schering-Plough Research Institute ("SPRI") and Novartis AG ("Novartis"). XOMA's biodefense initiatives currently include a $65 million multiple-year contract with the National Institute of Allergy and Infectious Diseases ("NIAID") to support XOMA's ongoing development of drug candidates toward clinical trials in the treatment of botulism poisoning.

The Company has a premier antibody discovery and development platform that includes six commercial antibody phage display libraries and XOMA's proprietary Human Engineering™ and bacterial cell expression technologies. Our Human Engineering™ technology was used in development of XOMA 052 and certain other antibody products. Bacterial cell expression technology is a key biotechnology for the discovery and manufacture of antibodies and other proteins. Thus far, more than 50 pharmaceutical and biotechnology companies have signed bacterial cell expression licenses with XOMA.

Strategy

We are advancing a pipeline of biotherapeutic products using our proven expertise, technologies and capabilities from antibody discovery through product development. We seek to expand our pipeline by developing proprietary products and technologies, collaborating with pharmaceutical and biotechnology companies and providing contract services to government agencies responsible for biodefense. We fund a portion of our development activities through multiple revenue streams, including product royalties, technology licenses, collaborations and biodefense contracts. The principal elements of our strategy are to:

- *Focus on advancing our proprietary pipeline, including XOMA 052, our lead product candidate.* Using our proprietary antibody technologies, capabilities and expertise, we discovered XOMA 052, a potent monoclonal antibody that targets the pro-inflammatory cytokine, Interleukin-1 beta ("IL-1 beta"). XOMA 052 is designed to reduce inflammation as an underlying cause of diabetes by targeting IL-1 beta, which triggers inflammatory pathways in the body. We believe XOMA 052 has the potential to treat many diseases in which inflammation is either the cause or plays a significant role. Because many of these diseases represent unmet medical needs, this potential increases the product's likelihood of successful development. In 2007, we began Phase 1 clinical studies of XOMA 052 in patients with Type 2 diabetes. We have been approached by several companies offering to collaborate on our testing and development of XOMA 052 for the treatment of diabetes and will seek to enter into such a collaboration by the end of 2009. We are also evaluating XOMA 052 for the treatment of rheumatoid arthritis in a Phase 2a clinical trial initiated in the first quarter of 2009. Additionally, we also plan to continue advancing our internal drug discovery efforts with multiple preclinical programs to generate new product candidates.

- *Increase licensing revenues from existing and future proprietary technologies.* We have a history of generating significant revenue from our proprietary technologies, including our bacterial cell expression technology, which we have licensed to more than 50 companies in exchange for license, milestone and other fees, royalties and complementary technologies. We believe that we can continue to generate significant revenue from our bacterial cell expression and other proprietary technologies in the future.
- *Prioritize application of available resources.* In response to current economic conditions, we have reviewed our research and development priorities in light of the positive interim XOMA 052 clinical study results discussed below and the need to establish a sustainable level of research and development investment. We have decided to focus our resources on XOMA 052 and curtail spending on certain other product candidates in our proprietary pipeline, including XOMA 629, which is a topical anti-bacterial formulation of a peptide derived from bactericidal/permeability-increasing protein ("BPI"), a key part of the protective human immune system. XOMA was developing XOMA 629 as a possible treatment for superficial skin infections, including impetigo and the eradication of staphylococcus aureus, including methicillin-resistant staphylococcus aureus ("MRSA"), but has curtailed all spending on XOMA 629 in response to current economic conditions.

  In January of 2009, XOMA announced a workforce reduction of approximately 42 percent, or 144 employees, a majority of which were employed in manufacturing and related support functions. This decision was made based on the challenging economic conditions and a decline in forecasted contract manufacturing demand in 2009. We expect an annualized reduction of approximately $27 million in cash expenditures when changes are completed in the second quarter of 2009. Upon completion of the workforce reduction on March 17, 2009, we expect to have approximately 200 employees to develop XOMA 052, develop and license proprietary products and technology, and continue fully funded antibody discovery and development activities in collaboration with our pharmaceutical partners and under biodefense contracts with the U.S. government. We will maintain our pilot scale manufacturing plant. XOMA expects to record a charge in the first quarter of 2009 of approximately $3 million for severance and other costs related to the workforce reduction.

Proprietary Products

As part of our strategy, we are focusing our technology and resources on advancing the emerging proprietary pipeline. Below is a summary of our proprietary products:

- **XOMA 052** is a potent Human Engineering™ monoclonal antibody with the potential to improve the treatment of patients with a wide variety of inflammatory diseases. XOMA 052 binds strongly to IL-1 beta, a pro-inflammatory cytokine that is involved in the development of diabetes, rheumatoid arthritis and other diseases. By binding IL-1 beta, the drug inhibits the activation of the IL-1 receptor, thereby preventing the cellular signaling events that produce inflammation. XOMA 052 is a humanized IgG2 antibody with a half-life of 22 days. Based on its binding properties, specificity to IL-1 beta and half-life, XOMA 052 may provide convenient dosing of once per month or longer.

  We are currently conducting two Phase 1 clinical trials in Type 2 diabetes patients, one in the U.S. and one in Europe. In September of 2008, we announced interim data from the Phase 1 clinical trials which indicate support for a novel anti-inflammatory approach to Type 2 diabetes treatment that may preserve insulin-producing cells. Although these Phase 1 studies were designed to test drug safety and pharmacokinetics, rather than efficacy, we believe these studies are important additions to other published medical research indicating that decreasing inflammation may reduce disease progression in diabetes. We plan to advance our Phase 1 clinical testing of XOMA 052 in Type 2 diabetes and initiate a major Phase 2 Type 2 diabetes study in the third quarter of 2009.

  In addition to our Phase 1 clinical trials in Type 2 diabetes patients, we initiated a Phase 2a pharmacokinetic study of XOMA 052 in rheumatoid arthritis in the first quarter of 2009. Depending on resources and timing, we may initiate additional small XOMA 052 "proof-of-concept" trials in other indications in 2009.

- **XOMA 3AB** is an antibody drug candidate designed for the treatment of botulism poisoning, a potentially deadly muscle paralyzing disease. Our anti-botulism program is the first of its kind to combine multiple human antibodies to target a broad spectrum of the most toxic botulinum toxins, including the three most toxic serotypes of botulism, Types A, B and E. The antibodies are designed to bind to each toxin and enhance the clearance of the toxin from the body. The use of multiple antibodies increases the likelihood of clearing the harmful toxins by providing specific protection against each toxin type. In contrast to existing botulinum drugs, XOMA uses advanced human monoclonal antibody technologies in an effort to achieve superior safety, potency and efficacy, and avoid life threatening immune reactions associated with animal-derived antibodies. We have a history of successfully providing contract services to the U.S. government for the development of anti-botulinum neurotoxin antibodies. In September of 2008, we were awarded a $65 million multiple-year contract funded with federal funds from NIAID, a part of the National Institutes of Health (Contract No. HHSN272200800028C), to support ongoing development of drug candidates for the treatment of botulism poisoning. This contract is the third that NIAID has awarded us for the development of botulinum antitoxins and brings the program's total awards to nearly $100 million.
- **Preclinical Product Pipeline:** We are pursuing additional opportunities to further broaden our preclinical product pipeline. These include internal discovery programs, product development collaborations with other pharmaceutical and biotechnology companies and evaluations of product in-licensing, in-kind product trades and acquisition opportunities.

Partnership Products

XOMA partners with world-class organizations in research and development of new antibody products. Below is a list of current activities through such collaborations:

- **Therapeutic Antibodies with Novartis:** Novartis is a global pharmaceutical company which reported net sales of $41.5 billion in 2008. In December of 2008, we entered into a Manufacturing and Technology Transfer Agreement with Novartis, effective July 1, 2008. Under this agreement, XOMA has been engaged by Novartis to perform research and development, process development, manufacturing and technology transfer activities with respect to the ongoing product programs now controlled by Novartis under the restructured product development collaboration.
- **Therapeutic Antibodies with SPRI**: SPRI is part of the Schering-Plough Corporation, a global pharmaceutical company which reported net sales of $18.5 billion in 2008. SPRI has been a partner since 2006 for therapeutic monoclonal antibody discovery and development against multiple targets selected by them, and we are currently conducting multiple discovery programs through this partnership.
- **Therapeutic Antibodies with Takeda:** Takeda is a global pharmaceutical company which reported net sales of approximately $13.9 billion for its fiscal year ended March of 2008. Since 2006, Takeda has been a partner for therapeutic monoclonal antibody discovery and development against multiple targets selected by them. In September of 2008, we initiated new therapeutic antibody programs under our existing antibody discovery and development collaboration with Takeda. The new programs add to the multiple discovery and development programs already being advanced through the collaboration. In addition, in February of 2009, we expanded our existing collaboration to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. As part of the expanded collaboration, we received a $29.0 million expansion fee, before taxes and other costs, and we may receive potential milestones and royalties on sales of antibody products in the future.

Royalties and Technology Licenses

Royalties

XOMA earns mid- and low-single digit royalties on the following three marketed antibody products:

- **RAPTIVA® (efalizumab) with Genentech, Inc. ("Genentech"):** RAPTIVA® is a humanized therapeutic monoclonal antibody developed to treat immune system disorders. RAPTIVA® is the first biologic therapy designed to provide long-term control of chronic moderate-to-severe plaque psoriasis and can be self-administered by patients as a single, once-weekly subcutaneous injection. RAPTIVA® was approved by the U.S. Food and Drug Administration ("FDA") in October of 2003 and in the European Union in September of 2004, where it is marketed by Merck Serono S.A. ("Merck Serono", formerly Serono S.A.). According to Genentech, United States sales of RAPTIVA® during 2008 were $108 million, compared with $107 million and $90 million during 2007 and 2006, respectively. According to Merck Serono, sales of RAPTIVA® outside of the U.S. during 2008 were approximately $134 million, compared with $106 million and $70 million during 2007 and 2006, respectively. In 2008, we earned royalties of $12.2 million from worldwide sales of RAPTIVA®, compared with $10.6 million and $8.2 million during 2007 and 2006, respectively.

  In October of 2008, the FDA announced that it had approved labeling changes, including a Boxed Warning, to highlight the risks of life-threatening infections, including progressive multifocal leukoencephalopathy ("PML"), with the use of RAPTIVA®. In November of 2008, Genentech announced that it had issued a Dear Healthcare Provider letter to inform dermatologists and neurologists of a second case of PML which resulted in the death of a 73-year old patient who had received RAPTIVA® for approximately four years. In February of 2009, the European Medicines Agency ("EMEA") announced that it has recommended suspension of the marketing authorization of RAPTIVA® in the European Union and that its Committee for Medicinal Products for Human Use ("CHMP") has concluded that the benefits of RAPTIVA® no longer outweigh its risks and EMD Serono Inc., the company that markets RAPTIVA® in Canada ("EMD Serono"), announced that, in consultation with Health Canada, the Canadian health authority ("Health Canada"), it will suspend marketing of RAPTIVA® in Canada. Also in February of 2009, the FDA issued a public health advisory concerning three confirmed reports, and one possible report, of PML in patients using RAPTIVA®. Genentech has stated that it is working with the FDA to determine appropriate next steps, which may include significant restrictions in the use of, or suspension or withdrawal of regulatory approval for, RAPTIVA®.

- **LUCENTIS® (ranibizumab injection) by Genentech:** LUCENTIS® is an antibody fragment against Vascular Endothelial Growth Factor for the treatment of neovascular (wet) age-related macular degeneration, which causes central vision loss in the elderly, brought on by deterioration of the macula, a collection of specialized cells located on the retina. LUCENTIS® was approved by the FDA in June of 2006 and in the European Union in January of 2007, where it is distributed by Novartis. It is the first marketed therapeutic product manufactured under a license using our bacterial cell expression technology. According to Genentech, U.S. sales of LUCENTIS® were $875 million during 2008 compared with $815 million and $380 million during 2007 and 2006, respectively. According to Novartis, sales of LUCENTIS® outside the United States were $886 million in 2008 compared with $393 million and $27 million during 2007 and 2006, respectively. In 2008, we earned royalties of $8.8 million from worldwide sales of LUCENTIS®, compared with $6.0 million and $2.0 million during 2007 and 2006, respectively.

  In January of 2009, Novartis announced that LUCENTIS® was approved in Japan for the treatment of neovascular (wet) age-related macular degeneration.

- **CIMZIA® (certolizumab pegol) by UCB Celltech, a branch of UCB S.A. ("UCB"):** CIMZIA® is an anti-TNF (Tumor Necrosis Factor) alpha antibody fragment. CIMZIA® was approved by the FDA in April of 2008 and in Switzerland in September of 2007 for the treatment of moderate-to-severe Crohn's disease in adults who have not responded to conventional therapies. UCB is responsible for the

marketing and sales effort in support of this product in the U.S. and Switzerland. According to UCB, worldwide sales of CIMZIA® were approximately $13 million during 2008. Royalties earned in 2008 from sales of CIMZIA® were immaterial.

In January of 2009, UCB announced that the FDA had issued a Complete Response Letter relating to the Biologics License Application ("BLA") of CIMZIA® for the treatment of rheumatoid arthritis. As a prerequisite for approval of CIMZIA®, UCB announced in February of 2009 that the FDA requires further analysis of existing data and a new safety update and that no additional studies are needed to fulfill the FDA's request. UCB is working with the FDA to fulfill its request and anticipates a full response will be submitted in the second quarter of 2009.

Technology Licenses

Below is a summary of certain proprietary technologies owned by us and available for licensing to other companies:

- **Bacterial Cell Expression.** The production or expression of antibodies using bacteria is an enabling technology for the discovery and selection, as well as the development and manufacture, of recombinant protein pharmaceuticals, including diagnostic and therapeutic antibodies for commercial purposes. Genetically engineered bacteria are used in the recombinant expression of target proteins for biopharmaceutical research and development. Reasons include the relative simplicity of gene expression in bacteria as well as many years of experience culturing such species as *E. coli* in laboratories and manufacturing facilities. In support of our own biopharmaceutical development efforts, XOMA scientists have developed bacterial expression technologies for producing antibodies and other recombinant protein products.

  We have granted over 50 licenses to biotechnology and pharmaceutical companies to use our patented and proprietary technologies relating to bacterial expression of recombinant pharmaceutical products. Bacterial antibody expression is also a key technology used in multiple systems for high-throughput screening of antibody domains. Expression of antibodies by phage display technology, for example, depends upon the expression and secretion of antibody domains from bacteria as properly folded, functional proteins.

  Under the terms of our license agreement with Pfizer, signed in 2007, we received an up-front, non-dilutive cash payment of $30.0 million and, in 2008, we received two milestone payments relating to two different products, including a payment of $0.5 million for the initiation of a Phase 3 clinical trial. We are also eligible for additional milestone, royalty and other fees on future sales of all products subject to this license.

  Current licensees include but are not limited to the following companies:

Affimed Therapeutics AG	Crucell Holland B.V.	Novartis AG
Affitech AS	Dompe, s.p.a.	Pfizer, Inc.
Alexion Pharmaceuticals, Inc.	Dyax Corp.	Schering-Plough Corporation
Applied Molecular Evolution, Inc. (AME)	E.I. duPont de Nemours and Company	Takeda Pharmaceutical Company Ltd.
Avecia Limited	Eli Lilly and Company	The Medical Research Council
Aventis Pharma Deutschland GmbH (Hoechst)	Genentech, Inc.	UCB S.A.
Bayer Healthcare AG	Genzyme Corporation	Unilever plc
BioInvent International AB	Invitrogen Corporation	Verenium Corporation
Biosite Incorporated	Merck & Co., Inc.	Wyeth Pharmaceuticals Division
Centocor, Inc.	MorphoSys AG	ZymoGenetics, Inc.

These licenses are sometimes associated with broader agreements which may include expanded license rights, cell line development and process development.

- **Human Engineering™.** Human Engineering™ is a proprietary technology that allows modification of non-human monoclonal antibodies to reduce or eliminate detectable immunogenicity and make them suitable for medical purposes in humans. The technology uses a unique method developed by us, based on analysis of the conserved structure-function relationships among antibodies. The method defines which residues in a non-human variable region are candidates to be modified. The result is a Human Engineering™ antibody with preserved antigen binding, structure and function, and with eliminated or greatly reduced immunogenicity. Human Engineering™ technology was used in development of XOMA 052 and certain other antibody products.
- **Antibody discovery technologies.** XOMA uses six commercial human antibody phage display libraries in its discovery of therapeutic candidates, and we offer access to numerous libraries as part of our collaboration business. We believe that access to multiple libraries offers a number of benefits to XOMA and its partners, because it enables use of libraries best suited to the needs of a particular discovery project to increase the probability of technical and business success in finding rare and unique functional antibodies directed to targets of interest.

We also have access to certain intellectual property rights and services that augment our existing integrated antibody technology platform and development capabilities and further compress product development timelines. This broad antibody technology platform and expertise is available for building our antibody product pipeline as well as those of our collaborators.

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Proprietary Product Summary:

The following table describes important information related to certain products on which we may earn royalties or that we are currently developing:

Program	Description	Indication	Status	Collaborator/Developer
XOMA 052	HE™ antibody to IL-1ß	Type 2 diabetes, rheumatoid arthritis, systemic juvenile idiopathic arthritis, and gout	Phase 1 for T2D Phase 1 for RA	Proprietary
XOMA 3AB	Therapeutic antibodies to multiple botulinum neurotoxins	Botulism poisoning	Preclinical	Proprietary (NIAID-funded)
Multiple Therapeutic Antibodies	Fully human monoclonal antibodies to undisclosed disease targets	Undisclosed	Preclinical	Takeda (fully funded)
Multiple Therapeutic Antibodies	Fully human monoclonal antibodies to undisclosed disease targets	Undisclosed	Preclinical	Schering-Plough Research Institute (fully funded)
HCD 122 and other Therapeutic Antibodies	Fully human antibody to CD40 and other monoclonal antibodies to undisclosed disease targets	B-cell cancers and other undisclosed diseases	Phase 1 and Preclinical	Novartis (fully funded)
RAPTIVA®	Humanized anti-CD11a monoclonal antibody	Moderate-to-severe plaque psoriasis	Marketed in U.S. and elsewhere, XOMA earns royalties	Genentech (marketed product)
LUCENTIS®	Humanized antibody fragment against Vascular Endothelial Growth Factor	Neovascular (wet) age-related macular degeneration	Marketed in U.S., Europe and elsewhere, XOMA earns royalties	Genentech (marketed product)
CIMZIA®	Anti-TNF alpha antibody fragment	Crohn's disease and rhematoid arthritis	Marketed in U.S. and Switzerland for Crohn's disease, XOMA earns royalties	UCB (marketed product)

Product Available for Out-Licensing

In an effort to focus our resources on our XOMA 052 program, we have designated XOMA 629 as available for out-licensing. XOMA 629 is a topical anti-bacterial formulation of a peptide derived from BPI, a key part of the protective human immune system. XOMA was developing XOMA 629 as a possible treatment for superficial skin infections, including impetigo and the eradication of staphylococcus aureus, including MRSA.

Financial and Legal Arrangements of Product Collaborations, Licensing and Other Arrangements

Current Agreements

Genentech

In April of 1996, we entered into a collaboration agreement with Genentech for the development of RAPTIVA®. In March of 2003, we entered into amended agreements which called for us to share in the development costs and to receive a 25% share of future U.S. operating profits and losses and a royalty on sales outside the U.S. The amended agreements also called for Genentech to finance our share of development costs up until first FDA marketing approval via a convertible subordinated loan, and our share of pre-launch marketing and sales costs via an additional commercial loan facility. Under the loan agreement, upon FDA approval of the product, which occurred in October of 2003, we elected to pay $29.6 million of the development loan in convertible preference shares, which are convertible into approximately 3.8 million common shares at a price of $7.75 per common share. The commercial loan was repaid in cash in two installments in 2004.

In January of 2005, we announced a restructuring of our arrangement with Genentech on RAPTIVA®. Under the restructured arrangement, we are entitled to receive mid-single digit royalties on worldwide sales of RAPTIVA® in all indications. The previous cost and profit sharing arrangement for RAPTIVA® in the U.S. was discontinued and Genentech is responsible for all operating and development costs associated with the product. In addition, the outstanding balance on our development loan was extinguished.

In December of 1998, we licensed our bacterial cell expression technology to Genentech, which utilized it in the development of LUCENTIS® for the treatment of neovascular (wet) age-related macular degeneration. LUCENTIS® was approved by the FDA in June of 2006, the European Union in January of 2007 and Japan in January of 2009. We are entitled to receive a low-single digit royalty on worldwide sales of LUCENTIS®.

UCB

In December of 1998, we licensed our bacterial cell expression technology to Celltech Therapeutics Ltd., now UCB Celltech, a branch of UCB, which utilized it in the development of CIMZIA® for the treatment of moderate-to-severe Crohn's disease in adults who have not responded to conventional therapies and for the treatment of rheumatoid arthritis. CIMZIA® was approved by the FDA in April of 2008 and in Switzerland in September of 2007 for the treatment of Crohn's disease. The FDA is currently considering UCB's application to market CIMZIA® for the treatment of rheumatoid arthritis. We are entitled to receive a low-single digit royalty on worldwide sales of CIMZIA®.

Novartis

In November of 2008, we restructured our product development collaboration with Novartis, which involves six development programs including the HCD122 program. HCD122, which is a fully human anti-CD40 antagonist antibody intended as a treatment for B-cell mediated diseases, including malignancies and autoimmune diseases, is currently in Phase 1 and Phase 2 clinical trials in several indications. The investigational drug is in a Phase 1b-2a clinical trial for the treatment of lymphoma and a Phase 1 clinical trial for the treatment of multiple myeloma. The antibody has a dual mechanism of action that involves inhibition of CD40-ligand mediated growth and survival while recruiting immune effector cells to kill CD40-expressing tumor cells through a process known as antibody-dependent cellular cytotoxicity (ADCC). CD40, a member of the tumor necrosis factor, or TNF, family of antigens, is a cell surface antigen expressed in B-cell malignancies and involved in a broad variety of immune and inflammatory responses.

Under the restructured agreement, Novartis made a payment to us of $6.2 million in cash; reduced our existing debt by $7.5 million; will fully fund all future research and development expenses; may pay potential milestones of up to $14.0 million and double-digit royalty rates for two ongoing product programs, including HCD122; and has provided us with options to develop or receive royalties on four additional programs. In exchange, Novartis has control over the HCD122 program and the additional ongoing program, as well as the right to expand the development of these programs into additional indications outside of oncology. As part of the agreement, Novartis has paid us for all project costs incurred after July 1, 2008.

The collaboration between XOMA and Novartis (then Chiron Corporation) began in 2004 with the signing of an exclusive, worldwide, multi-product agreement to develop and commercialize multiple antibody products for the treatment of cancer. We shared expenses and revenues, generally on a 70-30 basis, with our share being 30 percent. Financial terms included initial payments to us in 2004 totaling $10.0 million and a note agreement, secured by our interest in the collaboration, to fund up to 75 percent of our share of expenses beginning in 2005. In the first quarter of 2007, the mutual obligations of XOMA and Novartis to work together on an exclusive basis in oncology expired, except with respect to existing collaborative product development projects.

In December of 2008, we entered into a Manufacturing and Technology Transfer Agreement with Novartis, effective July 1, 2008. Under this agreement, XOMA has been engaged by Novartis to perform research and development, process development, manufacturing and technology transfer activities with respect to the ongoing product programs now controlled by Novartis under the restructured product development collaboration. The work performed by XOMA under this agreement is fully funded by Novartis.

Schering-Plough

In May of 2006, we entered into a fully funded collaboration agreement with the SPRI division of Schering-Plough Corporation for therapeutic monoclonal antibody discovery and development. Under the agreement, SPRI will make up-front, annual maintenance and milestone payments to us, fund our research and development activities related to the agreement and pay royalties on sales of products resulting from the collaboration. During the collaboration, we will discover therapeutic antibodies against multiple targets selected by SPRI using multiple human antibody phage display libraries, may optimize antibodies through affinity maturation or other protein engineering, may use our proprietary Human Engineering™ technology to humanize antibody candidates generated by hybridoma techniques, perform preclinical studies to support regulatory filings, develop cell lines and production processes and produce antibodies for initial clinical trials. SPRI selected the first target at the inception of the agreement and, in December of 2006, exercised its right to initiate the additional discovery and development programs.

Schering-Plough/AVEO Pharmaceuticals, Inc. ("AVEO")

In April of 2006, we entered into an agreement with AVEO to utilize our Human Engineering™ technology to humanize AV-299, AVEO's novel anti-HGF antibody, under which AVEO paid us an up-front license fee and development milestones. In addition, we will receive royalties on sales of products resulting from the agreement. Under this agreement we created four Human Engineering™ versions of the original AV-299, all of which met design goals and from which AVEO selected one as its lead development candidate. In September of 2006, as a result of the successful humanization of AV-299, we entered into a second agreement with AVEO to manufacture and supply AV-299 in support of early clinical trials. Under the agreement, we created AV-299 production cell lines, conducted process and assay development, and performed Good Manufacturing Practices ("cGMP") manufacturing activities. AVEO retains all development and commercialization rights to AV-299 and is responsible to pay XOMA annual maintenance fees, additional development milestones and royalties if certain targets are met.

In April of 2007, Schering-Plough Corporation, acting through its SPRI division, entered into a research, development and license agreement with AVEO concerning AV-299 and other anti-HGF molecules. In connection with the aforementioned license agreement, AVEO has assigned its entire right, title and interest in, to and under its manufacturing agreement with XOMA to SPRI.

Takeda

In November of 2006, we entered into a fully funded collaboration agreement with Takeda for therapeutic monoclonal antibody discovery and development. Under the agreement, we will discover and optimize therapeutic antibodies against multiple targets selected by Takeda. Takeda will make up-front, annual maintenance and milestone payments to us, fund our research and development and manufacturing activities for preclinical and early clinical studies and pay royalties on sales of products resulting from the collaboration. Takeda will be responsible for clinical trials and commercialization of drugs after an Investigational New Drug ("IND") submission and is granted the right to manufacture once a product enters into Phase 2 clinical trials.

In September of 2008, we initiated new therapeutic antibody programs under our existing collaboration with Takeda. The new programs add to the multiple discovery and development programs already being advanced through the collaboration.

In addition, in February of 2009 we expanded our existing collaboration to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. We received a $29.0 million expansion fee, of which $23.2 million was received in cash in February of 2009 and the remainder was witheld for payment to the Japanese taxing authority. In addition, we expect to pay approximately $1.5 million of additional expenses to Takeda related to the agreement. We may receive potential milestones and royalties on sales of antibody products in the future.

NIAID

In March of 2005, we were awarded a $15.0 million competitive bid contract from NIAID to develop three anti-botulinum neurotoxin monoclonal antibodies. Under this contract, we created production cell lines using our proprietary antibody expression systems, built Master and Manufacturer's Working Cell Banks, developed production processes and produced initial quantities of the three antibodies. The contract was performed over an 18-month period and was 100% funded with federal funds from NIAID under Contract No. HHSN266200500004C. Final acceptance of the project was received in October of 2006.

In July of 2006, we were awarded a $16.3 million contract funded with federal funds from NIAID under Contract No. HHSN266200600008C/N01-Al-60008 to produce monoclonal antibodies for the treatment of botulism to protect United States citizens against the harmful effects of botulinum neurotoxins used in bioterrorism. Under this contract, we have created and produced an innovative injectable product comprised of three anti-type A botulinum neurotoxin monoclonal antibodies to support entry into Phase 1 safety human clinical trials. The work is being performed on a cost plus fixed fee basis, per the terms of the contract, over a three-year period.

In September of 2008, we were awarded a third contract for $65 million funded with federal funds from NIAID under Contract No. HHSN272200800028C to continue development of our anti-botulinum antibody product candidates, including XOMA 3AB and additional product candidates. As part of the new contract, we will develop, evaluate and produce the clinical supplies to support an IND filing with the FDA and conduct preclinical studies required to support human clinical trials.

Recently Terminated Agreements

Lexicon

In November of 2008, we terminated our collaboration agreement with Lexicon Pharmaceuticals, Inc. ("Lexicon"), which was entered into in June of 2005 to jointly develop and commercialize antibody drugs for certain targets discovered by Lexicon. The collaboration was designed to combine Lexicon's target discovery and biotherapeutics capabilities with our antibody generation, process development and manufacturing expertise to accelerate the development and commercialization of novel therapeutic antibodies.

Incyte

In July of 2008, our license agreement with Incyte Corporation ("Incyte") expired including the remaining 125,000 warrants held by Incyte to purchase our common shares at $6.00 per share. This agreement was entered into in July of 1998 whereby we obtained an exclusive (even as to Incyte), freely sublicenseable, worldwide license to all of Incyte's patent rights relating to BPI. In exchange, we agreed to pay Incyte a royalty on sales of BPI products covered by the license, up to a maximum of $11.5 million and we made a $1.5 million advance royalty payment, one-half in cash and one-half in our common shares.

Research and Development

Our research and development expenses currently include costs of personnel, supplies, facilities and equipment, consultants, third party costs and other expenses related to preclinical and clinical testing. In 2008, our research and development expenses were $82.6 million compared with $66.2 million in 2007 and $52.1 million in 2006.

Our research and development activities can be divided into those related to our internal projects and those related to collaborative and contract arrangements, which are reimbursed by our customers. In 2008, research and development expenses related to internal projects were $58.5 million compared with $45.8 million in 2007 and $32.0 million in 2006. In 2008, research and development expenses related to collaborative and contract arrangements were $24.1 million compared with $20.4 million in 2007 and $20.1 million in 2006. Refer to *Item 7: Results of Operations: Research and Development Expenses* for further information regarding our research and development expenses.

Competition

The biotechnology and pharmaceutical industries are subject to continuous and substantial technological change. Competition in the areas of recombinant DNA-based and antibody-based technologies is intense and expected to increase as new technologies emerge and established biotechnology firms and large chemical and pharmaceutical companies continue to advance in the field. A number of these large pharmaceutical and chemical companies have enhanced their capabilities by entering into arrangements with or acquiring biotechnology companies or entering into business combinations with other large pharmaceutical companies. Many of these companies have significantly greater financial resources, larger research and development and marketing staffs and larger production facilities than ours. Moreover, certain of these companies have extensive experience in undertaking preclinical testing and human clinical trials. These factors may enable other companies to develop products and processes competitive with or superior to ours. In addition, a significant amount of research in biotechnology is being carried out in universities and other non-profit research organizations. These entities are becoming increasingly interested in the commercial value of their work and may become more aggressive in seeking patent protection and licensing arrangements. Furthermore, many companies and universities tend not to announce or disclose important discoveries or development programs until their patent position is secure or, for other reasons, later; as a result, we may not be able to track development of competitive products, particularly at the early stages. There can be no assurance that developments by others will not render our products or technologies obsolete or uncompetitive.

Without limiting the foregoing, we are aware of the following competitors for the products and candidates shown in the table below. This table is not intended to be representative of all existing competitors in the market:

Product/Candidate	Competitors
XOMA 052	Amgen, Inc. Novartis AG Biovitrum AB Regeneron Pharmaceuticals, Inc.
XOMA 3AB	Cangene Corporation Emergent BioSolutions, Inc.
RAPTIVA®	Amgen, Inc. with Wyeth Pharmaceuticals Abbott Laboratories Johnson & Johnson Astellas Pharma US, Inc.
LUCENTIS®	Pfizer, Inc. with OSI Pharmaceuticals, Inc. Novartis AG with QLT Inc.
CIMZIA®	Johnson & Johnson Abbott Laboratories

Regulatory

Our products are subject to comprehensive preclinical and clinical testing requirements and to approval processes by the FDA and by similar authorities in other countries. Our products are primarily regulated on a product-by-product basis under the United States Food, Drug and Cosmetic Act and Section 351(a) of the Public Health Service Act. Most of our human therapeutic products are or will be classified as biologic products. Approval of a biologic for commercialization requires licensure of the product and the manufacturing facilities. The review of therapeutic biologic products is carried out by the FDA's Center for Drug Evaluation and Research, the body that also reviews drug products.

The FDA regulatory process is carried out in several phases. Prior to beginning human clinical testing of a proposed new biologic product, an IND is filed with the FDA. This document contains scientific information on the proposed product, including results of testing of the product in animal and laboratory models. Also included is information on manufacturing the product and studies on toxicity in animals and a clinical protocol outlining the initial investigation in humans.

The initial stage of clinical testing, Phase 1, ordinarily encompasses safety, pharmacokinetic and pharmacodynamic evaluations. Phase 2 testing encompasses investigation in specific disease states designed to provide preliminary efficacy data and additional information on safety. Phase 3 studies are designed to further establish clinical safety and efficacy and to provide information allowing proper labeling of the product following approval. Phase 3 studies are most commonly multi-center, randomized, placebo-controlled trials in which rigorous statistical methodology is applied to clinical results. Other designs may also be appropriate in specific circumstances.

Following completion of clinical trials, a BLA is submitted to the FDA to request marketing approval. Internal FDA committees are formed that evaluate the application, including scientific background information, animal and laboratory efficacy studies, toxicology, manufacturing facility and clinical data. During the review process, a dialogue between the FDA and the applicant is established in which FDA questions are raised and additional information is submitted. During the final stages of the approval process, the FDA generally requests presentation of clinical or other data before an FDA advisory committee, at which point, some or all of such data may become available. Also, during the later stages of review, the FDA conducts an inspection of the manufacturing facility to

establish that the product is made in conformity with good manufacturing practice. If all outstanding issues are satisfactorily resolved and labeling established, the FDA issues a license for the product and for the manufacturing facility, thereby authorizing commercial distribution.

The FDA has substantial discretion in both the product approval process and the manufacturing approval process. It is not possible to predict at what point, or whether, the FDA will be satisfied with our submissions or whether the FDA will raise questions which may delay or preclude product approval or manufacturing facility approval. As additional clinical data is accumulated, it will be submitted to the FDA and may have a material impact on the FDA product approval process. Given that regulatory review is an interactive and continuous process, we have adopted a policy of limiting announcements and comments upon the specific details of the ongoing regulatory review of our products, subject to our obligations under the securities laws, until definitive action is taken. There can be no assurance any of the products we have under development will be developed successfully, obtain the requisite regulatory approval or be successfully manufactured or marketed.

In Europe, most of our human therapeutic products are or will be classified as biological medicinal products which are assessed through a centralized procedure by the EMEA. The EMEA coordinates the evaluation and supervision of medicinal products throughout the European Union and the European Economic Area. The assessment of the Marketing Authorization Application ("MA") is carried out by a Rapporteur and a Co-Rapporteur appointed by the CHMP, which is the expert scientific committee of the EMEA.

The Rapporteur and Co-Rapporteur are drawn from the CHMP membership representing member states of the European Union. In addition to their responsibility for undertaking scientific assessments of an application for a MA, the Rapporteur and the Co-Rapporteur liaise with the applicant on behalf of the CHMP in an effort to provide answers to queries raised by the CHMP. Their assessment report(s) is circulated to and considered by the full CHMP membership, leading to the production ultimately of a CHMP opinion which is transmitted to the applicant and the European Commission. The final decision on the grant of a MA is made by the European Commission as the licensing authority of the European Community ("Community"). Under Community law, a positive decision issued by the European Commission represents the grant of a MA. Such an authorization allows a medicinal product to be placed on the European market. Upon the grant of an MA in the European Union, certain member states require pricing approval before the product can be placed into commercial distribution.

Under Community law, the applicant may request grant of a MA under exceptional circumstances if comprehensive data on the efficacy and safety of the drug, under normal conditions of use cannot be provided because its intended indications are encountered so rarely (such as in the case of a medicinal product intended for treating an orphan disease) that comprehensive evidence cannot reasonably be collected, the present state of scientific knowledge will not allow comprehensive information to be collected, or it would be against generally accepted medical ethics to collect comprehensive information. The Rapporteur, Co-Rapporteur and the other CHMP members will assess the justification/data submitted for exceptional circumstances as part of the overall assessment of the benefit/risk of the application. It is up to the CHMP, during the review, to ultimately decide on whether grant of a MA under exceptional circumstances is justified on the evidence before them. Approval under exceptional circumstances is subject to a requirement for specific procedures related to safety and results of its use and is reviewed annually to reassess the risk-benefit balance of the product. Once approval is granted, the product can be marketed under the single European MA in all member states of the European Union and the European Economic Area. Consistent with the single MA, the labeling for Europe is identical throughout all member states except that all labeling must be translated into the local language of the country of intended importation and in relation to the content of the so called "blue box" on the outer packaging in which locally required information may be inserted.

Orphan drugs are those intended for use in rare diseases or conditions. As a result of the high cost of development and the low return on investment for rare diseases, governments provide regulatory and commercial incentives for the development of drugs for small disease populations. In the United States, the term "rare disease or condition" means any disease or condition which affects less than 200,000 persons in the United States.

Applications for United States orphan drug status are evaluated and granted by the Office of Orphan Products Development ("OOPD") of the FDA. In the United States, orphan drugs are subject to the standard regulatory process for marketing approval but are exempt from the payment of user fees for licensure, receive market exclusivity for a period of seven years and some tax benefits, and are eligible for OOPD grants. In Europe, orphan medicinal products are those intended for the diagnosis, prevention or treatment of a life-threatening or chronically debilitating condition affecting not more than five in 10,000 persons in the Community. The EMEA's Committee for Orphan Medicinal Products ("COMP") reviews applications seeking orphan designation. If the European Commission agrees with a positive assessment made by COMP, then the product will receive a positive designation through adoption of a decision by the European Commission. Orphan medicinal products are exempt from fees for protocol assistance and scientific advice from the Scientific Advice Working Party during development, reduction or exemption of MA and other fees, and ten-year market exclusivity upon granting of a MA in respect of the approved clinical indication. Moreover, manufacturers may be eligible for grants or other financial incentives from the Community and Member States programs.

Patents and Trade Secrets

Patent and trade secret protection is important to our business and our future will depend in part on our ability to obtain patents, maintain trade secret protection and operate without infringing on the proprietary rights of others. As a result of our ongoing activities, we hold and have filed applications for a number of patents in the United States and internationally to protect our products and important processes. We also have obtained or have the right to obtain exclusive licenses to certain patents and applications filed by others. However, the patent position of biotechnology companies generally is highly uncertain and no consistent policy regarding the breadth of allowed claims has emerged from the actions of the U.S. Patent and Trademark Office ("Patent Office") with respect to biotechnology patents. Accordingly, no assurance can be given that our patents will afford protection against competitors with similar technologies, or others will not obtain patents claiming aspects similar to those covered by our patent applications.

We have established a portfolio of patents related to our bacterial expression technology, including claims to novel promoter sequences, secretion signal sequences, compositions, methods for expression and secretion of recombinant proteins from bacteria, including immunoglobulin gene products, and improved methods and cells for expression of recombinant protein products. U.S. Patent No. 5,028,530 directed to expression vehicles containing an araB promoter, host cells and processes for regulated expression of recombinant proteins expired in July of 2008. U.S. Patent Nos. 5,576,195 and 5,846,818 are related to DNA encoding a pectate lyase signal sequence, recombinant vectors, host cells and methods for production and externalization of recombinant proteins. U.S. Patent Nos. 5,595,898, 5,698,435 and 5,618,920 address secretable immunoglobulin chains, DNA encoding the chains and methods for their recombinant production. U.S. Patent Nos. 5,693,493, 5,698,417 and 6,204,023 relate to methods for recombinant production/secretion of functional immunoglobulin molecules. U.S. Patent Nos. 7,094,579 and 7,396,661 relate to eukaryotic signal sequences and their use in methods for prokaryotic expression of recombinant proteins. U.S. Patent No. 6,803,210 relates to improved bacterial host cells that are deficient in one or more of the active transport systems for an inducer of an inducible promoter, such as arabinose for an araB promoter, and methods for the use of such cells for the production of recombinant proteins. Most of the more important European patents in this portfolio expired in July of 2008 or earlier.

We have also established a portfolio of patent applications related to our mammalian expression technology, including U.S. Patent No. 7,192,737, related to methods for increasing the expression of recombinant polypeptides using expression vectors containing multiple copies of a transcription unit encoding a polypeptide of interest.

We have established a portfolio of patents and applications related to our Human Engineering™ technology, including U.S. Patent No. 5,766,886, directed to methods of modifying antibody variable domains to reduce immunogenicity. Related patents and applications are directed to antibodies engineered according to our patented methods. We believe that our patented Human Engineering™ technology provides an attractive alternative to other humanization technologies.

If certain patents issued to others are upheld or if certain patent applications filed by others issue and are upheld, we may require certain licenses from others in order to develop and commercialize certain potential products incorporating our technology. There can be no assurance that such licenses, if required, will be available on acceptable terms.

Where appropriate, we also rely on trade secrets to protect aspects of our technology. However, trade secrets are difficult to protect. We protect our proprietary technology and processes, in part, by confidentiality agreements with our employees, consultants and collaborators. These parties may breach these agreements, and we may not have adequate remedies for any breach. Our trade secrets may otherwise become known or be independently discovered by competitors. To the extent that we or our consultants or collaborators use intellectual property owned by others, we may have disputes with our collaborators or consultants or other third parties as to the rights in related or resulting know-how and inventions.

International Operations

We believe that, because the pharmaceutical industry is global in nature, international activities will be a significant part of our future business activities and that, when and if we are able to generate income, a substantial portion of that income will be derived from product sales and other activities outside the United States.

A number of risks are inherent in international operations. Foreign regulatory agencies often establish standards different from those in the United States. An inability to obtain foreign regulatory approvals on a timely basis could have an adverse effect on our international business, financial condition and results of operations. International operations may be limited or disrupted by the imposition of government controls, export license requirements, political or economic instability, trade restrictions, changes in tariffs, restrictions on repatriating profits, taxation or difficulties in staffing and managing international operations. In addition, our business, financial condition and results of operations may be adversely affected by fluctuations in currency exchange rates. There can be no assurance that we will be able to successfully operate in any foreign market.

Financial information regarding the geographic areas in which we operate is included in*Note 1 to the Financial Statements: Segment and Geographic Information*.

Concentration of Risk

In 2008, Genentech, Novartis and SPRI each provided more than 10% of our total revenues, none of which represent a related party to XOMA. These key customers accounted for 81% of our total revenues in 2008 and represented 64% of the accounts receivable balance at December 31, 2008. NIAID accounted for an additional 28% of the accounts receivable balance at December 31, 2008. The loss of one or more of these customers could have a material adverse effect on our business and financial condition.

In 2007, Pfizer, Genentech, SPRI and NIAID each provided more than 10% of our total revenues, none of which represent a related party to XOMA. These key customers accounted for approximately 99% of our accounts receivable balance at December 31, 2007. In 2006, Genentech and NIAID each provided more than 10% of our total revenues. These key customers accounted for approximately 39% of the accounts receivable balance at December 31, 2006. SPRI accounted for an additional 45% of the accounts receivable balance at December 31, 2006.

Organization

We were incorporated in Delaware in 1981 and became a Bermuda company effective December 31, 1998, when we completed a shareholder-approved corporate reorganization, changing our legal domicile from Delaware to Bermuda and our name to XOMA Ltd. When referring to a time or period before December 31, 1998, or when the context so requires, the terms “Company” and “XOMA” refer to XOMA Corporation, a Delaware corporation and the predecessor of XOMA Ltd.

Employees

On January 15, 2009, the Company announced a workforce reduction of approximately 42 percent or 144 employees, a majority of which were employed in manufacturing and related support functions. This decision was based on a decrease in forecasted contract manufacturing demand in 2009.

As of March 6, 2009, we employed approximately 335 full-time employees (none of which are unionized) at our facilities, principally in Berkeley, California, and, due to the workforce reduction, expect to have approximately 200 employees as of March 17, 2009. Our employees are primarily engaged in clinical, process development, research and product development, and in executive, business development, finance and administrative positions. We consider our employee relations to be excellent.

Available Information

For information on XOMA's investment prospects and risks, please contact Investor Relations and Corporate Communications at (800) 246-9662 or by sending an e-mail message to investorrelations@xoma.com. Our principal executive offices are located at 2910 Seventh Street, Berkeley, California 94710, U.S.A. Our telephone number is (510) 204-7200.

The following information can be found on our website at http://www.xoma.com or can be obtained free of charge by contacting our Investor Relations Department:

- Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to those reports will be available as soon as reasonably practicable after such material is electronically filed with the United States Securities and Exchange Commission ("SEC"). All reports we file with the SEC can also be obtained free of charge via EDGAR through the SEC's website at http://www.sec.gov.
- Our policies related to corporate governance, including our Code of Ethics applying to our directors, officers and employees (including our principal executive officer and principal financial and accounting officer) that we have adopted to meet the requirements set forth in the rules and regulations of the SEC and its corporate governance principles are available.
- The charters of the Audit, Compensation and Nominating & Governance Committees of our Board of Directors are available.

We intend to satisfy the applicable disclosure requirements regarding amendments to, or waivers from, provisions of our Code of Ethics by posting such information on our website.

Item 1A. Risk Factors

The following risk factors and other information included in this annual report should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us also may impair our business operations. If any of the following risks occur, our business, financial condition, operating results and cash flows could be materially adversely affected.

Because our product candidates are still being developed, we will require substantial funds to continue; we cannot be certain that funds will be available and, if they are not available, we may have to take actions that could adversely affect your investment and may not be able to continue as a going concern.

While our refocused business strategy will reduce capital expenditures and other operating expenses, we will need to commit substantial funds to continue development of our product candidates and we may not be able to obtain sufficient funds on acceptable terms, or at all. If adequate funds are not available, we may have to raise additional funds in a manner that may dilute or otherwise adversely affect the rights of existing shareholders,

curtail or cease operations, or file for bankruptcy protection in extreme circumstances. We have spent, and we expect to continue to spend, substantial funds in connection with:

- research and development relating to our product candidates and production technologies,
- various human clinical trials, and
- protection of our intellectual property.

We finance our operations primarily through our multiple revenue streams resulting from the licensing of our antibody technologies, product royalties, development collaborations and biodefense contracts, and sales of XOMA's common shares. Based on current spending levels, anticipated revenues, collaborator funding and other sources of funding we believe to be available, we estimate that we have sufficient cash resources to meet our anticipated net cash needs through the next twelve months, excluding a potential acceleration of debt due to an anticipated decline in RAPTIVA® royalty revenue in 2009. Any significant revenue shortfalls, increases in planned spending on development programs or more rapid progress of development programs than anticipated, as well as the unavailability of anticipated sources of funding, could shorten this period. We expect sales of RAPTIVA® to decline significantly as a result of recent events, and we anticipate that as a consequence we will be in violation of or default under the relevant provisions of our loan from Goldman Sachs during the second or third quarter of this year. In the event we are not able to restructure the terms of our loan from Goldman Sachs and otherwise maintain at least twelve months of cash resources, there will be substantial doubt as to our ability to continue as a going concern. If adequate funds are not available, we will be required to delay, reduce the scope of, or eliminate one or more of our product development programs and further reduce personnel-related costs. Progress or setbacks by potentially competing products may also affect our ability to raise new funding on acceptable terms. As a result, we do not know when or whether:

- operations will generate meaningful funds,
- royalties will be sufficient to meet debt covenants,
- additional agreements for product development funding can be reached,
- strategic alliances can be negotiated, or
- adequate additional financing will be available for us to finance our own development on acceptable terms, or at all.

Cash balances and operating cash flow are influenced primarily by the timing and level of payments by our licensees and development partners, as well as by our operating costs.

Our independent registered public accountants have indicated there is substantial doubt as to our ability to continue as a going concern.

Our independent registered public accounting firm has included in their report for our fiscal year ended December 31, 2008 a qualification with respect to our ability to continue as a going concern. Our consolidated financial statements have been prepared on the basis of going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. If we became unable to continue as a going concern, we would have to liquidate our assets and the values we receive for our assets in liquidation could be significantly lower than the values at which they are carried on our consolidated financial statements. The inclusion of a going concern qualification in our independent registered public accounting firm's audit opinion for the year ended December 31, 2008 may materially adversely affect our share price and our ability to raise new capital.

Global credit and financial market conditions may reduce our ability to access capital and cash and could negatively impact the value of our current portfolio of cash equivalents or short-term investments and our ability to meet our financing objectives.

Traditionally, we have funded a large portion of our research and development expenditures through raising capital in the equity markets. Recent events, including failures and bankruptcies among large commercial and

investment banks, have led to considerable declines and uncertainties in these and other capital markets and may lead to new regulatory and other restrictions that may broadly affect the nature of these markets. These circumstances could severely restrict the raising of new capital by companies such as us in the future.

Recent volatility in the financial markets has also created liquidity problems in investments previously thought to bear a minimal risk. For example, money market fund investors, including us, have in the past been unable to retrieve the full amount of funds, even in highly-rated liquid money market accounts, upon maturity. An inability to retrieve funds from money market and similar short-term investments as they mature in the future could have a material and adverse impact on our business, results of operations and cash flows. As of December 31, 2008, we have received the full amount of proceeds from matured money market fund investments.

Our cash and cash equivalents are maintained in highly liquid investments with remaining maturities of 90 days or less at the time of purchase. Our short-term investments consist primarily of readily marketable debt securities with remaining maturities of more than 90 days at the time of purchase. While as of the date of this filing, we are not aware of any downgrades, material losses, or other significant deterioration in the fair value of our cash equivalents or short-term investments since December 31, 2008, no assurance can be given that further deterioration in conditions of the global credit and financial markets would not negatively impact our current portfolio of cash equivalents or short-term investments or our ability to meet our financing objectives.

Our level of leverage and debt service obligations could adversely affect our financial condition.

As of December 31, 2008, we had approximately $63.3 million of indebtedness outstanding, including $12.9 million with Novartis and $50.4 million with Goldman Sachs Specialty Lending Holdings, Inc. (“Goldman Sachs”). We may not be able to generate cash sufficient to pay the principal of, interest on and other amounts due in respect of our indebtedness when due. We may also incur additional debt that may be secured.

In connection with our original collaboration with Novartis, Novartis extended a loan to us (through our U.S. subsidiary) to fund up to 75% of our expenses thereunder, of which $12.9 million was outstanding as of December 31, 2008. The loan bears interest at an annual rate of six-month LIBOR plus 2%, which was equal to 3.85% at December 31, 2008, and any unpaid principal amount together with accrued and unpaid interest is due and payable in full in June of 2015. This loan is secured by a pledge of our interest in the collaboration. Although the collaboration was restructured in November of 2008 and we may not draw any additional funds under the loan facility, we remain liable for amounts previously borrowed under this facility.

In November of 2006, XOMA (US) LLC entered into a five-year, $35.0 million term royalty-based loan facility with Goldman Sachs and borrowed the full amount thereunder. In May of 2008, this term loan facility was replaced with a new five-year term royalty-based loan facility. The loan bears interest at an annual rate equal to the greater of six-month LIBOR or 3%, plus a margin of 8.5%. As of December 31, 2008, the interest rate on this loan was 12.3%. The outstanding balance of the new facility as of December 31, 2008 was $50.4 million.

The new Goldman Sachs loan is guaranteed by XOMA and secured by the payment rights relating to RAPTIVA®, LUCENTIS® and CIMZIA® . So long as this loan is outstanding, these assets will not be available to XOMA or any other lender to secure future indebtedness.

Our level of debt and debt service obligations could have important effects on us and our investors. These effects may include:

- making it more difficult for us to satisfy our obligations with respect to our obligations to other persons with respect to our other debt;
- limiting our ability to obtain additional financing or renew existing financing at maturity on satisfactory terms to fund our working capital requirements, capital expenditures, acquisitions, investments, debt service requirements and other general corporate requirements;

- increasing our vulnerability to general economic downturns, competition and industry conditions, which could place us at a competitive disadvantage compared with our competitors that are less leveraged;
- increasing our exposure to rising interest rates to the extent any of our borrowings are at variable interest rates;
- reducing the availability of our cash flow to fund our working capital requirements, capital expenditures, acquisitions, investments and other general corporate requirements because we will be required to use a substantial portion of our cash flow to service debt obligations; and
- limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate.

Our ability to satisfy our debt obligations will depend upon our future operating performance and the availability of refinancing debt. If we are unable to service our debt and fund our business, we may be forced to reduce or delay capital expenditures, seek additional debt financing or equity capital, restructure or refinance our debt or sell assets. We cannot assure you that we would be able to obtain additional financing, refinance existing debt or sell assets on satisfactory terms or at all. In particular, although we may prepay our debt to Goldman Sachs at any time, in order to do so we would be required to pay certain specified prepayment premiums if prepaid within the first four years which we may not have sufficient funds to pay or which may be prohibitively high under the circumstances at the time we would otherwise choose to repay such debt.

Because we expect the royalty payments we receive on sales of RAPTIVA® to decline significantly, we anticipate that we will be in violation of or default under our debt to Goldman Sachs if we cannot successfully restructure the terms of this debt.

Our loan agreement with Goldman Sachs includes provisions that allow the lenders to accelerate our obligation to repay the debt or to pursue other remedies against us in certain circumstances. For example, the terms of this debt include a financial covenant that requires us to maintain a specified ratio of royalties collected to interest payable and another covenant that requires quarterly U.S. and outside-the-U.S. sales of RAPTIVA® and LUCENTIS® to exceed certain specified minimum levels. This means that our ability to comply with these requirements is dependent on continued sales by Genentech, UCB and their partners of these products at adequate levels, and any significant reduction in such sales could cause us to violate or be in default under these provisions, which could result in acceleration of our obligation to repay this debt.

In February of 2009, the EMEA announced that it has recommended suspension of the marketing authorization of RAPTIVA® in the European Union, EMD Serono announced that, in consultation with Health Canada, it will suspend marketing of RAPTIVA® in Canada and the FDA issued a public health advisory concerning three confirmed reports, and one possible report, of PML in patients using RAPTIVA®. We expect sales of RAPTIVA® to decline significantly as a result of these and other related events, and we anticipate that as a consequence we will be in violation of or default under the relevant provisions of this loan during the second or third quarter of this year. We are currently in discussions with the lenders regarding a restructuring of the terms of this loan to address the effects of these developments. However, there can be no assurance that we will reach agreement with the lenders on acceptable terms, or at all, as a result of these discussions.

If the trading price of our common shares fails to comply with the continued listing requirements of The NASDAQ Global Market, we would face possible delisting, which would result in a limited public market for our common shares and make obtaining future debt or equity financing more difficult for us.

NASDAQ-listed companies are subject to delisting for, among other things, failure to maintain a minimum closing bid price per share of $1.00 for 30 consecutive business days. The closing price per share of our common shares was below $1.00 for 13 consecutive business days during November and December of 2008 and has been below $1.00 since December 9, 2008. NASDAQ has temporarily suspended the minimum bid price requirement in

response to current market conditions. This suspension is currently set to expire on April 20, 2009. Although NASDAQ had informally indicated that it may extend this suspension, there can be no assurance that it will do so.

If we do not continue to comply with the continued listing requirements for The NASDAQ Global Market, then NASDAQ may provide written notification regarding the delisting of our securities. At that time, we would have the right to request a hearing to appeal the NASDAQ determination and would also have the option to apply to transfer our securities to The NASDAQ Capital Market.

We cannot be sure that our price will comply with the requirements for continued listing of our common shares on The NASDAQ Global Market, or that any appeal of a decision to delist our common shares will be successful. If our common shares lose their status on The NASDAQ Global Market and we are not successful in obtaining a listing on The NASDAQ Capital Market, our common shares would likely trade in the over-the-counter market.

If our shares were to trade on the over-the-counter market, selling our common shares could be more difficult because smaller quantities of shares would likely be bought and sold, transactions could be delayed, and security analysts' coverage of us may be reduced. In addition, in the event our common shares are delisted, broker-dealers have certain regulatory burdens imposed upon them, which may discourage broker-dealers from effecting transactions in our common shares, further limiting the liquidity thereof. These factors could result in lower prices and larger spreads in the bid and ask prices for common shares.

Such delisting from The NASDAQ Global Market or future declines in our share price could also greatly impair our ability to raise additional necessary capital through equity or debt financing, and could significantly increase the ownership dilution to shareholders caused by our issuing equity in financing or other transactions. Consent under the Exchange Control Act 1972 (and its related regulations) has been obtained from the Bermuda Monetary Authority for the issue and transfer of our shares, notes and other securities to and between non-residents of Bermuda for exchange control purposes, but this consent is conditional on our shares remaining listed on an appointed stock exchange. We cannot assure you that the Bermuda Monetary Authority will give the same or a similar consent in the event our common shares are no longer listed on The NASDAQ Global Market or another appointed stock exchange. In the absence of such a general consent, specific consents of the Bermuda Monetary Authority would be required for certain issues and transfers of our shares, notes and other securities.

Because all of our product candidates are still being developed, we have sustained losses in the past and we expect to sustain losses in the future.

We have experienced significant losses and, as of December 31, 2008, we had an accumulated deficit of $785.1 million.

For the year ended December 31, 2008, we had a net loss of approximately $45.2 million or $0.34 per common share (basic and diluted). For the year ended December 31, 2007, we had a net loss of approximately $12.3 million or $0.10 per common share (basic and diluted).

Our ability to achieve profitability is dependent in large part on the success of our development programs, obtaining regulatory approval for our product candidates and entering into new agreements for product development, manufacturing and commercialization, all of which are uncertain. Our ability to fund our ongoing operations is dependent on the foregoing factors and on our ability to secure additional funds. Because our product candidates are still being developed, we do not know whether we will ever achieve sustained profitability or whether cash flow from future operations will be sufficient to meet our needs.

We may issue additional equity securities and thereby materially and adversely affect the price of our common shares.

We are authorized to issue, without shareholder approval, 1,000,000 preference shares, of which 2,959 were issued and outstanding as of March 6, 2009, which may give other shareholders dividend, conversion, voting, and

liquidation rights, among other rights, which may be superior to the rights of holders of our common shares. In addition, we are authorized to issue, generally without shareholder approval, up to 210,000,000 common shares, of which 142,244,227 were issued and outstanding as of March 6, 2009. If we issue additional equity securities, the price of our common shares may be materially and adversely affected. On October 21, 2008, we entered into a common share purchase agreement with Azimuth Opportunity, Ltd. ("Azimuth"), pursuant to which we obtained a committed equity line of credit facility under which we may sell up to $60 million of our registered common shares to Azimuth over a 24-month period, subject to certain conditions and limitations. As of March 6, 2009, we have sold 7,932,432 common shares under this facility for aggregate gross proceeds of $7.5 million.

The financial terms of future collaborative or licensing arrangements could result in dilution of our share value.

Funding from collaboration partners and others has in the past and may in the future involve issuance by us of our shares. Because we do not currently have any such arrangements, we cannot be certain how the purchase price of such shares, the relevant market price or premium, if any, will be determined or when such determinations will be made. Any such issuance could result in dilution in the value of our issued and outstanding shares.

Our share price may be volatile and there may not be an active trading market for our common shares.

There can be no assurance that the market price of our common shares will not decline below its present market price or that there will be an active trading market for our common shares. The market prices of biotechnology companies have been and are likely to continue to be highly volatile. Fluctuations in our operating results and general market conditions for biotechnology stocks could have a significant impact on the volatility of our common share price. We have experienced significant volatility in the price of our common shares. From January 1, 2008 through March 6, 2009, our share price has ranged from a high of $3.37 to a low of $0.48. Factors contributing to such volatility include, but are not limited to:

- sales and estimated or forecasted sales of products for which we receive royalties,
- results of preclinical studies and clinical trials,
- information relating to the safety or efficacy of products or product candidates,
- developments regarding regulatory filings,
- announcements of new collaborations,
- failure to enter into collaborations,
- developments in existing collaborations,
- our funding requirements and the terms of our financing arrangements,
- technological innovations or new indications for our therapeutic products and product candidates,
- introduction of new products or technologies by us or our competitors,
- government regulations,
- developments in patent or other proprietary rights,
- the number of shares issued and outstanding,
- the number of shares trading on an average trading day,
- announcements regarding other participants in the biotechnology and pharmaceutical industries, and
- market speculation regarding any of the foregoing.

Our therapeutic product candidates have not received regulatory approval. If these product candidates do not receive regulatory approval, neither our third party collaborators nor we will be able to manufacture and market them.

Our product candidates cannot be manufactured and marketed in the United States and other countries without required regulatory approvals. The United States government and governments of other countries extensively regulate many aspects of our product candidates, including:

- testing,
- manufacturing,
- promotion and marketing, and
- exporting.

In the United States, the FDA regulates pharmaceutical products under the Federal Food, Drug, and Cosmetic Act and other laws, including, in the case of biologics, the Public Health Service Act. At the present time, we believe that most of our product candidates will be regulated by the FDA as biologics. Initiation of clinical trials requires approval by health authorities. Clinical trials involve the administration of the investigational new drug to healthy volunteers or to patients under the supervision of a qualified principal investigator. Clinical trials must be conducted in accordance with FDA and International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use ("ICH") Good Clinical Practices and the European Clinical Trials Directive under protocols that detail the objectives of the study, the parameters to be used to monitor safety and the efficacy criteria to be evaluated. Other national, foreign and local regulations may also apply. The developer of the drug must provide information relating to the characterization and controls of the product before administration to the patients participating in the clinical trials. This requires developing approved assays of the product to test before administration to the patient and during the conduct of the trial. In addition, developers of pharmaceutical products must provide periodic data regarding clinical trials to the FDA and other health authorities, and these health authorities may issue a clinical hold upon a trial if they do not believe, or cannot confirm, that the trial can be conducted without unreasonable risk to the trial participants. We cannot assure you that U.S. and foreign health authorities will not issue a clinical hold with respect to any of our clinical trials in the future.

The results of the preclinical studies and clinical testing, together with chemistry, manufacturing and controls information, are submitted to the FDA and other health authorities in the form of a new drug application for a pharmaceutical product, and in the form of a BLA for a biological product, requesting approval to commence commercial sales. In responding to a new drug application or an antibody license application, the FDA or foreign health authorities may grant marketing approvals, request additional information or further research, or deny the application if it determines that the application does not satisfy its regulatory approval criteria. Regulatory approval of a new drug application, BLA, or supplement is never guaranteed, and the approval process can take several years and is extremely expensive. The FDA and foreign health authorities have substantial discretion in the drug and biologics approval processes. Despite the time and expense incurred, failure can occur at any stage, and we could encounter problems that cause us to abandon clinical trials or to repeat or perform additional preclinical, clinical or manufacturing-related studies.

Changes in the regulatory approval policy during the development period, changes in, or the enactment of additional regulations or statutes, or changes in regulatory review for each submitted product application may cause delays in the approval or rejection of an application. State regulations may also affect our proposed products. The FDA has substantial discretion in both the product approval process and manufacturing facility approval process and, as a result of this discretion and uncertainties about outcomes of testing, we cannot predict at what point, or whether, the FDA will be satisfied with our or our collaborators' submissions or whether the FDA will raise questions which may be material and delay or preclude product approval or manufacturing facility approval. As we accumulate additional clinical data, we will submit it to the FDA, and such data may have a material impact on the FDA product approval process.

Even once approved, a product may be subject to additional testing or significant marketing restrictions or its approval may be withdrawn.

Even if the FDA, the European Commission or another regulatory agency approves a product candidate for marketing, the approval may impose ongoing requirements for post-approval studies, including additional research and development and clinical trials, and the FDA, European Commission or other regulatory agency may subsequently withdraw approval based on these additional trials

Even for approved products such as RAPTIVA®, LUCENTIS® and CIMZIA®, the FDA, European Commission or other regulatory agency may impose significant restrictions on the indicated uses, conditions for use, labeling, advertising, promotion, marketing and/or production of such product. For example, in February of 2009, the FDA issued a public health advisory concerning three confirmed reports, and one possible report, of PML in patients using RAPTIVA®. Genentech has stated that it is working with the FDA to determine appropriate next steps, which may include significant restrictions in the use of, or suspension or withdrawal of regulatory approval for, RAPTIVA®.

Furthermore, a marketing approval of a product may be withdrawn by the FDA, the European Commission or another regulatory agency based, for example, on subsequently-arising safety concerns. In February of 2009, the EMEA announced that it has recommended suspension of the marketing authorization of RAPTIVA® in the European Union and that the CHMP has concluded that the benefits of RAPTIVA® no longer outweigh its risks because of safety concerns, including the occurrence of PML in patients taking the medicine.

The FDA, European Commission and other agencies also may impose various civil or criminal sanctions for failure to comply with regulatory requirements, including withdrawal of product approval.

We face uncertain results of clinical trials of our potential products.

Our potential products, including XOMA 052 and XOMA 3AB, will require significant additional research and development, extensive preclinical studies and clinical trials and regulatory approval prior to any commercial sales. This process is lengthy and expensive, often taking a number of years. As clinical results are frequently susceptible to varying interpretations that may delay, limit or prevent regulatory approvals, the length of time necessary to complete clinical trials and to submit an application for marketing approval for a final decision by a regulatory authority varies significantly. As a result, it is uncertain whether:

- our future filings will be delayed,
- our preclinical and clinical studies will be successful,
- we will be successful in generating viable product candidates to targets,
- we will be able to provide necessary additional data,
- results of future clinical trials will justify further development, or
- we will ultimately achieve regulatory approval for any of these product candidates.

For example, in 2003, we completed two Phase 1 trials of XOMA 629, a BPI-derived topical peptide compound targeting acne, evaluating the safety, skin irritation and pharmacokinetics. In January of 2004, we announced the initiation of Phase 2 clinical testing in patients with mild-to-moderate acne. In August of 2004, we announced the results of a Phase 2 trial with XOMA 629 gel. The results were inconclusive in terms of clinical benefit of XOMA 629 compared with vehicle gel. In 2007, after completing an internal evaluation of this program, we chose to reformulate and focus development efforts on the use of this reformulated product candidate in superficial skin infections, including impetigo and the eradication of staphylococcus aureus, including MRSA. In the fourth quarter of 2008, we decided to curtail all spending on XOMA 629 in response to current economic conditions and to focus our financial resources on XOMA 052.

The timing of the commencement, continuation and completion of clinical trials may be subject to significant delays relating to various causes, including scheduling conflicts with participating clinicians and clinical institutions, difficulties in identifying and enrolling patients who meet trial eligibility criteria, and shortages of available drug supply. Patient enrollment is a function of many factors, including the size of the patient population, the proximity of patients to clinical sites, the eligibility criteria for the trial, the existence of competing clinical trials and the availability of alternative or new treatments. In addition, we will conduct clinical trials in foreign countries in the future which may subject us to further delays and expenses as a result of increased drug shipment costs, additional regulatory requirements and the engagement of foreign clinical research organizations, as well as expose us to risks associated with foreign currency transactions insofar as we might desire to use U.S. dollars to make contract payments denominated in the foreign currency where the trial is being conducted.

All of our product candidates are prone to the risks of failure inherent in drug development. Preclinical studies may not yield results that would satisfactorily support the filing of an IND (or a foreign equivalent) with respect to our product candidates. Even if these applications would be or have been filed with respect to our product candidates, the results of preclinical studies do not necessarily predict the results of clinical trials. Similarly, early-stage clinical trials in healthy volunteers do not predict the results of later-stage clinical trials, including the safety and efficacy profiles of any particular product candidates. In addition, there can be no assurance that the design of our clinical trials is focused on appropriate indications, patient populations, dosing regimens or other variables which will result in obtaining the desired efficacy data to support regulatory approval to commercialize the drug. Preclinical and clinical data can be interpreted in different ways. Accordingly, FDA officials or officials from foreign regulatory authorities could interpret the data in different ways than we or our partners do, which could delay, limit or prevent regulatory approval.

Administering any of our products or potential products may produce undesirable side effects, also known as adverse effects. Toxicities and adverse effects that we have observed in preclinical studies for some compounds in a particular research and development program may occur in preclinical studies or clinical trials of other compounds from the same program. Such toxicities or adverse effects could delay or prevent the filing of an IND (or a foreign equivalent) with respect to such products or potential products or cause us to cease clinical trials with respect to any drug candidate. In clinical trials, administering any of our products or product candidates to humans may produce adverse effects. These adverse effects could interrupt, delay or halt clinical trials of our products and product candidates and could result in the FDA or other regulatory authorities denying approval of our products or product candidates for any or all targeted indications. The FDA, other regulatory authorities, our partners or we may suspend or terminate clinical trials at any time. Even if one or more of our product candidates were approved for sale, the occurrence of even a limited number of toxicities or adverse effects when used in large populations may cause the FDA to impose restrictions on, or stop, the further marketing of such drugs. Indications of potential adverse effects or toxicities which may occur in clinical trials and which we believe are not significant during the course of such clinical trials may later turn out to actually constitute serious adverse effects or toxicities when a drug has been used in large populations or for extended periods of time. Any failure or significant delay in completing preclinical studies or clinical trials for our product candidates, or in receiving and maintaining regulatory approval for the sale of any drugs resulting from our product candidates, may severely harm our reputation and business.

Given that regulatory review is an interactive and continuous process, we maintain a policy of limiting announcements and comments upon the specific details of regulatory review of our product candidates, subject to our obligations under the securities laws, until definitive action is taken.

Certain of our technologies are relatively new and are in-licensed from third parties, so our capabilities using them are unproven and subject to additional risks.

We license technologies from third parties. These technologies include but are not limited to phage display technologies licensed to us in connection with our bacterial cell expression technology licensing program. However, our experience with some of these technologies remains relatively limited and, to varying degrees, we

are still dependent on the licensing parties for training and technical support for these technologies. In addition, our use of these technologies is limited by certain contractual provisions in the licenses relating to them and, although we have obtained numerous licenses, intellectual property rights in the area of phage display are particularly complex. If the owners of the patent rights underlying the technologies we license do not properly maintain or enforce those patents, our competitive position and business prospects could be harmed. Our success will depend in part on the ability of our licensors to obtain, maintain and enforce our licensed intellectual property. Our licensors may not successfully prosecute the patent applications to which we have licenses, or our licensors may fail to maintain existing patents. They may determine not to pursue litigation against other companies that are infringing these patents, or they may pursue such litigation less aggressively than we would. Our licensors may also seek to terminate our license, which could cause us to lose the right to use the licensed intellectual property and adversely affect our ability to commercialize our technologies, products or services.

Our present and future revenues rely significantly on sales of products marketed and sold by others.

Currently, our revenues rely significantly upon sales of RAPTIVA® and LUCENTIS®, in which we have only royalty interests. RAPTIVA® was approved by the FDA on October 27, 2003, for the treatment of chronic moderate-to-severe plaque psoriasis in adults who are candidates for systemic therapy or phototherapy. Genentech and Merck Serono, Genentech's international marketing partner for RAPTIVA®, are responsible for the marketing and sales effort in support of this product. In September of 2004, Merck Serono announced that RAPTIVA® had received approval for use in the European Union and the product was launched in several European Union countries in the fourth quarter of 2004. LUCENTIS® was approved by the FDA on June 30, 2006, for the treatment of age-related macular degeneration. Genentech and Novartis, Genentech's international marketing partner for LUCENTIS®, are responsible for the marketing and sales effort in support of this product. We also receive revenues from sales of CIMZIA® in the U.S. and Switzerland, in which we only have a royalty interest, and royalties received therefrom through December 31, 2008 have been immaterial. CIMZIA® was approved by the FDA on April 22, 2008 for the treatment of moderate-to-severe Crohn's disease in adults who have not responded to conventional therapies. In March of 2008, UCB announced that the CHMP of the EMEA had rejected UCB's appeal following CHMP's previously-announced refusal of UCB's marketing authorization application for CIMZIA® in the treatment of Crohn's disease. UCB is responsible for the marketing and sales effort in support of this product. We have no role in marketing and sales efforts, and Genentech, Merck Serono, Novartis and UCB do not have an express contractual obligation to us regarding the marketing or sales of RAPTIVA®, LUCENTIS® or CIMZIA®.

Successful commercialization of RAPTIVA®, LUCENTIS® and CIMZIA® is subject to a number of risks, including, but not limited to:

- Genentech's, Merck Serono's, Novartis' and UCB's willingness and ability to implement their marketing and sales effort and achieve sales;
- the strength of competition from other products being marketed or developed to treat psoriasis, age-related macular degeneration and Crohn's disease;
- the occurrence of adverse events which may give rise to safety concerns;
- physicians' and patients' acceptance of RAPTIVA® as a treatment for psoriasis, LUCENTIS® as a treatment for age-related macular degeneration and CIMZIA® as a treatment for Crohn's disease;
- manufacturer's ability to provide manufacturing capacity to meet demand for the products;
- pricing and reimbursement issues; and
- expiration of patents and royalties.

For example, in February of 2009, the EMEA announced that it has recommended suspension of the marketing authorization of RAPTIVA® in the European Union and EMD Serono has announced that, in consultation with Health Canada, it will suspend marketing of RAPTIVA® in Canada. Merck Serono has stated

that it will work closely with the European health authorities to undertake all necessary measures to comply with the EMEA recommendation. Also in February of 2009, the FDA issued a public health advisory concerning three confirmed reports, and one possible report, of PML in patients using RAPTIVA®. Genentech has stated that, based on the medical information available for these cases, it believes that RAPTIVA® increases the risk of PML and that prolonged exposure to RAPTIVA® or older age may further increase this risk. Genentech has also stated that it is working with the FDA to determine appropriate next steps, which may include significant restrictions in the use of, or suspension or withdrawal of regulatory approval for, RAPTIVA®. We expect sales of RAPTIVA® to decline significantly as a result of these events.

According to Genentech, United States sales of RAPTIVA® during 2008 were $108 million, compared with $107 million and $90 million during 2007 and 2006, respectively. According to Merck Serono, sales of RAPTIVA® outside of the U.S. during 2008 were approximately $134 million, compared with $106 million and $70 million during 2007 and 2006, respectively. According to Genentech, U.S. sales of LUCENTIS® were $875 million during 2008 compared with $815 million and $380 million during 2007 and 2006, respectively. According to Novartis, sales of LUCENTIS® outside the United States were $886 million in 2008 compared with $393 million and $27 million during 2007 and 2006, respectively. According to UCB, worldwide sales of CIMZIA® were approximately $13 million during 2008.

Given our current reliance on RAPTIVA® and LUCENTIS® as principal sources of revenues, any material adverse developments with respect to the commercialization of RAPTIVA® or LUCENTIS® may cause our revenues to decrease and may cause us to incur additional losses in the future.

We do not know whether there will be, or will continue to be, a viable market for the products in which we have an ownership or royalty interest.

Although RAPTIVA® was approved in the United States in October of 2003 and in the European Union in 2004 and LUCENTIS® was approved in the United States in June of 2006, in the European Union in January of 2007 and in Japan in January of 2009, their acceptance in the marketplace may not continue. Although CIMZIA® was approved in the United States in April of 2008 and in Switzerland in September of 2007, it may not be accepted in the marketplace. Furthermore, even if other products in which we have an interest receive approval in the future, they may not be accepted in the marketplace. In addition, we or our collaborators or licensees may experience difficulties in launching new products, many of which are novel and based on technologies that are unfamiliar to the healthcare community. We have no assurance that healthcare providers and patients will accept such products, if developed. For example, physicians and/or patients may not accept a product for a particular indication because it has been biologically derived (and not discovered and developed by more traditional means) or if no biologically derived products are currently in widespread use in that indication. Similarly, physicians may not accept a product, such as RAPTIVA®, LUCENTIS® or CIMZIA®, if they believe other products to be more effective or are more comfortable prescribing other products.

Safety concerns may also arise in the course of on-going clinical trials or patient treatment as a result of adverse events or reactions. For example, in February of 2009, the EMEA announced that it has recommended suspension of the marketing authorization of RAPTIVA® in the European Union and EMD Serono has announced that, in consultation with Health Canada, it will suspend marketing of RAPTIVA® in Canada. Merck Serono has stated that it will work closely with the European health authorities to undertake all necessary measures to comply with the EMEA recommendation. Also in February of 2009, the FDA issued a public health advisory concerning three confirmed reports, and one possible report, of PML in patients using RAPTIVA®. Genentech has stated that, based on the medical information available for these cases, it believes that RAPTIVA increases the risk of PML and that prolonged exposure to RAPTIVA® or older age may further increase this risk. Genentech has also stated that it is working with the FDA to determine appropriate next steps, which may include significant restrictions in the use of, or suspension or withdrawal of regulatory approval for, RAPTIVA® and that it will likely see a reduction in demand for RAPTIVA® in the future. We expect demand for RAPTIVA® to decline significantly as a result of these events.

Furthermore, government agencies, as well as private organizations involved in healthcare, from time to time publish guidelines or recommendations to healthcare providers and patients. Such guidelines or recommendations can be very influential and may adversely affect the usage of any products we may develop directly (for example, by recommending a decreased dosage of a product in conjunction with a concomitant therapy or a government entity withdrawing its recommendation to screen blood donations for certain viruses) or indirectly (for example, by recommending a competitive product over our product). Consequently, we do not know if physicians or patients will adopt or use our products for their approved indications.

We or our third party collaborators or licensees may not have adequate manufacturing capacity sufficient to meet market demand.

Genentech is responsible for manufacturing or arranging for the manufacturing of commercial quantities of RAPTIVA® and LUCENTIS®. UCB is responsible for manufacturing or arranging for the manufacturing of commercial quantities of CIMZIA®. Should Genentech or UCB have difficulty in providing manufacturing capacity to produce these products in sufficient quantities, we do not know whether they will be able to meet market demand. If not, we will not realize revenues from the sales of these products. If any of our product candidates are approved, because we have never commercially introduced any pharmaceutical products, we do not know whether the capacity of our existing manufacturing facilities can be increased to produce sufficient quantities of our products to meet market demand. Also, if we or our third party collaborators or licensees need additional manufacturing facilities to meet market demand, we cannot predict that we will successfully obtain those facilities because we do not know whether they will be available on acceptable terms. In addition, any manufacturing facilities acquired or used to meet market demand must meet the FDA's quality assurance guidelines.

Our agreements with third parties, many of which are significant to our business, expose us to numerous risks.

Our financial resources and our marketing experience and expertise are limited. Consequently, our ability to successfully develop products depends, to a large extent, upon securing the financial resources and/or marketing capabilities of third parties.

- In April of 1996, we entered into an agreement with Genentech whereby we agreed to co-develop Genentech's humanized monoclonal antibody product RAPTIVA®. In April of 1999, March of 2003, and January of 2005, the companies amended the agreement. In October of 2003, RAPTIVA® was approved by the FDA for the treatment of adults with chronic moderate-to-severe plaque psoriasis who are candidates for systemic therapy or phototherapy and, in September of 2004, Merck Serono announced the product's approval in the European Union. In January of 2005, we entered into a restructuring of our collaboration agreement with Genentech which ended our existing cost and profit sharing arrangement related to RAPTIVA® in the United States and entitles us to a royalty interest on worldwide net sales.
- In March of 2004, we announced we had agreed to collaborate with Chiron Corporation (now Novartis) for the development and commercialization of antibody products for the treatment of cancer. In April of 2005, we announced the initiation of clinical testing of the first product candidate out of the collaboration, HCD122, an anti-CD40 antibody, in patients with advanced CLL. In October of 2005, we announced the initiation of the second clinical trial of HCD122 in patients with multiple myeloma. In November of 2008, we announced the restructuring of this product development collaboration, which involves six development programs including the ongoing HCD122 program. In exchange for cash and debt reduction on our existing loan facility with Novartis, Novartis will have control over the HCD122 program and the additional ongoing program, as well as the right to expand the development of these programs into additional indications outside of oncology. We may, in the future, receive milestones of up to $14.0 million and double-digit royalty rates for two ongoing product programs, including HCD122. The agreement also provides us with options to develop or receive royalties on four additional programs.

- In March of 2005, we entered into a contract with NIAID to produce three monoclonal antibodies designed to protect United States citizens against the harmful effects of botulinum neurotoxin used in bioterrorism. In July of 2006, we entered into an additional contract with NIAID for the development of an appropriate formulation for human administration of these three antibodies in a single injection. In September of 2008, we announced that we were awarded an additional contract with NIAID to support our on-going development of drug candidates toward clinical trials in the treatment of botulism poisoning.
- We have licensed our bacterial cell expression technology, an enabling technology used to discover and screen, as well as develop and manufacture, recombinant antibodies and other proteins for commercial purposes, to over 50 companies. As of December 31, 2008, we were aware of two antibody products manufactured using this technology that have received FDA approval, Genentech's LUCENTIS® (ranibizumab injection) for treatment of neovascular (wet) age-related macular degeneration and UCB's CIMZIA® (certolizumab pegol) for treatment of Crohn's disease.

Because our collaborators and licensees are independent third parties, they may be subject to different risks than we are and have significant discretion in determining the efforts and resources they will apply related to their agreements with us. If these collaborators and licensees do not successfully develop and market these products, we may not have the capabilities, resources or rights to do so on our own. We do not know whether our collaborators or licensees will successfully develop and market any of the products that are or may become the subject of one of our collaboration or licensing arrangements. In particular, each of these arrangements provides for funding solely by our collaborators or licensees. Furthermore, our contracts with NIAID contain numerous standard terms and conditions provided for in the applicable federal acquisition regulations and customary in many government contracts. Uncertainty exists as to whether we will be able to comply with these terms and conditions in a timely manner, if at all. In addition, given our relative lack of experience in programs under contract with government agencies, we are uncertain as to the extent of NIAID's demands and the flexibility that will be granted to us in meeting those demands.

Even when we have a collaborative relationship, other circumstances may prevent it from resulting in successful development of marketable products.

- In September of 2004, we entered into a collaboration arrangement with Aphton for the treatment of gastrointestinal and other gastrin-sensitive cancers using anti-gastrin monoclonal antibodies. In January of 2006, Aphton announced that its common stock had been delisted from NASDAQ. In May of 2006, Aphton filed for bankruptcy protection under Chapter 11, Title 11 of the United States Bankruptcy Code.
- In September of 2005, we signed a letter agreement with Cubist Pharmaceuticals, Inc. ("Cubist") to develop production processes and to manufacture a novel two-antibody biologic in quantities sufficient to conduct Phase 3 clinical trials. In July of 2006, Cubist announced that it had decided to cease investment in this product candidate because of stringent FDA requirements for regulatory approval, and as a result we have terminated our letter agreement with Cubist.
- In September of 2006, we entered into an agreement with Taligen Therapeutics, Inc. ("Taligen") which formalized an earlier letter agreement, which was signed in May of 2006, for the development and cGMP manufacture of a novel antibody fragment for the potential treatment of inflammatory diseases. In May of 2007, we and Taligen entered into a letter agreement which provides that we will not produce a cGMP batch at clinical scale pursuant to the terms of the agreement entered into in September of 2006. In addition, the letter agreement provides that we will conduct and complete the technical transfer of the process to Avecia Biologics Limited or its designated affiliate ("Avecia"). The letter agreement also provides that, subject to payment by Taligen of approximately $1.7 million, we will grant to Avecia a non-exclusive, worldwide, paid-up, non-transferable, non-sublicensable, perpetual license under our-owned project innovations. We have received $0.6 million as the first installment under the payment terms of the letter agreement and are entitled to receive two additional

payments totaling approximately $1.1 million upon fulfillment of certain obligations. We have not received any further payments from Taligen and do not know whether we will receive the remaining $1.1 million. This amount has not been recognized as revenue and is not included as an accounts receivable asset as of December 31, 2008.

Although we continue to evaluate additional strategic alliances and potential partnerships, we do not know whether or when any such alliances or partnerships will be entered into.

Products and technologies of other companies may render some or all of our products and product candidates noncompetitive or obsolete.

Developments by others may render our products, product candidates, or technologies obsolete or uncompetitive. Technologies developed and utilized by the biotechnology and pharmaceutical industries are continuously and substantially changing. Competition in the areas of genetically engineered DNA-based and antibody-based technologies is intense and expected to increase in the future as a number of established biotechnology firms and large chemical and pharmaceutical companies advance in these fields. Many of these competitors may be able to develop products and processes competitive with or superior to our own for many reasons, including that they may have:

- significantly greater financial resources,
- larger research and development and marketing staffs,
- larger production facilities,
- entered into arrangements with, or acquired, biotechnology companies to enhance their capabilities, or
- extensive experience in preclinical testing and human clinical trials.

These factors may enable others to develop products and processes competitive with or superior to our own or those of our collaborators. In addition, a significant amount of research in biotechnology is being carried out in universities and other non-profit research organizations. These entities are becoming increasingly interested in the commercial value of their work and may become more aggressive in seeking patent protection and licensing arrangements. Furthermore, many companies and universities tend not to announce or disclose important discoveries or development programs until their patent position is secure or, for other reasons, later; as a result, we may not be able to track development of competitive products, particularly at the early stages. Positive or negative developments in connection with a potentially competing product may have an adverse impact on our ability to raise additional funding on acceptable terms. For example, if another product is perceived to have a competitive advantage, or another product's failure is perceived to increase the likelihood that our product will fail, then investors may choose not to invest in us on terms we would accept or at all.

The examples below pertain to competitive events in the market which we review quarterly and are not intended to be representative of all existing competitive events. Without limiting the foregoing, we are aware that:

XOMA 052

XOMA has initiated clinical testing of XOMA 052, a potent anti-inflammatory monoclonal antibody targeting IL-1 beta, in Type 2 diabetes patients. It is possible that other companies may be developing other products based on the same therapeutic target as XOMA 052 and that these products may prove more effective than XOMA 052. We are aware that:

- Amgen has been developing AMG 108, a fully human monoclonal antibody that targets inhibition of the action of IL-1. On April 28, 2008, Amgen discussed results from its recently completed Phase 2 study in rheumatoid arthritis. AMG 108 showed statistically significant improvement in the signs and symptoms of rheumatoid arthritis and was well tolerated. Amgen announced it is focusing on other opportunities for the antibody.

- In 2008, Biovitrum AB obtained a worldwide exclusive license to Amgen Inc.'s Kineret® (anakinra) for its current approved indication. Kineret® is an IL-1 receptor antagonist (IL-1ra) currently marketed to treat rheumatoid arthritis and has been evaluated over the years in multiple IL-1 mediated diseases, including Type 2 diabetes and other indications we are considering for XOMA 052.
- Novartis has been developing ACZ885 or canakinumab, a fully human anti-IL-1beta monoclonal antibody targeting IL-1 beta, and reported positive results in Phase 1 proof of concept clinical trials in rheumatoid arthritis and in Muckle-Wells Syndrome in June of 2006. In July of 2007, they reported advancing ACZ885 into Phase 3 clinical trials for Muckle-Wells Syndrome and in December of 2007, they entered Phase 2 testing of ACZ885 in patients with Type 2 Diabetes Mellitus.
- In February of 2008, Regeneron Pharmaceuticals, Inc. ("Regeneron") announced it had received marketing approval from the FDA for ARCALYST™ (rilonacept) Injection for Subcutaneous Use, an interleukin-1 blocker or IL-1 Trap, for the treatment of Cryopyrin-Associated Periodic Syndromes, including Familial Cold Auto-inflammatory Syndrome and Muckle-Wells Syndrome in adults and children 12 and older. In September of 2007, Regeneron also announced that treatment with rilonacept demonstrated a statistically significant reduction in patient pain scores in a single-blind, placebo run-in-controlled study of 10 patients with chronic active gout. In November of 2007, Regeneron announced it had initiated a Phase 2 safety and efficacy trial of rilonacept in the prevention of gout flares induced by the initiation of uric acid-lowering drug therapy used to control the disease. In September of 2008, Regeneron announced that the recently completed Phase 2 study of rilonacept demonstrated a statistically significant reduction in gout flares versus the placebo.

XOMA 3AB

- In May of 2006, the U.S. Department of Health & Human Services awarded Cangene Corporation a five-year, $362 million contract under Project Bioshield. The contract requires Cangene to manufacture and supply 200,000 doses of an equine heptavalent botulism anti-toxin to treat individuals who have been exposed to the toxins that cause botulism.
- Emergent BioSolutions, Inc. is currently in development of a botulism immunoglobulin candidate that may compete with our anti-botulinum neurotoxin monoclonal antibodies.
- We are aware of additional companies that are pursuing biodefense-related antibody products. PharmAthene and Human Genome Sciences, Inc. are developing anti-anthrax antibodies. Cangene and Emergent BioSolutions, Inc. are developing anti-anthrax immune globulin products. These products may compete with our efforts in the areas of other monoclonal antibody-based biodefense products, and the manufacture of antibodies to supply strategic national stockpiles.

RAPTIVA®

- In April of 2004, Amgen Inc. and its partner Wyeth Pharmaceuticals, a division of Wyeth, announced that their rheumatoid arthritis and psoriatic arthritis drug, Enbrel®, had been approved by the FDA for the same psoriasis indication as RAPTIVA® and, in September of 2004, they announced that the product received approval in the European Union in this same indication.
- On January 18, 2008, Abbott Labs announced that the FDA had approved Humira® (adalimumab) as a treatment for adult patients with moderate-to-severe chronic plaque psoriasis. Abbott Labs had previously announced in December of 2007 that Humira® (adalimumab) had received marketing authorization from the European Commission for use as a treatment for moderate-to-severe plaque psoriasis.
- In September of 2006, Centocor, Inc. ("Centocor"), a unit of Johnson & Johnson, announced that its rheumatoid arthritis and Crohn's disease drug, Remicade® (infliximab) had been approved by the FDA for the treatment of adult patients with chronic severe (i.e. extensive and/or disabling) plaque psoriasis who are candidates for systemic therapy and when other systemic therapies are medically less

appropriate. This drug had already been approved to treat plaque psoriasis in the European Union, psoriatic arthritis in the United States and, in combination with methotrexate, in the European Union.

- In June of 2008, Centocor announced that an advisory panel to the FDA has unanimously recommended approval of ustekinumab (CNTO 1275), a fully human monoclonal antibody that targets the cytokines interleukin-12 (IL-12) and interleukin-23 (IL-23) for the treatment of moderate-to-severe plaque psoriasis. In November of 2008, the CHMP adopted a positive opinion for ustekinumab for the treatment of moderate-to-severe plaque psoriasis in adult patients who failed to respond to other systemic therapies, and in December of 2008 the Canadian Health Authority approved the use of ustekinumab for the treatment of chronic moderate-to-severe plaque psoriasis in adult patients who are candidates for phototherapy or systemic therapy.
- Astellas Pharma US, Inc. purchased the worldwide rights to Amevive® , which has been approved in the United States and Canada to treat the same psoriasis indication as RAPTIVA®, from Biogen Idec Inc. ("Biogen"), in March of 2006.
- In February of 2009, the EMEA announced that it has recommended suspension of the marketing authorization of RAPTIVA® in the European Union, EMD Serono announced that, in consultation with Health Canada, it will suspend marketing of RAPTIVA® in Canada and the FDA issued a public health advisory concerning three confirmed reports, and one possible report, of PML in patients using RAPTIVA®. Genentech has stated that it expects RAPTIVA® to lose market share to competitors due to cases of PML in RAPTIVA® patients.
- Other companies are developing monoclonal antibody or other products for treatment of inflammatory skin disorders.

LUCENTIS®

In addition to LUCENTIS®, there are two other FDA-approved therapies to treat macular degeneration: Pfizer's and OSI Pharmaceuticals, Inc.'s Macugen® and Novartis' and QLT Inc.'s Visudyne®. LUCENTIS® also competes with Genentech's cancer drug Avastin®.

CIMZIA®

In addition to CIMZIA®, there are two other FDA-approved anti-TNF therapies to treat moderate-to-severe active Crohn's disease in adults: Johnson & Johnson's Remicade® (infliximab) and Abbott Laboratories' Humira® (adalimumab).

Manufacturing risks and inefficiencies may adversely affect our ability to manufacture products for ourselves or others.

To the extent we continue to provide manufacturing services for our own benefit or to third parties, we are subject to manufacturing risks. Additionally, unanticipated fluctuations in customer requirements have led and may continue to lead to manufacturing inefficiencies. We must utilize our manufacturing operations in compliance with regulatory requirements, in sufficient quantities and on a timely basis, while maintaining acceptable product quality and manufacturing costs. Additional resources and changes in our manufacturing processes may be required for each new product, product modification or customer or to meet changing regulatory or third party requirements, and this work may not be successfully or efficiently completed. In addition, to the extent we continue to provide manufacturing services, our fixed costs, such as facility costs, would be expected to increase, as would necessary capital investment in equipment and facilities.

Manufacturing and quality problems may arise in the future to the extent we continue to perform these services for our own benefit or for third parties. Consequently, our development goals or milestones may not be achieved in a timely manner or at a commercially reasonable cost, or at all. In addition, to the extent we continue to make investments to improve our manufacturing operations, our efforts may not yield the improvements that we expect.

Because many of the companies we do business with are also in the biotechnology sector, the volatility of that sector can affect us indirectly as well as directly.

As a biotechnology company that collaborates with other biotech companies, the same factors that affect us directly can also adversely impact us indirectly by affecting the ability of our collaborators, partners and others we do business with to meet their obligations to us and reduce our ability to realize the value of the consideration provided to us by these other companies.

For example, in connection with our licensing transactions relating to our bacterial cell expression technology, we have in the past and may in the future agree to accept equity securities of the licensee in payment of license fees. The future value of these or any other shares we receive is subject both to market risks affecting our ability to realize the value of these shares and more generally to the business and other risks to which the issuer of these shares may be subject.

As we do more business internationally, we will be subject to additional political, economic and regulatory uncertainties.

We may not be able to successfully operate in any foreign market. We believe that, because the pharmaceutical industry is global in nature, international activities will be a significant part of our future business activities and that, when and if we are able to generate income, a substantial portion of that income will be derived from product sales and other activities outside the United States. Foreign regulatory agencies often establish standards different from those in the United States, and an inability to obtain foreign regulatory approvals on a timely basis could put us at a competitive disadvantage or make it uneconomical to proceed with a product or product candidate's development. International operations and sales may be limited or disrupted by:

- imposition of government controls,
- export license requirements,
- political or economic instability,
- trade restrictions,
- changes in tariffs,
- restrictions on repatriating profits,
- exchange rate fluctuations,
- withholding and other taxation, and
- difficulties in staffing and managing international operations.

If we and our partners are unable to protect our intellectual property, in particular our patent protection for our principal products, product candidates and processes, and prevent its use by third parties, our ability to compete in the market will be harmed, and we may not realize our profit potential.

We rely on patent protection, as well as a combination of copyright, trade secret, and trademark laws to protect our proprietary technology and prevent others from duplicating our products or product candidates. However, these means may afford only limited protection and may not:

- prevent our competitors from duplicating our products;
- prevent our competitors from gaining access to our proprietary information and technology, or
- permit us to gain or maintain a competitive advantage.

Because of the length of time and the expense associated with bringing new products to the marketplace, we and our partners hold and are in the process of applying for a number of patents in the United States and abroad

to protect our product candidates and important processes and also have obtained or have the right to obtain exclusive licenses to certain patents and applications filed by others. However, the mere issuance of a patent is not conclusive as to its validity or its enforceability. The United States Federal Courts or equivalent national courts or patent offices elsewhere may invalidate our patents or find them unenforceable. In addition, the laws of foreign countries may not protect our intellectual property rights effectively or to the same extent as the laws of the United States. If our intellectual property rights are not adequately protected, we may not be able to commercialize our technologies, products, or services, and our competitors could commercialize our technologies, which could result in a decrease in our sales and market share that would harm our business and operating results. Specifically, the patent position of biotechnology companies generally is highly uncertain and involves complex legal and factual questions. The legal standards governing the validity of biotechnology patents are in transition, and current defenses as to issued biotechnology patents may not be adequate in the future. Accordingly, there is uncertainty as to:

- whether any pending or future patent applications held by us will result in an issued patent, or that if patents are issued to us, that such patents will provide meaningful protection against competitors or competitive technologies,
- whether competitors will be able to design around our patents or develop and obtain patent protection for technologies, designs or methods that are more effective than those covered by our patents and patent applications, or
- the extent to which our product candidates could infringe on the intellectual property rights of others, which may lead to costly litigation, result in the payment of substantial damages or royalties, and/or prevent us from using technology that is essential to our business.

We have established an extensive portfolio of patents and applications, both United States and foreign, related to our BPI-related product candidates, including novel compositions, their manufacture, formulation, assay and use. We have also established a portfolio of patents, both United States and foreign, related to our bacterial cell expression technology, including claims to novel promoter sequences, secretion signal sequences, compositions and methods for expression and secretion of recombinant proteins from bacteria, including immunoglobulin gene products. Most of the more important European patents in our bacterial cell expression patent portfolio expired in July of 2008.

If certain patents issued to others are upheld or if certain patent applications filed by others issue and are upheld, we may require licenses from others in order to develop and commercialize certain potential products incorporating our technology or we may become involved in litigation to determine the proprietary rights of others. These licenses, if required, may not be available on acceptable terms, and any such litigation may be costly and may have other adverse effects on our business, such as inhibiting our ability to compete in the marketplace and absorbing significant management time.

Due to the uncertainties regarding biotechnology patents, we also have relied and will continue to rely upon trade secrets, know-how and continuing technological advancement to develop and maintain our competitive position. All of our employees have signed confidentiality agreements under which they have agreed not to use or disclose any of our proprietary information. Research and development contracts and relationships between us and our scientific consultants and potential customers provide access to aspects of our know-how that are protected generally under confidentiality agreements. These confidentiality agreements may be breached or may not be enforced by a court. To the extent proprietary information is divulged to competitors or to the public generally, such disclosure may adversely affect our ability to develop or commercialize our products by giving others a competitive advantage or by undermining our patent position.

Litigation regarding intellectual property can be costly and expose us to risks of counterclaims against us.

We may be required to engage in litigation or other proceedings to protect our intellectual property. The cost to us of this litigation, even if resolved in our favor, could be substantial. Such litigation could also divert management’s attention and resources. In addition, if this litigation is resolved against us, our patents may be

declared invalid, and we could be held liable for significant damages. In addition, we may be subject to a claim that we are infringing another party's patent. If such claim is resolved against us, we or our collaborators may be enjoined from developing, manufacturing, selling or importing products, processes or services unless we obtain a license from the other party. Such license may not be available on reasonable terms, thus preventing us from using these products, processes or services and adversely affecting our revenue.

Even if we or our third party collaborators or licensees bring products to market, we may be unable to effectively price our products or obtain adequate reimbursement for sales of our products, which would prevent our products from becoming profitable.

If we or our third party collaborators or licensees succeed in bringing our product candidates to the market, they may not be considered cost-effective, and reimbursement to the patient may not be available or may not be sufficient to allow us to sell our products on a competitive basis. In both the United States and elsewhere, sales of medical products and treatments are dependent, in part, on the availability of reimbursement to the patient from third-party payors, such as government and private insurance plans. Third-party payors are increasingly challenging the prices charged for pharmaceutical products and services. Our business is affected by the efforts of government and third-party payors to contain or reduce the cost of healthcare through various means. In the United States, there have been and will continue to be a number of federal and state proposals to implement government controls on pricing. In addition, the emphasis on managed care in the United States has increased and will continue to increase the pressure on the pricing of pharmaceutical products. We cannot predict whether any legislative or regulatory proposals will be adopted or the effect these proposals or managed care efforts may have on our business.

Healthcare reform measures and other statutory or regulatory changes could adversely affect our business.

The pharmaceutical and biotechnology industries are subject to extensive regulation, and from time to time legislative bodies and governmental agencies consider changes to such regulations that could have significant impact on industry participants. For example, in light of certain highly-publicized safety issues regarding certain drugs that had received marketing approval, the U.S. Congress is considering various proposals regarding drug safety, including some which would require additional safety studies and monitoring and could make drug development more costly. We are unable to predict what additional legislation or regulation, if any, relating to safety or other aspects of drug development may be enacted in the future or what effect such legislation or regulation would have on our business.

The business and financial condition of pharmaceutical and biotechnology companies are also affected by the efforts of governments, third-party payors and others to contain or reduce the costs of healthcare to consumers. In the United States and various foreign jurisdictions there have been, and we expect that there will continue to be, a number of legislative and regulatory proposals aimed at changing the healthcare system, such as proposals relating to the reimportation of drugs into the U.S. from other countries (where they are then sold at a lower price) and government control of prescription drug pricing. The pendency or approval of such proposals could result in a decrease in our share price or limit our ability to raise capital or to obtain strategic collaborations or licenses.

We are exposed to an increased risk of product liability claims.

The testing, marketing and sales of medical products entails an inherent risk of allegations of product liability. In the event of one or more large, unforeseen awards of damages against us, our product liability insurance may not provide adequate coverage. A significant product liability claim for which we were not covered by insurance would have to be paid from cash or other assets. To the extent we have sufficient insurance coverage, such a claim would result in higher subsequent insurance rates. In addition, product liability claims can have various other ramifications including loss of future sales opportunities, increased costs associated with replacing products, and a negative impact on our goodwill and reputation, which could also adversely affect our business and operating results.

The loss of key personnel, including our Chief Executive Officer, could delay or prevent achieving our objectives.

Our research, product development and business efforts could be adversely affected by the loss of one or more key members of our scientific or management staff, particularly our executive officers: Steven B. Engle, our Chairman, Chief Executive Officer and President; Fred Kurland, our Vice President, Finance and Chief Financial Officer; Patrick J. Scannon, M.D., Ph.D., our Executive Vice President and Chief Biotechnology Officer; and Christopher J. Margolin, our Vice President, General Counsel and Secretary. We currently have no key person insurance on any of our employees.

We may not realize the expected benefits of our initiatives to reduce costs across our operations.

We are pursuing and may continue to pursue a number of initiatives to reduce costs across our operations, including workforce reductions. In January of 2009, we implemented a workforce reduction of approximately 42% in order to improve our cost structure. We expect an annualized reduction of approximately $27 million in cash expenditures when changes are completed in the second quarter of 2009 and to record a charge in the first quarter of 2009 of approximately $3 million for severance and other costs related to the workforce reduction. We anticipate that we will incur some level of restructuring charges through the remainder of 2009 as we continue to implement these cost reduction initiatives.

We may not realize some or all of the expected benefits of our current and future initiatives to reduce costs. In addition to restructuring or other charges, we may experience disruptions in our operations as a result of these initiatives.

Because we are a relatively small biopharmaceutical company with limited resources, we may not be able to attract and retain qualified personnel.

Our success in developing marketable products and achieving a competitive position will depend, in part, on our ability to attract and retain qualified scientific and management personnel, particularly in areas requiring specific technical, scientific or medical expertise. We had approximately 335 employees as of March 6, 2009, and due to a workforce reduction, we expect to have approximately 200 employees as of March 17, 2009. We anticipate that we will require additional experienced executive, accounting, research and development, legal, administrative and other personnel in the future. There is intense competition for the services of these personnel, especially in California. Moreover, we expect that the high cost of living in the San Francisco Bay Area, where our headquarters and manufacturing facilities are located, may impair our ability to attract and retain employees in the future. If we do not succeed in attracting new personnel and retaining and motivating existing personnel, our operations may suffer and we may be unable to implement our current initiatives or grow effectively.

Calamities, power shortages or power interruptions at our Berkeley headquarters and manufacturing facility could disrupt our business and adversely affect our operations, and could disrupt the businesses of our customers.

Our principal operations are located in Northern California, including our corporate headquarters and manufacturing facility in Berkeley, California. In addition, many of our collaborators and licensees are located in California. All of these locations are in areas of seismic activity near active earthquake faults. Any earthquake, terrorist attack, fire, power shortage or other calamity affecting our facilities or our customers' facilities may disrupt our business and could have material adverse effect on our business and results of operations.

We may be subject to increased risks because we are a Bermuda company.

Alleged abuses by certain companies that have changed their legal domicile from jurisdictions within the United States to Bermuda have created an environment where, notwithstanding that we changed our legal

domicile in a transaction that was approved by our shareholders and fully taxable to our company under United States law, we may be exposed to various prejudicial actions, including:

- "blacklisting" of our common shares by certain pension funds,
- legislation restricting certain types of transactions, and
- punitive tax legislation.

We do not know whether any of these things will happen, but if implemented one or more of them may have an adverse impact on our future operations or our share price.

It may be difficult to enforce a judgment obtained against us because we are a foreign entity.

We are a Bermuda company. All or a substantial portion of our assets, including substantially all of our intellectual property, may be located outside the United States. As a result, it may be difficult for shareholders and others to enforce in United States courts judgments obtained against us. We have irrevocably agreed that we may be served with process with respect to actions based on offers and sales of securities made hereby in the United States by serving Christopher J. Margolin, c/o XOMA Ltd., 2910 Seventh Street, Berkeley, California 94710, our United States agent appointed for that purpose. Uncertainty exists as to whether Bermuda courts would enforce judgments of United States courts obtained in actions against us or our directors and officers that are predicated upon the civil liability provisions of the United States securities laws or entertain original actions brought in Bermuda against us or such persons predicated upon the United States securities laws. There is no treaty in effect between the United States and Bermuda providing for such enforcement, and there are grounds upon which Bermuda courts may not enforce judgments of United States courts. Certain remedies available under the United States federal securities laws may not be allowed in Bermuda courts as contrary to that nation's policy.

Our shareholder rights agreement or bye-laws may prevent transactions that could be beneficial to our shareholders and may insulate our management from removal.

In February of 2003, we adopted a new shareholder rights agreement (to replace the shareholder rights agreement that had expired), which could make it considerably more difficult or costly for a person or group to acquire control of us in a transaction that our Board of Directors opposes.

Our bye-laws:

- require certain procedures to be followed and time periods to be met for any shareholder to propose matters to be considered at annual meetings of shareholders, including nominating directors for election at those meetings;
- authorize our Board of Directors to issue up to 1,000,000 preference shares without shareholder approval and to set the rights, preferences and other designations, including voting rights, of those shares as the Board of Directors may determine; and
- contain provisions, similar to those contained in the Delaware General Corporation Law that may make business combinations with interested shareholders more difficult.

These provisions of our shareholders rights agreement and our bye-laws, alone or in combination with each other, may discourage transactions involving actual or potential changes of control, including transactions that otherwise could involve payment of a premium over prevailing market prices to holders of common shares, could limit the ability of shareholders to approve transactions that they may deem to be in their best interests, and could make it considerably more difficult for a potential acquirer to replace management.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our corporate headquarters and development and manufacturing facilities are located in Berkeley and Emeryville, California. We currently lease five buildings, and space in a sixth building, which house our research and development laboratories, manufacturing facilities and office space. A separate technology development and pilot scale manufacturing facility is owned by us.

On January 15, 2009, the Company announced a workforce reduction of approximately 42 percent or 144 employees, a majority of which were employed in manufacturing and related support functions. This decision was based on a decrease in forecasted contract manufacturing demand in 2009. As a result, we are temporarily suspending operations in four of our leased buildings. Our leases on these four buildings expire in the period from 2011 to 2014 and total minimum lease payments due from January of 2009 until expiration of the leases are $7.2 million. We are currently evaluating our options as to the future use of these leased spaces.

We will maintain our technology development and pilot scale manufacturing facility, and two leased buildings will house our research and development laboratories and office space. Subject to future manufacturing demand, we believe that these three facilities will be suitable and adequate for our current level of operations and anticipated growth in the near future.

In 2008, we produced multiple anti-botulinum neurotoxin antibodies, sufficient quantities of XOMA 052 for planned studies and numerous other small-scale development runs, pursuant to a drug manufacturing license obtained from the State of California. We also have an Investigational Medicinal Products ("IMP") Certification from the Medicines and Healthcare Products Regulatory Agency of the United Kingdom which permits production of clinical trial materials for use in the European Union.

Item 3. Legal Proceedings

In September of 2004, XOMA (US) LLC entered into a collaboration with Aphton for the treatment of gastrointestinal and other gastrin-sensitive cancers using anti-gastrin monoclonal antibodies. In May of 2006, Aphton filed for bankruptcy protection under Chapter 11, Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, No. 06-10510 (CSS). XOMA (US) LLC filed a proof of claim in the proceeding, as an unsecured creditor of Aphton, for approximately $594,000. Aphton and the Official Committee of Unsecured Creditors filed a Proposed Plan of Reorganization that would result in a liquidation of Aphton. The creditors have voted in favor of the plan, and the bankruptcy court has confirmed it. It is not presently known what, if any, distributions will be made to holders of unsecured claims. There were no developments material to XOMA in the United States Bankruptcy Court proceedings involving Aphton during the year ended December 31, 2008.

Item 4. Submission of Matters to a Vote of Security Holders

No matters were brought to a vote of our shareholders in the quarter ended December 31, 2008.

Supplementary Item: Executive Officers of the Registrant

Our executive officers and their respective ages, as of December 31, 2008, and positions are as follows:

Name	Age	Title
Steven B. Engle	54	Chairman, Chief Executive Officer and President
Patrick J. Scannon, M.D., Ph.D.	61	Executive Vice President and Chief Biotechnology Officer
Fred Kurland	58	Vice President, Finance and Chief Financial Officer
Christopher J. Margolin, Esq.	62	Vice President, General Counsel and Secretary

Effective August 8, 2008, J. David Boyle II, then the Company's Vice President, Finance and Chief Financial Officer, resigned. The Company appointed a new Vice President, Finance and Chief Financial Officer, Fred Kurland, effective December 28, 2008.

The Board of Directors elects all officers annually. There is no family relationship between or among any of the officers or directors.

Business Experience

Mr. Engle is XOMA's Chairman, Chief Executive Officer and President. He has more than 25 years of executive leadership and biotechnology and pharmaceutical industry experience. Prior to joining XOMA in 2007, he served as Chairman of the Board and Chief Executive Officer of La Jolla Pharmaceutical Company, a publicly-held biopharmaceutical company focused on the research and development of therapeutic products for autoimmune and antibody-mediated diseases. He joined La Jolla Pharmaceutical Company in 1993, became President and a Director in 1994, Chief Executive Officer in 1995, and Chairman of the Board in 1997. Prior to joining La Jolla, he held executive-level positions at Cygnus Therapeutic Systems, a developer of drug delivery systems, and Micro Power Systems, Inc., a manufacturer of high technology products, including medical devices. He began his professional career with the Strategic Decisions Group and the Stanford Research Institute. Mr. Engle is a graduate of the University of Texas with B.S. and M.S. degrees in Electrical Engineering, with a focus in biomedical engineering.

Dr. Scannon is one of our founders and has served as a Director since our formation. Dr. Scannon became Executive Vice President and Chief Biotechnology Officer in May of 2006. Previously he was our Chief Scientific and Medical Officer beginning in March of 1993, served as our as Vice Chairman, Scientific and Medical Affairs from April of 1992 to March of 1993 and our President from our formation until April of 1992. In 2007, Dr. Scannon was invited to join the newly formed National Biodefense Science Board, reporting to the Secretary for the Department of Health and Human Services. In 2007, he also became a member of the Board of Directors for Pain Therapeutics, Inc, a biopharmaceutical company. He serves on the Defense Sciences Research Council for the Defense Advanced Research Projects Agency (DARPA) and on the Threat Reduction Advisory Committee for the Department of Defense. From 1979 until 1981, Dr. Scannon was a clinical research scientist at the Letterman Army Institute of Research in San Francisco. A Board-certified internist, Dr. Scannon holds a Ph.D. in organic chemistry from the University of California, Berkeley and an M.D. from the Medical College of Georgia.

Mr. Kurland is our Vice President, Finance and Chief Financial Officer. He joined XOMA on December 29, 2008. Mr. Kurland is responsible for directing the Company's financial strategy, accounting, financial planning and investor relations functions. He has more than 30 years of experience in biotechnology and pharmaceutical companies including Aviron/MedImmune, Protein Design Labs and Syntex/Roche. Prior to joining XOMA, Mr. Kurland served as Chief Financial Officer of Bayhill Therapeutics, Inc., Corcept Therapeutics Incorporated and Genitope Corporation. From 1998 to 2002, Mr. Kurland served as Senior Vice President and Chief Financial Officer of Aviron, acquired by MedImmune in 2001 and developer of FluMist. From 1996 to 1998, he was Vice President and Chief Financial Officer of Protein Design Labs, Inc., an antibody design company, and from 1995 to 1996, he served as Vice President and Chief Financial Officer of Applied Immune Sciences, Inc. Mr. Kurland also held a number of financial management positions at Syntex Corporation, a pharmaceutical company acquired by Roche, including Vice President and Controller between 1991 and 1995. He received his J.D. and M.B.A. degrees from the University of Chicago and his B.S. degree from Lehigh University.

Mr. Margolin is our Vice President, General Counsel and Secretary and heads our technology licensing function. During his time with the Company, Mr. Margolin has been responsible for the legal and intellectual property function and, at various times, the business development, human resources and licensing functions. Prior to joining us in 1991, Mr. Margolin was a corporate attorney holding several different executive legal positions for Raychem Corporation, an international high technology company, for 11 years. From 1975 to 1980, he was a division counsel for TRW Inc. and from 1972 to 1975, he was an associate at the law firm of McCutchen, Black, Verleger and Shea in Los Angeles. Mr. Margolin holds a B.A. from Princeton University, a J.D. from the University of Pennsylvania and an M.B.A. from the University of California, Los Angeles.

PART II

Item 5. Market for Registrant's Common Equity, Related Shareholder Matters and Issuer Purchases of Equity Securities

Market for Registrant's Common Equity

Our common shares trade on the NASDAQ Global Market under the symbol "XOMA." The following table sets forth the quarterly range of high and low reported sale prices of our common shares on the NASDAQ Global Market for the periods indicated:

	Price Range	
	High	Low
2008		
First Quarter	$ 3.37	$ 2.21
Second Quarter	2.78	1.68
Third Quarter	2.40	1.58
Fourth Quarter	2.09	0.59
2007		
First Quarter	$ 3.50	$ 2.14
Second Quarter	3.80	2.88
Third Quarter	3.77	1.96
Fourth Quarter	4.39	2.95

On March 6, 2009, there were 2,640 shareholders of record of our common shares, one of which was Cede & Co., a nominee for Depository Trust Company ("DTC"). All of the common shares held by brokerage firms, banks and other financial institutions as nominees for beneficial owners are deposited into participant accounts at DTC and are therefore considered to be held of record by Cede & Co. as one shareholder.

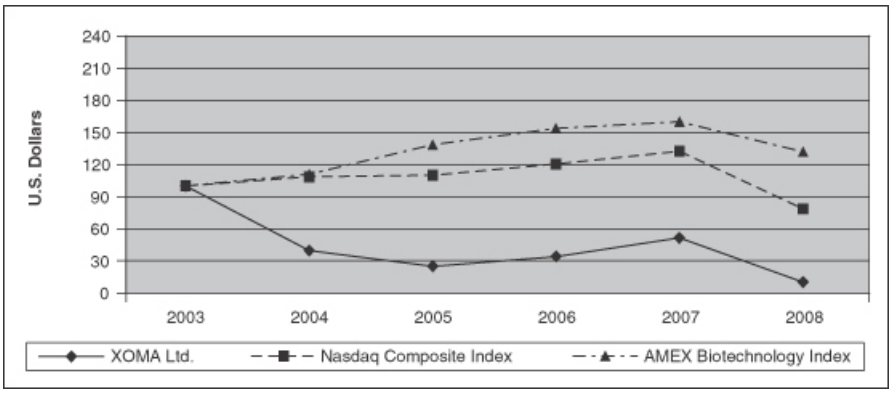
Dividend Policy

We have not paid dividends on our common shares. We currently intend to retain any earnings for use in the development and expansion of our business. We, therefore, do not anticipate paying cash dividends on our common shares in the foreseeable future.

Performance Graph

The following graph compares the five-year cumulative total shareholder return for XOMA common stock with the comparable cumulative return of certain indices. The graph assumes $100 invested on the same date in each of the indices. Returns of the company are not indicative of future performance.

FIVE-YEAR PERFORMANCE GRAPH



As of December 31,	XOMA Ltd.	Nasdaq Composite Index	AMEX Biotechnology Index
2003	$100.00	$100.00	$100.00
2004	39.24	108.59	111.05
2005	24.24	110.08	138.93
2006	33.33	120.56	153.90
2007	51.36	132.39	160.48
2008	9.39	78.72	132.05

Debt and Equity Issuances

On October 21, 2008, we entered into a common share purchase agreement (the "Purchase Agreement") with Azimuth Opportunity Ltd. ("Azimuth"), pursuant to which we obtained a committed equity line of credit facility (the "Facility") under which we may sell up to $60 million of our registered common shares to Azimuth over a 24-month period, subject to certain conditions and limitations. We are not obligated to utilize any of the $60 million Facility and remain free to enter other financing transactions. Pursuant to the terms of the Purchase Agreement, we determine, in our sole discretion, the timing, dollar amount and floor price per share of each draw down under the Facility, subject to certain conditions and limitations. The number and price of shares sold in each draw down are determined by a contractual formula designed to approximate fair market value, less a discount which may range from 2.65% to 6.65%. If the daily volume weighted average price of our common shares falls below a threshold price of $1.00 on any trading day during a draw down period, Azimuth will not be required to purchase the pro-rata portion of common shares allocated to that day. However, at its election, Azimuth may buy the pro-rata portion of shares allocated to that day at the threshold price less a negotiated discount. The Purchase Agreement also provides that from time to time and in our sole discretion, we may grant Azimuth the right to exercise one or more options to purchase additional common shares during each draw down pricing period for the amount of shares based upon the maximum option dollar amount and the option threshold price specified by us. Shares under the Facility are sold pursuant to a prospectus which forms a part of a registration statement declared effective by the Securities and Exchange Commission on May 29, 2008. From the

inception of the Facility in October of 2008 through December 31, 2008, we have sold 7,932,432 common shares under the Facility for aggregate gross proceeds of $7.5 million, and $52.5 million remains available under the Facility. This includes the sale of 4.0 million shares under the Facility in December of 2008 that Azimuth agreed to purchase notwithstanding that the relevant volume weighted average prices were under the threshold price of $1.00. Under the terms of the Purchase Agreement, we negotiated a discount rate of 8.86% for this draw down. Prior to the successful conclusion of such negotiations, Azimuth was not obligated to purchase such shares, and there can be no assurance that they would agree to do so again if similar circumstances were to arise in the future. Offering expenses incurred through December 31, 2008 related to this Facility were $0.3 million. The proceeds are being used for general corporate purposes.

In February of 2006, we completed an exchange offer with holders of our 6.5% convertible senior notes due 2012 in which we exchanged $60.0 million aggregate principal amount of our New Notes for all $60.0 million aggregate principal amount of our then outstanding convertible senior notes due 2012. We also issued an additional $12.0 million of New Notes to the public for cash at a public offering price of 104% of principal, or $12.5 million. The New Notes were initially convertible into approximately 38.4 million common shares at a conversion rate of 533.4756 of common shares per $1,000 principal amount of New Notes, which is equivalent to a conversion price of approximately $1.87 per common share.

For the year ended December 31, 2006, $27.5 million of 6.5% Convertible SNAPs$_{SM}$ due 2012 (the “New Notes”) were converted into 18,262,264 common shares including 3,602,879 shares related to the additional interest payment feature of the notes. During the first quarter of 2007, $42.0 million of New Notes were voluntarily converted by holders through March 7, 2007, at which time we announced that we had elected to automatically convert 100% of the remaining $2.5 million of New Notes outstanding. As a result, 25,640,187 shares were issued to effect the conversion of the principal balances. Additionally, we issued 1,889,317 shares and $5.2 million in cash to satisfy the remaining additional interest payment feature related to these converted New Notes.

During the first quarter of 2007, we eliminated the remaining balance of convertible debt issued in February of 2006. For the year ended December 31, 2007, we incurred $0.2 million in interest expense related to our convertible debt, amortized $0.1 million in debt issuance costs, premium and discount, and recognized $6.1 million in interest expense related to the revaluation of the embedded derivative.

Item 6. Selected Financial Data

The following table contains our selected financial information including consolidated statement of operations and consolidated balance sheet data for the years 2004 through 2008. The selected financial information has been derived from our audited consolidated financial statements. The selected financial information should be read in conjunction with *Item 8: Financial Statements and Supplementary Data* and *Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations* included in this Annual Report. The data set forth below is not necessarily indicative of the results of future operations.

	Year Ended December 31,				
	2008	2007	2006	2005	2004
	(In thousands, except per share amounts)				
Consolidated Statement of Operations Data					
Total revenues (1)	$ 67,987	$ 84,252	$ 29,498	$ 18,669	$ 3,665
Total operating costs and expenses (2)	106,721	86,796	70,182	54,694	81,761
Loss from operations	(38,734)	(2,544)	(40,684)	(36,025)	(78,096)
Other income (expense), net (3)	(6,894)	(9,782)	(11,157)	38,807	(846)
Net income (loss) before taxes	(45,628)	(12,326)	(51,841)	2,782	(78,942)
Income tax (benefit) expense	(383)	—	—	3	—
Net income (loss)	$ (45,245)	$ (12,326)	$ (51,841)	$ 2,779	$ (78,942)
Basic net income (loss) per common share	$ (0.34)	$ (0.10)	$ (0.54)	$ 0.03	$ (0.93)
Diluted net income (loss) per common share	$ (0.34)	$ (0.10)	$ (0.54)	$ 0.03	$ (0.93)

	December 31,				
	2008	2007	2006	2005	2004
	(In thousands)				
Balance Sheet Data					
Cash and cash equivalents	$ 9,513	$ 22,500	$ 28,002	$ 20,804	$ 23,808
Short-term investments	1,299	16,067	18,381	22,732	511
Restricted cash	9,545	6,019	4,330	—	—
Current assets	38,704	58,088	65,888	50,288	26,607
Working capital	11,712	34,488	43,221	33,744	3,004
Total assets	67,173	84,815	91,478	72,577	46,260
Current liabilities	26,992	23,600	22,667	16,544	23,603
Long-term liabilities (4)	71,582	60,897	106,984	76,706	47,267
Redeemable convertible preferences shares, at par value (5)	1	1	1	1	1
Accumulated deficit	(785,104)	(739,859)	(727,533)	(675,692)	(678,471)
Total shareholders' equity (net capital deficiency)	(31,401)	318	(38,173)	(20,673)	(24,610)

We have paid no dividends in the past five years.

(1) 2008 includes a non-recurring fee from Novartis AG ("Novartis") of $13.7 million relating to a restructuring of the existing collaboration agreement. 2007 includes a non-recurring license fee from Pfizer Inc. of $30.0 million.

(2) Increases in 2008, 2007 and 2006 reflect increased spending on our development of XOMA 052 and XOMA 629 and our contracts with Novartis, the National Institute of Allergy and Infectious Diseases, Schering-Plough Research Institute ("SPRI"), SPRI/AVEO Pharmaceuticals, Inc. and Takeda Pharmaceutical Company Limited. 2004 includes approximately $16.4 million of collaboration arrangement expenses related to our collaboration with Genentech, Inc. ("Genentech") on RAPTIVA®. This agreement was amended and, effective January 1, 2005, we no longer incur these expenses.

(3) 2007 and 2006 include interest expense of $6.1 million and $6.9 million, respectively, related to the revaluation of the embedded derivative to fair market value and the payment in common shares, of the additional interest feature, on our convertible debt. 2005 includes a one-time gain of $40.9 million as a result of the restructuring of the Genentech agreement in January of 2005.

(4) The balance as of December 31, 2008 includes $50.4 million from our term loan with Goldman Sachs Specialty Lending Holdings, Inc. ("Goldman Sachs"), $12.9 million from our Novartis note, and $8.1 million in long-term deferred revenue. In May of 2008, the Company entered into a $55.0 million amended term loan facility with Goldman Sachs, paying off the remaining balance on the term loan completed in November of 2006. In addition, the outstanding principal on our Novartis note was reduced by $7.5 million due to the restructure of our collaboration with Novartis. In 2007, we eliminated the remaining $44.5 million in convertible debt issued in 2006. The balance as of December 31, 2007 includes $30.3 million from our term loan with Goldman Sachs, $20.6 million for our Novartis note, and $10.0 million in long-term deferred revenue. In 2006, we exchanged convertible senior notes (issued in 2005) for $60.0 million of 6.5% Convertible SNAPs$_{SM}$ due 2012 and issued an additional $12.0 million of 6.5% SNAPs$_{SM}$ to the public for cash. The balance as of December 31, 2006 also includes our $35.0 million term loan from Goldman Sachs completed in November of 2006. 2005 includes liabilities incurred in connection with our $60.0 million aggregate principal amount of convertible senior notes due 2012 issued in February of 2005.

(5) Aggregate liquidation preference of $29.6 million.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

We are a leader in the discovery, development and manufacture of therapeutic antibodies and other agents designed to treat inflammatory, autoimmune, infectious and oncological diseases. Our proprietary development pipeline includes XOMA 052, an anti-IL-1 beta antibody, XOMA 3AB, a biodefense anti-botulism antibody candidate, and five antibodies in preclinical development. Our proprietary development pipeline is funded by multiple revenue streams resulting from the licensing of our antibody technologies, product royalties, development collaborations and biodefense contracts, and sales of XOMA's common shares. Our technologies and experienced team have contributed to the success of marketed antibody products, including RAPTIVA® (efalizumab) for chronic moderate-to-severe plaque psoriasis, LUCENTIS® (ranibizumab injection) for (wet) age-related macular degeneration and CIMZIA® (certolizumab pegol, CDP870) for Crohn's disease.

We have a premier antibody discovery and development platform that includes six antibody phage display libraries and our proprietary Human Engineering™ and bacterial cell expression technologies. Our bacterial cell expression technology is a key biotechnology for the discovery and manufacturing of antibodies and other proteins. Thus far, more than 50 pharmaceutical and biotechnology companies have signed bacterial cell expression licenses with us.

In addition to developing our own potential products, we develop products for premier pharmaceutical companies including Novartis AG ("Novartis"), Takeda Pharmaceutical Company Limited ("Takeda") and Schering-Plough Research Institute ("SPRI"). In the first quarter of 2009, we announced the expansion of our collaboration with Takeda under which Takeda will have access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. We have a fully integrated product development infrastructure, extending from preclinical science to manufacturing.

Our ability to fund ongoing operations is dependent on the progress of our proprietary development pipeline, specifically XOMA 052 and XOMA 3AB. We are currently conducting two Phase 1 clinical trials of XOMA 052 in Type 2 diabetes patients, one in the U.S. and one in Europe. In September of 2008, we announced interim data from the Phase 1 clinical trials which indicate support for a novel anti-inflammatory approach to Type 2 diabetes treatment that may preserve insulin-producing cells. XOMA 052 potentially addresses inflammation as an underlying cause of diabetes by targeting IL-1 beta, a master signaling protein which triggers

inflammatory pathways in the body. Although these Phase 1 studies were designed to test drug safety and pharmacokinetics, rather than efficacy, we believe these studies are important additions to the other medical research indicating that decreasing inflammation may reduce disease progression in diabetes. We plan to advance our Phase 1 clinical testing of XOMA 052 in Type 2 diabetes and initiate a major Phase 2 Type 2 diabetes study in the third quarter of 2009. We have been approached by several companies offering to collaborate on our testing and development of XOMA 052 for Type 2 diabetes and will seek to enter into a collaboration by the end of 2009.

We have also received promising results from our testing of XOMA 052 for use in other indications. Based on these results, we initiated a Phase 2a pharmacokinetic study of XOMA 052 in rheumatoid arthritis in the first quarter of 2009. Depending on resources and timing, we may initiate additional small XOMA 052 "proof-of-concept" trials in other indications in 2009.

In the near-term, our ability to fund ongoing operations is also dependent on worldwide sales of RAPTIVA®, which we developed under a collaboration agreement with Genentech, Inc. ("Genentech"), and LUCENTIS®, for which Genentech licensed our bacterial cell expression technology. Genentech is responsible for the manufacturing, marketing and sales effort in support of these products. In previous quarters, we disclosed that we expected royalty revenues from sales of LUCENTIS® outside the U.S. to decrease due to the expiration in July of 2008 of most of the more important European patents in our bacterial cell expression patent portfolio. In the fourth quarter of 2008, Genentech confirmed that LUCENTIS® is currently produced in the United States for worldwide distribution. Based on this information, we expect Genentech to continue to pay royalties on worldwide sales of LUCENTIS®, for so long as the product continues to be produced in the United States, through the expiration of the related U.S. patents at the end of 2014.

In October of 2008, the FDA announced that it had approved labeling changes, including a Boxed Warning, to highlight the risks of life-threatening infections, including progressive multifocal leukoencephalopathy ("PML"), with the use of RAPTIVA®. In November of 2008, Genentech announced that it had issued a Dear Healthcare Provider letter to inform dermatologists and neurologists of a second case of PML which resulted in the death of a 73-year old patient who had received RAPTIVA® for approximately four years. In February of 2009, the European Medicines Agency ("EMEA") announced that it has recommended suspension of the marketing authorization of RAPTIVA® in the European Union and that its Committee for Medicinal Products for Human Use ("CHMP") has concluded that the benefits of RAPTIVA® no longer outweigh its risks and EMD Serono Inc., the company that markets RAPTIVA® in Canada ("EMD Serono"), announced that, in consultation with Health Canada, the Canadian health authority ("Health Canada"), it will suspend marketing of RAPTIVA® in Canada. Also in February of 2009, the FDA issued a public health advisory concerning three confirmed reports, and one possible report, of PML in patients using RAPTIVA®. Genentech has stated that it is working with the FDA to determine appropriate next steps, which may include significant restrictions in the use of, or suspension or withdrawal of regulatory approval for, RAPTIVA®. These adverse events have consequences under our term loan with Goldman Sachs Specialty Lending Holdings, Inc. ("Goldman Sachs"), as detailed in *Liquidity and Capital Resources.*

We began receiving royalty revenues in the first quarter of 2008 from sales of CIMZIA®, which was approved in the U.S. in April of 2008 and Switzerland in September of 2007. UCB Celltech, a branch of UCB S.A. ("UCB") licensed our bacterial cell expression technology in the development of this product and is responsible for the marketing and sales effort in support of CIMZIA®.

Our initial biodefense anti-botulism antibody candidate, XOMA 3AB, is a multi-antibody product that targets the most potent of the botulinum toxins, Type A. Our anti-botulism program was recently expanded to include additional product candidates and is the first of its kind to combine multiple human antibodies to target a broad spectrum of the most toxic botulinum toxins, including the three most toxic serotypes of botulism, Types A, B and E. The antibodies are designed to bind to each toxin and enhance the clearance of the toxin from the body. The use of multiple antibodies increases the likelihood of clearing the harmful toxins by providing specific protection against each toxin type. In September of 2008, we were awarded our third contract from the National

Institute of Allergy and Infectious Diseases ("NIAID"), a part of the National Institutes of Health ("NIH"), to support our ongoing development of XOMA 3AB and additional product candidates toward clinical trials in the treatment of botulism poisoning. This brings the program's total to nearly $100 million.

We also have the ability to generate cash flow from funded research and development and other development activities. We are developing a number of products, both proprietary and under collaboration agreements with other companies and may enter into additional arrangements. Our objective in development collaborations is to leverage our existing development infrastructure to broaden and strengthen our proprietary product pipeline thereby diversifying our development risk and gaining financial support from our collaboration partners.

In January of 2009, we announced a workforce reduction of approximately 42 percent, or 144 employees, a majority of which were employed in manufacturing and related support functions. This decision was made based on the challenging economic conditions and a decline in forecasted manufacturing demand in 2009. We expect an annualized reduction of approximately $27 million in cash expenditures when changes are completed in the second quarter of 2009. Upon completion of the workforce reduction on March 17, 2009, we expect to remain staffed with approximately 200 employees to develop XOMA 052, develop and license proprietary products and technology, and continue fully funded antibody discovery and development activities with our pharmaceutical partners in collaborations and the U.S. government in biodefense. We will also maintain our pilot scale manufacturing plant with some full scale capability. XOMA expects to record a charge in the first quarter of 2009 of approximately $3 million for severance and other costs related to the workforce reduction.

We incurred negative cash flow from operations in four of the past five years and expect to remain in this position until sufficient cash flow can be generated from XOMA 052 partnering agreements, technology licensing, biodefense contracts with the government and various development collaboration arrangements, or until we achieve additional regulatory approvals and commence commercial sales of additional products. The timing and likelihood of additional approvals is uncertain and there can be no assurance that approvals will be granted or that cash flow from product sales will be sufficient to fully fund operations.

Critical Accounting Estimates

The accompanying discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements and the related disclosures, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts in our consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following policies to be the most critical to an understanding of our financial condition and results of operations because they require us to make estimates, assumptions and judgments about matters that are inherently uncertain.

Revenue Recognition

Revenue is generally recognized when the four basic criteria of revenue recognition are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or services have been rendered; (3) the fee is fixed and determinable; and (4) collectibility is reasonably assured. Determination of criteria (3) and (4) is based on management's judgments regarding the nature of the fee charged for products or services delivered and the collectibility of those fees. Allowances are established for estimated uncollectible amounts, if any.

We recognize revenue from license and collaboration arrangements, contract services, product sales and royalties. Our revenue arrangements with multiple elements are divided into separate units of accounting if

certain criteria are met, including whether the delivered element has stand-alone value to the customer and whether there is objective and reliable evidence of the fair value of the undelivered items. The consideration we receive is allocated among the separate units based on their respective fair values and the applicable revenue recognition criteria are applied to each of the separate units. Advance payments received in excess of amounts earned are classified as deferred revenue until earned.

License and Collaborative Fees

Revenue from non-refundable license, technology access or other payments under license and collaborative agreements, with cost and profit-sharing arrangements, where we have a continuing obligation to perform is recognized as revenue over the expected period of the continuing performance obligation. We estimate the performance period at the inception of the arrangement and reevaluate it each reporting period. This reevaluation may shorten or lengthen the period over which the remaining revenue is recognized. Changes to these estimates are recorded on a prospective basis.

Milestone payments under collaborative and other arrangements are recognized as revenue upon completion of the milestone events, once confirmation is received from the third party and collectibility is reasonably assured. This represents the culmination of the earnings process because we have no future performance obligations related to the payment. Milestone payments that require a continuing performance obligation on our part are recognized over the expected period of the continuing performance obligation. Amounts received in advance are recorded as deferred revenue until the related milestone is completed.

Contract Revenue

Contract revenue for research and development involves our providing research and development for manufacturing processes for collaborative partners, biodefense contracts or others. Revenue for certain contracts is accounted for by a proportional performance, or output based, method where performance is based on estimated progress toward elements defined in the contract. The amount of contract revenue and related costs recognized in each accounting period are based on estimates of the proportional performance during the period. Adjustments to estimates based on actual performance are recognized on a prospective basis and do not result in reversal of revenues should the estimate to complete be extended.

In addition, revenue related to certain research and development contracts is billed based on actual costs incurred by XOMA related to the contract, multiplied by full-time equivalent ("FTE") rates plus a mark-up. The FTE rates are developed based on our best estimates of labor, materials and overhead costs. For certain contracts, the FTE rates are agreed upon at the beginning of the contract and are subject to review or audit by the contracting party at any time.

For example, in the third quarter of 2008, the NIH completed an audit of the Company's 2007 actual data and developed billing rates for the period from January of 2007 to June of 2009 to be used for all of the Company's government contracts, including Contract No. HHSN26620060008C/N01-A1-60008l ("NIAID 2"). While the audited NIH rates are considered final for 2007 billings, these NIH rates are considered provisional for the period from January of 2008 to June of 2009 and thus are subject to future audits at the discretion of NIAID's contracting office. In September of 2008, XOMA retroactively applied these NIH rates to the invoices from 2007 through the third quarter of 2008 resulting in an adjustment to decrease revenue by $2.7 million. The adjustment increased the Company's loss from operations and net loss for the year ended December 31, 2008 by $2.7 million. The adjustment also increased basic and diluted net loss per common share by $0.02 for the year ended December 31, 2008. As the NIH audit only covered 2007 actual data, which differs significantly from 2006 actual data primarily due to a 22% increase in headcount from 2006 to 2007, management has determined that the original provisional rates are more reflective of 2006 actual data than the 2007 actual data. Based on this understanding, the parties agreed to not adjust the 2006 billings with the provision that those billings are subject to future NIH audit at the discretion of the NIAID contracting office.

Up-front fees are recognized ratably over the expected benefit period under the arrangement. Given the uncertainties of research and development collaborations, significant judgment is required to determine the duration of the arrangement. We have $13.2 million of deferred up-front fees related to two research and collaboration agreements that are being amortized over a range of two to five years.

Royalty Revenue

Royalty revenue and royalty receivables are generally recorded in the periods these royalties are earned, in advance of collection. The royalty revenue and receivables in these instances are based upon communication with collaborative partners, historical information and forecasted sales trends. Under some of our agreements with licensees that include receipt of royalty revenue, we do not have sufficient historical information to estimate royalty revenues or receivables in the period that these royalties are earned. For these contracts, we record royalty revenue upon receipt of a royalty statement or cash.

In previous quarters, we disclosed that we expected royalty revenues from sales of LUCENTIS® outside the U.S. to decrease due to the expiration in July of 2008 of most of the more important European patents in our bacterial cell expression patent portfolio. In the fourth quarter of 2008, Genentech confirmed that LUCENTIS® is currently produced in the United States for worldwide distribution. Based on this information, we expect Genentech to continue to pay royalties on worldwide sales of LUCENTIS®, for so long as the product continues to be produced in the United States, through the expiration of the related U.S. patents at the end of 2014. This information, obtained in the fourth quarter of 2008, resulted in an adjustment to increase third quarter royalty revenues by $0.7 million.

Research and Development Expenses

We expense research and development expenses as incurred. Research and development expenses consist of direct and research-related allocated overhead costs such as facilities costs, salaries and related personnel costs, and material and supply costs. In addition, research and development expenses include costs related to clinical trials to validate our testing processes and procedures and related overhead expenses. Expenses resulting from clinical trials are recorded when incurred based in part on estimates as to the status of the various trials. From time to time, research and development expenses may include up-front fees and milestones paid to collaborative partners for the purchase of rights to in-process research and development. Such amounts are expensed as incurred. The timing of up-front fees and milestone payments in the future may cause variability in our future research and development expenses.

Share-Based Compensation

On January 1, 2006, we adopted SFAS 123 (revised 2004), “Share-Based Payment” (“SFAS 123R”), which requires the measurement and recognition of compensation expense for all share-based payment awards made to our employees and directors, including employee share options and employee share purchases related to the Employee Share Purchase Plan (“ESPP”), on estimated fair values.

Under SFAS 123R, we elected to use the modified prospective transition method. Under this method, we are required to record compensation expense for all awards granted or modified after the date of adoption and the unvested portion of previously granted awards that remained outstanding at the date of adoption. To estimate the value of an award, we use the Black-Scholes option pricing model. This model requires inputs such as expected life, expected volatility and risk-free interest rate. Further, the forfeiture rate also impacts the amount of aggregate compensation. These inputs are subjective and generally require significant analysis and judgment to develop. While estimates of expected life, volatility and forfeiture rate are derived primarily from our historical data, the risk-free rate is based on the yield available on United States Treasury zero-coupon issues. We review our valuation assumptions quarterly and, as a result, it is likely we will change our valuation assumptions used to value share based awards granted in future periods.

Income Taxes

We account for uncertain tax positions in accordance with FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" ("FIN 48"), an interpretation of SFAS No. 109, "Accounting for Income Taxes" ("SFAS 109"). The application of income tax law and regulations is inherently complex. Interpretations and guidance surrounding income tax laws and regulations change over time. As such, changes in our subjective assumptions and judgments can materially affect amounts recognized in our financial statements.

SFAS 109 provides for the recognition of deferred tax assets if realization of such assets is more likely than not. Based upon the weight of available evidence, which includes our historical operating performance and carryback potential, we have determined that total deferred tax assets should be fully offset by a valuation allowance.

Results of Operations

Revenues

Total revenues in 2008 were $68.0 million, compared with $84.3 million in 2007 and $29.5 million in 2006 as shown in the table below (in thousands):

	Year ended December 31,		
	2008	2007	2006
License and collaborative fees	$ 16,366	$ 36,460	$ 2,846
Contract and other revenue	30,473	31,057	16,329
Royalties	21,148	16,735	10,323
Total revenues	$ 67,987	$ 84,252	$ 29,498

License and collaborative fees in 2008 were $16.4 million, compared with $36.5 million in 2007 and $2.8 million in 2006. These revenues include up-front and milestone payments related to the out-licensing of our products and technologies and other agreements where we have cost and profit-sharing arrangements, such as with our collaboration partner Novartis. The primary source of license and collaborative fees in 2008 related to the restructuring of our product development collaboration with Novartis, which involved six development programs including the HCD122 program. Under the restructured agreement, we recognized a collaborative fee of $13.7 million in exchange for giving Novartis control over the HCD122 program and an additional program, as well as the right to expand the development of these programs into additional indications outside of oncology. We also recognized $1.7 million in up-front fees and annual maintenance fees relating to various out-licensing arrangements. In addition, we recognized four milestone payments totaling $1.0 million, including two milestone payments from Pfizer Inc. ("Pfizer") relating to two different products, including the payment of $0.5 million for the initiation of a Phase 3 clinical trial. The generation of future revenues related to license fees and other collaborative arrangements is dependent on our ability to attract new licensees to our bacterial cell expression and other technologies and new collaboration partners.

The primary source of license and collaborative fees for 2007 related to payments received from Pfizer and an existing technology partner totaling $31.3 million. These payments represented initial license fees for which no remaining obligation of the Company existed. In addition, $4.3 million in revenue was recognized during the first quarter of 2007 representing the unamortized revenue from a $10.0 million up-front collaboration fee received in connection with our collaboration with Novartis in February of 2004. In February of 2007, we announced that pursuant to the terms of our collaboration agreement with Novartis, the mutual exclusivity obligation to conduct antibody discovery, development and commercialization work in oncology had ended. The expiration of this mutual obligation had no impact on the existing collaboration projects which had reached the development stage and the parties could continue to collaborate on a non-exclusive basis. Prior to the expiration of the exclusivity period, the up-front fee was being amortized over the expected five-year term of the exclusivity provision, or at a rate of $0.5 million per quarter.

License and collaborative fees recognized in 2006 primarily related to the recognition of $2.0 million from an up-front collaboration fee in connection with our Novartis collaboration.

Contract and other revenue was $30.5 million in 2008 compared with $31.1 million in 2007 and $16.3 million in 2006. These revenues include agreements where we provide contracted research and development and manufacturing services to our collaboration partners, including Takeda, SPRI, Novartis and NIAID. Contract and other revenue recognized in 2008 includes $4.2 million related to our NIAID Contract No. HHSN272200800028C ("NIAID 3"), which was awarded in September of 2008, and $6.6 million relating to our Manufacturing and Technology Transfer Agreement with Novartis signed in December of 2008, and effective from July of 2008. We also recognized $10.8 million in revenue in 2008 from our agreement with SPRI, compared with $5.7 million in 2007, and $4.4 million in revenue in 2008 from our agreement with Takeda, compared with $3.1 million in 2007. These increases in contract and other revenue were offset by decreases in revenue recognized from our NIAID 2 contract from $11.3 million in 2007 to $1.3 million in 2008, and on our AVEO Pharmaceuticals, Inc. (now with SPRI and referred to herein together as "SPRI/AVEO") contract from $8.0 million in 2007 to $3.2 million in 2008. These decreases are primarily due to the Company nearing the end of contracted service arrangements with NIAID 2 and SPRI/AVEO. Contract revenue for 2008 also includes an adjustment for NIAID 2 to decrease revenue by $2.7 million due to a change in billing rates, as detailed above in the *Critical Accounting Estimates: Contract Revenue* section. We expect to continue to generate revenue in 2009 related to our NIAID 3 contract, which is a $65 million multiple-year contract, our 2008 Novartis contract and our existing agreements with SPRI and Takeda, the latter of which we initiated new therapeutic antibody programs in September of 2008.

The increase in contract and other revenue of $14.7 million for 2007 compared to 2006 was primarily due to increased activities on our contracts with SPRI/AVEO, SPRI, Takeda and NIAID 2. This increase was partially offset by the completion of our NIAID Contract No. HHSN26620050004C ("NIAID 1") in October of 2006, which was entered into in March of 2005. Contract and other revenues recognized in 2006 related to contracts entered into in 2006 with SPRI, Taligen Therapeutics, Inc. ("Taligen"), Cubist Pharmaceuticals, Inc. ("Cubist") and SPRI/AVEO and contract work performed under NIAID 1 and NIAID 2.

We defer revenue until all requirements under our revenue recognition policy are met. In 2008, we deferred $17.5 million of revenue from five contracts including SPRI, Takeda and Novartis and recognized $18.4 million in revenue from the five contracts. In 2007, we deferred $23.3 million of revenue from five contracts including SPRI, SPRI/AVEO and Takeda and recognized $22.2 million in revenue from the five contracts including amortization of $4.3 million of the $10.0 million in up-front payments received from Novartis related to our February of 2004 oncology collaboration contract. In 2006, we deferred $25.2 million of revenue from eight contracts including SPRI, NIAID, Takeda and Taligen and recognized $16.1 million of revenue from the eight contracts, including the amortization of the Novartis up-front payments.

The following table shows the activity in deferred revenue for the years ended December 31, 2008, 2007 and 2006 (in thousands):

	Year ended December 31,		
	2008	2007	2006
Beginning deferred revenue	$ 18,064	$ 16,968	$ 7,860
Revenue deferred	17,515	23,254	25,204
Revenue recognized	(18,366)	(22,158)	(16,096)
Ending deferred revenue	$ 17,213	$ 18,064	$ 16,968

Of the $17.2 million balance in deferred revenue at December 31, 2008, $9.1 million is expected to be earned over the next year and the remaining $8.1 million is expected to be earned over the next five years. Future amounts may be impacted by additional consideration received, if any, under existing or any future licensing or other collaborative arrangements as well as changes in the estimated period of obligation or services to be provided under the arrangements.

Revenue from royalties was $21.1 million in 2008 compared with $16.7 million in 2007 and $10.3 million in 2006. This includes royalties of $6.5 million from U.S. sales of RAPTIVA® in 2008, compared with $6.4 million and $5.4 million during 2007 and 2006, respectively, and royalties of $5.7 million from sales of RAPTIVA® outside the U.S. in 2008, compared with $4.2 million and $2.8 million during 2007 and 2006, respectively. In addition, royalties earned on U.S sales of LUCENTIS® were $4.4 million in 2008, compared with $4.1 million and $1.9 million during 2007 and 2006, respectively, and royalties earned on sales of LUCENTIS® outside the U.S. were $4.4 million in 2008, compared with $1.9 million and $0.1 million during 2007 and 2006, respectively.

The increase in royalty revenues from 2006 through 2008 resulted from higher sales of LUCENTIS® and RAPTIVA® in the U.S. and worldwide. According to Genentech, U.S sales of RAPTIVA® during 2008 were $108 million, compared with $107 million and $90 million during 2007 and 2006, respectively. According to Merck Serono, sales of RAPTIVA® outside of the U.S. during 2008 were approximately $134 million, compared with $106 million and $70 million during 2007 and 2006, respectively. According to Genentech, U.S. sales of LUCENTIS® were $875 million during 2008 compared with $815 million and $380 million during 2007 and 2006, respectively. According to Novartis, sales of LUCENTIS® outside the United States were $886 million in 2008 compared with $393 million and $27 million during 2007 and 2006, respectively.

In previous quarters, we disclosed that we expected royalty revenues from sales of LUCENTIS® outside the U.S. to decrease due to the expiration in July of 2008 of most of the more important European patents in our bacterial cell expression patent portfolio. In the fourth quarter of 2008, Genentech confirmed that LUCENTIS® is currently produced in the United States for worldwide distribution, and as a result we recorded an adjustment to increase third quarter royalty revenues by $0.7 million. We expect Genentech to continue to pay royalties on worldwide sales of LUCENTIS®, for so long as the product continues to be produced in the United States, through the expiration of the related U.S. patents at the end of 2014. Therefore we expect royalty revenues from sales of LUCENTIS® worldwide to increase in 2009. In addition, in January of 2009, Novartis announced that LUCENTIS® was approved in Japan for the treatment of (wet) age-related macular degeneration.

In October of 2008, the FDA announced that it had approved labeling changes, including a Boxed Warning, to highlight the risks of life-threatening infections, including PML, associated with the use of RAPTIVA®. In the fourth quarter of 2008, royalty revenues from U.S. sales of RAPTIVA® decreased by approximately 10%; however, we are unable to determine at this point in time if the decline in sales was linked to the Boxed Warning.

In February of 2009, the EMEA announced that it has recommended suspension of the marketing authorization of RAPTIVA® in the European Union and that the CHMP has concluded that the benefits of RAPTIVA® no longer outweigh its risks and EMD Serono Inc. announced that, in consultation with Health Canada, it will suspend marketing of RAPTIVA® in Canada. Also in February of 2009, the FDA issued a public health advisory concerning three confirmed reports, and one possible report, of PML in patients using RAPTIVA®. Genentech has stated that it is working with the FDA to determine appropriate next steps, which may include significant restrictions in the use of, or suspension or withdrawal of regulatory approval for, RAPTIVA®. We expect royalties from sales of RAPTIVA® to decline significantly as a result of these and other related events.

In addition, UCB announced in April of 2008 that CIMZIA® received FDA approval for the treatment of Crohn's disease. CIMZIA® was approved in Switzerland for the treatment of Crohn's disease in September of 2007. UCB provides CIMZIA® related sales and royalty statements to us within 60 days of the end of each quarter. Due to the lack of sufficient historical information, royalties received on sales of CIMZIA® are recorded upon receipt of the royalty statement until we establish sufficient historical information on which to estimate related royalty revenues. During 2008, royalties received from sales of CIMZIA® were not material; however we expect sales to increase in 2009.

Research and Development Expenses

Biopharmaceutical development includes a series of steps, including *in vitro* and *in vivo* preclinical testing, and Phase 1, 2 and 3 clinical studies in humans. Each of these steps is typically more expensive than the previous step, but actual timing and the cost to us depends on the product being tested, the nature of the potential disease indication and the terms of any collaborative arrangements with other companies. After successful conclusion of all of these steps, regulatory filings for approval to market the products must be completed, including approval of manufacturing processes and facilities for the product. Our research and development expenses currently include costs of personnel, supplies, facilities and equipment, consultants, third party costs and other expenses related to preclinical and clinical testing.

In 2008, our research and development expenses were $82.6 million compared with $66.2 million in 2007 and $52.1 million in 2006. The $16.4 million increase in 2008 compared with 2007 primarily reflects increased spending on development of XOMA 052, including Phase 1 clinical trials, and to a lesser extent XOMA 629. In addition, we increased spending on our contracts with Novartis, SPRI, NIAID 3 and Takeda. Research and development expenses also increased in 2008 related to the preclinical development of five antibodies, XOMA 3AB and upgrades made to our manufacturing plant. These increases were partially offset by a decrease in spending on NIAID 2 and SPRI/AVEO-related contract activities, due to the Company nearing the end of contracted service arrangements.

The $14.1 million increase in 2007 compared with 2006 primarily reflects increased spending on development of XOMA 052, including the initiation of Phase 1 clinical trials, and on the development of XOMA 629. In addition, we increased spending on our contracts with NIAID 2, SPRI/AVEO, SPRI and Takeda, partially offset by a decrease in spending on NIAID 1 due to the Company nearing the end of the contracted service arrangement.

We recorded $34.4 million in research and development salaries and employee related expenses in 2008 compared with $31.5 million in 2007 and $22.8 million in 2006. Included in these expenses for 2008 were $32.1 million for salaries and benefits and $2.3 million for share-based compensation, which is a non-cash expense, compared with $27.9 million and $1.0 million, respectively, in 2007, and $21.1 million and $0.5 million, respectively, in 2006. The $2.9 million increase in salaries and employee related expenses in 2008 as compared to 2007 primarily relates to increased headcount.

Partially offsetting the 2008 increase in salaries and employee related expenses is a decrease in bonus expense for 2008 to zero compared with $2.6 million in 2007 and $1.2 million in 2006. In efforts to control spending and manage the Company's cash balance, the Company decided not to pay bonuses for 2008. The Bonus Compensation Plan ("BCP") was implemented in 2007 and provides performance-based bonuses to be paid to employees that did not qualify under the Management Incentive Compensation Plan ("MICP") or CEO Incentive Compensation Plan ("CICP", collectively "Incentive Plans"). See *Results of Operations: Share-Based Compensation* for further discussion of our share-based compensation expense for 2008.

We expect a decrease in salaries and employee related expenses in 2009 as a result of the workforce reduction and our decision, at this time, to not award merit increases in 2009. We expect the workforce reduction announced in January of 2009 will be completed by the second quarter of 2009. A charge of approximately $3 million is expected in the first quarter of 2009 for severance and other costs related to the workforce reduction.

Our research and development activities can be divided into earlier stage programs and later stage programs. Earlier stage programs include molecular biologics, process development, pilot-scale production and preclinical testing. Also included in earlier stage programs are costs related to excess manufacturing capacity, which we expect to decrease in 2009 as a result of the workforce reduction. Later stage programs include clinical testing, regulatory affairs and manufacturing clinical supplies. The costs associated with these programs approximate the following (in thousands):

	Year ended December 31,		
	2008	2007	2006
Earlier stage programs	$ 62,872	$ 57,027	$ 41,548
Later stage programs	19,704	9,188	10,546
Total	$ 82,576	$ 66,215	$ 52,094

Our research and development activities can also be divided into those related to our internal projects and those projects related to collaborative and contract arrangements. The costs related to internal projects versus collaborative and contract arrangements approximate the following (in thousands):

	Year ended December 31,		
	2008	2007	2006
Internal projects	$ 58,468	$ 45,804	$ 32,033
Collaborative and contract arrangements	24,108	20,411	20,061
Total	$ 82,576	$ 66,215	$ 52,094

In 2008, one development program (Novartis) accounted for more than 10% but less than 20% of our total research and development expenses and one development program (XOMA 052) accounted for more than 20% but less than 30% of our total research and development expenses. No development program accounted for more than 30% of our total research and development expenses in 2008. In 2007, two development programs (XOMA 052 and NIAID) each individually accounted for more than 10% but less than 20% of our total research and development expenses. In 2006, three development programs (Novartis, NIAID and XOMA 052) each individually accounted for more than 10% but less than 20% of our total research and development expenses. No development program accounted for more than 20% of our total research and development expenses in 2007 or 2006.

We currently anticipate a decrease in our research and development spending in 2009. In the fourth quarter of 2008, we narrowed the focus of our research and development efforts to XOMA 052, and away from our other programs. In 2009, we plan to complete Phase 1 clinical testing of XOMA 052 in Type 2 diabetes, which includes three studies. We also plan to initiate a major Phase 2 study in Type 2 diabetes in the third quarter of 2009. We have been approached by several companies offering to collaborate on our testing and development of XOMA 052 and will seek to enter into a collaboration by the end of 2009. We also initiated a Phase 2a pharmacokinetic study in rheumatoid arthritis in the first quarter of 2009, and plan to conduct XOMA 052 “proof-of-concept” trials in other indications in 2009.

As a result of the workforce reduction in January of 2009, we are temporarily suspending operations in four of our leased buildings. We expect capital costs to decrease in 2009, as compared to 2008.

Future research and development spending may also be impacted by potential new licensing or collaboration arrangements, as well as the termination of existing agreements. Beyond this, the scope and magnitude of future research and development expenses are difficult to predict at this time.

General and Administrative Expenses

General and administrative expenses include salaries and related personnel costs, facilities costs and professional fees. In 2008, general and administrative expenses were $24.1 million compared with $20.6 million in 2007 and $18.1 million in 2006. The $3.5 million increase in general and administrative expenses in 2008 as compared with 2007 was primarily related to a $1.2 million increase in legal fees supporting our technology licensing and collaboration agreements as well as the protection of our intellectual property, a $1.1 million increase in spending related to the marketing and communication of our technology and proprietary products to potential corporate partners and investors, a $0.9 million increase in consulting fees primarily related to employee training and system implementation and a net increase in salaries and related expenses of $0.6 million.

The increase in general and administrative expenses of $2.5 million in 2007 compared with 2006 primarily relates to increased compensation costs, including an increase in share-based compensation, which is a non-cash expense, related to the CEO transition in the third quarter of 2007 and an increase in bonus awards, including the implementation of BCP, as detailed above in the *Results of Operations: Research and Development Expenses* section.

We recorded $13.3 million in general and administrative salaries and employee related expenses in 2008 compared with $12.7 million in 2007 and $9.6 million in 2006. Included in these amounts were $10.7 million for salaries and benefits and $2.6 million for share-based compensation, which is a non-cash expense, in 2008, compared with $9.5 million and $1.9 million, respectively, in 2007, and $8.3 million and $0.5 million, respectively, in 2006. The $0.6 million increase in salaries and employee related expenses in 2008 as compared to 2007 primarily relates to increased headcount.

Partially offsetting the 2008 increase in salaries and employee related expenses is a decrease in bonus expense for 2008 to zero compared with $1.4 million in 2007 and $0.8 million in 2006. In the fourth quarter of 2008, the Company decided not to pay 2008 bonuses in an effort to control spending and manage the Company's cash balance. Based on this information, the 2008 bonus accrual was reversed in the fourth quarter of 2008. See *Results of Operations: Share-Based Compensation* for further discussion of our share-based compensation expense for 2008.

We expect a decrease in salaries and employee related expenses in 2009 as a result of the workforce reduction and our decision, at this time, to not award merit increases in 2009. We expect the workforce reduction announced in January of 2009 will be completed by the second quarter of 2009. A charge of approximately $3 million is expected to be recorded in the first quarter of 2009 for severance and other costs related to the workforce reduction.

As a result of the workforce reduction in January of 2009, we are temporarily suspending operations in four of our leased buildings. Our leases on these four buildings expire in the period from 2011 to 2014 and total minimum lease payments due from January of 2009 until expiration of the leases are $7.2 million. In addition, the net book value of fixed assets potentially subject to write down as a result of the workforce reduction is approximately $12.5 million as of December 31, 2008. We are currently evaluating our options as to the future use of these leased spaces.

Other Income (Expense)

Investment and interest income was $0.9 million in 2008 compared with $1.9 million in 2007 and $1.7 million in 2006. Investment and interest income consists primarily of interest earned on our cash and investment balances. The differences between 2008, 2007, and 2006 balances resulted from varying average cash balances and interest rates.

Interest expense was $7.7 million in 2008 compared with $11.6 million and $12.9 million in 2007 and 2006, respectively. The decrease in interest expense of $3.9 million in 2008 compared to 2007 is due to the elimination of our convertible debt in 2007, which represented $6.1 million of interest expense in 2007 from the revaluation to fair value of the embedded derivative on our convertible debt related to the additional interest feature, partially offset by an increase in interest expense related to the higher principal balance and interest rate associated with our new term loan facility with Goldman Sachs.

The decrease in interest expense from 2006 to 2007 of $1.3 million includes a decrease in interest expense recorded relating to the revaluation of the embedded derivative of $0.8 million and a decrease in interest expense on our convertible debt of $3.2 million, offset by an increase in interest expense on our Goldman Sachs loan of $2.9 million.

Interest expense for 2009 is expected to decrease compared to 2008 due to the repayment of $8.9 million of principal on our Novartis note and $4.6 million of principal paid on our Goldman Sachs term loan in the fourth quarter of 2008. The decrease in interest expense from this principal reduction is expected to be slightly offset by the increase in the principal balance and the interest rate on our new Goldman Sachs term loan in the fourth quarter of 2008. This anticipated decrease may be offset by additional interest expense in the event we obtain new financing.

Income Taxes

We have recorded cumulative gross deferred tax assets of $214.7 million and $205.6 million at December 31, 2008 and 2007, respectively, principally attributable to the timing of the deduction of certain expenses associated with certain research and development expenses, net operating loss and other carryforwards. We also recorded corresponding valuation allowances of $214.7 million and $205.6 million at December 31, 2008 and 2007, respectively, to offset these deferred tax assets, as management cannot predict with reasonable certainty that the deferred tax assets to which the valuation allowances relate will be realized.

As of December 31, 2008, we had federal net operating loss carryforwards of approximately $159.5 million to offset future taxable income. We also had federal research and development tax credit carryforwards of approximately $10.5 million. If not utilized, these carryforwards will begin to expire in 2009. Our activities in Ireland and the adoption of FIN 48 in 2007 have allowed us to record previously unrecorded net operating losses related to our Irish subsidiary. These net operating losses are subject to a full valuation allowance. The availability of our net operating loss and tax credit carryforwards may be subject to substantial limitation if it is determined that our ownership has changed by more than 50% over a three-year period.

We had $0.4 million of income tax benefit for 2008 relating to refundable credits. There was no income tax expense for 2007 and 2006.

In February of 2009, we expanded our existing collaboration with Takeda to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. We received a $29.0 million expansion fee, of which $5.8 million was witheld for payment to the Japanese taxing authority and will be included in income tax expense in 2009.

Share-Based Compensation

In October of 2007, our Board of Directors (the “Board”) approved a company-wide grant of options to purchase common shares. The purpose of the grant was to improve the level of employee ownership in the business by using existing share-based option plans to bring the Company in line with competitive industry levels. Of the total 6,635,000 options granted, 5,185,000 options were made subject to shareholder approval of a commensurate increase in the number of shares available for the grant of options under the Company’s existing share option plans. In addition, all options granted in February of 2008 as part of our annual compensation plan were subject to the aforementioned shareholder approval. As of December 31, 2007, the 5,185,000 shares from October of 2007 were not included in any of the options outstanding disclosures, options granted disclosures, or share-based compensation expense as they were not deemed granted for accounting purposes until shareholder approval was obtained in May of 2008.

In May of 2008, our shareholders approved the increase in the number of shares available for issuance under our existing share option plans. Upon shareholder approval, we recognized share-based compensation expense for the 5,185,000 share options granted in October of 2007 and the company-wide grant of 3,521,300 share options from February of 2008.

These shares vest according to our standard four-year vesting schedule which provides for 25% cliff vesting on the first year anniversary of the legal date of grant and monthly vesting of the remaining 75% of shares over the next three years. For accounting purposes, the expense related to the cliff vesting feature will be recognized from May of 2008 through the first corresponding anniversary of the legal grant date. We expect our share-based compensation expense to continue to be higher than prior periods over the four-year vesting period related to these options.

During the year ended December 31, 2008, we recognized $4.9 million in share-based compensation expense compared with $2.9 million in 2007 and $1.0 million in 2006. The increase of $2.0 million relates to annual grants in February of 2008 and the grant in October of 2007. At December 31, 2008, there was $11.1 million of unrecognized share-based compensation expense related to unvested share options with a weighted-average remaining recognition period of 2.9 years.

Liquidity and Capital Resources

Cash, cash equivalents and short-term investments at December 31, 2008 was $10.8 million compared with $38.6 million and $46.4 million at December 31, 2007 and 2006, respectively. Net cash used in operating activities was $33.0 million in 2008, compared with net cash provided of $4.5 million in 2007. The $37.5 million increase in cash used for operations from 2007 to 2008 included a net loss of $45.2 million offset by non-cash adjustments of $16.1 million, primarily related to depreciation and share-based compensation. In addition, receivables increased by $4.6 million in 2008 primarily related to work performed on the NIAID 3, Novartis, SPRI and Takeda contracts, offset by a decrease in work performed on the SPRI/AVEO contract. Deferred revenue decreased by $0.9 million primarily related to a decrease in deferred revenue on the SPRI contract of $2.7 million due to amortization of up-front fees and a decrease in advance billings. This decrease was partially offset by an increase in deferred revenue of $1.5 million related to advance billings on the Novartis contract signed in December of 2008. Accrued liabilities decreased by $3.3 million primarily related to the reversal of the 2008 bonus accrual in the fourth quarter when the Company decided it would not pay the 2008 bonuses. Accounts payable increased by $3.0 million due to the Company paying vendors on longer terms and other liabilities increased by $2.1 million related to the NIAID 2 billing adjustment (as detailed above in the *Critical Accounting Estimates: Contract Revenue* section) for which a credit was provided to the NIH to be applied to future work performed on the NIAID 2 contract. During 2008, we collected $58.5 million in outstanding accounts receivable related to our revenue streams and made payments of $35.6 million relating to payroll, $4.0 million for the 2007 annual bonus and $65.8 million relating to payment of vendors.

We expect a decrease in net cash used for operating activities in 2009. During 2008, we substantially increased our spending on XOMA 052. We have been approached by several companies offering to collaborate on our testing and development of XOMA 052 and will seek to enter into such a collaboration by the end of 2009. We expect decreases in payroll expense and manufacturing-related expense in 2009 as a result of the workforce reduction, for which we expect to record a charge of approximately $3 million for severance and other costs. Our collaboration costs are fully funded by contract revenues from collaborators, including SPRI, Takeda and Novartis. Our biodefense costs are fully funded by the U.S. Government through our NIAID contracts.

In February of 2009 we expanded our existing collaboration to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. We received a $29.0 million expansion fee, of which $23.2 million was received in cash in February of 2009 and the remainder was witheld for payment to the Japanese taxing authority. In addition, we expect to pay approximately $1.5 million of additional expenses to Takeda related to the agreement. We may receive potential milestones and royalties on sales of antibody products in the future.

Cash provided by operations for 2007 consisted of a net loss of $12.3 million with non-cash add-backs for depreciation and amortization of $6.2 million, the revaluation of our embedded derivative of $6.1 million, equity-related compensation of $4.2 million, and the amortization of debt issuance costs and the premium or discount on convertible notes of $0.6 million, as well as a net increase in liabilities of $4.5 million, which was partially offset by cash payments for the additional interest feature of our convertible debt of $5.2 million and $0.4 million of accrued interest on convertible debt and other interest bearing obligations. During the year ended December 31, 2007, we made payments of $6.6 million for interest on our convertible debt, $3.1 million for interest on our Goldman Sachs term loan, and $1.0 million for our Incentive Plans. In October of 2007, the Board of Directors approved amendments to the Incentive Plans eliminating the provisions requiring payments to be made partly in Common Shares and beginning in 2008, bonuses awarded under the incentive plans are paid entirely in cash.

Cash used in operations in 2006 consisted of a net loss of $51.8 million with non-cash add-backs for the revaluation of our embedded derivative of $6.9 million, depreciation and amortization of $5.1 million, equity-related compensation of $2.1 million and accrued interest of $1.2 million, along with a net increase in liabilities of $9.0 million partially offset by an increase in assets of $6.8 million. During 2006, we made payments of $2.7 million for debt issuance costs on our convertible debt of which $2.0 million related to cash used in operations, $3.8 million for interest on our convertible debt and $1.1 million for our Incentive Plans.

Net cash provided by investing activities was $3.2 million in 2008, compared with net cash used in investing activities for 2007 and 2006 of $8.8 million and $8.4 million, respectively. Cash provided by investing activities for 2008 consisted of net sales and maturities of investments of $14.8 million, slightly offset by the transfer to restricted cash of $3.5 million relating to our new facility with Goldman Sachs and purchases of fixed assets of $8.1 million, primarily relating to lab and production equipment. Net cash used in investing activities for 2007 and 2006 consisted of purchases of property and equipment of $9.5 million and $8.5 million, respectively, and net proceeds from short-term investments of $2.3 million and $4.4 million, respectively. In addition, $1.7 million was transferred to restricted cash in 2007 and $4.3 million was transferred to restricted cash in 2006. We expect the reduction in our manufacturing-related operations, as part of the workforce reduction, to be completed by the second quarter of 2009. As a result, we expect capital costs to decrease in 2009 as compared to 2008.

Net cash provided by (used in) financing activities in 2008, 2007 and 2006 was $16.8 million, $(1.2 million) and $48.9 million, respectively. The increase in cash provided by financing activities in 2008 as compared to 2007 of $18.0 million is due to the refinancing of our original facility with Goldman Sachs in May of 2008, which netted proceeds of approximately $30.9 million, partially offset by a principal payment of $8.2 million against the outstanding balance of the original facility with Goldman Sachs in the first quarter of 2008. In addition, principal payment of $4.6 million was made on the new Goldman Sachs facility and $8.9 million was paid on our Novartis note in the fourth quarter of 2008. We also received proceeds of $7.6 million from the issuance of common shares related to draws made on our equity line of credit facility entered into in October of 2008 with Azimuth Opportunity, Ltd. (“Azimuth”).

Financing activities in 2007 included a $4.7 million principal repayment on our Goldman Sachs term loan, offset by additional borrowings of $2.8 million on our Novartis note and $0.7 million in proceeds received from the issuance of common shares. Financing activities in 2006 consisted of borrowings of $35.0 million from our original term loan with Goldman Sachs, partially offset by $1.5 million in debt issuance costs, $12.5 million in proceeds received from the issuance of convertible notes, partially offset by $0.5 million in debt issuance costs, a $3.0 million advance on our line-of-credit with Novartis and $0.4 million in proceeds received from the issuance of common shares.

Goldman Sachs Term Loan

In November of 2006, XOMA (US) LLC entered into a five-year, $35.0 million term loan facility (“the original facility”) with Goldman Sachs and borrowed the full amount thereunder. Indebtedness under the original facility incurred interest at an annual rate equal to six-month LIBOR plus 5.25% and was secured by all rights to receive payments due to the Company relating to RAPTIVA®, LUCENTIS® and CIMZIA®.

In May of 2008, we entered into a five-year, $55.0 million amended and restated term loan facility with Goldman Sachs (the “new facility”) refinancing the original facility and borrowed the full amount thereunder. Indebtedness under the new facility bears interest at an annual rate equal to the greater of (x) six-month LIBOR or (y) 3.0%, plus 8.5% and is subject to reset on April 1 and October 1 of each year. As of December 31, 2008, the interest rate was 12.3%. The debt is secured by all rights to receive payments due to the Company relating to RAPTIVA®, LUCENTIS®, and CIMZIA®. Payments received by XOMA in respect of these payment rights, in addition to a standing reserve equal to the next semi-annual interest payment, are held in a custodial account which is classified as restricted cash. This cash account and the interest earned thereon can be used solely for the payment of the semi-annual interest amounts due on April 1 and October 1 of each year and, at that time, amounts in excess of the interest reserve requirement may be used to pay down principal or be distributed back to us, at the discretion of Goldman Sachs. We may prepay indebtedness under the facility at any time, subject to certain prepayment premiums if prepaid during the first four years.

We are required to comply with certain covenants including a ratio of royalties collected to interest payable and a requirement that quarterly U.S. and outside-the-U.S. sales of RAPTIVA® and LUCENTIS® exceed certain specified minimum levels and we were in compliance with these covenants as of December 31, 2008. Our ability

to comply with these covenants is dependent on continued sales by Genentech, UCB and their partners of these products at adequate levels, and any significant reduction in such sales could cause us to violate or be in default under these provisions, which could result in acceleration of our obligation to repay this debt.

In February of 2009, the EMEA announced that it has recommended suspension of the marketing authorization of RAPTIVA® in the European Union, EMD Serono announced that, in consultation with Health Canada, it will suspend marketing of RAPTIVA® in Canada and the FDA issued a public health advisory concerning three confirmed reports, and one possible report, of PML in patients using RAPTIVA®. We expect sales of RAPTIVA® to decline significantly as a result of these and other related events, and we anticipate that as a consequence we will be in violation of or default under the relevant provisions of the new facility during the second or third quarter of this year. We are currently in discussions with the lenders regarding a restructuring of the terms of the new facility to address the effects of these developments. However, there can be no assurance that we will reach agreement with the lenders on acceptable terms, or at all, as a result of these discussions.

At December 31, 2008, the outstanding principal amount under the new facility totaled $50.4 million and the balance in restricted cash was $8.6 million relating to this facility. On April 1, 2009, the next payment date under the loan, the outstanding principal balance of the loan may be reduced, at the discretion of the lenders, by as much as $8 million, should the lenders choose to apply a portion of the restricted cash balance to the repayment of outstanding principal. This potential reduction in principal, if it were to occur, would take into account our interest payment due on April 1, 2009, estimated fourth quarter 2008 royalty receipts and amounts required to remain in restricted cash for the estimated interest payment due on October 1, 2009.

Debt issuance costs under the new facility of $2.0 million are being amortized on a straight-line basis over the five-year life of the loan and are disclosed as current and long-term debt issuance costs on the balance sheet. Proceeds from the new facility were used to pay the outstanding principal and accrued interest under the original facility, certain fees and expenses in connection with the new facility and for general corporate purposes.

Novartis Note

In May of 2005, we executed a secured note agreement with Chiron Corporation (now Novartis). Under the note agreement, Novartis agreed to make semi-annual loans to us to fund up to 75% of our research and development and commercialization costs under the collaboration arrangement, not to exceed $50.0 million in aggregate principal amount. Any unpaid principal amount together with accrued and unpaid interest shall be due and payable in full on June 21, 2015, the tenth anniversary date of the advance date on which the first loan was made. Interest on the unpaid balance of the principal amount of each loan shall accrue at six-month LIBOR plus 2%, which was equal to 3.85% at December 31, 2008, and is payable semi-annually in June and December of each year. Additionally, the interest rate resets in June and December of each year. At our election, the semi-annual interest payments can be added to the outstanding principal amount, in lieu of a cash payment, as long as the aggregate principal amount does not exceed $50.0 million and we have made this election for all interest payments thus far. Loans under the note agreement are secured by our interest in the collaboration with Novartis, including any payments owed to us thereunder.

In November of 2008, we restructured our product development collaboration with Novartis. Under the restructured agreement, we received $13.7 million in consideration of which $7.5 million was in the form of a debt reduction on our existing loan facility with Novartis, in exchange for giving Novartis control over the HCD122 program and an additional ongoing program. In addition, we made a principal payment on our Novartis note of $1.4 million in November of 2008. Pursuant to this restructuring, no additional borrowings will be made by XOMA on our Novartis note.

At December 31, 2008, the outstanding principal balance under this note agreement totaled $12.9 million and for the years ended December 31, 2008, 2007 and 2006 we incurred, and added to the principal balance of the note, interest expense of $1.2 million, $1.3 million and $1.0 million, respectively.

Equity Line of Credit

On October 21, 2008, we entered into a common share purchase agreement (the "Purchase Agreement") with Azimuth, pursuant to which we obtained a committed equity line of credit facility (the "Facility") under which we may sell up to $60 million of our registered common shares to Azimuth over a 24-month period, subject to certain conditions and limitations. We are not obligated to utilize any of the $60 million Facility and remain free to enter other financing transactions. Pursuant to the terms of the Purchase Agreement, we determine, in our sole discretion, the timing, dollar amount and floor price per share of each draw down under the Facility, subject to certain conditions and limitations. The number and price of shares sold in each draw down are determined by a contractual formula designed to approximate fair market value, less a discount which may range from 2.65% to 6.65%. If the daily volume weighted average price of our common shares falls below a threshold price of $1.00 on any trading day during a draw down period, Azimuth will not be required to purchase the pro-rata portion of common shares allocated to that day. However, at its election, Azimuth may buy the pro-rata portion of shares allocated to that day at the threshold price less a negotiated discount. The Purchase Agreement also provides that from time to time and in our sole discretion, we may grant Azimuth the right to exercise one or more options to purchase additional common shares during each draw down pricing period for the amount of shares based upon the maximum option dollar amount and the option threshold price specified by us. Shares under the Facility are sold pursuant to a prospectus which forms a part of a registration statement declared effective by the Securities and Exchange Commission on May 29, 2008. From the inception of the Facility in October of 2008 through December 31, 2008, we have sold 7,932,432 common shares under the Facility for aggregate gross proceeds of $7.5 million, and $52.5 million remains available under the Facility. This includes the sale of 4.0 million shares under the Facility in December of 2008 that Azimuth agreed to purchase notwithstanding that the relevant volume weighted average prices were under the threshold price of $1.00. Under the terms of the Purchase Agreement, we negotiated a discount rate of 8.86% for this draw down. Prior to the successful conclusion of such negotiations, Azimuth was not obligated to purchase such shares, and there can be no assurance that they would agree to do so again if similar circumstances were to arise in the future. Offering expenses incurred through December 31, 2008 related to this Facility were $0.3 million. The proceeds are being used for general corporate purposes.

Convertible Debt

In February of 2006, we completed an exchange offer with holders of our 6.5% convertible senior notes due 2012 in which we exchanged $60.0 million aggregate principal amount of our new 6.5% Convertible SNAPs$_{SM}$ due 2012 (the "New Notes") for all $60.0 million aggregate principal amount of our then outstanding convertible senior notes due 2012. We also issued an additional $12.0 million of New Notes to the public for cash at a public offering price of 104% of principal, or $12.5 million. The New Notes were initially convertible into approximately 38.4 million common shares at a conversion rate of 533.4756 of common shares per $1,000 principal amount of New Notes, which is equivalent to a conversion price of approximately $1.87 per common share.

We separately accounted for the additional interest payment feature of the New Notes as an embedded derivative instrument, which was measured at fair value and classified on the balance sheet with the convertible debt. Changes in the fair value of the embedded derivative were recognized in earnings as a component of other income (expense). The initial fair value of the derivative was subtracted from the carrying value of the debt, reflected as a debt discount, which was amortized as interest expense using the effective interest method through the date the notes were scheduled to mature, and separately reported as a derivative liability.

The additional New Notes were issued to the initial purchasers for net proceeds of $11.8 million. Debt issuance costs related to the New Notes of approximately $0.7 million were being amortized on a straight-line basis over the original 72-month life of the notes. Additional debt issuance costs of $2.0 million, related to the modification of the existing debt, were expensed as incurred with $1.1 million expensed during the quarter ended March 31, 2006.

At the time of note conversion, unamortized discount, premium and debt issuance costs related to the converted notes was charged to shareholder's equity.

For the year ended December 31, 2006, $27.5 million of New Notes were converted into 18,262,264 common shares including 3,602,879 shares related to the additional interest payment feature of the notes. As of December 31, 2006, we had elected to pay all additional interest owed in common shares. We recorded a $6.9 million charge to interest expense during the year ended December 31, 2006, as a result of an increase in the fair value of the embedded derivative on our convertible debt including $4.8 million related to the additional interest feature of the converted notes. The remaining principal for the New Notes was $44.5 million as of December 31, 2006.

During the first quarter of 2007, $42.0 million of New Notes were voluntarily converted by holders through March 7, 2007, at which time we announced that we had elected to automatically convert 100% of the remaining $2.5 million of New Notes outstanding. As a result, during the quarter 25,640,187 shares were issued to effect the conversion of the principal balances. Additionally, we issued 1,889,317 shares and $5.2 million in cash to satisfy the remaining additional interest payment feature related to these converted New Notes. We recorded a $6.1 million charge to interest expense during the first quarter of 2007 as a result of the revaluation of the embedded derivative related to the additional interest feature of the convertible notes.

For the years ended December 31, 2007 and 2006, we incurred $0.2 million and $3.4 million, respectively, in interest expense on our convertible debt. Additionally, we amortized a net of $0.1 million and $1.0 million in debt issuance costs, premium and discount for the years ended December 31, 2007 and 2006, respectively. There were no balances recorded in 2008 relating to the convertible debt, as it was eliminated in the first quarter of 2007.

We have incurred significant operating losses and negative cash flows from operations since our inception. At December 31, 2008, we had cash, cash equivalents and short-term investments of $10.8 million, restricted cash of $9.5 million and working capital of $11.7 million. During 2009, we expect to continue using our cash, cash equivalents and short-term investments to fund ongoing operations. Additional licensing, antibody discovery collaboration agreements and financing arrangements may positively impact our cash balances. Based on anticipated spending levels, revenues, collaborator funding and other sources of funding we believe to be available, we estimate that we have sufficient cash resources to meet our anticipated net cash needs through the next twelve months, excluding a potential acceleration of the Goldman Sachs debt due to an anticipated decline in RAPTIVA® royalties in 2009, as discussed above. Any significant revenue shortfalls, increases in planned spending on development programs or more rapid progress of development programs than anticipated, as well as the unavailability of anticipated sources of funding, could shorten this period. We expect sales of RAPTIVA® to decline significantly as a result of recent events, and we anticipate that as a consequence we will be in violation of or default under the relevant provisions of our loan from Goldman Sachs during the second or third quarter of this year. In the event we are not able to restructure the terms of our loan from Goldman Sachs and otherwise maintain at least twelve months of cash resources, there will be substantial doubt as to our ability to continue as a going concern. Progress or setbacks by potentially competing products may also affect our ability to raise new funding on acceptable terms. If adequate funds are not available, we have developed contingency plans that may require us to delay, reduce the scope of, or eliminate one or more of our product development programs and further reduce personnel-related costs.

Our independent registered public accounting firm has included in their report for our fiscal year ended December 31, 2008 a qualification with respect to our ability to continue as a going concern. Our consolidated financial statements have been prepared on the basis of going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. If we became unable to continue as a going concern, we would have to liquidate our assets and the values we receive for our assets in liquidation could be significantly lower than the values at which they are carried on our consolidated financial statements. The inclusion of a going concern qualification in our independent registered public accounting firm's audit opinion for the year ended December 31, 2008 may materially adversely affect our share price and our ability to raise new capital.

Commitments and Contingencies

Purchase Obligations

In September of 2007, we entered into a five-year purchase agreement for custom cell culture medium for use in our research and development activities. Under the terms of the agreement we are obligated to meet certain annual purchase commitments. These commitments are included in the schedule of contractual obligations below:

Schedule of Contractual Obligations

Payments by period due under contractual obligations at December 31, 2008 are as follows (in thousands):

Contractual Obligations	Total	Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
Operating leases	$ 19,237	$ 4,041	$ 8,333	$ 6,246	$ 617
Purchase obligations	440	110	220	110	—
Debt Obligations (a)					
Principal	63,274	—	—	50,394	12,880
Interest	32,242	6,797	13,594	11,108	743
Total	$115,193	$ 10,948	$ 22,147	$ 67,858	$ 14,240

(a) See *Item 7A: Quantitative and Qualitative Disclosures about Market Risk* and *Note 3: Long-Term Debt and Other Arrangements* to the accompanying consolidated financial statements for further discussion of our debt obligations.

In addition to the above, we have committed to make potential future "milestone" payments to third parties as part of licensing and development programs. Payments under these agreements become due and payable only upon the achievement of certain developmental, regulatory and/or commercial milestones. Because it is *uncertain* if and when these milestones will be achieved, such contingencies, aggregating up to $79.0 million have not been recorded on our consolidated balance sheet. We are unable to determine precisely when and if our payment obligations under the agreements will become due as these obligations are based on milestone events, the achievement of which is subject to a significant number of risks and uncertainties.

Although operations are influenced by general economic conditions, we do not believe that inflation had a material impact on financial results for the periods presented. We believe that we are not dependent on materials or other resources that would be significantly impacted by inflation or changing economic conditions in the foreseeable future.

Recent Accounting Pronouncements

Fair Value Measurements

In October 2008, the FASB issued FSP 157-3 *Determining Fair Value of a Financial Asset in a Market That Is Not Active* (FSP 157-3). FSP 157-3 clarified the application of SFAS No. 157 in an inactive market. It demonstrated how the fair value of a financial asset is determined when the market for that financial asset is inactive. FSP 157-3 was effective upon issuance, including prior periods for which financial statements had not been issued. The implementation of this standard did not have a material impact on our financial statements. See *Note 1: Fair Value of Financial Instruments* to the Consolidated Financial Statements for information and related disclosures regarding our fair value measurements.

Accounting for Advance Payments for Goods or Services to Be Used in Future Research and Development

In June of 2007, the Emerging Issues Task Force issued EITF Issue 07-03, "Accounting for Advance Payments for Goods or Services to Be Used in Future Research and Development" ("EITF 07-03"). EITF 07-03

addresses the diversity which exists with respect to the accounting for the non-refundable portion of a payment made by a research and development entity for future research and development activities. Under EITF 07-03, an entity would defer and capitalize non-refundable advance payments made for research and development activities until the related goods are delivered or the related services are performed. EITF 07-03 was effective for fiscal years beginning after December 15, 2007 and interim periods within those years. The adoption of EITF 07-03 did not have a material impact on our financial statements.

Accounting for Collaborative Agreements

In December of 2007, the EITF reached a consensus on EITF Issue 07-01 "Accounting for Collaborative Agreements" ("EITF 07-01"). EITF 07-01 defines collaborative arrangements and establishes reporting requirements for transactions between participants and third parties in a collaborative arrangement. EITF 07-01 prohibits companies from applying the equity method of accounting to activities performed outside a separate legal entity by a virtual joint venture. Instead, revenues and costs incurred with third parties in connection with the collaborative arrangement should be presented gross or net by the collaborators based on the criteria in EITF Issue No. 99-19, "Reporting Revenue Gross as a Principal versus Net as an Agent", and other applicable accounting literature. The consensus should be applied to collaborative arrangements in existence at the date of adoption using a modified retrospective method that requires reclassification in all periods presented for those arrangements still in effect at the transition date, unless that application is impracticable. The consensus is effective for fiscal years beginning after December 15, 2008. The adoption of EITF 07-01 is not expected to have a material impact on the Company's financial statements.

Subsequent Events

Workforce Reduction

In January of 2009, we announced a workforce reduction of approximately 42 percent, or 144 employees, a majority of which were employed in manufacturing and related support functions. This decision was made based on the challenging economic conditions and a decline in forecasted contract manufacturing demand in 2009. We expect an annualized reduction of approximately $27 million in cash expenditures when changes are completed in the second quarter of 2009. Upon completion of the workforce reduction, we expect to remain staffed with approximately 200 employees to develop XOMA 052, develop and license proprietary products and technology, and continue fully funded antibody discovery and development activities with our pharmaceutical partners in collaborations and the U.S. government in biodefense. We are temporarily suspending operations in four of our leased buildings. Our leases on these four buildings expire in the period from 2011 to 2014 and total minimum lease payments due from January of 2009 until expiration of the leases are $7.2 million. We are currently evaluating our options as to future use of these leased spaces. We will maintain our pilot scale manufacturing plant with some full scale capability.

Approval of LUCENTIS® in Japan

In January of 2009, Novartis announced that LUCENTIS® received approval in Japan for the treatment of (wet) age-related macular degeneration. We are entitled to receive low single-digit royalties on worldwide sales of LUCENTIS®.

Expansion of Collaboration with Takeda

In February of 2009, we expanded our existing collaboration with Takeda to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. We received a $29.0 million expansion fee, of which $23.2 million was received in cash in February of 2009 and the remainder was witheld for payment to the Japanese taxing authority. In addition, we expect to pay approximately $1.5 million of additional expenses to Takeda related to the agreement. We may receive potential milestones and royalties on sales of antibody products in the future.

EMEA and Health Canada Recommendations and FDA Warning Regarding RAPTIVA®

In February of 2009, the EMEA announced that it recommended suspension of the marketing authorization of RAPTIVA® in the European Union, EMD Serono announced that, in consultation with Health Canada, it will suspend marketing of RAPTIVA® in Canada, and the FDA issued a public health advisory concerning three confirmed reports, and one possible report, of PML in patients using RAPTIVA®. We are entitled to receive mid-single digit royalties on worldwide sales of RAPTIVA®. We expect sales of RAPTIVA® to decline significantly as a result of these and other related events.

Forward-Looking Information and Cautionary Factors That May Affect Future Results

Certain statements contained herein related to the sufficiency of our cash resources, levels of future revenues, losses, expenses and cash, future sales of approved products, as well as other statements related to current plans for product development and existing and potential collaborative and licensing relationships, or that otherwise relate to future periods, are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements are based on assumptions that may not prove accurate. Actual results could differ materially from those anticipated due to certain risks inherent in the biotechnology industry and for companies engaged in the development of new products in a regulated market. Among other things, the period for which our cash resources are sufficient could be shortened if expenditures are made earlier or in larger amounts than anticipated or are unanticipated, if anticipated revenues or cost sharing arrangements do not materialize, if funds are not otherwise available on acceptable terms; revenue levels may be other than as expected if sales of approved products are lower than expected; losses may be other than as expected for any of the reasons affecting revenues and expenses; expense levels and cash utilization may be other than as expected due to unanticipated changes in our research and development programs; and the sales efforts for approved products may not be successful if the parties responsible for marketing and sales fail to meet their commercialization goals, due to the strength of the competition, if physicians do not adopt the product as treatment for their patients or if remaining regulatory approvals are not obtained. These and other risks, including those related to the results of preclinical testing; the timing or results of pending and future clinical trials (including the design and progress of clinical trials; safety and efficacy of the products being tested; action, inaction or delay by the United States Food and Drug Administration ("FDA"), European or other regulators or their advisory bodies; and analysis or interpretation by, or submission to, these entities or others of scientific data); changes in the status of existing collaborative relationships; the ability of collaborators and other partners to meet their obligations; our ability to meet the demand of the United States government agency with which we have entered our government contracts; competition; market demands for products; scale-up and marketing capabilities; availability of additional licensing or collaboration opportunities; international operations; share price volatility; our financing needs and opportunities; uncertainties regarding the status of biotechnology patents; uncertainties as to the costs of protecting intellectual property; and risks associated with our status as a Bermuda company, are described in more detail in *Item 1A: Risk Factors.*

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

Interest Rate Risk

Our exposure to market rate risk for changes in interest rates relates primarily to our investment portfolio and our loan facilities. By policy, we make our investments in high quality debt securities, limit the amount of credit exposure to any one issuer and limit duration by restricting the term of the instrument. We generally hold investments to maturity, with a weighted average portfolio period of less than twelve months. We do not invest in derivative financial instruments.

We hold interest-bearing instruments that are classified as cash, cash equivalents and short-term investments. Fluctuations in interest rates can affect the principal values and yields of fixed income investments. If interest rates in the general economy were to rise rapidly in a short period of time, our fixed income investments could lose value.

The following table presents the amounts and related weighted average interest rates of our cash and investments at December 31, 2008 and 2007 (in thousands, except interest rate):

	Maturity	Carrying Amount (in thousands)	Fair Value (in thousands)	Weighted Average Interest Rate
December 31, 2008				
Cash and cash equivalents	Daily to 90 days	$ 9,513	$ 9,513	2.67%
Short-term investments	91 days to less than 12 months	1,301	1,299	4.64%
December 31, 2007				
Cash and cash equivalents	Daily to 90 days	$ 22,504	$ 22,500	5.01%
Short-term investments	91 days to less than 18 months	16,072	16,067	5.19%

Due to the adverse developments in the credit markets in 2008, we may experience reduced liquidity with respect to some of our investments. Our investments are generally held to maturity, with a weighted average portfolio period of less than twelve months. However, if the need arose to liquidate such securities before maturity, we may experience losses on liquidation.

We have the ability and intent to hold our debt securities to maturity when they will be redeemed at full par value. Accordingly, we consider any unrealized losses to be temporary and have not recorded an impairment charge during the year ended December 31, 2008.

In November of 2006, we entered into a five-year senior term loan facility with Goldman Sachs in the aggregate amount of $35.0 million with the principal due at maturity. In May of 2008, this facility was replaced with a new loan facility of $55.0 million, for which we borrowed the full amount thereunder. As of December 31, 2008, $50.4 million remains outstanding under the new facility. Interest on the new facility is charged at a rate of the greater of (x) USD six-month LIBOR or (y) 3.0%, plus 8.5%, which was 12.3% at December 31, 2008.

As of December 31, 2008, we have an outstanding principal balance on our note with Novartis of $12.9 million, which is due in 2015. The interest rate on this note is charged at a rate of USD six-month LIBOR plus 2%, which was 3.85% at December 31, 2008. No further borrowing is available under this facility.

The variable interest rates related to our long-term debt instruments are based on LIBOR. We estimate that a hypothetical 100 basis point change in interest rates could increase or decrease our interest expense by approximately $642,000 on an annualized basis.

Item 8. Financial Statements and Supplementary Data

The following consolidated financial statements of the registrant, related notes and report of independent registered public accounting firm are set forth beginning on page F-1 of this report.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

Not applicable.

Item 9A. Controls and Procedures

Under the supervision and with the participation of our management, including our Chairman, Chief Executive Officer and President and our Vice President, Finance and Chief Financial Officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this report. Our disclosure controls and procedures are intended to ensure that the information we are required to disclose in the reports that we file or submit under the Securities Exchange Act of 1934 is (i) recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) accumulated and communicated to our management, including the Chairman, Chief Executive Officer and President and Vice President, Finance and Chief Financial Officer, as the principal executive and financial officers, respectively, to allow timely decisions regarding required disclosures. Based on this evaluation, our Chairman, Chief Executive Officer and President and our Vice President, Finance and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

We continue to enhance internal financial controls and staffing consistent with the requirements of the Sarbanes-Oxley Act of 2002. Apart from this, there were no changes in our internal controls over financial reporting during 2008 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial accounting.

Management's Report on Internal Control over Financial Reporting

Management, including our Chairman, Chief Executive Officer and President and our Vice President, Finance and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting (as such term is defined in Exchange Act Rules 13a-159f). The Company's internal control system was designed to provide reasonable assurance to the Company's management and board of directors regarding the preparation and fair presentation of published financial statements in accordance with accounting principles generally accepted in the United States.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2008. In making this assessment, Management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control—Integrated Framework*. Based on our assessment we believe that, as of December 31, 2008, our internal control over financial reporting is effective based on those criteria.

The Company's internal control over financial reporting as of December 31, 2008, has been audited by Ernst & Young, LLP, the independent registered public accounting firm who also audited the Company's consolidated financial statements. Ernst & Young's attestation report on the Company's internal control over financial reporting follows.

Changes in Internal Control over Financial Reporting

Our management, including our Chairman, Chief Executive Officer and President and our Vice President, Finance and Chief Financial Officer, has evaluated any changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2008, and has concluded that there was no change during such quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders of XOMA Ltd.:

We have audited XOMA Ltd.'s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). XOMA Ltd.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, XOMA Ltd. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of XOMA Ltd. as of December 31, 2008 and 2007 and the related consolidated statements of operations, shareholders' equity (net capital deficiency) and cash flows for each of the three years in the period ended December 31, 2008 of XOMA Ltd., and our report dated March 10, 2009 expressed an unqualified opinion thereon that included an explanatory paragraph regarding XOMA Ltd.'s ability to continue as a going concern.

/s/ ERNST & YOUNG LLP

Palo Alto, California
March 10, 2009

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers, Corporate Governance

Certain information regarding our executive officers required by this Item is set forth as a Supplementary Item at the end of Part I of this Form 10-K (pursuant to Instruction 3 to Item 401(b) of Regulation S-K). The Company's Code of Ethics applies to all employees, officers and directors including the Chairman, Chief Executive Officer and President, the Vice President, Finance and Chief Financial Officer and Chief Accounting Officer, and is posted on the Company's website at www.xoma.com. Other information required by this Item will be included in the Company's proxy statement for the 2009 Annual General Meeting of Shareholders, under the sections labeled *"Item 1—Election of Directors"* and *"Compliance with Section 16(a) of the Securities Exchange Act of 1934"*, and is incorporated herein by reference.

Item 11. Executive Compensation

Information required by this Item will be included in the sections labeled *"Compensation of Executive Officers", "Summary Compensation Table", "Plan-Based Awards", "Outstanding Equity Awards", "Option Exercises and Share Vested Table", "Pension Benefits", "Non-Qualified Deferred Compensation"* and *"Director Compensation"* appearing in our proxy statement for the 2009 Annual General Meeting of Shareholders, and is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Shareholder Matters

Information required by this Item will be included in the sections labeled *"Share Ownership"* and *"Equity Compensation Plan Information"* appearing in our proxy statement for the 2009 Annual General Meeting of Shareholders, and is incorporated herein by reference.

Item 13. Certain Relationships and Related Transactions, and Director Independence

Information required by this Item will be included in the section labeled *"Transactions With Related Persons"* appearing in our proxy statement for the 2009 Annual General Meeting of Shareholders, and is incorporated herein by reference.

Item 14. Principal Accountant Fees and Services

Information required by this Item will be included in the section labeled *"Item 2—Appointment of Independent Auditors"* appearing in our proxy statement for the 2009 Annual General Meeting of Shareholders, and is incorporated herein by reference.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) The following documents are included as part of this Annual Report on Form 10-K:

(1) Financial Statements:

All financial statements of the registrant referred to in Item 8 of this Report on Form 10-K.

(2) Financial Statement Schedules:

All financial statements schedules have been omitted because the required information is included in the consolidated financial statements or the notes thereto or is not applicable or required.

(3) Exhibits:

See “Index to Exhibits” on page i of this report.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on this 11th day of March 2009.

XOMA LTD.

By: /s/ STEVEN B. ENGLE
Steven B. Engle
Chairman, Chief Executive Officer and President

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ STEVEN B. ENGLE **(Steven B. Engle)**	Chairman, Chief Executive Officer and President	March 11, 2009
/s/ FRED KURLAND **(Fred Kurland)**	Vice President, Finance and Chief Financial Officer	March 11, 2009
/s/ PATRICK J. SCANNON **(Patrick J. Scannon, M.D., Ph.D.)**	Executive Vice President, Chief Biotechnology Officer and Director	March 11, 2009
/s/ W. DENMAN VAN NESS **(W. Denman Van Ness)**	Lead Director	March 11, 2009
/s/ WILLIAM K. BOWES, JR. **(William K. Bowes, Jr.)**	Director	March 11, 2009
/s/ CHARLES J. FISHER **(Charles J. Fisher, M.D.)**	Director	March 11, 2009
/s/ PETER BARTON HUTT **(Peter Barton Hutt)**	Director	March 11, 2009
/s/ JOHN VARIAN **(John Varian)**	Director	March 11, 2009
/s/ PATRICK J. ZENNER **(Patrick J. Zenner)**	Director	March 11, 2009

Index to Consolidated Financial Statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Shareholders of XOMA Ltd.:

We have audited the accompanying consolidated balance sheets of XOMA Ltd. as of December 31, 2008 and 2007, and the related consolidated statements of operations, shareholders' equity (net capital deficiency), and cash flows for each of the three years in the period ended December 31, 2008. These consolidated financial statements are the responsibility of XOMA Ltd.'s management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

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

As discussed in Note 1 to the consolidated financial statements, the Company has recurring operating losses and cash, cash equivalents and short-term investments balance of $10.8 million. In addition, the Company has a long-term loan balance of $50.4 million, where, under certain circumstances, the obligation to repay this debt could be required in 2009. These conditions raise substantial doubt about its ability to continue as a going concern. Management's plans as to these matters are described in Note 1. The 2008 consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), XOMA Ltd.'s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 10, 2009 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Palo Alto, California
March 10, 2009

XOMA Ltd.

CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)

	December 31, 2008	December 31, 2007
ASSETS		
Current assets:		
Cash and cash equivalents	$ 9,513	$ 22,500
Short-term investments	1,299	16,067
Restricted cash	9,545	6,019
Receivables	16,686	12,135
Prepaid expenses and other current assets	1,296	1,113
Debt issuance costs	365	254
Total current assets	38,704	58,088
Property and equipment, net	26,843	25,603
Debt issuance costs—long-term	1,224	722
Other assets	402	402
Total assets	$ 67,173	$ 84,815
LIABILITIES AND SHAREHOLDERS' EQUITY (NET CAPITAL DEFICIENCY)		
Current liabilities:		
Accounts payable	$ 9,977	$ 6,995
Accrued liabilities	4,438	7,710
Accrued interest	1,588	878
Deferred revenue	9,105	8,017
Other current liabilities	1,884	—
Total current liabilities	26,992	23,600
Deferred revenue—long-term	8,108	10,047
Interest bearing obligation—long-term	63,274	50,850
Other long-term liabilities	200	—
Total liabilities	98,574	84,497
Commitments and contingencies (Note 5)		
Shareholders' equity (net capital deficiency):		
Preference shares, $0.05 par value, 1,000,000 shares authorized		
Series A, 210,000 designated, no shares issued and outstanding at December 31, 2008 and 2007	—	—
Series B, 8,000 designated, 2,959 shares issued and outstanding at December 31, 2008 and 2007 (aggregate liquidation preference of $29.6 million)	1	1
Common shares, $0.0005 par value, 210,000,000 shares authorized, 140,467,529 and 131,957,774 shares outstanding at December 31, 2008 and 2007, respectively	70	66
Additional paid-in capital	753,634	740,119
Accumulated comprehensive loss	(2)	(9)
Accumulated deficit	(785,104)	(739,859)
Total shareholders' equity (net capital deficiency)	(31,401)	318
Total liabilities and shareholders' equity (net capital deficiency)	$ 67,173	$ 84,815

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

XOMA Ltd.

CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share amounts)

	Year Ended December 31,		
	2008	2007	2006
Revenues:			
License and collaborative fees	$ 16,366	$ 36,460	$ 2,846
Contract and other revenue	30,473	31,057	16,329
Royalties	21,148	16,735	10,323
Total revenues	67,987	84,252	29,498
Operating costs and expenses:			
Research and development (including contract related of $20,828, $17,032, and $10,909, respectively, for the years ended December 31, 2008, 2007, and 2006)	82,576	66,215	52,094
General and administrative	24,145	20,581	18,088
Total operating costs and expenses	106,721	86,796	70,182
Loss from operations	(38,734)	(2,544)	(40,684)
Other income (expense):			
Investment and interest income	859	1,866	1,675
Interest expense	(7,654)	(11,585)	(12,932)
Other income (expense)	(99)	(63)	100
Net loss before taxes	(45,628)	(12,326)	(51,841)
Income tax benefit	383	—	—
Net loss	$ (45,245)	$ (12,326)	$ (51,841)
Basic and diluted net loss per common share	$ (0.34)	$ (0.10)	$ (0.54)
Shares used in computing basic and diluted net loss per common share	132,928	127,946	95,961

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

XOMA Ltd.

CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY
(NET CAPITAL DEFICIENCY)
(in thousands)

	Preferred Shares		Common Shares					Total Shareholders' Equity (Net Capital Deficiency)
	Shares	Amount	Shares	Amount	Paid-In Capital	Accumulated Comprehensive Income (Loss)	Accumulated Deficit	
Balance, December 31, 2005	3	$ 1	86,313	$ 43	$655,041	$ (66)	$ (675,692)	$ (20,673)
Exercise of share options, contributions to 401(k) and incentive plans	—	—	879	1	1,489	—	—	1,490
Share-based compensation expense under SFAS 123R	—	—	—	—	978	—	—	978
Conversion of convertible debt	—	—	18,262	9	31,807	—	—	31,816
Comprehensive income (loss):								
Net change in unrealized loss on investments	—	—	—	—	—	57	—	57
Net loss	—	—	—	—	—	—	(51,841)	(51,841)
Comprehensive loss								(51,784)
Balance, December 31, 2006	3	1	105,454	53	689,315	(9)	(727,533)	(38,173)
Exercise of share options, contributions to 401(k) and incentive plans	—	—	864	—	1,976	—	—	1,976
Share-based compensation expense under SFAS 123R	—	—	—	—	2,858	—	—	2,858
Conversion of convertible debt	—	—	25,640	13	45,970	—	—	45,983
Comprehensive loss:								
Net loss	—	—	—	—	—	—	(12,326)	(12,326)
Comprehensive loss	—	—	—	—	—	—	—	(12,326)
Balance, December 31, 2007	3	1	131,958	66	740,119	(9)	(739,859)	318
Exercise of share options, contributions to 401(k) and incentive plans	—	—	577	—	1,389	—	—	1,389
Share-based compensation expense under SFAS 123R	—	—	—	—	4,934	—	—	4,934
Sale of common shares	—	—	7,932	4	7,192	—	—	7,196
Comprehensive income (loss):								
Net change in unrealized loss on investments	—	—	—	—	—	7	—	7
Net loss	—	—	—	—	—	—	(45,245)	(45,245)
Comprehensive loss	—	—	—	—	—	—	—	(45,238)
Balance, December 31, 2008	3	$ 1	140,467	$ 70	$753,634	$ (2)	$ (785,104)	$ (31,401)

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

XOMA Ltd.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2008	2007	2006
Cash flows from operating activities:			
Net loss	$ (45,245)	$ (12,326)	$ (51,841)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:			
Depreciation and amortization	6,721	6,155	5,117
Common shares contribution to 401(k) and management incentive plans	1,008	1,321	1,088
Share-based compensation expense	4,934	2,858	978
Accrued interest on convertible notes and other interest bearing obligations	1,921	408	1,159
Revaluation of embedded derivative	—	6,101	6,945
Interest paid on conversion of convertible debt	—	(5,172)	—
Amortization of discount, premium and debt issuance costs of long-term and convertible debt	1,378	584	1,035
Amortization of premiums on short-term investments	20	(5)	18
Loss on disposal/retirement of property and equipment	99	146	11
Other non-cash adjustments	(20)	(7)	(3)
Changes in assets and liabilities:			
Receivables	(4,551)	(52)	(6,706)
Prepaid expenses and other current assets	(183)	(52)	(86)
Other assets	—	55	—
Accounts payable	2,982	2,809	(1,462)
Accrued liabilities	(3,272)	624	1,369
Deferred revenue	(851)	1,096	9,108
Other liabilities	2,084	—	—
Net cash (used in) provided by operating activities	(32,975)	4,543	(33,270)
Cash flows from investing activities:			
Proceeds from sales of investments	9,875	31,480	14,950
Proceeds from maturities of investments	8,099	3,840	17,834
Purchase of investments	(3,199)	(32,994)	(28,391)
Transfer of restricted cash	(3,526)	(1,689)	(4,330)
Purchase of property and equipment	(8,060)	(9,469)	(8,506)
Net cash provided by (used in) investing activities	3,189	(8,832)	(8,443)
Cash flows from financing activities:			
Proceeds from issuance of long-term debt	55,000	2,840	36,541
Principal payments of long-term debt	(45,779)	(4,707)	—
Proceeds from issuance of convertible notes	—	—	11,969
Proceeds from issuance of common shares	7,578	654	401
Net cash provided by (used in) financing activities	16,799	(1,213)	48,911
Net (decrease) increase in cash and cash equivalents	(12,987)	(5,502)	7,198
Cash and cash equivalents at the beginning of the period	22,500	28,002	20,804
Cash and cash equivalents at the end of the period	$ 9,513	$ 22,500	$ 28,002

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

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Business and Summary of Significant Accounting Policies

Business

XOMA Ltd. ("XOMA" or the "Company"), a Bermuda company, is a biopharmaceutical company that discovers, develops and manufactures therapeutic antibodies and other agents designed to treat inflammatory, autoimmune, infectious and oncological diseases. The Company's products are presently in various stages of development and most are subject to regulatory approval before they can be commercially launched. The Company receives royalties from Genentech, Inc. ("Genentech") on two approved products, RAPTIVA®, for the treatment of moderate-to-severe plaque psoriasis, and LUCENTIS®, for the treatment of neovascular (wet) age-related macular degeneration. XOMA also receives royalties from UCB Celltech, a branch of UCB S.A. ("UCB") on sales of CIMZIA® in the United States and Switzerland for the treatment of Crohn's disease. XOMA's pipeline includes both proprietary products and collaborative programs at various stages of preclinical and clinical development.

Liquidity and Financial Condition

The Company has incurred significant operating losses and negative cash flows from operations since its inception. As of December 31, 2008, the Company had cash, cash equivalents and short-term investments of $10.8 million, restricted cash of $9.5 million and working capital of $11.7 million. Based on cash and cash equivalents on hand at December 31, 2008 and anticipated spending levels, revenues, collaborator funding and other sources of funding the Company believes to be available, the Company estimates that it has sufficient cash resources to meet its anticipated net cash needs through the next twelve months, excluding a potential acceleration of the Company's outstanding principal on a term loan facility with Goldman Sachs Specialty Lending Holdings, Inc. ("Goldman Sachs") due to an anticipated decline in RAPTIVA® royalties in 2009. The Company expects sales of RAPTIVA® to decline significantly and it anticipates that as a consequence it will be in violation of or default under the relevant provisions of this facility during the second or third quarter of this year. The Company is currently in discussions with the lenders regarding a restructuring of the terms of this loan to address the effects of these developments. However, there can be no assurance that the Company will reach agreement with the lenders on acceptable terms, or at all, as a result of these discussions. If the Company cannot reach agreement on acceptable terms, the lenders could demand payment on the debt. If the lenders demand payment, the Company currently would not have the resources to pay the full amount due.

The Company may be required to raise additional funds through public or private financings, strategic relationships, or other arrangements. The Company cannot assure that the funding, if needed, will be available on terms attractive to it, or at all. Furthermore, any additional equity financings may be dilutive to shareholders and debt financing, if available, may involve restrictive covenants. The Company's failure to raise capital as and when needed could have a negative impact on its financial condition and its ability to pursue business strategies. If adequate funds are not available, the Company has developed contingency plans that may require the Company to delay, reduce the scope of, or eliminate one or more of its development programs. In addition, the Company may be required to further reduce personnel-related costs and other discretionary expenditures that are within the Company's control.

The accompanying financial statements have been prepared assuming the Company will continue to operate as a going concern, which contemplates the realization of assets and the settlement of liabilities in the normal course of business. The consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from uncertainty related to the Company's ability to continue as a going concern.

Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Use of Estimates and Reclassifications

The preparation of these consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures. On an on-going basis, management evaluates its estimates, including those related to revenue recognition, research and development expense, long-lived assets and stock-based compensation. The Company bases its estimates on historical experience and on various other market specific and other relevant assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ significantly from these estimates.

In the third quarter of 2008, the National Institutes of Health ("NIH") completed an audit of the Company's 2007 actual data and developed billing rates for the period from January of 2007 to June of 2009 to be used for all of the Company's contracts with the National Institute of Allergy and Infectious Diseases ("NIAID"), a part of the NIH, including Contract No. HHSN26620060008C/N01-A1-60008l ("NIAID 2"). While the audited NIH rates are considered final for 2007 billings, these NIH rates are considered provisional for the period from January of 2008 to June of 2009 and thus are subject to future audits at the discretion of NIAID's contracting office. In September of 2008, XOMA retroactively applied these NIH rates to the invoices from 2007 through the third quarter of 2008 resulting in an adjustment to decrease revenue by $2.7 million. The adjustment increased the Company's loss from operations and net loss for the year ended December 31, 2008 by $2.7 million. The adjustment also increased basic and diluted net loss per common share by $0.02 for the year ended December 31, 2008.

Prior to the NIH's audit, the Company's billings were based on provisional fringe, overhead and general and administrative rates supported by XOMA's 2005 actual data. As the NIH audit only covered 2007 actual data, which differs significantly from 2006 actual data primarily due to a 22% increase in headcount from 2006 to 2007, management has determined that the original provisional rates are more reflective of 2006 actual data than 2007 actual data. Based on this understanding, the parties agreed to not adjust the 2006 billings with the provision that those billings are subject to future NIH audit at the discretion of the NIAID contracting office.

Certain reclassifications of prior period amounts have been made to our consolidated statements of cash flows to conform to the current period presentation.

Concentration of Risk

Cash equivalents, short-term investments, restricted cash and receivables are financial instruments, which potentially subject the Company to concentrations of credit risk. The Company maintains money market funds and short-term investments that were previously thought to bear a minimal risk. Recent volatility in the financial markets has created liquidity problems in these types of investments, and money market fund investors, including the Company, have recently been unable to retrieve the full amount of funds, even in highly-rated liquid money market accounts, upon maturity. As of December 31, 2008, the full amount of matured money market fund investments had been received by the Company.

The Company has not experienced any significant credit losses and does not generally require collateral on receivables. In 2008, three customers represented 31%, 30% and 20% of total revenues and as of December 31, 2008, there were billed receivables of $14.7 million outstanding from these three customers and one additional customer representing 33%, 28%, 16% and 15% of the accounts receivable balance. In 2007, four customers represented 36%, 20%, 16% and 13% of total revenues and as of December 31, 2007, there were billed and

unbilled receivables of $10.9 million outstanding from three of these customers representing 42%, 31% and 26% of the accounts receivable balance. In 2006, two customers represented 40% and 35% of total revenues and as of December 31, 2006, there were billed and unbilled receivables of $11.2 million outstanding from these customers and one additional customer representing 45%, 26% and 13% of the accounts receivable balance.

Significant Accounting Policies

The following policies are critical to an understanding of the Company's financial condition and results of operations because they require it to make estimates, assumptions and judgments about matters that are inherently uncertain.

Revenue Recognition

Revenue is generally recognized when the four basic criteria of revenue recognition are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or services have been rendered; (3) the fee is fixed and determinable; and (4) collectibility is reasonably assured. Determination of criteria (3) and (4) are based on management's judgments regarding the nature of the fee charged for products or services delivered and the collectibility of those fees. Allowances are established for estimated uncollectible amounts, if any.

The Company recognizes revenue from its license and collaboration arrangements, contract services, product sales and royalties. Revenue arrangements with multiple elements are divided into separate units of accounting if certain criteria are met, including whether the delivered element has stand-alone value to the customer and whether there is objective and reliable evidence of the fair value of the undelivered items. The consideration received is allocated among the separate units based on their respective fair values and the applicable revenue recognition criteria are applied to each of the separate units. Advance payments received in excess of amounts earned are classified as deferred revenue until earned.

License and Collaborative Fees

Revenue from non-refundable license, technology access or other payments under license and collaborative agreements where the Company has a continuing obligation to perform is recognized as revenue over the expected period of the continuing performance obligation. The Company estimates the performance period at the inception of the arrangement and reevaluates it each reporting period. This reevaluation may shorten or lengthen the period over which the remaining revenue is recognized. Changes to these estimates are recorded on a prospective basis.

Milestone payments under collaborative arrangements are recognized as revenue upon completion of the milestone events, once confirmation is received from the third party and collectibility is reasonably assured. This represents the culmination of the earnings process because the Company has no future performance obligations related to the payment. Milestone payments that require a continuing performance obligation on the part of the Company are recognized over the expected period of the continuing performance obligation. Amounts received in advance are recorded as deferred revenue until the related milestone is completed.

Contract Revenue

Contract revenue for research and development involves the Company providing research and development for manufacturing processes for collaborative partners, biodefense contracts or others. Revenue for these contracts is accounted for by a proportional performance, or output based, method where performance is based

on estimated progress toward elements defined in the contract. The amount of contract revenue and related costs recognized in each accounting period are based on management's estimates of the proportional performance during the period toward elements defined in the contract. Adjustments to estimates based on actual performance are recognized on a prospective basis and do not result in reversal of revenues should the estimate to complete be extended.

Up-front fees are recognized ratably over the expected benefit period under the arrangement. Given the uncertainties of research and development collaborations, significant judgment is required to determine the duration of the arrangement.

Royalty Revenue

Royalty revenue and royalty receivables are generally recorded in the periods these royalties are earned, in advance of collection. The royalty revenue and receivables in these instances is based upon communication with collaborative partners, historical information and forecasted sales trends. Under some of XOMA's agreements with licensees that include receipt of royalty revenue, the Company does not have sufficient historical information to estimate royalty revenues or receivables in the period that these royalties are earned. For these contracts, the Company records royalty revenue upon receipt of a royalty statement or cash.

Research and Development

The Company expenses research and development costs as incurred. Research and development expenses consist of direct and research-related allocated overhead costs such as facilities costs, salaries and related personnel costs and material and supply costs. In addition, research and development expenses include costs related to clinical trials to validate the Company's testing processes and procedures and related overhead expenses. Expenses resulting from clinical trials are recorded when incurred based in part on estimates as to the status of the various trials. From time to time, research and development expenses may include up-front fees and milestones paid to collaborative partners for the purchase of rights to in-process research and development. Such amounts are expensed as incurred.

Long-Lived Assets

In accordance with Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" the Company records impairment losses on long-lived assets used in operations when events and circumstances indicate that the assets might be impaired and the undiscounted cash flows estimated to be generated by those assets are less than the carrying amounts of those assets.

Share-Based Compensation

The Company grants qualified and non-qualified share options, shares and other share related awards under various plans to directors, officers, employees and other individuals. To date, share-based compensation issued under these plans consists of qualified and non-qualified incentive share options and shares. Share options are granted at exercise prices of not less than the fair market value of the Company's common shares on the date of grant. Generally, share options granted to employees fully vest four years from the grant date and expire ten years from the date of the grant or three months from the date of termination of employment (longer in case of death or certain retirements). Certain options granted to directors fully vest on the date of grant and certain options may fully vest upon a change of control of the Company. Additionally, the Company has an Employee Share Purchase Plan ("ESPP") that allows employees to purchase Company shares at a purchase price equal to 95% of the closing price on the exercise date.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

On January 1, 2006, the Company adopted SFAS No. 123 (revised 2004), "Share-Based Payment" ("SFAS 123R"), which requires the measurement and recognition of compensation expense for all share-based payment awards made to the Company's employees and directors, including employee share options and employee share purchases related to the ESPP, on estimated fair values. The Company is using the modified prospective transition method. Under this method, compensation cost recognized during the years ended December 31, 2008, 2007 and 2006, includes compensation cost for all share-based payments granted prior to, but not yet vested as of January 1, 2006, based on the grant date fair value estimated in accordance with the original provisions of SFAS 123 amortized on a graded vesting basis over the options' vesting period, and compensation cost for all share-based payments granted subsequent to January 1, 2006, based on the grant date fair value estimated in accordance with the provisions of SFAS 123R amortized on a straight-line basis over the options' vesting period. As permitted by SFAS 123R under the modified prospective transition method, the Company has not restated its financial results for prior periods to reflect expensing of share-based compensation and therefore the results for the years ended December 31, 2008, 2007 and 2006 are not comparable to earlier years.

In addition, the Company elected the "short-cut" method to establish its APIC pool required under SFAS 123(R) for the year ended December 31, 2006, as permitted by FASB Staff Position SFAS 123(R)-3, "Transition Election Related to Accounting for the Tax Effects of Share Base Payment Awards." In subsequent periods, the APIC pool will be increased by tax benefits from share-based compensation and decreased by tax deficiencies caused when the recorded share-based compensation for book purposes exceeds the allowable tax deduction. As of December 31, 2008, the Company had not recorded any adjustments to the APIC pool due to its loss position and the balance has remained zero.

The following table shows total share-based compensation expense included in the consolidated statements of operations for the years ended December 31, 2008, 2007 and 2006 (in thousands):

	Year Ended December 31,		
	2008	2007	2006
Research and development	$ 2,307	$ 1,005	$ 468
General and administrative	2,627	1,853	510
Total share-based compensation expense	$ 4,934	$ 2,858	$ 978

To estimate the value of an award, the Company uses the Black-Scholes option pricing model. This model requires inputs such as expected life, expected volatility and risk-free interest rate. The forfeiture rate also impacts the amount of aggregate compensation. These inputs are subjective and generally require significant analysis and judgment to develop. While estimates of expected life, volatility and forfeiture rate are derived primarily from the Company's historical data, the risk-free rate is based on the yield available on U.S. Treasury zero-coupon issues.

The fair value of share-based awards was estimated using the Black-Scholes model with the following weighted average assumptions for the years ended December 31, 2008, 2007 and 2006:

	Year Ended December 31,		
	2008	2007	2006
Dividend yield	0%	0%	0%
Expected volatility	65%	67%	79%
Risk-free interest rate	2.84%	4.22%	4.65%
Expected life	5.4 years	5.3 years	5.3 years

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Unvested share activity for the year ended December 31, 2008 is summarized below:

	Unvested Number of Shares	Weighted-Average Grant-Date Fair Value
Unvested balance at December 31, 2007	5,846,721	$ 2.75
Granted	11,475,750	1.98
Vested	(3,893,834)	2.39
Forfeited	(2,194,257)	2.33
Unvested balance at December 31, 2008	11,234,380	2.17

At December 31, 2008, there was $11.1 million of unrecognized share-based compensation expense related to unvested share options with a weighted average remaining recognition period of 2.9 years. The estimated fair value of options vested during 2008, 2007 and 2006 was $3.6 million, $0.4 million and $0.5 million, respectively. Total intrinsic value of the options exercised was $50,000 in 2008, $0.4 million during 2007 and $1,400 during 2006. Total cash received from share option exercises during 2008 was $0.1 million.

Income Taxes

The Company accounts for uncertain tax positions in accordance with FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" ("FIN 48"), an interpretation of SFAS No. 109, "Accounting for Income Taxes" ("SFAS 109"). The application of income tax law and regulations is inherently complex. Interpretations and guidance surrounding income tax laws and regulations change over time. As such, changes in the Company's subjective assumptions and judgments can materially affect amounts recognized in the consolidated financial statements.

SFAS 109 provides for the recognition of deferred tax assets if realization of such assets is more likely than not. Based upon the weight of available evidence, which includes the Company's historical operating performance and carryback potential, the Company has determined that total deferred tax assets should be fully offset by a valuation allowance.

Net Loss per Common Share

Basic and diluted net loss per common share is based on the weighted average number of common shares outstanding during the period. Diluted net loss per common share is based on the weighted average number of common shares and other dilutive securities outstanding during the period, provided that including these dilutive securities does not increase the net loss per share.

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

	December 31,		
	2008	2007	2006
Options for common shares	19,810	11,108	6,230
Convertible preference shares	3,818	3,818	29,459
Warrants for common shares (1)	—	125	125

(1) Expired in July of 2008

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Cash and Cash Equivalents

The Company considers all highly liquid debt instruments with maturities of three months or less at the time the Company acquires them to be cash equivalents. At December 31, 2008 and 2007, cash and cash equivalents consisted of overnight deposits, money market funds, commercial paper, repurchase agreements and debt securities with maturities of less than 90 days and are reported at fair value. Cash and cash equivalent balances were as follows as of December 31, 2008 and 2007 (in thousands):

	December 31, 2008			
	Cost Basis	Unrealized Gains	Unrealized Losses	Estimated Fair Value
Cash	$ 553	$ —	$ —	$ 553
Cash equivalents	8,960	—	—	8,960
Total cash and cash equivalents	$9,513	$ —	$ —	$ 9,513

	December 31, 2007			
	Cost Basis	Unrealized Gains	Unrealized Losses	Estimated Fair Value
Cash	$ 5,011	$ —	$ —	$ 5,011
Cash equivalents	17,493	1	(5)	17,489
Total cash and cash equivalents	$22,504	$ 1	$ (5)	$ 22,500

Short-term Investments

Short-term investments include debt securities classified as available-for-sale. Available-for-sale securities are stated at fair value, with unrealized gains and losses, net of tax, if any, reported in other comprehensive income (loss). The estimate of fair value is based on publicly available market information. Realized gains and losses and declines in value judged to be other-than-temporary on available-for-sale securities are also included in investment and other income. The cost of investments sold is based on the specific identification method. Interest and dividends on securities classified as available-for-sale are included in investment and other income.

Due to the recent adverse developments in the credit markets, XOMA may experience reduced liquidity with respect to some of its investments. These investments are generally held to maturity, which is typically less than one year. However, if the need arose to liquidate such securities before maturity, the Company may experience losses on liquidation.

At December 31, 2008, all short-term investments had maturities of less than one year. The Company has recorded these investments as current as these investments are available for current operations and management's intent is to realize these investments as required to fund current operations.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Short-term investments by security type at December 31, 2008 and 2007 were as follows (in thousands):

	December 31, 2008			
	Cost Basis	Unrealized Gains	Unrealized Losses	Estimated Fair Value
Corporate notes and bonds	$1,301	$ —	$ (2)	$ 1,299
Total Short-Term Investments	$1,301	$ —	$ (2)	$ 1,299

	December 31, 2007			
	Cost Basis	Unrealized Gains	Unrealized Losses	Estimated Fair Value
Corporate notes and bonds	$ 7,447	$ —	$ (5)	$ 7,442
State and municipal debt securities	8,625	—	—	8,625
Total Short-Term Investments	$16,072	$ —	$ (5)	$ 16,067

State and municipal debt securities as of December 31, 2007 included $8.6 million in auction rate securities with average ratings by Standard & Poors/Moody's of Aaa. During 2008, the Company sold all of its remaining auction rate securities. All sales were at par value, which was equal to recorded fair value, and no loss was incurred by the Company.

The Company reviews its instruments for other-than-temporary impairment whenever the value of the instrument is less than the amortized cost. All such investments have been or were in an unrealized loss position for less than twelve months. The Company has not sold similar investments at a loss and currently has the financial ability to hold short-term investments with an unrealized loss until maturity or recovery and not incur any recognized losses. As a result, the Company does not believe any unrealized losses represent other-than-temporary impairment. During the years ended December 31, 2008, 2007 and 2006, there were $4,000, zero and zero in realized gains on short-term investments. During the years ended December 31, 2008, 2007 and 2006, there were no realized losses on short-term investments.

Restricted Cash

Under the terms of its loan agreement with Goldman Sachs, the Company maintains a custodial account for the deposit of RAPTIVA®, LUCENTIS® and CIMZIA® royalty revenues in addition to a standing reserve of the next semi-annual interest payment due on the loan. This cash account and the interest earned thereon can be used solely for the payment of the semi-annual interest amounts due on April 1 and October 1 of each year and, at that time, amounts in excess of the interest reserve requirement may be used to pay down principal or be distributed back to the Company, at the discretion of the Goldman Sachs. At December 31, 2008, the restricted cash balance of $8.6 million was invested in money market funds. See *Note 3: Long-Term Debt and Other Arrangements* for additional discussion of the Goldman Sachs term loan.

In April of 2008, XOMA entered into an irrevocable letter of credit ("LOC") arrangement in favor of an insurance company agent that is certified to draw funds on the LOC not to exceed $942,000. The LOC is intended to cover any potential liability, loss, or costs incurred by the agent under any bonds or undertakings for the purpose of clearing manufacturing materials through U.S. Customs and Border Protection. The LOC will expire, if not renewed, in one year, and requires XOMA to record the LOC balance as restricted short-term cash on the consolidated balance sheet. The restricted cash balance of $0.9 million was invested in a certificate of deposit as of December 31, 2008.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Fair Value of Financial Instruments

Effective January 1, 2008, the Company adopted SFAS No. 157, *Fair Value Measurements* ("SFAS 157"). In February of 2008, the FASB issued FASB Staff Position No. FAS 157-2, *Effective Date of FASB Statement No. 157*, which provides a one year deferral of the effective date of SFAS 157 for non-financial assets and non-financial liabilities, except those that are recognized or disclosed in the financial statements at fair value at least annually. Therefore, the Company has adopted the provisions of SFAS 157 with respect to its financial assets and liabilities only. SFAS 157 defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles and enhances disclosures about fair value measurements. Fair value is defined under SFAS 157 as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value under SFAS 157 must maximize the use of observable inputs and minimize the use of unobservable inputs. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

- Level 1—Quoted prices in active markets for identical assets or liabilities.
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The adoption of SFAS 157 did not have a material effect on the Company's financial position, results of operations, or cash flows.

In accordance with SFAS 157, the following table represents the Company's fair value hierarchy for its financial assets (cash equivalents and investments) measured at fair value on a recurring basis as of December 31, 2008 (in thousands):

		Fair Value Measurements at Reporting Date Using		
	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Repurchase agreements	$ 8,950	$ 8,950	$ —	$ —
Certificates of deposit-restricted	952	952	—	—
Money market funds	10	10	—	—
Money market funds-restricted	8,593	8,593	—	—
Corporate notes and bonds	1,299	—	1,299	—
Total	$19,804	$ 18,505	$ 1,299	$ —

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Level 3 assets held during 2008 consisted of auction rate securities. During 2008, the Company sold all of its auction rate securities investments at par value, which equaled the recorded fair value, and has recognized no loss on the sale of such investments. The following table provides a summary of changes in fair value of the Company's Level 3 financial assets as of December 31, 2008 (in thousands):

	Auction Rate Securities
Balance at December 31, 2007	$ 8,625
Unrealized gains/losses included in other comprehensive income	—
Sales	(8,625)
Balance at December 31, 2008	$ —

Receivables

Receivables consisted of the following at December 31, 2008 and 2007 (in thousands):

	December 31,	
	2008	2007
Trade receivables	$ 16,274	$ 11,655
Other receivables	412	480
Total	$ 16,686	$ 12,135

Property and Equipment

Property and equipment is stated at cost. Equipment depreciation is calculated using the straight-line method over the estimated useful lives of the assets (three to seven years). Leasehold improvements, buildings and building improvements are amortized and depreciated using the straight-line method over the shorter of the lease terms or the useful lives (one to fifteen years).

Property and equipment consisted of the following at December 31, 2008 and 2007 (in thousands):

	December 31,	
	2008	2007
Furniture and equipment	$ 36,592	$ 34,618
Buildings, leasehold and building improvements	22,355	19,969
Construction-in-progress	1,108	1,845
Land	310	310
	60,365	56,742
Less: Accumulated depreciation and amortization	(33,522)	(31,139)
Property and equipment, net	$ 26,843	$ 25,603

Depreciation and amortization expense was $6.7 million, $6.2 million and $5.1 million for the years ended December 31, 2008, 2007 and 2006, respectively.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Accrued Liabilities

Accrued liabilities consisted of the following at December 31, 2008 and 2007 (in thousands):

	December 31,	
	2008	2007
Accrued management incentive compensation	$ —	$ 4,135
Accrued payroll costs	2,776	2,635
Accrued professional fees	514	617
Other	1,148	323
Total	$ 4,438	$ 7,710

Deferred Revenue

The Company defers revenue until all requirements under its revenue recognition policy are met. In 2008, the Company deferred $17.5 million of revenue from five contracts including Schering-Plough Research Institute ("SPRI"), Takeda Pharmaceutical Company Limited ("Takeda") and Novartis AG ("Novartis") and recognized $18.4 million of revenue from the five contracts.

In 2007, the Company deferred $23.3 million of revenue from five contracts including SPRI and Takeda and recognized $22.2 million of revenue from the five contracts, including the amortization of the remaining $4.3 million of the $10.0 million in up-front payments received from Novartis, formerly known as Chiron Corporation, related to the oncology collaboration contract entered into in February of 2004, due to the ending of the parties' mutual exclusivity obligation.

The following table shows the activity in deferred revenue for the years ended December 31, 2008 and 2007 (in thousands):

	Year ended December 31,	
	2008	2007
Beginning deferred revenue	$ 18,064	$ 16,968
Revenue deferred	17,515	23,254
Revenue recognized	(18,366)	(22,158)
Ending deferred revenue	$ 17,213	$ 18,064

Of the $17.2 million balance in deferred revenue at December 31, 2008, $9.1 million is expected to be earned over the next year and the remaining $8.1 million is expected to be earned over the next five years.

Other Current Liabilities

Other current liabilities consisted of the following at December 31, 2008 and 2007 (in thousands):

	December 31,	
	2008	2007
Due to government agency	$1,551	$—
Other	333	—
Total	$1,884	$—

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The amount due to government agency at December 31, 2008 relates to payments received from the NIAID 2 contract. In 2008, the NIH completed an audit of XOMA's 2007 actual data and developed billing rates for the period from January of 2007 to June of 2009 to be used for all of the Company's government contracts. As a result, XOMA retroactively applied these NIH rates to the invoices from 2007 through the third quarter of 2008 resulting in an adjustment to decrease revenue by $2.7 million. Refer to the *Use of Estimates and Reclassification* section above for more detail.

Of the $2.7 million liability recorded in the third quarter of 2008, $0.9 million was earned in the fourth quarter of 2008. Of the remaining balance at December 31, 2008, $1.6 million is expected to be earned over the next year and the remaining $0.2 million is expected to be earned by the completion of the contract in 2010 and is included in other long-term liabilities in the consolidated balance sheet as of December 31, 2008.

Supplemental Cash Flow Information

The following table shows the supplemental cash flow information for the years ended December 31, 2008, 2007 and 2006 (in thousands):

	Year ended December 31,		
	2008	2007	2006
Cash paid during the year for:			
Interest	$ 4,354	$ 3,077	$ 3,793
Income taxes	$ —	$ —	$ —
Non-cash investing and financing activities:			
Debt reduction on Novartis note	$ 7,500	$ —	$ —
Conversion of convertible debt to equity	$ —	$ 44,521	$ 27,479
Interest added to principal balance on Novartis note	$ 1,183	$ 1,323	$ 1,018
Payment of additional interest feature on convertible debt in shares	—	1,889	3,603

Non-cash transactions from financing activities for the year ended December 31, 2008 consisted of $7.5 million received in the form of debt reduction on XOMA's existing loan facility with Novartis, as part of the restructuring of the Company's product development collaboration with Novartis entered into in 2004 for the development and commercialization of antibody products for the treatment of cancer. In addition, interest of $1.2 million, $1.3 million and $1.0 million on the Novartis secured loan was added to the principal balance of the loan for the years ended December 31, 2008, 2007 and 2006, respectively.

Non-cash transactions from financing activities for the years ended December 31, 2007 and 2006 consisted of the conversion of $44.5 million and $27.5 million, respectively, in convertible notes to equity and the payment of 1.9 million shares and 3.6 million shares, respectively, related to the additional interest feature. See *Note 3: Long-Term Debt and Other Arrangements* to the Consolidated Financial Statements for additional discussion of the convertible debt and Novartis loan.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Segment Information

The Company has determined that, in accordance with SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information", it operates in one segment as it only reports operating results on an aggregate basis to the chief operating decision maker of the Company. The Company's property and equipment is held entirely in the United States.

Foreign Operations Information

Revenues earned by the Company's foreign operations are attributed to the following countries for each of the years ended December 31, 2008, 2007 and 2006 were as follows (in thousands):

	Year ended December 31,		
	2008	2007	2006
United States	$ 56,467	$ 46,029	$ 26,642
Ireland	2,603	32,088	645
Bermuda	8,917	6,135	2,211
Total	$ 67,987	$ 84,252	$ 29,498

Recent Accounting Pronouncements

Fair Value Measurements

In October of 2008, the FASB issued FSP 157-3 *Determining Fair Value of a Financial Asset in a Market That Is Not Active* (FSP 157-3). FSP 157-3 clarified the application of SFAS No. 157 in an inactive market. It demonstrated how the fair value of a financial asset is determined when the market for that financial asset is inactive. FSP 157-3 was effective upon issuance, including prior periods for which financial statements had not been issued. The implementation of this standard did not have a material impact on the Company's consolidated results of operations and financial condition.

Accounting for Advance Payments for Goods or Services to Be Used in Future Research and Development

In June of 2007, the Emerging Issues Task Force issued EITF Issue 07-03, "Accounting for Advance Payments for Goods or Services to Be Used in Future Research and Development" ("EITF 07-03"). EITF 07-03 addresses the diversity which exists with respect to the accounting for the non-refundable portion of a payment made by a research and development entity for future research and development activities. Under EITF 07-03, an entity would defer and capitalize non-refundable advance payments made for research and development activities until the related goods are delivered or the related services are performed. EITF 07-03 was effective for fiscal years beginning after December 15, 2007 and interim periods within those years. The adoption of EITF 07-03 did not have a material impact on the Company's financial statements.

Accounting for Collaborative Agreements

In December of 2007, the EITF reached a consensus on EITF Issue 07-01, "Accounting for Collaborative Agreements" ("EITF 07-01"). EITF 07-01 defines collaborative arrangements and establishes reporting requirements for transactions between participants and third parties in a collaborative arrangement. EITF 07-01 prohibits companies from applying the equity method of accounting to activities performed outside a separate legal entity by a virtual joint venture. Instead, revenues and costs incurred with third parties in connection with the collaborative arrangement should be presented gross or net by the collaborators based on the criteria in EITF

Issue 99-19, "Reporting Revenue Gross as a Principal versus Net as an Agent", and other applicable accounting literature. The consensus should be applied to collaborative arrangements in existence at the date of adoption using a modified retrospective method that requires reclassification in all periods presented for those arrangements still in effect at the transition date, unless that application is impracticable. The consensus is effective for fiscal years beginning after December 15, 2008. The adoption of EITF 07-01 is not expected to have a material impact on the Company's financial statements.

2. Licensing and Collaborative Agreements

Licensing Agreements

XOMA has granted over 50 licenses to biotechnology and pharmaceutical companies for use of patented and proprietary technologies relating to bacterial expression of recombinant pharmaceutical products. XOMA, in exchange, receives license and other fees as well as access to these companies' antibody display libraries, intellectual property and/or services that complement XOMA's existing development capabilities and support the Company's own antibody product development pipeline.

These agreements also generally provide releases of the licensee companies and their collaborators from claims under the XOMA patents arising from past activities using the companies' respective technologies to the extent they also used XOMA's antibody expression technology. Licensees are generally also allowed to use XOMA's technology in combination with their own technology in future collaborations.

Collaborative Agreements

Total research and development expenses incurred related to the Company's collaborative agreements were approximately $24.1 million, $20.4 million and $20.1 million in 2008, 2007 and 2006, respectively.

Genentech

In April of 1996, the Company entered into a collaboration agreement with Genentech for the development of RAPTIVA®. In March of 2003, it entered into amended agreements which called for XOMA to share in the development costs and to receive a 25% share of future U.S. operating profits and losses and a royalty on sales outside the United States. The amended agreements also called for Genentech to finance the Company's share of development costs up until first FDA marketing approval via a convertible subordinated loan, and its share of pre-launch marketing and sales costs via an additional commercial loan facility. Under the loan agreement, upon FDA approval of the product, which occurred in October of 2003, the Company elected to pay $29.6 million of the development loan in convertible preference shares, which are convertible into approximately 3.8 million common shares at a price of $7.75 per common share. The commercial loan was repaid in cash in two installments in 2004.

In January of 2005, the Company announced a restructuring of its arrangement with Genentech on RAPTIVA®. Under the restructured arrangement, the Company is entitled to receive mid-single digit royalties on worldwide sales of RAPTIVA® in all indications. The previous cost and profit sharing arrangement for RAPTIVA® in the U.S. was discontinued and Genentech is responsible for all operating and development costs associated with the product. In addition, the Company's remaining obligation under the development loan was extinguished.

In December of 1998, the Company licensed its bacterial cell expression technology to Genentech, which was utilized to develop LUCENTIS® for the treatment of neovascular (wet) age-related macular degeneration. The Company is entitled to receive a low single-digit royalty on worldwide sales of LUCENTIS®.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company recognizes RAPTIVA® and LUCENTIS® royalty revenue when the underlying sales occur. Total royalties recognized for the years ended December 31, 2008, 2007 and 2006 were $21.0 million, $16.7 million and $10.3 million, respectively.

UCB

In December of 1998, the Company licensed its bacterial cell expression technology to Celltech Therapeutics Ltd., now UCB, which utilized it in the development of CIMZIA® for the treatment of moderate-to-severe Crohn's disease in adults who have not responded to conventional therapies. UCB announced in April of 2008 that CIMZIA® received FDA approval for the treatment of Crohn's disease. CIMZIA® was approved in Switzerland for the treatment of Crohn's disease in September of 2007. The Company is entitled to receive a low single-digit royalty on sales of CIMZIA® in the U.S. and Switzerland. The Company recognizes CIMZIA® royalty revenue upon receipt of a royalty statement, until such time that sufficient historical information is available to estimate royalty revenues or receivables in the period. During 2008, royalties received from sales of CIMZIA® were not material.

Novartis

In November of 2008, the Company restructured its product development collaboration with Novartis entered into in 2004 for the development and commercialization of antibody products for the treatment of cancer. Under the restructured agreement, the Company received $6.2 million in cash and $7.5 million in the form of debt reduction on its existing loan facility with Novartis. In addition, the Company may, in the future, receive milestones and double-digit royalty rates for certain product programs and options to develop or receive royalties on additional programs. In exchange, Novartis received control over certain programs under the original product development collaboration. The Company recognized revenue on the $13.7 million consideration received in November of 2008, as XOMA had completed the transfer of the full rights to and materials of the collaboration targets now controlled by Novartis. The Company will recognize revenue relating to the milestones when they are achieved and on the royalties when the underlying sales occur.

Under the original product development collaboration, XOMA received initial payments of $10.0 million in 2004, which was being recognized ratably over five years, the expected term of the agreement, as license and collaborative fees. In February of 2007, the Company announced the parties' mutual exclusivity obligation to conduct antibody discovery, development and commercialization work in oncology had ended. The expiration of this mutual obligation had no impact on the existing collaboration projects which had reached the development stage and the parties continued to collaborate on a non-exclusive basis. The entire remaining unamortized balance of $4.3 million, at December 31, 2006, associated with the up-front collaboration fee of $10.0 million was recognized in 2007 due to the change in estimate from five years to three years.

A loan facility of up to $50.0 million was available to the Company to fund up to 75% of its share of development expenses incurred beginning in 2005. See *Note 3: Long-Term Debt and Other Arrangements* for additional discussion of the financing arrangement between XOMA and Novartis.

In December of 2008, the Company entered into a Manufacturing and Technology Transfer Agreement with Novartis, effective July 1, 2008. Under this agreement, XOMA has been engaged by Novartis to perform research and development, process development, manufacturing and technology transfer activities with respect to certain product programs under the original product development collaboration. The work performed under this agreement is fully funded by Novartis. The Company will recognize revenue on the research and development and other services as they are performed on a time and materials basis.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

NIAID

In September of 2008, the Company announced that it had been awarded a $65 million multiple-year contract funded with federal funds from NIAID, a part of the NIH (Contract No. HHSN272200800028C), to continue development of drug candidates toward clinical trials in the treatment of botulism poisoning, a potentially deadly muscle paralyzing disease. The contract work is being performed on a cost plus fixed fee basis over a three-year period. The Company is recognizing revenue under the arrangement as the services are being performed on a proportional performance basis.

In July of 2006, the Company was awarded a $16.3 million contract, NIAID 2, to produce monoclonal antibodies for the treatment of botulism to protect United States citizens against the harmful effects of botulinum neurotoxins used in bioterrorism. The contract work is being performed on a cost plus fixed fee basis. The original contract was for a three-year period, however the contract has been extended into 2010. The Company is recognizing revenue as the services are being performed on a proportional performance basis. In 2008, the NIH completed an audit of XOMA's 2007 actual data and developed billing rates for the period from January of 2007 to June of 2009 to be used for all of the Company's government contracts. As a result, XOMA retroactively applied these NIH rates to the invoices from 2007 through the third quarter of 2008 resulting in an adjustment to decrease revenue by $2.7 million. The Company will apply the $2.7 million to future billing to the NIH for the services performed. Refer to the *Use of Estimates and Reclassification* section above for more detail. As of December 31, 2008, $1.8 million of the $2.7 million credit remains to be applied to future services.

In March of 2005, the Company was awarded a $15.0 million contract from NIAID to develop three anti-botulinum neurotoxin monoclonal antibody therapeutics. The contract work was performed over an 18-month period and was 100% funded with federal funds from NIAID under Contract No. HHSN266200500004C. The Company recognized revenue over the life of the contract as the services were performed on a proportional performance basis, and, as per the terms of the contract, a 10% retention on all revenue was deferred and classified as a receivable until final acceptance of the contract which was achieved in October of 2006.

Schering-Plough

In May of 2006, the Company entered into a collaboration agreement with the SPRI division of Schering-Plough Corporation for therapeutic monoclonal antibody discovery and development. Under the agreement, SPRI will make up-front, annual maintenance and milestone payments to the Company, fund the Company's research and development and manufacturing activities related to the agreement and pay the Company royalties on sales of products resulting from the collaboration. During the collaboration, the Company will discover therapeutic antibodies against one or more targets selected by SPRI, use the Company's proprietary Human Engineering™ technology to humanize antibody candidates generated by hybridoma techniques, perform preclinical studies to support regulatory filings, develop cell lines and production processes and produce antibodies for initial clinical trials. The Company will recognize revenue on the up-front payments on a straight-line basis over the expected term of each target antibody discovery, on the research and development and manufacturing services as they are performed on a time and materials basis, on the maintenance fees when they are due, on the milestones when they are achieved and on the royalties when the underlying sales occur.

Schering-Plough/AVEO

In April of 2006, XOMA entered into an agreement with AVEO Pharmaceuticals, Inc ("AVEO") to utilize XOMA's Human Engineering™ technology to humanize AV-299 under which AVEO paid XOMA an up-front license fee and development milestones. Under this agreement XOMA created four Human Engineering™ versions of the original AV-299, all of which met design goals and from which AVEO selected one as its lead development candidate.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In September of 2006, as a result of the successful humanization of AV-299, XOMA entered into a second agreement with AVEO to manufacture and supply AV-299 in support of early clinical trials. Under the agreement, XOMA created AV-299 production cell lines, conducted process and assay development and performed Good Manufacturing Practices ("cGMP") manufacturing activities. AVEO retains all development and commercialization rights to AV-299 and is responsible to pay the Company annual maintenance fees, additional development milestones and royalties if certain targets are met in the future. The Company will recognize revenue on the research and development and manufacturing services as they are performed on a time and materials basis, on the maintenance fees when they are due, on the milestones when they are achieved and on the royalties when the underlying sales occur.

In April of 2007, Schering-Plough Corporation, acting through its SPRI division, entered into a research, development and license agreement with AVEO concerning AV-299 and other anti-HGF molecules. In connection with the aforementioned license agreement, AVEO has assigned its entire right, title and interest in, to and under its manufacturing agreement with XOMA to SPRI.

Takeda

In November of 2006, the Company entered into a collaboration agreement with Takeda for therapeutic monoclonal antibody discovery and development. Under the agreement, Takeda will make up-front, annual maintenance and milestone payments to the Company, fund its research and development and manufacturing activities for preclinical and early clinical supplies and pay royalties on sales of products resulting from the collaboration. Takeda will be responsible for clinical trials and commercialization of drugs after an Investigational New Drug Application ("IND") submission and is granted the right to manufacture once the product enters into Phase 2 clinical trials. During the collaboration, the Company will discover therapeutic antibodies against multiple targets selected by Takeda. The Company will recognize revenue on the up-front payments on a straight-line basis over the expected term of each target antibody discovery, on the research and development and manufacturing services as they are performed on a time and materials basis, on the maintenance fees when they are due, on the milestones when they are achieved and on the royalties when the underlying sales occur.

Pfizer

In August of 2007, XOMA entered into a license agreement with Pfizer Inc. ("Pfizer") for non-exclusive, worldwide rights for XOMA's patented bacterial cell expression technology for research (including phage display), development and manufacturing of antibody products. Under the terms of the agreement, XOMA received a license fee payment of $30.0 million in 2007 and milestone payments of $0.7 million, including $0.5 million for the initiation of a Phase 3 clinical trial in 2008. We may receive milestones (licensee achievement based), royalty and other fees on future sales of all products subject to this license, including products currently in late-stage clinical development. The Company has no further obligations under the license agreement and accordingly, the $30.0 million was recorded as license fee revenue in the accompanying statement of operations for the year ended December 31, 2007.

Other

In July of 2007, the Company reached an agreement with a major collaborator to resolve its liability for material cost charges incurred pursuant to the collaboration arrangement. As a result, the Company reduced its research and development costs by $2.8 million included in the statement of operations for the year ended December 31, 2007. Additionally, as of September 30, 2007, the Company eliminated an approximate $1.8 million liability carried on the balance sheet since December 31, 2006 and established a collaboration receivable balance of $1.0 million for the remaining balance related to the material cost charges liability resolution, which was collected prior to December 31, 2007.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

3. Long-Term Debt and Other Arrangements

As of December 31, 2008, the Company had long-term debt of $63.3 million, including $50.4 million outstanding under the new Goldman Sachs term loan and $12.9 million outstanding under the Novartis note. In 2008, XOMA incurred interest expense of $7.7 million, including $5.1 million related to borrowings under the Goldman Sachs term loan and $1.2 million related to borrowings under the Novartis note, and amortization of debt issuance costs of $1.4 million related to the Goldman Sachs term loan.

As of December 31, 2007, the Company had long-term debt of $50.9 million, including $30.3 million outstanding from the original Goldman Sachs term loan and $20.6 million outstanding from the Novartis note. In 2007, XOMA incurred interest expense of $11.6 million, including $3.8 million related to the Goldman Sachs term loan, $1.3 million related the Novartis note and $6.5 million related to the convertible debt. In 2007, XOMA also recognized amortization of debt issuance costs of $0.3 million related to the Goldman Sachs term loan.

Goldman Sachs Term Loan

In November of 2006, the Company entered into a five-year, $35.0 million term loan facility ("the original facility") with Goldman Sachs and borrowed the full amount thereunder. Indebtedness under the original facility incurred interest at an annual rate equal to six-month LIBOR plus 5.25%, and was secured by all rights to receive payments due to the Company relating to RAPTIVA®, LUCENTIS® and CIMZIA®.

In May of 2008, the Company entered into a five-year, $55.0 million amended and restated term loan facility with Goldman Sachs (the "new facility") refinancing the original facility and borrowed the full amount thereunder. Indebtedness under the new facility bears interest at an annual rate equal to the greater of (x) six-month LIBOR or (y) 3.0%, plus 8.5% and is subject to reset on April 1 and October 1 of each year. As of December 31, 2008, the interest rate was 12.3%. The debt is secured by all rights to receive payments due to the Company relating to RAPTIVA®, LUCENTIS® and CIMZIA®. Payments received by the Company in respect of these payment rights, in addition to a standing reserve equal to the next semi-annual interest payment, are held in a custodial account which is classified as restricted cash. This cash account and the interest earned thereon can be used solely for the payment of the semi-annual interest amounts due on April 1 and October 1 of each year and, at that time, amounts in excess of the interest reserve requirement may be used to pay down principal or be distributed back to the Company, at the discretion of Goldman Sachs. The Company may prepay indebtedness under the facility at any time, subject to certain prepayment premiums if prepaid during the first four years.

The Company is required to comply with certain covenants including a ratio of royalties collected to interest payable and a requirement that quarterly U.S. and outside-the-U.S. sales of RAPTIVA® and LUCENTIS® exceed certain specified minimum levels and XOMA was in compliance with these covenants as of December 31, 2008. The Company's ability to comply with these covenants is dependent on continued sales by Genentech, UCB and their partners of these products at adequate levels, and any significant reduction in such sales could cause the Company to violate or be in default under these provisions, which could result in acceleration of the Company's obligation to repay this debt, as discussed in *Note 1* to the consolidated financial statements.

Proceeds from the new facility were used to pay the outstanding principal and accrued interest under the original facility, certain fees and expenses in connection with the new facility and for general corporate purposes. At December 31, 2008, the outstanding principal balance under the new facility totaled $50.4 million and the related balance in restricted cash was $8.6 million. Debt issuance costs under the new facility of $2.0 million are being amortized on a straight-line basis over the five-year life of the loan and are disclosed as current and long-term debt issuance costs on the balance sheet. Unamortized debt issuance costs under the original facility were expensed upon payment of the underlying loan facility.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Novartis Note

In May of 2005, the Company executed a secured note agreement with Novartis. Under the note agreement, Novartis agreed to make semi-annual loans to the Company to fund up to 75% of the Company's research and development and commercialization costs under the collaboration arrangement, not to exceed $50.0 million in aggregate principal amount. Any unpaid principal amount together with accrued and unpaid interest was due and payable in full on June 21, 2015, the tenth anniversary date of the advance date on which the first loan was made. Interest on the unpaid balance of the principal amount of each loan accrues at six-month LIBOR plus 2%, which was equal to 3.85% at December 31, 2008, and is payable semi-annually in June and December of each year. Additionally, the interest rate resets in June and December of each year. At the Company's election, the semi-annual interest payments can be added to the outstanding principal amount, in lieu of a cash payment, as long as the aggregate principal amount does not exceed $50.0 million. The Company has made this election for each interest payment thus far. Loans under the note agreement are secured by the Company's interest in its collaboration with Novartis, including any payments owed to the Company thereunder.

In November of 2008, the Company restructured its product development collaboration with Novartis. Under the restructured agreement (see*Note 2: Novartis* for further detail), the Company's existing debt was reduced by $7.5 million. In addition, the Company made an additional principal repayment on its Novartis note of $1.4 million in November of 2008. Pursuant to this restructuring, no additional borrowings will be made by XOMA on the Novartis note.

At December 31, 2008, the outstanding principal balance under this note agreement totaled $12.9 million.

Convertible Senior Notes

In February of 2006, the Company completed an exchange offer with holders of its 6.5% convertible senior notes due 2012 in which the Company exchanged $60.0 million aggregate principal amount of its new 6.5% Convertible SNAPs$_{SM}$ due 2012 (the "New Notes") for all $60.0 million aggregate principal amount of its then outstanding convertible senior notes due 2012. The Company also issued an additional $12.0 million of New Notes to the public for cash at a public offering price of 104% of principal, or $12.5 million. The New Notes were initially convertible into approximately 38.4 million common shares at a conversion rate of 533.4756 of common shares per $1,000 principal amount of New Notes, which is equivalent to a conversion price of approximately $1.87 per common share.

The Company separately accounted for the additional interest payment feature of the New Notes as an embedded derivative instrument, which was measured at fair value and classified on the balance sheet with the convertible debt. Changes in the fair value of the embedded derivative were recognized in earnings as a component of other income (expense). The initial fair value of the derivative was subtracted from the carrying value of the debt, reflected as a debt discount, which was amortized as interest expense using the effective interest method through the date the notes were scheduled to mature, and separately reported as a derivative liability.

The additional New Notes were issued to the initial purchasers for net proceeds of $11.8 million. Debt issuance costs related to the New Notes of approximately $0.7 million were being amortized on a straight-line basis over the original 72-month life of the notes. Additional debt issuance costs of $2.0 million, related to the modification of the existing debt, were expensed as incurred with $1.1 million and $0.9 million expensed during the quarters ended March 31, 2006 and December 31, 2005, respectively.

At the time of note conversion, unamortized discount, premium and debt issuance costs related to the converted notes were charged to shareholders' equity.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

During the first quarter of 2007, $42.0 million of New Notes were voluntarily converted by holders through March 7, 2007, at which time the Company announced that it had elected to automatically convert all of the remaining $2.5 million of New Notes outstanding. As a result, during the first quarter of 2007, 25,640,187 of common shares were issued to effect the conversion of the principal balances. Additionally, the Company issued 1,889,317 shares and $5.2 million in cash to satisfy the remaining additional interest payment feature related to these converted New Notes. The Company recorded a $6.1 million charge to interest expense as a result of the revaluation of the embedded derivative related to the additional interest feature of the convertible notes.

For the year ended December 31, 2006, $27.5 million of New Notes were converted into 18,262,264 common shares including 3,602,879 shares related to the additional interest payment feature of the notes. As of December 31, 2006, the Company elected to pay all additional interest owed in common shares. The Company recorded a $6.9 million charge to interest expense during the year ended December 31, 2006, as a result of an increase in the fair value of the embedded derivative on its convertible debt including $4.8 million related to the additional interest feature of the converted notes.

For the years ended December 31, 2007 and 2006, the Company incurred $0.2 million and $3.4 million, respectively, in interest expense on its convertible debt. Interest expense was payable on a semi-annual basis. Additionally, the Company amortized a net of $0.1 million and $1.0 million in debt issuance costs, premium and discount for the year ended December 31, 2007 and 2006.

4. Share Capital

Common Shares

As of December 31, 2008, the Company had the authority to issue 210,000,000 common shares with a par value of $0.0005 per share of which 140,467,529 were outstanding.

Preference Shares

As of December 31, 2008, the Company has the authority to issue 1,000,000 preference shares with a par value of $0.05 per share. Of these, 210,000 preference shares have been designated Series A Preference Shares and 8,000 preference shares have been designated Series B Preference Shares.

- Series A: As of December 31, 2008, the Company has authorized 210,000 Series A Preference Shares of which none were outstanding at December 31, 2008 or 2007. Refer to *Shareholder Rights Plan* below.
- Series B: As of December 31, 2008, the Company has authorized 8,000 Series B Preference Shares. In December of 2003, the Company issued 2,959 of the Series B preference shares to Genentech in repayment of $29.6 million of the outstanding balance under the convertible subordinated debt agreement. Pursuant to the rights of the Series B preference shares, the holders of Series B preference shares will not be entitled to receive any dividends on the Series B preference shares. The Series B preference shares will rank senior with respect to rights on liquidation, winding-up and dissolution of XOMA to all classes of common shares. Upon any voluntary or involuntary liquidation, dissolution or winding-up of XOMA, holders of Series B preference shares will be entitled to receive $10,000 per share of Series B preference shares before any distribution is made on the common shares. The holder of the Series B preference shares has no voting rights, except as required under Bermuda law.

  The holder of Series B preference shares has the right to convert Series B preference shares into common shares at a conversion price equal to $7.75 per common share, subject to adjustment in certain circumstances. Accordingly, the 2,959 issued Series B preference shares are convertible into 3,818,395 common shares.

The Series B preference shares will be automatically converted into common shares at their then effective conversion rate immediately upon the transfer by the initial holder to any third party which is not an affiliate of such holder. The Company will have the right, at any time and from time to time, to redeem any or all Series B preference shares for cash in an amount equal to the conversion price multiplied by the number of common shares into which each such share of Series B preference shares would then be convertible.

Incentive Compensation Plans

The Board of Directors established a Management Incentive Compensation Plan ("MICP") effective July 1, 1993, in which management employees (other than the Chief Executive Officer), as well as certain additional discretionary participants chosen by the Chief Executive Officer, are eligible to participate. The Chief Executive Officer is covered under a CEO Incentive Compensation Plan ("CICP") which was established by the Board of Directors effective January 1, 2004. Employees that do not qualify under the MICP or CICP are covered under the Bonus Compensation Plan ("BCP") effective January 1, 2007.

As of January 1, 2007, awards earned under the MICP, CICP and BCP are payable in cash during the first quarter of the following fiscal year so long as the participant remains an employee of the Company. Awards earned under the MICP prior to 2004 vested over a three-year period with 50% of each award payable during the first quarter of the following fiscal year and 25% payable on each of the next two annual distribution dates, so long as the participant remained an employee of the Company. The 50% on the first distribution date was payable half in cash and half in common shares. The balance on the next two annual distribution dates was payable, at the election of the participant, all in cash, all in common shares or half in cash and half in common shares or, for elections not made in a timely manner, all in common shares. The final payout under this plan occurred in 2006.

In October of 2007, the Board of Directors approved amendments to the incentive plans eliminating the requirement for bonus awards to be paid partially in shares. Beginning with awards related to the year ended December 31, 2007, the bonus awards are paid entirely in cash. The number of common shares issued pursuant to awards made for the year ended December 31, 2006 was 177,180, and these shares were reserved under the Restricted Plan (as defined below).

The amounts charged to expense under the incentive plans were zero, $4.0 million and $1.9 million for the plan years 2008, 2007 and 2006, respectively. In the fourth quarter of 2008, the Company decided that it would not pay bonuses for 2008. As of December 31, 2008, no amounts were accrued related to these plans.

Employee Share Purchase Plan

In 1998, the Company's shareholders approved the 1998 Employee Share Purchase Plan which provides employees of the Company the opportunity to purchase common shares through payroll deductions. Up to 1,500,000 common shares are authorized for issuance under the Share Purchase Plan. An employee may elect to have payroll deductions made under the Share Purchase Plan for the purchase of common shares in an amount not to exceed 15% of the employee's compensation.

Prior to December 31, 2004, the purchase price per common share was either (i) an amount equal to 85% of the fair market value of a common share on the first day of a 24-month offering period or on the last day of such offering period, whichever was lower, or (ii) such higher price as may be set by the Compensation Committee of the Board at the beginning of such offering period.

Effective January 1, 2005, the plan was amended to reduce future offering periods to three months and to change the purchase price per common share to 95% of the closing price of XOMA shares on the exercise date.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In 2008, 2007, and 2006, employees purchased 195,403, 83,338 and 234,535 common shares, respectively, under the Share Purchase Plan. Net payroll deductions under the Share Purchase Plan totaled $0.3 million, $0.3 million and $0.4 million for 2008, 2007 and 2006, respectively.

Shareholder Rights Plan

On February 26, 2003, the Company's Board of Directors unanimously adopted a Shareholder Rights Plan ("Rights Plan"), which is designed to extend the provisions of a similar rights plan originally adopted in October of 1993. Under the Rights Plan, Preference Share Purchase Rights ("Rights") are authorized and granted at the rate of one Right for each outstanding common share. Each Right entitles the registered holder of common shares to buy a fraction of a share of the new series of Preference Shares ("Series A Preference Shares") at an exercise price of $30.00, subject to adjustment. The Rights will be exercisable and will detach from the common share, only if a person or group acquires 20 percent or more of the common shares, announces a tender or exchange offer that if consummated will result in a person or group beneficially owning 20 percent or more of the common shares or if the Board of Directors declares a person or group owning 10 percent or more of the outstanding common shares to be an Adverse Person (as defined in the Rights Plan). Once exercisable, each Right will entitle the holder (other than the acquiring person) to purchase units of Series A Preference Share (or, in certain circumstances, common shares of the acquiring person) with a value of twice the Rights exercise price. The Company will generally be entitled to redeem the Rights at $0.001 per Right at any time until the close of business on the tenth day after the Rights become exercisable. The Rights will expire at the close of business on February 26, 2013.

Shares Reserved for Future Issuance

The Company has reserved common shares for future issuance as of December 31, 2008, as follows:

Share option plans	24,222,336
Convertible preference shares	3,818,395
Employee share purchase plan	276,813
Total	28,317,544

Share Options

At December 31, 2008, the Company had share-based compensation plans, as described below. The aggregate number of common shares that may be issued under these plans is 28,065,000 shares.

In October of 2007, the Board of Directors (the "Board") approved a company-wide grant of options to purchase common shares. The purpose of the grant was to improve the level of employee ownership in the business by using existing share-based option plans to bring the Company in line with competitive industry levels. Of the total 6,635,000 options granted, 5,185,000 options were made subject to shareholder approval of a commensurate increase in the number of shares available for the grant of options under the Company's existing share option plans. In addition, all options granted in February of 2008 as part of the Company's annual compensation plan were subject to the aforementioned shareholder approval. As of December 31, 2007, the 5,185,000 shares from October of 2007 were not included in any of the options outstanding disclosures, options granted disclosures, or share-based compensation expense as they were not deemed granted for accounting purposes until shareholder approval was obtained in May of 2008.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In May of 2008, the shareholders approved the increase in the number of shares available for issuance under the Company's existing share option plans. Upon shareholder approval, the Company recognized share-based compensation expense for the remaining 5,185,000 share options granted in October of 2007 and the company-wide grant of 3,521,300 share options from February of 2008.

These shares vest according to the Company's standard four-year vesting schedule which provides for 25% cliff vesting on the first year anniversary of the legal date of grant and monthly vesting of the remaining 75% of shares over the next three years. For accounting purposes, the expense related to the cliff vesting feature will be recognized from May of 2008 through the first corresponding anniversary of the legal grant date.

Share Option Plan

Under the Company's amended 1981 Share Option Plan ("Option Plan") the Company grants qualified and non-qualified share options to employees and other individuals, as determined by the Board of Directors, at exercise prices of not less than the fair market value of the Company's common shares on the date of grant. Options granted under the Option Plan may be exercised when vested and generally expire ten years from the date of the grant or three months from the date of termination of employment (longer in case of death or certain retirements). Options granted generally vest over four years and certain options may fully vest upon a change of control of the Company. The Option Plan will terminate on November 15, 2011.

Up to 25,600,000 shares are authorized for issuance under the Option Plan. As of December 31, 2008, options covering 18,798,499 common shares were outstanding under the Option Plan.

Restricted Share Plan

The Company also has a Restricted Share Plan ("Restricted Plan") which provides for the issuance of options or grants of common shares to certain employees and other individuals as determined by the Board of Directors at fair market value of the common shares on the grant date. Prior to 2005, options or shares could be granted at not less than 85% of fair market value of the common shares on the grant date. Each option issued under the Restricted Plan will be a non-statutory share option under federal tax laws and will have a term not in excess of ten years from the grant date or three months from the date of termination of employment (longer in the case of death or certain retirements). Options granted generally vest over four years and certain options may fully vest upon a change of control of the Company. The Restricted Plan will terminate on November 15, 2011.

Up to 2,750,000 shares are authorized for issuance under the Restricted Plan, subject to the condition that not more than 25,600,000 shares are authorized under both the Option Plan and the Restricted Plan. As of December 31, 2008, options covering 1,655,566 common shares were outstanding under the Restricted Plan.

Directors Share Option Plan and Other Options

In 1992, the shareholders approved a Directors Share Option Plan ("Directors Plan") which provides for the issuance of options to purchase common shares to non-employee directors of the Company at 100% of the fair market value of the shares on the date of the grant. Up to 1,350,000 shares are authorized for issuance during the term of the Directors Plan. Options generally vest on the date of grant and have a term of up to ten years. As of December 31, 2008, options for 999,500 common shares were outstanding under the Directors Plan.

In addition, in July of 2002, the Company granted a non-qualified fully-vested option to a director to purchase 15,000 common shares at 100% of the fair market value of the shares on the date of grant, which will expire in ten years. This option was not issued as part of the Directors Plan.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In August of 2007, the Company granted a non-qualified option to Steven B. Engle, CEO, to purchase 1,100,000 common shares at 100% of the fair market value of the shares on the date of grant. The option is subject to the Company's typical four-year vesting schedule and will expire 10 years from the date of issuance. The option was not issued as part of the Company's Option Plan or the Restricted Plan.

Share Option Plans Summary

A summary of the status of the all of Company's share option plans as of December 31, 2008, 2007 and 2006, and changes during years ended on those dates is presented below:

	2008		2007		2006	
Options:	**Shares**	**Price***	**Shares**	**Price***	**Shares**	**Price***
Outstanding at beginning of year	11,108,120	$ 3.66	6,229,864	$ 4.22	5,422,096	$ 4.96
Granted						
(1)	—	—	—	—	—	—
(2)	2,784,750	1.59	5,545,850	2.95	1,480,300	1.70
(3)	8,691,000	3.28	500,000	5.00	—	—
Exercised	(85,740)	1.54	(252,920)	1.60	(3,733)	1.41
Forfeited, expired or cancelled (4)	(2,687,947)	3.46	(914,674)	4.50	(668,799)	4.68
Outstanding at end of year	19,810,183	3.24	11,108,120	3.66	6,229,864	4.22
Exercisable at end of year	8,575,803		5,261,399		4,245,736	
Weighted average fair value of options granted						
(1)		—		—		—
(2)		$ 0.94		$ 1.80		$ 1.16
(3)		$ 0.99		$ 0.89		—

* Weighted-average exercise price:

(1) Option price less than market price on date of grant as provided for in the Restricted Share Plan.

(2) Option price equal to market price on date of grant.

(3) Option price greater than market price on date of grant.

(4) The Company adjusts for forfeitures as they occur.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes information about share options outstanding at December 31, 2008:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number	Life*	Price**	Number	Price**
$0.62 – $1.58	2,290,895	8.56	$ 1.14	716,459	$ 1.39
1.64 – 2.11	1,793,869	7.04	1.85	1,029,135	1.78
2.12 – 2.17	2,293,750	8.56	2.17	873,085	2.17
2.18 – 2.70	161,812	7.19	2.46	41,342	2.44
2.71 – 2.71	3,437,700	8.31	2.71	419,500	2.71
2.79 – 3.56	2,106,820	5.55	3.38	1,443,790	3.38
3.58 – 3.65	56,703	0.40	3.63	53,162	3.62
3.67 – 3.67	5,250,084	8.28	3.67	1,580,780	3.67
3.84 – 9.75	2,017,550	4.40	6.32	2,017,550	6.32
9.99 – 12.99	401,000	2.78	10.42	401,000	10.42
$0.62 – $12.99	19,810,183	7.41	3.24	8,575,803	3.94
Options vested and expected to vest	17,420,515		3.31		

* Weighted-average remaining contractual life

** Weighted-average exercise price

The weighted average remaining contractual term of outstanding share options at December 31, 2008, was 7.4 years and the aggregate intrinsic value was zero. The weighted average remaining contractual term of exercisable share options at December 31, 2008, was 6.1 years and the aggregate intrinsic value was zero.

Equity Line of Credit

On October 21, 2008, the Company entered into a common share purchase agreement (the "Purchase Agreement") with Azimuth Opportunity Ltd. ("Azimuth"), pursuant to which it obtained a committed equity line of credit facility (the "Facility") under which the Company may sell up to $60 million of its registered common shares to Azimuth over a 24-month period, subject to certain conditions and limitations. XOMA is not obligated to utilize any of the $60 million Facility and remains free to enter other financing transactions. Pursuant to the terms of the Purchase Agreement, the Company determines, in its sole discretion, the timing, dollar amount and floor price per share of each draw down under the Facility, subject to certain conditions and limitations. The number and price of shares sold in each draw down are determined by a contractual formula designed to approximate fair market value, less a discount which may range from 2.65% to 6.65%. If the daily volume weighted average price of the Company's common shares falls below a threshold price of $1.00 on any trading day during a draw down period, Azimuth will not be required to purchase the pro-rata portion of common shares allocated to that day. However, at its election, Azimuth may buy the pro-rata portion of shares allocated to that day at the threshold price less a negotiated discount. The Purchase Agreement also provides that from time to time and in its sole discretion, the Company may grant Azimuth the right to exercise one or more options to purchase additional common shares during each draw down pricing period for the amount of shares based upon the maximum option dollar amount and the option threshold price specified by the Company. Shares under the Facility are sold pursuant to a prospectus which forms a part of a registration statement declared effective by the Securities and Exchange Commission on May 29, 2008. From the inception of the Facility through December 31, 2008, the Company sold 7,932,432 common shares under the Facility for aggregate gross proceeds of $7.5 million, and $52.5 million remains available under the Facility at year end. This includes the sale of 4.0 million shares under the Facility in December of 2008 that Azimuth agreed to purchase notwithstanding that the relevant

volume weighted average prices were under the threshold price of $1.00. Under the terms of the Purchase Agreement, the Company negotiated a discount rate of 8.86% for this draw down. Prior to the successful conclusion of negotiations, Azimuth was not obligated to purchase these shares. Offering expenses incurred through December 31, 2008 related to this Facility were $0.3 million.

Warrants

In July of 2008, the remaining 125,000 warrants issued to Incyte Corporation expired. These warrants, to purchase common shares at $6.00 per share, were issued in July of 1998 as partial payment of license fees. As of December 31, 2007, there were 125,000 of these warrants outstanding.

5. Commitments and Contingencies

Collaborative Agreements, Royalties and Milestone Payments

The Company is obligated to pay royalties, ranging generally from 1.5% to 5% of the selling price of the licensed component and up to 40% of any sublicense fees to various universities and other research institutions based on future sales or licensing of products that incorporate certain products and technologies developed by those institutions.

In addition, the Company has committed to make potential future “milestone” payments to third parties as part of licensing and development programs. Payments under these agreements become due and payable only upon the achievement of certain developmental, regulatory and/or commercial milestones. Because it is uncertain if and when these milestones will be achieved, such contingencies, aggregating up to $79.0 million have not been recorded on the consolidated balance sheet. The Company is unable to determine precisely when and if payment obligations under the agreements will become due as these obligations are based on milestone events, the achievement of which is subject to a significant number of risks and uncertainties.

Purchase Obligations

In September of 2007, XOMA entered into a five-year purchase agreement for custom cell culture medium for use in research and development activities. Under the terms of the agreement, the Company is obligated to meet certain purchase commitments of approximately $0.1 million per year over the next five years. These amounts were met for the years ended December 31, 2008 and 2007 and are not included in the Consolidated Balance Sheet.

Leases

As of December 31, 2008, the Company leased administrative, research facilities, and office equipment under operating leases expiring on various dates through May of 2014.

Future minimum lease commitments are as follows (in thousands):

	Operating Leases
2009	4,041
2010	4,162
2011	4,171
2012	3,946
2013	2,300
Thereafter	617
Minimum lease payments	$ 19,237

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Total rental expense was approximately $4.1 million, $3.6 million and $3.1 million for the years ended December 31, 2008, 2007 and 2006, respectively. Rental expense based on leases allowing for escalated rent payments are recognized on a straight-line basis. The Company is required to restore certain of its leased property to certain conditions in place at the time of lease. The Company believes these costs would not be material to its operations.

Legal Proceedings

In September of 2004, XOMA (US) LLC entered into a collaboration with Aphton for the treatment of gastrointestinal and other gastrin-sensitive cancers using anti-gastrin monoclonal antibodies. In May of 2006, Aphton filed for bankruptcy protection under Chapter 11, Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, No. 06-10510 (CSS). XOMA (US) LLC filed a proof of claim in the proceeding, as an unsecured creditor of Aphton, for approximately $594,000. Aphton and the Official Committee of Unsecured Creditors filed a Proposed Plan of Reorganization that would result in a liquidation of Aphton. The creditors have voted in favor of the plan, and the bankruptcy court has confirmed it. It is not presently known what, if any, distributions will be made to holders of unsecured claims. There were no developments material to XOMA in the United States Bankruptcy Court proceedings involving Aphton during the year ended December 31, 2008.

6. Income Taxes

The Company recognized $0.4 million in income tax benefit in 2008 relating to refundable credits. There was no income tax expense for 2007 and 2006.

The significant components of net deferred tax assets as of December 31, 2008 and 2007 are as follows (in millions):

	December 31,	
	2008	2007
Capitalized research and development expenses	$ 79.6	$ 80.3
Net operating loss carryforwards	103.5	93.6
Research and development and other credit carryforwards	20.6	21.2
Other	11.0	10.5
Total deferred tax assets	214.7	205.6
Valuation allowance	(214.7)	(205.6)
Net deferred tax assets	$ —	$ —

The net increase in the valuation allowance was $9.1 million, $42.3 million and $5.9 million for the years ended December 31, 2008, 2007 and 2006, respectively. Approximately $13.1 million and $23.1 million in unutilized federal net operating loss carryforwards expired in 2008 and 2007, respectively. An additional $10.9 million in California net operating loss carryforwards expired unutilized in 2008.

SFAS 109 provides for the recognition of deferred tax assets if realization of such assets is more likely than not. Based upon the weight of available evidence, which includes the Company's historical operating performance and carryback potential, the Company has determined that total deferred tax assets should be fully offset by a valuation allowance.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

XOMA's accumulated federal, state, and foreign tax net operating loss carryforwards and credit carryforwards as of December 31, 2008, are as follows:

	Amounts (in millions)	Expiration Dates
Federal		
NOLs	$ 159.5	2009 – 2028
Credits	10.5	2009 – 2028
State		
NOLs	132.5	2014 – 2029
Credits	15.0	Do not expire
Foreign		
NOLs	332.0	Do not expire

The Company's activities in Ireland and the adoption of FIN 48 in 2007 have allowed it to record previously unrecorded net operating losses related to its Irish subsidiary. The availability of the Company's net operating loss and tax credit carryforwards may be subject to substantial limitation if it should be determined that there has been a change in ownership of more than 50% of the value of the Company's shares over a three-year period.

On January 1, 2007 the Company adopted FIN 48 which clarifies the accounting for uncertainty in income taxes recognized in the Company's financial statements in accordance with SFAS 109 and prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition and measurement of a tax position taken or expected to be taken in a tax return. The adoption of FIN 48 did not have a material impact on the Company.

The Company files income tax returns in the U.S. federal jurisdiction, state of California and Ireland. The Company's federal income tax returns for tax years 2005 and beyond remain subject to examination by the Internal Revenue Service. The Company's California and Irish income tax returns of the tax years 2004 and beyond remain subject to examination by the Franchise Tax Board and Irish Revenue Commissioner. In addition, all of the net operating losses and research and development credit carryforwards that may be used in future years are still subject to adjustment.

The Company did not have unrecognized tax benefits as of December 31, 2008 and does not expect this to change significantly over the next twelve months. In connection with the adoption of FIN 48, the Company will recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. As of December 31, 2008, the Company has not accrued interest or penalties related to uncertain tax positions.

7. Related Party Transactions

Related party transactions during the years ended December 31, 2008 and 2007 consisted of relocation loans to two employees. The final balance of these loans was forgiven in November of 2008. The initial loans of $70,000 and $150,000 were granted in 2001 and 2004, respectively, and were forgiven, along with related interest, over five and two-thirds and four years, respectively, contingent on the employees continued employment with the Company. Total related party balances as of December 31, 2008 and 2007 were zero and $38,000, respectively.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

8. Deferred Savings Plan

Under section 401(k) of the Internal Revenue Code of 1986, the Board of Directors adopted, effective June 1, 1987, a tax-qualified deferred compensation plan for employees of the Company. Participants may make contributions which defer up to 50% of their eligible compensation per payroll period, up to a maximum for 2008 of $15,500 (or $20,500 for employees over 50 years of age). The Company may, at its sole discretion, make contributions each plan year, in cash or in the Company's common shares, in amounts which match up to 50% of the salary deferred by the participants. The expense related to these contributions was $1.1 million, $1.0 million and $0.8 million for the years ended December 31, 2008, 2007 and 2006, respectively, and 100% was paid in common shares in each year.

9. Subsequent Events

Workforce Reduction

In January of 2009, the Company announced a workforce reduction of approximately 42 percent, or 144 employees, a majority of which were employed in manufacturing and related support functions. A charge of approximately $3 million is expected to be recorded in the first quarter of 2009 for severance and other costs related to the workforce reduction. As a result, the Company is temporarily suspending operations in four of its leased buildings. The Company's leases on these four buildings expire in the period from 2011 to 2014 and total minimum lease payments due from January of 2009 until expiration of the leases are $7.2 million. In addition, the net book value of fixed assets relating to these four buildings is approximately $12.5 million as of December 31, 2008, and will be subject to impairment review. The Company is currently evaluating its options as to the future use of these leased spaces.

Expansion of Collaboration with Takeda

In February of 2009, XOMA expanded its existing collaboration with Takeda to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. The Company received a $29.0 million expansion fee, of which $23.2 million was received in cash in February of 2009 and the remainder was withheld for payment to the Japanese taxing authority. In addition, the Company expects to pay approximately $1.5 million of additional expenses to Takeda related to the agreement.

XOMA Ltd.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

10. Quarterly Financial Information (unaudited)

The following is a summary of the quarterly results of operations for the years ended December 31, 2008 and 2007.

	Consolidated Statements of Operations			
	Quarter Ended			
	March 31	June 30	September 30	December 31
	(In thousands, except per share amounts)			
2008				
Total revenues (1)	$ 12,057	$ 11,116	$ 7,894	$ 36,920
Total operating costs and expenses (2)	25,083	29,907	26,438	25,293
Other expense, net	(1,149)	(1,899)	(1,818)	(2,028)
Net income (loss)	(14,175)	(20,690)	(20,362)	9,982
Basic and diluted net income (loss) per common share	$ (0.11)	$ (0.16)	$ (0.15)	$ 0.07
2007				
Total revenues (1)	$ 12,252	$ 14,136	$ 43,140	$ 14,724
Total operating costs and expenses (2)	20,838	21,667	20,423	23,868
Other expense, net (3)	(7,342)	(807)	(900)	(733)
Net income (loss)	(15,928)	(8,338)	21,817	(9,877)
Basic net income (loss) per common share	$ (0.14)	$ (0.06)	$ 0.17	$ (0.07)
Diluted net income (loss) per common share	$ (0.14)	$ (0.06)	$ 0.16	$ (0.07)

(1) Revenues in the quarter ended December 31, 2008 include a non-recurring fee from Novartis of $13.7 million relating to a restructuring of the existing collaboration agreement. Revenues in the quarter ended September 30, 2007 include a $30.0 million non-recurring license fee from Pfizer.

(2) Operating expenses for the quarter ended December 31, 2008 include a reversal of the bonus accrual of $3.0 million, as the Company determined it would not pay 2008 bonuses. Operating expenses for the quarter ended September 30, 2007 include a non-recurring credit of $2.8 million related to an agreement reached with a major collaborator regarding material costs previously recorded under the collaboration agreement.

(3) Other expense for the quarter ended March 31, 2007 includes $6.1 million related to the revaluation of the embedded derivative to fair market value and the payment in common shares, of the additional interest feature, on the Company's convertible debt.

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3.1	Memorandum of Continuance of XOMA Ltd. (Exhibit 3.4)[1]
3.2	Bye-Laws of XOMA Ltd. (as amended) (Exhibit 3.2)[2]
4.1	Shareholder Rights Agreement dated as of February 26, 2003, by and between XOMA Ltd. and Mellon Investor Services LLC as Rights Agent (Exhibit 4.1)[3]
4.2	Resolution Regarding Preferences and Rights of Series A Preference Shares (Exhibit A to Exhibit 4.1)[3]
4.3	Resolution Regarding Preferences and Rights of Series B Preference Shares (Exhibit B to Exhibit 3)[3]
4.4	Form of Common Stock Purchase Warrant (Incyte Warrants) (Exhibit 2)[4]
4.5	Indenture between XOMA Ltd. and Wells Fargo Bank, National Association, as trustee, relating to the Company's 6.50% Convertible SNAPs$_{SM}$ due February 1, 2012 (Exhibit 2)[5]
10.1	1981 Share Option Plan as amended and restated (Exhibit 10.1)[6]
10.1A	Form of Share Option Agreement for 1981 Share Option Plan (Exhibit 10.1A)[7]
10.1B	Amendment to 1981 Share Option Plan (Exhibit 10.1B)[8]
10.1C	Amendment No. 2 to 1981 Share Option Plan (Exhibit 10.1C)[8]
10.1D	Amendment No. 3 to 1981 Share Option Plan (Exhibit 10.1)[9]
10.2	Restricted Share Plan as amended and restated (Exhibit 10.3)[6]
10.2A	Form of Share Option Agreement for Restricted Share Plan (Exhibit 10.2A)[7]
10.2B	Amendment to Restricted Share Plan (Exhibit 10.2C)[8]
10.2C	Amendment No. 2 to Restricted Share Plan (Exhibit 10.2D)[8]
10.2D	Amendment No. 3 to Restricted Share Plan (Exhibit 10.2D)[7]
10.2E	Amendment No. 4 to Restricted Share Plan (Exhibit 10.2)[9]
10.2F	2007 CEO Share Option Plan (Exhibit 10.7)[10]
10.3	1992 Directors Share Option Plan as amended and restated (Exhibit 10.3)[7]
10.3A	Amendment No. 1 to 1992 Directors Share Option Plan*
10.3B	Form of Share Option Agreement for 1992 Directors Share Option Plan (initial grants) (Exhibit 10.3A)[7]
10.3C	Form of Share Option Agreement for 1992 Directors Share Option Plan (subsequent grants) (Exhibit 10.3B)[7]
10.3D	2002 Director Share Option Plan (Exhibit 10.10)[6]
10.4	Management Incentive Compensation Plan as amended and restated (Exhibit 10.3)[9]
10.4A	CEO Incentive Compensation Plan (Exhibit 10.4A)[7]
10.4B	Bonus Compensation Plan (Exhibit 10.4B)[7]
10.5	1998 Employee Share Purchase Plan as amended and restated (Exhibit 10.11)[6]
10.5A	Amendment to 1998 Employee Share Purchase Plan (Exhibit 10.5A)[8]

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10.5B	Amendment No. 2 to 1998 Employee Share Purchase Plan (Exhibit 10.5B)[8]
10.6	Form of Amended and Restated Indemnification Agreement for Officers (Exhibit 10.6)[11]
10.6A	Form of Amended and Restated Indemnification Agreement for Employee Directors (Exhibit 10.7)[11]
10.6B	Form of Amended and Restated Indemnification Agreement for Non-employee Directors (Exhibit 10.8)[11]
10.7	Form of Employment Agreement entered into between XOMA (US) LLC and certain of its executives, with reference schedule (Exhibit 10.1)*
10.7A	Consulting Agreement effective as of August 3, 2007 between XOMA (US) LLC and John L. Castello (Exhibit 10.8)[10]
10.8	Form of Change of Control Severance Agreement entered into between XOMA Ltd. and certain of its executives, with reference schedule (Exhibit 10.2)*
10.9	Lease of premises at 890 Heinz Street, Berkeley, California dated as of July 22, 1987 (Exhibit 10.12)[2]
10.10	Lease of premises at Building E at Aquatic Park Center, Berkeley, California dated as of July 22, 1987 and amendment thereto dated as of April 21, 1988 (Exhibit 10.13)[12]
10.11	Lease of premises at Building C at Aquatic Park Center, Berkeley, California dated as of July 22, 1987 and amendment thereto dated as of August 26, 1987 (Exhibit 10.14)[12]
10.12	Letter of Agreement regarding CPI adjustment dates for leases of premises at Buildings C, E and F at Aquatic Park Center, Berkeley, California dated as of July 22, 1987 (Exhibit 10.15)[12]
10.13	Lease of premises at 2910 Seventh Street, Berkeley, California dated March 25, 1992 (Exhibit 10.16)[2]
10.13A	Fifth amendment to lease of premises at 2910 Seventh Street, Berkeley, California dated June 1, 2006 (Exhibit 10.58)[3]
10.14	Lease of premises at 5860 and 5864 Hollis Street, Emeryville, California dated as of November 2, 2001 (with addendum) (Exhibit 10.19)[4]
10.15	Lease of premises at 2850 Seventh Street, Second Floor, Berkeley, California dated as of December 28, 2001 (with addendum and guaranty) (Exhibit 10.20)[4]
10.16	Amended and Restated Research and License Agreement dated September 1, 1993, between the Company and New York University (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.28)[12]
10.16A	Third Amendment to License Agreement dated June 12, 1997, between the Company and New York University (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.28A)[12]
10.16B	Fourth Amendment to License Agreement dated December 23, 1998, between the Company and New York University (Exhibit 10.22B)[5]
10.16C	Fifth Amendment to License Agreement dated June 25, 1999, between the Company and New York University (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.21C)[16]

Exhibit Number	
10.16D	Sixth Amendment to License Agreement dated January 25, 2000, between the Company and New York University (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.1)[17]
10.16E	Seventh Amendment to License Agreement by and among New York University, XOMA Technology Limited and XOMA Ireland Limited effective as of November 10, 2004 (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 3)[18]
10.17	Technology Acquisition Agreement dated June 3, 1994, between Connective Therapeutics, Inc. (now called Connetics Corporation) and the Company (with certain confidential information deleted) (Exhibit 10.46)[19]
10.17A	Amendment Number One to Technology Acquisition Agreement dated December 8, 1999, between Connetics Corporation and XOMA (US) LLC (with certain confidential information deleted) (Exhibit 10.24A)[16]
10.17B	Agreement dated December 8, 1999, by and between The Immune Response Corporation and XOMA (US) LLC (with certain confidential information deleted) (Exhibit 10.24B)[16]
10.18	Second Amended and Restated Collaboration Agreement dated January 12, 2005, by and between XOMA (US) LLC and Genentech, Inc. (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.26C)[8]
10.19	License Agreement between Incyte Pharmaceuticals, Inc. and XOMA Corporation effective as of July 9, 1998 (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 1)[4]
10.19A	Amendment No. 1 to License Agreement by and among Incyte Corporation, XOMA Technology Limited and XOMA Ireland Limited effective as of November 10, 2004 (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 4)[18]
10.19B	Registration Rights Agreement dated as of July 9, 1998, by and among the Company and Incyte Pharmaceuticals, Inc. (Exhibit 3)[4]
10.20	License Agreement by and between XOMA Ireland Limited and MorphoSys AG, dated as of February 1, 2002 (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.43)[20]
10.21	Amended and Restated License Agreement by and between XOMA Ireland Limited and DYAX Corp., dated as of October 27, 2006 (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.32)[11]
10.22	License Agreement by and between XOMA Ireland Limited and Cambridge Antibody Technology Limited, dated as of December 22, 2002 (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.46)[2]

Exhibit Number	
10.23	License Agreement, dated as of December 29, 2003, by and between Diversa Corporation and XOMA Ireland Limited (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 2)[21]
10.24	Agreement, dated February 27, 2004, by and between Chiron Corporation and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.50)[22]
10.24A	Research, Development and Commercialization Agreement, dated as of May 26, 2005, by and between Chiron Corporation and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.2)[23]
10.24B	Secured Note Agreement, dated as of May 26, 2005, by and between Chiron Corporation and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.3)[23]
10.24C	Amended and Restated Agreement Research, Development and Commercialization Agreement, executed November 7, 2008, by and between Novartis Vaccines and Diagnostics, Inc. (formerly Chiron Corporation) and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission)*
10.24D	Manufacturing and Technology Transfer Agreement, executed December 16, 2008, by and between Novartis Vaccines and Diagnostics, Inc. (formerly Chiron Corporation) and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission)*
10.25	Collaboration Agreement, dated as of September 23, 2004, by and between Aphton Corporation and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 2)[24]
10.26	Agreement dated March 8, 2005, between XOMA (US) LLC and the National Institute of Allergy and Infectious Diseases (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.53)[8]
10.26A	Agreement dated July 28, 2006, between XOMA (US) LLC and the National Institute of Allergy and Infectious Diseases (Exhibit 10.60)[13]
10.26B	Agreement dated September 15, 2008, between XOMA (US) LLC and the National Institute of Allergy and Infectious Diseases (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.39)[25]
10.27	License Agreement, effective as of June 20, 2005, by and between Merck & Co., Inc. and XOMA Ireland Limited (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.4)[23]

Exhibit Number	
10.28	Letter Agreement dated September 20, 2005, between XOMA (US) LLC and Cubist Pharmaceuticals, Inc. (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission (Exhibit 10.54)[26]
10.29	Form of Dealer Manager Agreement relating to the Company's 6.50% Convertible SNAPs$_{SM}$ due February 1, 2012 (Exhibit 1.1)[27]
10.29A	Form of Placement Agreement relating to the Company's 6.50% Convertible SNAPs$_{SM}$ due February 1, 2012 (Exhibit 1.2)[27]
10.30	Collaboration Agreement dated as of May 22, 2006, by and between Schering Corporation, acting through its Schering-Plough Research Institute division, and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.59)[13]
10.31	Collaboration Agreement, dated as of November 1, 2006, between Takeda Pharmaceutical Company Limited and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.46)[11]
10.31A	First Amendment to Collaboration Agreement, effective as of February 28, 2007, between Takeda Pharmaceutical Company Limited and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.48)[28]
10.31B	Second Amendment to Collaboration Agreement, effective as of February 9, 2009, among Takeda Pharmaceutical Company Limited and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission)*
10.32	Loan Agreement, dated as of November 9, 2006, between Goldman Sachs Specialty Lending Holdings, Inc., XOMA (US) LLC and XOMA Ltd. (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.47)[11]
10.32A	Amended & Restated Loan Agreement, dated as of May 9, 2008 between Goldman Sachs Specialty Lending Holdings, Inc., XOMA Ltd. and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 10.37)[29]
10.33	License Agreement, effective as of August 27, 2007, by and between Pfizer Inc. and XOMA Ireland Limited (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission) (Exhibit 2)[30]
10.34	Common Stock Purchase Agreement, dated as of October 21, 2008, by and between XOMA Ltd. and Azimuth Opportunity Ltd. (Exhibit 10.1)[31]
21.1	Subsidiaries of the Company*
23.1	Consent of Independent Registered Public Accounting Firm*
31.1	Certification of Steven B. Engle, filed pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
31.2	Certification of Fred Kurland, filed pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
32.1	Certification of Steven B. Engle, furnished pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*
32.2	Certification of Fred Kurland, furnished pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*
99.1	Press Release dated March 11, 2009*

Footnotes:

*	Filed herewith.
1	Incorporated by reference to the referenced exhibit to the Company's Registration Statement on Form S-4 filed November 27, 1998, as amended.
2	Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2002.
3	Incorporated by reference to the referenced exhibit to the Company's Amendment No. 1 to Form 8-K/A filed April 18, 2003.
4	Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed July 16, 1998.
5	Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed February 13, 2006.
6	Incorporated by reference to the referenced exhibit to the Company's Registration Statement on Form S-8 filed August 28, 2003.
7	Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007, as amended.
8	Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.
9	Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed November 6, 2007.
10	Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed August 7, 2007.
11	Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2006.
12	Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1997, as amended.
13	Incorporated by reference to the referenced exhibit to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2006.
14	Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2001.
15	Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1998.
16	Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1999.
17	Incorporated by reference to the referenced exhibit to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2000.
18	Incorporated by reference to the referenced exhibit to the Company's Amendment No. 1 on Form 8-K/A filed November 30, 2004.
19	Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1994.
20	Incorporated by reference to the referenced exhibit to Amendment No. 2 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2002 filed on December 12, 2002.
21	Incorporated by reference to the referenced exhibit to the Company's Amendment No. 2 on Form 8-K/A filed March 19, 2004.
22	Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2003.
23	Incorporated by reference to the referenced exhibit to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2005.
24	Incorporated by reference to the referenced exhibit to the Company's Amendment No. 1 on Form 8-K/A filed October 26, 2004.

25 Incorporated by reference to the referenced exhibit to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2008.
26 Incorporated by reference to the referenced exhibit to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2005.
27 Incorporated by reference to the referenced exhibit to Amendment No. 2 to the Company's Registration Statement on Form S-4 filed January 11, 2006.
28 Incorporated by reference to the referenced exhibit to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2007.
29 Incorporated by reference to the referenced exhibit to Amendment No. 1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2008 filed on September 11, 2008.
30 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed September 13, 2007.
31 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed October 22, 2008.

Exhibit 10.3A

XOMA LTD.

1992 DIRECTORS SHARE OPTION PLAN

(As Amended and Restated Through May 13, 2008)

1. **General.** The XOMA Ltd. 1992 Directors Share Option Plan (the "Plan") was adopted on February 20, 1992 (the "Adoption Date") by the Board of Directors of XOMA Ltd. (the "Company"), subject to the approval of the Company's shareholders at its 1992 annual meeting. A total of 1,350,000 of the Company's Common Shares, par value $.0005 per share ("Common Shares"), have been reserved for issuance hereunder. The Plan provides for the granting to non-employee directors of the Company of non-qualified options ("Options" or "Option") to purchase Common Shares.

2. **Purposes.** The purposes of the Plan are to increase the proprietary interest of non-employee directors in the Company by granting them non-qualified options to purchase Common Shares, to promote long-term shareholder value through the potential for increased ownership of Common Shares by non-employee directors, and to encourage the continued service on the Board of Directors (the "Board") of non-employee directors.

3. **Administration.** Except as provided in Section 6(c), the Plan is designed to operate automatically and not require administration. However, to the extent that administration is necessary, the Plan shall be administered by those members of the Board who are not eligible to participate in the Plan (the "Plan Administrators"). Since it is intended that this Plan provide for grants of Options to non-employee directors of the Company, this function will be limited to matters of administrative oversight. Decisions and determinations of the Plan Administrators shall be final and binding upon all persons having an interest in the Plan. The Plan Administrators will have no discretion with respect to the selection of optionees or the determination of the exercise price, the timing of grants or the number of shares covered by the Options granted hereunder. The Plan Administrators will receive no additional compensation for their services in connection with the administration of the Plan.

4. **Eligibility.** Each member of the Board who is not a full or part-time employee of the Company or of any subsidiary or affiliate of the Company ("Director") shall be entitled to participate in the Plan.

5. **Grants under the Plan**. All Options granted under the Plan shall be non-statutory options, not entitled to special tax treatment under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"). The number of Common Shares available for grants under the Plan shall not exceed 1,350,000 shares, subject to adjustment as provided in Section 7. The shares with respect to which a particular Option has been granted are hereinafter referred to as "Optioned Shares." The written agreement evidencing each Option granted under the Plan (the "Agreement") shall be dated as of the applicable date of grant. Each Director accepting an Option grant shall execute and return a copy of the Agreement to the Company. If any outstanding Option shall terminate for any reason without having been exercised in full, the shares applicable to the unexercised portion of such Option shall again become available under the Plan.

6. **Share Options.**

(a) Initial Grants. On the Adoption Date (which shall be the date of grant for purposes of Sections 6(d), (e) and (f)) of the Plan, each Director shall be granted an Option to purchase that number of Common Shares equal to 10,000 minus the number of Common Shares with respect to which options have been previously granted to such Director (without regard to the status of such Director at the time of any such prior grant, whether any such prior grant was made pursuant to another plan of the company or any other circumstances of any such prior grant), subject to the approval of the Plan by the Company's shareholders at the 1992 Annual Meeting. Each person who becomes a Director for the first time after the Effective Date (as defined below) through calendar year 1997 shall be granted an Option on the six-month anniversary of the date such person becomes a Director to purchase that number of Common Shares equal to 10,000 minus the number of Common Shares with respect to which options have been previously granted to such Director (without regard to the status of such Director at the time of any such prior grant, whether any such prior grant was made pursuant to another plan of the Company or any other circumstances of any such prior grant). Each person who becomes a Director for the first time beginning calendar year 1998 through calendar year 2003 shall be granted an Option on the six-month anniversary of the date such person becomes a Director to purchase that number of Common Shares equal to 15,000 minus the number of Common Shares with respect to which options have been previously granted to such Director (without regard to the status of such Director at the time of any such prior grant, whether any such prior grant was made pursuant to another plan of the Company or any other circumstances of any such prior grant). Each person who becomes a Director for the first time beginning calendar year 2004 through calendar year 2006 shall be granted an Option on the date such person becomes a Director to purchase that number of Common Shares equal to 20,000 minus the number of Common Shares with respect to which options have been previously granted to such Director (without regard to the status of such Director at the time of any such prior grant, whether any such prior grant was made pursuant to another plan of the Company or any other circumstances of any such prior grant). Each person who becomes a Director for the first time beginning calendar year 2007 shall be granted an Option on the date such person becomes a Director to purchase that number of Common Shares equal to 40,000 minus the number of Common Shares with respect to which options have been previously granted to such Director (without regard to the status of such Director at the time of any such prior grant, whether any such prior grant was made pursuant to another plan of the Company or any other circumstances of any such prior grant).

(b) Regular Annual Grants. On each date that the Company holds its annual meeting of shareholders commencing with the 1993 and ending with the 1997 calendar years, immediately after the annual election of directors, each Director then in office (other than those Directors first elected at such meeting) will

receive a grant of an Option to purchase 1,000 shares, provided that no Director will receive under this Plan Options to purchase a total of more than 25,000 shares. On each date that the Company holds its annual meeting of shareholders commencing with the 1998 and ending with the 2003 calendar years, immediately after the annual election of directors, each Director then in office (other than those Directors first elected at such meeting) will receive a grant of an Option to purchase 7,500 shares, provided that no Director will receive under this Plan Options to purchase a total of more than 75,000 shares. On each date that the Company holds its annual meeting of shareholders commencing with the 2004 and ending with the 2006 calendar years, immediately after the annual election of directors, each Director then in office (other than those Directors first elected at such meeting) will receive a grant of an Option to purchase 10,000 shares. On the date that the Company holds its annual meeting of shareholders for the 2007 calendar year, immediately after the annual election of directors, each Director then in office (other than those Directors first elected at such meeting) will receive a grant of an Option to purchase 12,000 shares. On each date that the Company holds its annual meeting of shareholders commencing with the 2008 calendar year, immediately after the annual election of directors, each Director then in office (other than those Directors first elected at such meeting) will receive a grant of an Option to purchase 25,000 shares; provided, that any such Director who then serves in the capacity of (i) chairman of any of the following committees of the Board (or, in each case, another committee or group performing similar functions): the audit committee, the compensation committee or the nominating & governance committee, and/or (ii) lead independent director will instead receive a grant of an Option to purchase the number of shares equal to the product of 25,000 times the Applicable Multiple. "Applicable Multiple" means (A) 1.3, in the case of the chairman of the audit committee, (B) 1.2, in the case of the chairman of the compensation committee or the nominating & governance committee, and (C) 1.5, in the case of the lead independent director, except that if an individual Director is serving in more than one of the foregoing capacities, then the Applicable Multiple shall be cumulative, such that, for example, the Applicable Multiple for a Director serving as both chairman of the compensation committee and as lead independent director shall be 1.7.

(c) Discretionary Grants. In addition to the initial grants and regular annual grants described above and notwithstanding the provisions of Section 3, the Board, acting on the recommendation of its nominating & governance committee (or another committee or group performing similar functions), shall have full authority to grant Options under the Plan from time to time to one or more Directors and to determine the number of shares to be covered by each such grant, the time or times at which each granted option is to become exercisable and the maximum term for which the option may remain outstanding.

(d) Option Exercise Price. The per share price to be paid by the Director at the time an Option is exercised shall be 100% of the fair market value of the Common Shares on the date of grant. "Fair market value" shall be determined as follows:

(i) If the Common Shares are not at the time listed or admitted to trading on any stock exchange but are traded in the over-the-counter market, the fair market value shall be the closing selling price per Common Share on the date in question, as such price is reported on the OTC Bulletin Board or any successor system. If there is no reported closing selling price for Common Shares on the date in question, then the closing selling price on the last preceding date for which such quotation exists shall be determinative of fair market value.

(ii) If the Common Shares are at the time listed or admitted to trading on any stock exchange, then the fair market value shall be the closing selling price per Common Share on the date in question on the stock exchange which is the primary market for the Common Shares, as such price is officially quoted on such exchange. If there is no reported sale of Common Shares on such exchange on the date in question, then the fair market value shall be the closing selling price on the exchange on the last preceding date for which such quotation exists.

(e) Maximum Term of Option. Each Option granted in Section 6(a) or Section 6(b) shall have a maximum term of ten (10) years from the date of grant. The maximum term for which any Option granted under Section 6(c) may remain outstanding shall be determined by the Board, as provided in Section 6(c).

(f) Date of Exercise. Provided that an optionee hereunder (an "Optionee") remains a Director, and except as otherwise provided in Section 8(a),

(i) the Options granted in Section 6(a) hereof commencing with the 1992 and ending with the 2003 calendar years shall become exercisable in accordance with the following schedule:

(A) with respect to Options granted pursuant to the first sentence of Section 6(a) hereof, each such Option shall become exercisable with respect to 20% of the Optioned Shares on the date of grant;

(B) each Option shall become exercisable with respect to 20% (or, in the case of Options referred to in clause (A) above, an additional 20%) of the Optional Shares after the expiration of one year from the date of grant;

(C) each Option shall become exercisable with respect to an additional 20% of the Optional Shares after the expiration of two years from the date of grant;

(D) each Option shall become exercisable with respect to an additional 20% of the Optioned Shares after the expiration of three years from the date of grant;

(E) each Option shall become exercisable with respect to an additional 20% (or, in the case of Options referred to in clause (A) above, the remaining 20%) of the Optional Shares after the expiration of four years from the date of grant;

(F) with respect to Options other than those referred to in clause (A) above, each such Option shall become exercisable with respect to the remaining 20% of the Optioned Shares after the expiration of five years from the date of grant; and

(ii) the Options granted in Section 6(a) hereof commencing with the 2004 calendar years shall become exercisable after the expiration of one year from the date of grant;

(iii) the Options granted in Section 6(b) hereof shall become exercisable on the date of grant; and

(iv) any Options granted under Section 6(c) hereof shall become exercisable at the time or times determined by the Board, as provided in Section 6(c).

Exercisable installments may be exercised in whole or in part and, to the extent not exercised, shall accumulate and be exercisable at any time on or before the Expiration Date or sooner termination of the Option term.

(g) Accelerated Termination of Option Term. The option term with respect to a particular Option granted hereunder shall terminate (and such Option shall cease to be exercisable) prior to the specified expiration date thereof (the "Expiration Date") should one of the following provisions become applicable:

(i) Except as otherwise provided in subsections (ii), (iii) and (iv) below, should Optionee cease to be a Director at any time during the option term, then Optionee shall have up to a three (3) month period commencing with the date of such cessation of Director status in which to exercise this Option, but in no event shall this Option be exercisable at any time after the Expiration Date. During such limited period of exercisability, the Option may not be exercised for more than the number of Optioned Shares (if any) for which it is exercisable at the date of Optionee's cessation of Director status. Upon the expiration of such limited period of exercisability or (if earlier) upon the Expiration Date, the Option shall terminate and cease to be outstanding.

(ii) Should Optionee die while such Option is outstanding, then the personal representative of Optionee's estate or the person or persons to whom the Option is transferred shall have the right to exercise this Option, but only with respect to that number of Optioned shares (if any) for which Option is exercisable on the date of Optionee's death. Such right shall lapse and the Option shall cease to be exercisable upon the earlier of (A) the expiration of the one (1) year period measured from the date of Optionee's death or (B) the specified Expiration Date of the Option term.

(iii) Should Optionee become permanently disabled and cease by reason thereof to be a Director at any time during the Option term, then Optionee shall have a period of twelve (12) months (commencing with the date of such cessation of Director status) during which to exercise such Option; provided, however, that in no event shall the Option be exercisable at any time after the Expiration Date. During such limited period of exercisability, the Option may not be exercised for more that the number of Optioned Shares (if any) for which this Option is exercisable at the date of Optionee's cessation of Director status. Upon the expiration of such limited period of exercisability or (if earlier) upon the Expiration Date, the Option shall terminate and cease to be outstanding. Optionee shall be deemed to be permanently disabled if Optionee is, by reason of any medically determinable physical or mental impairment expected to result in death or to be of continuous duration of not less than 12 consecutive months or more, unable to perform his/her usual duties as a director of the Company.

(iv) Should Optionee's status as a Director be terminated on account of any act of (A) fraud or intentional misrepresentation, or (B) embezzlement, misappropriation or conversion of assets or opportunities of the Company, or any unauthorized disclosure of confidential information or trade secrets of the Company, such Option shall terminate and cease to be exercisable immediately upon the date of such termination of Director status.

(h) Method of Exercise. An Option may be exercised with respect to all or any part of the shares of Common Shares for which such Option is at the time exercisable. Each notice of exercise shall be accompanied by the full purchase price of the shares being purchased, with such payment to be made in cash or by check.

(i) Transferability. Options are transferable and assignable to the spouse of the Optionee or a descendent of the Optionee (any such spouse or descendent, an "Immediate Family Member") or a corporation, partnership, limited liability company or trust so long as all of the shareholders, partners, members or beneficiaries thereof, as the case may be, are either the Optionee or an Immediate Family Member of the Optionee, provided that (i) there may be no consideration for any such transfer and (ii) subsequent transfers or transferred options will be prohibited other than by will, by the laws of descent and distribution or pursuant to a "qualified domestic relations order" as such term is defined by the Code or the Employee Retirement Income Security Act of 1974 ("ERISA"). Following transfer, any such options will continue to be subject to the same terms and conditions as were applicable immediately prior to transfer, provided that for purposes of the option agreement the term "Optionee" will refer to the transferee.

7. **Adjustment Upon Changes in Capitalization.**

(a) If the number of shares of the Company as a whole are increased, decreased or changed into, or exchanged for, a different number or kind of shares or securities of the Company, whether through reclassification, share dividend, share split, combination of shares, exchange of shares, change in corporate structure or the like, an appropriate and proportionate adjustment shall be made in the number and kind of shares subject to the Plan, and in the number, kind and per share exercise price of shares subject to unexercised Options or portions thereof granted prior to any such change. Any such adjustment in an outstanding Option, however, shall be made without a change in the total price applicable to the unexercised portion of the Option but with a corresponding adjustment in the price for each share covered by the Option.

(b) If the Company is the surviving or continuing entity in any merger, amalgamation or other business combination, then an Option shall be appropriately adjusted to apply and pertain to the number and class of securities which the holder of the number of Common Shares subject to an Option immediately prior to such merger, amalgamation or other business combination would have been entitled to receive in the consummation of such merger, amalgamation or other business combination, and appropriate adjustment shall be made to the option price payable per share, provided the aggregate option price shall remain the same.

8. **Corporate Transaction.**

(a) In the event of one or more of the following transactions ("Corporate Transaction"):

(i) a merger, amalgamation or acquisition in which the Company is not the surviving or continuing entity, except for a transaction the principal purpose of which is to change the jurisdiction of the Company's incorporation,

(ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company, or

(iii) any other business combination in which fifty percent (50%) or more of the Company's outstanding voting shares are transferred to different holders in a single transaction or a series of related transactions,

then the exercisability of an Option shall automatically be accelerated so that such Option may be exercised for any or all of the Common Shares subject to such Option. No such acceleration of exercise dates shall occur, however, if and to the extent the terms of any agreement relating to such Corporate Transaction provide as a prerequisite to the consummation of such Corporate Transaction that outstanding options purchase Common Shares (including an Option issued

pursuant to this Plan) are to be assumed by the successor corporation or parent thereof or are to be replaced with options to purchase capital shares of the successor corporation or parent thereof. In any such case, an appropriate adjustment as to the number and kind of shares and the per share exercise prices shall be made. No fractional shares shall be issued under the Plan on account of any adjustment specified above. Upon the consummation of the Corporate Transaction, an Option shall, to the extent not previously exercised or assumed by the successor corporation or its parent company, terminate and cease to be exercisable.

(b) This Plan shall not in any way affect the right of the company to adjust, reclassify, reorganize or otherwise make changes in its capital or business structure or to merge, amalgamate, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

9. **Amendment and Termination of Plan.** The Board may make such amendments to the Plan and to any Agreements hereunder as it shall deem advisable; provided, however, that the Board may not, without further approval by the affirmative votes of the holders of a majority of the securities of the Company present, or represented, and entitled to vote at a shareholders meeting duly held in accordance with applicable laws, increase the number of shares as to which Options may be granted under this Plan (except as otherwise permitted in Section 8(a) hereof), materially increase the benefits accruing to participants under this Plan or materially modify the requirements as to eligibility for participation under this Plan. In addition, the Board may not amend the Plan or Agreement hereunder more than once every six months, other than to comport with changes in the Code or the rules thereunder. The Board may terminate the Plan at any time within its absolute discretion. No such termination, other than that provided in Section 8(a) hereof, shall in any way affect any Option then outstanding.

10. **Miscellaneous Provisions.** Neither the Plan nor any action taken hereunder shall be construed as giving any Director any right to be nominated for re-election to the Board. The Plan shall be governed by the laws of the State of California.

11. **Effective Date.** The Plan was initially adopted by the Board on February 20, 1992 and approved by the Company shareholders at the 1992 Annual Meeting, to be effective as of February 20, 1992 (the "Effective Date"). Amendments to the Plan regarding transfer provisions were adopted by the Board on October 30, 1996 and approved by the shareholders at the 1997 Annual Meeting. Further amendments to the amended and restated Plan to increase the number of shares issuable under the Plan were adopted by the Board on February 25, 1998 and approved by the shareholders at the 1998 Annual Meeting. The Plan was further amended to reflect the Company's change of domicile from Delaware to Bermuda and the new restatement of the Plan, effective December 31, 1998, was adopted by the Board in February of 1999. An amendment and restatement of the Plan was adopted by the Board on February 25, 2004 and approved by the shareholders at the 2004 Annual Meeting. Further amendments to the amended and restated Plan were adopted by the Board on October 31, 2007 and approved by the shareholders at the 2008 Annual Meeting.

Exhibit 10.7

FORM OF

AMENDED AND RESTATED

EMPLOYMENT AGREEMENT

This Amended and Restated Employment Agreement ("Agreement"), effective as of this 30th day of December, 2008, by and between XOMA (US) LLC ("XOMA" or the "Company"), a Delaware limited liability company with its principal office at 2910 Seventh Street, Berkeley, California, and _____ ("Employee"), an individual residing at _____ _____.

WHEREAS, the Company and Employee entered into an Employment Agreement effective as of_____, 200_ (the "Original Agreement") to assure the Company of the continued services of Employee;

WHEREAS, the Company wishes to enter into this Agreement to amend and restate the Original Agreement; and

WHEREAS, Employee is willing to enter into this Agreement and to continue to serve in the employ of the Company upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. Employment. The Company agrees to continue to employ Employee, and Employee agrees to continue to be employed by the Company, for the period referred to in Section 3 hereof and upon the other terms and conditions herein provided.

2. Position and Responsibilities. The Company agrees to employ Employee in the position of_____, and Employee agrees to serve as _____, for the term and on the conditions hereinafter set forth. Employee agrees to perform such services not inconsistent with her/his position as shall from time to time be assigned to her/him by the Chairman of the Board, President and Chief Executive Officer of the Company (the "Chairman").

3. Term and Duties.

(a) Term of Employment. This Agreement shall become effective and the term of employment pursuant to this Agreement shall commence on_____, 2006 and will continue until _____, _____, and will be automatically extended (without further action by the parties) for one year thereafter and again on each subsequent anniversary thereof unless notice of nonextension of the term is given by either the Employee or the Company more than 90 days prior to the next scheduled expiration date or unless Employee's employment is terminated by the Company or he/she resigns from the Company's employ as described herein.

(b) Duties. During the period of her/his employment hereunder Employee shall serve the Company as its_____, and except for illnesses, vacation periods and reasonable leaves of absence, Employee shall devote all of her/his business time, attention, skill and efforts to the faithful performance of her/his duties hereunder. So long as Employee is _____ of the Company, he/she will discharge all duties incidental to such office and such further duties as may be reasonably assigned to her/him from time to time by the Chairman.

4. Compensation and Reimbursement of Expenses.

(a) Compensation. For all services rendered by Employee as_____ during her/his employment under this Agreement, the Company shall pay Employee as compensation a base salary at a rate of not less than $_____ per annum. All taxes and governmentally required withholding shall be deducted in conformity with applicable laws.

(b) Reimbursement of Expenses. The Company shall pay or reimburse Employee for all reasonable travel and other expenses incurred by Employee in performing her/his obligations under this Agreement in a manner consistent with past Company practice. The Company further agrees to furnish Employee with such assistance and accommodations as shall be suitable to the character of Employee's position with the Company, adequate for the performance of her/his duties and consistent with past Company practice.

5. Participation in Benefit Plans. The payments provided in Section 4 hereof are in addition to benefits Employee is entitled to under any group hospitalization, health, dental care, disability insurance, surety bond, death benefit plan, travel and/or accident insurance, other allowance and/or executive compensation plan, including, without limitation, any senior staff incentive plan, capital accumulation programs, restricted or non-restricted share purchase plan, share option plan, retirement income or pension plan or other present or future group employee benefit plan or program of the Company for which key executives are or shall become eligible, and Employee shall be eligible to receive during the period of her/his employment under this Agreement, all benefits and emoluments for which key executives are eligible under every such plan or program to the extent permissible under the general terms and provisions of such plans or programs and in accordance with the provisions thereof.

6. Payments to Employee Upon Termination of Employment.

(a) Termination. Upon the occurrence of an event of termination (as hereinafter defined) during the period of Employee's employment under this Agreement, the provisions of this paragraph 6(a) and paragraph 6(b) shall apply. As used in this Agreement, an "event of termination" shall mean and include any one or more of the following:

(i) The termination by the Company of Employee's employment hereunder for any reason other than pursuant to paragraph 6(c) and shall include any termination of the Employee's employment upon expiration of the term of this Agreement due to the Company giving written notice of its intention not to extend the term of this Agreement as provided in paragraph 3(a); or

(ii) Employee's resignation from the Company's employ for Good Reason in accordance with the terms hereof. "Good Reason" shall mean, unless remedied by the Company within thirty (30) days after the receipt of written notice from the Employee as provided below or consented to in writing by the Employee, (A) the material diminution of any material duties or responsibilities of the Employee; or (B) a material reduction in the Employee's base salary; provided, however, that the Employee must have given written notice to the Company of the existence of any such condition within ninety (90) days after the initial existence thereof (and the failure to provide such timely notice will constitute a waiver of the Employee's ability to terminate employment for Good Reason as a result of such condition), and the Company will have a period of thirty (30) days from receipt of such written notice during which it may remedy the condition; provided further, however, that any termination of employment by the Employee for Good Reason must occur not later than one hundred eighty (180) days following the initial existence of the condition giving rise to such Good Reason.

(b) Severance Pay and Other Benefits. The following provisions of this Section 6(b) shall apply upon the occurrence of an event of termination under paragraph 6(a).

(i) Cash Severance Pay. Upon the occurrence of an event of termination under paragraph 6(a), the Company shall, subject to the provisions of Section 7 below, pay Employee, or in the event of her/his subsequent death, her/his beneficiary or beneficiaries of her/his estate, as the case may be, as severance pay or liquidated damages, or both, (A) a severance payment in an amount equal to ____ times the Employee's annual base salary as in effect immediately prior to the termination, and (B) a severance payment equal to the sum of (1) ____ times the Employee's annual target bonus as in effect for the fiscal year in which the termination occurs, and (2) an amount equal to a pro-rated portion of the Employee's annual target bonus as in effect for the fiscal year in which the termination occurs calculated by multiplying the annual target bonus by a fraction, the numerator of which shall be the number of calendar months (including a portion of any such month) that the Employee was employed with the Company prior to the occurrence of the termination during such fiscal year, and the denominator of which shall be 12. Such severance payments shall be in lieu of any other severance payment to which the Employee shall be entitled as a result of such termination pursuant to this Agreement, any other employment agreement with or offer letter from the Company or any of its affiliates or the Company's or any of its affiliate's then existing severance plans and policies, except in those circumstances where the provisions of the Amended and Restated Change of Control Severance Agreement, effective as of _____, 200_, between Employee and XOMA Ltd., by such agreement's express terms, apply, in which case the provisions of such agreement providing for severance payment(s) to Employee as a result of such termination shall apply in lieu of the provisions of this Agreement relating thereto. The severance payment described in Section 6(b)(i)(A) shall be paid in

monthly installments over [ ] months (the "Severance Payment Period"), with the first two (2) of such monthly installments being paid sixty (60) days after the date of termination and the remaining monthly installments being paid monthly thereafter until fully paid, and the severance payments described in Section 6(b)(i)(B) shall be paid in a lump sum sixty (60) days after the date of termination; provided, however, that all of such severance payments shall be subject to the requirements of Section 6(b)(iii) and Section 6(b)(v) below.

(ii) Group Health Coverage and Certain Other Benefits. In addition, during a period of_____ months following an event of termination under paragraph 6(a), (A) the Company shall pay for the full cost of the coverage (plus an additional amount to pay for the taxes on such payments, if any, plus any taxes on such additional amount, such amount to be paid no later than ten (10) days prior to the date such taxes are due) of the Employee and Employee's spouse and eligible dependents under any group health plans of the Company on the date of such termination of employment at the same level of health (i.e., medical, vision and dental) coverage and benefits as in effect for the Employee or such covered dependents on the date immediately preceding the date of the Employee's termination; provided, however, that (1) the Employee and Employee's spouse and eligible dependents each constitutes a qualified beneficiary, as defined in Section 4980B(g)(1) of the Internal Revenue Code of 1986, as amended (the "Code"); and (2) the Employee elects continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), within the time period prescribed pursuant to COBRA; and (B) if Employee is, at the time of such termination, an eligible participant in the Company's mortgage differential program, the Company shall continue to make mortgage assistance payments to Employee pursuant to such program as in effect at the time of such termination. Notwithstanding the foregoing, the payments by the Company for such group health coverage and/or mortgage assistance, as applicable, shall cease prior to the expiration of the _____ month period in this Section 6(b)(ii) upon the employment of the Employment by another employer. Furthermore, if, at the time of the termination of Employee's employment under paragraph 6(a), Employee is the obligor of a "forgivable" loan (i.e., a loan which by its terms is to be considered forgiven by the Company and paid by the obligor in circumstances other than actual repayment) from the Company, then, notwithstanding any provisions of such loan to the contrary, such loan shall remain outstanding, and the forgiveness thereof shall continue, for a period of _____ months following such termination in accordance with the terms of such loan in effect at the time of such termination; *provided, however,* that at the end of such period of_____ months, the outstanding balance of such loan shall be immediately due and payable, together with any accrued and unpaid interest thereon.

(iii) Section 409A of the Code. Notwithstanding any provision to the contrary in this Agreement, if the Employee is deemed on the date of his or her "separation from service" (within the meaning of Treas. Reg. Section 1.409A-1(h)) with the Company to be a "specified employee" (within the meaning of Treas. Reg. Section 1.409A-1(i)), then with regard to any payment or benefit (including,

without limitation, any mortgage assistance payment or loan forgiveness referred to above) that is considered deferred compensation under Section 409A payable on account of a "separation from service" that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code (after taking into account any applicable exceptions to such requirement), such payment or benefit shall be made or provided on the date that is the earlier of (i) the expiration of the six (6)-month period measured from the date of the Employee's "separation from service," or (ii) the date of the Employee's death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 9(c) (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Employee in a lump sum and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein. Notwithstanding any provision of this Agreement to the contrary, for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment, references to the Employee's "termination of employment" (and corollary terms) with the Company shall be construed to refer to Employee's "separation from service" (within the meaning of Treas. Reg. Section 1.409A-1(h)) with the Company.

(iv) Outplacement Program. Upon the occurrence of an event of termination under paragraph 6(a), the Employee will immediately become entitled to participate in a _____ month executive outplacement program provided by an executive outplacement service, at the Company's expense not to exceed _____.

(v) Release of Claims. As a condition of entering into this Agreement and receiving the severance benefits under this Section 6(b), the Employee agrees to execute, on or before the date that is fifty (50) days following the date of termination, and not revoke a release of claims agreement substantially in the form attached hereto as Exhibit A upon the termination of the Employee's employment with the Company. Such release shall not, however, apply to the rights and claims of the Employee under this Agreement, any indemnification agreement between the Employee and XOMA Ltd. (or its successor or acquirer), the bye-laws of XOMA Ltd. (or its successor or acquirer), the share award agreements between the Employee and XOMA Ltd. (or its successor or acquirer), or any employee benefit plan of which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

(c) Other Termination of Employment. Notwithstanding paragraphs 6(a) and (b) or any other provision of this Agreement to the contrary, if on or after the date of this Agreement and prior to the end of the term hereof:

(i) Employee has been convicted of any crime or offense constituting a felony under applicable law, including, without limitation, any act of dishonesty such as embezzlement, theft or larceny;

(ii) Employee shall act or refrain from acting in respect of any of the duties and responsibilities which have been assigned to her/him in accordance with this Agreement and shall fail to desist from such action or inaction within thirty (30) days after Employee's receipt of notice from the Company of such action or inaction and the Board of Directors determines that such action or inaction constituted gross negligence or a willful act of malfeasance or misfeasance of Employee in respect of such duties; or

(iii) Employee shall breach any material term of this Agreement and shall fail to correct such breach within thirty (30) days after Employee's receipt of notice from the Company of such breach (provided such breach can be cured);

then, and in each such case, the Company shall have the right to give notice of termination of Employee's services hereunder (or pay Employee in lieu of notice) as of a date (not earlier than fourteen (14) days from such notice) to be specified in such notice and this Agreement (other than the provisions of Section 7 hereof) shall terminate on such date.

7. Post-Termination Obligations. All payments and benefits to Employee under this Agreement shall be subject to Employee's compliance with the following provisions during the term of her/his employment and for the Severance Payment Period:

(a) Confidential Information and Competitive Conduct. Employee shall not, to the detriment of the Company, disclose or reveal to any unauthorized person any trade secret or other confidential information relating to the Company or its affiliates or to any businesses operated by them, and Employee confirms that such information constitutes the exclusive property of the Company. Employee shall not otherwise act or conduct her/himself to the material detriment of the Company or its affiliates, or in a manner which is inimical or contrary to the interests thereof, and, for a period of twelve (12) months following an event of termination under paragraph 6(a), shall not, directly or indirectly, engage in or render any service (whether to a person, firm or business) in direct competition with the Company; provided, however, that Employee's ownership of less than five percent (5%) of the outstanding stock of a corporation shall not be itself be deemed to constitute such competition. Employee recognizes that the possible restrictions on her/his activities which may occur as a result of her/his performance of her/his obligations under this paragraph 7(a) are required for the reasonable protection of the Company and its investments. For purposes hereof, "in direct competition" means engaged in the research, development and/or production of biological materials intended for use as therapeutic, prophylactic or diagnostic products in one or more of the same indications, and that utilize one or more of the same scientific bases (e.g., in the case of a therapeutic antibody, targets the same signal initiating pathway), as a product or product candidate the research, development and/or production of which is an active part of the Company's business plan at the time of Employee's termination.

(b) Non-Disparagement. The Employee and the Company agree to refrain from any defamation, libel or slander of the other and its respective officers, directors, employees, representatives, investors, shareholders, administrators, affiliates, divisions,

subsidiaries, predecessor and successor corporations and assigns or tortious interference with the contracts and relationships of the other and its respective officers, directors, employees, representatives, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns.

(c) Failure of Employee to Comply. If, for any reason other than death or disability, Employee shall, without written consent of the Company, fail to comply with the provisions of paragraphs 7(a) or 7(b) above, her/his rights to any future payments or other benefits hereunder shall terminate, and the Company's obligations to make such payments and provide such benefits shall cease.

(d) Remedies. Employee agrees that monetary damages would not be adequate compensation for any loss incurred by the Company by reason of a breach of the provisions of this Section 7 and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

8. Effect of Prior Agreements. This Agreement contains the entire understanding between the parties hereto and supersedes any prior employment agreements between the Company and Employee, but shall not supersede the Change of Control Severance Agreement referred to above, any indemnification agreement between the Employee and XOMA Ltd. (or its successor or acquirer), the share award agreements between the Employee and XOMA Ltd. (or its successor or acquirer), or any employee benefit plan of which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

9. General Provisions.

(a) Binding Agreement. This Agreement shall be binding upon, and inure to the benefit of, Employee and the Company and their respective permitted successors and assigns.

(b) Legal Expenses. In the event that Employee incurs legal expenses in contesting any provision of this Agreement and such contest results in a determination that the Company has breached any of its obligations hereunder, Employee shall be reimbursed by the Company for such legal expenses.

(c) Compliance with Section 409A of the Code.

(i) It is intended that this Agreement will comply with Section 409A of the Code and any regulations and guidelines promulgated thereunder (collectively, "Section 409A"), to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order for it to comply with Section 409A of the Code, the parties hereto will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible. No action or failure to act pursuant to this Section 9(c) shall subject the Company to any claim, liability, or expense, and the Company shall not have any obligation to indemnify or otherwise protect the Employee from the obligation to pay any taxes, interest or penalties pursuant to Section 409A of the Code.

(ii) With respect to any reimbursement or in-kind benefit arrangements of the Company and its subsidiaries that constitute deferred compensation for purposes of Section 409A, except as otherwise permitted by Section 409A, the following conditions shall be applicable: (A) the amount eligible for reimbursement, or in-kind benefits provided, under any such arrangement in one calendar year may not affect the amount eligible for reimbursement, or in-kind benefits to be provided, under such arrangement in any other calendar year (except that the health and dental plans may impose a limit on the amount that may be reimbursed or paid), (B) any reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and (C) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (e.g., "payment shall be made within thirty (30) days after termination of employment"), the actual date of payment within the specified period shall be within the sole discretion of the Company. Whenever payments under this Agreement are to be made in installments, each such installment shall be deemed to be a separate payment for purposes of Section 409A.

10. Successors and Assigns.

(a) Assignment by the Company. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company and, unless clearly inapplicable, reference herein to the Company shall be deemed to include its successors and assigns.

(b) Assignment by Employee. Employee may not assign this Agreement in whole or in part.

11. Modification and Waiver.

(a) Amendment of Agreement. This Agreement may not be modified or amended except by an instrument in writing signed by the parties hereto.

(b) Waiver. No term or condition of this Agreement shall be deemed to have been waived except by written instrument of the party charged with such waiver. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term or condition waived.

12. Severability. In the event any provision of this Agreement or any part hereof is held invalid, such invalidity shall not affect any remaining part of such provision or any other provision. If any court construes any provision of this Agreement to be illegal, void or unenforceable because of the duration or the area or matter covered thereby, such court shall reduce the duration, area or matter of such provision, and, in its reduced form, such provision shall then be enforceable and shall be enforced.

13. Governing Law. This Agreement has been executed and delivered in the State of California, and its validity interpretation, performance, and enforcement shall be governed by the laws of said State.

IN WITNESS WHEREOF, XOMA has caused this Agreement to be executed by its duly authorized officer, and Employee has signed this Agreement, all as of the day and year first above written.

XOMA (US) LLC

By: Steven Engle
Chairman of the Board, Chief Executive Officer and President

Employee

EXHIBIT A

FORM RELEASE OF CLAIMS AGREEMENT

This Release of Claims Agreement (this "Agreement") is made and entered into by and between XOMA (US) LLC (the "Company") and_____ (the "Employee").

WHEREAS, the Employee was employed by the Company; and

WHEREAS, the Company and the Employee have entered into an employment agreement effective as of_____, 200_ (the "Employment Agreement").

NOW THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Employee (collectively referred to as the "Parties") desiring to be legally bound do hereby agree as follows:

1. Termination. The Employee's employment with the Company terminated on_____, 20__.

2. Consideration. Subject to and in consideration of the Employee's release of claims as provided herein, the Company has agreed to pay the Employee certain benefits and the Employee has agreed to provide certain benefits to the Company, both as set forth in the Employment Agreement.

3. Release of Claims. The Employee agrees that the foregoing consideration represents settlement in full of all currently outstanding obligations owed to the Employee by the Company. The Employee, on the Employee's own behalf and the Employee's respective heirs, family members, executors and assigns, hereby fully and forever releases the Company and its past, present and future officers, agents, directors, employees, investors, shareholders, administrators, affiliates, divisions, subsidiaries, parents, predecessor and successor corporations, and assigns, from, and agrees not to sue or otherwise institute or cause to be instituted any legal or administrative proceedings concerning any claim, duty, obligation or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that the Employee may possess arising from any omissions, acts or facts that have occurred up until and including the Effective Date (as defined below) of this Agreement including, without limitation:

(a) any and all claims relating to or arising from the Employee's employment relationship with the Company and the termination of that relationship;

(b) any and all claims relating to, or arising from, the Employee's right to purchase, or actual purchase of shares of stock of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law and securities fraud under any state or federal law;

(c) any and all claims for wrongful discharge of employment, termination in violation of public policy, discrimination, breach of contract (both express and implied), breach of a covenant of good faith and fair dealing (both express and implied), promissory estoppel, negligent

or intentional infliction of emotional distress, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, negligence, personal injury, assault, battery, invasion of privacy, false imprisonment and conversion;

(d) any and all claims for violation of any federal, state or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, The Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, and Labor Code Section 201, *et seq*. and Section 970, *et seq.* and all amendments to each such Act as well as the regulations issued thereunder;

(e) any and all claims for violation of the federal or any state constitution;

(f) any and all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

(g) any and all claims for attorneys' fees and costs.

The Employee agrees that the release set forth in this Section 4 shall be and remain in effect in all respects as a complete general release as to the matters released. Notwithstanding the foregoing, this release does not extend to any obligations now or subsequently incurred under this Agreement, the Employment Agreement, the Indemnification Agreement between the Employee and the Company (or its successor or acquirer), the outstanding stock award agreements between the Employee and the Company (or its successor or acquirer), or any employee benefit plan of which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

4. Acknowledgment of Waiver of Claims under ADEA. The Employee acknowledges that the Employee is waiving and releasing any rights the Employee may have under the Age Discrimination in Employment Act of 1967 ("ADEA") and that this waiver and release is knowing and voluntary. The Employee and the Company agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. The Employee acknowledges that the consideration given for this waiver and release agreement is in addition to anything of value to which the Employee was already entitled. The Employee further acknowledges that the Employee has been advised by this writing that (a) the Employee should consult with an attorney prior to executing this Agreement; (b) the Employee has at least twenty-one (21) days within which to consider this Agreement; (c) the Employee has seven (7) days following the execution of this Agreement by the Parties to revoke the Agreement; and (d) this Agreement shall not be effective until the revocation period has expired. Any revocation should be in writing and delivered to the Company by the close of business on the seventh (7 th) day from the date that the Employee signs this Agreement.

5. Civil Code Section 1542. The Employee represents that the Employee is not aware of any claims against the Company other than the claims that are released by this Agreement. The Employee acknowledges that the Employee has been advised by legal counsel and is familiar with the provisions of California Civil Code Section 1542, which provides as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HER OR HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HER OR HIM MUST HAVE MATERIALLY AFFECTED HER OR HIS SETTLEMENT WITH THE DEBTOR.**

The Employee, being aware of said code section, agrees to expressly waive any rights the Employee may have thereunder, as well as under any other statute or common law principles of similar effect.

6. No Pending or Future Lawsuits. The Employee represents that the Employee has no lawsuits, claims or actions pending in the Employee's name, or on behalf of any other person or entity, against the Company or any other person or entity referred to herein. The Employee also represents that the Employee does not intend to bring any claims on the Employee's own behalf or on behalf of any other person or entity against the Company or any other person or entity referred to herein except, if necessary, with respect to the agreements listed in the last sentence of Section 4 of this Agreement.

7. Confidentiality. The Employee agrees to use the Employee's best efforts to maintain in confidence the existence of this Agreement, the contents and terms of this Agreement, and the consideration for this Agreement (hereinafter collectively referred to as "Release Information"). The Employee agrees to take every reasonable precaution to prevent disclosure of any Release Information to third parties and agrees that there will be no publicity, directly or indirectly, concerning any Release Information. The Employee agrees to take every precaution to disclose Release Information only to those attorneys, accountants, governmental entities and family members who have a reasonable need to know of such Release Information.

8. No Adverse Cooperation. The Employee agrees the Employee will not act in any manner that might damage the business of the Company. The Employee agrees that the Employee will not counsel or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges or complaints by any third party against the Company and/or any officer, director, employee, agent, representative, shareholder or attorney of the Company, unless compelled under a subpoena or other court order to do so.

9. Costs. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Agreement.

10. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Agreement. The Employee represents and warrants that the Employee has the capacity to act on the Employee's own behalf and on behalf of all who might claim through the Employee to bind them to the terms and conditions of this Agreement.

11. No Representations. The Employee represents that the Employee has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

12. Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

13. Entire Agreement. This Agreement and the Employment Agreement and the agreements and plans referenced therein represent the entire agreement and understanding between the Company and the Employee concerning the Employee's separation from the Company, and supersede and replace any and all prior agreements and understandings concerning the Employee's relationship with the Company and the Employee's compensation by the Company. This Agreement may only be amended in writing signed by the Employee and an executive officer of the Company.

14. Governing Law. This Agreement shall be governed by the internal substantive laws, but not the choice of law rules, of the State of California.

15. Effective Date. This Agreement is effective eight (8) days after it has been signed by the Parties (the "Effective Date") unless it is revoked by the Employee within seven (7) days of the execution of this Agreement by the Employee.

16. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

17. Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims. The Parties acknowledge that:

(a) they have read this Agreement;

(b) they have been represented in the preparation, negotiation and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;

(c) they understand the terms and consequences of this Agreement and of the releases it contains; and

(d) they are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

XOMA (US) LLC

By: _____

Title: _____

Date: _____

EMPLOYEE

_____

Name

Date: _____

Exhibit 10.8

FORM OF

XOMA LTD.

AMENDED AND RESTATED

CHANGE OF CONTROL SEVERANCE AGREEMENT

This Amended and Restated Change of Control Severance Agreement (the "Agreement") is made and entered into effective as of _____, 200_ (the "Effective Date"), by and between _____(the "Employee") and XOMA Ltd., a Bermuda company (the "Company").

R E C I T A L S

A. It is expected that the Company may from time to time consider the possibility of a Change of Control (as hereinafter defined). The Board of Directors of the Company (the "Board") recognizes that such consideration could be a distraction to the Employee and could cause the Employee to consider alternative employment opportunities.

B. The Board believes that it is in the best interest of the Company and its shareholders to provide the Employee with an incentive to continue the Employee's employment and to maximize the value of the Company upon a Change of Control for the benefit of its shareholders.

C. In order to provide the Employee with enhanced financial security and sufficient encouragement to remain with the Company notwithstanding the possibility of a Change of Control, the Company and the Employee entered into a Change of Control Severance Agreement effective as of _____, 200_ (the "Original Agreement") to provide the Employee with certain severance benefits upon the Employee's termination of employment following a Change of Control.

D. The Company and the Employee wish to enter into this Agreement to amend and restate the Original Agreement.

E. XOMA (US) LLC, a wholly-owned subsidiary of the Company, and the Employee have previously entered into an employment agreement effective as of _____, 200_, which has been amended and restated effective as of _____, 200_ (the "Existing Agreement") and provides the Employee with certain severance benefits upon the Employee's termination of employment.

F. The parties intend that this Agreement shall operate in addition to, and not in replacement of, the Existing Agreement.

AGREEMENT

In consideration of the mutual covenants herein contained and the continued employment of the Employee by the Company, the parties agree as follows:

1. Definition of Terms. The following terms referred to in this Agreement shall have the following meanings:

(a) "Cause" shall mean (i) the Employee has been convicted of any crime or offense constituting a felony under applicable law, including, without limitation, any act of dishonesty such as embezzlement, theft or larceny, (ii) the Employee has acted or refrained from acting in respect of any of the duties and responsibilities which have been assigned to her/him in accordance with this Agreement or the Existing Agreement and shall fail to desist from such action or inaction within thirty (30) days after the Employee's receipt of notice from the Company of such action or inaction and the Board determines that such action or inaction constituted gross negligence or a willful act of malfeasance or misfeasance of the Employee in respect of such duties, or (iii) the Employee has breached any material term of this Agreement or the Existing Agreement and shall fail to correct such breach within thirty (30) days after the Employee's receipt of notice from the Company of such breach.

(b) "Change of Control" shall mean the occurrence of any of the following events:

(i) a merger, amalgamation or acquisition in which the Company is not the surviving or continuing entity, except for a transaction the principal purpose of which is to change the jurisdiction of the Company's organization;

(ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company;

(iii) any other reorganization or business combination in which fifty percent (50%) or more of the Company's outstanding voting securities are transferred to different holders in a single transaction or series of related transactions;

(iv) any approval by the shareholders of the Company of a plan of complete liquidation of the Company;

(v) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becoming the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then outstanding voting securities; or

(vi) a change in the composition of the Board, as a result of which fewer than a majority of the directors are Incumbent Directors. "Incumbent Directors" shall mean directors who (A) are directors of the Company as of the date hereof, (B) are elected, or nominated for election, to the Board with the affirmative votes of the directors of the Company as

of the date hereof, or (C) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of those directors whose election or nomination was not in connection with any transaction described in subsections (i) through (v) or in connection with an actual or threatened proxy contest relating to the election of directors of the Company.

(c) "Change of Control Protection Period" shall mean the period commencing one (1) month prior to the execution of the definitive agreement for a Change of Control and eighteen (18) months following the closing of a Change of Control.

(d) "Compensation Continuation Period" shall mean the period of time commencing with termination of the Employee's employment as a result of Involuntary Termination at any time within a Change of Control Protection Period and ending with the date _____ months following the date of the Employee's Involuntary Termination.

(e) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(f) "Involuntary Termination" shall mean (i) the failure of a successor or an acquiring company to offer the Employee the position held by Employee on the date of this Agreement (or, if higher, a subsequent position of the Employee) with the successor or acquiring company following a Change of Control; (ii) without the Employee's express written consent, a substantial reduction, without good business reasons, of the rights, privileges and perquisites available to the Employee immediately prior to such reduction; (iii) without the Employee's express written consent, a material diminution in the authority, responsibilities, duties or reporting lines held or possessed by the Employee prior to the Change of Control; (iv) without the Employee's express written consent, a reduction by the Company of the Employee's base salary or target bonus as in effect immediately prior to such reduction; (v) without the Employee's express written consent, a material reduction by the Company in the kind or level of employee benefits to which the Employee is entitled immediately prior to such reduction with the result that the Employee's overall benefits package is significantly reduced; (vi) without the Employee's express written consent, the relocation of the regular offices of the Employee to a facility or a location more than thirty (30) miles further from the Employee's current location (unless such new facility or location is closer to the Employee's residence); (vii) any purported termination of the Employee by the Company which is not effected for Cause or for which the grounds relied upon are not valid; or (viii) the failure of the Company to obtain the assumption of this Agreement by any successors contemplated in Section 7 below.

2. Term of Agreement. This Agreement shall terminate upon the date that all obligations of the parties hereto under this Agreement have been satisfied or, if earlier, on the date, prior to a Change of Control Protection Period, the Employee is no longer employed by the Company.

3. At-Will Employment. The Company and the Employee acknowledge that the Employee's employment is and shall continue to be at-will, as defined under applicable law. If the Employee's employment terminates for any reason, the Employee shall not be entitled to any payments, benefits, damages, awards or compensation other than as provided by this Agreement or the Existing Agreement or as may otherwise be established under the Company's then existing employee benefit plans or policies at the time of termination.

4. Change of Control and Severance Benefits.

(a) Option Acceleration and Extended Exercise Period. If the Employee's employment with the Company terminates as a result of an Involuntary Termination at any time within a Change of Control Protection Period, then the exercisability of all options granted to the Employee by the Company (including any such options granted or assumed by the surviving or continuing entity of the Change of Control) and still outstanding (the "Options") shall automatically be accelerated so that all the Options may be exercised immediately upon such Involuntary Termination for any or all of the shares subject thereto and the post-termination exercise period of each Option shall be extended to sixty (60) months (but in no event beyond the remainder of the maximum term of the Option). The Options shall continue to be subject to all other terms and conditions of the Company's share option plans and the applicable option agreements between the Employee and the Company.

(b) Outplacement Program. If the Employee's employment with the Company terminates as a result of an Involuntary Termination at any time within a Change of Control Protection Period, the Employee will immediately become entitled to participate in a twelve (12) month executive outplacement program provided by an executive outplacement service, at the Company's expense not to exceed fifteen thousand dollars ($15,000).

(c) Termination Following a Change of Control.

(i) Cash Severance Payment Upon Involuntary Termination. If the Employee's employment with the Company terminates as a result of an Involuntary Termination at any time within a Change of Control Protection Period, then the Employee shall be entitled to receive a severance payment equal to the sum of (A) an amount equal to _____ times the Employee's annual base salary as in effect immediately prior to the Involuntary Termination, plus (B) an amount equal to _____ times Employee's target bonus as in effect for the fiscal year in which the Involuntary Termination occurs. Such severance payments shall be in lieu of any other severance payment to which the Employee shall be entitled as a result of such termination pursuant to this Agreement, any employment agreement with or offer letter from the Company or any of its affiliates or the Company's or any of its affiliate's then existing severance plans and policies. The severance payment described in Section 4(c)(i)(A) shall be paid in monthly installments over [ ]

months (the "Severance Payment Period"), with the first two (2) of such monthly installments being paid sixty (60) days after the date of termination and the remaining monthly installments being paid monthly thereafter until fully paid, and the severance payments described in Section 4(c)(i)(B) shall be paid in a lump sum sixty (60) days after the date of termination; provided, however, that all of such severance payments shall be subject to the requirements of Section 4(c)(iii) and Section 9 below.

(ii) Provision of Group Health and Certain Other Benefits. In addition, during a period of _____ months following the termination of Employee's employment as a result of an Involuntary Termination at any time within a Change of Control Protection Period, (A) the Company shall make available and pay for the full cost of the coverage (plus an additional amount to pay for the taxes on such payments, if any, plus any taxes on such additional amount, such amount to be paid no later than ten (10) days prior to the date such taxes are due) of the Employee and Employee's spouse and eligible dependents under any group health plans of the Company on the date of such termination of employment at the same level of health (i.e., medical, vision and dental) coverage and benefits as in effect for the Employee or such covered dependents on the date immediately preceding the date of the Employee's termination; provided, however, that (1) the Employee and Employee's spouse and eligible dependents each constitutes a qualified beneficiary, as defined in Section 4980B(g)(1) of the Internal Revenue Code of 1986, as amended; and (2) the Employee elects continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), within the time period prescribed pursuant to COBRA; and (B) if Employee is, at the time of such termination, an eligible participant in the Company's mortgage differential program, the Company shall continue to make mortgage assistance payments to Employee pursuant to such program as in effect at the time of such termination. Notwithstanding the foregoing, the payments by the Company for such group health coverage and/or mortgage assistance, as applicable, shall cease prior to the expiration of the _____ month period in this Section 4(c)(ii) upon the employment of the Employment by another employer. Furthermore, if, at the time of the termination of Employee's employment as a result of an Involuntary Termination at any time within a Change of Control Protection Period, Employee is the obligor of a "forgivable" loan (i.e., a loan which by its terms is to be considered forgiven by the Company and paid by the obligor in circumstances other than actual repayment) from the Company, then, notwithstanding any provisions of such loan to the contrary, such loan shall remain outstanding, and the forgiveness thereof shall continue, for a period of _____ months following such termination in accordance with the terms of such loan in effect at the time of such termination; *provided, however,* that at the end of such period of _____ months, the outstanding balance of such loan shall be immediately due and payable, together with any accrued and unpaid interest thereon.

(iii) Section 409A of the Code. Notwithstanding any provision to the contrary in this Agreement, if the Employee is deemed on the date of his or her "separation from service" (within the meaning of Treas. Reg. Section 1.409A-1(h)) with the Company to be a "specified employee" (within the meaning of Treas. Reg. Section 1.409A-1(i)), then with regard to any payment or benefit (including, without limitation, any mortgage assistance payment or loan forgiveness referred to above) that is considered deferred compensation under Section 409A payable on account of a "separation from service" that is

required to be delayed pursuant to Section 409A(a)(2)(B) of the Code (after taking into account any applicable exceptions to such requirement), such payment or benefit shall be made or provided on the date that is the earlier of (i) the expiration of the six (6)-month period measured from the date of the Employee's "separation from service," or (ii) the date of the Employee's death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 4(c) (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Employee in a lump sum and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein. Notwithstanding any provision of this Agreement to the contrary, for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment, references to the Employee's "termination of employment" (and corollary terms) with the Company shall be construed to refer to Employee's "separation from service" (within the meaning of Treas. Reg. Section 1.409A-1(h)) with the Company.

(iv) Voluntary Resignation or Termination for Cause. If the Employee's employment with the Company terminates as a result of the Employee's voluntary resignation which is not an Involuntary Termination or if the Employee is terminated for Cause at any time after a Change of Control, then the Employee shall not be entitled to receive severance or other benefits hereunder, but may be eligible for those benefits (if any) as may then be established under the Company's then existing severance and benefits plans and policies at the time of such termination.

(d) Disability or Death. If the Employee's employment with the Company terminates due to the Employee's death or disability following a Change of Control, then the Employee shall not be entitled to receive severance or other benefits hereunder, except for those (if any) as may be then established under the Company's then existing severance and benefits plans and policies at the time of such disability or death. In the event of the Employee's death or disability after the termination of the Employee's employment with the Company as a result of an Involuntary Termination within a Change of Control Protection Period, the Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees shall be entitled to receive severance or other benefits hereunder.

(e) Accrued Wages and Vacation; Expenses. Without regard to the reason for, or the timing of, the Employee's termination of employment (and without duplication of any similar benefits under any employment agreement with the Company or any of its affiliates): (i) the Company shall pay the Employee any unpaid base salary due for periods prior to the date of termination; (ii) the Company shall pay the Employee all of the Employee's accrued and unused vacation through the date of termination; and (iii) following submission of proper expense reports by the Employee, the Company shall reimburse the Employee for all expenses reasonably and necessarily incurred by the Employee in connection with the business of the Company prior to the date of termination. These payments shall be made promptly upon termination, within the period of time mandated by law, and in no event later than ten (10) days after the date of termination.

5. Conditional Nature of Severance Payments.

(a) Non-Compete. The Employee shall not, to the detriment of the Company or any of its affiliates, disclose or reveal to any unauthorized person any trade secret or other confidential information relating to the Company or its affiliates or to any businesses operated by them, and the Employee confirms that such information constitutes the exclusive property of the Company. The Employee shall not otherwise act or conduct her/himself to the material detriment of the Company or its affiliates, or in a manner which is inimical or contrary to the interests thereof, and, for a period of twenty-four (24) months following the termination of Employee's employment as a result of an Involuntary Termination at any time within a Change of Control Protection Period, shall not, directly or indirectly, engage in or render any service (whether to a person, firm or business) in direct competition with the Company; provided, however, that the Employee's ownership of less than five percent (5%) of the outstanding stock of a corporation shall not itself be deemed to constitute such competition. The Employee recognizes that the possible restrictions on her/his activities which may occur as a result of her/his performance of her/his obligations under this Section 5(a) are required for the reasonable protection of the Company and its investments. For purposes hereof, "in direct competition" means engaged in the research, development and/or production of biological materials intended for use as therapeutic, prophylactic or diagnostic products in one or more of the same indications, and that utilize one or more of the same scientific bases (e.g., in the case of a therapeutic antibody, targets the same signal initiating pathway), as a product or product candidate the research, development and/or production of which is an active part of the Company's business plan at the time of Employee's termination.

(b) Non-Disparagement. The Employee and the Company agree to refrain from any defamation, libel or slander of the other and its respective officers, directors, employees, representatives, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns or tortious interference with the contracts and relationships of the other and its respective officers, directors, employees, representatives, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns.

(c) Understanding of Covenants. The Employee represents that the Employee (i) is familiar with the foregoing covenants not to compete and not to disparage, and (ii) is fully aware of the Employee's obligations hereunder, including, without limitation, the reasonableness of the length of time, scope and geographic coverage of the covenant not to compete.

6. Golden Parachute Excise Tax. In the event that the benefits provided for in this Agreement or otherwise payable to the Employee constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code") that are subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the Employee shall receive (i) a one-time payment from the Company sufficient to pay such excise tax (the "Excise Tax Gross-Up"), and (ii) an additional one-time payment from the Company sufficient to pay the additional excise tax and

federal, state and local income and employment taxes arising from the Excise Tax Gross-Up made by the Company to the Employee pursuant to this Section 6 (the "Additional Gross-Up"). Unless the Company and the Employee otherwise agree in writing, the determination of the Employee's excise tax liability and the amount required to be paid under this Section 6 shall be made in writing in good faith by the accounting firm serving as the Company's independent public accountants immediately prior to the Change of Control (the "Accountants"). The initial Excise Tax Gross-Up and Additional Gross-Up payments hereunder, if any, shall either be (x) paid to the Employee no later than ten (10) days prior to the due date for the payment of any excise tax, or (y) paid to the Internal Revenue Service on behalf of the Employee no later than the due date for the payment of any excise tax. In the event that the Excise Tax incurred by the Employee is determined by the Internal Revenue Service to be greater or lesser than the amount so determined by the Accountants, the Company and the Employee agree to promptly (but in no event later than the end of the calendar year in which the applicable taxes are paid to (or received from) the Internal Revenue Service) make such additional payment, including interest and any tax penalties, to the other party as the Accountants reasonably determine is appropriate. For purposes of making the calculations required by this Section 6, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on interpretations concerning the application of the Code for which there is a "substantial authority" tax reporting position. The Company and the Employee shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section 6. The Company shall bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 6.

7. Successors.

(a) Company's Successors. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, amalgamation, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the Company's obligations under this Agreement and agree expressly to perform the Company's obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business and/or assets which executes and delivers the assumption agreement described in this subsection (a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Employee's Successors. Without the written consent of the Company, the Employee shall not assign or transfer this Agreement or any right or obligation under this Agreement to any other person or entity. Notwithstanding the foregoing, the terms of this Agreement and all rights of the Employee hereunder shall inure to the benefit of, and be enforceable by, the Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

8. Notices.

(a) General. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. In the case of the Employee, mailed notices shall be addressed to the Employee at the home address that the Employee most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

(b) Notice of Termination. Any termination by the Company for Cause or by the Employee as a result of a voluntary resignation or an Involuntary Termination shall be communicated by a notice of termination to the other party hereto given in accordance with this Section 8. Such notice shall indicate the specific termination provision in this Agreement relied upon, shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated. The failure by the Employee to include in the notice any fact or circumstance which contributes to a showing of Involuntary Termination shall not waive any right of the Employee hereunder or preclude the Employee from asserting such fact or circumstance in enforcing the Employee's rights hereunder.

9. Execution of Release Agreement Upon Termination. As a condition of entering into this Agreement and receiving the benefits under Section 4, the Employee agrees to execute, on or before the date that is fifty (50) days following the date of termination, and not revoke a release of claims agreement substantially in the form attached hereto as Exhibit A upon the termination of the Employee's employment with the Company. Such release shall not, however, apply to the rights and claims of the Employee under this Agreement, any indemnification agreement between the Employee and the Company (or its successor or acquirer), the bye-laws of the Company (or its successor or acquirer), the share award agreements between the Employee and the Company (or its successor or acquirer), or any employee benefit plan of which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

10. Arbitration.

(a) Any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach, or termination thereof, shall be settled by binding arbitration to be held in San Francisco or Alameda County, California, in accordance with the National Rules for the Resolution of Employment Disputes then in effect of the American Arbitration Association (the "Rules"). The cost of the arbitration shall be borne in full by the Company (or its successor or acquirer) but each of the Employee and the Company (or its successor or acquirer) shall bear his, her or its own legal fees and other cost in such arbitration subject to a possible award of attorneys fees and costs by the arbitrator as provided in the arbitration ruling. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction.

(b) The arbitrator(s) shall apply California law to the merits of any dispute or claim, without reference to conflicts of law rules. The arbitration proceedings shall be governed by federal arbitration law and by the Rules, without reference to state arbitration law. The Employee hereby consents to the personal jurisdiction of the state and federal courts located in California for any action or proceeding arising from or relating to this Agreement or relating to any arbitration in which the parties are participants.

(c) The Employee understands that nothing in this Section 10 modifies the Employee's at-will employment status. Either the Employee or the Company can terminate the employment relationship at any time, with or without cause.

(d) THE EMPLOYEE HAS READ AND UNDERSTANDS THIS SECTION, WHICH DISCUSSES ARBITRATION. THE EMPLOYEE UNDERSTANDS THAT SUBMITTING ANY CLAIMS ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, OR THE INTERPRETATION, VALIDITY, CONSTRUCTION, PERFORMANCE, BREACH OR TERMINATION THEREOF TO BINDING ARBITRATION TO THE EXTENT PERMITTED BY LAW, AND THAT THIS ARBITRATION CLAUSE CONSTITUTES A WAIVER OF THE EMPLOYEE'S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES RELATING TO ALL ASPECTS OF THE EMPLOYER/EMPLOYEE RELATIONSHIP, INCLUDING BUT NOT LIMITED TO, THE FOLLOWING CLAIMS:

(i) ANY AND ALL CLAIMS FOR WRONGFUL DISCHARGE OF EMPLOYMENT; BREACH OF CONTRACT, BOTH EXPRESS AND IMPLIED; BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING, BOTH EXPRESS AND IMPLIED; NEGLIGENT OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; NEGLIGENT OR INTENTIONAL MISREPRESENTATION; NEGLIGENT OR INTENTIONAL INTERFERENCE WITH CONTRACT OR PROSPECTIVE ECONOMIC ADVANTAGE; AND DEFAMATION.

(ii) ANY AND ALL CLAIMS FOR VIOLATION OF ANY FEDERAL STATE OR MUNICIPAL STATUTE, INCLUDING, BUT NOT LIMITED TO, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE CIVIL RIGHTS ACT OF 1991, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE AMERICANS WITH DISABILITIES ACT OF 1990, THE FAIR LABOR STANDARDS ACT, THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, AND LABOR CODE SECTION 201, *et seq*;

(iii) ANY AND ALL CLAIMS ARISING OUT OF ANY OTHER LAWS AND REGULATIONS RELATING TO EMPLOYMENT OR EMPLOYMENT DISCRIMINATION.

11. Miscellaneous Provisions.

(a) Mitigation. The Employee shall not be required to mitigate the amount of any payment contemplated by this Agreement, nor shall any such payment be reduced by any earnings that the Employee may receive from any other source. However, the Employee shall not be entitled to receive the health coverage and benefits contemplated by this Agreement in the event that the Employee receives similar health coverage and benefits as a result of new employment during the Compensation Continuation Period.

(b) Waiver. No provision of this Agreement may be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Employee and by an authorized officer of the Company (other than the Employee). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Integration. This Agreement represents the entire agreement and understanding between the parties with respect to the subject matter herein but shall not supersede any employment agreement between the Company or any of its affiliates and the Employee, any indemnification agreement between the Employee and the Company (or its successor or acquirer), the share award agreements between the Employee and the Company (or its successor or acquirer), or any employee benefit plan of which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

(d) Choice of Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the internal substantive laws, but not the conflicts of law rules, of the State of California.

(e) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(f) Tax Withholdings. All payments made pursuant to this Agreement shall be subject to withholding of applicable income and employment taxes.

(g) Compliance with Section 409A of the Code.

(i) It is intended that this Agreement will comply with Section 409A of the Code and any regulations and guidelines promulgated thereunder (collectively, "Section 409A"), to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order for it to comply with Section 409A of the Code, the parties hereto will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible. No action or failure to act pursuant to this Section 11(g) shall subject the Company to any claim, liability, or expense, and the Company shall not have any obligation to indemnify or otherwise protect the Employee from the obligation to pay any taxes, interest or penalties pursuant to Section 409A of the Code.

(ii) With respect to any reimbursement or in-kind benefit arrangements of the Company and its subsidiaries that constitute deferred compensation for purposes of Section 409A, except as otherwise permitted by Section 409A, the following conditions shall be applicable: (A) the amount eligible for reimbursement, or in-kind benefits provided, under any such arrangement in one calendar year may not affect the amount eligible for reimbursement, or in-kind benefits to be provided, under such arrangement in any other calendar year (except that the health and dental plans may impose a limit on the amount that may be reimbursed or paid), (B) any reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and (C) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (e.g., "payment shall be made within thirty (30) days after termination of employment"), the actual date of payment within the specified period shall be within the sole discretion of the Company. Whenever payments under this Agreement are to be made in installments, each such installment shall be deemed to be a separate payment for purposes of Section 409A.

(h) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year first above written.

COMPANY:

XOMA LTD.

By: _____ :
Name:
[Independent Director or CEO]

EMPLOYEE:

_____
Name

EXHIBIT A

FORM RELEASE OF CLAIMS AGREEMENT

This Release of Claims Agreement (this "Agreement") is made and entered into by and between XOMA Ltd. (the "Company") and _____ (the "Employee").

WHEREAS, the Employee was employed by the Company; and

WHEREAS, the Company and the Employee have entered into a Change of Control Severance Agreement effective as of_____, 2007 (the "Severance Agreement").

NOW THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Employee (collectively referred to as the "Parties") desiring to be legally bound do hereby agree as follows:

1. Termination. The Employee's employment with the Company terminated on_____, 20__.

2. Consideration. Subject to and in consideration of the Employee's release of claims as provided herein, the Company has agreed to pay the Employee certain benefits and the Employee has agreed to provide certain benefits to the Company, both as set forth in the Severance Agreement.

3. Release of Claims. The Employee agrees that the foregoing consideration represents settlement in full of all currently outstanding obligations owed to the Employee by the Company. The Employee, on the Employee's own behalf and the Employee's respective heirs, family members, executors and assigns, hereby fully and forever releases the Company and its past, present and future officers, agents, directors, employees, investors, shareholders, administrators, affiliates, divisions, subsidiaries, parents, predecessor and successor corporations, and assigns, from, and agrees not to sue or otherwise institute or cause to be instituted any legal or administrative proceedings concerning any claim, duty, obligation or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that the Employee may possess arising from any omissions, acts or facts that have occurred up until and including the Effective Date (as defined below) of this Agreement including, without limitation:

(a) any and all claims relating to or arising from the Employee's employment relationship with the Company and the termination of that relationship;

(b) any and all claims relating to, or arising from, the Employee's right to purchase, or actual purchase of shares of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law and securities fraud under any state or federal law;

(c) any and all claims for wrongful discharge of employment, termination in violation of public policy, discrimination, breach of contract (both express and implied), breach of a covenant of good faith and fair dealing (both express and implied), promissory estoppel, negligent or intentional infliction of emotional distress, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, negligence, personal injury, assault, battery, invasion of privacy, false imprisonment and conversion;

(d) any and all claims for violation of any federal, state or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, The Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, and Labor Code Section 201, *et seq.* and Section 970, *et seq.* and all amendments to each such Act as well as the regulations issued thereunder;

(e) any and all claims for violation of the federal or any state constitution;

(f) any and all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

(g) any and all claims for attorneys' fees and costs.

The Employee agrees that the release set forth in this Section 3 shall be and remain in effect in all respects as a complete general release as to the matters released. Notwithstanding the foregoing, this release does not extend to any obligations now or subsequently incurred under this Agreement, the Severance Agreement, the Indemnification Agreement between the Employee and the Company (or its successor or acquirer), the outstanding share award agreements between the Employee and the Company (or its successor or acquirer), or any employee benefit plan of which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

4. Acknowledgment of Waiver of Claims under ADEA. The Employee acknowledges that the Employee is waiving and releasing any rights the Employee may have under the Age Discrimination in Employment Act of 1967 ("ADEA") and that this waiver and release is knowing and voluntary. The Employee and the Company agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. The Employee acknowledges that the consideration given for this waiver and release agreement is in addition to anything of value to which the Employee was already entitled. The Employee further acknowledges that the Employee has been advised by this writing that (a) the Employee should consult with an attorney prior to executing this Agreement; (b) the Employee has at least twenty-one (21) days within which to consider this Agreement; (c) the Employee has seven (7) days following the execution of this Agreement by the Parties to revoke the Agreement; and (d) this Agreement shall not be effective until the revocation period has expired. Any revocation should be in writing and delivered to the Company by the close of business on the seventh (7^{th}) day from the date that the Employee signs this Agreement.

5. Civil Code Section 1542. The Employee represents that the Employee is not aware of any claims against the Company other than the claims that are released by this Agreement. The Employee acknowledges that the Employee has been advised by legal counsel and is familiar with the provisions of California Civil Code Section 1542, which provides as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HER OR HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HER OR HIM MUST HAVE MATERIALLY AFFECTED HER OR HIS SETTLEMENT WITH THE DEBTOR.**

The Employee, being aware of said code section, agrees to expressly waive any rights the Employee may have thereunder, as well as under any other statute or common law principles of similar effect.

6. No Pending or Future Lawsuits. The Employee represents that the Employee has no lawsuits, claims or actions pending in the Employee's name, or on behalf of any other person or entity, against the Company or any other person or entity referred to herein. The Employee also represents that the Employee does not intend to bring any claims on the Employee's own behalf or on behalf of any other person or entity against the Company or any other person or entity referred to herein except, if necessary, with respect to the agreements listed in the last sentence of Section 3 of this Agreement.

7. Confidentiality. The Employee agrees to use the Employee's best efforts to maintain in confidence the existence of this Agreement, the contents and terms of this Agreement, and the consideration for this Agreement (hereinafter collectively referred to as "Release Information"). The Employee agrees to take every reasonable precaution to prevent disclosure of any Release Information to third parties and agrees that there will be no publicity, directly or indirectly, concerning any Release Information. The Employee agrees to take every precaution to disclose Release Information only to those attorneys, accountants, governmental entities and family members who have a reasonable need to know of such Release Information.

8. No Adverse Cooperation. The Employee agrees the Employee will not act in any manner that might damage the business of the Company. The Employee agrees that the Employee will not counsel or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges or complaints by any third party against the Company and/or any officer, director, employee, agent, representative, shareholder or attorney of the Company, unless compelled under a subpoena or other court order to do so.

9. Costs. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Agreement.

10. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Agreement. The Employee represents and warrants that the Employee has the capacity to act on the Employee's own behalf and on behalf of all who might claim through the Employee to bind them to the terms and conditions of this Agreement.

11. No Representations. The Employee represents that the Employee has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

12. Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

13. Entire Agreement. This Agreement and the Severance Agreement and the agreements and plans referenced therein represent the entire agreement and understanding between the Company and the Employee concerning the Employee's separation from the Company, and supersede and replace any and all prior agreements and understandings concerning the Employee's relationship with the Company and the Employee's compensation by the Company. This Agreement may only be amended in writing signed by the Employee and an executive officer of the Company.

14. Governing Law. This Agreement shall be governed by the internal substantive laws, but not the choice of law rules, of the State of California.

15. Effective Date. This Agreement is effective eight (8) days after it has been signed by the Parties (the "Effective Date") unless it is revoked by the Employee within seven (7) days of the execution of this Agreement by the Employee.

16. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

17. Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims. The Parties acknowledge that:

(a) they have read this Agreement;

(b) they have been represented in the preparation, negotiation and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;

(c) they understand the terms and consequences of this Agreement and of the releases it contains; and

(d) they are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

XOMA LTD.

By: _____
Title: _____
Date: _____

EMPLOYEE

_____
Name
Date: _____

Exhibit 10.24C

AMENDED AND RESTATED
RESEARCH, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT

This Amended and Restated Research, Development and Collaboration Agreement (this "**Agreement**") is effective as of July 1, 2008 (the "**Effective Date**") by and between Novartis Vaccines and Diagnostics, Inc. (f/k/a Chiron Corporation), a Delaware corporation with offices at 4650 Horton Street, Emeryville, California 94608 (together with its Affiliates, "**NVDI**"), and XOMA (US) LLC, a Delaware limited liability company with offices at 2910 Seventh Street, Berkeley, California 94710 (together with its Affiliates, "**XOMA**"). NVDI and XOMA are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**." When used in this Agreement, capitalized terms shall have the meanings set forth in Article 1.

RECITALS

1. The Parties established a collaborative relationship to research, develop and commercialize antibody products in the field of oncology pursuant to that certain agreement executed on February 27, 2004 by and between the Parties (the **"Initial Agreement"**).

2. The Parties entered into that certain Research, Development and Commercialization Agreement dated as of May 26, 2005 (the**"Original Agreement"**) to replace the Initial Agreement to set forth in further detail the terms of the collaborative relationship between the Parties.

3. The Parties now wish to amend and restate the Original Agreement on the terms set forth below.

IN CONSIDERATION of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS

The following terms shall have the following meanings as used in this Agreement:

1.1 "Accounting Standards" means (a) with respect to NVDI, International Financial Reporting Standards, and (b) with respect to XOMA, United States generally accepted accounting principles, in each case consistently applied and as in effect from time to time.

1.2 "Affiliate" means any entity that is controlled by, controls or is under common control with NVDI or XOMA, as applicable. For such purpose, the term "**control**" means (a) direct or indirect ownership of more than fifty percent (50%) of the voting interest in the entity in question, or more than fifty percent (50%) interest in the income of the entity in question; or (b) possession, directly or indirectly, of the power to direct or cause the direction of management or policies of the entity in question (whether through ownership of securities or other ownership interests, by contract or otherwise).

1.3 "Agreement Product" means any of the Collaboration Products, Resumed Products, Reactivated Products and Ongoing Products.

1.4 "Agreement Target" means each of the Targets in the Original Collaboration immediately prior to the Effective Date as set forth on **Schedule 1.4**.

1.5 "Antibody" means any immunoglobulin molecule whether in monospecific or any other form and shall include, without limitation, immunoglobulin fragments, such as Fv, Fab, F(ab') and single-chain antibodies.

1.6 "Antibody Product" means any composition of matter or article of manufacture consisting essentially of an Antibody alone or integrally associated with a composition of matter or article of manufacture (including without limitation conjugates bound to a toxin, label or other moiety) providing therapeutic, half-life, safety or other advantages to the Antibody. For the avoidance of doubt, Antibody Product does not include gene therapy products, Fc fusion proteins lacking antibody variable domains or viral conjugates.

1.7 "BLA" means a biologics license application with the FDA as more fully described at 21 CFR § 601.2, or successor equivalent.

1.8 "Collaboration Inventions" means any and all Inventions Controlled by a Party and made, conceived, reduced to practice or otherwise acquired or licensed, either alone or jointly with another, on or after the Effective Date of the Initial Agreement and before the Effective Date and arising out of the activities of the Parties under the Original Collaboration and pursuant to research and development plans and budgets approved under the Initial Agreement or the Original Agreement, excluding, however, any and all Inventions encompassed within the Expression and Engineering Technologies. For the avoidance of doubt, (a) any and all such Inventions which constitute an improvement to either NVDI Background IP or XOMA Background IP made, conceived, reduced to practice or otherwise acquired or licensed on or after the Effective Date of the Initial Agreement and before the Effective Date and in the course of the Original Collaboration shall be deemed to be Collaboration Inventions, and (b) any and all Inventions made, conceived, reduced to practice or otherwise acquired or licensed on or after the Effective Date shall not be Collaboration Inventions. Notwithstanding the foregoing, the Parties acknowledge that, to the extent any Collaboration Invention is covered by a license or other agreement with a Third Party, such Collaboration Invention shall, for all purposes of this Agreement, be subject to the financial and other obligations, limitations and restrictions contained in such Third Party license or agreement.

1.9 "Collaboration IP" means any and all Collaboration Know-How and any and all Collaboration Patent Rights.

1.10 "Collaboration Know-How" means any and all Know-How Controlled by a Party and made, conceived, reduced to practice or otherwise acquired or licensed, either alone or jointly with others, on or after the Effective Date of the Initial Agreement and before the Effective Date and arising out of the activities of the Parties under the Original Collaboration and

pursuant to research and development plans and budgets approved under the Initial Agreement or the Original Agreement that is necessary or useful in the research, development, manufacture or commercialization of a Collaboration Product, excluding, however, any and all Know-How encompassed within the Expression and Engineering Technologies. For the avoidance of doubt, (a) any and all such Know-How which constitutes an improvement to either NVDI Background IP or XOMA Background IP made, conceived, reduced to practice or otherwise acquired or licensed on or after the Effective Date of the Initial Agreement and before the Effective Date and in the course of the Original Collaboration shall be deemed to be Collaboration Know-How, and (b) any and all Know-How made, conceived, reduced to practice or otherwise acquired or licensed on or after the Effective Date shall not be Collaboration Know-How. Notwithstanding the foregoing, the Parties acknowledge that, to the extent any Collaboration Know-How is covered by a license or other agreement with a Third Party, such Collaboration Know-How shall, for all purposes of this Agreement, be subject to the financial and other obligations, limitations and restrictions contained in such Third Party license or agreement.

1.11 "Collaboration Patent Rights" means Patent Rights claiming Collaboration Inventions.

1.12 "Collaboration Product" means any Antibody Product that: (a) binds to CD40 or [*] and (b) is identified, generated or otherwise created, or acquired from a Third Party, by either Party before or after the Effective Date, *provided, however,* that such Antibody Product shall cease to be a Collaboration Product when the Target it binds to becomes a Pending Target pursuant to Section 2.1(d)(i), and *provided, further* that, if such Target again becomes a Collaboration Target pursuant to Section 2.1(d)(ii), such Antibody Product, as well as any other Antibody Product that binds to the same Target and that has been, or is later, identified, generated or otherwise created, or acquired from a Third Party by either Party at any time, shall again become a Collaboration Product.

1.13 "Collaboration Target" means each of CD40 and [*] unless or until either or both of such Targets become Pending Targets pursuant to Section 2.1(d)(i), but subject to either or both of such Targets again becoming Collaboration Targets pursuant to Section 2.1(d)(ii).

1.14 "Commercially Reasonable and Diligent Efforts" means, with respect to the efforts to be expended by a Party hereunder, efforts and resources comparable to those used by the Top 10 Pharmaceutical Companies (with respect to NVDI), or an appropriately funded biotechnology company of comparable market capitalization (with respect to XOMA) as would reasonably be expected to be exerted or employed for a product proprietary to that company, which product is of similar market potential (taking into account the relevant patent and proprietary position) at a similar stage in its development or product life to the applicable Target, Antibody or Antibody Product (or another comparable product if no such Antibody Product exists), utilizing sound and reasonable scientific, business, (where relevant) pre-clinical and clinical practice and judgment in order to develop and commercialize such product in a timely manner. A Party's obligation to devote Commercially Reasonable Efforts may be satisfied by that Party's or its Affiliate's efforts.) Notwithstanding the foregoing, to the extent that the performance of a Party's responsibilities hereunder is adversely affected by the other Party's failure to perform its responsibilities hereunder, such Party shall not be deemed to have failed to use Commercially Reasonable and Diligent Efforts in performing such responsibilities.

1.15 [*]

1.16 "Confidential Information" means all know-how, inventions, technical, marketing, financial or other similar information, including without limitation proprietary information and biological and other tangible materials (whether or not patentable). Materials, know-how or other information that is orally, electronically or visually disclosed by a Party, or is disclosed in writing without an appropriate letter, stamp or legend, shall constitute Confidential Information if such information is of the type that should reasonably have been considered confidential by the receiving Party at the time of disclosure, given the circumstances surrounding the disclosure of such materials, know-how or other information.

1.17 "Control" or **"Controlled"** means, with respect to any Know-How or Patent Rights, possession of the ability (whether arising by ownership or license) to grant rights, ownership, access, a license or a sublicense (as applicable) to such intellectual property as provided for herein without violating the terms of any written agreement with a Third Party entered into prior to the time such Party would be first required hereunder to grant the other Party such access, license or sublicense.

1.18 "Controlling Party" means (a) with respect to Collaboration Inventions and Post-Effective Date Inventions made, conceived or reduced to practice in the course of a Collaboration Project or in the course of developing or commercializing a Collaboration Product, and all Collaboration Patent Rights and Post-Effective Date Patent Rights covering or claiming any such Invention(s), NVDI, (b) with respect to Collaboration Inventions and Post-Effective Date Inventions made, conceived or reduced to practice in the course of a Resumed Project or in the course of developing or commercializing a Resumed Product, and all Collaboration Patent Rights and Post-Effective Date Patent Rights covering or claiming any such Invention(s), XOMA, (c) with respect to Collaboration Inventions and Post-Effective Date Inventions made, conceived or reduced to practice in the course of a Reactivated Project or an Ongoing Project, and all Collaboration Patent Rights and Post-Effective Date Patent Rights covering or claiming any such Invention(s), the Party progressing such Reactivated Project or Ongoing Project, and (d) with respect to Collaboration Inventions and Post-Effective Date Inventions made, conceived or reduced to practice in the course of Preliminary Research with respect to a particular Inactive Project, and all Collaboration Patent Rights and Post-Effective Date Patent Rights covering or claiming any such Invention(s), the Party conducting such Preliminary Research.

1.19 "Effective Date of the Initial Agreement" means February 27, 2004.

1.20 "Expression and Engineering Technologies" means (a) the bacterial cell expression technology Controlled by XOMA Ireland Limited and subsequently licensed to XOMA (with the right to sublicense hereunder) and any improvements thereto which are made, conceived, reduced to practice or otherwise acquired or licensed on or after the Effective Date of the Initial Agreement and before the Effective Date and in the course of the Original Collaboration, and (b) the Human Engineering™ Technology.

1.21 "FDA" means the United States Food and Drug Administration and any successor agency.

1.22 "Human Engineering Technology" means the Human Engineering™ technology Controlled by XOMA Ireland Limited and subsequently licensed to XOMA (with the right to sublicense hereunder) and any improvements thereto which are made, conceived, reduced to practice or otherwise acquired or licensed on or after the Effective Date of the Initial Agreement and before the Effective Date and in the course of the Original Collaboration.

1.23 "Inactive Product" means: (a) in the case where CD40 or [*] is the Inactive Target, an Antibody Product that is deemed an Inactive Product pursuant to Section 2.1(d)(iv); (b) in the case where an Inactive Target becomes a Reactivated Target and later becomes an Inactive Target again pursuant to Section 2.2(d), an Antibody Product that is deemed an Inactive Product pursuant to Section 2.2(d); and (c) in the case of any other Inactive Target, (i) an Antibody Product that binds to such Inactive Target and that was initially identified, generated or otherwise created, or acquired from a Third Party, by either Party in the course of the Original Collaboration, or (ii) any other Antibody Product that also binds to such Inactive Target and that is derived from, or derived from the use of, an Antibody Product referred to in clause (i) of this sentence.

1.24 "Inactive Target" means any Agreement Target that is not subject to a Project. The Inactive Targets existing as of the Effective Date are set forth on **Schedule 1.24**.

1.25 "IND" means an investigational new drug application with the FDA as more fully described at 21 CFR § 312.20, or successor equivalent, or a comparable filing with a Regulatory Authority outside the United States.

1.26 "Inventions" means any and all inventions, discoveries or ideas, and improvements thereto (whether or not patentable).

1.27 "Know-How" means any and all know-how, trade secrets, data, processes, techniques, procedures, compositions, materials, devices, methods, formulas, protocols, pre-clinical and clinical data and information, including any and all chemical, biochemical, toxicological, and scientific research information, whether in written, electronic, graphic or video form or any other form or format.

1.28 "Net Sales" means the gross invoice price of Products sold by or on behalf of NVDI (or its Affiliates or sublicensees) for sale of Collaboration Products, NVDI Ongoing Products and NVDI Reactivated Products, or XOMA (or its Affiliates or sublicensees) for sale of Resumed Products, XOMA Ongoing Products and XOMA Reactivated Products, as the case may be (each, a "**Selling Entity**"), in each case to Third Parties, in bona fide, arms-length transactions after deduction of all of the following (reasonably documented):

(a) [*]

all as determined in accordance with the Selling Entity's usual and customary Accounting Standards as consistently applied by the Selling Entity.

Amounts invoiced between a Selling Entity and its Affiliates for quantities of Product for use in clinical trials or for resale, or by a Selling Entity or its Affiliates to permitted sublicensees of the license(s) granted hereunder for resale shall not be included in the calculation of Net Sales.

Any of the items set forth above that would otherwise be deducted from the invoice price in the calculation of Net Sales but which are separately charged to Third Parties shall not be deducted from the invoice price in the calculation of Net Sales.

Net Sales of any Product sold by or on behalf of a Selling Entity or its Affiliates as part of a product that in addition to Product contains one or more other active ingredients (a "Combination Product"), shall be calculated as follows:

(1) The Net Sales for the purpose of determining royalty-style payments on sales of the Combination Product shall be calculated by [*].

(2) [*]

1.29 "NVDI Background IP" means any and all Know-How and Patent Rights (including, for example, intellectual property relating to Agreement Targets) Controlled by NVDI as of the Effective Date of the Initial Agreement (or, in the case of intellectual property relating to Agreement Targets accepted for inclusion in the Original Collaboration pursuant to Section 3.3(d) of the Original Agreement after the Effective Date of the Initial Agreement, as of the date on which each such Agreement Target was so accepted) that are [*] for (a) research relating to Agreement Target(s) or (b) research, development, manufacture or commercialization of Resumed Products, XOMA Ongoing Products or XOMA Reactivated Products. NVDI Background IP also includes any and all Know-How and Patent Rights that are necessary for either of the purposes set forth in clauses (a) and (b) of the immediately preceding sentence and that came to be Controlled by NVDI after the Effective Date of the Initial Agreement and either (x) before the Effective Date but not in the course of the Original Collaboration or (y) on or after the Effective Date, except (i) to the extent the inclusion of such Know-How and Patent Rights in NVDI Background IP would constitute a breach or violation of or a default under, or would otherwise be inconsistent with, the terms and provisions of any license or other agreement giving rise to or governing such Know-How or Patent Rights, and (ii) that, in the event the inclusion of such Know-How or Patent Rights in NVDI Background IP would subject either or both of the Parties to additional financial or other adverse obligations to a Third Party, such Know-How or Patent Rights shall not be so included in NVDI Background IP unless the Parties so agree (which agreement shall not be unreasonably withheld or delayed). For the avoidance of doubt, the Parties acknowledge that, to the extent any NVDI Background IP is covered by a license or other agreement with a Third Party, such NVDI Background IP shall, for all purposes of this Agreement, be subject to the financial and other obligations, limitations and restrictions contained in such Third Party license or agreement. NVDI Background IP shall include, without limitation, those licenses, patents and patent applications set forth on **Schedule 1.29**.

1.30 "Original Collaboration" means the collaborative relationship between the Parties as governed by the Initial Agreement and the Original Agreement during the period from the Effective Date of the Initial Agreement through the Effective Date.

1.31 "Patent Rights" means (a) unexpired letters patent (including inventor's certificates) which have not been held invalid or unenforceable by a court of competent jurisdiction from which no appeal can be taken or has been taken within the required time period (and which have not been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise, or been abandoned), including without limitation any substitution, extension, registration, confirmation, reissue, re-examination, supplementary protection certificates, confirmation patents, patent of additions, renewal or any like filing thereof and (b) pending applications for letters patent which have not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority for whatever reason (and from which no appeal is or can be taken), and/or abandoned, including without limitation any continuation, division or continuation-in-part thereof and any provisional applications.

1.32 "Phase I Clinical Trial" means that portion of the process seeking Regulatory Approval which provides for human trials for the purposes of determining toxicity, metabolism, absorption, elimination and other pharmacological action, as more fully described at 21 CFR § 312.21(a).

1.33 "Phase II Clinical Trial" means that portion of the process seeking Regulatory Approval which provides for human trials for the purposes of determining dose and evaluating safety and efficacy in the proposed therapeutic indication, as more fully described at 21 CFR § 312.21(b).

1.34 "Phase III Clinical Trial" means that portion of the process seeking Regulatory Approval which provides for human trials on sufficient numbers of patients intended for the purposes of (a) establishing safety and efficacy for an intended use; and (b) defining warnings, precautions and adverse reactions in the dosage to be prescribed, as more fully described at 21 CFR § 312.21(c).

1.35 "Post-Effective Date Inventions" means any and all Inventions Controlled by a Party and made, conceived, reduced to practice or otherwise acquired or licensed, either alone or jointly with another, on or after the Effective Date and arising out of the activities of such Party in connection with the development or commercialization of Collaboration Products, NVDI Ongoing Products, Resumed Products, XOMA Ongoing Products or Reactivated Products. For the avoidance of doubt, any and all Inventions comprising the Expression and Engineering Technologies as such technologies exist on or after the Effective Date shall not be Post-Effective Date Inventions. Notwithstanding the foregoing, the Parties acknowledge that, to the extent any Post-Effective Date Invention is covered by a license or other agreement with a Third Party, such Post-Effective Date Invention shall, for all purposes of this Agreement, be subject to the financial and other obligations, limitations and restrictions contained in such Third Party license or agreement.

1.36 "Post-Effective Date Patent Rights" means Patent Rights claiming or covering Post-Effective Date Inventions.

1.37 "Project" means any of the Collaboration Projects, Pending Projects, Resumed Projects, Reactivated Projects or Ongoing Projects. For clarity, each Project shall consist of research and development activities relating to a particular Agreement Target and the Agreement Products corresponding to such Agreement Target.

1.38 "R&D Plans and Budgets" means research and development plans and budgets relating to Agreement Targets and Agreement Products approved in accordance with the terms of the Original Agreement, as in effect immediately prior to the Effective Date.

1.39 "Regulatory Approval" means any approvals (including pricing and reimbursement approvals), licenses, registrations or authorizations of any federal, state or local regulatory agency, department, bureau or other governmental entity necessary for the manufacture and sale of any Agreement Product in a regulatory jurisdiction.

1.40 "Regulatory Authority" means any national (e.g., the FDA), supranational (e.g., the European Medicines Agency), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity in any jurisdiction of the world involved in the granting of Regulatory Approvals for pharmaceutical products.

1.41 "Royalty-Style Payment Period" means with respect to any Collaboration Product, Resumed product, NVDI Ongoing Product, XOMA Ongoing Product or Reactivated Product, the longer of (i) the period during which such Product is covered by a Valid Claim of Related XOMA Patent Rights or Related NVDI Patent Rights as the case may be or (ii) twenty (20) years from the launch of such Product on a country-by-country basis.

1.42 [*]

1.43 "Target" means any biological molecule that is believed to be accessible to an Antibody.

1.44 "Third Party" means any person or entity other than NVDI or XOMA or their respective Affiliates.

1.45 "Top 10 Pharmaceutical Companies" means **[still to be provided by NVDI]**.

1.46 "United States" or "**U.S.**" means the United States of America, including its territories and possessions, the District of Columbia and Puerto Rico.

1.47 "Valid Claim" means a claim of an issued Patent Right that has not expired or been revoked, held invalid or unenforceable by a patent office, court or other governmental agency of competent jurisdiction in a final and non-appealable judgment (or a judgment from which no appeal was taken within the allowable time period).

1.48 "XOMA Background IP" means any and all Know-How and Patent Rights (including, for example, intellectual property relating to Agreement Targets) Controlled by XOMA as of the Effective Date of the Initial Agreement (or, in the case of intellectual property relating to Agreement Targets accepted for inclusion in the Original Collaboration pursuant to Section 3.3(d) of the Original Agreement after the Effective Date of the Initial Agreement, as of the date on which each such Agreement Target was so accepted) that are [*] for (a) research

relating to Agreement Target(s) or (b) research, development, manufacture (including expression vectors and other technology for expression of proteins in mammalian and other non-bacterial cells) or commercialization of Collaboration Product(s), NVDI Ongoing Product(s) or NVDI Reactivated Product(s). XOMA Background IP shall also include any and all Know-How and Patent Rights that are necessary for either of the purposes set forth in clauses (a) and (b) of the immediately preceding sentence and that came to be Controlled by XOMA on or after the Effective Date of the Initial Agreement and either (x) before the Effective Date but not in the course of the Original Collaboration or (y) on or after the Effective Date, except (i) to the extent the inclusion of such Know-How and Patent Rights in XOMA Background IP would constitute a breach or violation of or a default under, or would otherwise be inconsistent with, the terms and provisions of any license or other agreement giving rise to or governing such Know-How or Patent Rights, and (ii) that, in the event the inclusion of such Know-How or Patent Rights in XOMA Background IP would subject either or both of the Parties to additional financial or other adverse obligations to a Third Party, such Know-How or Patent Rights shall not be so included in XOMA Background IP unless the Parties so agree (which agreement shall not be unreasonably withheld or delayed). For the avoidance of doubt, the Parties acknowledge that, to the extent any XOMA Background IP is covered by a license or other agreement with a Third Party, such XOMA Background IP shall, for all purposes of this Agreement, be subject to the financial and other obligations, limitations and restrictions contained in such Third Party license or agreement. XOMA Background IP shall include, without limitation, those licenses, patents and patent applications set forth on **Schedule 1.48**. Notwithstanding any provision of this Agreement to the contrary, XOMA Background IP shall not include the Expression and Engineering Technologies.

In addition, the following terms have the meanings given them in the corresponding Sections of this Agreement:

Term	Section
Agreement	Introduction
Article 10 Disputes	10.1
Assignment Date	11.1(b)
Claims	4.1
Collaboration Projects	2.1(a)
Coordination Committee	2.3(b)
Effective Date	Introduction
Exclusivity Period	2.1(d)(iv)
Inactive Project	2.1(d)(iv)
Initial Agreement	Recitals
Interest Period	3.12
Interest Rate	3.12
Losses	8.5(a)
Match Period	2.2(c)(ii)
Match Right Period	2.2(c)(ii)
NVDI	Introduction
NVDI Ongoing Product	2.2(c)(i)(B)
NVDI Ongoing Project	2.2(c)(i)(B)

NVDI Reactivated Product	2.2(b)
NVDI Reactivated Project	2.2(b)
NVDI Releasees	4.1
NVDI Releasors	4.2
Ongoing Product	2.2(c)(i)(B)
Ongoing Project	2.2(c)(i)(B)
Original Agreement	Recitals
Party/Parties	Introduction
Pending Product	2.1(d)(i)
Pending Project	2.1(d)(i)
Pending Target	2.1(d)(i)
Phase III Decision Point	2.2(c)(ii)
Preliminary Research	2.2(a)
Proof-of-Concept Data	2.2(b)
Reactivated Product	2.2(b)
Reactivated Project	2.2(b)
Reactivated Target	2.2(b)
Related NVDI Patent Rights	7.2(b)
Related XOMA Patent Rights	7.2(c)
Requesting Party	2.4
Resumed Product	2.1(d)(ii)
Resumed Project	2.1(d)(ii)
Resumed Target	2.1(d)(ii)
Responding Party	2.4
Secured Note Agreement	3.1
Security Agreement	3.2
Term	9.1
Third Party Background IP Agreements	3.6(f)
Third Party Transaction	2.2(c)(ii)
Transition Period	2.1(b)
Trigger Date	2.1(d)(ii)
XOMA	Introduction
XOMA Ongoing Product	2.2(c)(i)(B)
XOMA Ongoing Project	2.2(c)(i)(B)
XOMA Reactivated Product	2.2(b)
XOMA Reactivated Project	2.2(b)
XOMA Releasees	4.2
XOMA Releasors	4.1

ARTICLE 2

RESEARCH AND DEVELOPMENT

2.1 Collaboration Targets; Resumed Targets.

(a) NVDI Control. XOMA and NVDI have been conducting research and development activities relating to Collaboration Targets and Collaboration Products in accordance with existing R&D Plans and Budgets (the "**Collaboration Projects**"). Commencing upon the Effective Date, NVDI will assume complete control over the conduct of the Collaboration Projects, but in any event consistent with existing protocols and applicable legal requirements. NVDI shall have the sole decision-making authority and responsibility, to be exercised at its sole discretion (subject to its obligations under Section 2.1(c)), without consultation with XOMA or any other entity, regarding all development, research, manufacturing, regulatory, safety, marketing and commercialization activities related to such Collaboration Products anywhere in the world, including rights and decision-making authority regarding involvement by Third Parties. Notwithstanding the foregoing or any other provision hereof to the contrary, NVDI will inform XOMA in a timely manner of any correspondence or other communication with any Regulatory Authority regarding the regulatory status of, or that otherwise relates to the regulatory process concerning, the cell line provided by XOMA to NVDI for use in connection with the Agreement Target known as [*].

(b) Transition Period. For a period of [*] days following the Effective Date (or until such period is earlier terminated by agreement of the Parties) (the "**Transition Period**"), (i) XOMA shall use Commercially Reasonable and Diligent Efforts, as specifically requested by NVDI and at NVDI's expense, to assist in the orderly and timely transfer of responsibilities and necessary materials to the control of NVDI in order to give effect to Section 2.1(a), and (ii) from time to time at NVDI's sole discretion, NVDI may (but has no obligation to) propose to XOMA that XOMA assist in research and/or development activities related to, or provide other services in connection with, one or more Collaboration Projects. XOMA will consider such proposal, but has no obligation to undertake any such activities or to provide any such services. If NVDI and XOMA agree to have XOMA assist in such activities or provide such services, then the Parties shall negotiate in good faith with respect to terms under which XOMA would do so. Within [*] after the Effective Date, XOMA shall provide to NVDI all reasonably useful data and information in its possession, which shall include without limitation production cell lines, cell banks, production batch records, clinical trial materials, research and assay reagents, test methods and regulatory submissions, relating to Collaboration Projects. From time to time at NVDI's sole discretion, NVDI may (but shall have no obligation to) propose to XOMA that XOMA assist in providing information and expertise to NVDI to assist NVDI in preparing regulatory filings and responding to Regulatory Authority inquiries regarding INDs and/or BLAs relating to one or more Collaboration Products [*]. XOMA will consider any such proposal in good faith, but shall have no obligation to undertake any such activities or to provide any such services. If NVDI and XOMA agree to have XOMA assist in such activities or provide such services, then the Parties shall negotiate in good faith with respect to terms under which XOMA would do so. Following the Transition Period, XOMA shall have no obligation whatsoever under this Agreement to assist or provide any services to, and following such [*] XOMA shall have no obligation whatsoever under this Agreement to provide any materials to, NVDI in connection with the Collaboration Projects.

(c) Diligence. NVDI shall use Commercially Reasonable and Diligent Efforts in the development and commercialization of the Collaboration Products.

(i) Without limiting the generality of the foregoing, NVDI shall use Commercially Reasonable and Diligent Efforts to achieve each of the following diligence events:

(ii) [*]

(iii) [*]

(d) XOMA's Right to Resumed Products.

(i) In the event NVDI decides not to proceed with all Collaboration Projects related to the development and/or commercialization of a particular Collaboration Product, NVDI shall promptly notify XOMA in writing of such decision, upon which notification such Collaboration Project(s) shall cease to be Collaboration Project(s) and shall be deemed "**Pending Project(s)**", such Collaboration Product shall cease to be a Collaboration Product and shall be deemed a "**Pending Product**", and the Target that is the subject of such Project shall cease to be a Collaboration Target and shall be deemed a "**Pending Target**." In addition, if NVDI fails to use Commercially Reasonable and Diligent Efforts to develop and/or commercialize any Collaboration Product(s) with respect to a particular Collaboration Target, XOMA may notify NVDI in writing of such failure and NVDI shall have [*] after receiving such notification to remedy such failure. If NVDI fails to do so within such [*] (or, if such notice is disputed by NVDI, following resolution of such dispute in XOMA's favor), the Collaboration Project(s) related thereto shall also cease to be Collaboration Project(s) and shall be deemed "**Pending Project(s)**", each Collaboration Product related thereto shall also cease to be a Collaboration Product and shall be deemed a "**Pending Product**", and the Target that is the subject of such Project shall cease to be a Collaboration Target and shall be deemed a "**Pending Target**."

(ii) Within [*] after a Project becomes a Pending Project (the "**Trigger Date**"), NVDI shall provide to XOMA all reasonably useful data and information in its possession, which shall include without limitation production cell lines, cell banks, production batch records, clinical trial materials, research and assay reagents, test methods and regulatory submissions relating to such Pending Project. For a period of [*] after the Trigger Date, XOMA shall have the exclusive option to provide NVDI with written notice to assume complete control over such Pending Project. If XOMA does not exercise such option during such [*] period then from the expiration of such period until the end of the Exclusivity Period (as defined in Section 2.1(d)(iv) below), either Party shall have the option to provide the other Party with written notice to assume complete control over such Pending Project. Any such notification by XOMA shall not be construed as XOMA's waiving any claims against NVDI. If NVDI resumes control over such Pending Project, then such Pending Project shall cease to be a Pending Project and shall again become a Collaboration Project, each Antibody Product related thereto shall cease to be a Pending Product and shall again be deemed a Collaboration Product, the Target that is the subject of such Project shall cease to be a Pending Target and shall again be deemed a Collaboration

Target, and the terms and conditions under this Agreement with respect to a Collaboration Project, Collaboration Product or Collaboration Target shall again apply thereto. If XOMA assumes control over such Pending Project, then such Pending Project shall cease to be a Pending Project and shall be deemed a "**Resumed Project**", each Antibody Product related thereto, including any other Antibody Product that binds to the same Target and that has been, or is later, identified, generated or otherwise created, or acquired from a Third Party by either Party at any time, shall cease to be a Pending Product and shall be deemed a "**Resumed Product**", and the Target that is the subject of such Project shall cease to be a Pending Target and shall be deemed a "**Resumed Target**"). XOMA shall thereupon have the sole decision-making authority and responsibility, to be exercised at its sole discretion, without consultation with NVDI or any other entity, regarding all research, development, manufacturing, regulatory, safety, marketing and commercialization activities related to such Resumed Project and all Resumed Product(s) anywhere in the world, including rights and decision-making authority regarding involvement by Third Parties, without any further obligation to NVDI, except under Section 3.6(b).

(iii) If XOMA assumes control over any Project pursuant to Section 2.1(d)(ii) above, for a period of at least [*] following receipt of such notice, NVDI shall use Commercially Reasonable and Diligent Efforts, as specifically requested by XOMA and at XOMA's expense, to assist in the orderly and timely transfer of responsibilities and necessary materials to the control of XOMA in order to give effect to the last sentence of Section 2.1(d)(ii), which materials shall include without limitation production cell lines, cell banks, production batch records, clinical trial materials, research and assay reagents, test methods and regulatory submissions relating to such Resumed Projects. From time to time at XOMA's sole discretion, XOMA may (but shall have no obligation to) propose to NVDI that NVDI assist in research and/or development activities related to, or provide other services in connection with, the development and/or commercialization of one or more Resumed Products. NVDI will consider such proposal in good faith, but shall have no obligation to undertake any such activities or to provide any such services. If NVDI and XOMA agree to have NVDI assist in such activities or provide such services, then the Parties shall negotiate in good faith with respect to terms under which NVDI would do so. Following the transition of such Resumed Products to XOMA, NVDI shall have no obligation whatsoever under this Agreement to assist, or provide any services or materials to, XOMA in connection with the development or commercialization of such Resumed Products.

(iv) Subject to Section 11.1(b), for the Exclusivity Period (as defined below) with respect to a particular Pending Project, neither Party shall have the right to develop and/or commercialize any Antibody Product binding to the applicable Pending Target, without first assuming control over such Pending Project pursuant to Section 2.1(d)(ii) above, in which case such Party shall develop and commercialize such Antibody Product as a Collaboration Product under such Collaboration Project, or a Resumed Product under such Resumed Project, as the case may be. "**Exclusivity Period**" shall mean the period commencing upon the first Trigger Date with respect to a particular Pending Project and continuing until the [*] *provided* that, (A) if NVDI assumes control over any Pending Project under Section 2.1(d)(ii) above as a Collaboration Project and later terminates all development efforts related thereto, so that such Project again becomes a Pending Project, then the Exclusivity Period shall commence upon the Trigger Date on which such Project became a Pending Project for the first time and shall expire upon [*]

or (B) if XOMA assumes control over any Pending Project under Section 2.1(d)(ii) above as a Resumed Project and later terminates all development efforts thereto, so that such Project again becomes a Pending Project, then [*]. At the end of the Exclusivity Period for a particular Pending Project, if neither Party is pursuing such Project as a Collaboration Project or Resumed Project, then such Pending Project shall cease to be a Pending Project and shall be deemed an "**Inactive Project**," the Target that is the subject of such Project shall cease to be a Pending Target and shall be deemed an Inactive Target, and (C) each Antibody Product that had then been identified, generated or otherwise created, or acquired from a Third Party, by either Party that binds to the relevant Target, and (D) any other Antibody Product that also binds to the same Agreement Target and that is derived from, or derived from the use of, an Antibody Product referred to in clause (C) above, shall cease to be a Pending Product and be deemed an Inactive Product.

(v) For clarity, subject to Section 11.1(b), XOMA shall not have the right to, either by itself or in collaboration with a Third Party, develop, commercialize and/or provide related services with respect to any Antibody Product that binds to any Collaboration Target, and NVDI shall not have the right to, either by itself or in collaboration with a Third Party, develop, commercialize and/or provide related services with respect to any Antibody Product that binds to any Resumed Target. Otherwise, either Party shall be free, by itself or in collaboration with a Third Party, to develop, commercialize and/or provide related services with respect to products that bind to any of the Agreement Targets, subject to the limitations with respect to Pending Projects under this Section 2.1(d) and with respect to Inactive Projects under Section 2.2 below.

2.2 Inactive Targets.

(a) Activities with Respect to Inactive Targets.

(i) At any time(s), each Party shall have the right, at its sole discretion and expense, to perform preclinical research with respect to any Inactive Target and any Antibody Product related thereto, until such Party obtains Proof-of-Concept Data with respect to such Inactive Target (such preclinical research, the "**Preliminary Research**"). Upon the reasonable, written request of a Party intending to perform Preliminary Research with respect to an Inactive Target, the other Party will provide, at the requesting Party's expense, any useful materials in its control relating directly and solely to such Inactive Target and created during the period from the Effective Date of the Initial Agreement through the Effective Date and as part of the Original Collaboration, which materials may include without limitation production cell lines, cell banks, production batch records, clinical trial materials, research and assay reagents, test methods and regulatory submissions relating to such Inactive Target but shall exclude any materials that the requesting Party could readily obtain from another source without undue expense or undue delay to such preclinical research.

(ii) To the extent a Party has generated during Preliminary Research, or at any time(s) plans to generate, any new Antibody Product that binds to any Inactive Target that is not an Inactive Product, it shall have the right to do so, free and clear of any obligations to the other Party under this Agreement, regardless of whether the other Party is pursuing the same Agreement Target through developing and/or commercializing any Antibody Product under this Section 2.2 as a Reactivated Product or an Ongoing Product.

(iii) To the extent a Party elects to further develop or optimize any Inactive Product, it shall do so pursuant to this Agreement and in particular the provisions of this Section 2.2.

(b) Right to Inactive Projects. In the event that a Party has obtained data from an animal proof-of-principle or animal proof-of-concept study with respect to any Inactive Product (the "**Proof-of-Concept Data**"), and intends to pursue human clinical trials of such Inactive Product, that Party shall notify the other Party in writing, and provide the other Party a written description of its Proof-of-Concept Data. Within [*] after such other Party receives such written notice, subject to the rest of this Section 2.2(b), such Inactive Product and any other Inactive Product related to the same Inactive Target shall cease to be an Inactive Product and shall be deemed a "**Reactivated Product**", the development and/or commercialization activities with respect to such Inactive Target and each Reactivated Product related to such Inactive Target shall be deemed a "**Reactivated Project**", and such Agreement Target shall be deemed a "**Reactivated Target**." The Party which has first obtained the Proof-of-Concept Data shall have the exclusive right, as between the Parties, to further progress such Reactivated Project and to develop and commercialize each Reactivated Product related thereto, *provided* that the other Party shall maintain the right to develop and/or commercialize products (including Antibody Products) related to the same Inactive Target provided that such products do not comprise a Reactivated Product. A Reactivated Project under development or commercialization by NVDI shall be deemed an "**NVDI Reactivated Project**" and the Reactivated Product(s) thereunder, "**NVDI Reactivated Product(s)**." A Reactivated Project under development or commercialization by XOMA shall be deemed a "**XOMA Reactivated Project**" and the Reactivated Product(s) thereunder, "**XOMA Reactivated Product(s)**." If, upon receiving the notification from the first Party that it has obtained the Proof-of-Concept Data with respect to a particular Inactive Product, the other Party claims that it has also obtained Proof-of Concept Data for an Inactive Product related to the same Inactive Target, then such other Party shall notify the first Party in writing within [*] after receiving the notification from the first Party of such other Party's claim. In such event, the Parties shall discuss in good faith to resolve such claim, and either Party may initiate the dispute resolution procedures set forth in Article 10 hereof to resolve such claim. The Party which has been determined by such resolution to have first obtained such Proof-of-Concept Data with respect to an Inactive Product related to such Inactive Target shall have the exclusive right, as between the Parties, to further progress such Project as a Reactivated Project and to develop and commercialize each Inactive Product related thereto as a Reactivated Product, pursuant to the terms and conditions of this Agreement. The Party not progressing any particular Reactivated Project shall have the match right pursuant to Section 2.2(c)(ii) below with respect to such Reactivated Project, and the potential opt-in rights under Sections 2.2(c)(i) and (iii) below. For clarity, any such opt-in right, if exercised with respect to any particular Reactivated Project, shall have the effect only of providing for the Party which made the opt-in payment to obtain an increased royalty-style payment on the Net Sales of the Agreement Products related thereto, and shall not allow such Party to actively participate in the progressing of such Project or the development and commercialization of such Agreement Products related thereto.

(c) Opt-In Right and Match Right

(i) IND Filing Opt-In Rights.

(A) If, as a result of any research and development activities conducted with respect to a Reactivated Project, the Party advances the development of a Reactivated Product related thereto such that it has filed an IND for such Reactivated Product, then such Party shall have the right, but not the obligation, to offer the other Party the right to opt-in on such Reactivated Project pursuant to this Section 2.2(c). If such Party elects to offer the other Party such opt-in right, it shall provide written notice thereof, together with all reasonably useful data and information in its possession relating to such Reactivated Project, including the documentation for the filing of the IND. The Party receiving the opt-in offer shall have a period of [*] from the date it receives such notice, data and information to evaluate such data and information and to exercise its opt-in rights.

(B) If the Party exercises its opt-in right, the Party opting-in shall pay the Party who progressed the Reactivated Project a one-time option fee of [*]. Upon payment of such amount to the Party offering such opt-in right, the Reactivated Project shall cease to be a Reactivated Project and shall be deemed an "**Ongoing Project**" and each Reactivated Product related thereto shall cease to be a Reactivated Product and shall be deemed an "**Ongoing Product**." Specifically, if NVDI has progressed such Reactivated Product, such Ongoing Project shall be deemed an "**NVDI Ongoing Project**" and each Reactivated Product related thereto, an "**NVDI Ongoing Product**", and if XOMA has progressed such Reactivated Project, such Ongoing Project shall be deemed a "**XOMA Ongoing Project**" and each Reactivated Product related thereto, a "**XOMA Ongoing Product**." In each case, such Ongoing Project and Ongoing Product shall be subject to the terms and conditions set forth in this Agreement applicable to such Ongoing Project and Ongoing Product including without limitation the terms and conditions under Sections 2.2(d) and (e), and Article 3.

(C) In the event that the Party receiving the opt-in offer of this Section 2.2(c) does not exercise its rights to opt in, the other Party shall be permitted to progress such Reactivated Project and to research, develop and commercialize all Reactivated Products related to such Reactivated Target, either alone or with a Third Party, free of any further obligation to the other Party under this Section 2.2.

(ii) Match Right. With respect to any Reactivated Project under development by a Party and for which such Party did not offer the opt-in right to the other Party pursuant to Section 2.2(c)(i) above, the other Party shall have a Match Right for such Reactivated Project at any time before the Phase III Decision Point (the "**Match Right Period**"). "**Phase III Decision Point**" means the time when the Party developing such Reactivated Project makes a decision, after a post-Phase II Clinical Trial meeting with the FDA or equivalent regulatory authority with respect to a Reactivated Product related thereto, to conduct a Phase III Clinical Trial with respect to such Reactivated Product. At any time during the Match Right Period with respect to such Reactivated Project, if the Party conducting the development of such Reactivated Project proposes to license or otherwise grant any development and commercialization rights to a Third Party with respect to such Reactivated Project or any Reactivated Product related thereto (a "**Third Party Transaction**"), then, prior to entering into a binding agreement with respect to the essential terms of such Third Party Transaction, such Party shall provide the other Party with written notice of such terms, together with all reasonably useful information, including all material information provided to the Third Party, to the extent such information was

not previously provided to the receiving Party. The receiving Party shall have the right, in its sole discretion, to enter into an agreement with the offering Party on substantially the same terms as those contained in such notice by providing written notice of such election within thirty (30) days of receipt of such notice (the "**Match Period**"), *provided* that to the extent any of the material terms of the Third Party Transaction are specific to the Third Party, its products or business, XOMA and NVDI shall negotiate in good faith substitute terms which shall provide equivalent value therefor. In the event that the receiving Party does not exercise such right within the Match Period, the offering Party will be free to enter into the Third Party Transaction with the Third Party on the terms proposed (or on other terms no more favorable to the Third Party than those offered to the receiving Party). In the event the offering Party enters into such Third Party Transaction, such Party shall have no further obligation to the other Party with respect to such Reactivated Project except as set forth in Article 3.

(iii) Phase III Decision Point Opt-In Rights. In the event that the Party conducting the development of a Reactivated Project: (A) did not offer the opt-in right to the other Party pursuant to Section 2.2(c)(i) above; (B) did not enter into any Third Party Transaction with respect to such Reactivated Project and/or any Reactivated Product related thereto within the Match Right Period in compliance with Section 2.2(c)(ii); and (C) has advanced such Reactivated Project to a Phase III Decision Point, then:

(W) As soon as practicable following the occurrence of a Phase III Decision Point in respect of a Reactivated Product related to such Reactivated Project, the Party progressing such Reactivated Project shall have the obligation to offer the other Party the right to opt-in on such Reactivated Project and shall provide written notice thereof, together with all reasonably useful data and information in its possession relating to such Reactivated Project, including the memorandum contemplated by the clause (Z) below, to the other Party.

(X) The Party receiving such notice shall have a period of [*] from the date it receives such notice, data, information and memorandum, to evaluate such data, information and memorandum and to inform the other Party as to whether it will opt-in on such Reactivated Project. If the Party exercises its opt-in right, the Party opting-in shall pay the Party who progressed the Reactivated Project a one-time option fee of [*]. Upon payment of such amount to the Party offering such opt-in right, the Reactivated Project shall cease to be a Reactivated Project and shall be deemed an Ongoing Project, and each Reactivated Product related thereto shall cease to be a Reactivated Product and shall be deemed an Ongoing Product, in the same manner as set forth in Section 2.2(c)(i)(B) above.

(Y) In the event that the Party receiving opt-in offer of this Section 2.2(c)(iii) does not exercise its rights to opt in, the other Party shall be permitted to progress such Reactivated Project and to research, develop and commercialize all Reactivated Products related to such Reactivated Target, either alone or with a Third Party, free of any further obligation to the other Party under this Section 2.2.

(Z) Such Phase III Decision Point shall be evidenced by a memorandum to be delivered to the receiving Party together with a notice delivered pursuant to this Section 2.2(c)(iii), and such memorandum shall set forth (1) the rationale for the decision to conduct a Phase III Clinical Trial with respect to the particular Reactivated Product related to such

Reactivated Project, (2) the indication(s) to be pursued in connection with such Phase III, and (3) the estimated date of the first dosing of the first patient in such Phase III. In no event shall there occur the first dosing of the first patient in Phase III prior to delivery of such memorandum and the expiration of the opt-in rights contemplated by this Section 2.2(c)(iii)(Z).

(d) Termination of Development Activities. In the event a Party terminates the development activities with respect to a Reactivated Project or an Ongoing Project for which such Party has sole control and responsibility under Section 2.3 below, such Party shall notify the other Party in writing, and thereupon such Project shall again become an Inactive Project, the Target that is the subject of such Project shall again be deemed an Inactive Target, and each Inactive Product related thereto shall again be deemed an Inactive Product.

(e) Reactivation of Certain Inactive Projects. Notwithstanding Section 2.2(b), with respect to each Inactive Project that was deemed an Inactive Project under Section 2.1(d)(iv) or Section 2.2(d), either Party may progress such Inactive Project and conduct further development and commercialization with respect to the Inactive Products related thereto by providing the other Party with written notice, upon which notice such Project shall again become a Reactivated Project and each such Inactive Product related thereto shall again become a Reactivated Product, in each case subject again to the applicable terms under this Agreement and in particular the provisions under Sections 2.2 and 2.3.

2.3 Parties' Responsibilities.

(a) NVDI shall have sole control and responsibility with respect to the research and development of the Agreement Targets that are the subjects of the Collaboration Projects, NVDI Reactivated Projects and NVDI Ongoing Projects, and the research, development, commercialization, regulatory affairs and manufacture (including clinical and commercial supply) of all Collaboration Products, NVDI Ongoing Products and NVDI Reactivated Products under this Agreement, in each case in compliance with all applicable laws and regulations. XOMA shall have sole control and responsibility with respect to the research and development of the Agreement Targets that are the subjects of the Resumed Projects, XOMA Reactivated Projects and XOMA Ongoing Projects, and the research, development, commercialization, regulatory affairs and manufacture (including clinical and commercial supply) of all Resumed Products, XOMA Ongoing Products and XOMA Reactivated Products under this Agreement, in each case in compliance with all applicable laws and regulations.

(b) Without limiting the foregoing, a coordination committee (the "**Coordination Committee**") will be maintained to facilitate the sharing of information and ideas as reasonably necessary to enable the Parties to meaningfully preserve and exercise their rights and satisfy their obligations under this Agreement. The Coordination Committee will be comprised of three (3) representatives of each Party and will meet (which meetings may be in person, by videoconference or by teleconference) periodically at such times as the members of the Coordination Committee shall agree. Each Party will use Commercially Reasonable and Diligent Efforts to keep the other Party informed of developments of major clinical, medical or commercial relevance that could reasonably be expected to impact such other Party's ability to meaningfully preserve and exercise its rights and satisfy its obligations under this Agreement.

2.4 Scientific/Regulatory Records; Inspection. Each Party agrees to keep and to require its Affiliates to keep, clear, accurate and complete records in accordance with good scientific practices for a period of at least [*] in sufficient detail to permit compliance with the requirements of this Article 2 (including without limitation with respect to (a) achievement of the events set forth in Section 2.1(c), (b) an Antibody Product's status as an Inactive Product or Resumed Product, (c) an Agreement Target's status as an Inactive Target or Resumed Target and (d) assembling, filing and maintaining of submissions to Regulatory Authorities). Upon the written request of a Party (the "**Requesting Party**") and not more than once each calendar year, the other Party (the "**Responding Party**") shall permit an independent consultant of recognized standing, selected by the Requesting Party and reasonably acceptable to the Responding Party, at the Requesting Party's expense, to have access during normal business hours to the records of the Responding Party as is reasonably necessary to confirm compliance with the requirements of this Article 2 during any calendar quarter ending not more than [*] prior to the date of such request. The consultant shall disclose to both Parties whether the records confirm such compliance or not, and shall disclose to both Parties the specific details concerning any non-compliance. All information disclosed to such independent consultant, and any verbal or written disclosure by such independent consultant to the Parties, shall be deemed to be Confidential Information of the inspected Party.

ARTICLE 3

FINANCIAL PROVISIONS

3.1 Upfront Fee. As partial consideration for the release and control granted to NVDI under this Agreement, NVDI shall pay to XOMA a fee of thirteen million seven hundred thousand dollars ($13,700,000.00) (the "**Upfront Fee**"). Seven million five hundred thousand dollars ($7,500,000.00) of the Upfront Fee shall be paid in the form of a reduction in the outstanding balance due under the Secured Note Agreement, dated May 26, 2005, by and between the Parties (the "**Secured Note Agreement**"). The remaining six million two hundred thousand dollars ($6,200,000.00) of the Upfront Fee shall be paid within [*] following full execution of this Agreement.

3.2 Amendments to Security Agreement and Secured Note Agreement. The Security Agreement dated as of May 26, 2005 between the Parties (the "**Security Agreement**") is hereby amended such that Section 2(a) of the Security Agreement is deleted in its entirety and replaced with the following: "the Company's interest in the Collaboration and its share of Pre-tax Profits from Collaboration Products (as each such term is defined in the Collaboration Agreement), payable to the Company pursuant to Section 6.2 of the Collaboration Agreement as well as the Company's interest in all milestone payments, royalty-style payments or option payments that may become due to Company pursuant to the Amended and Restated Research, Development and Commercialization Agreement, effective as of July 1, by and between Novartis Vaccines and Diagnostics, Inc. and XOMA (US) LLC; and". The Secured Note Agreement is hereby amended such that Section 4(e) of the Secured Note Agreement is revised to strike the words "and royalties" each time they appear after the words "Pre-Tax Profits" and replace them with the following: "as well as the Company's interest in all milestone payments, royalty-style payments or option payments that may become due to Company pursuant to the

Amended and Restated Research, Development and Commercialization Agreement, effective as of July 1, by and between Novartis Vaccines and Diagnostics, Inc. and XOMA (US) LLC". The Secured Note Agreement and the Security Agreement shall continue in full force and effect in all other respects.

3.3 Milestone Payments. (a) In the event NVDI (or an affiliate) initiates a Phase 1 (or equivalent) trial in a non-oncology indication for HCD 122, NVDI shall pay XOMA a non-refundable milestone payment of [*]. (b) In the event NVDI (or an affiliate) initiates (i) a Phase III trial for HCD 122 in an oncology indication or (ii) a randomized Phase II trial with the agreement of FDA that it shall be a pivotal registration trial for HCD 122 in an oncology indication, NVDI shall pay to XOMA a non-refundable milestone of [*].

3.4 Payments under the Original Agreement. Without admitting any liability therefor, XOMA is expressly discharged and released from any responsibility for, and shall have no obligation with respect to, any and all of the costs, charges, expenses and other items set forth on **Schedule 3.4** hereto as provided therein. Except as expressly set forth herein, each Party is responsible for, and will continue to be responsible for, any and all payments owing or accrued by such Party under the Original Agreement prior to the Effective Date. Without limiting the generality of the foregoing, the Parties acknowledge that, as provided in the Secured Note Agreement, XOMA [*] on the most recent Advance Date (as defined in the Secured Note Agreement), without adjustment therefor as provided in the definition of "Availability Amount" in the Secured Note Agreement, and XOMA agrees to [*] to NVDI within [*] days following full execution of this Agreement.

3.5 Expenses for Development and Commercialization. Without limiting the general effect of this Agreement as an amendment and restatement of the Original Agreement, the Parties acknowledge that, from and after the Effective Date, the profit-sharing provisions of the Original Agreement are of no further force or effect and that, except as expressly provided in this Agreement to the contrary, NVDI shall be responsible for all costs, charges and expenses relating to Collaboration Projects, NVDI Reactivated Projects and NVDI Ongoing Projects, and the development and commercialization of Collaboration Products, NVDI Reactivated Products and NVDI Ongoing Products incurred on or after the Effective Date. XOMA shall be responsible for all costs, charges and expenses relating to Resumed Projects, XOMA Reactivated Project and XOMA Ongoing Projects, and the development and commercialization of Resumed Products, XOMA Reactivated Products and XOMA Ongoing Products incurred on or after the Effective Date.

3.6 Royalty-Style Payments.

(a) Subject to the adjustment provisions of Section 3.6(g), NVDI shall pay to XOMA royalty-style payments on Net Sales of each Collaboration Product at the following rates during the applicable Royalty-Style Payment Period:

(i) [*] of the portion of the aggregate Net Sales for such Collaboration Product in each calendar year that is equal to or less than [*];

(ii) [*] of the portion of the aggregate Net Sales for such Collaboration Product in each calendar year that is greater than [*]; and

(iii) [*] of the portion of the aggregate Net Sales for such Collaboration Product in each calendar year that is greater than [*].

(b) Subject to the adjustment provisions of Section 3.6(g), XOMA shall pay to NVDI a royalty-style payment on Net Sales of any Resumed Product at rates that are [*] set forth in Section 3.6(a) above for the corresponding Net Sales levels during the applicable Royalty-Style Payment Period.

(c) With respect to each Reactivated Product, subject to the adjustment provisions of Section 3.6(g), the Party commercializing such Reactivated Product shall pay to the other Party a royalty-style payment on Net Sales of such Reactivated Product at rates that are [*].

(d) With respect to each Ongoing Product, subject to the adjustment provisions of Section 3.6(g), the Party commercializing such Ongoing Product shall pay to the other Party a royalty-style payment on Net Sales of such Ongoing Product at rates that are [*].

(e) Royalty-style payments due under this Section 3.6 shall be payable on a country-by-country and product-by-product basis from the first commercial sale of each Agreement Product for the duration of the applicable Royalty-Style Payment Period. No more than one royalty-style payment shall be due under this Agreement with respect to a sale of a particular unit of Agreement Product.

(f) NVDI shall be responsible for any royalties owed to Third Parties in connection with the manufacture, development or commercialization of any and all Collaboration Product(s), XOMA shall be responsible for any royalties owed to Third Parties in connection with the manufacture, development or commercialization of any and all Resumed Product(s), and the Party progressing any Reactivated Product or Ongoing Product shall be responsible for any royalties owed to Third Parties in connection with the manufacture, development or commercialization of such Reactivated Product or Ongoing Product. With respect to any licenses or other agreements that are included in either the NVDI Background IP or the XOMA Background IP (collectively, the "**Third Party Background IP Agreements**"), each Party will use Commercially Reasonable and Diligent Efforts to comply with the terms and conditions of such Third Party Background IP Agreements as necessary to preserve the benefits thereof to the other Party, insofar as such terms and conditions apply to Agreement Products. Without limiting the generality of the foregoing, to the extent that either Party intends to claim the benefit of any Third Party Background IP Agreement to which it is not a party with respect to an Agreement Product, such Party shall provide the other Party with any information required by the terms of such Third Party Background IP Agreement to be so provided, shall cooperate with the other Party in complying with the terms of such Third Party Background IP Agreement and shall permit the other Party to comply with the terms thereof. For the avoidance of doubt, the Parties acknowledge that any benefits to either Party of the Third Party Background IP Agreements with respect to any Agreement Product shall, for all purposes under this Agreement, be subject to the financial and other obligations, limitations and restrictions contained therein.

(g) [*]

3.7 Payment Timing.

(a) In the event a milestone payment becomes due under this Agreement, the Party owing such milestone shall inform the other Party within [*] of achievement of the milestone. Upon receipt of such notice, the Party owed the milestone shall submit an invoice to the Party owing the milestone substantially in the form of **Schedule 3.7** setting forth the amount of the milestone payment. Milestone payments shall be made within [*] of receipt of such an invoice to the account specified on the invoice.

(b) Royalty-style payments due under this Agreement shall be made quarterly in accordance with the following procedure. The Party owing such royalty-style payments shall provide a written report to the other Party within [*] following the end of each calendar quarter stating the actual Net Sales and calculation of the royalty-style payment payable for that calendar quarter, on a country by country basis. After receipt of such report, the other Party shall submit an invoice to the Party owing such royalty-style payments substantially in the form of **Schedule 3.7** setting forth the royalty-style payments due for such calendar quarter. The Party owing such royalty-style payments shall pay the invoiced amount within [*] after receipt of the invoice to the account specified on the invoice.

3.8 Payment Reports. For each quarter during which any royalty-style payments are to be paid under this Agreement, the Party owing such royalty-style payments shall provide to the other Party an initial report with a good faith estimate of Net Sales and royalty-style payments for Net Sales, at least [*] prior to the end of the applicable quarter.

3.9 Payment Records; Audits. Each Party agrees to keep and to require its Affiliates to keep, clear, accurate and complete records in accordance with the Accounting Standards for a period of at least [*] in sufficient detail to enable milestone payments, royalty-style payments and any other amounts payable or creditable under this Agreement to be determined.

(a) Access to Records. Upon the written request of the Requesting Party and not more than once each calendar year, the Responding Party shall permit an independent certified public accounting firm of recognized standing, selected by the Requesting Party and reasonably acceptable to the Responding Party, at the Requesting Party's expense, to have access during normal business hours to the records of the Responding Party as may be reasonably necessary to verify the accuracy of the financial reports and calculations made under this Agreement for any calendar quarter ending not more than [*] prior to the date of such request. The accounting firm shall disclose to both Parties whether the reports and calculations are correct or not, and shall disclose to both Parties the specific details concerning any discrepancies. All information disclosed to such independent accountant, and any verbal or written disclosure by such independent accountant to the Parties, shall be deemed to be Confidential Information of the inspected Party.

(b) Discrepancy. If any error in favor of either Party is discovered in the course of inspection under this Section 3.9, the other Party, within [*] after the accounting firm's disclosure of its findings, shall pay the first Party the amount (plus interest, if applicable) that the first Party would have received in the absence of such error. Inspections conducted under this Section 3.9 shall be at the expense of the inspecting Party, unless a variation or error in favor of

the inspected Party exceeding [*] of the amount actually paid for the period covered by the inspection is established in the course of such inspection, whereupon all costs in connection with such inspection for such period will be paid by the inspected Party within [*] after the accounting firm's disclosure of its findings.

3.10 Payment Method.

(a) All payments hereunder shall be in United States dollars in immediately available funds and shall be made by wire transfer from a United States bank located in the United States to such bank account as designated from time to time by the Party receiving such payment to the Party making such payment.

(b) Any determination(s) hereunder requiring the conversion of currency shall be made by the Party responsible for such determination(s) in the same manner such Party uses in connection with the preparation of its audited externally published financial statements (or those of its parent company), consistent with the Accounting Standards.

3.11 Withholding Taxes. If the laws, rules or regulations require withholding of income taxes or other taxes or other duties imposed on payments made between the Parties, the Party making a payment under the terms of this Agreement shall make such withholding payments as required and subtract such withholding payments from the payments otherwise to be paid, and shall promptly submit appropriate proof of payment of the withholding taxes to the Party receiving payment. The paying Party shall provide reasonable cooperation to the receiving Party in the event that the receiving Party claims exemption from (or reduction in the rate of) such withholding, including but not limited to, by providing to the receiving Party copies of receipts of payment of such withheld tax or other documents reasonably available to the paying Party.

3.12 Interest on Payments Past Due. Any failure by a Party to make a payment within [*] after the date when due shall obligate such Party to pay interest to the receiving Party at a rate equal to the lesser of: (a) [*] or (b) the maximum rate permitted by applicable law (the "**Interest Rate**"). The Interest Rate shall be calculated from the date payment was due until actually received by the receiving party (the "**Interest Period**") based on actual number of days lapsed and a 360-day year. If the Interest Period extends beyond three months, at the beginning of each three-month interval, the Interest Rate will be recalculated using the current three-month LIBOR, as described above, until the payment is received. Interest shall be compounded daily in arrears and shall be due and payable on the tender of the underlying principal amount.

3.13 Sublicensees. Any licenses or sublicenses granted by NVDI or XOMA, as the case may be, shall include an obligation for the licensee or sublicensee to account for and report its Net Sales of any Agreement Product using the same accounting standards used to determine royalty-style payments owed under this Agreement on Net Sales of such Agreement Product, and the Party granting such sublicense shall pay royalty-style payments to the other Party as if the Net Sales of the sublicensee were Net Sales of the sublicensing Party.

3.14 Finance Representatives. Each Party shall appoint a representative to serve as a contact for payments, royalty-style payment calculations and other financial issues under this Agreement. A Party may change its financial representative, at any time, on notice to the other Party. Financial representatives are not authorized to amend the terms of this Agreement or waive any rights on behalf of either Party. At either Party's request from time to time no more than once per calendar quarter, the other Party will provide to the requesting Party, for the requesting Party's budgeting purposes only, information regarding projected sales of any Agreement Product.

ARTICLE 4

RELEASES

4.1 Release of Claims by XOMA. In partial consideration for the grant of rights and releases by NVDI hereunder, the sufficiency of which is hereby acknowledged, XOMA, on behalf of itself, its Affiliates, its past affiliated entities and all of their respective directors, managers, officers, representatives, agents, employees, attorneys, insurers, successors and assigns over whom it has control (collectively, the "**XOMA Releasors**"), acknowledges, separately and collectively, complete satisfaction, and hereby releases, absolves and forever discharges NVDI, its Affiliates, its past affiliated entities and all of their respective past and present directors, managers, officers, partners, shareholders, representatives, agents, employees, attorneys, insurers, successors and assigns (collectively, the "**NVDI Releasees**"), separately and collectively, from any and all manner of action or actions, cause or causes of action, in law or equity, and all suits, claims, demands, damages, liabilities, losses, costs or expenses arising out of, based on or relating to actions or omissions under the Initial Agreement or the Original Agreement ("**Claims**"), known or unknown, discoverable or undiscoverable, which the XOMA Releasors ever had, now have, or hereafter can, shall or may claim to have, from the beginning of time to the Effective Date.

4.2 Release of Claims by NVDI. In partial consideration for the grant of rights and licenses by XOMA hereunder, the sufficiency of which is hereby acknowledged, NVDI, on behalf of itself, its Affiliates, its past affiliated entities and all of their respective directors, managers, officers, representatives, agents, employees, attorneys, insurers, successors and assigns over whom it has control (collectively, the "**NVDI Releasors**"), acknowledges, separately and collectively, complete satisfaction, and hereby releases, absolves and forever discharges XOMA, its Affiliates, its past affiliated entities and all of their respective past and present directors, managers, officers, partners, shareholders, representatives, agents, employees, attorneys, insurers, successors and assigns (collectively, the "**XOMA Releasees**"), separately and collectively, from any and all manner of Claims, known or unknown, discoverable or undiscoverable, which the NVDI Releasors ever had, now have, or hereafter can, shall or may claim to have, from the beginning of time to the Effective Date.

ARTICLE 5

LICENSES

5.1 Agreement Targets.

(a) Subject to the terms of this Agreement, XOMA hereby grants to NVDI and its Affiliates a worldwide, non-exclusive license (or as applicable sublicense), with the right to sublicense at multiple levels, under XOMA Background IP and XOMA's interest in Collaboration IP and Post-Effective Date Patent Rights to research, develop, make, have made and use Agreement Targets and to conduct Preliminary Research for the diagnosis, prevention and treatment of diseases in humans or animals.

(b) Subject to the terms of this Agreement, NVDI hereby grants to XOMA and its Affiliates a worldwide, non-exclusive license (or as applicable sublicense), with the right to sublicense at multiple levels, under NVDI Background IP and NVDI's interest in Collaboration IP and Post-Effective Date Patent Rights to research, develop, make, have made and use Agreement Targets, and to conduct Preliminary Research for the diagnosis, prevention and treatment of diseases in humans or animals.

5.2 Collaboration Products; Resumed Products; Ongoing Products; Reactivated Products.

(a) Subject to the terms of this Agreement, XOMA hereby grants to NVDI and its Affiliates:

(i) A worldwide, exclusive license (or as applicable sublicense), with the right to sublicense at multiple levels, under XOMA Background IP and XOMA's interest in Collaboration IP and Post-Effective Date Patent Rights to research, develop, make, have made, use, sell, offer for sale, import and export Collaboration Products and NVDI Ongoing Products, subject to XOMA's rights to assume control over Collaboration Projects as provided in Section 2.1(d).

(ii) A worldwide, exclusive license (or as applicable sublicense), with the right to sublicense at multiple levels, under XOMA Background IP and XOMA's interest in Collaboration IP and Post-Effective Date Patent Rights to research, develop, make, have made, use, sell, offer for sale, import and export NVDI Reactivated Products, subject to Section 2.2 above.

(b) Subject to the terms of this Agreement, NVDI hereby grants to XOMA and its Affiliates:

(i) A worldwide, exclusive license (or as applicable sublicense), with the right to sublicense at multiple levels, under NVDI Background IP and NVDI's interest in Collaboration IP and Post-Effective Date Patent Rights to research, develop, make, have made, use, sell, offer for sale, import and export Resumed Products and XOMA Ongoing Products.

(ii) A worldwide, exclusive license (or as applicable sublicense), with the right to sublicense at multiple levels, under NVDI Background IP and NVDI's interest in Collaboration IP and Post-Effective Date Patent Rights to research, develop, make, have made, use, sell, offer for sale, import and export XOMA Reactivated Product, subject to Section 2.2 above.

5.3 Expression and Engineering Technologies. For clarity, the licenses granted by XOMA to NVDI under Sections 5.1 and 5.2 above expressly exclude any right for NVDI to practice the Expression and Engineering Technologies for any purpose, *provided* that NVDI shall have the right to research, develop, commercialize, manufacture and have manufactured Collaboration Products, NVDI Reactivated Products and NVDI Ongoing Products under the licenses granted to it under Section 5.2 above, regardless of whether such Agreement Product or related Collaboration Invention was identified or discovered using the Expression and Engineering Technologies in the course of the Original Collaboration.

ARTICLE 6

CONFIDENTIALITY

6.1 Confidentiality.

(a) Prior Agreements Superseded. The obligations of confidentiality in this Article 6 shall supersede all prior agreements between the Parties regarding obligations of confidentiality and non-use with respect to the subject matter of the Original Collaboration. All confidential information exchanged between the Parties under such prior agreements shall be deemed Confidential Information of the corresponding Party and protected under the terms of this Article 6.

(b) Treatment. Except to the extent expressly authorized by this Agreement, required under agreements by which technology is or was acquired for use in the Original Collaboration or otherwise agreed to in writing by a disclosing Party, a receiving Party shall keep confidential and shall not publish or otherwise disclose or use for any purpose other than as expressly permitted under this Agreement, any Confidential Information of the disclosing Party, except on a need-to-know basis to the receiving Party's directors, officers, employees, agents, consultants, subcontractors, attorneys and accountants, and others approved by the disclosing Party, to the extent such disclosure is reasonably necessary in connection with the receiving Party's activities or exercise of rights under this Agreement, including, without limitation, the research and development, and commercialization of Collaboration Products, Resumed Products, NVDI Ongoing Products, XOMA Ongoing Products or Reactivated Products. To the extent that disclosure to any person other than a Regulatory Authority or other governmental body or entity is authorized by this Agreement, prior to disclosure, a Party shall obtain written agreement of such person to hold in confidence and not disclose or use the Confidential Information of the disclosing Party, which agreement shall contain obligations of confidentiality and non-use no less restrictive than those set forth in this Article 6. The receiving Party shall notify the disclosing Party promptly upon discovery of any unauthorized use or disclosure of the disclosing Party's Confidential Information.

(c) Exclusions. Notwithstanding anything to the contrary, the obligations of the Parties under this Section 6.1 shall not apply to the extent that Confidential Information of the other Party (as determined by competent documentation):

(i) was known or used by the receiving Party, other than under an obligation of confidentiality, prior to its date of receipt by the receiving Party; or

(ii) either before or after the date of the disclosure to the receiving Party is lawfully disclosed to the receiving Party by independent sources rightfully in possession of such information, other than under an obligation of confidentiality; or

(iii) either before or after the date of the disclosure to the receiving Party becomes published or generally known to the public (including information known to the public through the sale of products in the ordinary course of business) through no fault or omission on the part of the receiving Party; or

(iv) is independently developed by or for the receiving Party without reference to or reliance upon the Confidential Information.

6.2 Authorized Disclosure. The obligations of nondisclosure and nonuse under this Article 6 shall not apply to the extent that a Party is required to disclose information by applicable law, regulation or order of a governmental agency or a court of competent jurisdiction; *provided*, *however*, that such Party shall provide written notice thereof to the other Party, consult with the other Party with respect to such disclosure, provide the other Party a reasonable opportunity to object to any such disclosure or to request confidential treatment thereof and, except to the extent such information becomes part of the public domain as a result of disclosure permitted pursuant to this Section 6.2, shall continue to treat such Confidential Information as such with respect to any Third Party to whom such information is not so required to be disclosed.

6.3 Survival. This Article 6 shall survive expiration or termination of this Agreement for the longer of (a) a period of [*] or (b) as required pursuant to any confidentiality agreement between either of the Parties and any Third Party pursuant to which Confidential Information is shared between the parties to such confidentiality agreement in connection with the Original Collaboration.

6.4 Terms of This Agreement; Press Release; Publicity.

(a) Neither Party shall disclose any confidential terms or conditions of this Agreement to any Third Party without the prior consent of the other Party; *provided*, *however*, that a Party may disclose the terms or conditions of this Agreement, (i) to government authorities where and to the extent required by applicable law, regulation or court order (and with appropriate requests made for confidential treatment), including filings required to be made by law with the United States Securities and Exchange Commission and any market on which a Party's securities are traded, (ii) to a Party's accountants, lawyers or other advisors, and (iii) to a Third Party under an obligation of confidentiality in connection with a *bona fide* written proposal from such Third Party and an authorization by such Party's Board of Directors to negotiate a significant equity investment by or in such Party, a collaboration with such Party (including a sublicense hereunder), a merger, consolidation or similar transaction with such Party or a sale of all or a portion of the stock or assets of such Party.

(b) The Parties hereby agree to the release of a press release in the form attached hereto as **Schedule 6.4** upon full execution of this Agreement, that the fact of the consummation of this Agreement as well as such terms as are expressly described in such press release shall be deemed to be in the public domain, and that once a particular item of information has been approved by the Parties for disclosure, no further consent or approval shall be required under this Article 6 with respect to disclosure of such item of information.

ARTICLE 7

INTELLECTUAL PROPERTY

7.1 Ownership.

(a) Collaboration Inventions and Collaboration IP. NVDI and XOMA each shall own an undivided half interest in and to any and all Collaboration Inventions and Collaboration IP regardless of inventorship or any terms under the Original Agreement, and except to the extent of exclusive licenses granted herein, each Party shall have the right to exploit such Collaboration Inventions and Collaboration IP without the duty of accounting or seeking consent from the other Party.

(i) Either Party, upon receipt of written notice from the other Party and payment by such Party of [*] shall, subject to the other obligations of this Agreement, assign to the notifying Party all right, title and interest in, to and under any and all Collaboration Patent Rights, and Collaboration Inventions claimed or covered by such Collaboration Patent Rights, specified in such written notice.

(ii) At any time during a period of [*] after an assignment pursuant to Section 7.1(a)(i), the original assigning Party, at its option, may provide written notice to the original assignee Party and, upon receipt of such written notice and the payment by the original assigning Party of [*] the original assignee Party shall assign to the original assigning Party sufficient right, title and interest in, to and under any and all Collaboration Patent Rights, and Collaboration Inventions claimed or covered by such Collaboration Patent Rights, specified in such written notice, such that after such assignment each Party shall have one-half of such right, title and interest.

(b) NVDI Background IP and Inventions Outside Collaboration or After Effective Date As between NVDI and XOMA, NVDI shall own the entire right, title and interest in and to any and all (1) NVDI Background IP, (2) Inventions made, conceived or reduced to practice by NVDI, either alone or jointly with a Third Party prior to the Effective Date outside of the Original Collaboration, and Know-How and Patent Rights including, claiming or covering such Inventions, and (3) Inventions made, conceived or reduced to practice by NVDI, either alone or jointly with a Third Party, on or after the Effective Date, and Know-How or Patent Rights including, claiming or covering such Inventions. Inventorship of Inventions for purposes of this Section 7.1(b) shall be determined in accordance with United States patent law.

(c) XOMA Background IP; Inventions Outside Collaboration or After Effective Date; Expression and Engineering Technologies As between XOMA and NVDI, XOMA shall own the entire right, title and interest in and to any and all (1) XOMA Background IP, (2) Inventions made, conceived or reduced to practice by XOMA, either alone or jointly with a Third Party, prior to the Effective Date and outside of the Original Collaboration, and Know-How and Patent Rights including, claiming or covering such Inventions, (3) Inventions made,

conceived or reduced to practice by XOMA, either alone or jointly with a Third Party, on or after the Effective Date, and Know-How or Patent Rights including, claiming or covering such Inventions; and (4) Expression and Engineering Technologies. Inventorship of Inventions for purposes of this Section 7.1(c) shall be determined in accordance with United States patent law.

7.2 Patent Prosecution.

(a) Collaboration Patent Rights and Post-Effective Date Patent Rights For each Project or Agreement Product, the Controlling Party of such Project or Agreement Product shall be responsible for the filing, prosecution (including any interferences, oppositions, reissue proceedings and reexaminations), appeals and maintenance of all Collaboration Patent Rights and Post-Effective Date Patent Rights claiming or covering a Collaboration Invention or Post-Effective Date Invention, as the case may be, made, conceived or reduced to practice in the course of the development and/or commercialization of such Agreement Product. Such Controlling Party shall provide to the other Party (1) a draft of each and every patent application included in such Patent Rights prior to the filing of such patent application, allowing adequate time for review and comment by such other Party; *provided*, *however*, that the Controlling Party shall not be required to delay the initial filing of such patent application if such delay would jeopardize the ability to secure priority status against Third Parties; and (2) copies of all correspondence from any and all patent offices concerning patent applications included in such Patent Rights and an opportunity to comment on any proposed responses, voluntary amendments and submissions of any kind to be made to any and all such patent offices. If the Controlling Party decides not to continue the prosecution or maintenance of any patent application or patent included in such Patent Rights, it shall promptly notify the other Party thereof. Following such notice, the other Party may, in its discretion, take over the prosecution and maintenance of any such patent application or patent, as the case may be, in which case such other Party shall be deemed the Controlling Party with respect thereto. All costs and expenses for the filing, prosecution (including any interferences, oppositions, reissue proceedings and reexaminations), appeals and maintenance of the Collaboration Patent Rights and Post-Effective Date Patent Rights shall be borne by the Controlling Party for such Patent Rights. A Party who files a patent application claiming or covering a Collaboration Invention or Post-Effective Date Invention, or who is responsible for the prosecution of a patent application within the Collaboration Patent Rights or the Post-Effective Date Patent Rights, shall not take any action or make any statement that would reasonably be expected to cause material harm to the patentability, validity or enforceability of any NVDI Background IP, XOMA Background IP, or other Collaboration Patent Right or Post-Effective Date Patent Right without first obtaining the informed consent of the other Party when such NVDI Background IP, XOMA Background IP, or other Collaboration Patent Right or Post-Effective Patent Right is cited by the examiner in an official action during patent prosecution. In the event that an interference is declared by a Patent and Trademark Office between one or more patents or patent applications owned solely by one Party that constitute Patent Rights claiming or covering any Agreement Target or Collaboration Product, Resumed Product, Ongoing Product or Reactivated Product, and one or more patents or patent applications owned or otherwise controlled solely by the other Party that constitute Patent Rights claiming or covering any Agreement Target or Collaboration Product, Resumed Product, Ongoing Product or Reactivated Product, including where such declared interference involves patents or patent applications owned by a Third Party or Third Parties, then the Parties shall in good faith establish within thirty (30) days

of the declaration of such interference or such other time as agreed upon a mutually agreeable process to resolve solely those portions of such interference or interferences which relate to matters in dispute between NVDI and XOMA in a reasonable manner in conformance with all applicable legal standards and to maximize the scope, priority, validity and/or enforceability of the Patent Rights licensed hereunder.

(b) Patent Rights Controlled by NVDI. NVDI shall prosecute and maintain, at its sole expense, the Patent Rights Controlled by NVDI necessary for, and being utilized in, the research and development, and/or commercialization of Resumed Products, XOMA Ongoing Products and XOMA Reactivated Products but excluding any Patent Rights claiming or covering Inventions made, conceived or reduced to practice by NVDI outside of the Original Collaboration or the scope of this Agreement ("**Related NVDI Patent Rights**"). NVDI shall provide XOMA with (1) drafts of each and every patent application within the Related NVDI Patent Rights; and (2) copies of all correspondence from any and all patent offices concerning patent applications within the Related NVDI Patent Rights and an opportunity to comment on any proposed responses, voluntary amendments and submissions of any kind to be made to any and all such patent offices. If NVDI decides not to continue the prosecution or maintenance of any patent application or patent within the Related NVDI Patent Rights, it shall promptly notify XOMA thereof. Following such notice, XOMA may take over prosecution and maintenance of such patent application or patent within the Related NVDI Patent Rights, and thereafter such patent application or patent will be deemed a patent application or patent within the Related XOMA Patent Rights, as further described in Section 7.2(c) below.

(c) Patent Rights Controlled by XOMA. XOMA shall prosecute and maintain, at its sole expense, the Patent Rights Controlled by XOMA necessary for, and being utilized in, the research and development, and/or commercialization of Collaboration Products, NVDI Ongoing Products and NVDI Reactivated Products, but excluding any patent application claiming Expression and Engineering Technologies and any Patent Rights claiming or covering Inventions made, conceived or reduced to practice by NVDI outside of the Original Collaboration or the scope of this Agreement ("**Related XOMA Patent Rights**"). XOMA shall provide NVDI with (i) drafts of each and every patent application within the Related XOMA Patent Rights; and (ii) copies of all correspondence from any and all patent offices concerning patent applications within the Related XOMA Patent Rights and an opportunity to comment on any proposed responses, voluntary amendments and submissions of any kind to be made to any and all such patent offices. If XOMA decides not to continue the prosecution or maintenance of any patent application or patent within the Related XOMA Patent Rights, it shall promptly notify NVDI thereof. Following such notice, NVDI may take over prosecution and maintenance of such patent application or patent within the Related XOMA Patent Rights, and thereafter such patent application or patent will be deemed a patent application or patent within the Related NVDI Patent Rights, as further described in Section 7.2(b) above.

(d) Cooperation. At the request of the Party performing the prosecution of any patent application under this Section 7.2, the other Party will cooperate, in all reasonable ways and at the requesting Party's expense, in connection with the prosecution and maintenance of all such patent applications. Each Party shall make available to the other Party or its respective authorized attorneys, agents or representatives such of its employees or consultants as the

other Party in its reasonable judgment deems necessary in order to assist such other Party with the prosecution and maintenance of such patents. Each Party shall sign or use commercially reasonable efforts to have signed all legal documents necessary in connection with such prosecution and maintenance.

7.3 Enforcement of Patent Rights.

(a) Enforcement of Collaboration Patent Rights and Post-Effective Date Patent Rights.

(i) Primary Enforcement Right. In the event either Party becomes aware of a suspected infringement of a patent within the Collaboration Patent Rights or Post-Effective Date Patent Rights or the institution by a Third Party of any proceedings for the revocation of, or to invalidate or render unenforceable, any patent within the Collaboration Patent Rights other the Post-Effective Date Patent Rights, such Party shall notify the other Party promptly, and following such notification, the Parties shall discuss the situation. In any such circumstance, the Controlling Party shall have the first right (at its own expense), but shall not be obligated, to bring legal action to enforce the Parties' rights under the Collaboration Patent Rights or the Post-Effective Date Patent Rights or to defend such proceedings. The other Party will provide reasonable assistance to the Controlling Party (at the Controlling Party's expense) in any such action or proceeding, including for example lending such other Party's name to such action or proceeding if requested by the Controlling Party or required by law, and shall have a right (at its own expense) to participate and be represented in any such suit by its own counsel. No settlement of any such action or defense which restricts the scope or affects the enforceability of a patent within the Collaboration Patent Rights or the Post-Effective Date Patent Rights may be entered into by the Controlling Party without the prior consent of the other Party, which consent shall not be unreasonably withheld or delayed.

(ii) Secondary Enforcement Right. If the Controlling Party elects not to bring any legal action for infringement or to defend any proceeding described in Section 7.3(a)(i) and so notifies the other Party, then such other Party may (at its own expense) seek approval from the Controlling Party to bring such a legal action and do so only with the approval from the Controlling Party, which approval shall not be unreasonably withheld or delayed. The Controlling Party may provide reasonable assistance to the other Party (at such other Party's expense) in any such action or proceeding, including for example, lending the Controlling Party's name to such action or proceeding if required by law, and shall have a right (at its own expense) to participate and be represented in any such suit by its own counsel. No settlement of any such action or defense which restricts the scope or affects the enforceability of a patent within the Collaboration Patent Rights or the Post-Effective Date Patent Rights may be entered into by such other Party without the prior consent of the Controlling Party, which consent shall not be unreasonably withheld or delayed.

(iii) Recoveries. In the event either Party exercises the rights conferred in this Section 7.3(a) and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, 100% of such funds shall be retained by the Party so exercising such rights.

(b) Enforcement of Related NVDI Patent Rights.

(i) Enforcement by NVDI. NVDI shall have the right, but shall not be obligated, to bring any action for infringement of, or to defend any proceedings for the revocation of, or to invalidate or render unenforceable, any patent within the Related NVDI Patent Rights at its own expense, in its own name and entirely under its own direction and control. XOMA will provide reasonable assistance to NVDI (at NVDI's expense) in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by NVDI or required by law. XOMA shall have the right (at its own expense) to participate and be represented in any such suit by its own counsel. No settlement of any such action or defense which restricts the scope or affects the enforceability of a patent within the Related NVDI Patent Rights that claims or covers a Reactivated Product, XOMA Ongoing Product or Resumed Product may be entered into by NVDI without the prior consent of XOMA, which consent shall not be unreasonably withheld or delayed.

(ii) Recoveries. In the event NVDI exercises the rights conferred in this Section 7.3(b) and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, all such funds shall be retained by NVDI.

(c) Enforcement of Related XOMA Patent Rights.

(i) Enforcement by XOMA. XOMA shall have the right, but shall not be obligated, to bring any action for infringement of, or to defend any proceedings for the revocation of, or to invalidate or render unenforceable, any patent within the Related XOMA Patent Rights at its own expense, in its own name and entirely under its own direction and control. NVDI will provide reasonable assistance to XOMA (at XOMA's expense) in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by XOMA or required by law. NVDI shall have the right (at its own expense) to participate and be represented in any such suit by its own counsel. No settlement of any such action or defense which restricts the scope or affects the enforceability of a patent within the Related XOMA Patent Rights that claims or covers an NVDI Ongoing Product or Reactivated Product may be entered into by XOMA without the prior consent of NVDI, which consent shall not be unreasonably withheld or delayed.

(ii) Recoveries. In the event XOMA exercises the rights conferred in this Section 7.3(c) and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys

fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, all of such funds shall be retained by XOMA.

7.4 Allegations of Infringement by Third Parties. In the event that either Party receives written notice that the use, development, manufacture, sale, import or export of an Agreement Target or an Agreement Product, or any other action by either of them under this Agreement, prior to the expiration of the Term, is alleged to be a violation of the patent or other intellectual property rights of a Third Party, it shall promptly notify the other Party. [*] The Party controlling such action, as provided in this Section 7.4, shall consult with the other Party, and give due consideration to any concerns the other Party may raise, with respect to all significant matters relating to such action. The costs thereof (including any damages, costs or expenses resulting from any action) shall be borne by the Party controlling such action. The Party controlling such action shall not admit or stipulate the invalidity of any Collaboration Patent Rights or Post-Effective Date Patent Rights or settle any such suit, without the written consent of the other Party (which consent shall not be unreasonably withheld or delayed). Any recovery obtained as a result of infringement actions governed by this Section 7.4 shall be treated as provided in Section 7.3(a)(iii).

7.5 Trademarks.

(a) Collaboration Product Marks. NVDI will own all right, title and interest in and to all trademarks, trade names, service marks and trade dress specifically developed for and used on or in connection with all Collaboration Products, NVDI Ongoing Products and NVDI Reactivated Products. XOMA will own all right, title and interest in and to all trademarks, trade names, service marks and trade dress specifically developed for and used on or in connection with all XOMA Ongoing Products and XOMA Reactivated Products.

(b) Party Marks. NVDI and XOMA shall each retain sole and exclusive ownership of their own respective and independently developed and/or pre-existing trademarks, trade names, service marks and trade dress, regardless of whether such trademarks, trade names, service marks and trade dress are used on or in connection with any Collaboration Product, Resumed Product, NVDI Ongoing Product, XOMA Ongoing Product or Reactivated Product.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES; DISCLAIMER; INDEMNIFICATION

8.1 Representations and Warranties of XOMA. XOMA represents and warrants to NVDI that, as of the Effective Date:

(a) XOMA is a limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation; XOMA has the full legal authority and the legal right to enter into this Agreement; this Agreement has been duly authorized by all necessary corporate action on the part of XOMA,

(b) this Agreement does not conflict with, violate, or breach or constitute a default or require any consent under, any contractual obligation or court or administrative order by which XOMA is bound, and

(c) XOMA has the full right and authority to enter into this Agreement.

8.2 Representations and Warranties of NVDI. NVDI represents and warrants to XOMA that, as of the Effective Date:

(a) NVDI is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation; NVDI has the full corporate authority and the legal right to enter into this Agreement; this Agreement has been duly authorized by all necessary corporate action on the part of NVDI,

(b) this Agreement does not conflict with, violate, or breach or constitute a default or require any consent under, any contractual obligation or court or administrative order by which NVDI is bound, and

(c) NVDI has the full right and authority to enter into this Agreement.

8.3 No Warranty of Validity; Non-Infringement. Nothing in this Agreement shall be construed as (a) a warranty or representation by either Party as to the validity or scope of any Patent Right or (b) a warranty or representation that any product obtained from an Agreement Target, including without limitation any Collaboration Product, Resumed Product, NVDI Ongoing Product, XOMA Ongoing Product or Reactivated Product, will be free from infringement of intellectual property rights held or otherwise controlled by a Third Party.

8.4 No Other Warranties. EXCEPT AS SPECIFICALLY SET FORTH IN THIS ARTICLE, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY INTELLECTUAL PROPERTY LICENSED UNDER THE TERMS OF THIS AGREEMENT, ANY COLLABORATION TARGET OR ANY COLLABORATION PRODUCT, AND FURTHER MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF ANY COLLABORATION TARGET OR COLLABORATION PRODUCT SET FORTH IN THIS AGREEMENT WILL NOT INFRINGE ANY THIRD-PARTY RIGHTS.

8.5 Indemnification.

(a) Indemnification by NVDI. NVDI will indemnify, defend and hold harmless XOMA, its Affiliates and their respective directors, officers, employees and agents against any and all loss, damage, action, suit, claim, demand, liability or expense, and reasonable attorneys fees and expenses (collectively, "**Losses**") to the extent such Losses arise out of any Third Party claim relating to (i) the research, development, commercialization, manufacture, use, storage, transfer or disposal of any Collaboration Product, NVDI Ongoing Product or NVDI Reactivated Product, including without limitation any personal injury claims arising from any adverse drug event; (ii) willful misconduct of NVDI, or its permitted licensees, in connection with the

performance of any tasks to be performed by NVDI under this Agreement, (iii) the intentional material breach by NVDI of any of its express representations or warranties in this Agreement; or (iv) the intentional material breach by NVDI of any of its covenants or obligations in this Agreement; *provided* that the foregoing indemnification shall not apply to any Loss to the extent such Loss is based on or arises out of the matters described in Section 8.5(b).

(b) Indemnification by XOMA. XOMA will indemnify, defend and hold harmless NVDI, its Affiliates and their respective directors, officers, employees and agents against any and all Losses to the extent such Losses arise out of any Third Party claim relating to (i) the research, development, commercialization, manufacture, use, storage, transfer or disposal of any Resumed Product, XOMA Ongoing Product or XOMA Reactivated Product, including without limitation any personal injury claims arising from any adverse drug event; (ii) willful misconduct of XOMA, or its permitted licensees, in connection with the performance of any tasks to be performed by XOMA under this Agreement, (iii) the intentional material breach by XOMA of any of its express representations or warranties in this Agreement; or (iv) the intentional material breach by XOMA of any of its covenants or obligations in this Agreement; *provided* that the foregoing indemnification shall not apply to any Loss to the extent such Loss is based on or arises out of the matters described in Section 8.5(a).

(c) General Indemnification Provisions. In the event that a Party is seeking indemnification under this Section 8.5, it shall inform the other Party of a claim as soon as reasonably practicable after it receives notice of the claim, shall permit the other Party to assume direction and control of the defense of the claim, and shall cooperate as requested by the other Party (at the expense of the other Party) in the defense of the claim. Neither Party shall have the right to settle a claim for which it is seeking indemnification under this Section 8.5, whether the claim seeks monetary consideration or injunctive relief, without the consent of the other Party (which consent shall not be unreasonably withheld or delayed).

ARTICLE 9

TERM AND TERMINATION

9.1 Term. This Agreement commences as of the Effective Date and continues until such time as no Collaboration Product, Resumed Product, NVDI Ongoing Product, XOMA Ongoing Product or Reactivated Product is any longer being developed or commercialized anywhere in the world or no royalty-style payments are due on any Collaboration Product, Resumed Product, NVDI Ongoing Product, XOMA Ongoing Product or Reactivated Product by either Party, any of its Affiliates or permitted sublicensees (such period, the "**Term**").

9.2 Termination for Material Breach. In the event either Party shall be in breach of any material obligation hereunder, the non-breaching Party may give written notice to the other Party specifying the claimed particulars of such breach, and in the event such material breach is not cured, or effective steps to cure such material breach have not been initiated or are not thereafter diligently pursued, within [*] following the date of such written notification, the non-breaching Party shall have the right thereafter to terminate the Agreement by giving [*] prior written notice to the other Party to such effect.

9.3 Consequences of Termination or Expiration.

(a) Licenses. The licenses granted under this Agreement survive any expiration of the Term or termination of this Agreement. [*]

(b) Surviving Rights. As of the end of the Term, all obligations and rights of the Parties under this Agreement terminate, except those obligations and rights under the following Articles, Sections and subsections, which continue perpetually or in accordance with their terms: Articles 1, 6, 8, 10 and 11 and Sections 2.4, 3.9, 7.1, 7.2, 7.3, 7.4 and 9.3.

(c) No Prejudice. Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any payments which shall have accrued to the benefit of either Party prior to such termination, relinquishment or expiration, including damages arising from any breach hereunder.

(d) Bankruptcy. Either Party may, in addition to any other remedies available to it by law or in equity, terminate this Agreement, in whole or in part as the terminating Party may determine, by written notice to the other Party, in the event the other Party shall have become bankrupt, shall have made an assignment for the benefit of its creditors or there shall have been appointed a trustee or receiver of the other Party or for all or a substantial part of its property or any case or proceeding shall have been commenced or other action taken by or against the other Party in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts or any other relief under any bankruptcy, insolvency, reorganization or other similar act or law of any jurisdiction now or hereafter in effect and any such event shall have continued for sixty (60) days undismissed, unbonded and undischarged. All rights and licenses granted under this Agreement by one Party to the other Party are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101(56) of the Bankruptcy Code. The Parties agree that the licensing Party under this Agreement shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code in the event of a bankruptcy by the other Party. The Parties further agree that in the event of the commencement of a bankruptcy proceeding by or against one Party under the Bankruptcy Code, the other Party shall be entitled to complete access to any such intellectual property pertaining to the rights granted in the licenses hereunder of the Party by or against whom a bankruptcy proceeding has been commenced and all embodiments of such intellectual property.

ARTICLE 10

DISPUTE RESOLUTION

10.1 Disputes. The Parties recognize that disputes as to certain matters may from time to time arise during the term of this Agreement which relate to either Party's rights and/or obligations hereunder. It is the objective of the Parties to establish procedures to facilitate the resolution of disputes arising under this Agreement in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Parties agree to follow the procedures set forth in this Article 10 with respect to any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof ("**Article**

10 Disputes"). Article 10 Disputes first will be referred to the Chief Executive Officer or a Vice President of NVDI and the Chief Executive Officer or a Vice President of XOMA or their respective designees. If after [*] the dispute remains unresolved, the Parties agree to refer the matter to mediation pursuant to Section 10.2. If after [*] the matter cannot be resolved by mediation, the Parties agree to submit to arbitration pursuant to Section 10.3.

10.2 Mediation. For Article 10 Disputes, except (a) disputes relating to intellectual property owned in whole or in part by XOMA or NVDI, or (b) claims for equitable relief, the Parties shall try in good faith to resolve any such dispute by mediation administered by the American Arbitration Association in accordance with its Commercial Mediation Rules. The mediation proceeding shall be conducted at the location of the Party not originally requesting resolution of the dispute. The Parties agree that they shall share equally the cost of the mediation filing and hearing fees, and the cost of the mediator. Each Party must bear its own attorney's fees and associated costs and expenses. For the purposes of this Section 10.2, the Parties agree to accept the jurisdiction of the federal courts located in the Northern District of California for the purposes of enforcing the agreements reflected in this Section 10.2.

10.3 Arbitration. **[DRAFT NOTE: Final discussion to be had.]** For Article 10 Disputes not resolved pursuant to Section 10.1 or Section 10.2 within the time periods provided, except (a) disputes relating to intellectual property owned in whole or in part by XOMA or NVDI, or (b) claims for equitable relief, upon ten (10) days written notice, either Party may initiate arbitration by giving notice to that effect to the other Party and by filing the notice with the American Arbitration Association in accordance with its Commercial Arbitration Rules. Such dispute shall then be settled by arbitration in California in accordance with the Commercial Arbitration Rules of the American Arbitration Association or other rules agreed to by the Parties, by a panel of three (3) neutral arbitrators, who shall be selected by the Parties using the procedures for arbitrator selection of the American Arbitration Association.

(a) The Parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Insofar as it applies, the United States Arbitration Act shall govern the interpretation of, enforcement of, and proceedings pursuant to the arbitration clause in this Agreement. Except insofar as the United States Arbitration Act applies to such matters, the agreement to arbitrate set forth in this Section 10.3 shall be construed, and the legal relations among the Parties shall be determined in accordance with, the substantive laws of California.

(b) The panel shall render its decision and award, including a statement of reasons upon which such award is based, within [*] after the arbitration hearing. The decision of the panel shall be determined by majority vote among the arbitrators, shall be in writing and shall be binding upon the Parties, final and non-appealable. Judgment upon the award rendered by the panel may be entered in any court having jurisdiction thereof in accordance with Section 10.4.

(c) Except as provided under the United States Arbitration Act and with respect to the infringement, validity and/or enforceability of patent rights, no action at law or in equity based upon any dispute that is subject to arbitration under this Section 10.3 shall be instituted.

(d) All expenses of any arbitration pursuant to this Section 10.3, including fees and expenses of the Parties' attorneys, fees and expenses of the arbitrators, and fees and expenses of any witness or the cost of any proof produced at the request of the arbitrators, shall be paid by the non-prevailing Party.

(e) For the purposes of this Section 10.3, the Parties agree to accept the jurisdiction of the federal courts located in the Northern District of California for the purposes of enforcing the agreements reflected in this Section 10.3.

10.4 Jurisdiction and Governing Law. For any disputes not subject to arbitration or resolved by mediation, California law (excluding conflict of laws principles) governs and the Parties are free to institute litigation or seek any other remedy available to them. For the purposes of any litigation instituted by the parties under this Article 10, the Parties accept the jurisdiction of the state courts geographically located in the Northern District of California or the federal courts within the Northern District of California.

10.5 Determination of Patent Rights and Other Intellectual Property. Any dispute relating to the determination of validity of a Party's Patent Rights or other issues relating solely to a Party's intellectual property shall be submitted exclusively to the federal courts located in the Northern District of California, San Francisco Division, and the Parties hereby consent to the jurisdiction and venue of such court.

ARTICLE 11

MISCELLANEOUS

11.1 Assignment.

(a) Either Party may assign all of its rights and obligations under this Agreement (i) freely in connection with a merger or reorganization or the sale of all or substantially all of its stock or assets to which this Agreement relates, (ii) with the prior written consent of the other Party, or (iii) to an Affiliate. This Agreement shall survive any such merger or reorganization of each Party with or into, or such sale of stock or assets to, any other person or entity and no consent for such merger, reorganization or sale shall be required hereunder. Any assignment not in accordance with this Agreement shall be void.

(b) This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties;*provided* that, in the event this Agreement is assigned by either Party to a Third Party that merges with the assigning Party or purchases all or substantially all of such Party's stock or assets to which this Agreement relates, then: (i) the Patents Rights and Know-How owned or in-licensed by such Third Party prior to the effective date of such merger or purchase transaction (the "**Assignment Date**") shall not be included as part of the intellectual property licensed by the assigning Party to the other Party under this Agreement by reason of such assignment; and (ii) if such Third Party has, prior to such Assignment Date, a pre-existing research, development or commercialization program with respect to a specific Target subject to the exclusivity obligations under Sections 2.1(d)(iv) and/or (v), then commencing upon the Assignment Date: (A) such exclusivity obligations shall no longer apply to either Party with respect to such Target and the Project related thereto; (B) the Party not progressing such

Project prior to the Assignment Date shall then have the right to, without any obligation to the other Party under this Agreement, develop and/or commercialize any Antibody Product binding to such Target, so long as such Antibody Product has not been identified, generated or otherwise created, or acquired from a Third Party, by either Party prior to the Assignment Date, or is an Antibody Product that is derived from, or derived from the use of, such Antibody Product and that binds to the same Target; and (C) the Party progressing such Project shall no longer have any obligations under this Agreement, including royalty-style payment obligations, with respect to any Antibody Product binding to such Target, so long as such Antibody Product has not been identified, generated or otherwise created, or acquired from a Third Party, by either Party prior to the Assignment Date, or is an Antibody Product that is derived from, or derived from the use of, such Antibody Product and that binds to the same Target; and, *provided further,* that, in the event this Agreement is assigned to an Affiliate, the Patents Rights and Know-How owned or in-licensed by such Affiliate prior to the effective date of such assignment (the "**Assignment Date**") shall not be included as part of the intellectual property licensed by the assigning Party to the other Party under this Agreement by reason of such assignment.

11.2 Force Majeure. Neither Party shall lose any rights hereunder or be liable to the other Party for damages or losses on account of failure of performance by the defaulting Party if the failure is occasioned by government action, war, terrorism, fire, explosion, flood, earthquake, strike, lockout, embargo, act of God, or any other cause beyond the control of the defaulting Party; provided that the Party claiming force majeure has exerted all Commercially Reasonable and Diligent Efforts to avoid or remedy such force majeure; *provided, however,* that in no event shall a Party be required to settle any labor dispute or disturbance. Neither Party shall be excused from any payment obligations hereunder unless such force majeure event directly affects the payment process. The obligations of each Party hereunder, and any obligations of the other Party that are dependent thereon, shall be deemed to be suspended until such time as the force majeure event and its effects are relieved.

11.3 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

11.4 Notices. All notices hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), telexed, mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice; *provided* that notices of a change of address shall be effective only upon receipt thereof).

If to XOMA,

addressed to: XOMA (US) LLC
2910 Seventh Street
Berkeley, California 94710
Attention: Company Secretary
Telephone: (510) 204-7200
Telecopy: (510) 649-7571

with a copy to: Vice President, Business Development

If to NVDI,

addressed to: Novartis Vaccines and Diagnostics, Inc.
4650 Horton Street
Emeryville, California 94608
Attention: Company Secretary
Telephone: (510) 655-8730
Telecopy: (510) 654-5366

with a copy to: Vice President, Business Development

11.5 Waiver. Except as specifically provided for herein, the waiver from time to time by either of the Parties of any of its rights or its failure to exercise any remedy shall not operate or be construed as a continuing waiver of same or of any other of such Party's rights or remedies provided in this Agreement.

11.6 Severability. If any term, covenant or condition of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be held to be invalid or unenforceable, then (a) the remainder of this Agreement, or the application of such term, covenant or condition to Parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; and (b) the Parties hereto covenant and agree to renegotiate any such term, covenant or application thereof in good faith in order to provide a reasonably acceptable alternative to the term, covenant or condition of this Agreement or the application thereof that is invalid or unenforceable, it being the intent of the Parties that the basic purposes of this Agreement are to be effectuated.

11.7 Ambiguities. Ambiguities, if any, in this Agreement shall not be construed against either Party, irrespective of which Party may be deemed to have authorized the ambiguous provision.

11.8 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.9 Entire Agreement. This Agreement, including all Schedules attached hereto, which are hereby incorporated herein by reference, sets forth all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto and, as of the Effective Date, supersedes all prior agreements and understandings between the Parties, including but not limited to the Original Agreement, except for the remaining obligations described in this Agreement. For the avoidance of doubt, the Secured Note Agreement and Security Agreement shall continue in full force and effect as amended by this Agreement. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties regarding the subject matter herein other than as set

forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless reduced to writing and signed by the respective authorized officers of the Parties. Notwithstanding the foregoing, the rights and obligations of the Parties regarding "Opt-Out Targets" and "Opt-Out Products" under the Original Agreement shall remain in effect with regard to the Target known as M-CSF, a former Collaboration Target under the Original Agreement with respect to which XOMA opted out under the Original Agreement.

11.10 Performance by Affiliates. A Party is entitled to perform hereunder via its Affiliates. In the event of any dispute arising from the performance of this Agreement by an Affiliate, or the alleged failure of an Affiliate to comply with the conditions and obligations under this Agreement applicable to such Affiliate, the Party seeking to resolve such dispute may do so directly with the other Party without any obligation to first pursue an action against, or recovery from, the Affiliate which is alleged to have caused the breach of this Agreement.

11.11 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL A PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE ARISING OUT OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF SUCH DAMAGES.

IN WITNESS WHEREOF, the Parties have executed this Amended and Restated Research, Development and Commercialization Agreement in duplicate originals by their proper officers as of the Effective Date.

XOMA (US) LLC

By: _____
Mary L. Anderson
Vice President, Business Development

NOVARTIS VACCINES AND
DIAGNOSTICS, INC.

By: _____
Name:
Title:

Schedule 1.4

Agreement Targets

1. CD40
2. [*]
3. [*]
4. [*]
5. [*]
6. [*]

Schedule 1.24

Inactive Targets as of the Effective Date

[*]

Schedule 1.29

NVDI Background IP

[*]

Schedule 1.48

XOMA Background IP

[*]

Schedule 3.4

Certain Items

[*]

Schedule 3.7

Form of Invoice

Sender's Logo

Street
Town, Country
Phone and Fax Nr.

INVOICE

INVOICE DATE:
MMM DD, 20YY

INVOICE No.: XXXX

Bill To:
Company
Address
Att. Mr. XXXX
Address
Address

For:
Product X Royalties xxx Quarter, 20YY
(or Milestone for event Y)

DESCRIPTION	AMOUNT (USD)
Product X royalties January - March 20YY calculated based on Novartis provided sales report	US$000'000.00
(Or milestone payment for event Y, according to paragraph XY of agreement ZZZZ dated.....)	
Please specify the event for which the invoice is due, and add any copies of invoices from third parties in case reimbursement for third party work is agreed to	
Please remit by wire transfer within 60 days to:	
Receiving Bank -	
Swift Code -	
ABA Number -	
Credit Account -	
Beneficiary -	
TOTAL	000'000,00

If you have any questions concerning this invoice, contact
or e-mail to

VAT -Reg. No. Xxxxxxxxxx (if partner has one)

Best regards,

Press Release

XOMA Restructures Drug Development Collaboration Including Oncology Drug Candidate HCD122

XOMA to Receive Upfront Cash, Potential Milestones and Higher Royalties, Full Funding of Ongoing R&D, Reduction of Existing Loan and Elimination of Certain XOMA Payment Obligations

BERKELEY, Calif., Nov 10, 2008 (GlobeNewswire via COMTEX News Network) — XOMA Ltd. (Nasdaq:XOMA), a leader in the discovery and development of therapeutic antibodies, today announced the restructuring of its product development collaboration with Novartis Vaccines and Diagnostics, Inc. ("Novartis"), which involves six development programs including the ongoing HCD122 program. Under the restructured agreement Novartis will make an upfront payment to XOMA of $6.2 million; fully fund all future R&D expenses; reduce existing debt by $7.5 million; pay potential milestones of up to $14 million and double-digit royalty rates for two ongoing product programs including HCD122; and provide XOMA with options to develop or receive royalties on four additional programs currently pending selection. In exchange, Novartis will have control over the HCD122 program and the additional ongoing program, as well as the right to expand the development of these programs into additional indications outside of oncology. As part of the agreement, NVS will pay XOMA for all project costs incurred after July 1.

Novartis will pay XOMA royalties on sales of HCD122 and one other active product program candidate, based on aggregate sales in all indications. If either XOMA or Novartis chooses to activate any or all of the four currently pending programs, the developing company will pay the other party reduced royalties on sales of any resulting products. In all cases, royalty rates are subject to certain customary adjustments.

"The restructured agreement with Novartis allows XOMA to focus our resources on proprietary projects like XOMA 052, an anti-inflammatory drug candidate designed for use in multiple diseases, while maintaining a share of the potential value of the product candidates resulting from the collaboration," noted Steven Engle, Chairman and Chief Executive Officer of XOMA. "Importantly, the development of HCD122 can now be expanded under Novartis' leadership into new disease indications. We believe this expansion is a key step in realizing the full potential of this program."

About the Agreement

Formed in 2004, the collaboration between XOMA and Novartis (then Chiron Corporation) began with the signing of an exclusive, worldwide, multi-product agreement to develop and commercialize multiple antibody products for the treatment of cancer. The companies shared expenses and revenues, generally on a 70-30 basis, with XOMA's share being 30 percent. Financial terms included initial payments to XOMA in 2004 totaling $10.0 million and a note agreement, secured by XOMA's interest in the collaboration, to fund up to 75 percent of the company's share of expenses beginning in 2005. In the first quarter of 2007, the mutual obligations of XOMA and Novartis to work together on an exclusive basis in oncology expired, except with respect to existing collaborative product development projects.

As of June 30, 2008, XOMA had $21.3 million of outstanding principal on its secured note agreement with Novartis. Under the revised agreement, the principal has been reduced by $7.5 million to $13.8 million. The remaining principal of approximately $13.8 million is due in 2015 and accrues interest at a rate of 2 percent plus LIBOR. Under the revised agreement, no additional draw downs on the note may be made by XOMA.

About HCD122

HCD122 is a fully human monoclonal antibody that targets CD40. The investigational drug is in a Phase 1/B-2A clinical trial for the treatment of lymphoma and a Phase 1 clinical trial for the treatment of multiple myeloma. The antibody has a dual mechanism of action that involves inhibition of CD40-ligand mediated growth and survival while recruiting immune effector cells to kill CD40-expressing tumor cells through a process known as antibody-dependent cellular cytotoxicity (ADCC). CD40, a member of the tumor necrosis factor superfamily, is a cell surface antigen expressed in B-cell malignancies and involved in a broad variety of immune and inflammatory responses.

About XOMA

XOMA discovers, develops and manufactures therapeutic antibody and other agents designed to treat inflammatory, autoimmune, infectious and cancerous diseases and is engaged in 16 active development projects. The company's expanding pipeline includes XOMA 052, an anti-IL-1 beta antibody, and XOMA 629, a synthetic antimicrobial peptide compound derived from bactericidal/permeability-increasing protein.

XOMA's proprietary development pipeline is primarily funded by multiple revenue streams resulting from the licensing of its antibody technologies, product royalties, development collaborations, and biodefense contracts. XOMA's technologies and experienced team have contributed to the success of marketed antibody products, including RAPTIVA(r) (efalizumab) for chronic moderate to severe plaque psoriasis, LUCENTIS(r) (ranibizumab injection) for wet age-related macular degeneration and CIMZIA(r) (certolizumab pegol) for Crohn's disease.

The company has a premier antibody discovery and development platform that incorporates leading antibody phage display libraries and XOMA's proprietary Human Engineering(tm) and bacterial cell expression technologies. Bacterial cell expression is a key breakthrough biotechnology for the discovery and manufacturing of antibodies and other proteins. As a result, more than 50 pharmaceutical and biotechnology companies have signed BCE licenses.

In addition to developing its own products, XOMA develops products with premier pharmaceutical companies including Schering-Plough Research Institute and Takeda Pharmaceutical Company Limited. XOMA has a fully integrated product development infrastructure, extending from pre-clinical science to marketing approval, and a team of 330 employees at its Berkeley location. For more information, please visit http://www.xoma.com.

Certain statements contained herein concerning contingent payments under existing agreements and/or product development or that otherwise relate to future periods are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements are based on assumptions that may not prove accurate. Actual results could differ materially from those anticipated due to certain risks inherent in the biotechnology industry and for companies engaged in the development of new products in a regulated market.
Among other things XOMA will not receive contingent payments under existing contracts if related milestone events are not achieved or if royalty-bearing products are not successfully developed, approved for sale and sold.

These and other risks, including those related to the results of discovery and pre-clinical testing; the timing or results of pending and future clinical trials (including the design and progress of clinical trials; safety and efficacy of the products being tested; action, inaction or delay by the FDA, European or other regulators or their advisory bodies; and analysis or interpretation by, or submission to, these entities or others of scientific data); changes in the status of existing collaborative relationships; the ability of collaborators and other partners to meet their obligations; XOMA's ability to meet the demands of the United States government agency with which it has entered into its government contracts; competition; market demands for products; scale-up and marketing capabilities; availability of additional licensing or collaboration opportunities; international operations; share price volatility; XOMA's financing needs and opportunities; uncertainties regarding the status of biotechnology patents; uncertainties as to the costs of protecting intellectual property; and risks associated with XOMA's status as a Bermuda company, are described in more detail in XOMA's most recent filing on Form 10-K and in other SEC filings. Consider such risks carefully when considering XOMA's prospects.

Porter Novelli Life Sciences for XOMA
Media & Investors Contact:
Carolyn Hawley
619-849-5375
chawley@pnlifesciences.com

Exhibit 10.24D

MANUFACTURING AND TECHNOLOGY TRANSFER AGREEMENT

This Manufacturing and Technology Transfer Agreement (this "**Agreement**") is effective as of July 1, 2008 (the "**Effective Date**"), by and between XOMA (US) LLC, a Delaware limited liability company with offices at 2910 Seventh Street, Berkeley, California 94710 ("**XOMA**"), and Novartis Vaccines and Diagnostics, Inc., a Delaware corporation with offices at 4650 Horton Street, Emeryville, California 94608 ("**NVDI**"). XOMA and NVDI are sometimes referred to herein individually as a "Party" and collectively as "Parties."

RECITALS

WHEREAS, the Parties have entered into that certain Amended and Restated Research, Development and Commercialization Agreement effective as of the Effective Date (the "**Collaboration Agreement**");

WHEREAS, XOMA has substantial expertise in product development and manufacturing of its own and its collaborators' biopharmaceutical products and, in addition, has invested in biopharmaceutical manufacturing facilities; and

WHEREAS, NVDI desires to engage XOMA to perform technology transfer and other activities with respect to NVDI's anti-[*] monoclonal antibody, known as [*] and its anti-CD40 monoclonal antibody, known as HCD122, and to manufacture and supply two (2) GLP Batches of [*] and XOMA desires to provide such services to NVDI, on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants set forth below, NVDI and XOMA mutually agree as follows;

ARTICLE 1
DEFINITIONS

Capitalized terms used but not defined herein shall have the meanings set forth in the Collaboration Agreement. As used in this Agreement, he following terms will have the following meanings:

1.1 "[*] *Scale*" means the 2750 liter nominal volume fermentation bioreactor production scale for the [*] Drug Substance manufacturing process that will result from scale-up work carried out by XOMA as part of the Project.

1.2 "***AAA***" means the American Arbitration Association or its successor organization.

1.3 "***Affiliate***" means any person or entity that, directly or indirectly, through one or more intermediaries, owns, is owned by or is under common ownership with, a Party, where "own," "owned" and "ownership" refer to (a) direct or indirect possession of at least fifty percent (50%) of the outstanding voting securities of a corporation or a comparable ownership in any other type of entity; or (b) the actual ability of an entity, person or group to control and direct the management of the person or entity, whether by contract or otherwise.

1.4 "***Batch***" means the quantity of [*] Drug Substance that is intended to have a uniform character and quality, within specified limits, and that is produced according to a single manufacturing order during the same cycle of manufacture.

1.5 "***Confidential Information***" of a Party means all confidential or proprietary information of such Party that the other Party receives or learns under this Agreement. Confidential Information shall include without limitation the manufacturing processes transferred to, used by or improved by XOMA under this Agreement. Confidential Information shall not include any information to the extent that the receiving Party can demonstrate by competent evidence:

1.5.1. is now, or hereafter becomes, through no act or failure to act on the part of the receiving Party in breach of Article 9, generally known or available;

1.5.2. is known by the receiving Party at the time of receiving such information, as shown by written records predating such receipt;

1.5.3. is furnished after the Effective Date to the receiving Party by a Third Party, without breach of and not subject to any obligation of confidentiality; or

1.5.4. is independently developed by the receiving Party without use of or reference to Confidential Information of the other Party, as shown by independent written records contemporaneous with such development.

1.6 "***Control***," "***Controls***" and "***Controlled***" mean, with respect to a particular item of information or Intellectual Property Right, that the applicable Party owns or has a license to such item or right and has the ability to grant to the other Party access to and a license or sublicense (as applicable) under such item or rights as provided for herein without violating the terms of any agreement or other arrangement with any Third Party.

1.7 "***CPR***" means the CPR Institute for Dispute Resolution or its successor organization.

1.8 "***Dedicated Equipment"*** has the meaning set forth in Section 2.9.1.

1.9 "***Delivery***" has the meaning set forth in Section 4.2.1.

1.10 "***Facility***" means XOMA's appropriate facilities located in Berkeley and Emeryville, California.

1.11 "***FDA***" means the U.S. Food and Drug Administration or any successor agency.

1.12 "***FD&C Act***" means the U.S. Food, Drug and Cosmetics Act and applicable regulations and guidances promulgated thereunder, as amended from time to time.

1.13 "***FTE***" has the meaning set forth in Section 5.1.

1.14 "***GLP***" means the then current standards for laboratory practice in relation to biologicals, as set forth in the FD&C Act, and such standards of good laboratory practice as are required by the FDA.

1.15 "***Governmental Authority***" means any supranational, national, regional, state or local regulatory agency, department, bureau, or other governmental entity.

1.16 "***Indemnitee***" has the meaning set forth in Section 8.3.

1.17 "***Indemnitor***" has the meaning set forth in Section 8.3.

1.18 "***Innovations***" means inventions, discoveries, works of authorship, trade secrets and other know-how or developments.

1.19 "***Intellectual Property Rights***" means Patents, copyrights, trademarks, service marks, trade secrets, mask works and applications for the foregoing, in any country, supra-national organization or territory of the world.

1.20 "[*] *Drug Substance*" means the anti-[*] monoclonal antibody known as [*] in purified bulk form that has been manufactured and processed to the stage where it meets the Master Production Records and is suitable for further processing to yield Product.

1.21 "***Losses***" means losses, claims, suits, damages, costs, fees and expenses (including without limitation reasonable attorneys' fees).

1.22 "***Master Production Records***" or "***MPRs***" means the documentation generated by XOMA that collectively defines the manufacturing methods, test methods, specifications, materials, and other procedures, directions and controls associated with the manufacture and testing of [*] Drug Substance. The Master Production Records shall also include or incorporate by reference, without limitation, such information as the specifications of raw materials, resins and other consumables to be used in the manufacture of [*] Drug Substance, in process and final [*] Drug Substance sampling standards, equipment and instrumentation specifications and standard operating procedures, including, without limitation, standard operating procedures for in-process quality control testing and [*] Drug Substance packaging and aliquoting procedures.

1.23 "***Monthly Report***" means a detailed report which shall set forth the costs for the Services performed during such calendar month.

1.24 "***NVDI Indemnitees***" means NVDI and its Affiliates and their respective directors, officers, employees and agents.

1.25 "***NVDI Innovations***" means all Innovations that NVDI either Controls as of the Effective Date or gains Control of independently of activities under this Agreement, including all Intellectual Property Rights in any of the foregoing.

1.26 "***NVDI IP***" means, to the extent Controlled by NVDI, Intellectual Property Rights claiming or covering NVDI Innovations or NVDI-owned Project Innovations that, in the absence of a license thereunder, would be infringed or misappropriated by XOMA's performance of its obligations under this Agreement.

1.27 "***Patents***" means (a) United States issued patents, re-examinations, reissues, renewals, extensions, patent term restorations, and foreign counterparts of each of the foregoing; and (b) pending applications for United States patents and foreign counterparts thereof, whether issued or not.

1.28 "***Process***" means the process and technology used to manufacture and test [*] Drug Substance under this Agreement.

1.29 "***Product***" means the finished dosage form of (a) NVDI's [*] antibody product candidate and/or (b) NVDI's HCD122 antibody product candidate, as the context requires.

1.30 "***Project***" means the product development (including preclinical and production related activities, technology transfer and regulatory and clinical oversight) and manufacturing relationship established by this Agreement.

1.31 "***Project Innovations***" shall mean all Innovations, whether or not patentable, that are conceived in the course and as a result of the Services.

1.32 "***Project Team***" means a group constituted pursuant to Section 2.4 and comprised of an appropriate number of representatives of each Party with expertise appropriate to the current stage of the Project.

1.33 "***Quality Agreement***" means that certain Quality Agreement between the Parties dated as of the Effective Date, a copy of which is attached hereto as Appendix B and which is incorporated herein by this reference.

1.34 "*Quarterly Invoice*" has the meaning set forth in Section 5.2.

1.35 "***Regulatory Approval***" means all approvals, product and/or establishment licenses, registrations or authorizations of all Regulatory Authorities necessary for the manufacture, use, storage, import, export, transport and sale of a biological product in a jurisdiction.

1.36 "***Regulatory Authority***" means a supranational, national or local regulatory agency or other governmental entity with the authority to grant a Regulatory Approval.

1.37 "***SEC***" means the U.S. Securities and Exchange Commission or any successor agency.

1.38 "***Services***" means those services to be performed by XOMA hereunder pursuant to the Work Plan.

1.39 "***Start Date***" means, with respect to a scheduled production run, the date on which a cell bank vial is scheduled in the Work Plan to be thawed for such production run, *provided* that such date shall be adjusted to account for any actual delays in the start of such production run.

1.40 "***Third Party***" means any person or entity other than the Parties or their respective Affiliates.

1.41 "***Third Party Claim***" means any Third Party claim, demand, suit, action or proceeding.

1.42 "***Waste"*** means any "hazardous substance" and/or "hazardous material" as provided under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), any "hazardous waste" as provided under the Resource Conservation and Recovery Act (RCRA), and/or any other waste material, pollutant and/or contaminant of any kind including, without limitation, any routine process waste or any by-product arising from any activities conducted pursuant to this Agreement.

1.43 "***Work Plan***" means the Work Plan attached hereto as Appendix A and incorporated herein by this reference (as such Work Plan may be amended from time to time by mutual written agreement of the Parties).

1.44 "***XOMA Indemnitees***" means XOMA and its Affiliates and their respective directors, officers, employees and agents.

1.45 "***XOMA Innovations***" means all Innovations that XOMA either Controls as of the Effective Date or gains Control of independently of activities under this Agreement, including all Intellectual Property Rights in any of the foregoing.

1.46 "***XOMA IP***" means, to the extent Controlled by XOMA, Intellectual Property Rights claiming or covering XOMA Innovations or XOMA-owned Project Innovations that, in the absence of a license thereunder, would be infringed or misappropriated by the development, manufacture, use or sale of [*] Drug Substance or Product.

ARTICLE 2
OVERVIEW; GOVERNANCE.

2.1 Project; Schedule. XOMA and NVDI are entering into this Agreement with the purpose of having XOMA perform technology transfer and other activities as provided in the Work Plan and produce [*] in compliance with the Master Production Records at [*] Scale for NVDI. Subject to the terms and conditions of this Agreement, XOMA will carry out the Project in accordance with this Agreement and the Work Plan. XOMA will commit to the Project appropriate personnel (including without limitation those with expertise in technical development, manufacturing, operations, quality control, quality assurance and regulatory affairs) and conduct the Services at the Facility. NVDI will commit such of its personnel with appropriate expertise to provide monitoring and, as appropriate, technical consultation for the

Project. XOMA and NVDI recognize the importance of timely execution of the Project, and accordingly each Party will give priority to the Project, assign adequate staffing and other resources and use all diligent, commercially reasonable efforts to maximize the potential of achieving successful completion of the Project (including without limitation timely provision of all deliverables in accordance with the Work Plan), it being understood that the efforts and resources used to date by XOMA satisfy such standard. More specifically:

2.1.1. NVDI and XOMA each will give priority to completion, as promptly as reasonably practicable, of the development and implementation of the Work Plan. NVDI has delivered to XOMA certain materials and information and will deliver to XOMA any further materials and information necessary for XOMA to undertake its responsibilities hereunder, together with relevant details of any hazards and/or characterization relating to the materials delivered or to be delivered by NVDI to be used, and the storage and use of such materials. With this information, XOMA has initiated and will continue the process development efforts.

2.1.2. Upon successful completion of cell banking, process development and preparation for scale-up work, XOMA will produce [*] and in each case according to the Work Plan. For the avoidance of doubt, the GLP batch under production in November of 2008 shall count as one (1) [*]. In connection with the foregoing, XOMA will also conduct related testing and deliver related regulatory documentation to NVDI.

2.2 Work Plan.

2.2.1. Attached hereto as Appendix A is the Work Plan for the technology transfer, manufacturing and other activities as provided therein in accordance with the terms and conditions of this Agreement. The Parties acknowledge that the initial Work Plan attached hereto at the time of execution of this Agreement is a preliminary version included for guidance but not yet fully agreed to by the Parties. The Parties agree to use commercially reasonable efforts to finalize such initial Work Plan within [*] following full execution of this Agreement. For the avoidance of doubt, once such initial Work Plan is agreed, it may be further amended as provided herein.

2.2.2. Each Party agrees to perform its obligations under this Agreement in accordance with the Work Plan and the Quality Agreement. The Project Team members shall review the Work Plan and consult as to its continuing suitability at their meetings pursuant to Section 2.4 and shall propose appropriate revisions thereto. Any such revised Work Plan or amendment or supplement to the Work Plan shall be in writing and shall become effective only upon execution by both Parties.

2.3 Cooperation. Adherence to the schedules set out in the Work Plan is contingent in part on each Party's reasonably expedient reviews, decisions and approvals of the requisite documents, data and paths, where such review and approval is necessary, it being understood and agreed that, in order to maintain adherence to the schedules set forth in the Work Plan (taking into consideration the custom and practice of the industry as well as XOMA's standard operating procedures), this may require a prompt response from either NVDI or XOMA following a request from the other Party.

2.4 Project Team. As of the Effective Date, the Parties have formed a Project Team. Each Party may replace or supplement its members on the Project Team and will at all times ensure that its current Project Team members have expertise appropriate to the current stage of the Project. Each Party shall use commercially reasonable efforts to maintain the same Project Team manager throughout the term of this Agreement unless such individual leaves the employ of such Party. The Project Team will be responsible for reviewing progress of the Project under the Work Plan and to discuss and decide on any potential revisions to the Work Plan. The Project Team shall seek to make decisions by consensus. The Project Team shall hold monthly meetings by teleconference or in person unless otherwise agreed by Project Team members. At each such meeting, a representative of XOMA shall be responsible for keeping the minutes of such meeting and for circulating a draft of such minutes thereafter for approval by the attendees.

2.5 Senior Management Oversight and Dispute Resolution. In the event that the Project Team is unable to reach consensus regarding any matter, either Party may, by written notice to the other Party, refer such matter to the CEOs of the Parties (or to their respective senior executive designees) for attempted resolution. If a Party refers any matter to the CEOs of the Parties (or such designees) pursuant to this Section 2.5, then the CEOs of the Parties (or such designees) will attempt in good faith to resolve such matter within [*]. If the matter remains unresolved at the end of such [*] period, the matter may be submitted for resolution pursuant to Section 11.3.

2.6 Master Production Records; Changes to Master Production Records and Work Plan

2.6.1. NVDI or XOMA may change the Master Production Records or the Work Plan from time to time, with the review and approval of the other Party in advance as to such changes, and such revised MPRs or Work Plan, as the case may be, shall replace the previous MPRs or Work Plan, as applicable, and shall be deemed to be part of this Agreement. The work of each Party hereunder will be performed in a professional and workmanlike manner in accordance with the standards of performance in the industry.

2.6.2. NVDI shall be responsible for any incremental costs incurred by XOMA as a result of any changes to the MPRs or the Work Plan pursuant to Section 2.6.1. If such changes significantly and adversely affect the ability of XOMA to manufacture [*] Drug Substance in compliance with the MPRs or require significant modifications to the Facility in order to permit XOMA to manufacture [*] Drug Substance in accordance with the MPRs, then at XOMA's election, the Parties will renegotiate the terms of this Agreement so as to permit XOMA to perform its obligations under this Agreement with substantially the same proportional economic benefit for its efforts.

2.7 NVDI Representatives. NVDI shall be allowed to have, at its cost, such number of representatives [*] escorted by XOMA personnel, with reasonable access to the Facility during the manufacture of [*] Drug Substance for the purpose of observing, reporting on, and consulting as to such manufacturing efforts. Prior to receiving such access, NVDI representative(s) will enter into XOMA's standard form of confidentiality agreement, which will be commercially reasonable and will permit XOMA personnel to disclose information learned to NVDI. XOMA will reasonably cooperate in enabling (e.g., providing necessary training to allow for compliance with XOMA procedures) NVDI representatives to carry out their responsibilities and will make adequate temporary desk space and other reasonable resources available to these representatives during the periods they are working at the Facility.

2.8 Other Manufacturing Relationships. The manufacturing relationship set forth in this Agreement will be non-exclusive.

2.9 Additional Equipment.

2.9.1. Dedicated Equipment Purchases. The Parties acknowledge that certain equipment has been obtained for the Project and do not expect that additional equipment will be needed. In the unlikely event that additional equipment is needed, XOMA shall purchase for delivery to the Facility all equipment that is to be dedicated to the Project, as either set forth in the Work Plan or otherwise approved in writing in advance by NVDI, which approval shall not be unreasonably withheld or delayed (any such additional equipment, the **"Dedicated Equipment")**. NVDI will reimburse XOMA for the cost of Dedicated Equipment purchases (including, without limitation, reimbursement for the time and efforts of XOMA personnel, and the costs for delivery, installation and qualification) in accordance with the Work Plan or as otherwise approved in writing in advance by NVDI and NVDI will have ownership of the Dedicated Equipment. XOMA will operate and maintain the Dedicated Equipment as per approved procedures once such equipment is commissioned and in operation. NVDI shall be liable for repair of all damage and risk of any loss to Dedicated Equipment unless caused by XOMA's negligence, willful misconduct or breach of this Agreement. NVDI shall be responsible for any delays to the Work Plan caused in whole or in part by delays in the delivery, testing, qualification or validation of Dedicated Equipment. If any piece of Dedicated Equipment is not or no longer used for the Project or for other NVDI products, then XOMA at its option will either transfer such Dedicated Equipment to NVDI or keep such Dedicated Equipment and reimburse NVDI for the depreciated cost thereof. NVDI will pay any costs of the physical transfer of such Dedicated Equipment to NVDI.

2.9.2. General Equipment Purchases. It may also be necessary to obtain additional equipment of general utility to XOMA for the development or scale-up of the Process or the manufacture of [*] Drug Substance. Upon mutual agreement of the Parties that additional equipment is needed for the Project, XOMA will purchase for its own account and for delivery to the Facility any such additional equipment. XOMA and NVDI will share the cost of purchasing this equipment in a [*] arrangement. However, NVDI's portion of the purchase cost will be subtracted from future revenues to XOMA for work performed under this Agreement. XOMA will have ownership of such equipment from the date of purchase.

2.10 Handling of Materials; Wastes. At NVDI's expense, XOMA or a designated Third Party contractor shall handle, label, package, store, transport and dispose of all Wastes generated through performance of the manufacturing and processing activities hereunder in material compliance with all federal, state and local laws, rules, and regulations applicable to such handling, labeling, packaging, storage, transport and disposal. Each Party shall promptly notify the other of any health hazards or potential health hazards of which it is or becomes aware concerning exposure to or handling of the [*] Drug Substance or Wastes.

ARTICLE 3
TECHNOLOGY TRANSFER AND OTHER ACTIVITIES; PRODUCTION.

3.1 Technology Transfer to XOMA. To the extent not already completed, the Parties will complete as quickly as practicable the transfer from NVDI to XOMA of all relevant materials and information related to the Project. NVDI shall be responsible for obtaining all relevant technology, other necessary information and assistance from relevant Third Parties, if needed. Throughout the course of the Project, NVDI will make scientific and technical staff available as necessary and reasonably useful to assist XOMA's efforts.

3.2 Technology Transfer to NVDI; Manufacture. In accordance with the provisions and timelines in the Work Plan, XOMA will perform technology transfer and other activities as provided therein and manufacturing at [*] and will take such actions and generate such data and documentation as are necessary to meet the MPRs.

ARTICLE 4
TESTING, DELIVERY AND REGULATORY MATTERS.

4.1 Raw Materials Services; In-Process Testing. XOMA has provided and will continue to provide in accordance with the Work Plan the ordering, testing, inventorying and releasing services for raw materials used in the manufacture of [*] Drug Substance under this Agreement and in-process testing for continued manufacture of [*] Drug Substance under this Agreement. XOMA shall obtain raw materials, resins, buffers, consumables and other like materials for manufacture of [*] Drug Substance under this Article 4. XOMA shall not be responsible for delays in the purchase and/or delivery of any such materials that occur outside of the reasonable control of XOMA and despite XOMA using commercially reasonable efforts to avoid such delays. All such materials shall be invoiced to NVDI by XOMA at one hundred percent (100%) of XOMA's cost.

4.2 Delivery; Risk of Loss; Storage Fees.

4.2.1. On or prior to the applicable date of delivery of [*] Drug Substance to NVDI or its designee, XOMA will deliver such [*] Drug Substance to NVDI or its designee F.O.B. the Facility, along with samples and copies of Batch production records. XOMA will test each Batch of [*] Drug Substance pursuant to the Master Production Records and will include with each Batch of [*] Drug Substance a certificate of analysis confirming that such Batch has been tested according to the MPRs. XOMA shall package for shipment each Batch of [*] Drug Substance in accordance with NVDI's written instructions, and NVDI shall bear all packaging, shipping and insurance charges. Delivery of [*] Drug Substance by XOMA shall be deemed to have taken place upon the earlier to occur of (i) delivery to a carrier at the Facility or (ii) [*] after release by XOMA ("**Delivery**"). **[Draft note to XOMA: Has this been resolved?]** Title and risk of loss shall transfer to NVDI upon Delivery. XOMA shall accept no liability or responsibility and risk associated with the loss of any Batch of [*] Drug Substance once this transfer has occurred. XOMA shall retain representative samples of [*] Drug Substance for record keeping, testing and regulatory purposes, including in accordance with applicable laws, rules and regulations.

XOMA shall bear the risk of loss prior to Delivery, except to the extent such loss is due to circumstances beyond its reasonable control, including without limitation earthquakes, governmental regulation, fire, flood, labor difficulties, interruption of supply of key raw materials, civil disorder, and acts of God. XOMA shall provide for the storage of any Batch, upon release of such Batch at the Facility in accordance with guidelines to be agreed to by the Parties at the Facility for up to [*]; *provided*, that any additional storage beyond such [*] period will be charged to NVDI at XOMA's customary rates. Unless otherwise agreed in writing by the Parties, XOMA shall not be required to store any Batch for more than [*] after release of such Batch pursuant to this Section 4.2; provided that, XOMA will notify NVDI in writing before disposing of any Batch, and shall continue storage of the affected Batch for a reasonable period of time (not to exceed [*]) sufficient to allow NVDI to arrange for alternate disposition of the Batch. NVDI shall pay applicable storage costs for any portion of the Batch remaining. XOMA shall not be required to deliver any Batch to the carrier until the carrier informs XOMA that it has obtained all appropriate approvals and consents of any Governmental Authority necessary for the transportation or shipment of such Batch.

4.2.2. XOMA hereby agrees to obtain and carry general liability insurance with coverage in an amount equal to or greater than the aggregate amount of expected payments under this Agreement. Upon written request, XOMA shall provide NVDI a certificate evidencing such insurance.

4.3 Regulatory Matters. Upon NVDI's decision to file regulatory documentation for Drug Substance or Product with the FDA or other Regulatory Authorities in accordance with the Collaboration Agreement, and upon NVDI's request and at NVDI's expense, XOMA will, in accordance with the applicable regulatory requirements, provide the necessary documentation according to the Work Plan.

ARTICLE 5
PRICES AND PAYMENT.

5.1 Price for Services, Batches and Technology Transfer. In consideration for XOMA's performance of its obligations under this Agreement and the Work Plan, and subject to the terms and conditions of this Agreement, NVDI shall pay to XOMA an amount equal to the sum of (a) XOMA's fully burdened costs, measured, where applicable, by its standard full-time equivalent ("**FTE**") rates as set forth in the Work Plan for the functions providing the Services plus (b) [*] with respect to Services provided on or after the Effective Date and prior to November 1, 2008, ten percent (10%) or (ii) with respect to Services provided on or after November 1, 2008, twenty percent (20%). The Parties expressly acknowledge that the dollar amounts for expected time and materials set forth in the Work Plan are estimates. NVDI must approve in writing any deviations of [*] or more from either the aggregate amount in the Work Plan for manufacturing Services or the aggregate amount in the Work Plan for technology transfer Services.

5.2 Quarterly Invoices. Upon execution of this Agreement in full, and on a calendar quarterly basis thereafter, XOMA shall send to NVDI an invoice in an amount equal to the sum of (a) (in case of the first invoice only) XOMA's fees for (i) the work undertaken on or after the

Effective Date through such date of full execution, (ii) the actual costs of materials, other than materials procured under the Original Agreement as such term is defined in the Collaboration Agreement, procured before the Effective Date but used or to be used in connection with the Project after the Effective Date and (iii) the actual costs of materials procured on or after the Effective Date through such date of full execution and (b) (in the case of the first invoice and every invoice thereafter) the projected fees and expenses of XOMA set forth in the Work Plan with respect to the Services to be performed and Batches to be Delivered by XOMA in such quarter as adjusted pursuant to Section 5.7 (each a "**Quarterly Invoice**").

5.3 Equipment Reimbursement. NVDI will reimburse XOMA one hundred percent (100%) of the cost of Dedicated Equipment purchased pursuant to Section 2.9.1 after receipt of each invoice and applicable documentation for such costs.

5.4 Third Party Costs. Charges for Third Party raw materials, goods and services directly related to work performed under this Agreement, including the costs of obtaining raw materials, will be reimbursed by NVDI at one hundred percent (100%) of XOMA's cost.

5.5 [*]

5.6 Agreed Changes. From time to time, either Party may propose certain changes to the Work Plan and/or the Process by which [*] Drug Substance is manufactured and tested under this Agreement. Upon receipt of any such request, the Parties will enter into good faith negotiations regarding the assessment of the implications and costs arising from a change to the Work Plan or Process. Any such changes mutually agreed by the Parties will be set forth in an amendment to the Work Plan attached hereto. No change to the Work Plan and/or the Process will be effective unless and until mutually agreed in such an amendment.

5.7 Monthly Reports and True-Up. Within twenty (20) days from the start of each calendar month starting with the first full month after the execution of this Agreement in full, XOMA shall send to NVDI a Monthly Report for the previous calendar month. The amounts set forth in each Monthly Report shall be compared to the sums paid to XOMA under the then most recent Quarterly Invoice. The sum of any differences between XOMA's actual costs as reflected in the three most recent Monthly Reports and the amount paid by NVDI under the most recent Quarterly Invoice shall be added to the next Quarterly Invoice.

5.8 Payment. NVDI will pay undisputed amounts due XOMA under this Article 5 within [*] after receipt of each invoice from XOMA; *provided, however,* that payment pursuant to the first invoice referenced in Section 5.2(a) shall be due within ten (10) days after receipt thereof. All payments to be made under this Agreement shall be made in United States dollars in the United States to a bank account designated by XOMA. All properly invoiced and undisputed amounts not paid within [*] after receipt of the invoice shall accrue interest at a rate equal to the lesser of [*] or the highest interest rate permitted under applicable law.

5.9 Financial Records. XOMA will keep reasonably complete and accurate books and accounts of record in connection with the manufacture and use by it of [*] Drug Substance hereunder in sufficient detail to permit accurate determination of whether XOMA has properly invoiced amounts under this Article 5. Such records shall be maintained for a period of [*] from

the end of each year in which sales occurred or expenses were incurred. NVDI, at its expense, through a certified public accountant, shall have the right to access such books and records for the sole purpose of verifying the reports regarding amounts due; such access shall be conducted after reasonable prior notice by NVDI during XOMA's normal business hours and shall not be more frequent than once during each calendar year. Such accountant shall execute a reasonable confidentiality agreement with XOMA which shall require such accountant not disclose to NVDI or any other party any confidential information of XOMA (subject to customary exclusions) except as necessary to determine amounts properly invoiced under this Agreement. If such accountant determines that XOMA's error resulted in NVDI paying more than properly due in respect of any Batch or calendar quarter, then XOMA will promptly reimburse such amount.

ARTICLE 6
TECHNOLOGY AND INFORMATION.

6.1 Technology Transfer.

6.1.1. Use of Transferred Technology. NVDI shall be entitled to maintain and use any documents delivered to it by XOMA hereunder within the scope of its license(s) in Section 6.3 for itself, its Affiliates or Third Parties.

6.1.2. Transfer of Process. Upon NVDI's request and at NVDI's expense, XOMA will transfer the Process and the Dedicated Equipment (if any) to NVDI in accordance with the Work Plan. If this Agreement is terminated for reason other than NVDI's uncured material breach prior to XOMA's Delivery of [*] then upon NVDI's request and at NVDI's expense, XOMA will provide any undelivered [*] Drug Substance and cell line materials to NVDI along with Process specific documentation generated up until the date of termination. Without limiting the generality of the foregoing, when transferring the Process and Dedicated Equipment, XOMA shall promptly transfer and/or deliver to NVDI (i) any [*] Drug Substance developed by XOMA, (ii) any raw materials and resins purchased specifically in connection with performance of the Services, (iii) any necessary documentation reasonably related to the Process, (iv) any assays used in connection with the development of the Process, and (v) any master or working cell bank and cell materials related to the [*] Drug Substance, including documentation requested by Novartis QA for release of those cell banks. Furthermore, XOMA shall provide to NVDI all reasonably useful data and information in its possession regarding work performed by it pursuant to this Agreement [*]. For purposes of clarity, in the event of termination of this Agreement for reason other than NVDI's uncured material breach, it is the intention of the Parties that NVDI be able to recommence the development of the Process itself with as little interruption as reasonably possible, and therefore, that pursuant to this paragraph, NVDI shall have access to and the right to use any and all information, processes, intellectual property and materials developed by XOMA in the course of the Services reasonably required to do so. In connection with such technology transfer, upon reasonable notice, XOMA will permit reasonable access to the Facility during normal business hours to employees of NVDI to learn about the relevant process and technology. Prior to obtaining access, such employees will enter into XOMA's standard form of confidentiality agreement, which will be commercially reasonable and will permit such employees to disclose information learned to NVDI. While at the Facility such employees shall follow

XOMA's policies and procedures and shall use commercially reasonable efforts to avoid interrupting or interfering with the work of other XOMA personnel. NVDI will pay XOMA for such technology transfer work as provided in Sections 5.1, 5.3 and 5.4. If reasonably requested by NVDI, XOMA personnel will visit Novartis facilities to consult and advise on technology transfer matters at NVDI's expense at XOMA's applicable FTE rates.

6.2 Information.

6.2.1. Access. NVDI shall have reasonable access during normal business hours to copies of Batch records and any other documentation relating to manufacture of [*] Drug Substance by XOMA under this Agreement and shall be free, subject to Article 9, to copy and use such documentation as reasonably required for any normal regulatory or business use relating to [*] Drug Substance or Product.

6.2.2. Regulatory Authorities. If XOMA receives notice of any visit or inspection by any Regulatory Authority of any part of the Facility solely engaged in the manufacture of [*] Drug Substance or otherwise relating solely to the manufacture of [*] Drug Substance, XOMA will promptly notify NVDI of such visit or inspection and will permit an employee of NVDI to be present and participate in such visit or inspection. XOMA shall provide to NVDI a copy of any report and other written communications received from such Regulatory Authority in connection with such visit or inspection, and any written communications received from any Regulatory Authority, or sent to any Regulatory Authority by XOMA, relating to [*] Drug Substance or the production of [*] Drug Substance, as soon as practicable and in any event within [*] after receipt and will to the extent practicable consult with NVDI concerning the response to each such communication. Any additional costs incurred by XOMA as a result of such visit or inspection shall be charged to NVDI at XOMA's applicable FTE rates.

6.3 Licenses.

6.3.1. Development and Manufacturing License to XOMA. Subject to the terms and conditions of this Agreement, NVDI hereby grants to XOMA a non-exclusive, royalty-free, paid-up, non-transferable (except pursuant to Section 11.7), non-sublicensable license under all NVDI IP to practice NVDI Innovations and NVDI-owned Project Innovations solely to the extent necessary or useful for performance of XOMA's obligations under this Agreement.

6.3.2. Project Innovations License to XOMA. Subject to the terms and conditions of this Agreement, NVDI hereby grants to XOMA a non-exclusive, royalty-free, paid-up, non-transferable (except pursuant to Section 11.7), non-sublicensable license under NVDI IP to practice NVDI-owned Project Innovations at the Facility solely for the purpose of manufacturing products that do not contain any [*] Drug Substance.

6.3.3. XOMA Innovations License to NVDI. Subject to the terms and conditions of this Agreement, XOMA hereby grants to NVDI a non-exclusive, worldwide, royalty-free, paid-up, non-transferable (except pursuant to Section 11.7), non-sublicensable license under XOMA IP to practice XOMA Innovations and XOMA-owned Project Innovations solely to the extent necessary to make, have made, use, import, offer for sale, sell and have sold [*] Drug Substance or Product.

6.4 Ownership of Innovations and Intellectual Property.

6.4.1. NVDI Innovations. Subject only to the licenses in Section 6.3, NVDI shall retain all right, title and interest in and to all NVDI Innovations.

6.4.2. XOMA Innovations. Subject only to the licenses in Section 6.3, XOMA shall retain all right, title and interest in and to all XOMA Innovations.

6.4.3. Project Innovations.

(a) Inventorship of discoveries or inventions included within Project Innovations and authorship of works of authorship included within Project Innovations shall be determined in accordance with the patent and copyright laws of the United States of America, respectively.

(b) Without further payment to XOMA, NVDI shall own all right, title and interest in and to all Project Innovations in and to [*] Drug Substance or Product (other than Intellectual Property Rights in those methods and processes generally applied to the scale-up, development and/or manufacturing of immunoglobulins, the ownership of which shall follow inventorship determined pursuant to Section 6.4.3(a) above, whether made, conceived, reduced to practice, authored, or otherwise generated or developed solely by XOMA personnel, solely by NVDI personnel, or jointly by XOMA and NVDI personnel, and all Intellectual Property Rights arising therefrom. XOMA will provide to NVDI a non-exclusive license to use all Project Innovations owned by XOMA and Intellectual Property Rights arising therefrom for the purpose of manufacturing [*] Drug Substance or Product.

6.5 Patenting of Project Innovations. NVDI will have first right, but not the obligation, to control the preparation, filing and prosecution of Patents claiming Project Innovations, other than those owned solely by XOMA, and of maintenance of Patents issuing thereon. XOMA shall reasonably cooperate with NVDI at NVDI's cost and shall provide to NVDI whatever assignments and other documents that may be needed in connection therewith. NVDI will be fully responsible for the costs and expenses of such actions.

6.6 Infringement of Patents.

6.6.1. Each Party shall promptly notify the other Party of any infringement, misappropriation or other unauthorized use of an Intellectual Property Right licensed under this Agreement in the field of the development, manufacture, use and/or sale of [*] Drug Substance or Product that comes to such Party's attention. The notice shall set forth the facts of such infringement, misappropriation or use in reasonable detail.

6.6.2. NVDI shall have the sole right, but not the obligation, to institute, prosecute, and control, at its expense, any action or proceeding against the Third Party infringer of a Patent claiming a Project Innovation other than those owned solely by XOMA. If NVDI institutes an action against such infringer, XOMA will give NVDI, at NVDI's expense, reasonable assistance and authority to control, file, and prosecute the suit as necessary at NVDI's expense. NVDI shall retain any damages or other monetary awards that it recovers in pursuing any action under this Section 6.6.2.

6.6.3. XOMA shall have the sole right, but not the obligation, to institute, prosecute, and control, at its expense, any action or proceeding against a Third Party infringer of a Patent claiming a Project Innovation owned solely by XOMA. If XOMA institutes an action against such infringer, NVDI will give XOMA, at XOMA's expense, reasonable assistance in connection therewith. XOMA shall retain any damages or other monetary awards that it recovers in pursuing any action under this Section 6.6.3, except that any portion of such damages or awards that are attributable to lost sales, lost profits or a reasonable royalty with respect to [*] Drug Substance or Product shall belong to NVDI.

6.6.4. Each Party has the sole right to enforce any Intellectual Property Rights owned solely by such Party.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES; DISCLAIMER.

7.1 [*] Drug Substance Warranties and Remedy. XOMA warrants that for each Batch of [*] Drug Substance delivered pursuant to Section 4.2: (i) each Batch was manufactured and analyzed in conformance with the Master Production Records; and (ii) XOMA will provide title to such Batch to NVDI free and clear of any encumbrances. NVDI's sole remedies and XOMA's entire liability with respect to this warranty are set forth in Sections 8.2 and 8.6. The warranties in this Section 7.1 are the only warranties made by XOMA with respect to Batches delivered under this Agreement and may only be modified or amended by a written instrument signed by a duly authorized officer of XOMA and accepted by NVDI.

7.2 General Representations and Warranties. Each Party hereby represents and warrants to the other Party that:

7.2.1. **Existence and Power**. It is a corporation (in the case of NVDI) or a limited liability company (in the case of XOMA) duly organized, validly existing and in good standing under the laws of the state or country in which it is incorporated or organized, as applicable, and has full corporate or company power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as contemplated to be conducted in this Agreement, including, without limitation, the right to grant the licenses granted hereunder.

7.2.2. Authority and Binding Agreement. As of the Effective Date, (i) it has the corporate or company power and authority and the legal right to enter into this Agreement and perform its obligations hereunder; (ii) it has taken all necessary corporate or company action on its part required to authorize the execution and delivery of the Agreement and the performance of its obligations hereunder; and (iii) the Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid and binding obligation of such Party and is enforceable against it in accordance with its terms.

7.2.3. Title. As of the Effective Date, it has sufficient legal and/or beneficial title under its Intellectual Property Rights necessary to perform activities contemplated under this Agreement and to grant the licenses that it is obligated to grant under this Agreement.

7.3 Disclaimer. THE REPRESENTATIONS AND WARRANTIES IN SECTION 7.1 AND 7.2 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AND EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, CUSTOM OR TRADE.

ARTICLE 8
INDEMNIFICATION; LIMITATION OF LIABILITY.

8.1 NVDI Indemnity. NVDI will indemnify, hold harmless and defend the XOMA Indemnitees from and against any and all Losses resulting from any Third Party Claim, to the extent arising out of (a) any breach of NVDI's representations, warranties, covenants or other obligations under this Agreement, the Collaboration Agreement or the Quality Agreement; (b) the use (including, without limitation, in human clinical trials), further manufacture or modification, transport, storage, handling, possession, distribution, marketing, or disposal of the [*] Drug Substance after delivery by XOMA; (c) any infringement or misappropriation of Third Party Intellectual Property Rights; or (d) any willful misconduct by any NVDI Indemnitee with respect to NVDI's activities under this Agreement.

8.2 XOMA Indemnity. XOMA agrees to indemnify, hold harmless and defend the NVDI Indemnitees from and against any and all Losses resulting from any Third Party Claim to the extent arising out of (a) any breach of XOMA's representations, warranties, covenants or other obligations under this Agreement, the Collaboration Agreement or the Quality Agreement; (b) XOMA's transportation, storage, use, handling or disposal of hazardous materials used in or generated by XOMA's activities under this Agreement (excluding the [*] Drug Substance); (c) any personal injury arising from performance of this Agreement by XOMA; or (d) any willful misconduct by any XOMA Indemnitee with respect to XOMA's activities under this Agreement.

8.3 Procedure. A Party that intends to claim indemnification under this Article 8 (the "**Indemnitee**") shall promptly notify the other Party (the "**Indemnitor**") of any claim, demand, action or other proceeding for which the Indemnitee intends to claim such indemnification. The Indemnitor shall have the right to participate in, and to the extent the Indemnitor so desires, to assume the defense thereof with counsel selected by the Indemnitor; *provided, however*, that the Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnitor, if representation of the Indemnitee by the counsel retained by the Indemnitor would be inappropriate due to actual or potential differing interests between the Indemnitee and any other Party represented by such counsel in such proceeding. The indemnity obligations under this Article 8 shall not apply to amounts paid in settlement of any claim, demand, action or other proceeding if such settlement is effected without the prior express written consent of the Indemnitor, which consent shall not be unreasonably withheld, conditioned or delayed. The failure to deliver notice to the Indemnitor within a reasonable time after notice of any such claim or demand, or the commencement of any such action or other proceeding, if prejudicial to its ability to defend such claim, demand, action or other proceeding, shall relieve such Indemnitor of any liability to the Indemnitee under this Article 8 solely to the extent of such

prejudice, but the omission so to deliver notice to the Indemnitor shall not relieve it of any liability that it may have to the Indemnitee otherwise than under this Article 8. The Indemnitor may not settle or otherwise consent to an adverse judgment in any such claim, demand, action or other proceeding that imposes any obligation or burden on the Indemnitee without the prior express written consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned or delayed. The Indemnitee, its employees and agents shall reasonably cooperate with the Indemnitor and its legal representatives in the investigation and defense of any claim, demand, action or other proceeding covered by this Article 8.

8.4 Separate Defenses. If the Parties cannot agree as to the application of Sections 8.1 and 8.2 to a particular Loss or Third Party Claim, the Parties may conduct separate defenses of the relevant Third Party Claim. Each Party further reserves the right to claim indemnity from the other Party in accordance with Sections 8.1 and 8.2 upon resolution of the underlying Third Party Claim, notwithstanding the provisions of Section 8.3 requiring the indemnified Party to tender to the indemnifying Party the ability to defend such Third Party Claim.

8.5 Expenses. Neither Party shall be required to pay over to the other Party amounts called for under this Article 8 until the resolution of the Third Party Claim from which the right to such payment arose, except that litigation costs, fees, and expenses will be paid in arrears on a calendar quarterly basis, subject to reimbursement upon the agreement of the Parties or a final determination by a court of competent jurisdiction that the indemnity under this Article 8 did not apply to the Third Party Claim giving rise to such costs, fees and expenses.

8.6 Limitation of Liability.

8.6.1. IN NO EVENT SHALL EITHER PARTY OR ITS RESPECTIVE AFFILIATES BE LIABLE TO THE OTHER PARTY FOR SPECIAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, EXCEPT FOR A WILLFUL FAILURE BY A PARTY OR ITS SUCCESSOR TO PERFORM IN ACCORDANCE WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION FOLLOWING A CHANGE IN CONTROL OF SUCH PARTY.

8.6.2. THE LIMITATIONS OF LIABILITY IN SECTION 8.6.1 ARE INTENDED TO LIMIT THE LIABILITY OF THE APPLICABLE PARTY OR PARTIES AND SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR WARRANTY. THE PARTIES HERETO ACKNOWLEDGE THAT THE TERMS OF THIS SECTION 8.6 REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY. THE LIMITATIONS OF LIABILITY OF THIS SECTION 8.6 SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

8.6.3. Without limiting the foregoing, the Parties acknowledge the risks inherent in biologics manufacturing, and XOMA expressly disclaims responsibility or liability for such inherent risks. Notwithstanding any other provisions of this Agreement to the contrary, NVDI hereby assumes all liability for failed production lots, except to the extent that, as supported by a subsequent failed lot investigation, it is finally determined that the failure was a direct result of XOMA's gross negligence or willful misconduct in its performance of the production run yielding such failed production lot.

ARTICLE 9
CONFIDENTIALITY.

9.1 Confidential Information; Exceptions. Each Party will, and will use commercially reasonable efforts to ensure that its employees will: (a) maintain all Confidential Information of the other Party in trust and confidence; (b) not disclose any Confidential Information of the other Party to any Third Party (except that a Party may disclose such Confidential Information to those of its employees, agents, independent contractors, Affiliates, or sublicensees who require such information in order to perform under this Agreement and who are subject to binding obligations of confidentiality and limited use at least as restrictive as those of this Article 9); (c) not disclose or use any Confidential Information of the other Party for any purposes other than those necessary or permitted for performance under this Agreement; (d) not use any Confidential Information of the other Party for any purpose or in any manner that would constitute a violation of any applicable governmental laws, rules, regulations, or orders, including without limitation the export control laws of the United States; and (e) not reproduce any Confidential Information of the other Party in any form except as required to perform in accordance with this Agreement. Each Party will use at least the same standard of care as it uses to protect its own Confidential Information of a similar nature to prevent unauthorized disclosures or uses of Confidential Information of the other Party, but in any event each Party will use no less than commercially reasonable care to achieve such objectives. Each Party will promptly notify the other Party upon discovery of any unauthorized use or disclosure of the Confidential Information of the other Party.

The Parties agree that the material financial, commercial, scientific and technical terms of the Agreement will be considered Confidential Information of both Parties. Notwithstanding the foregoing, either Party may disclose such terms to bona fide potential corporate partners, potential investors or merger or acquisition partners, and to commercial lenders, financial underwriters, investment bankers and legal and financial advisors, *provided* that all such disclosures shall be made only to such Parties under commercially reasonable obligations of confidentiality no less protective than the obligations set forth in this Article 9.

9.2 Authorized Disclosure. Notwithstanding any other provision of this Agreement, each Party may disclose Confidential Information of the other Party:

9.2.1. to the extent and to the persons and entities required by an applicable governmental law, rule, regulation or order;*provided*, *however*, that the receiving Party shall first have given prompt notice to the other Party hereto as soon as reasonably practicable to enable it to seek any available exemptions from or limitations on such disclosure requirement and shall reasonably cooperate, at the other Party's expense, in such efforts by the other Party;

9.2.2. to the extent and to the persons and entities required by rules of the National Association of Securities Dealers;

9.2.3. as necessary to file or prosecute patent applications relating to Project Innovations, prosecute or defend litigation or otherwise establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary;

9.2.4. to permitted sublicensees, successors and assigns under this Agreement;

9.2.5. in the case of NVDI, to Regulatory Authorities, for the purpose of obtaining Regulatory Approval for Product and to Third Parties for the purpose of contract manufacturing of Product; and

9.2.6. to identified Third Parties with the prior, express, specific, written permission of the disclosing Party.

9.3 Publicity. Neither Party will issue any publicity release or announcement containing information about this Agreement without the advance written consent of the other Party (which consent shall not be unreasonably withheld or delayed), except as such release or announcement may be required by law, in which case the Party making the release or announcement shall, before making any such release or announcement, afford the other Party a reasonable opportunity to review and comment upon such release or announcement to the extent practicable.

9.4 Requests for Confidential Treatment. The Parties acknowledge that the rules and regulations promulgated by the SEC may require that a Party disclose the non-confidential material terms of this Agreement and file a copy hereof with the SEC. The Parties will use commercially reasonable efforts to secure confidential treatment under applicable laws, rules and regulations for financial, commercial and scientific and technical terms that are trade secrets of either Party, will agree, prior to submission to the SEC of a confidential treatment request (without delaying the timeliness of such submission), upon the terms for which each Party will seek confidential treatment, and will coordinate in good faith with respect to any such requests and any responses to any SEC comments on or responses to such requests, *provided*, *however*, that after using such efforts each Party will be free to make disclosures that it reasonably believes, based on the advice of outside counsel, are required by applicable law, rule or regulation or that the SEC will otherwise require.

9.5 Return of Confidential Information. Upon any expiration or termination of this Agreement, each Party will, upon request of the other Party, use diligent efforts (including without limitation a diligent search of files and computer storage devices) to return or destroy all Confidential Information of the other Party and all copies, summaries, compilations, extracts or other derivatives thereof, except to the extent such Confidential Information is necessary to exercise any license or other right surviving termination of this Agreement. Additionally, each Party will be allowed to keep one archival copy, or a required quantity, of any Confidential Information of the other Party for record keeping purposes only or as required by applicable law, rule or regulation.

9.6 Injunctive Relief. The Parties expressly acknowledge and agree that any breach or threatened breach of this Article 9 may cause immediate and irreparable harm to the Party whose Confidential Information is at issue, which harm may not be adequately compensated by

damages. Each Party therefore agrees that in the event of such breach or threatened breach and in addition to any remedies available at law, the Party whose Confidential Information is at issue shall have the right to seek equitable and injunctive relief, without bond, in connection with such a breach or threatened breach.

9.7 Survival. The terms of this Article 9 shall survive for [*].

9.8 Collaboration Agreement. For the avoidance of doubt, all Confidential Information of NVDI received by XOMA after full execution of this Agreement will be deemed governed by the provisions of this Article 9 as opposed to Article 6 of the Collaboration Agreement.

ARTICLE 10
TERM AND TERMINATION.

10.1 Term. The initial term of this Agreement will commence on the Effective Date and unless sooner terminated under Sections 10.2 or 10.3 shall expire upon the second anniversary thereof.

10.2 Termination by Either Party for Breach. If a Party materially breaches this Agreement, and (i) such breach is of a payment obligation hereunder, then the other Party may terminate this Agreement upon [*] prior written notice to the first Party specifying such breach if the breaching Party fails to cure the breach within such [*], (ii) such breach is of an obligation hereunder other than a payment obligation and is reasonably curable within [*], then the other Party may terminate this Agreement upon [*] prior written notice to the first Party specifying such breach if the breaching Party fails to cure the breach within such [*], or (iii) such breach is of an obligation hereunder other than a payment obligation and is not reasonably curable within [*], the other Party may give the breaching Party written notice specifying such breach and may then terminate this Agreement upon an additional [*] written notice if the breaching Party either fails to provide by the end of the initial [*] period a reasonable written plan to cure such breach as promptly as reasonably practicable or fails to carry out such plan diligently and cure such breach.

10.3 Termination by NVDI. NVDI may terminate this Agreement [*].

If NVDI terminates this Agreement pursuant to this Section 10.3, NVDI will reimburse XOMA within [*] of termination of this Agreement for all appropriate costs under this Agreement (as set forth in Article 5) incurred by XOMA to the date of notice of termination by NVDI for Services performed and for commitments made in accordance with this Agreement that cannot be canceled, for resources that cannot be reallocated, and for all other costs that

XOMA incurs in transferring the technology to NVDI at NVDI's request pursuant to Section 6.1.2. For the avoidance of doubt and without limiting the foregoing, XOMA's reimbursable costs referred to in the immediately preceding sentence of this Section 10.3 shall include, without limitation, its fully burdened costs of completing the [*] run. Except as set forth above in this Section 10.3, XOMA shall refund to NVDI within [*] of termination of this Agreement, any prepaid amounts (including, without limitation, any or all of the amount paid under the most recent Quarterly Invoice) not earned by XOMA prior to the date of such termination.

10.4 Surviving Obligations. Termination or expiration of this Agreement shall not affect any rights or obligations of either Party which may have accrued up to the effective date of such termination or expiration. The provisions of Sections 5.8, 5.9, 6.1, 6.2.2, 6.3.2, 6.3.3, 6.4, 6.5, 6.6.2, 6.6.3, 6.6.4, 10.3 and 10.4 and Articles 1, 7, 8, 9 and 11 shall survive the termination or expiration of this Agreement.

ARTICLE 11
MISCELLANEOUS.

11.1 Notice. All notices hereunder shall be in writing and shall be deemed given upon (a) personal delivery, (b) facsimile transmission with electronic confirmation of transmission, if sent during the recipient's normal business hours, or otherwise on the recipient's next normal business day, (c) receipt after delivery by nationally-recognized bonded courier when sent for next business day delivery, or (d) receipt after sending by certified or registered mail, postage prepaid and return receipt requested personally, to the following addresses or fax numbers of the respective Parties:

If to XOMA:

XOMA (US) LLC
2910 Seventh Street
Berkeley, California 94710
Attention: Legal Department
Fax No.: (510) 649-7571

If to NVDI:

Novartis Vaccines and Diagnostics, Inc.
4650 Horton Street
Emeryville, CA 94608
Attention: Company Secretary
Telephone: (510) 655-8730
Fax No.: (510) 654-5366

A Party may change its address or fax number for notice by giving notice under this Section 11.1.

11.2 Use of Names. Neither Party shall use the name, trade name, trademark, or other designation of the other Party (including contraction, abbreviation or simulation of any of the foregoing) in advertising, publicity or other promotional activities. Under no circumstances shall either Party state or imply in any promotional material, publication or other published announcement that the other Party has tested or approved any product.

11.3 Formal Dispute Resolution.

11.3.1. Mediation. Solely with respect to any dispute between the Parties (other than any dispute which arises out of or relates to validity, enforceability, infringement and/or misappropriation of any Intellectual Property Rights), the Parties shall negotiate in good faith and use reasonable efforts to resolve any such dispute. In the event that the Parties do not fully resolve any such dispute within [*] then either Party may declare an impasse and initiate mediation administered by the CPR in accordance with its mediation procedure. The mediation proceeding shall be conducted at the location of the Party not originally requesting the resolution of the dispute. The Parties agree that they shall share equally the cost of the mediation filing and hearing fees and the cost of the mediator. Each Party must bear its own attorney's fees and associated costs and expenses. For the avoidance of doubt, nothing in connection with such mediation shall be binding on either Party, except for the provisions regarding sharing of costs set forth in this Section 11.3.1.

11.3.2. Arbitration. For disputes not resolved pursuant to Section 11.3.1 within the time period provided, except (a) disputes relating to intellectual property owned in whole or in part by XOMA or NVDI, or (b) claims for equitable relief, upon [*] written notice, either Party may initiate arbitration by giving notice to that effect to the other Party and by filing the notice with the AAA in accordance with its Commercial Arbitration Rules. Such dispute shall then be settled by arbitration in California in accordance with the Commercial Arbitration Rules of the AAA or other rules agreed to by the Parties, by a panel of three (3) neutral arbitrators, who shall be selected by the Parties using the procedures for arbitrator selection of the AAA.

(a) The Parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Insofar as it applies, the United States Arbitration Act shall govern the interpretation of, enforcement of, and proceedings pursuant to the arbitration clause in this Agreement. Except insofar as the United States Arbitration Act applies to such matters, the agreement to arbitrate set forth in this Section 11.3.2 shall be construed, and the legal relations among the Parties shall be determined in accordance with, the substantive laws of California.

(b) The panel shall render its decision and award, including a statement of reasons upon which such award is based, within [*] after the arbitration hearing. The decision of the panel shall be determined by majority vote among the arbitrators, shall be in writing and shall be binding upon the Parties, final and non-appealable. Judgment upon the award rendered by the panel may be entered in any court having jurisdiction thereof in accordance with Section 11.4.

(c) Except as provided under the United States Arbitration Act and with respect to the infringement, validity and/or enforceability of patent rights, no action at law or in equity based upon any dispute that is subject to arbitration under this Section 11.3.2 shall be instituted.

(d) All expenses of any arbitration pursuant to this Section 11.3.2, including fees and expenses of the Parties' attorneys, fees and expenses of the arbitrators, and fees and expenses of any witness or the cost of any proof produced at the request of the arbitrators, shall be paid by the non-prevailing Party.

(e) For the purposes of this Section 11.3.2, the Parties agree to accept the jurisdiction of the federal courts located in the Northern District of California for the purposes of enforcing the agreements reflected in this Section 11.3.2

11.3.3. Intellectual Property Disputes. The Parties will submit any dispute arising out of or relating to the validity, enforceability, infringement and/or misappropriation of any Intellectual Property Right that has not been resolved pursuant to Section 2.5 to a court of competent jurisdiction.

11.4 Jurisdiction and Governing Law. For any disputes not subject to arbitration or resolved by mediation, California law (excluding conflict of laws principles) governs and the Parties are free to institute litigation or seek any other remedy available to them. For the purposes of any litigation instituted by the parties under this Article 11, the Parties accept the jurisdiction of the state courts geographically located in the Northern District of California or the federal courts within the Northern District of California.

11.5 Rights in Bankruptcy. All rights and licenses granted under or pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the U.S. Bankruptcy Code. The Parties agree that NVDI, as a licensee under Section 6.3.3 and a transferee under Sections 6.1 and 6.4.3 of such Intellectual Property Rights under this Agreement, and XOMA, as a licensee under Section 6.3.2, each shall retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against a Party under the U.S. Bankruptcy Code, the other Party shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property as to which it is a licensee or transferee and all embodiments of such intellectual property, and same, if not already in its possession, shall be promptly delivered to such other Party (a) upon any such commencement of a bankruptcy proceeding upon such other Party's written request therefore, unless the first Party elects to continue to perform all of its obligations under this Agreement, or (b) if not delivered under (a) above, upon rejection of this Agreement by or on behalf of the first Party upon written request therefor by the other Party.

11.6 Waiver. The failure on the part of NVDI or XOMA to exercise or enforce any rights conferred upon it hereunder shall not be deemed to be a waiver of any such rights nor operate to bar the exercise or enforcement thereof at any time or times hereafter.

11.7 Assignment; Binding Effect. Neither Party will assign its rights or duties under this Agreement to another without the prior express written consent of the other Party, which shall not be unreasonably withheld; *provided*, *however*, that either Party may assign this Agreement to (a) its Affiliates, or (b) a successor by merger, acquisition, or sale of all or substantially all of such Party's business assets in the field to which this Agreement relates, without the other Party's consent, *provided* that such successor will expressly assume in writing the obligation to perform in accordance with the terms and conditions of this Agreement.

Any purported assignment not in compliance with this Section 11.7 shall be void. This Agreement shall be binding upon each Party's successors and permitted assignees.

11.8 Independent Parties. Neither Party is an employee or a legal representative of the other Party for any purpose. Neither Party shall have the authority to enter into any contracts in the name of or on behalf of the other Party.

11.9 Force Majeure. Neither Party shall be liable to the other for its failure to perform any of its obligations under this Agreement during any period in which such performance is delayed because rendered impracticable or impossible due to circumstances beyond its reasonable control, including without limitation earthquakes, governmental regulation, fire, flood, labor difficulties, interruption of supply of key raw materials, civil disorder, and acts of God, *provided* that the Party experiencing the delay promptly notifies the other Party of the delay and uses and continues to use commercially reasonable efforts to overcome such delay.

11.10 Severability. If any item or provision of this Agreement shall to any extent be invalid or unenforceable, it shall be severed from this Agreement, and the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

11.11 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California and/or the United States of America which are applicable to contracts negotiated, executed and performed within the State of California in the United States of America. In addition, the Parties agree to comply with all applicable laws, rules and regulations of the State of California and the United States of America, including all export and import laws, and to do nothing to cause XOMA or NVDI to violate any such laws, rules and/or regulations.

11.12 Entire Agreement; Modification. This Agreement, including all Appendices referenced herein (including, without limitation, the Quality Agreement), constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings relating to the subject matter hereof. Any modification of this Agreement shall be effective only to the extent it is reduced to writing and signed by both Parties.

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be signed and delivered by its duly authorized officer or representative as of the Effective Date.

NOVARTIS VACCINES AND DIAGNOSTICS, INC.

By: _____
Name:
Title:

XOMA (US) LLC

By: _____
Name: Robert S. Tenerowicz
Title: Vice President, Operations

[*]

[*]

Exhibit 10.31B

SECOND AMENDMENT TO COLLABORATION AGREEMENT

This Second Amendment to Collaboration Agreement (this 'Second Amendment") is effective as of February 9, 2009 (the "Amendment Effective Date") and is made by and among Takeda Pharmaceutical Company Limited, a Japanese corporation having offices at 1-1, Doshomachi 4-chome, Chuo-ku, Osaka 540-8645, Japan (hereinafter "Takeda"); XOMA (US) LLC, a Delaware limited liability company having offices at 2910 Seventh Street, Berkeley, California 94710, USA (hereinafter 'XOMA") [*]

BACKGROUND

A. XOMA and Takeda entered into a certain Collaboration Agreement dated as of November 1, 2006 (as amended, including by the First Amendment and, unless otherwise noted after giving effect to this Second Amendment, the "Agreement").

B. As part of the Collaboration, Takeda has expressed a desire to obtain (i) expanded rights to XOMA-Controlled intellectual property rights and (ii) certain materials and related information, hereinafter identified as, *inter alia* [*] the Discovery Know-How and the Systems.

C. XOMA and Takeda wish to amend the Agreement and expand the Collaboration, and to further enable Takeda to work with XOMA, the XOMA Companies wish to license, sublicense, and otherwise make available certain items of intellectual property and deliver to Takeda and, where specified herein, assign to Takeda (and its Affiliates) all right, title and interest in, the Transferred Materials as specified herein.

D. Takeda, on its own behalf and on behalf of its Affiliates, agrees to accept the Transferred Materials under the terms and conditions of this Second Amendment and, as applicable, the Agreement.

E. The XOMA Companies will benefit from the transactions contemplated by this Second Amendment and the Agreement, and are willing to (i) grant Takeda the expanded rights and licenses contained in this Second Amendment [*] and Takeda agrees to accept such grants [*]

F. Terms which are defined in the Agreement shall have the same meanings when used in this Second Amendment, unless a different definition is given herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, each of the XOMA Companies and Takeda agree as follows:

Section 1. Amendments. Pursuant to Section 14.9 of the Agreement,

(a) Article 1 (Definitions) of the Agreement is hereby supplemented, amended and modified with the following definitions:

1.3 "Affiliate" means, as of the Amendment Effective Date, as to a particular person or entity, any corporation, company, partnership, joint venture and/or firm that controls, is controlled by or is under common control with such person or entity. For purposes hereof, "control" means (a) in the case of a corporate entity, direct or indirect ownership of more than fifty percent

(50%) of the stock or shares entitled to vote for the election of directors; (b) in the case of a non-corporate entity, direct or indirect ownership of more than fifty percent (50%) of the equity interests with the power to direct the management and policies of such non-corporate entity; or (c) possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the entity in question (whether through ownership of securities or other ownership interests, by contract or otherwise).

1.8A "Applicable Specifications" means (a) with respect to [*] the [*] Materials Specifications, (b) with respect to [*] the specifications determined to be applicable thereto in accordance with Section 3A.4(a), and (c) with respect to each of the Systems, the specifications corresponding to such System set forth in Schedule 1.8A.

1.8B "Article 3A Know-How" means, collectively, the Discovery Know-How, HE™ Know-How [*] TES Know-How, and Systems Know-How.

1.8C "Article 3A Patent Rights" means, collectively, the Discovery Patent Rights, HE™ Patent Rights [*] TES Patent Rights, and Systems Patent Rights.

1.8D "Bacterial Cell Expression Technology" or "BCE Technology" means (a) the Patent Rights listed on Schedule 1.8D (the "BCE Patent Rights") [*] BCE Patent Rights shall be deemed to exclude any and all Article 3A Patent Rights, except that the Patent Rights titled [*] and more particularly described on Schedule 1.29C as of the Amendment Effective Date shall be deemed to be both BCE Patent Rights and Discovery Patent Rights.

1.11A "BCE 6A.2 License Term" means that duration of time beginning on the Amendment Effective Date and ending upon the termination of the license granted under Section 6A.2 pursuant to Section 13.5A.

1.11B "BCE 6A.6 License Term" means that duration of time beginning on the Amendment Effective Date and ending upon the termination of the license granted under Section 6A.6 pursuant to Section 13.5A.

1.11C "BCE Patent Rights" has the meaning specified in Section 1.8D hereof.

1.17A "Claims" has the meaning specified in Section 12.4A hereof.

1.20 "Collaboration Product", as of the Amendment Effective Date, is amended to add the following sentence: "No Discovery Product shall be considered a Collaboration Product."

1.24 "Confidential Information", as of the Amendment Effective Date, is amended to add the following sentence: "[*] shall not be considered to be Confidential Information of XOMA."

1.27 "Control" or "Controlled" means, as of the Amendment Effective Date, with respect to any (a) material, document, item of information, method, data or other Know-How or (b) Patent Right or other intellectual property right, the possession (whether by ownership, license, covenant not to sue or otherwise, other than by a license granted pursuant to this Agreement) by a Party or its Affiliates of the ability to grant to the other Party access, ownership, a license, a sublicense and/or a covenant not to sue or otherwise (as provided herein) under such item or right without violating the terms of any agreement or other arrangement with any Third Party as of the time such Party would first be required hereunder to grant the other Party such access, ownership, license or sublicense.

1.28A "CRO" means any contract research organization [*] engaged in contract research on behalf of Takeda or a Designated Takeda Affiliate using Transferred Materials and any provider of storage services to Takeda or a Designated Takeda Affiliate with respect to [*]

1.28B [*]

1.28C [*]

1.28D "Designated Takeda Affiliate" means Takeda SF or any other Takeda Affiliate designated by Takeda to XOMA in accordance with Section 3A.5(a).

1.29A "Discovery Know-How" means the Know-How required to be transferred to Takeda or its Affiliates pursuant to Sections 3A.1 and 3A.4.

1.29B [*]

1.29C "Discovery Patent Rights" means the Patent Rights described on Schedule 1.29C, [*]. Discovery Patent Rights shall be deemed to exclude any and all BCE Patent Rights, except that the Patent Rights titled [*] and more particularly described on Schedule 1.29C as of the Amendment Effective Date shall be deemed to be both BCE Patent Rights and Discovery Patent Rights.

1.29D [*]

1.29E "Discovery Product" means an Antibody, Antibody Product or other therapeutic, prophylactic or diagnostic compound or product [*] and/or the practice of the Discovery Patent Rights or other exercise of its rights under this Second Amendment.

1.29F "Discovery Product Royalty Period" has the meaning specified in Section 7A.1(d) hereof.

1.45 "GAAP" means, as of the Amendment Effective Date, for each applicable country or territory, the generally accepted accounting principles for such country or territory, as they exist from time to time, consistently applied.

1.45A "HE™ Know-How" has the meaning specified in Section 1.46 hereof.

1.45B "HE™ License Term" means that duration of time beginning on the Amendment Effective Date and ending upon the termination of the license granted under Section 6A.5 pursuant to Section 13.5A.

1.45C "HE™ Patent Rights" has the meaning specified in Section 1.46 hereof.

1.46 "Human Engineering™ Technology", as of the Amendment Effective Date, is amended to read in its entirety as follows: "'Human Engineering™ Technology' or 'HE™ Technology' means (a) the materials and Know-How (the "HE™ Know-How") and Patent Rights (the 'HE™ Patent Rights") listed on Schedule 1.46 [*]"

1.49A [*]

1.57A "Licensed Technology" means the BCE Technology, HE™ Technology [*] TES Technology, and Systems.

1.61A [*]

1.71 "Program Antibody", as of the Amendment Effective Date, is amended to insert the number "(1)" after the words "provided, however, that" and add the following clause to the end of the last sentence: "and (2) in no event shall the term "Program Antibody" include any Discovery Product."

1.75 "Program Technology", as of the Amendment Effective Date, is amended to insert the words ", Licensed Technology and [*]" at the end of the last sentence.

1.87A "Royalty-Bearing Discovery Product" means a Royalty-Bearing Discovery Product A or Royalty Bearing Discovery Product B.

1.87B "Royalty-Bearing Discovery Product A" means [*] provided, however, an Antibody Product that is both a Royalty-Bearing Discovery Product A and Royalty-Bearing Discovery Product B shall be deemed only to be a Royalty Bearing Discovery Product A.

1.87C "Royalty-Bearing Discovery Product B" means [*]

1.87D "Second Amendment Indemnitee" has the meaning specified in Section 12.4D(b) hereof.

1.87E "Second Amendment Indemnitor" has the meaning specified in Section 12.4D(b) hereof.

1.87F "Second Amendment Milestone Payment" has the meaning specified in Section 7A.1(c) hereof.

1.87G "Software" has the meaning specified in Schedule 6A.3 to the Second Amendment.

1.87H "Source Code" has the meaning specified in Schedule 6A.3 to the Second Amendment.

1.87I [*]

1.88A [*]

1.88B [*].

1.89A "Systems" means the informatics and other materials handling systems, associated software applications, related data systems, Patent Rights related to the foregoing (the "Systems Patent Rights") and related Know-How (the "Systems Know-How"), each as more particularly described on Schedule 1.89A. For the purposes of the Agreement, Systems shall not include any Third Party software, operating system, data device or other materials not part of, or actually integrated into, the Systems as delivered to Takeda.

1.89B "Systems Know-How" has the meaning specified in Section 1.89A hereof.

1.89C "Systems License Term" means that duration of time beginning on the Amendment Effective Date and ending upon the termination of the license granted under Section 6A.3 pursuant to Section 13.5A.

1.89D "Systems Patent Rights" has the meaning specified in Section 1.89A hereof.

1.89E [*]

1.89F [*]

1.89G [*]

1.90A "Takeda Discovery Patent Rights" means Patent Rights to the extent Controlled by Takeda that arise out of Takeda's or a Designated Takeda Affiliate's use or practice of the Discovery Patent Rights or Licensed Technology.

1.90B "Takeda Licensee" means, solely with respect to Discovery Products, any Third Party to whom Takeda or a Designated Takeda Affiliate licenses or grants rights, as part of a bona fide collaboration, development, commercialization or marketing arrangement, to develop, commercialize, market or distribute any Discovery Product; *provided*, *however*, no Third Party shall be a Takeda Licensee if (a) such Third Party is known by Takeda to be, at the time of determination, either misappropriating the Article 3A Know-How or infringing any of the Article 3A Patent Rights or (b) such Takeda Licensee does not take material economic risk with respect to the discovery, identification, development or commercialization of such Discovery Product that is the subject of the applicable arrangement; and *provided*, *further*, that the foregoing clause (b) shall not prevent Takeda from using any Third Party as a distributor or selling agent of such Discovery Products. All arrangements with a Takeda Licensee related to Discovery Products shall be pursuant to a written agreement, which will incorporate the applicable provisions of the Agreement (including without limitation Article 3A) and, where applicable, provide that XOMA and its Affiliates shall be third party beneficiaries thereof.

1.90C "Takeda San Francisco" or "Takeda SF" means Takeda San Francisco, Inc., a Delaware corporation having offices at 285 East Grand Avenue, South San Francisco, California 94080, USA, as of the Amendment Effective Date.

1.91A [*]

1.92A "TES Know-How" has the meaning specified in Section 1.93C hereof.

1.92B "TES License Term" means that duration of time beginning on the Amendment Effective Date and ending upon the termination of the license granted under Section 6A.4 pursuant to Section 13.5A.

1.92C "TES Patent Rights" has the meaning specified in Section 1.93C hereof.

1.93A [*]

1.93B "Transferred Materials" means, collectively [*] the Article 3A Know-How, the Systems and any materials actually transferred to Takeda pursuant to Article 3A.

1.93C "Transient Expression System Technology" or "TES Technology" means (a) the materials and Know-How (the "TES Know-How") and the Patent Rights (the "TES Patent Rights"), listed on Schedule 1.93C [*]

1.95A "XOMA Collaboration Partner" means, solely with respect to a Third Party with whom XOMA licenses or grants rights, as part of a bona fide collaboration, development, commercialization or marketing arrangement, to develop, commercialize, market or distribute any compound or product; provided, however, no Third Party shall be a Collaboration Partner if (a) such Third Party is known by XOMA to be, at the time of determination, either misappropriating any Takeda Know-How or infringing any Takeda Discovery Patent Rights or (b) such Collaboration Partner does not take material economic risk with respect to the discovery, identification, development or commercialization of such compound or product that is the subject of the applicable arrangement; and *provided*, *further*, that the foregoing clause (b) shall not prevent XOMA from using any Third Party as a distributor or selling agent of such compounds or products.

1.95B [*]

1.95C "[*] Materials Specifications" means the specifications listed on Schedule 1.95B.

(b) The Agreement is hereby supplemented by adding the following Article 3A following existing Article 3:

ARTICLE 3A

XOMA TO TAKEDA TRANSFERS

3A.1 Assignments and Deliverables.

(a) XOMA shall on behalf of itself and each XOMA Company, and as evidenced by a Bill of Sale in the form attached as Exhibit A, assign and transfer to Takeda all right, title and interest, free and clear of all liens, security interests and statutory encumbrances, (i) upon satisfaction by XOMA or waiver by Takeda of the conditions to payment set forth in Section 4 of this Second Amendment, to [*] and (ii) upon satisfaction of either condition under Sections 3A.4(c)(ii)(x) or (y), to [*]

(b) On or before [*] after the Amendment Effective Date, XOMA shall deliver to Takeda (i) [*] the Discovery Know-How relating thereto, including all materials listed on Schedule 3A.1(a), the HE™ Know-How [*] the TES Know-How and the Systems as evidenced by the Delivery and Receipt Acknowledgement in the form attached as Exhibit B [*]

(c) [*]

(d) In connection with [*] and Licensed Technology other than BCE Technology, XOMA shall provide Takeda with the corresponding services described in and under the terms of Schedule 3A.1(d).

(e) Risk of loss or degradation to and of Transferred Materials shall shift to Takeda upon Takeda's signed confirmation of receipt of such materials.

(f) [*]

3A.2 Grants of Rights in Discovery Know-How and Patent Rights [*]

(a) [*] XOMA on behalf of itself and each XOMA Company does hereby grant to Takeda, a sole and exclusive, irrevocable, perpetual and, subject to the applicable restrictions and limitations in this Second Amendment, assignable license and right throughout the Territory to use [*] for any and all purposes including to [*] modify and develop Discovery Products; and

(b) Without limiting the licenses granted under Article 6A, XOMA on behalf of itself and each XOMA Company does hereby grant to Takeda a non-exclusive, non-transferable, license and right throughout the Territory, without the right to grant sublicenses to:

(x) use the Discovery Know-How, and practice the Discovery Patent Rights, in each case at a Takeda or Designated Takeda Affiliate to [*] modify and develop Discovery Products;

(y) use the BCE Technology in connection with the use of [*] for any and all purposes including to [*] modify and develop Discovery Products, but not to [*] any quantities of any compound or product, including an Antibody, in a prokaryote except as reasonably necessary to conduct non-clinical research and development activities using [*] including in vitro and small animal in vivo research and development, and not for clinical development or for the manufacture for sale of any compound or product, including an Antibody; and

(z) to the extent required (if any), use the Discovery Know-How, and practice the Discovery Patent Rights to [*] use, sell, offer to sell, import or export any Discovery Product.

Notwithstanding any provision of this Second Amendment to the contrary, the rights and licenses provided for in this Section 3A.2 include, to the extent required, a right and license to Takeda and its Affiliates, [*] to develop, commercialize, market or distribute [*] or the practice of the other Article 3A Patent Rights.

[*] the rights and licenses granted under Articles 3A and 6A in this Second Amendment shall be subject to those limitations, restrictions and obligations of any license or grant of rights from or other agreement with a Third Party which Third Party limitations, restrictions and obligations are disclosed to Takeda on, or were disclosed to Takeda prior to, the Amendment Effective Date.

(c) Each of the XOMA Companies hereby covenants that it shall not initiate or permit any of its Affiliates or any Third Party over whom it has control to initiate or knowingly assist in any way in the initiation or prosecution of, any action against Takeda, any Takeda Affiliates, its and their employees, directors, officers or agents, any Takeda Licensee or CRO authorized hereunder, including Takeda's distributors and selling agents, for the misappropriation, infringement or other violation of any Patent Rights, Know-How or other intellectual property rights directly or indirectly owned or controlled by such XOMA Company at any time that, if owned or controlled by XOMA as of the Amendment Effective Date [*] would have been within the scope of the licenses granted to Takeda under Section 3A.2(b) or Article 6A.

(d) In the event that XOMA is or becomes unable to grant Takeda, or any Designated Takeda Affiliate, any of the rights described under subsections 3A.2(a) or (b), and to the extent that a XOMA Affiliate, including [*] has the necessary right, power and authority to grant Takeda, or any Designated Takeda Affiliate, such rights, the applicable XOMA Affiliate hereby grants to Takeda, or a Designated Takeda Affiliate, such rights to the extent and under the terms contained herein.

(e) [*]

(f) [*] If as part of the Collaboration, Takeda submits a Proposed Target and specifically requests that XOMA use [*] to [*] an Antibody and XOMA agrees to do so, then such Proposed Target shall be subject to the XOMA gate-keeping process under Section 2.2.3.

(g) None of XOMA or its Affiliates shall (except for the sole benefit of Takeda and its Affiliates) (i) [*] (ii) [*] or (iii) without Takeda's prior written consent, transfer [*] to any person or entity (other than Takeda or a Designated Takeda Affiliate), except in conjunction with an assignment of this Agreement under Section 14.2. Notwithstanding the foregoing, XOMA may retain a sufficient quantity of [*] in storage solely for the purposes of [*]

(h) The Parties agree that XOMA may use "blinded" validation and qualification data regarding [*] (so long as such use does not jeopardize the patentability of any invention claimed by a patent or patent application filed by Takeda) for purposes of demonstrating, presenting or otherwise promoting its technologies, expertise, capabilities and/or applications of any thereof. XOMA shall submit such blinded data to Takeda for approval at least [*] prior to disclosure, such approval not to be unreasonably withheld or delayed. Once the presentation of such data in a particular form has been approved by Takeda, no further approval shall be required for subsequent uses of the same data in the same form.

(i) If and to the extent that XOMA owns or has the right to use, sell, license, transfer or otherwise exploit copies of the Article 3A Know-How and the Systems, the Source Code, the Software, the Know-How used by XOMA to construct [*] the Article 3A Patent Rights and/or any other Patent Right, copyright or other item of intellectual property that covers or claims the Transferred Materials and/or their creation, construction or use, except as expressly set forth in Section 3A.2(g) and elsewhere herein, nothing in this Second Amendment is intended to limit or prevent XOMA from exercising such ownership or rights.

(j) [*]

3A.3 Takeda Inventions/Unblocking Covenant Not to Sue. Without limiting or expanding the results under applicable patent law, the parties acknowledge that Takeda shall be free to seek and obtain patent protection for any inventions of Takeda [*] *provided*, *however*, that:

(a) Takeda covenants not to sue any XOMA Company under the Takeda Discovery Patent Rights if any XOMA Company uses, for itself or on behalf of a XOMA Collaboration Partner, the Licensed Technology and Discovery Patent Rights, as such technology and patent rights exist as of the Amendment Effective Date [*] (regardless of location). Takeda covenants not to sue any XOMA Collaboration Partner under the Takeda Discovery Patent Rights if such XOMA Collaboration Partner, or XOMA on behalf of such XOMA Collaboration Partner, uses the Licensed Technology and Discovery Patent Rights, as such technology and patent rights exist as of the Amendment Effective Date [*] within the scope of XOMA and such XOMA Collaboration Partner's collaboration (regardless of location).

(b) Takeda covenants not to sue XOMA under the Takeda Discovery Patent Rights if XOMA uses the Licensed Technology and Discovery Patent Rights, as such technology and patent rights may be improved after the Amendment Effective Date by XOMA [*]

(c) Takeda covenants not to sue any XOMA Collaboration Partner under the Takeda Discovery Patent Rights if such XOMA Collaboration Partner, or XOMA on behalf of such XOMA Collaboration Partner, uses the Licensed Technology and Discovery Patent Rights, as such technology and patent rights may be improved after the Amendment Effective Date by XOMA [*] within the scope of XOMA and such XOMA Collaboration Partner's collaboration.

None of the foregoing covenants shall extend to any Takeda Discovery Patent Rights to the extent they claim Discovery Products.

3A.4 [*] (a) Takeda may, in its discretion at any time or times on or before [*] order up to [*] of [*]. Prior to placing such an order, Takeda shall initiate technical discussions with XOMA pursuant to which the Parties will set forth in writing Takeda's specifications [*] for [*] to be ordered. Such specifications shall identify whether such [*] are to be [*] and include other elements such as [*]. Upon agreement between the Parties on the technical capability of XOMA or its Affiliates to deliver [*] embodying the specifications [*] Takeda will place a firm purchase order and provide [*] for the construction of such [*]

(b) Once (i) the Parties have agreed on the technical capability of XOMA or its Affiliates to deliver [*] embodying the specifications (including design elements) referred to in Section 3A.4(a), (ii) XOMA has received [*] and provided written confirmation that they are [*] (iii) Takeda or, as applicable, a Designated Takeda Affiliate has placed a firm purchase order therefor, and (iv) Takeda has paid the requisite fee pursuant to Section 7A.1(b)(i) or (ii), as applicable, XOMA shall design, construct and have available for delivery to Takeda such [*] meeting the Applicable Specifications not later than [*] from the last to occur of clauses (i) through (iv).

(c) Once a particular set of [*] has been validated by XOMA but prior to delivery thereof to Takeda or, as applicable, a Designated Takeda Affiliate, XOMA shall provide to Takeda or such Designated Takeda Affiliate such data as is reasonably necessary to determine whether such [*] are in accordance with the specifications referred to in Section 3A.4(a). Takeda or, as applicable, such Designated Takeda Affiliate shall have [*] following receipt of such data by Takeda or such Designated Takeda Affiliate to determine whether it agrees that such [*] are in accordance with such specifications and to notify XOMA of such determination, or it shall be deemed to have agreed that the [*] meet the applicable specifications.

(i) If, within such [*] day period, Takeda or, as applicable, such Designated Takeda Affiliate notifies XOMA that it does not agree that such [*] are in accordance with such specifications, XOMA shall promptly provide such data to a mutually acceptable independent Third Party, which shall review such data, under confidentiality, for the sole purpose of making a final and binding determination as to whether such [*] are in accordance with such specifications. If, following its review, such Third Party determines that such [*] are not in accordance with such specifications, then the third sentence of Section 7A.1(b) shall apply and XOMA shall promptly destroy such [*]. The [*] period referred to in Section 3A.4(b) shall be tolled for the period between XOMA's provision of data to the Third Party reviewer and the reviewer's determination. The Party against which the Third Party reviewer rules shall bear all costs of the Third Party review.

(ii) If either (x) Takeda or, as applicable, the Designated Takeda Affiliate agrees based on its review of the data that such [*] are in accordance with such specifications or (y) the Third Party reviewer determines that such [*] are in accordance with such specifications, then XOMA shall, under the same conditions as the transfer and delivery of [*] and the Discovery Know-How relating thereto, assign all right, title and interest in, and deliver [*] and the Discovery Know-How relating thereto, to Takeda or at Takeda's election, to a Designated Takeda Affiliate.

3A.5 Designation of Additional Affiliates, Transfers to Additional Sites and Limitations on Use and Modification

(a) Takeda shall be permitted to designate to XOMA in writing up to, at any one time, [*] additional Takeda Affiliates to which the Transferred Materials may be transferred and delivered or through which Takeda wishes to exercise rights or perform obligations under this Agreement; provided, however, that Takeda shall obtain, prior to any such transfer and delivery, a written acknowledgement, separately enforceable by XOMA as a third-party beneficiary, by such Designated Takeda Affiliate that it shall abide by any and all requirements of the Agreement applicable to the transfer and use of the Transferred Materials. Upon receipt by XOMA of such written designation and acknowledgement, the Agreement shall be deemed amended to the extent necessary to include such Designated Takeda Affiliate as being entitled to the rights and subject to the obligations applicable to Takeda hereunder. Takeda shall be free to change such designation to any Takeda Affiliate. Takeda hereby guarantees, without any requirement of written demand by XOMA, the performance of and compliance with the Agreement by Takeda SF and any other Designated Takeda Affiliate.

(b) Subject to Section 3A.5(a), (i) Takeda may move the Transferred Materials to any other Takeda site (including its Affiliates') of its selection that is and will remain under its control and has reasonable safeguards designed to protect the Transferred Materials from theft, vandalism or unauthorized use, and (ii) Takeda may transfer to any CRO that, to Takeda's knowledge, has reasonable safeguards designed to protect such materials from theft, vandalism, unauthorized use, alteration or modification, the following materials solely for the corresponding purposes: (x) [*]or (y) [*] and TES Technology specific to such research program and data outputs for the performance of such research program.

(c) The parties agree that the transfers provided for by this Article 3A arise out of and are part of the existing collaboration and that the use of the Transferred Materials and the practice of the Article 3A Patent Rights and any other Patent Rights to which rights are assigned or granted pursuant to this Article 3A may, subject to the applicable provisions of the Agreement, be used by Takeda or, as applicable, a Designated Takeda Affiliate for any other purpose including the [*] development and subsequent commercial sale of any composition of matter in the Field. Nothing in this subsection shall restrict Takeda from being able to [*]. Notwithstanding the foregoing, the following restrictions shall apply to the Transferred Materials:

(i) Takeda shall not, and shall not permit its Affiliates and CROs to, alter or modify [*]. The Transferred Materials may not be further transferred or disposed of by Takeda to a Third Party (other than to a CRO as provided in Section 3A.5(b)); provided, however, that [*]

(ii) Neither Takeda nor, as applicable, any Designated Takeda Affiliate shall use the Transferred Materials or practice the Article 3A Patent Rights and any other Patent Rights to which rights are assigned or granted by a XOMA Company pursuant to this Article 3A on behalf of any Third Party [*] or otherwise engage in activities not directly associated with Takeda's or Takeda Affiliate's own internal [*] research and development programs; *provided*, *however*, that, so long as the other limitations of this Article 3A are satisfied, Takeda or, as applicable, a Designated Takeda Affiliate may use the Transferred Materials or practice the Article 3A Patent Rights and any other Patent Rights assigned or granted by a XOMA Company pursuant to this Article 3A with respect to any Discovery Product, Antibody or Antibody Product as to which Takeda or a Designated Takeda Affiliate has either in-licensed or acquired rights from a Third Party where such in-license or grant of rights is for the exclusive development of such Discovery Product, Antibody or Antibody Product or variants thereof by Takeda, either alone or in collaboration with such Third Party.

3A.6 [*]

(c) The Agreement is hereby supplemented by adding the following Article 6A following existing Article 6:

ARTICLE 6A

ADDITIONAL LICENSES

6A.1 [*]

6A.2 [*]

6A.3 Informatics Systems License. Subject to the terms of this Second Amendment and Schedule 6A.3, XOMA hereby grants to Takeda, in the Field in the Territory during the Systems License Term, a non-exclusive right and license, without the right to sublicense, under the Systems to make, have made, use, sell, offer to sell, import and export any products and (solely to the extent required for exercising the foregoing rights) to reproduce (but not for commercial distribution purposes), modify, publicly perform, and publicly display the Systems and all copyrights therein. Notwithstanding the foregoing, in no event shall Takeda publicly disseminate without XOMA's prior written consent non-public Systems source code or created work based on Systems source code, such as screen shots, flow charts, object code and/or algorithms, with the exception of data produced by execution of the source code.

6A.4 TES Technology License. Subject to the terms of this Second Amendment, XOMA hereby grants to Takeda, in the Field in the Territory during the TES License Term, a perpetual, non-exclusive right and license, without the right to sublicense, under the TES Technology to make, have made, use, sell, offer to sell, import and export any Antibody Products.

6A.5 HE™ Technology License. Subject to the terms of this Second Amendment, XOMA hereby grants to Takeda, in the Field in the Territory during the HE™ License Term, a perpetual, non-exclusive right and license, without the right to sublicense, under the HE™ Technology to make, have made, use, sell, offer to sell, import and export any Antibody Products, and (solely to the extent required for exercising the foregoing rights) as to software included therein, to reproduce for Takeda's purposes, modify, publicly perform, and publicly display such software and all copyrights therein. Notwithstanding the foregoing, in no event shall Takeda publicly disseminate without XOMA's prior written consent non-public software source code or created work based on software source code, such as screen shots, flow charts, object code and/or algorithms, with the exception of data produced by execution of the source code.

6A.6 BCE Technology License for HE™. Subject to the terms of this Second Amendment, XOMA hereby grants to Takeda a non-exclusive right and license during the BCE 6A.6 License Term, without the right to sublicense, to use the BCE Technology solely to conduct activities related to selection of a lead product candidate from among a group of variant sequences derived using the HE™ Technology as provided in, and as limited by, the scope of the license grants in Section 6A.5 but not to make or have made any quantities of any compound or product, including an Antibody, in a prokaryote except as reasonably necessary to conduct non-clinical research and development activities using [*] including *in vitro* and small animal *in vivo* research and development, and not for clinical development or for the manufacture for sale of any compound or product, including an Antibody.

The grants provided for in this Section 6A include, to the extent required, a right and license to [*] use, sell, offer to sell, import or export any (1) Discovery Product and (2) any Antibody or Antibody Product derived from or arising out of, directly or indirectly, the use of the other Transferred Materials or the practice of the other Article 3A Patent Rights.

6A.7 Third Party Licenses.

(a) For the avoidance of doubt, the license grants in this Second Amendment are intended to include all Third Party licenses and covenants not to sue relating to the Licensed Technology or [*] directly or indirectly owned or controlled by XOMA, to the extent such Third Party licenses and covenants not to sue are permitted by their terms to be so included. [*] In the event that XOMA is or becomes unable to grant Takeda, or any Designated Takeda Affiliate, any of the rights described under this Article 6A, and to the extent that a XOMA Affiliate [*] has the necessary right, power and authority to grant Takeda, or any Designated Takeda Affiliate, such rights, the applicable XOMA Affiliate hereby grants to Takeda, or a Designated Takeda Affiliate, such rights to the extent and under the terms contained herein.

(b) [*]

(c) The first sentence of Section 6.3 of the Agreement is hereby amended to add the words "or Discovery Product" after the words "Collaboration Product."

(d) [*]

(d) The Agreement is hereby supplemented by adding the following Article 7A following existing Article 7:

ARTICLE 7A

ADDITIONAL FINANCIAL TERMS

7A.1 Second Amendment Financial Terms. In further consideration for XOMA's full and timely performance under the Agreement, including the transfers and deliveries required, and licenses granted under this Second Amendment:

(a) Second Amendment Fee. Subject to satisfaction by XOMA or waiver by Takeda of the conditions to payment set forth in Section 4 of this Second Amendment, Takeda shall have up to [*] after the later of (i) [*] and (ii) receipt of the materials by Takeda SF pursuant to Section 3A.1 to [*] pay to XOMA a one-time fee equal to $29,000,000.

(b) [*]

(c) Second Amendment Milestones.

(x) Subject to Section 7A.1(c)(y) below, for each Royalty-Bearing Discovery Product and irrespective of the country or other jurisdiction in which the event described hereafter occurs, Takeda shall pay XOMA a one time payment of (i) [*] (ii) [*] and (iii) [*]. For the avoidance of doubt, in no event shall more than $3,250,000 in Second Amendment Milestone Payments be owed with respect to any Royalty-Bearing Discovery Product. For the purposes of this Section 7A.1(c) and Sections 1.87B and 1.87C, the references to a "Collaboration Product" in the defined terms "Phase 1 Trial," "Phase 3 Trial" and "BLA," in the Agreement shall be refer to "Royalty-Bearing Discovery Product" instead.

(y) [*]

(d) Royalty Payments. Subject to the next two sentences and Section 7A.1(f) below, (a) Takeda shall pay XOMA a royalty of (i) for each Royalty-Bearing Discovery Product A, [*]

of Net Sales of such Royalty-Bearing Discovery Product A, and (ii) for each Royalty-Bearing Discovery Product B [*] of Net Sales of such Royalty-Bearing Discovery Product B; in each case of clause (i) and (ii) on a country-by-country basis until [*]. After expiration of royalty obligations hereunder, the licenses granted hereunder shall be fully paid-up. For the purposes of this Section 7A.1(d), the references to "Collaboration Product" in the defined terms "First Commercial Sale" and "Net Sales" in the Agreement shall be refer to "Royalty-Bearing Discovery Product" instead. For the avoidance of doubt, if Takeda sells, assigns or transfers any Royalty-Bearing Discovery Product as part of a larger corporate transaction, or grants the right to sell such Royalty-Bearing Discovery Product, to any person or entity, the purchase price and any upfront license fees paid by such person or entity for such Royalty-Bearing Discovery Product shall not be included for purposes of calculating Net Sales on such Royalty-Bearing Discovery Product.

(e) Royalty and Milestone [*] for Diagnostic Products For any Royalty-Bearing Discovery Products that are used for diagnostic purposes, each of the milestones under Section 7A.1(c) and royalties payable under Section 7A.1(d) shall be [*]

(f) [*]

(g) [*]

7A.2 Relation to Collaboration Product Fees. For avoidance of doubt, no amounts shall be owed under Article 7 of this Agreement on any Antibody or Antibody Product that is a Discovery Product; nor shall any amounts be owed under this Article 7A on any Collaboration Product. Notwithstanding the foregoing, if after submission by Takeda and acceptance by XOMA any Discovery Product shall enter the Collaboration as a Collaboration Product, only the amounts owed under Article 7 shall be due on such product after such product becomes a Collaboration Product.

7A.3 Additional Reporting and Record-Keeping Obligations. Section 7.5.1 of the Agreement is amended so as to insert the words "or Section 7A.1(c)" after the reference to Section 7.3 in the second line. Section 7.5.2 of the Agreement shall be amended so as to insert the words "or Section 7A.1(d)" after each reference to Section 7.4 and the words "or Royalty-Bearing Discovery Products, as applicable," after each reference to "Collaboration Products." Takeda shall keep accurate books and accounts in sufficient detail to permit XOMA to verify the accuracy of amounts owed and payable under this Second Amendment.

7A.4 Second Amendment Withholding Taxes. For clarity, Section 7.10 shall apply to any payments due under this Article 7A. The Parties further agree that, as of the Amendment Effective Date, Takeda may be required and, if so, shall withhold a withholding tax, as determined under Law, on the amount due to XOMA under Section 7A.1(a).

(e) Section 9.4 is amended by adding to such Section the following sentence: "This Section 9.4 shall apply only to the Collaboration Agreement without giving effect to the Second Amendment."

(f) Section 9.6 is amended to insert the words "or any Patent Rights in respect of or arising out of the use of the Transferred Materials" after "Controlled by either Party".

(g) Section 10.1.2 is amended to insert the words "or, in the case of a disclosure by Takeda, Discovery Product" after the words "Collaboration Product" in the penultimate sentence.

(h) [*]

(i) In Article 12 (Indemnity):

(i) Section 12.1 is hereby amended to change the title to "Takeda Original Collaboration Agreement Indemnity Obligations" and add the following after the last sentence: "The indemnification obligation under this Section 12.1 shall apply only to the Collaboration Agreement without giving effect to the Second Amendment.";

(ii) Section 12.2 is hereby amended to change the title to "XOMA Original Collaboration Agreement Indemnity Obligations" and add the following after the last sentence: "The indemnification obligation under this Section 12.2 shall apply only to the Collaboration Agreement without giving effect to the Second Amendment.";

(iii) Section 12.3 is hereby amended to read in its entirety as follows:

"12.3 Limitation on Indemnity Obligations. None of the parties, their Affiliates or their respective employees and agents shall be entitled to the indemnities set forth in Article 12, to the comparative extent the claim, loss, damage or expense for which indemnification is sought was caused by grossly negligent, reckless or fraudulent acts, misrepresentations or acts of willful misconduct of such party, Affiliate, employee or agent; *provided, however*, that each of the XOMA Companies agrees, represents and warrants that the use by Takeda or a Designated Takeda Affiliate of [*] in accordance with this Second Amendment to [*] modify and develop Discovery Products on its own behalf shall not in and of itself constitute a grossly negligent, reckless or fraudulent act, misrepresentation or act of misconduct of Takeda or such Designated Affiliate."

(iv) Section 12.4 is hereby amended to replace all references to "Article 12" with "Sections 12.1 or 12.2".

(v) The following new Sections 12.4A through D are added to the Agreement:

12.4A Takeda Second Amendment Indemnity Obligations. Subject to Section 12.3 hereof, Takeda agrees to defend, indemnify and hold XOMA, its Affiliates and its and their respective employees, directors, officers and agents harmless from any and all actions, claims, losses, liabilities, damages or expenses (including reasonable experts' and attorneys' fees and costs) ("Claims") of Third Parties if and to the extent arising as a result of: (a) actual or asserted violations of any applicable law or regulation by Takeda, its sublicensees and their respective Affiliates by virtue of which any Discovery Products manufactured, distributed or sold by Takeda, its sublicensees or their respective Affiliates pursuant to this Agreement shall be alleged or determined to be adulterated, misbranded, mislabeled or otherwise not in compliance with any applicable law or regulation; (b) claims for bodily injury, death or tangible property damage attributable to the manufacture, distribution, sale or use of any Discovery Products by Takeda, its sublicensees or their respective Affiliates; (c) a recall of a Discovery Product manufactured, distributed or sold by Takeda, its sublicensees or their respective Affiliates ordered by a governmental agency; or (d) Takeda's breach of any of its representations, warranties or covenants hereunder.

12.4B XOMA Second Amendment Indemnity Obligations. Subject to Section 12.3 hereof, each XOMA Company jointly and severally agrees to defend, indemnify and hold Takeda, its Affiliates and its and their respective employees, directors, officers and agents harmless from all Claims of Third Parties if and to the extent arising as a result of: (a) actual or asserted violations of any applicable law or regulation by any XOMA Company, its sublicensees and their respective Affiliates by virtue of which any Discovery Products manufactured, distributed or sold by any XOMA Company, its sublicensees or their respective Affiliates pursuant to this Agreement shall be alleged or determined to be adulterated, misbranded, mislabeled or otherwise not in compliance with any applicable law or regulation; (b) claims for bodily

injury, death or tangible property damage attributable to the manufacture, distribution, sale or use of any Discovery Products by any XOMA Company, its or their sublicensees or their respective Affiliates; (c) a recall of a Discovery Product manufactured, distributed or sold by a XOMA Company, its sublicensees or their respective Affiliates ordered by a governmental agency; or (d) any XOMA Company's breach of any of its representations, warranties or covenants hereunder.

12.4C [*]

12.4D Procedure.

(a) Each party agrees to promptly notify the other party of any [*] received or known by it or its Affiliates.

(b) If a Party or any of its Affiliates or their respective employees, directors, officers, or agents (collectively, the 'Second Amendment Indemnitee") intends to claim indemnification under Sections 12A through D, the Second Amendment Indemnitee shall promptly notify the other party (the "Second Amendment Indemnitor") of any Claims, [*] or discovery of fact in respect of which the Second Amendment Indemnitee intends to claim such indemnification.

(c) The Second Amendment Indemnitor shall assume the defense of any such Claim, at the sole cost of the Second Amendment Indemnitor, so long as the Second Amendment Indemnitor diligently pursues the defense of the Claim.

(d) If the Second Amendment Indemnitor assumes defense of a Claim, the Second Amendment Indemnitor shall use counsel selected by the Second Amendment Indemnitor and reasonably acceptable to the Second Amendment Indemnitee; *provided*, *however*, that an Second Amendment Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the Second Amendment Indemnitor, if representation of such Second Amendment Indemnitee by the counsel retained by the Second Amendment Indemnitor would be inappropriate due to actual or potential differing interests between such Second Amendment Indemnitee and any other party represented by such counsel in such proceedings.

(e) If the Second Amendment Indemnitor assumes defense of a Claim, the Second Amendment Indemnitor shall have the right to settle or compromise any claims for which it is providing indemnification under this Article 12, *provided* that the consent of the Second Amendment Indemnitee (which shall not be unreasonably withheld or delayed) shall be required in the event any such settlement or compromise would adversely affect the interests of the Second Amendment Indemnitee.

(f) If the Second Amendment Indemnitor does not so assume the defense of such Claim, the Second Amendment Indemnitee may conduct such defense with counsel of the Second Amendment Indemnitee's choice, at Second Amendment Indemnitor's expense, but may not settle such Claim without the written consent of the Second Amendment Indemnitor (which shall not be unreasonably withheld or delayed).

(g) A Second Amendment Indemnitee's omission to deliver notice to the Second Amendment Indemnitor will not relieve the Second Amendment Indemnitor of any liability that it may have to any Second Amendment Indemnitee under this Article 12. If Second Amendment Indemnitor denies that it has an indemnification obligation with respect to any Claim, then the Second Amendment Indemnitee shall be entitled to defend such claim using counsel of its own selection at Second Amendment Indemnitor's expense.

(h) The Second Amendment Indemnitee under this Article 12, its employees and agents, shall cooperate fully with the Second Amendment Indemnitor and its legal representatives in the investigation of any action, claim or liability covered by this indemnification. The Second Amendment Indemnitor under this Article 12, its employees and agents, shall cooperate fully with the Second Amendment Indemnitee and its legal representatives in the investigation of any action, claim or liability covered by this indemnification."

(j) Article 13 (Expiration and Termination) of the Agreement is hereby amended to add or modify, as applicable, the following Sections:

13.1 Term of Agreement is amended to read in its entirety as follows: "Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue until the later of (a) the payment by Takeda and receipt by XOMA of the last amount to be paid by Takeda to XOMA pursuant to the terms hereof, (b) the cessation of all Research and Development activities with respect to all Program Antibodies, Collaboration Targets and/or Collaboration Products, as applicable, pursuant to the terms hereof, or (c) the termination of all rights and licenses granted under Articles 3A and 6A, pursuant to the terms hereof."

13.3 Change of Control is amended to add the following sentence at the end: "In the event of a Change of Control of XOMA, Takeda shall have the right, but not the obligation, to terminate Section 3A.3."

13.5 Effect of an Event of Default is amended to read in its entirety as follows: "Effect of an Event of Default Not Relating to Second Amendment In the event of an Event of Default based upon either Party's material breach of the provisions of Articles 2 through 10 (to the extent such material breach does not relate to rights or obligations granted by or arising from Articles 3A, 6A or 7A), 11, or Sections 12.1, 12.2 or 12.4 (but not including Articles 3A, 6A, 7A, Sections 12.4A through 12.4D, or Sections 2 through 4 of the Second Amendment), the non-defaulting Party shall have the right, at its option exercisable in its sole discretion, in addition to any other rights or remedies available to it at law or in equity and subject to the limitations set forth in Sections 3.8, 11.4 and 14.8 hereof, to (a) if the Event of Default directly relates to less than all Collaboration Targets, Program Antibodies and Collaboration Products, by written notice to the other Party, deem that such Party has abandoned work on the Collaboration Target(s), Program Antibodies and Collaboration Product(s) to which such Event of Default directly relates, or (b) if the Event of Default directly relates to all Collaboration Targets, Program Antibodies and Collaboration Products, by written notice to the other Party, deem that such Party has terminated Articles 2 through 8 of the Agreement (but not including Articles 3A, 6A or 7A and the Sections referenced therein and necessary to give effect thereto)."

13.5A Effect of an Event of Default Relating to Second Amendment (a) If there is an Event of Default based upon Takeda's material breach of any of the provisions of Articles 3A, 6A, 7A, 9 or 10 (to the extent such material breach relates to rights or obligations granted by or arising from Articles 3A, 6A or 7A), Sections 12.4A through 12.4D, or Sections 2 through 4 of the Second Amendment, then:

(i) if the Event of Default directly relates to less than all [*] and Licensed Technologies, then XOMA shall be entitled to terminate the licenses and rights granted, and XOMA's executory obligations under, Section 3A.2(b) (but not Section 3A.1 and, to the extent it relates to Article 3A Know-How delivered to Takeda, Section 3A.2(c)) and/or Article 6A, as applicable, as to those and only as to those [*] or Licensed Technologies, as the case may be, to which such Event of Default directly relates; *provided*, (A) that the licenses to the BCE Technology in Sections 3A.2(b)(y), 6A.2 and 6A.6 shall be terminable only in the event and to the extent the licenses in Sections 3A.2(b)(x) (Discovery), 6A.1 (TAE) and 6A.5 (HE), respectively, are terminable

as provided in this Section 13.5A, (B) that Takeda's covenants under Section 3A.3 as to such licenses and rights, and as to Takeda Discovery Patent Rights arising from such licenses and rights, shall be terminated concurrently with XOMA's termination of such licenses and rights, and (C) with respect to any [*] to which such Event of Default directly relates, XOMA's termination of Takeda's rights (including any license under Section 3A.2(a)) to such [*] shall enjoin Takeda from further use of such [*] but shall not require Takeda to destroy or surrender possession of such [*]; or

(ii) if the Event of Default directly relates to all [*] and Licensed Technologies, then XOMA shall have the right to terminate the licenses and rights granted, and XOMA's executory obligations under, Articles 3A (but not Section 3A.1 and, to the extent it relates to Article 3A Know-How delivered to Takeda, Section 3A.2(c)) and 6A in their entirety, *provided*, (A) Takeda's covenants under Section 3A.3 shall be terminated concurrently with XOMA's termination of such licenses and rights, and (B) with respect to [*] XOMA's termination of Takeda's rights (including any license under Section 3A.2(a)) to [*] shall enjoin Takeda from further use of [*] but shall not require Takeda to destroy or surrender possession of [*];

provided further, that Takeda's right to [*] use and sell any Discovery Products (and its corresponding payment obligations under Article 7A with respect thereto, subject to the offset and payment reduction provisions therein), shall survive any termination by XOMA under this Section 13.5A.

(b) In the event of an Event of Default based upon any of the XOMA Company's material breach of any of the provisions of Articles 3A, 6A, 7A, 9 or 10 (to the extent such material breach relates to rights or obligations granted by or arising from Articles 3A, 6A or 7A), Sections 12.4A through 12.4D, or Sections 2 through 4 of the Second Amendment, Takeda shall be entitled to [*] terminate any part or all of the provisions of Articles 3A, 6A, 7A, 9 or 10 (to the extent such material breach relates to rights or obligations granted by or arising from Articles 3A, 6A or 7A), Sections 12.4A through 12.4D, or Sections 2 through 4 of the Second Amendment.

(c) Without limiting the other provisions of this Section 13.5A, in the event of an Event of Default based upon Section 13.4(b), Takeda (in the event one of the XOMA Companies is the defaulting Party) or the XOMA Companies (in the event Takeda is the defaulting Party), as the case may be, shall have the right, at its option exercisable in its sole discretion but subject to Section 5 of this Second Amendment, in addition to any other rights or remedies available to it at law or in equity, to terminate Section 3A.2(b), and Articles 6A and 7A (and the Sections referenced therein and necessary to give effect thereto).

13.7 Takeda's Rights After Termination for an Event of Default by XOMAis amended so that (i) the words "this Agreement is" in the first sentence are replaced by the words "Articles 2 through 8 of the Agreement (but not including Articles 3A, 6A or 7A and the Sections referenced therein and necessary to give effect thereto) are", and (ii) any reference to an "Event of Default by XOMA" therein shall be replaced with "Event of Default by XOMA based upon XOMA's material breach of Articles 2 through 10 (to the extent such material breach does not relate to rights or obligations granted by or arising from Articles 3A, 6A or 7A), 11, or Sections 12.1, 12.2 or 12.4 (but not including Articles 3A, 6A, 7A, Sections 12.4A through 12.4D, or Sections 2 through 4 of the Second Amendment)".

13.8 Effect of Expiration or Termination of Agreement is amended to read in its entirety as follows: "Effect of Termination Under Section 13.5. The termination of a given R&D Program or Articles 2 through 8 of the Agreement (but not including Articles 3A, 6A or 7A and the Sections referenced therein and necessary to give effect thereto), as provided in Section 13.5 shall not relieve the Parties of any obligation accruing under such R&D Program or Articles prior to such termination. In no way limiting

the generality of the foregoing, (a) Sections 2.1.3.1, 2.4, 2.6, 4.3, 5.1.2, 6.1.1, and 7.8-7.13 shall survive the termination of Articles 2 through 8 (but not including Articles 3A, 6A or 7A and the Sections referenced therein and necessary to give effect thereto), and (b) in the event of any termination to which either Section 13.6 or 13.7 applies, the provisions of Sections 7.4 and 7.5.2 shall survive such termination."

13.8A Effect of Termination Under Section 13.5A. The termination of Articles 3A, 6A, 7A, 9 or 10 (to the extent such material breach relates to rights or obligations granted by or arising from Articles 3A, 6A or 7A), Sections 12.4A through 12.4D, or Sections 2 through 4 of the Second Amendment, as provided in Section 13.5A shall not relieve the Parties of any payment obligation accruing under such Articles or Sections prior to such termination. Following termination of the licenses and rights granted and executory obligations under Article 3A or 6A as provided under Section 13.5A, the recipient of such rights shall thereafter cease using such rights; *provided*, *however*, that Takeda's right to [*] use and sell any Discovery Products (and its corresponding payment obligations under Article 7A with respect thereto, [*] and Sections 3A.2(g), 3A.2(i), 3A.2(j) and 6A.7(b) shall survive any such expiration or termination.

13.8B Effect of Expiration of Agreement. Articles 1 and 9 through 14, Sections 2.4, 2.6, 3A.2(g), 3A.2(i), 3A.2(j), 4.3, 5.1.2, 6.1.1, 6A.7(b) and 7.8-7.13, and Sections 2 and 3 of the Second Amendment shall survive the expiration of this Agreement.

(k) Sections 14.7 (Consent to Jurisdiction) and 14.8 (Dispute Resolution) of the Agreement are hereby amended to add the XOMA Companies to each reference to "XOMA" or "the Parties" therein.

(l) Section 14.8 (Dispute Resolution) of the Agreement is hereby amended to add Section 14.8.4 as follows:

"14.8.4 The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded."

(m) The Agreement is hereby amended to replace Schedule 1.46 (Human Engineering™ Patent Rights) with Schedule 1.46 attached hereto.

Section 2. [*]

Section 3. Representations and Warranties; Covenants.

(a) As of the Amendment Effective Date and only as to this Second Amendment, Takeda makes the representations and warranties set forth in Sections 11.1.1 through 11.1.6 and 11.1.8 of the Agreement.

(b) As of the Amendment Effective Date and only as to this Second Amendment, each XOMA Company represents and warrants to and covenants with Takeda that:

(i) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation or incorporation;

(ii) it has the corporate and full legal right, authority and power to enter into this Second Amendment, and, as applicable, to extend the rights and licenses granted to Takeda in this Second Amendment;

(iii) it has taken all necessary corporate action to authorize the execution, delivery and performance of this Second Amendment;

(iv) upon the execution and delivery of this Second Amendment, this Second Amendment shall constitute a valid and binding obligation of such XOMA Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' and contracting Parties' rights generally and except as enforceability may be subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(v) the execution of this Second Amendment and performance of its obligations under this Second Amendment will not conflict with such XOMA Company's charter documents or result in a breach of any agreements, contracts or other arrangements to which it is a party or violate any court or administrative order by which it is bound;

(vi) neither it nor any of its employees or consultants working on the collaboration with Takeda have been debarred pursuant to the FDC Act or are currently excluded, debarred, suspended or otherwise ineligible to participate in Federal health care program and such XOMA Company shall promptly notify Takeda of any change in this warranty and representation;

(vii) all license agreements, covenants not to sue and other arrangements that such XOMA Company has with Third Parties relating to intellectual property that XOMA will utilize or reasonably anticipates utilizing to perform its obligations under this Second Amendment have been disclosed to Takeda in writing;

(viii) [*]

(ix) [*]

(x) [*]

(xi) to its reasonable knowledge, during the course of Takeda's due diligence investigation in connection with entering into this Second Amendment conducted prior to the Amendment Effective Date, such XOMA Company neither (a) disclosed to Takeda any written material that contained a material misstatement regarding (i) any agreement between such XOMA Company and a Third Party relating to Relevant Second Amendment Third Party IP, or (ii) such XOMA Company's ability to perform its obligations under this Second Amendment; nor (b) failed to disclose to Takeda any written material in such XOMA Company's possession that would reasonably be expected to be material to (i) any agreement between such XOMA Company and a Third Party relating to Relevant Second Amendment Third Party IP, or (ii) any Relevant Second Amendment Third Party IP;

(xii) [*]

(xiii) [*]

(xiv) [*]

(xv) [*]

(xvi) [*]

(xvii) [*]

(xviii) [*]

(xix) it is and shall remain in compliance in all material respects with any and all applicable laws and regulations relating to this Second Amendment and its ability to perform its obligations hereunder; and

(xx) [*]

Section 4. Conditions to Payment Obligation. The obligations of Takeda to consummate the transaction contemplated by this Second Amendment and to make any payments to XOMA under this Second Amendment are subject to the satisfaction of the following conditions:

(i) as of the Amendment Effective Date, XOMA executing and providing copies to Takeda of any and all executed agreements between a XOMA Company and XOMA granting to XOMA any and all rights necessary for XOMA to grant its respective rights and licenses contained herein to Takeda; and

(ii) as of the Amendment Effective Date, XOMA and Takeda executing a services agreement substantially in the form annexed hereto as Exhibit C.

Section 5. Bankruptcy. All rights and licenses granted under this Second Amendment by XOMA to Takeda are, and shall otherwise be deemed to be, for purposes of Section 365(n) of Title XI of the United States Code (the "Bankruptcy Code"), licenses of rights to "intellectual property" as defined under Section 101(35A) of the Bankruptcy Code. The Parties further agree that in the event of the commencement of a bankruptcy proceeding by or against one Party under the Bankruptcy Code, Takeda (if such proceeding is commenced against a XOMA Company) or XOMA (if such proceeding is commenced against Takeda), to the extent permitted under applicable Laws, shall be entitled to complete access to any such intellectual property pertaining to the rights granted in the licenses hereunder of the Party by or against whom a bankruptcy proceeding has been commenced and all embodiments of such intellectual property. [*]

Section 6. Press Release. The Parties hereby agree to the release of a press release in the form attached hereto as Exhibit D upon full execution of this Second Amendment, and the fact of the execution of this Second Amendment, as well as the terms that are expressly described in such press release, shall be deemed to be in the public domain. In all other respects, Section 10.4 of the Agreement shall apply to the terms and conditions of this Second Amendment.

Section 7. Effect of Amendment. Together with the Agreement (including all Schedules thereto), this Second Amendment constitutes the entire agreement between the Parties in connection with the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. Except as expressly provided for herein, all terms and conditions of the Agreement shall remain in full force and effect. To the extent that the terms of this Second Amendment conflict or are inconsistent with the terms of the Agreement, the terms of this Second Amendment shall control.

Section 8. Governing Law. This Second Amendment shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law principles thereof.

Section 9. Counterparts. This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the undersigned parties have agreed to the foregoing as of the date first written above.

TAKEDA PHARMACEUTICAL COMPANY LIMITED

By: _____

Name: Dr. Shigenori Ohkawa
Title: Member of the Board, General Manager
of Pharmaceutical Research Division

XOMA (US) LLC

By: _____

Name: Fred Kurland
Title: Vice President, Finance and Chief Financial Officer

[*]

Schedule 1.8A

Systems Specifications

[*]

XOMA Patent Rights – Bacterial Expression

A. Title: Modular Assembly of Antibody Genes, Antibodies Prepared Thereby and Use

Inventors: Robinson, Liu, Horwitz, Wall, Better

1) Based on PCT/US86/02269, which is a continuation-in-part of U.S. Application No. 06/793,980 filed November 1, 1985 (abandoned).

COUNTRY	APPLICATION NO.	PATENT NO.
Australia	65981/86	AU 606,320
Denmark	3385/87	DK 175680
Canada	521,909	Abandoned
Europe	86906676.1	0247091 Abandoned
Europe	92115754.1	Abandoned
Japan	505887/1986	Abandoned
Taiwan	75105650	51922
*United States	06/793,980	Abandoned
*United States	U.S. National Phase of PCT/US86/02269	Abandoned

* Cases abandoned in favor of a continuing application.

2) Based on PCT/US88/02514, which corresponds to U.S. Application No. 07/077,528, which is a continuation-in-part PCT/US86/02269 (abandoned), which is a continuation-in-part of U.S. Application No. 06/793,980 (abandoned).

COUNTRY	APPLICATION NO.	PATENT NO.
Australia	23244/88	AU 632,462
Canada	572,398	CA 1,341,235
Denmark	192/90	DK 174824
Denmark	200301155	DK 175654
Denmark	200301156	DK 175581
Europe	EP 88907510.7	EP 0371998
Austria	EP 88907510.7	AT 0102249
Belgium	EP 88907510.7	BE 0371998
France	EP 88907510.7	FR 0371998
Germany	EP 88907510.7	DE 3888186.1
Italy	EP 88907510.7	IT 0371998
Luxembourg	EP 88907510.7	LU 0371998
Netherlands	EP 88907510.7	NL 0371998
Sweden	EP 88907510.7	SE 0371998
Switzerland/Liechtenstein	EP 88907510.7	CH 0371998
United Kingdom	EP 88907510.7	GB 0371998
Europe	EP 93100041.8	EP 0550400
Austria	EP 93100041.8	AT0140266E
Belgium	EP 93100041.8	BE 0550400

COUNTRY	APPLICATION NO.	PATENT NO.
France	EP 93100041.8	FR 0550400
Germany	EP 93100041.8	DE 3855421.6
Italy	EP 93100041.8	IT 0550400
Luxembourg	EP 93100041.8	LU 0550400
Netherlands	EP 93100041.8	NL 0550400
Sweden	EP 93100041.8	SE 0550400
Switzerland/Liechtenstein	EP 93100041.8	CH 0550400
United Kingdom	EP 93100041.8	GB 0550400
Europe	EP 95119798.7	EP 0731167
Austria	EP 95119798.7	AT 0197315
Belgium	EP 95119798.7	BE 0731167
France	EP 95119798.7	FR 0731167
Germany	EP 95119798.7	DE 3856440.8
Italy	EP 95119798.7	IT 0731167
Luxembourg	EP 95119798.7	LU 0731167
Netherlands	EP 95119798.7	NL 0731167
Sweden	EP 95119798.7	SE 0731167
Switzerland/Liechtenstein	EP 95119798.7	CH 0731167
United Kingdom	EP 95119798.7	GB 0731167
Japan	506481/88	JP 2991720
*United States	07/077,528	

* Cases abandoned in favor of a continuing application.

3) Based on U.S. Application No. 07/501,092 filed March 29, 1990, which is a continuation-in-part of U.S. Application No. 07/077,528 (Modular Assembly of Antibody Genes, Antibodies Prepared Thereby and Use; Robinson, Liu, Horwitz, Wall, Better) and of U.S. Application No. 07/142,039 (Novel Plasmid Vector with Pectate Lyase Signal Sequence; Lei, Wilcox).

COUNTRY	APPLICATION NO.	PATENT NO.
*United States	07/501,092	Abandoned
*United States	07/870,404	Abandoned
*United States	07/987,555	Abandoned
*United States	08/020,671	Abandoned
United States	08/235,225	US 5,618,920
United States	08/299,085	US 5,595,898
United States	08/450,731	US 5,693,493
United States	08/466,203	US 5,698,417
United States	08/467,140	US 5,698,435
United States	08/472,691	US 6,204,023
*United States	09/722,315	Abandoned
*United States	09/722,425	Abandoned
*United States	10/040,945	Abandoned
United States	11/582,563	Abandoned

* Cases abandoned in favor of a continuing application.

B. Title: Novel Plasmid Vector with Pectate Lyase Signal Sequence (PelB)

Inventors: Lei, Wilcox

Based on U.S. Application No. 07/142,039 filed January 11, 1988 and PCT/US89/00077.

COUNTRY	APPLICATION NO.	PATENT NO.
Australia	29377/89	AU 627443
Canada	587,885	CA 1,338,807
Europe	EP 89901763.6	EP 0396612
Austria	EP 89901763.6	AT 0140731
Belgium	EP 89901763.6	BE 0396612
France	EP 89901763.6	FR 0396612
Germany	EP 89901763.6	DE 689 26 882
Italy	EP 89901763.6	IT 0396612
Luxembourg	EP 89901763.6	LU 0396612
Netherlands	EP 89901763.6	NL 0396612
Sweden	EP 89901763.6	SE 0396612
Switzerland/Liechtenstein	EP 89901763.6	CH 0396612
United Kingdom	EP 89901763.6	GB 0396612
Japan	501661/89	JP 2980626
*United States	07/142,039	Abandoned
United States	08/472,696	US 5,846,818
United States	08/357,234	US 5,576,195

* Cases abandoned in favor of a continuing application.

C. Title: Methods and Cells for Expression of Recombinant Protein Products (Ara)

Inventor: Better

Based on PCT/US01/08754, which claims priority to U.S. Provisional Application Nos. 60/192,129 filed March 24, 2000 and 60/192,238 filed March 27, 2000

COUNTRY	APPLICATION NO.	PATENT NO.
Australia	2001249265	AU 2001249265
Canada	2,404,046	2,404,046
Europe	01922467.4	EP 1268823
Austria	01922467.4	AT 1268823
Belgium	01922467.4	BE 1268823
Cyprus	01922467.4	CY 1268823
Denmark	01922467.4	DK 1268823
Finland	01922467.4	FI 1268823
France	01922467.4	FR 1268823
Germany	01922467.4	DE 60131261.9-08
Greece	01922467.4	GR 1268823
Ireland	01922467.4	IE 1268823
Italy	01922467.4	IT 1268823
Luxembourg	01922467.4	LU 1268823
Monaco	01922467.4	MC 1268823

COUNTRY	APPLICATION NO.	PATENT NO.
Netherlands	01922467.4	NL 1268823
Portugal	01922467.4	PT 1268823
Spain	01922467.4	ES 1268823
Sweden	01922467.4	SE 1268823
Switzerland	01922467.4	CH 1268823
Turkey	01922467.4	TR 1268823
United Kingdom	01922467.4	GB 1268823
[*]		
*United States	60/192,129	Abandoned
*United States	60/192,238	Abandoned
United States	09/811,933	US 6,803,210
United States	10/963,414	Abandoned

* Cases abandoned in favor of a continuing application.

[*]

Schedule 1.29C

Discovery Patent Rights

[*]

Schedule 1.46

Human Engineering™ Technology

A. Materials/Know-How

[*]

B. Patent Rights

Title: Methods and Materials for Preparation of Modified Antibody Variable Domains and Therapeutic Uses Thereof

Inventors: Studnicka

Based on PCT/US92/10906 [WO 93/11794 filed 12/14/92], which is a continuation-in-part of U.S. Serial No. 07/808,464 filed December 13, 1991 (abandoned).

COUNTRY	SERIAL NO.	PATENT NO.
*United States	07/808,464	Abandoned
United States	08/107,669	5,766,886
United States	08/472,788	5,770,196
United States	08/477,531	5,821,123
United States	08/082,842	5,869,619
United States	09/097,980	Abandoned
United States	09/245,202	Abandoned
United States	10/325,696	Abandoned
United States	10/340,189	Abandoned
United States	11/133,775	Abandoned
Canada	2,103,887	2,103,887
[*]		
Europe	EP 93901238.1	EP0571613
Austria	EP 93901238.1	Abandoned
Belgium	EP 93901238.1	BE 0571613
France	EP 93901238.1	FR 0571613
Germany	EP 93901238.1	DE 69233204
Ireland	EP 93901238.1	IE 0571613
Italy	EP 93901238.1	IT 0571613
Netherlands	EP 93901238.1	NL 0571613
Spain	EP 93901238.1	ES 2202310
Switzerland/Liechtenstein	EP 93901238.1	CH 0571613
United Kingdom	EP 93901238.1	GB 0571613
Europe (Divisional)	02021775.8	Abandoned
Japan	5-511171	4,157,160
Japan*	2005-6625	Abandoned
[*]		

* Cases abandoned in favor of a continuing application.

[*]

Systems

A. Materials/Know-How

[*]

B. Patent Rights

[*]

[*]

Schedule 1.93C

Transient Expression System Technology

A. Materials/Know-How

[*]

B. Patent Rights

Title: Methods and materials for transient expression of a recombinant protein

Inventor: Masahisa Handa, Arnold H. Horwitz, Robyn Cotter, Eddie Bautista

Based on PCT/US2005/043922 (WO 2006/060769 A2) filed 5 December 2005 which corresponds to U.S. Provisional Application No. 60/633,056 filed 3 December 2004

Country	Application #	Filed	Status
US Prov	60/633,056	12/3/2004	expired
US	11/295,006	12/5/2005	Abandoned

[*]

[*] Materials Specifications

[*]

[*] Quantities and Additional Information

[*]

Schedule 3A.1(d)

Services Relating to
[*] Systems, TES Technology and HE™ Technology

(i) Services: Upon the request of Takeda, XOMA agrees to perform the services described in Exhibit A to this Schedule 3A.1(d) ("Services"). XOMA warrants that it has and/or will retain employees and/or consultants with the skills, ability and training necessary to, and that it shall, render the Services in a timely and professional manner consistent with industry standards in accordance with the terms of this Schedule 3A.1(d) including Exhibit A. Subject to the foregoing, the manner and means by which XOMA chooses to complete the Services are in XOMA's sole discretion and control.

(ii) Compensation: In consideration of the Services to be rendered hereunder, Takeda agrees to pay XOMA the compensation set forth in Exhibit A to this Schedule 3A.1(d).

(iii) Expenses: Takeda will reimburse XOMA for all reasonable travel, lodging and other expenses of XOMA's employees and consultants rendering the Services documented to the reasonable satisfaction of Takeda.

(iv) Other Services: XOMA (including its employees rendering the Services) may conduct activities with and provide services to, and its consultants rendering the Services may perform services for or be employed by, Third Parties so long as doing so does not cause XOMA to breach its obligations under this Schedule 3A.1(d) or the Agreement.

(v) Term: The Parties shall have no further rights or obligations with respect to this Schedule 3A.1(d) (other than those accrued prior to such termination) upon the earliest of (i) termination of Article 3A of the Agreement in accordance with its terms, (ii) termination of this Schedule 3A.1(d) by either Party upon a material breach by the other Party that is not cured within thirty (30) days of such other Party becoming aware of such breach, effective immediately upon written notice to the breaching Party, or (iii) termination by Takeda of this Schedule 3A.1(d), at its discretion, upon prior written notice to XOMA.

(vi) Confidential Information: Article 10 of the Agreement shall apply to any Confidential Information disclosed, received or created by either party in connection with this Schedule 3A.1(d).

EXHIBIT A TO SCHEDULE 3A.1(d)

Statement of Work

I. DESCRIPTION OF THE SERVICES TO BE PERFORMED:

1. [*]
2. [*]
3. Technical support for the Systems
4. Technical support for the TES Technology
5. Technical support for the HE™ Technology

II. COMPENSATION:

[*]

Schedule 6A.3

Additional Provisions Relating to Software License

1. Definitions. For purposes of this Schedule 6A.3, the following terms shall have the respective meanings indicated below:

1.1 "Applicable Patent Rights" shall mean (a) in the case where XOMA is the grantor of rights, claims of patents that (i) are now or hereafter acquired, owned by or assigned to XOMA and (ii) cover subject matter contained in the Source Code or the Software, and (b) in the case where Takeda is the grantor of rights, claims of patents that (i) are now or hereafter acquired, owned by or assigned to Takeda and (ii) cover subject matter contained in the Covered Code or the Covered Software.

1.2 "Covered Code" shall mean the Source Code and any Modifications to the Source Code made by Takeda or any person or entity acting on Takeda's behalf.

1.3 "Covered Software" shall mean the Software and any Modifications to the Software made by Takeda or any person or entity acting on Takeda's behalf.

1.4 "Larger Work" shall mean a work which combines the Covered Code or the Covered Software or portions thereof with code not governed by the terms of this Schedule 6A.3.

1.5 "Modifications" shall mean any addition to, deletion from and/or other change to the substance and/or structure of the Source Code or the Software. When code is released as a series of files, a Modification is (a) any addition to or deletion from the contents of a file containing the Covered Code or the Covered Software and/or (b) any new file or other representation of computer program statements that contains any part of the Covered Code or the Covered Software.

1.6 "Software" shall mean the software, programs and/or computer instruction sets, other than the Source Code, consisting of the versions thereof existing and deployed at XOMA as of the Amendment Effective Date and more fully described in item A.1 of Schedule 1.46 and item A.1 of Schedule 1.89A and any changed or modified versions thereof that correct significant defects contained in the Software as of the Amendment Effective Date ("Corrected Software"). Expressly excluded from the definition of Software are (a) other programs, software and/or computer instructions that XOMA derives from such programs, software and/or computer instructions or develops, acquires or obtains the right to sublicense during the term of this Schedule 6A.3, as well as (b) any changed, modified or enhanced versions of the Software (other than Corrected Software).

1.7 "Source Code" shall mean the human readable form of the Software that is suitable for modification, including all modules it contains, plus any associated data files, interface definition files, scripts used to control compilation and installation of an executable computer instruction.

2. Corrected Software; Terms and Conditions.

2.1 Corrected Software. If, within the first [*] following the Amendment Effective Date, XOMA develops, licenses or acquires any Corrected Software, XOMA shall promptly provide Takeda with a copy thereof. All Corrected Software shall be deemed, in accordance with the terms and conditions of this Schedule 6A.3 and without payment of additional consideration, to be included in the definition of Software.

2.2 Terms and Conditions. (a) Any reproduction, use or dissemination of any Covered Code or Covered Software, including without limitation, any Modifications thereof, shall be limited to activities undertaken by Takeda and Designated Takeda Affiliates' employees who are subject to the confidentiality and intellectual property provisions of the Agreement. Notwithstanding the foregoing sentence, Takeda and Designated Takeda Affiliates may employ or use Third Parties to make Modifications or use the Covered Code or the Covered Software for purposes reasonably related to Takeda's legitimate use as provided for by the Agreement, including this Schedule 6A.3. Takeda shall not grant any such Third Party the right to access the Software or the Source Code unless and until such Third Party executes a written confidentiality agreement that provides, in addition to the other terms and conditions of such agreement, that (a) the Third Party will abide, for XOMA's and Takeda's benefit, by the limitations provided for in this Schedule 6A.3 and the Agreement, (b) all work will be undertaken by such Third Party in a manner so as to establish that any such work is done as a "work made for hire" and (c) such Third Party will assign any patent rights to Takeda such that they become Applicable Patent Rights.

(b) Takeda shall retain and reproduce in all copies of the Covered Code and the Covered Software (i) the copyright and other proprietary notices and disclaimers of XOMA as they appear in the Source Code and the Software, respectively, (ii) all notices in the Source Code and/or the Software that refer to this Schedule 6A.3, and (iii) to the extent it does not already exist, the notice provided for below:

"Portions Copyright (c) 2005-2009 XOMA Ltd. All Rights Reserved.

"This file contains Source Code or Software or Modifications thereof as defined in and that are subject to a software license and related terms between Takeda Pharmaceutical Company Limited and XOMA (US) LLC. You may not use this file except in compliance with that license and those terms. Please obtain a copy of the software license and related terms between Takeda and XOMA by contacting Research Information & Alliances, Strategic Research Planning Department, Pharmaceutical Research Division, of Takeda Pharmaceutical Company Limited, and read it before using this file.

"Unless otherwise stated, these materials are distributed on an 'AS IS' basis, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND XOMA HEREBY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT. Please see the software license and related terms between Takeda and XOMA for the specific language governing rights and limitations under that license and those terms."

(c) For any Modifications, Takeda must cause the modified files to carry notices stating that Takeda changed the files and the date of such change.

(d) Takeda will use commercially reasonable and diligent efforts to protect XOMA's proprietary interests in and to the Software, the Source Code and XOMA's Applicable Patent Rights, including, as appropriate, ensuring that there is password protection of any computer or network containing any copies of the Covered Code or the Covered Software. In addition, Takeda will prohibit its employees from disclosing to unauthorized Third Parties the Covered Code or the Covered Software except under the conditions required by this Schedule 6A.3 and the acknowledgement that the Software and the Source Code constitute Confidential Information of XOMA under the Agreement.

3. Takeda Exclusive Rights. Takeda shall own all Modifications to the Source Code or the Software created by Takeda pursuant to this Schedule 6A.3 and shall have no obligation to share or provide copies or updates thereof to XOMA.

4. Representations and Warranties Regarding Software and Source Code.

4.1 Representations and Warranties. XOMA represents and warrants that the Source Code and the Software were made by XOMA employees and constitute a "work made for hire," and were not authored or distributed to Takeda in violation of any agreements between XOMA and any Third Party, including any "open source" licenses.

4.2 Limitations on Warranties and Support. The Covered Code or the Covered Software may contain in whole or in part pre-release, untested or not fully tested works, may contain errors that could cause failures or loss of data, and may be incomplete or contain inaccuracies. Takeda expressly acknowledges and agrees that use of the Covered Code or the Covered Software, or any portion thereof, is at Takeda's sole and entire risk. UNLESS OTHERWISE STATED, THE SOURCE CODE AND THE SOFTWARE ARE PROVIDED "AS IS" AND WITHOUT WARRANTY, UPGRADES OR SUPPORT OF ANY KIND. UNLESS OTHERWISE STATED, XOMA, ITS LICENSOR(S) AND CONTRIBUTORS (COLLECTIVELY REFERRED TO AS "XOMA" FOR THE PURPOSES OF SECTIONS 4 AND 5) EXPRESSLY DISCLAIM ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT AND OF NONINFRINGEMENT OF THIRD PARTY RIGHTS. XOMA DOES NOT WARRANT AGAINST INTERFERENCE WITH TAKEDA'S ENJOYMENT OF THE COVERED CODE AND THE COVERED SOFTWARE, THAT THE FUNCTIONS CONTAINED IN THE COVERED CODE OR THE COVERED SOFTWARE WILL MEET TAKEDA'S REQUIREMENTS, THAT THE OPERATION OF THE COVERED CODE OR THE COVERED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE COVERED CODE OR THE COVERED SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY XOMA OR ANY XOMA REPRESENTATIVE SHALL CREATE A WARRANTY. Takeda acknowledges that neither the Covered Code nor the Covered Software is intended for use in the operation of nuclear facilities, aircraft navigation, communication systems or air traffic control machines, in which case the failure of the Covered Code or the Covered Software could lead to death, personal injury or severe physical or environmental damage.

5. Termination. The rights granted under this Schedule will terminate upon termination of the Systems License Term.

6. Government End Users. Each of the Covered Code and the Covered Software is a "commercial item" as defined in FAR 2.101. Government software and technical data rights in the Covered Code or the Covered Software include only those rights customarily provided to the public as defined in this Schedule 6A.3. This customary commercial license in technical data and software is provided in accordance with FAR 12.211 (Technical Data) and 12.212 (Computer Software) and, for Department of Defense purchases, DFAR 252.227-7015 (Technical Data — Commercial Items) and 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). Accordingly, all U.S. Government End Users acquire the Covered Code or the Covered Software with only those rights set forth herein.

Exhibit 21.1

Subsidiaries of the Company	Jurisdiction of Organization
XOMA (Bermuda) Ltd.	Bermuda
XOMA Ireland Limited	Ireland
XOMA Technology Ltd.	Bermuda
XOMA (US) LLC	Delaware
XOMA Limited	United Kingdom

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-108306, 333-66171, 333-39155 and 151416) pertaining to the XOMA Ltd. 1981 Share Option Plan, the XOMA Ltd. Restricted Share Plan, the XOMA Ltd. Management Incentive Compensation Plan, the XOMA Ltd. 1992 Directors Share Option Plan, the XOMA Ltd. 2002 Director Share Option Plan, the XOMA Ltd. 1998 Employee Share Purchase Plan, and the XOMA Ltd. 2007 CEO Share Option Plan and in the Registration Statements on Form S-3 (Nos. 333-112161, 333-107929, 333-60503, 333-148342) and the related Prospectuses of XOMA Ltd., of our reports dated March 10, 2009, with respect to the consolidated financial statements of XOMA Ltd., and the effectiveness of internal control over financial reporting of XOMA Ltd. included in this Annual Report (Form 10-K) for the year ended December 31, 2008.

/s/ ERNST & YOUNG LLP

Palo Alto, California
March 10, 2009

Exhibit 31.1

Certification
Pursuant to Section 302 Of The Sarbanes-Oxley Act Of 2002
(Chapter 63, Title 18 U.S.C. Section 1350(A) And (B))

I, Steven B. Engle, certify that:

1. I have reviewed this annual report on Form 10-K of XOMA Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f))) for the registrant and we have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2009

/s/ STEVEN B. ENGLE
Steven B. Engle
Chairman, Chief Executive Officer and President

Exhibit 31.2

Certification
Pursuant to Section 302 Of The Sarbanes-Oxley Act Of 2002
(Chapter 63, Title 18 U.S.C. Section 1350(A) And (B))

I, Fred Kurland, certify that:

1. I have reviewed this annual report on Form 10-K of XOMA Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f))) for the registrant and we have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2009

/S/ FRED KURLAND
Fred Kurland
Vice President, Finance and Chief Financial Officer

Exhibit 32.1

Certification
Pursuant to Section 906 Of The Sarbanes-Oxley Act Of 2002
(Chapter 63, Title 18 U.S.C. Section 1350(A) And (B))

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chapter 63, Title 18 U.S.C. Section 1350(a) and (b)), the undersigned hereby certifies in his capacity as an officer of XOMA Ltd. (the "Company") that the Annual Report of the Company on Form 10-K for the year ended December 31, 2008, fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934, as amended, and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of the Company at the end of and for the periods covered by such Report.

Date: March 11, 2009

/S/ STEVEN B. ENGLE
Steven B. Engle
Chairman, Chief Executive Officer and President

This certification will not be deemed filed for purposes of Section 18 of the Exchange Act (15 U.S.C. 78), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

Exhibit 32.2

Certification
Pursuant to Section 906 Of The Sarbanes-Oxley Act Of 2002
(Chapter 63, Title 18 U.S.C. Section 1350(A) And (B))

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chapter 63, Title 18 U.S.C. Section 1350(a) and (b)), the undersigned hereby certifies in his capacity as an officer of XOMA Ltd. (the "Company") that the Annual Report of the Company on Form 10-K for the year ended December 31, 2008, fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934, as amended, and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of the Company at the end of and for the periods covered by such Report.

Date: March 11, 2009

/s/ FRED KURLAND
Fred Kurland
Vice President, Finance and Chief Financial Officer

This certification will not be deemed filed for purposes of Section 18 of the Exchange Act (15 U.S.C. 78), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

XOMA Reports 2008 Financial Results

BERKELEY, Calif., March 11, 2009: XOMA Ltd. (Nasdaq:XOMA), a leader in the discovery and development of therapeutic antibodies, today announced its results for the year ended December 31, 2008.

Total revenues in 2008 were $68.0 million, compared with $84.3 million in 2007. XOMA's net loss was $45.2 million, or $0.34 per share for the year ended December 31, 2008, compared with a net loss of $12.3 million, or $0.10 per share, for 2007. The changes in revenue and net loss were primarily due to a one-time cash payment in 2007 of $30 million by Pfizer Inc. for a license providing non-exclusive access to XOMA's Bacterial Cell Expression technology.

"In 2008, XOMA made significant progress in advancing our product-focused strategy while capitalizing on our technologies and assets to generate multiple revenue streams," said Steven Engle, XOMA's Chairman and Chief Executive Officer. "For the first time, XOMA showed that a single dose of an interleukin-1 beta (IL-beta) inhibitor, XOMA 052, increased the ability of Type 2 diabetes patients to produce insulin over three months. These clinical results provide support for one of the most significant medical advances in diabetes in decades - adding an entirely new approach, anti-inflammatory treatment, to existing insulin focused therapy.

"In addition to generating revenues in line with our guidance for 2008, XOMA made key decisions that enabled us to reduce spending and provide greater focus on high priority projects such as XOMA 052 and revenue-generating technology development that supports technology licensing deals such as the one we recently announced with Takeda," continued Engle.

In 2009, XOMA plans to:

- Complete the ongoing Phase 1 clinical trials of XOMA 052 in Type 2 diabetes by mid 2009
- Initiate a Phase 2 clinical study of XOMA 052 in Type 2 diabetes in the third quarter of 2009
- Establish a partnership for the development and worldwide marketing of XOMA 052
- Present data on XOMA 052 at various medical conferences, including the 2009 American Diabetes Association Scientific Sessions in June
- Complete the ongoing Phase 2a clinical trial of XOMA 052 in rheumatoid arthritis
- Continue to seek opportunities to collaborate and license our novel antibody technologies

Recent Highlights

- **Diabetes data generated with XOMA 052 supports groundbreaking anti-inflammatory approach:** Based on ongoing Phase 1 results in humans with Type 2 diabetes and new preclinical findings, XOMA plans to initiate a Phase 2 clinical trial. Notably, preclinical results indicate that animals treated with XOMA 052 have increased insulin production and proliferation of insulin-producing islet cells. The Phase 1 clinical trial in the U.S. continues to progress with (1) enrollment in the single dose intravenous part of the trial completed; (2) enrollment in the single dose subcutaneous part of the trial nearing completion; and (3) the recent initiation of a multiple dose subcutaneous study. Complete data from all three parts of the Phase 1 trial are expected by mid-2009. Patient enrollment in the Phase 1 trial in Switzerland is expected to be completed in the fourth quarter of 2009.

- **Rheumatoid arthritis clinical trial of XOMA 052 initiated:** In March 2009, XOMA initiated a U.S.-based randomized, placebo-controlled Phase 2a study designed to enroll up to 18 patients with moderate to severe rheumatoid arthritis and evaluate the safety, pharmacokinetics and disease-specific outcomes of XOMA 052. The company expects results by the end of 2009.

- **Data presented in 2008 from multiple clinical studies, supporting anti-inflammatory IL-1 therapeutic approach:** At the annual meeting of the American College of Rheumatologists in October, Novartis AG (Novartis) reported positive Phase 2 data for its IL-1 beta targeting antibody canakinumab in cyropyrin-associated periodic syndrome that met the predefined endpoints of time to disease flare vs. placebo ($p < 0.001$). Novartis also reported earlier stage data in systemic juvenile idiopathic arthritis that showed patients achieved substantial clinical improvement within 15 days. Additionally, Regeneron reported positive Phase 2 data in gout for its IL-1 Trap ARCALYST®, demonstrating statistically significant reduction in the incidence of gout flares in a Phase 2 clinical study ($p=0.0011$). These results continue to build evidence for the class of IL-1 drugs.

- **Takeda collaboration expanded, providing XOMA with a $29 million fee and potential milestones and royalties:** In February 2009, Takeda Pharmaceutical Company Limited (Takeda) and XOMA expanded an existing collaboration to provide Takeda with access to multiple antibody technologies, including a suite of integrated information and data management systems. XOMA may incur an estimated $7.5 million for taxes and other costs related to the expanded collaboration. XOMA is marketing non-exclusive collaborations to potential partners which utilize XOMA's extensive antibody discovery and development capabilities and technologies.

- **Operating costs reduced:** XOMA undertook multiple cost-cutting measures in 2008, including the postponement of clinical studies for additional indications of XOMA 052, the postponement of development on XOMA 629 and the restructuring of the Novartis oncology collaboration. These measures have allowed the company to focus research and development spending on the most promising proprietary development programs, including XOMA 052 in Type 2 diabetes. In January 2009, XOMA announced a reduction of its workforce by approximately 42 percent or 144 employees, a majority of which were in manufacturing and related areas. The company expects an annualized reduction of $27 million in cash expenditures when reductions have been completed in the second quarter of 2009. No bonuses were paid for 2008, and no salary increases have been awarded for 2009.

- **Novartis collaboration restructured:** The revised agreement provided an immediate cash payment and debt reduction, eliminated planned project expenditures and generated revenues in 2008 and 2009. Novartis will fully fund all future research and development expenses related to the agreement and pay potential milestones and double-digit royalties related to the HCD122 program and an additional ongoing program. HCD122 is a fully human anti-CD40 antibody with a unique, dual mechanism of action designed as a treatment for B-cell mediated diseases, including malignancies and autoimmune diseases. In April 2008, Novartis and XOMA initiated a Phase 1/2 clinical study of HCD122 for patients with lymphoma. A Phase 1 study for patients with multiple myeloma is also ongoing.

Fourth Quarter 2008 Financial Results

Total revenues were $36.9 million in the fourth quarter of 2008, compared to $14.7 million in the fourth quarter of 2007. License and collaborative fee revenues were $14.9 million in the fourth quarter of 2008, compared with $0.6 million in the same period of 2007. This increase is primarily related to the $13.7 million received from Novartis in 2008 as part of the restructuring of a collaboration agreement. Contract revenues for the fourth quarter of 2008 totaled $15.7 million compared with $9.5 million for the same period of 2007. The increase is primarily due to the execution of a manufacturing and technology transfer agreement with Novartis in the fourth quarter of 2008. Royalties were $6.3 million for fourth quarter of 2008 compared with $4.6 million for the same period in 2007. This increase is primarily the result of increased sales of LUCENTIS® worldwide.

Royalties are received based on worldwide sales of LUCENTIS®, RAPTIVA® and CIMZIA®. According to Genentech and Novartis, who are responsible for U.S. and international sales of LUCENTIS®, respectively, worldwide sales in the fourth quarter of 2008 were $464 million, a 26 percent increase over fourth quarter 2007 sales of $367 million.

According to Genentech and Merck Serono SA (Merck Serono), who are responsible for U.S. and international sales of RAPTIVA®, respectively, worldwide sales in the fourth quarter of 2008 and 2007 were the same at $58 million.

The company began to receive royalty income from sales of CIMZIA® which was launched in the U.S. for the treatment of moderate to severe Crohn's disease in adult patients who have not responded to conventional therapy. Royalties in the fourth quarter of 2008 were not material. CIMZIA® is currently under review for approval for the treatment of rheumatoid arthritis by the FDA in the U.S and by the European Medicines Agency (EMEA) in Europe.

XOMA's research and development expense for the fourth quarter of 2008 was $20.1 million, compared with $18.4 million in the same period 2007. This increase is primarily related to an increase in spending on the development of XOMA 052. General and administrative expense for the fourth quarter of 2008 was $5.2 million compared with $5.5 million for the same period last year.

Interest expense for the fourth quarter of 2008 was $2.0 million compared with $1.2 million for the same period of 2007. This increase is due to a higher principal balance and interest rate in 2008 associated with the increased loan from Goldman Sachs Specialty Lending Holdings, Inc. (Goldman Sachs).

Fiscal Year 2008 Financial Results

Total revenues in 2008 were $68.0 million, compared to $84.3 million in 2007. The decrease was primarily due to a one-time cash payment in 2007 of $30 million by Pfizer Inc. for a license providing non-exclusive access to XOMA's Bacterial Cell Expression technology. License and collaborative fee revenues were $16.4 million in 2008 versus $36.5 million in 2007. In 2008, contract revenues were $30.5 million compared to $31.1 million for 2007. Royalties were $21.1 million for 2008 compared with $16.7 million for 2007.

According to Genentech and Novartis, worldwide sales of LUCENTIS® in 2008 were $1,761 million, an increase of 46% over 2007 sales of $1,208 million. According to Genentech and Merck Serono, worldwide sales of RAPTIVA® in 2008 were $242 million, an increase of 14% over 2007 sales of $213 million. According to UCB, who is responsible for sales of CIMZIA® , sales were $13 million in its first year of marketing in the U.S. and Switzerland.

In February 2009, the EMEA announced that, due to safety issues, it has recommended suspension of the marketing authorization of RAPTIVA® in the European Union. Merck Serono's Canadian affiliate has announced that, in consultation with Health Canada, it will suspend marketing of RAPTIVA® there, also due to safety issues. The FDA has issued a RAPTIVA® public safety warning. As a result, sales of RAPTIVA® are expected to decline significantly in Europe and Canada and may be impacted in the U.S. XOMA receives mid single-digit royalties on worldwide sales of RAPTIVA®.

Operating expenses in 2008 were $106.7 million compared with $86.8 million in 2007. Research and development expense for the year 2008 was $82.6 million compared with $66.2 million for 2007. The increase was principally due to an increase in research and development spending supporting the clinical development of XOMA 052, research collaborations with Novartis, Schering-Plough Research Institute (SPRI) and Takeda, the company's agreements with the National Institute of Allergy and Infectious Diseases (NIAID) and contract manufacturing activities.

Selling, general and administrative expense for 2008 was $24.1 million compared with $20.6 million for the same period last year. This increase was primarily due to increases in legal expenses, marketing communications, consulting fees and employee related costs, of which $0.8 million was share-based (non-cash) compensation.

Interest expense for 2008 was $7.7 million compared with $11.6 million for 2007. The decrease of $3.9 million is primarily due to the elimination in early 2007 of the company's convertible debt, partially offset by additional interest expense incurred in 2008 related to the increased loan from Goldman Sachs.

Long-term Debt

At December 31, 2008, XOMA had outstanding principal of $50.4 million on a 5-year term loan from Goldman Sachs established in May 2008 and $12.9 million of long-term debt due to Novartis. The Goldman Sachs loan is secured by the company's royalty revenue for RAPTIVA®, LUCENTIS® and CIMZIA®. The terms of this loan require that quarterly U.S. and outside-the-U.S. sales of RAPTIVA® exceed specified minimums, and that we maintain a specified ratio of royalties collected to interest payable. Due to the anticipated reduction in RAPTIVA® sales, XOMA may not be able to meet these requirements in the second or third quarter of this year and Goldman Sachs may accelerate repayment of the debt unless we can restructure the terms of the loan. The company has initiated discussions with Goldman Sachs regarding a restructuring of the loan and expects to resolve this matter in the next few months.

The long-term debt to Novartis represents XOMA's borrowings under a loan facility established to facilitate XOMA's participation in its collaboration with Novartis. The Novartis loan is secured by XOMA's interest in the collaboration and is due in 2015. Under the restructured Novartis collaboration agreement, the principal balance of this note was reduced by $8.9 million to $12.9 million and no additional draw downs are available.

Liquidity and Capital Resources

Cash, cash equivalents and short-term investments at December 31, 2008 were $10.8 million compared with $38.6 million at December 31, 2007. In addition, restricted cash as of December 31, 2008 and 2007 was $9.5 million and $6.0 million, respectively and consisted primarily of funds reserved for repayment of the Goldman Sachs loan. In February 2009, XOMA received a $29 million fee before taxes and other costs from Takeda due to an expansion of the companies' collaboration. Cash used in operating activities during 2008 was $33.0 million compared with cash provided by operating activities of $4.5 million during 2007.

In October 2008, XOMA entered into a $60 million committed equity financing facility wherein the company can sell shares to Azimuth Opportunity Ltd. over a 24-month period. In 2008, the company sold 7.9 million shares for a total of $7.5 million under this facility.

As a result of the anticipated decline in RAPTIVA® royalty revenue and its impact on the Goldman Sachs loan, the company's independent registered public accounting firm has included a going concern qualification in its opinion contained in XOMA's annual report on Form 10-K for the year ended December 31, 2008 filed with the Securities and Exchange Commission on March 11, 2009.

A more detailed tabulation of XOMA's financial results appears below, and a fuller discussion is included in the company's 2008 Form 10-K filing.

Guidance Update

The company will not be providing guidance on revenues or cash receipts for 2009 so as to best manage its on-going negotiations for XOMA 052 and technology licensing and in light of general economic and market conditions.

The company expects that cash used in operating activities may range from $15 million to cash neutral or positive. This guidance does not include cash from royalty payments.

About XOMA 052

XOMA 052 is a potent monoclonal antibody with the potential to improve the treatment of patients with a wide variety of inflammatory diseases. XOMA 052 binds strongly to interleukin-1 beta (IL-1 beta), a pro-inflammatory cytokine that is involved in the development of diabetes, rheumatoid arthritis, gout and other diseases. By binding IL-1 beta, the drug inhibits the activation of the IL-1 receptor, thereby preventing the cellular signaling events that produce inflammation. XOMA 052 is a humanized IgG2 antibody with a half-life of 22 days. Based on its binding properties, specificity to IL-1 beta and half-life, XOMA 052 may provide convenient dosing of once per month or longer.

XOMA 052 was developed by XOMA using the company's proprietary antibody technologies, capabilities and expertise. XOMA owns worldwide rights to the antibody and related intellectual property.

The central role of the IL-1 pathway in multiple diseases has been clinically validated by two FDA-approved therapies and several inhibitors of the IL-1 pathway in clinical development. These disease indications include rheumatoid arthritis, systemic juvenile idiopathic arthritis, gout, Muckle-Wells syndrome, and others.

Investor Conference Call

XOMA will host a conference call and web cast to discuss its fiscal year 2008 results today, March 11, 2008, at 4:30 p.m. EDT. The web cast can be accessed via XOMA's website at http://www.investorcalendar.com/IC/CEPage.asp?ID=141980 and will be available for replay until close of business on June 10, 2009. Telephone numbers for the live audio cast are 877-407-9205 (U.S. and Canada) and 201-689-8054 (International). Conference ID #: 315644. A telephonic replay will be available beginning approximately two hours after the conclusion of the call until close of business on April 10, 2009. Telephone numbers for the replay are 877-660-6853 (U.S./Canada) and 201-612-7415 (International). Two access numbers are required for the replay: account number 286 and conference ID # 315644.

About XOMA

XOMA discovers, develops and manufactures therapeutic antibody and other agents designed to treat inflammatory, autoimmune, infectious and cancerous diseases. The company's proprietary product pipeline includes XOMA 052, an anti-IL-1 beta antibody, and XOMA 3AB, a biodefense anti-botulism antibody candidate.

XOMA's proprietary development pipeline is primarily funded by multiple revenue streams resulting from the licensing of its antibody technologies, product royalties, development collaborations and biodefense contracts. XOMA's technologies and experienced team have contributed to the success of marketed antibody products, including RAPTIVA® (efalizumab) for chronic moderate to severe plaque psoriasis, LUCENTIS® (ranibizumab injection) for wet age-related macular degeneration and CIMZIA® (certolizumab pegol) for Crohn's disease.

The company has a premier antibody discovery and development platform that incorporates leading antibody phage display libraries and XOMA's proprietary Human Engineering™ and Bacterial Cell Expression and manufacturing technologies. Bacterial Cell Expression is a key breakthrough biotechnology for the discovery and manufacturing of antibodies and other proteins. As a result, more than 50 pharmaceutical and biotechnology companies have signed BCE licenses.

In addition to developing its own products, XOMA develops products with premier pharmaceutical companies including Novartis AG, Schering-Plough Research Institute and Takeda Pharmaceutical Company Limited. XOMA has a fully integrated product development infrastructure, extending from pre-clinical science to approval, and a team of about 200 employees at its Berkeley location. For more information, please visit http://www.xoma.com.

Forward-Looking Statements

Certain statements contained herein concerning the anticipated levels of cash inflows, cash utilization, cash expenditures and reductions in cash expenditures; sales of approved products; timing of initiation, completion or availability of results of clinical trials; expected payments under existing agreements and/or product development or that otherwise relate to future periods are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements are based on assumptions that may not prove accurate. Actual results could differ materially from those anticipated due to certain risks inherent in the biotechnology industry and for companies engaged in the development of new products in a regulated market.

Among other things, the anticipated levels of cash inflows, cash utilization, cash expenditures and reductions in cash expenditures may be other than as expected due to unanticipated changes in XOMA's research and development programs, unavailability of additional arrangements or higher than anticipated transaction costs; sales of approved products may be lower or decline faster than anticipated as a result of actions or inaction by the third parties responsible for selling such products; the timing of initiation, completion or availability of results of clinical trials may be delayed or may never occur as a result of unavailability of resources, actions or inaction by our present or future collaboration partners, insufficient enrollment in such trials or unanticipated safety issues; and XOMA will not receive the estimated total amounts of funds if it cannot successfully carry out its obligations under its existing contracts.

These and other risks, including those related to XOMA's ability to remain in compliance with or renegotiate the requirements of its loan agreements; the declining and generally unstable nature of current economic conditions; the results of discovery and pre-clinical testing; the timing or results of pending and future clinical trials (including the design and progress of clinical trials; safety and efficacy of the products being tested; action, inaction or delay by the FDA, European or other regulators or their advisory bodies; and analysis or interpretation by, or submission to, these entities or others of scientific data); changes in the status of existing collaborative relationships; the ability of collaborators and other partners to meet their obligations; XOMA's ability to meet the demands of the United States government agency with which it has entered into its government contracts; competition; market demands for products; scale-up and marketing capabilities; availability of additional licensing or collaboration opportunities; international operations; share price volatility; XOMA's financing needs and opportunities; uncertainties regarding the status of biotechnology patents; uncertainties as to the costs of protecting intellectual property; and risks associated with XOMA's status as a Bermuda company, are described in more detail in XOMA's most recent filing on Form 10-K and in other SEC filings. Consider such risks carefully when considering XOMA's prospects.

* * Tables Follow * *

CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)

	December 31, 2008	December 31, 2007
ASSETS		
Current assets:		
Cash and cash equivalents	$ 9,513	$22,500
Short-term investments	1,299	16,067
Restricted cash	9,545	6,019
Receivables	16,686	12,135
Prepaid expenses and other current assets	1,296	1,113
Debt issuance costs	365	254
Total current assets	38,704	58,088
Property and equipment, net	26,843	25,603
Debt issuance costs—long-term	1,224	722
Other assets	402	402
Total assets	$ 67,173	$84,815
LIABILITIES AND SHAREHOLDERS' EQUITY (NET CAPITAL DEFICIENCY)		
Current liabilities:		
Accounts payable	$ 9,977	$ 6,995
Accrued liabilities	4,438	7,710
Accrued interest	1,588	878
Deferred revenue	9,105	8,017
Other current liabilities	1,884	—
Total current liabilities	26,992	23,600
Deferred revenue—long-term	8,108	10,047
Interest bearing obligation—long-term	63,274	50,850
Other long-term liabilities	200	—
Total liabilities	98,574	84,497
Shareholders' equity (net capital deficiency)	(31,401)	318
Total liabilities and shareholders' equity (net capital deficiency)	$ 67,173	$84,815

CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share amounts)

	Three months ended December 31,		Twelve months ended December 31,	
	2008	2007	2008	2007
Revenues:				
License and collaborative fees	$ 14,900	$ 601	$ 16,366	$ 36,460
Contract and other revenue	15,745	9,527	30,473	31,057
Royalties	6,275	4,596	21,148	16,735
Total revenues	36,920	14,724	67,987	84,252
Operating costs and expenses:				
Research and development	20,132	18,351	82,576	66,215
General and administrative	5,161	5,517	24,145	20,581
Total operating costs and expenses	25,293	23,868	106,721	86,796
Income (loss) from operations	11,627	(9,144)	(38,734)	(2,544)
Investment and interest income	62	551	859	1,866
Interest expense	(2,042)	(1,228)	(7,654)	(11,585)
Other income (expense)	(48)	(56)	(99)	(63)
Net income (loss) before taxes	9,599	(9,877)	(45,628)	(12,326)
Income tax benefit	383	—	383	—
Net income (loss)	$ 9,982	$ (9,877)	$ (45,245)	$ (12,326)
Basic net income (loss) per common share	$ 0.07	$ (0.07)	$ (0.34)	$ (0.10)
Diluted net income (loss) per common share	$ 0.07	$ (0.07)	$ (0.34)	$ (0.10)
Shares used in computing basic net income (loss) per common share	134,906	131,913	132,928	127,946
Shares used in computing diluted net income (loss) per common share	138,727	131,913	132,928	127,946