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, 2011

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 Corporation

(Exact name of registrant as specified in its charter)

Delaware	**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:

Title of each class	**Name of each exchange on which registered**
Common Stock, $0.0075 par value	The NASDAQ Global Market
Preferred Stock Purchase Rights	

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

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 whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). 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 common equity held by non-affiliates of the registrant is $75,567,267 as of June 30, 2011

Number of shares of Common Stock outstanding as of March 12, 2012: 68,043,103

DOCUMENTS INCORPORATED BY REFERENCE:

Portions of the Company's Proxy Statement for the Company's 2011 Annual General Meeting of Stockholders are incorporated by reference into Part III of this Report.

XOMA Corporation
2011 FORM 10-K ANNUAL REPORT
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PART I

Item 1. Business

Overview

XOMA Corporation ("XOMA" or the "Company"), a Delaware corporation, discovers and develops innovative antibody-based therapeutics. Our lead drug candidate is gevokizumab (formerly XOMA 052), a humanized antibody that binds to the inflammatory cytokine interleukin-1 beta ("IL-1 beta"). In collaboration with our partner, Les Laboratoires Servier ("Servier"), we expect gevokizumab to enter global Phase 3 clinical development in 2012 for non-infectious uveitis ("NIU") and Behçet's uveitis. We anticipate Servier will enter gevokizumab into a Phase 2 study in a cardiovascular disease indication during 2012. Separately, we have launched a Phase 2 proof-of-concept program for gevokizumab to evaluate additional indications for further development, including a clinical trial in moderate-to-severe inflammatory acne, which began enrolling patients in December 2011, and a clinical trial in erosive osteoarthritis of the hand, for which we plan to initiate enrollment in the second quarter of 2012.

We have entered into a license and collaboration agreement with Servier to jointly develop and commercialize gevokizumab in multiple indications. Gevokizumab is designed to inhibit the pro-inflammatory cytokine IL-1 beta, which is believed to be a primary trigger of pathologic inflammation in multiple diseases. Under the terms of the agreement, Servier has worldwide rights to gevokizumab for cardiovascular disease and diabetes indications and rights outside the U.S. and Japan to all other indications. We retain development and commercialization rights in the U.S. and Japan to all indications except cardiovascular disease and diabetes and have an option to reacquire rights to these indications from Servier in these territories. Should we exercise our option to reacquire rights to either or both of the cardiovascular disease or diabetes indications in the U.S. and Japan, we will be required to pay Servier an option fee and partially reimburse its incurred development expenses.

Our proprietary preclinical pipeline includes classes of antibodies that activate or sensitize the insulin receptor in vivo and represent potential new therapeutic approaches to the treatment of diabetes. We have developed these and other antibodies using some or all of our ADAPT™ antibody discovery and development platform, our ModulX™ technologies for generating allosterically modulating antibodies, and our OptimX™ technologies for optimizing biophysical properties of antibodies, including affinity, immunogenicity, stability and manufacturability.

In January 2012, we announced that we had acquired U.S. rights to the perindopril franchise from Servier. The agreement includes ACEON® (perindopril erbumine), a currently marketed angiotensin converting enzyme ("ACE") inhibitor, and a portfolio of three fixed-dose combination product candidates where perindopril is combined with another active ingredient(s), such as a calcium channel blocker. The longest of the patents relating to the proprietary form of perindopril in each of the combination product candidates expires in December 2023. We assumed commercialization activities for ACEON® in January 2012 following the transfer from Servier's previous licensee. In late February 2012, we initiated enrollment in a Phase 3 trial for the first fixed-dose combination product candidate from the perindopril franchise we acquired from Servier, which combines perindopril arginine and amlodipine besylate ("FDC1"). The trial, named PATH (**P**erindopril **A**mlodipine for the **T**reatment of **H**ypertension), is expected to enroll approximately 816 patients with hypertension to determine the safety and efficacy of the fixed-dose combination versus either perindopril or amlodipine alone. The primary and secondary endpoints are reduction in sitting diastolic and systolic blood pressure, respectively, from baseline after six weeks of treatment. Based on regulatory interaction to date, if positive, this trial is expected to be the only additional efficacy trial needed to complement the existing clinical data in support of the submission of an application to the FDA seeking approval for this product candidate. Partial funding for the PATH trial will be provided by Servier; the balance of study expenses, consisting primarily of costs generated by our contract research organization, are expected to be paid by us over time from any profits generated by our ACEON® sales.

XOMA 3AB, a biodefense anti-botulism product candidate comprised of a combination of antibodies, was developed through funding from the National Institute of Allergy and Infectious Diseases ("NIAID") of the U.S. National Institutes of Health ("NIH"). Enrollment has been completed in a Phase 1 clinical trial sponsored by NIAID. In January 2012, we announced that we will complete NIAID biodefense contracts currently in place but will not actively pursue future contracts. Should the government choose to acquire XOMA 3AB or other biodefense products in the future, we expect to be able to provide these antibodies through an outside manufacturer.

We also have developed antibody product candidates with premier pharmaceutical companies including Novartis AG ("Novartis") and Takeda Pharmaceutical Company Limited ("Takeda"). Two antibodies developed with Novartis, LFA102 and HCD122 (lucatumumab), are in Phase 1 and/or 2 clinical development by Novartis for the potential treatment of breast or prostate cancer and hematological malignancies, respectively.

In January 2012, we implemented a restructuring designed to sharpen our focus on value-creating opportunities led by gevokizumab and our antibody discovery and development capabilities. The restructuring plan includes a reduction of our personnel by 84 positions, or 34%, of which approximately 50 were eliminated immediately and the remainder will be eliminated by April 6, 2012. These staff reductions result primarily from our decisions to utilize a contract manufacturing organization for Phase 3 and commercial antibody production and to eliminate internal research functions that are non-differentiating or that can be obtained cost-effectively by contract service providers.

Product Development Strategy

We are advancing a pipeline of antibody product candidates using our proven expertise, technologies and capabilities from antibody discovery through product development. We seek to expand our pipeline by developing additional proprietary products and technologies and by entering into licensing and collaborative arrangements with pharmaceutical and biotechnology companies. The principal elements of our strategy are to:

- ***Focus on advancing gevokizumab, our lead product candidate.*** Using our proprietary antibody technologies, capabilities and expertise, we discovered gevokizumab, an antibody that inhibits IL-1 beta. Gevokizumab has the potential to address the underlying inflammatory causes of a wide range of unmet medical needs by targeting IL-1 beta, a cytokine that triggers inflammatory pathways in the body.

  In December 2010, we entered into an agreement with Servier to jointly develop and commercialize gevokizumab in multiple indications, which provided for a non-refundable upfront payment of $15.0 million that we received in January 2011. In connection with this agreement, Servier is funding the first $50.0 million of gevokizumab global clinical development and chemistry and manufacturing controls ("CMC") expenses and 50% of further expenses for the Behçet's uveitis indication. Servier has agreed to include the NIU Phase 3 trial discussed below under the terms of the collaboration agreement for Behçet's uveitis as long as the European Medicines Agency ("EMA") enables the results of the trial to be included in regulatory submissions in the European Union ("EU").

  In January 2011, we received the full €15.0 million advance allowed under our loan agreement with Servier dated December 30, 2010, converting to U.S. dollar proceeds of approximately $19.5 million at the date of funding.

  In March 2011, we announced our Phase 2b trial of gevokizumab in 421 Type 2 diabetes patients did not achieve the primary endpoint of reduction in hemoglobin A1c ("HbA1c") after six monthly treatments with gevokizumab compared to placebo. However, significant decreases in C-reactive protein ("CRP"), a biomarker for the risk of heart attack, stroke and other cardiovascular and inflammatory diseases, were observed in all dose groups versus placebo. Results from a Phase 2a gevokizumab trial in 74 patients with Type 2 diabetes, announced in June 2011, were consistent with the Phase 2b results. Gevokizumab was well tolerated in these trials, with no significant differences in adverse events between gevokizumab and placebo and no serious drug-related adverse events.

  Servier and we are implementing an expanded gevokizumab clinical development plan. The plan includes a global Phase 3 trial in active and controlled NIU involving the intermediate and/or posterior segments of the eye, including Behçet's uveitis, and a Phase 3 trial outside the U.S. in Behçet's uveitis. We expect these trials will be designed to meet the FDA requirement for ophthalmic indications that at least 300 patients be treated for at least six months and 100 patients for 1 year at the to-be-marketed dose. We anticipate we will have preliminary top-line results from the first NIU Phase 3 trial approximately 18 to 24 months after we enroll our first patient. Based upon the timing of anticipated regulatory interactions, we anticipate initiating the first NIU Phase 3 trial in the second quarter of 2012.

  In addition, we announced a Phase 2 proof-of-concept clinical program to identify additional conditions that may respond to treatment with gevokizumab. The program will study gevokizumab in three separate diseases that have demonstrated IL-1 beta involvement. The first study in moderate to severe inflammatory acne began enrolling patients in December 2011. During the second quarter of 2012, we are planning to initiate enrollment in the second clinical study in this program, which will study gevokizumab in patients with erosive osteoarthritis of the hand. Later in 2012, we plan to announce the final proof-of-concept indication. Based upon our discussions, we believe Servier intends to advance gevokizumab into Phase 2 development for cardiovascular disease in 2012.

- ***Advance our proprietary preclinical pipeline candidates and generate revenues from our proprietary technologies.*** We will continue to develop our proprietary preclinical pipeline, primarily focusing on the development of allosteric modulating monoclonal antibodies. Our first program, which targets the insulin receptor, has generated two new classes of fully human monoclonal antibodies that activate (XMetA) or sensitize (XMetS) the insulin receptor in vivo. XMetA and XMetS represent the potential for distinct, new therapeutic approaches to the treatment of patients with diabetes. Separate studies of XMetA and XMetS demonstrated they reduced fasting blood glucose levels and improved glucose tolerance in mouse models of diabetes.

Historically, we have established technology collaborations with several companies to provide access to multiple XOMA proprietary antibody discovery and optimization technologies. In addition, we have licensed our BCE technology to more than 60 companies in exchange for license, milestone and other fees, royalties and complementary technologies; a number of licensed product candidates are in clinical development. We believe we can continue to generate significant revenue from our proprietary technologies and programs in the future.

- ***Complete current biodefense contracts.*** To date, we have been awarded four contracts, totaling up to approximately $120 million, from NIAID to support development of XOMA 3AB and additional product candidates for the treatment of botulism poisoning. In addition, our biodefense programs included two subcontracts from SRI International totaling $4.3 million, funded through NIAID, for the development of antibodies to neutralize H1N1 and H5N1 influenza viruses and the virus that causes severe acute respiratory syndrome ("SARS").

  NIAID is conducting a Phase 1 trial of XOMA 3AB, a novel formulation of three antibodies designed to prevent and treat botulism poisoning. This double-blind, dose-escalation study in approximately 24 healthy volunteers is designed to assess the safety and tolerability and determine the pharmacokinetic profile, of XOMA 3AB.

  In January 2012, we announced that we will complete NIAID biodefense contracts currently in place but will not actively pursue future contracts. Should the government choose to acquire XOMA 3AB or other biodefense products in the future, we expect to be able to provide these antibodies through an outside manufacturer.

Commercialization Strategy

We are committed to establishing XOMA as a commercial organization in the U.S. in order to derive appropriate value from our product discovery and development programs. In January 2012, we announced we had acquired U.S. rights, and we assumed commercialization activities, for the branded antihypertensive product ACEON® (perindopril erbumine), an FDA-approved ACE inhibitor, from Servier's previous U.S. licensee. In addition to ACEON®, the acquisition includes a portfolio of three fixed-dose combination product candidates where perindopril is combined with other active ingredient(s), such as a calcium channel blocker.

ACEON® is subject to competition from multiple approved generic perindopril erbumine products, and our commercialization activities are limited to distribution and post marketing regulatory responsibilities as the current holder of the ACEON® New Drug Application, or NDA. We have contracted with third parties to manufacture and distribute ACEON®.

Proprietary Products

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

- **Gevokizumab** is a potent monoclonal antibody with the potential to improve the treatment of patients with a wide variety of inflammatory diseases. Gevokizumab binds strongly to IL-1 beta, a pro-inflammatory cytokine involved in the development of NIU and Behçet's uveitis, moderate-to-severe inflammatory acne, erosive osteoarthritis of the hand, cardiovascular disease, rheumatoid arthritis, gout and other diseases. By binding to IL-1 beta, gevokizumab inhibits the activation of the IL-1 receptor, thereby preventing the cellular signaling events that produce inflammation. Gevokizumab is a humanized IgG2 antibody. Based on its binding properties, specificity for IL-1 beta and its half-life (the time it takes for the amount administered to be reduced by one-half) in the body, gevokizumab may provide convenient dosing of once per month or less frequently.

  In December 2010, we entered into an agreement with Servier to jointly develop and commercialize gevokizumab in multiple indications.

- **XOMA Metabolic Activating and Sensitizing Antibodies.** Insulin receptor-activating antibodies, such as XMetA, are designed to provide long-acting insulin-like activity to diabetic patients who cannot make sufficient insulin, potentially reducing the number of insulin injections needed to control their blood glucose levels. Insulin receptor-sensitizing antibodies, such as XMetS, are designed to reduce insulin resistance and could enable diabetic patients to use their own insulin more effectively to control blood glucose levels.

  Studies presented on XMetA demonstrated it reduced fasting blood glucose levels and improved glucose tolerance in a mouse model of diabetes. After six weeks of treatment, mice treated with XMetA had a statistically significant reduction in HbA1c levels, a standard measure of average blood glucose levels over time, compared to the control mice. In addition, there was a statistically significant reduction in elevated non-HDL cholesterol levels.

  We studied XMetS in a mouse model of obesity-induced insulin resistance. In mice treated with XMetS, we saw enhanced insulin sensitivity and statistically significant improvements in fasting blood glucose levels and glucose tolerance as compared to the control mice. In addition, there was a statistically significant reduction in elevated non-HDL cholesterol levels.

- **XOMA 3AB** is a multi-antibody product designed to neutralize the most potent of the botulinum toxins, Type A, which causes paralysis and is a bioterrorism threat. Our anti-botulism program also includes additional product candidates and is the first of its kind to combine multiple human antibodies in each product candidate to target a broad spectrum of the most toxic botulinum toxins, including the three most toxic serotypes, 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 agents that treat botulism, 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 products. XOMA 3AB is currently in a Phase 1 study funded and conducted by NIAID.

- **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 evaluation of product in-licensing, in-kind product trades and acquisition opportunities.

Partnership Products

Historically, we have provided research and development collaboration services for world-class organizations, such as Novartis, Takeda, and Schering Plough Research Institute, a division of Schering Corporation, now a subsidiary of Merck & Co. (referred to herein as "Merck/Schering-Plough"), in pursuit of new antibody products. In more recent years, we have evolved our business focus from a service provider model to a proprietary product development model. However, we will continue to capitalize on collaborative partnership arrangements as opportunities arise. Below is a list of such collaborations:

- **Therapeutic Antibodies with Takeda:** Since 2006, Takeda has been a collaboration partner for therapeutic monoclonal antibody discovery and development against multiple targets selected by them. In February 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 may receive potential milestones and royalties on sales of antibody products in the future.

- **Therapeutic Antibodies with Novartis:** In November 2008, we restructured our product development collaboration with Novartis. Under the restructured agreement, Novartis received control over the two ongoing programs, HCD122 and LFA102, under the original product development collaboration entered into in 2004 with Novartis (then Chiron Corporation). We may, in the future, receive milestones and double-digit royalty rates for the programs and options to develop or receive royalties from four additional programs.

- **Therapeutic Antibodies with Merck/Schering- Plough**: Merck/Schering-Plough has been a collaboration partner since 2006 for therapeutic monoclonal antibody discovery and development against multiple targets selected by them. In January 2011, we successfully completed the services we had agreed to perform under the collaboration agreement with Merck/Schering-Plough.

Technologies and Technology Licenses

We have a unique set of antibody discovery, optimization and development technologies, including:

- ADAPT™ (Antibody Discovery Advanced Platform Technologies): proprietary phage display libraries integrated with yeast and mammalian display to enable antibody discovery;

- ModulX™: technology that enables positive and negative modulation of biological pathways using a new class of monoclonal antibodies called allosterically modulating antibodies; and

- OptimX™: technologies used for optimizing biophysical properties of antibodies, including affinity, immunogenicity, stability and manufacturability.

Technology Licenses

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

- **Antibody discovery technologies:** We use human antibody phage display libraries, integrated with yeast and mammalian display ("ADAPT™ Integrated Display"), in our discovery of therapeutic candidates, and we offer access to this platform, including novel phage libraries developed internally, as part of our collaboration business. We believe access to ADAPT™ Integrated Display offers a number of benefits to us and our collaboration partners, because it enables us to combine the diversity of phage libraries with accelerated discovery due to rapid IgG reformatting and FACS-based screening using yeast and mammalian display. This increases the probability of technical and business success in finding rare and unique functional antibodies directed to targets of interest.

- **ModulX™ technology:** ModulX™ technology allows modulation of biological pathways using monoclonal antibodies and offers insights into regulation of signaling pathways, homeostatic control, and disease biology. Using ModulX™, XOMA is generating a new class of product candidates with novel mechanisms of action that specifically alter the kinetics of interaction between molecular constituents (e.g. receptor-ligand). ModulX™ technology enables expanded target and therapeutic options, and offers a unique approach in the treatment of disease.

- **OptimX™ technologies:**

  Human Engineering™: HE™ is a proprietary humanization 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 HE™ antibody with preserved antigen binding, structure and function and with eliminated or greatly reduced immunogenicity. HE™ technology was used in development of gevokizumab and is used in the development of certain other antibody products.

  Targeted Affinity Enhancement™ ("TAE™"): TAE™ is a proprietary technology involving the assessment and guided substitution of amino acids in antibody variable regions, enabling efficient optimization of antibody binding affinity and selectivity modulation. TAE™ generates a comprehensive map of the effects of amino acid mutations in the CDR region likely to impact binding. The technology is utilized by XOMA scientists and has been licensed to a number of our collaborators.

- **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, primarily due to 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. Our scientists have developed bacterial expression technologies for producing antibodies and other recombinant protein products.

  We have granted more than 60 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.

  Many licensees of our bacterial cell expression technology have developed, or are in the process of developing, antibodies for which we may be entitled to future milestone payments and royalties on product sales. Under the terms of our license agreement with Pfizer Inc. ("Pfizer"), signed in 2007, we received an up-front cash payment of $30 million and from 2009 through 2011; we received milestone payments relating to four undisclosed product candidates. We also may be eligible for additional milestone payments aggregating up to $4.9 million relating to these four product candidates and low single-digit royalties on future sales of all products subject to this license. In addition, we may receive potential milestone payments aggregating up to $1.7 million for each additional qualifying product candidate. Our right to milestone payments expires on the later of the expiration of the last-to-expire licensed patent or the tenth anniversary of the effective date. Our right to royalties expires upon the expiration of the last-to-expire licensed patent.

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

Active Biotech AB	Dompe, s.p.a.	MorphoSys AG
Affimed Therapeutics AG	Dyax Corp.	Novartis AG
Affitech AS	Eli Lilly and Company	Pfizer Inc.
Applied Molecular Evolution, Inc. (now a subsidiary of Eli Lilly and Company)	Genentech, Inc. (now a member of the Roche Group)	Takeda Pharmaceutical Company Ltd.
Bayer Healthcare AG	Invitrogen Corporation	The Medical Research Council UCB S.A.
BioInvent International AB	MedImmune Ltd.	Verenium Corporation
Centocor Ortho Biotech (now a member of Johnson & Johnson)	Merck & Co., Inc.	Wyeth Pharmaceuticals Division (now a member of Pfizer Inc.)
Crucell Holland B.V. (now a member of Johnson & Johnson)	Mitsubishi Tanabe Pharma Corporation	ZymoGenetics, Inc. (now a member of Bristol-Myers Squibb Company)

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

Proprietary Product Summary:

The following table summarizes information related to the proprietary products we are currently developing:

Program	Description	Indication	Status	Developer
Gevokizumab	HE™ antibody to IL-1 beta	Non-infectious uveitis, Behçet's uveitis, moderate to severe inflammatory acne, erosive osteoarthritis of the hand, and cardio-metabolic diseases	Planned Phase 3 for non-infectious uveitis in 2012, planned Phase 3 for Behçet's uveitis, and planned Phase 2 cardiovascular study in 2012, ongoing Phase 2 for moderate to severe inflammatory acne, and planned initiation of erosive osteoarthritis of the hand and one additional proof-of-concept study in 2012	XOMA (in collaboration with Servier)
XMetA, XMetS	Fully human monoclonal antibodies	Diabetes, metabolic disorders	Preclinical	XOMA
XOMA 3AB	Therapeutic antibodies to multiple Type A botulinum neurotoxins	Botulism poisoning	Phase 1	XOMA (NIAID-funded)
Multiple preclinical programs	Fully human monoclonal antibodies to multiple disease targets, including TGF-beta and FGFR-4.	Autoimmune, cardio-metabolic, infectious, inflammatory, and oncological diseases	Preclinical	XOMA

Partnership Product Summary:

The following table summarizes information related to certain products that we currently are developing or have developed in the past, for which we may earn royalties on product sales in the future:

Program	Description	Indication	Status	Developer
FDC1	Perindopril arginine and amlodipine besylate	Hypertension	Phase 3	XOMA (partially funded by Servier)
HCD122 and LFA102	Fully human antibody to CD40 and HE™ antibody to prolactin receptor	Hematologic tumors; certain breast and prostate cancers; other undisclosed diseases	Phase 1 and 2; Phase 1	Novartis (fully funded)
Therapeutic antibodies	Fully human monoclonal antibodies to undisclosed disease targets	Undisclosed	Preclinical	Takeda (fully funded)
Therapeutic antibodies	HE™ monoclonal antibody to HGF	Non-small cell lung cancer; solid tumors and multiple myeloma	Phase 2; Phase 1	AVEO (fully funded)

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

Collaboration and Licensing Agreements

Servier -- Gevokizumab

We have entered into a license and collaboration agreement with Servier to jointly develop and commercialize gevokizumab in multiple indications, which provided a non-refundable upfront payment of $15 million, which we received in January 2011. Under the terms of the agreement, Servier has worldwide rights to cardiovascular disease and diabetes indications and rights outside the U.S. and Japan to all other indications, including Behçet's uveitis and other inflammatory and oncology indications. XOMA retains development and commercialization rights in the U.S. and Japan for all indications (including NIU, Behçet's uveitis and other inflammatory disease and oncology indications) except cardiovascular disease and diabetes. XOMA also has an option to reacquire rights to cardiovascular disease and diabetes indications from Servier in these territories (the "Cardiometabolic Indications Option"). Should we exercise the Cardiometabolic Indications Option, we will be required to pay Servier an option fee and partially reimburse their incurred development expenses. Each party has the right in certain circumstances to pursue development in indications not specified in the agreement, and in such event the other party will have the option to participate in such development in certain circumstances, including reimbursement of a portion of the developing party's expenses.

Under this agreement, Servier will fully fund activities to advance the global clinical development and future commercialization of gevokizumab in cardiovascular-related diseases and diabetes. Also, Servier will fund $50 million of future gevokizumab global clinical development and CMC expenses and 50% of further expenses for the Behçet's uveitis indication. Servier has agreed to include the NIU Phase 3 trial under the terms of the collaboration agreement for Behçet's uveitis discussed above as long as the EMA enables the results of the trial to be included in regulatory submissions in the EU.

In addition, under the agreement, we are eligible to receive a combination of Euro- and U.S. Dollar ("USD")-denominated, development and sales milestones for multiple indications aggregating to a potential maximum of approximately $460 million when converted using the December 31, 2011, Euro to USD exchange rate (the "12/31/11 Exchange Rate"), if XOMA reacquires cardiovascular and/or diabetes rights in the U.S. and Japan. If XOMA does not reacquire these rights, then the milestone payments aggregate to a potential maximum of approximately $800 million converted using the 12/31/11 Exchange Rate. Servier's obligation to pay development and commercialization milestones will continue for so long as Servier is developing or selling products under the agreement.

We also are eligible to receive royalties on gevokizumab sales, which are tiered based on sales levels and range from a mid-single digit to up to a mid-teens percentage rate. Our right to royalties with respect to a particular product and country will continue for so long as such product is sold in such country.

The collaboration will be carried out and managed by committees mutually established by the parties. In general, in the event of any disputes, each party will have decision-making authority over matters relating to its areas of responsibility and territory, but neither party will have unilateral decision-making rights if the decision would have a material adverse impact on the other party's rights in its territory. The agreement contains customary termination rights relating to matters such as material breach by either party, safety issues and patents. Servier also has a unilateral right to terminate the agreement on a country-by-country basis or in its entirety on six months' notice.

We also have entered into a loan agreement with Servier, which provided for an advance of up to €15.0 million. The loan was fully funded in January 2011, with the proceeds converting to approximately $19.5 million at the date of funding. The loan is secured by an interest in XOMA's intellectual property rights to all gevokizumab indications worldwide, excluding certain rights in the U.S. and Japan. Interest is calculated at a floating rate based on a Euro Inter-Bank Offered Rate ("EURIBOR") and is subject to a cap. The interest rate is reset semi-annually in January and July of each year. The interest rate for the initial interest period was 3.22%. The interest rate was reset to 3.83% for the six-month period from July 2011 through January 2012 and 3.54% for the six-month period from January 2012 through July 2012. Interest is payable semi-annually; however, the loan agreement provides for a deferral of interest payments over a period specified in the agreement. During the deferral period, accrued interest will be added to the outstanding principal amount for the purpose of interest calculation for the next six-month interest period. On the repayment commencement date, all unpaid and accrued interest shall be paid to Servier, and thereafter, all accrued and unpaid interest shall be due and payable at the end of each six-month period. The loan matures in 2016; however, after a specified period prior to final maturity, the loan is to be repaid (i) at Servier's option, by applying up to a significant percentage of any milestone or royalty payments owed by Servier under our collaboration agreement and (ii) using a significant percentage of any upfront, milestone or royalty payments we receive from any third-party collaboration or development partner for rights to gevokizumab in the U.S. and/or Japan. In addition, the loan becomes immediately due and payable upon certain customary events of default. At December 31, 2011, the outstanding principal balance under this loan was $19.4 million using the 12/31/11 Exchange Rate. Refer to *Management's Discussion and Analysis of Financial Condition and Results of Operations* for further information regarding our loan agreement with Servier.

Servier – U.S. Perindopril Franchise

Effective January 11, 2012, we entered into an amended and restated agreement with Servier for the U.S. commercialization rights to ACEON® (perindopril erbumine), an ACE inhibitor, and the development and commercialization in the U.S. of up to three product candidates combining perindopril with other cardiovascular drugs in fixed-dose combinations, or FDCs. This agreement, together with a related trademark license agreement, provides us with exclusive U.S. rights to ACEON® and the first FDC product candidate, which combines perindopril arginine and amlodipine besylate, a calcium channel blocker, and options on two additional FDC product candidates. Under the arrangement, Servier is required to provide relevant data, patent rights and know-how to us, and we are required to use diligent efforts to (i) maintain the ACEON® marketing approval and commercialize ACEON® in a manner intended to maintain sales for a period of three years and (ii) develop and commercialize the first FDC product candidate and, if our options are exercised, the additional FDC product candidates. The arrangement also provides that Servier will supply to us, and we will purchase exclusively from Servier, the active ingredients in ACEON® and the FDC product candidates, in some cases for a limited period.

In connection with this arrangement, we paid a $1.5 million license fee to Servier in the third quarter of 2010. We also are required to pay a royalty on ACEON® sales at a rate that is tiered based on sales levels and ranges from a mid-single digit to a mid-teen percentage rate. If approved, we also will pay a royalty on sales of the FDC product candidates in the mid-teen percentage rate. The FDC royalty rate is subject to reduction in the event of generic competition or if other intellectual property rights are required. We may be required to pay the following milestones: development milestones aggregating $8.5 million (assuming we exercise our options on the additional FDCs) and sales milestones of up to an aggregate $15.1 million, in each case for all of the FDC product candidates. We also may be required to make certain additional payments if the FDC product candidates receive FDA approval but certain minimum sales levels are not reached. We generally will be responsible for our development and commercialization expenses, but Servier has agreed to partially fund development of the first FDC product candidate, FDC1.

By its terms, the arrangement, including our obligation to pay royalties and/or development and sales milestones, will continue until the later of July 2018 or the expiration of the last-to-expire Servier patent licensed to us under the arrangement, unless terminated earlier. The agreement contains customary termination rights relating to matters, such as material breach by either party, insolvency of either party or safety issues. Each party also has the right to terminate the arrangement if the first FDC product candidate does not receive FDA approval by December 31, 2014. Servier also has the right to terminate the arrangement if certain aspects of our commercialization strategy are not successful and Servier does not consent to an alternative strategy or, as to the FDC product candidates, if we breach our obligations to certain of our service providers.

NIAID

In March 2005, we were awarded a $15 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 fully funded with Federal funds from NIAID under Contract No. HHSN266200500004C ("NIAID 1"). Final acceptance of the project was received in October 2006.

In July 2006, we were awarded a $16.3 million NIAID contract under Contract No. HHSN266200600008C/N01-Al-60008 ("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. Under this contract, we created and produced XOMA 3AB, an innovative injectable product comprised of three anti-type A botulinum neurotoxin monoclonal antibodies. This work was complete in the third quarter of 2010.

In September 2008, we were awarded a third NIAID contract for $65 million under Contract No. HHSN272200800028C ("NIAID 3") to continue development of our anti-botulinum antibody product candidates, including XOMA 3AB and additional product candidates. As part of the contract, we have developed, evaluated and produced the clinical supplies to support an IND filing with the FDA for XOMA 3AB and have conducted preclinical studies required to support human clinical trials. In May 2011, NIAID informed us that it was initiating a Phase 1 trial of XOMA 3AB.

In October 2011, we announced we had been awarded a fourth NIAID contract for up to $28.0 million over five years under Contract No. HHSN 272201100031C ("NIAID 4") to develop broad-spectrum antitoxins for the treatment of human botulism poisoning.

In January 2012, we announced that we will complete NIAID biodefense contracts currently in place but will not actively pursue future contracts. Should the government choose to acquire XOMA 3AB or other biodefense products in the future, we expect to be able to provide these antibodies through an outside manufacturer.

SRI International

In the third quarter of 2009, we began work on two biodefense subcontract awards from SRI International, including a $2.1 million award to develop novel antibody drugs against the virus that causes SARS and a $2.2 million award to develop a novel antibody, known as F10, that has been shown to neutralize group 1 influenza A viruses, including the H1N1 and H5N1 strains. The subcontract awards were funded through NIAID. In September 2011, we successfully completed the contract services we had agreed to perform under the subcontract awards from SRI International.

Takeda

In November 2006, we entered into a fully funded collaboration agreement with Takeda for therapeutic monoclonal antibody discovery and development under which we agreed to discover and optimize therapeutic antibodies against multiple targets selected by Takeda. Takeda agreed to 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 is responsible for clinical trials and commercialization of drugs after an IND submission and is granted the right to manufacture once a product enters into Phase 2 clinical trials. We have completed a technology transfer and do not expect to perform any further research and development services under this program. From 2009 through 2011, we received milestone payments relating to one currently active program.

Under the terms of this agreement, we may receive milestone payments aggregating up to $19.0 million relating to one undisclosed product candidate and low single-digit royalties on future sales of all products subject to this license. In addition, in the event Takeda were to develop additional future qualifying product candidates under the terms of our agreement, we would be eligible for milestone payments aggregating up to $20.75 million for each such qualifying product candidate. Our right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation of all research and development activities with respect to all program antibodies, collaboration targets and/or collaboration products. Our right to royalties expires on the later of 13.5 years from the first commercial sale of each royalty-bearing discovery product or the expiration of the last-to-expire licensed patent.

In February 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 may receive milestones of up to $3.25 million per discovery product candidate and low single-digit royalties on future sales of all antibody products subject to this license. Our right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation of all research and development activities with respect to all program antibodies, collaboration targets and/or collaboration products. Our right to royalties expires on the later of 10 years from the first commercial sale of such royalty-bearing discovery product, or the expiration of the last-to-expire licensed patent.

Novartis

In November 2008, we restructured our product development collaboration with Novartis, which involved six development programs including the HCD122 program. Novartis is recruiting patients for a Phase 1b follicular lymphoma trial using HCD122 (lucatumumab), a fully human anti-CD40 antagonist antibody malignancies. 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. Novartis has initiated a Phase 1 trial of LFA102, a HE™ antibody to prolactin receptor, in patients with metastatic breast cancer or hormone refractory prostate cancer.

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 royalty rates ranging from 10% to 20% for two ongoing product programs, HCD122 and LFA102; and has provided us with options to develop or receive royalties on four additional programs. In exchange, Novartis has control over the HCD122 and LFA102 programs, as well as the right to expand the development of these programs into additional indications outside of oncology. As part of the agreement, Novartis paid us for all project costs incurred after July 1, 2008. Our right to milestone payments expires at such time as no collaboration product or former collaboration product is being developed or commercialized anywhere in the world and no royalty-style payments on these products are due. Our right to royalty-style payments expires on the later of the expiration of any licensed patent covering each product or 20 years from the launch of each product that is produced from a cell line provided to Novartis by XOMA.

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 revenue, 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. The secured note agreement with Novartis, which was executed in May 2005, is due and payable in full in June 2015. At December 31, 2011, the outstanding principal balance under this note agreement totaled $14.0 million, and pursuant to the terms of the arrangement as restructured in November 2008, we will not make any additional borrowings on the Novartis note. 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 2008, we entered into a Manufacturing and Technology Transfer Agreement with Novartis, effective July 1, 2008. Under this agreement, XOMA was 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, which was fully funded by Novartis, was completed in the third quarter of 2009.

Arana

In September 2009, we entered into an antibody discovery collaboration with Arana Therapeutics Limited (“Arana”), a wholly-owned subsidiary of Cephalon, Inc., now Teva Pharmaceutical Industries Ltd., involving multiple proprietary XOMA antibody research and development technologies, including a new antibody phage display library and a suite of integrated information and data management systems. Arana agreed to pay us a fee of $6.0 million, of which we received $4.0 million in the third quarter of 2009 and $2.0 million in the third quarter of 2010. Also, we may be entitled to future milestone payments, aggregating up to $3.0 million per product, and low single-digit royalties on product sales. Our right to milestone payments expires on the later of the receipt of payment from Arana of the last amount to be paid under the agreement, the cessation by Arana of the use of all research and development technologies or the cessation by Arana of the exercise of the patent rights granted to them. Our right to royalties expires five years from the first commercial sale of each royalty-bearing product.

Kaketsuken

In October 2009, we entered into an antibody discovery collaboration with The Chemo-Sero-Therapeutic Research Institute, a Japanese research foundation known as Kaketsuken, involving multiple proprietary XOMA antibody research and development technologies, including a new antibody phage display library and a suite of integrated information and data management systems. Kaketsuken agreed to pay us a fee of $8.0 million, of which we received $6.0 million in the fourth quarter of 2009 and $2.0 million in the fourth quarter of 2010. Also, we may be entitled to future milestone payments, aggregating up to $0.2 million per product, and low single-digit royalties on product sales. Our right to milestone payments expires upon the receipt of payment from Kaketsuken of the last amount to be paid pursuant to the agreement. Our right to royalties expires 15 years from the first commercial sale of each royalty-bearing product.

AVEO Pharmaceuticals, Inc. ("AVEO")

In April 2006, we entered into an agreement with AVEO to utilize our HE™ 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 Engineered™ 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 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 may be required to pay XOMA annual maintenance fees, additional development milestone payments aggregating up to $6.3 million and low single-digit royalties on product sales in the future. Our right to milestone payments expires upon full satisfaction of all financial obligations of AVEO pursuant to the agreement. Our right to royalties expires on the later of 15 years from the first commercial sale of each royalty-bearing product or the expiration of the last-to-expire licensed patent.

In April 2007, Merck/Schering-Plough 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 assigned its entire right, title and interest in, to and under its manufacturing agreement with XOMA to Merck/Schering-Plough. In the third quarter of 2010, AVEO regained its worldwide rights from Merck/Schering-Plough to develop and commercialize AV-299 and other anti-HGF molecules. In June 2011, AVEO announced that patient enrollment has been completed in its ongoing Phase 2 trial evaluating AV-299 (ficlatuzumab) in combination with gefitinib as first-line therapy for patients with wild-type and mutant epidermal growth factor receptor non-small cell lung cancer.

Merck/Schering-Plough

In May 2006, we entered into a fully funded collaboration agreement with Merck/Schering-Plough for therapeutic monoclonal antibody discovery and development. Under the agreement, Merck/Schering-Plough made up-front, annual maintenance and milestone payments to us, funded our research and development activities related to the agreement and would have paid royalties on sales of products resulting from the collaboration. During the collaboration, we discovered therapeutic antibodies against multiple targets selected by Merck/Schering-Plough using multiple human antibody phage display libraries, optimized antibodies through affinity maturation or other protein engineering, used our proprietary HE™ technology to humanize antibody candidates generated by hybridoma techniques, performed preclinical studies to support regulatory filings, developed cell lines and production processes and produced antibodies for initial clinical trials. Merck/Schering-Plough selected the first target at the inception of the agreement and, in December 2006, exercised its right to initiate the additional discovery and development programs. In January 2011, we completed the services we had agreed to perform under the collaboration agreement with Merck/Schering-Plough.

UCB

Celltech Therapeutics Ltd., now UCB Celltech, a branch of UCB, utilized our bacterial cell expression technology under license 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 moderate-to-severe rheumatoid arthritis in adults. The license provides for a low-single digit royalty on sales of CIMZIA® in countries where our bacterial cell expression technology is patented, which includes the U.S. and Canada, until the expiration of the last-to-expire licensed patent. In August 2010, we sold our royalty interest in CIMZIA® to OrbiMed Advisors, LLC for gross proceeds of $4.0 million. We no longer receive royalties on sales of CIMZIA®.

Genentech

In April 1996, we entered into a collaboration agreement with Genentech, Inc., a wholly-owned member of the Roche Group (referred to herein as "Genentech") for the development of RAPTIVA®. In March 2003, we entered into amended agreements which called for us to share in the development costs and called for Genentech to finance our share of development costs via a convertible subordinated loan. Under the loan agreement, upon FDA approval of the product, which occurred in October 2003, we elected to pay $29.6 million of the development loan in convertible preference shares, which were convertible into approximately 0.3 million shares of common stock at a price of $116.25 per share. In April 2011, the convertible preference shares were converted by Genentech. The $29.6 million liquidation preference associated with the convertible preference shares was eliminated as a result of this conversion.

In January 2005, we restructured our arrangement with Genentech on RAPTIVA® under which we were 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 was responsible for all operating and development costs associated with the product. In the first half of 2009, RAPTIVA® was withdrawn from the commercial drug markets and royalties ceased.

Genentech utilized our bacterial cell expression technology under license in the development of LUCENTIS® for the treatment of neovascular wet age-related macular degeneration. LUCENTIS® was approved by the FDA in June 2006 and in the European Union in January 2007. We were entitled to receive a low-single digit royalty on worldwide sales of LUCENTIS®. In the third quarter of 2009, we sold our LUCENTIS® royalty interest to Genentech for $25 million, including royalty revenue from the second quarter of 2009. We no longer receive royalties on sales of LUCENTIS®.

Financing Agreements

Outstanding Warrants

In December of 2011, we issued warrants in connection with a debt financing, which entitle the holder to purchase up to an aggregate of 263,158 unregistered shares of XOMA common stock at an exercise price equal to $1.14 per share, are immediately exercisable and will expire on December 30, 2016. In February of 2010, we issued warrants to purchase 1,260,000 shares of XOMA's common stock in connection with an underwritten offering, which are exercisable beginning six months and one day after issuance and have a five-year term and an exercise price of $10.50 per share. In June of 2009, we issued warrants to certain institutional investors as part of a registered direct offering, which represent the right to acquire an aggregate of up to 347,826 shares of common stock over a five year period beginning December 11, 2009 at an exercise price of $19.50 per share. As of December 31, 2011, all of the foregoing warrants were outstanding.

ATM Agreements

In the third quarter of 2010, we entered into an At Market Issuance Sales Agreement (the "2010 ATM Agreement"), with Wm Smith & Co. and McNicoll, Lewis & Vlak LLC (the "Agents"), under which we could sell shares of our common stock from time to time through the Agents, as our agents for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under our registration statement on Form S-3 (File No. 333-148342) filed with the Securities and Exchange Commission ("SEC") on December 26, 2007 and declared effective by the SEC on May 29, 2008. The Agents could sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker. The Agents also could sell the shares in privately negotiated transactions, subject to our prior approval. We paid the Agents, collectively, a commission equal to 3% of the gross proceeds of the sales price of all shares sold through them as sales agents under the 2010 ATM Agreement. From the inception of the 2010 ATM Agreement through May of 2011, we sold a total of 7,560,862 shares of common stock under this agreement for aggregate gross proceeds of $34.0 million, including 821,386 shares sold in 2011 for aggregate gross proceeds of $4.4 million. Total offering expenses incurred related to sales under the 2010 ATM Agreement from inception to May of 2011 were $1.0 million, including $0.1 million incurred in 2011. In May of 2011, the 2010 ATM Agreement expired by its terms, and there will be no further issuances under this facility.

On February 4, 2011, we entered into an At Market Issuance Sales Agreement (the "2011 ATM Agreement"), with McNicoll, Lewis & Vlak LLC (now known as MLV & Co. LLC, "MLV"), under which we may sell shares of our common stock from time to time through MLV, as our agent for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under our registration statement on Form S-3 (File No. 333-172197) filed with the SEC on February 11, 2011, and amended on March 10, 2011, June 3, 2011 and January 3, 2012, which was most recently declared effective by the SEC on January 17, 2012. MLV may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker. MLV also may sell the shares in privately negotiated transactions, subject to our prior approval. We will pay MLV a commission equal to 3% of the gross proceeds of the sales price of all shares sold through it as sales agent under the 2011 ATM Agreement. From the inception of the 2011 ATM Agreement through December 31, 2011, we sold a total of 5,286,952 shares of common stock under this agreement for aggregate gross proceeds of $11.3 million. Total offering expenses incurred related to sales under the 2011 ATM Agreement from inception to December 31, 2011, were $0.3 million. Subsequent to December 31, 2011, through March 12, 2012, 2,285,375 additional shares of common stock were sold through MLV for aggregate gross proceeds of $3.3 million. Total offering expenses related to these sales were approximately $0.1 million.

General Electric Capital Corporation Term Loan

In December 2011, we entered into a loan agreement (the "Loan Agreement") with General Electric Capital Corporation ("GECC"), under which GECC agreed to make a term loan in an aggregate principal amount of $10 million (the "Term Loan") to XOMA (US) LLC, a wholly owned subsidiary of the Company, and upon execution of the Loan Agreement, GECC funded the Term Loan. The Term Loan is guaranteed by the Company and its two other principal subsidiaries, XOMA Ireland Limited and XOMA Technology Ltd. As security for their obligations under the Loan Agreement, the Company, XOMA (US) LLC, XOMA Ireland Limited and XOMA Technology Ltd. each granted a security interest pursuant to a guaranty, pledge and security agreement in substantially all of their existing and after-acquired assets, excluding their intellectual property assets (such as those relating to our gevokizumab and anti-botulism products). The proceeds of the Term Loan, after payment of lender fees and expenses, were approximately $8.7 million, which we anticipate will be used for working capital and general corporate purposes.

The Term Loan accrues interest at a fixed rate of 11.71% per annum. We are required to repay the principal amount of the Term Loan over a period of 42 consecutive equal monthly installments of principal and accrued interest, commencing on January 4, 2012, and thereafter on the first calendar day of each succeeding month. The Term Loan matures and is due and payable in full on June 30, 2015, and at maturity of the Term Loan, we will make an additional payment equal to 5% of the Term Loan ("Final Payment Fee").

The Loan Agreement contains customary representations and warranties and customary affirmative and negative covenants, including restrictions on the ability to incur indebtedness, grant liens, make investments, dispose of assets, enter into transactions with affiliates and amend existing material agreements, in each case subject to various exceptions. In addition, the Loan Agreement contains customary events of default that entitle GECC to cause any or all of the indebtedness under the Loan Agreement to become immediately due and payable. The events of default include any event of default under a material agreement or certain other indebtedness. Upon an event of default, the Term Loan and other obligations under the Loan Agreement will, at the election of GECC, bear interest from and after the occurrence and during the continuation of an event of default at a rate equal to the lesser of 5.0% above the stated rate of interest or the maximum rate allowed by law.

We may voluntarily prepay the Term Loan in full, but not in part, and any voluntary and certain mandatory prepayments are subject to a prepayment premium of 3% in the first year of the loan, 2% in the second year and 1% thereafter, although mandatory prepayments in connection with entering into certain exclusive licenses, granting certain negative pledges or incurring certain collaboration-related indebtedness will not be subject to such prepayment premium. We will also be required to pay the Final Payment Fee in connection with any voluntary or mandatory prepayment.

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 2011, our research and development expenses were $68.1 million compared with $77.4 million in 2010 and $58.1 million in 2009.

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 2011, research and development expenses relating to internal projects were $24.4 million compared with $52.0 million in 2010 and $35.1 million in 2009. In 2011, research and development expenses related to collaborative and contract arrangements were $43.7 million compared with $25.4 million in 2010 and $23.0 million in 2009. Refer to *Management's Discussion and Analysis of Financial Condition and 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 antibody-based technologies is intense and is 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.

The ACE inhibitor market is highly genericized with all options being available generically. The number one product within the ACE inhibitor category is lisinopril, formerly marketed by Astra-Zeneca Pharmaceuticals LP under the brands ZESTRIL® or Prinivil®. ACE inhibitors represent the largest category of anti-hypertensive medications and are considered a first-line treatment option by the majority of the medical guidelines. There are multiple options in the fixed-dose combination market combining ACE inhibitors with diuretics, but there are few options combining an ACE inhibitor with a calcium channel blocker. Current options with a calcium channel blocker are benazepril/amlodipine, formerly marketed by Novartis Pharmaceuticals as Lotrel®, and trandolapril/verapamil, formerly marketed by Abbot Laboratories as Tarka®.

ACE inhibitors are a segment of the larger Renin Angiotensin Aldosterone System, or RAAS market. This market is comprised of ACE inhibitors and angiotensin receptor blockers (ARB). Both classes act on the RAAS in different ways to control blood pressure. The most successful of the ARBs is valsartan, trade name Diovan®, which is marketed by Novartis. This compound, along with other ARBs, has been developed in multiple fixed-dose combination products: with a diuretic, a calcium channel blocker (amlodipine) and as a triple combining all three. Our perindopril fixed dose combination franchise, if approved, will compete directly with fixed-dose combinations containing an ACE inhibitor and secondarily with fixed-dose combinations containing an ARB.

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
Gevokizumab	Abbott Biovitrum AB Eli Lilly and Company Lux Biosciences, Inc. MedImmune Novartis AG Regeneron Pharmaceuticals, Inc. Santen Pharmaceutical Co., Ltd.
ACEON **FDCs**	Generic manufacturers Novartis AG Takeda Pharmaceutical Company Ltd. Daiichi Sankyo, Inc.
XOMA 3AB	Cangene Corporation Emergent BioSolutions, Inc.

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 primarily are 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 biological products (also referred to as biologics), and some are classified as drugs. Approval of a biologic or drug for commercialization requires licensure of the product and the manufacturing facilities. The review of therapeutic biological products and drugs is carried out in the U.S. by the FDA's Center for Drug Evaluation and Research.

The FDA regulatory process is carried out in several phases. Prior to beginning human clinical testing of a proposed new biological 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 also may be appropriate in specific circumstances.

Following completion of clinical trials, a Biologics Licensing Application ("BLA"), in the case of a biological product, or a New Drug Application ("NDA"), in the case of a drug, is submitted to the FDA to request marketing approval. Internal FDA committees are formed to 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 raises questions, and the applicant submits additional information. 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 resolved satisfactorily and labeling is established, the FDA issues a license for the product and for the manufacturing facility, thereby authorizing commercial distribution.

The FDA and other regulatory agencies have 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 or other regulatory agencies will be satisfied with our submissions or whether the FDA or other regulatory agencies will raise questions that may delay or preclude product approval or manufacturing facility approval. In light of this discretion and the complexities of the scientific, medical and regulatory environment, our interpretation or understanding of the FDA's or other regulatory agencies' requirements, guidelines or expectations may prove incorrect, which could also further delay or increase the cost of the approval process. As additional clinical data is accumulated, it will be submitted to the FDA and other regulatory agencies, as appropriate, and may have a material impact on the 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 EMA. The EMA 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 Committee for Medicinal Products for Human Use ("CHMP"), which is the expert scientific committee of the EMA.

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 U.S., the term "rare disease or condition" means any disease or condition that affects less than 200,000 persons in the U.S. Applications for United States orphan drug status are evaluated and granted by the Office of Orphan Products Development ("OOPD") of the FDA. In the U.S., 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 EMA'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 U.S. 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 consistent policy regarding the breadth of allowed claims has not 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 in the U.S., Europe and certain other countries for our gevokizumab program, the longest of which expires in 2027. U.S. Patent Nos. 7,531,166 and 7,582,742 cover gevokizumab and other antibodies and antibody fragments with similar binding properties for IL-1 beta, as well as nucleic acids, expression vectors and production cell lines for the manufacture of such antibodies and antibody fragments. U.S. Patent Nos. 7,744,865, 7,744,866 and 7,943,121 relate to additional IL-1 beta binding antibodies and binding fragments. U.S. Patent No. 7,695,718 relates to methods of treating Type 2 diabetes with high affinity antibodies and antibody fragments that bind to IL-1 beta, including gevokizumab. U.S. Patent No. 7,695,717 relates to methods of treating certain IL-1 related inflammatory diseases, including rheumatoid arthritis and osteoarthritis, with gevokizumab and other antibodies and antibody fragments with similar binding properties for IL-1 beta. U.S. Patent No. 7,829,093 relates to methods of treating diabetes mellitus ("Type 1") with gevokizumab or other IL-1 beta antibodies and fragments having similar binding properties. U.S. Patent No. 7,829,094 relates to methods of treating certain cancers with gevokizumab or other IL-1beta antibodies and fragments having similar binding properties, with the cancer being selected from multiple myeloma, acute myelogenous leukemia and chronic myelogenous leukemia. U.S. Patent No. 7,988,968 relates to methods of treating certain IL-1beta related coronary conditions, including myocardial infarction, with gevokizumab or other IL-1beta antibodies and fragments having similar binding properties, Also, patents have been granted by the European Patent Office and certain other countries for gevokizumab, as well as nucleic acids, expression vectors and production cell lines for the manufacture of gevokizumab.

We have exclusively in-licensed a portfolio of patents and applications covering anti-botulinum toxin antibodies from the Regents of the University of California. These include U.S. Patent Nos. 7,700,738 and 7,999,079, covering certain XOMA 3AB antibodies, the longest of which expire in 2026.

We have exclusively in-licensed the U.S. rights to a portfolio of patents and applications related to the perindopril franchise from Les Laboratoires Servier. These include U.S. Patent No. 6,696,481, covering an arginine salt of perindopril and its hydrates, which expires in 2023.

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 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 relate to 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, 7,396,661, 7,972,811 and 7,977,068 relate to particular eukaryotic signal sequences and their use in methods for prokaryotic expression of polypeptides and for preparing polypeptide display libraries. 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 2008 or earlier.

We also have established a portfolio of patents related to our mammalian expression technology, including U.S. Patent Nos. 7,192,737, 7,993,915 and 7,794,976, which relate to methods of producing recombinant proteins using particular vectors, including expression vectors comprising multiple copies of a transcription unit encoding a polypeptide separated by at least one selective marker gene.

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

A number of risks are inherent in international operations. Foreign regulatory agencies often establish standards different from those in the U.S. 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 12 to the December 31, 2011, Financial Statements: Concentration of Risk, Segment and Geographic Information.*

Concentration of Risk

In 2011, Servier and NIAID accounted for 61% and 32% of our total revenue, neither of which represents a related party to XOMA. These key customers accounted for 57% and 43% of the accounts receivable balance at December 31, 2011. The loss of one or more of these customers could have a material effect on our business and financial condition.

In 2010, NIAID, UCB, and Takeda each accounted for more than 10% of our total revenue, none of which represents a related party to XOMA. These key customers accounted for 87% of our total revenue in 2010 and NIAID was responsible for 23% of the accounts receivable balance at December 31, 2010. Servier accounted for an additional 72% of the accounts receivable balance at December 31, 2010. The loss of one or more of these customers could have a material effect on our business and financial condition.

In 2009, Takeda and Genentech each accounted for more than 10% of our total revenue, none of which represents a related party to XOMA. These key customers accounted for 65% of our total revenue in 2009, but were not responsible for any of the accounts receivable balance at December 31, 2009. NIAID, Arana, and Kaketsuken accounted for 90% of the accounts receivable balance at December 31, 2009.

Organization

We were incorporated in Delaware in 1981 and became a Bermuda exempted company in December 1998. Effective December 31, 2011, we changed our jurisdiction of incorporation from Bermuda to Delaware and changed our name to XOMA Corporation. 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 when referring to a time or period after December 31, 1998 and before December 31, 2011, such terms refer to XOMA Ltd., a Bermuda company.

Employees

As of March 12, 2012, we employed 188 full-time employees, none of which are unionized, at our facilities, principally in Berkeley, California. As of April 6, 2012, upon the completion of our workforce reduction, we will employ 158 employees. Our employees primarily are 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 (510) 204-7200 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 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 operations.

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 we raise additional funds by issuing equity securities, our stockholders will experience dilution. Any debt financing or additional equity that we raise may contain terms that are not favorable to our stockholders or us. If we raise additional funds through collaboration and licensing arrangements with third parties, we may be required to relinquish some rights to our technologies or our product candidates, grant licenses on terms that are not favorable to us or enter into a collaboration arrangement for a product candidate at an earlier stage of development or for a lesser amount than we might otherwise choose.

Additional funds may not be available when we need them on terms that are acceptable to us, or at all. If adequate funds are not available on a timely basis, we may:

- terminate or delay clinical trials for one or more of our product candidates;
- further reduce our headcount and capital or operating expenditures; or
- curtail our spending on protecting our intellectual property.

We finance our operations primarily through our multiple revenue streams resulting from discovery and development collaborations, biodefense contracts, the licensing of our antibody technologies, and sales of our common stock. In September 2009, we sold our royalty interest in LUCENTIS® to Genentech, Inc., a wholly-owned member of the Roche Group ("Genentech") for gross proceeds of $25.0 million, including royalty revenue from the second quarter of 2009. These proceeds, along with other funds, were used to fully repay our loan from Goldman Sachs Specialty Lending Holdings, Inc. ("Goldman Sachs"). As a result, we no longer have a royalty interest in LUCENTIS®. In August 2010, we sold our royalty interest in CIMZIA® for gross proceeds of $4.0 million, including royalty revenue from the second quarter of 2010. As a result, we no longer have a royalty interest in CIMZIA®. We received revenue from this royalty interest of $0.5 million in 2010 and $0.5 million in 2009.

Based on our cash reserves and anticipated spending levels, revenue from collaborations including our gevokizumab (formerly referred to as XOMA 052) collaboration agreement with Les Laboratoires Servier ("Servier"), funding from our loan agreements with Servier and General Electric Capital Corporation ("GECC"), our recent public offering, biodefense contracts and licensing transactions and other sources of funding that we believe to be available, we believe that we have sufficient cash resources to meet our anticipated net cash needs into 2014. 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 or otherwise have a material adverse impact on our ability to finance our continued operations. 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,
- 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, collaboration and development partners, as well as by our operating costs.

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 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 have led 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.

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. Although as of December 31, 2011, we have received the full amount of proceeds from money market fund investments, an inability to retrieve funds from money market fund investments as they mature in the future could have a material and adverse impact on our business, results of operations and cash flows.

Our cash and cash equivalents are maintained in highly liquid investments with remaining maturities of 90 days or less 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 since December 31, 2011, 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 our ability to meet our financing objectives.

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, 2011, we had an accumulated deficit of $886.1 million.

For the year ended December 31, 2011, we had a net loss of approximately $32.7 million or $1.04 per share of common stock (basic and diluted). For the year ended December 31, 2010, we had a net loss of approximately $68.8 million or $3.69 per share of common stock (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 have received negative results from certain of our clinical trials, and we face uncertain results of other clinical trials of our product candidates.

In March 2011, we announced that our Phase 2b trial of gevokizumab in Type 2 diabetes in 421 patients did not achieve the primary endpoint of reduction in hemoglobin A1c ("HbA1c") after six monthly treatments with gevokizumab compared to placebo. In June 2011, we announced top line trial results from our six-month Phase 2a trial of gevokizumab in Type 2 diabetes in 74 patients, and there were no differences in glycemic control between the drug and placebo groups as measured by HbA1c levels.

Many of our product candidates, including gevokizumab 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.

The timing of the commencement, continuation and completion of clinical trials may be subject to significant delays relating to various causes, including completion of preclinical testing and earlier-stage clinical trials in a timely manner, 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. Regardless of the initial size or relative complexity of a clinical trial, the costs of such trial may be higher than expected due to increases in duration or size of the trial, changes in the protocol pursuant to which the trial is being conducted, additional or special requirements of one or more of the healthcare centers where the trial is being conducted, changes in the regulatory requirements applicable to the trial or in the standards or guidelines for approval of the product candidate being tested or for other unforeseen reasons. 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 Investigational New Drug application ("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, Food and Drug Administration ("FDA") officials or officials from foreign regulatory authorities could interpret the data in different ways than we or our collaboration or development 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 collaboration or development 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.

In June 2011, Novartis announced that an advisory committee of the FDA voted in favor of the overall efficacy but not the overall safety of Ilaris® (canakinumab), a fully-human monoclonal antibody that, like gevokizumab, targets IL-1 beta, to treat gouty arthritis attacks in patients who cannot obtain adequate relief with non-steroidal anti-inflammatory drugs or colchicine. Novartis also stated that in two pivotal Phase 3 studies of canakinumab in gouty arthritis patients, a higher percentage of patients had adverse events with canakinumab than with the standard treatment for gouty arthritis, and more serious adverse events were reported by patients treated with canakinumab compared to patients receiving the standard treatment. In August 2011, Novartis announced that the FDA had issued a Complete Response letter requesting additional information, including clinical data to evaluate the benefit risk profile of canakinumab in refractory gouty arthritis patients. We have not yet determined what impact, if any, these developments may have on the development of gevokizumab.

If our therapeutic 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 (including gevokizumab, perindopril arginine in combination with amlodipine besylate ("FDC1") and XOMA 3AB) 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 many of our product candidates (including gevokizumab and XOMA 3AB) will be regulated by the FDA as biologics and that some of our product candidates (including FDC1) will be regulated by the FDA as drugs. 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 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 ("NDA") for a drug, and in the form of a Biologic License Application ("BLA") for a biological product, requesting approval to commence commercial sales. In responding to an NDA or BLA, 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 an NDA, 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 and other regulatory agencies have 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 or other regulatory agencies will be satisfied with our or our collaborators' submissions or whether the FDA or other regulatory agencies will raise questions which may be material and delay or preclude product approval or manufacturing facility approval. In light of this discretion and the complexities of the scientific, medical and regulatory environment, our interpretation or understanding of the FDA's or other regulatory agencies' requirements, guidelines or expectations may prove incorrect, which could also further delay or increase the cost of the approval process. As we accumulate additional clinical data, we will submit it to the FDA and other regulatory agencies, as appropriate and such data may have a material impact on the approval process.

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.

Even once approved, a product may be subject to additional testing or significant marketing restrictions, its approval may be withdrawn or it may be voluntarily taken off the market.

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. As the current holder of the ACEON® NDA, we are required to submit annual reports to the FDA and are responsible for pharmacovigilance activities related to the product.

Even for approved products, 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.

Furthermore, a marketing approval of a product may be withdrawn by the FDA, the European Commission or another regulatory agency or such a product may be voluntarily withdrawn by the company marketing it based, for example, on subsequently-arising safety concerns. In February 2009, the European Medicines Agency ("EMA") announced that it had recommended suspension of the marketing authorization of RAPTIVA® in the European Union and that its Committee for Medicinal Products for Human Use ("CHMP") had concluded that the benefits of RAPTIVA® no longer outweigh its risks because of safety concerns, including the occurrence of progressive multifocal leukoencephalopathy ("PML") in patients taking the medicine. In the second quarter of 2009, Genentech announced and carried out a phased voluntary withdrawal of RAPTIVA® from the U.S. market, based on the association of RAPTIVA® with an increased risk of PML.

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

We are authorized to issue, without stockholder approval, 1,000,000 shares of preferred stock, of which none were issued and outstanding as of March 9, 2012, which may give other stockholders dividend, conversion, voting, and liquidation rights, among other rights, which may be superior to the rights of holders of our common stock. In April 2011, the 2,959 Series B convertible preference shares previously issued to Genentech were converted by Genentech into 254,560 shares of common stock. In addition, we are authorized to issue, generally without stockholder approval, up to 92,666,666 shares of common stock, of which 68,043,103 were issued and outstanding as of March 12, 2012. If we issue additional equity securities, the price of our common stock may be materially and adversely affected.

In the third quarter of 2009, we had entered into an At Market Issuance Sales Agreement (the "2009 ATM Agreement"), with Wm Smith & Co. ("Wm Smith"), under which we could sell up to 1.7 million shares of our common stock from time to time through Wm Smith, as the agent for the offer and sale of the shares. Wm Smith could sell these shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), including but not limited to sales made directly on The NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker. Wm Smith could also sell the shares in privately negotiated transactions, subject to our approval. From the inception of the 2009 ATM Agreement through October 27, 2010, we sold a total of 1,666,666 shares of common stock through Wm Smith, constituting all of the shares available for sale under the agreement, for aggregate gross proceeds of $12.2 million.

In February 2010, we completed an underwritten offering of 2.8 million units, with each unit consisting of one share of our common stock and a warrant to purchase 0.45 of a share of common stock, for gross proceeds of approximately $21.0 million, before deducting underwriting discounts and commissions and estimated offering expenses of $1.7 million. The investors purchased the units at a price of $7.50 per unit. The warrants, which represent the right to acquire an aggregate of up to 1.26 million shares of common stock, are exercisable beginning six months and one day after issuance and have a five-year term and an exercise price of $10.50 per share.

In July 2010, we entered into a common stock purchase agreement with Azimuth Opportunity, Ltd. ("Azimuth"), pursuant to which we obtained a committed equity line of credit facility under which we could sell up to $30.0 million of our registered shares of common stock to Azimuth over a 12-month period, subject to certain conditions and limitations. In August 2010, we sold a total of 3,421,407 shares under this facility for aggregate proceeds of $14.2 million, representing the maximum number of shares that could be sold under this facility.

In October of 2010, we entered into an At Market Issuance Sales Agreement (the "2010 ATM Agreement"), with Wm Smith and McNicoll, Lewis & Vlak LLC (the "Agents"), under which we could sell shares of our common stock from time to time through the Agents, as our agents for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under our registration statement on Form S-3 (File No. 333-148342) filed with the Securities and Exchange Commission (the "SEC") on December 26, 2007 and declared effective by the SEC on May 29, 2008. The Agents could sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker. The Agents could also sell the shares in privately negotiated transactions, subject to our prior approval. From the inception of the 2010 ATM Agreement through May of 2011, we sold a total of 7.6 million shares of common stock under this agreement for aggregate gross proceeds of $34.0 million, including 0.8 million shares sold in 2011 for aggregate gross proceeds of $4.4 million. In May of 2011, the 2010 ATM Agreement expired by its terms, and there will be no further issuances under this facility.

On February 4, 2011, we entered into an At Market Issuance Sales Agreement (the "2011 ATM Agreement") with McNicoll, Lewis & Vlak LLC (now known as MLV & Co. LLC, "MLV"), under which we may sell shares of our common stock from time to time through the MLV, as our agent for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under our registration statement on Form S-3 (File No. 333-172197) filed with the SEC on February 11, 2011 and amended on March 10, 2011, June 3, 2011 and January 3, 2012, which was most recently declared effective by the SEC on January 17, 2012. MLV may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker. MLV may also sell the shares in privately negotiated transactions, subject to our prior approval. From the inception of the 2011 ATM Agreement through March 12, 2012, we sold a total of 7,572,327 shares of common stock under this agreement for aggregate gross proceeds of $14.6 million.

On March 9, 2012, we completed an underwritten public offering of 29,669,154 shares of our common stock, and accompanying warrants to purchase one half of a share of common stock for each share purchased, at a public offering price of $1.32 per share. Total gross proceeds from the offering were approximately $39.2 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $3.0 million. The warrants, which represent the right to acquire an aggregate of up to 14,834,577 shares of common stock, are immediately exercisable and have a five-year term and an exercise price of $1.76 per share.

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. 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 stock.

There can be no assurance that the market price of our common stock will not decline below its present market price or that there will be an active trading market for our common stock. 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 stock price. We have experienced significant volatility in the price of our common stock. From January 1, 2011 through March 12, 2012, the share price of our common stock has ranged from a high of $7.71 to a low of $1.04. Factors contributing to such volatility include, but are not limited to:

- 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,
- sales and estimated or forecasted sales of products for which we receive royalties, if any,
- 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.

If we are unable to continue to meet the requirements for continued listing on The NASDAQ Global Market, then we may be de-listed. In March 2010, we received a Staff Determination letter from The NASDAQ Stock Market LLC ("NASDAQ") indicating that we had not regained compliance with the minimum $1.00 per share requirement for continued inclusion on The NASDAQ Global Market, pursuant to NASDAQ Listing Rule 5450(a)(1). On August 18, 2010, we effected a reverse split of our common stock in order to regain compliance.

We may not be successful in commercializing our products, which could also affect our development efforts.

We began commercializing our first product, ACEON®, in January 2012, and we have limited experience in the sales, marketing and distribution of pharmaceutical products. There can be no assurance that we will be able to maintain the arrangements we have with third-party suppliers, distributors and other service providers that are necessary for us to perform these activities or that our efforts will be successful. Maintaining or expanding these arrangements, or developing our own capabilities, may divert attention and resources from or otherwise negatively affect our development programs.

Our rights to commercialize ACEON® are licensed from Servier, and we are obligated to develop and commercialize the products covered by our agreement in accordance with the terms and conditions of that agreement. Our ability to satisfy some of these obligations is dependent on factors that are outside of our control, and our agreement may be terminated if we materially breach our obligations and fail to cure such breach or for other reasons. If our agreement is terminated, we would have no further rights to develop and commercialize these products.

Furthermore, because we intend to use revenues generated by sales of ACEON® in part to fund development of FDC1, lower than expected revenues from such sales could adversely affect our ability to fund the costs of such development.

We are subject to various state and federal healthcare related laws and regulations that may impact the commercialization of ACEON® or our product candidates and could subject us to significant fines and penalties.

Our operations may be directly or indirectly subject to various state and federal healthcare laws, including, without limitation, the federal Anti-Kickback Statute, the federal False Claims Act and HIPAA/HITECH. These laws may impact, among other things, the commercial operations for ACEON or any of our product candidates that may be approved for commercial sale.

The federal Anti-Kickback Statute prohibits persons from knowingly and willingly soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated. The Anti-Kickback Statute is broad and prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. Penalties for violations of the federal Anti-Kickback Statute include criminal penalties and civil sanctions such as fines, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs. Many states have also adopted laws similar to the federal Anti-Kickback Statute, some of which apply to the referral of patients for healthcare items or services reimbursed by any source, not only the Medicare and Medicaid programs. The Physician Payments Sunshine Act also has several state equivalents, which require, and under which the federal government will require in 2013, disclosure of payments we make to physicians for consulting and other services.

The federal False Claims Act prohibits persons from knowingly filing, or causing to be filed, a false claim to, or the knowing use of false statements to obtain payment from the federal government. Suits filed under the False Claims Act, known as "qui tam" actions, can be brought by any individual on behalf of the government and such individuals, commonly known as "whistleblowers," may share in any amounts paid by the entity to the government in fines or settlement. The filing of qui tam actions has caused a number of pharmaceutical, medical device and other healthcare companies to have to defend a False Claims Act action. When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate false claim. Various states have also enacted laws modeled after the federal False Claims Act.

The federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, created new federal criminal statutes that prohibit executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters and was amended by the Health Information Technology and Clinical Health Act, or HITECH, and its implementing regulations, which imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information. In order to comply with these laws, we have implemented a compliance program to actively identify, prevent and mitigate risk through the implementation of compliance policies and systems and by promoting a culture of compliance. Although we take our obligation to maintain our compliance with these various laws and regulations seriously and our compliance program is designed to prevent the violation of these laws and regulations, if we are found to be in violation of any of the laws and regulations described above or other applicable state and federal healthcare fraud and abuse laws, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from government healthcare reimbursement programs and the curtailment or restructuring of our operations, all of which could have a material adverse effect on our business and results of operations.

Certain of our technologies are in-licensed from third parties, so our capabilities using them are restricted 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 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 in-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.

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.

Even if 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 if they believe other products to be more effective or more cost-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 2009, the EMA announced that it had recommended suspension of the marketing authorization of RAPTIVA® in the European Union and EMD Serono Inc., the company that marketed RAPTIVA® in Canada ("EMD Serono") announced that, in consultation with Health Canada, the Canadian health authority ("Health Canada"), it would suspend marketing of RAPTIVA® in Canada. In March 2009, Merck Serono Australia Pty Ltd, the company that marketed RAPTIVA® in Australia ("Merck Serono Australia"), following a recommendation from the Therapeutic Goods Administration, the Australian health authority ("TGA"), announced that it was withdrawing RAPTIVA® from the Australian market. In the second quarter of 2009, Genentech announced and carried out a phased voluntary withdrawal of RAPTIVA® from the U.S. market, based on the association of RAPTIVA® with an increased risk of PML. As a result, sales of RAPTIVA® ceased in the second quarter of 2009.

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.

Even approved and marketed products are subject to risks relating to changes in the market for such products. Introduction or increased availability of generic versions of products can alter the market acceptance of branded products, such as ACEON®. In addition, unforeseen safety issues may arise at any time, regardless of the length of time a product has been on the market.

Our third party collaborators, licensees, suppliers or contractors may not have adequate manufacturing capacity sufficient to meet market demand.

Upon approval of any of our product candidates or in the event of increased demand for marketed products, we do not know whether the capacity of the manufacturing facilities of our existing or future third-party collaborators, licensees, suppliers or contractors will be available or can be increased to produce sufficient quantities of our products to meet market demand. Also, if we or our third party collaborators, licensees, suppliers or contractors 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 1996, we entered into an agreement with Genentech whereby we agreed to co-develop Genentech's humanized monoclonal antibody product RAPTIVA®. In April 1999, March 2003, and January 2005, the companies amended the agreement. In October 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 2004, Merck Serono announced the product's approval in the European Union. In January 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 entitled us to a royalty interest on worldwide net sales. In February 2009, the EMA announced that it had recommended suspension of the marketing authorization of RAPTIVA® in the European Union and EMD Serono announced that, in consultation with Health Canada, it would suspend marketing of RAPTIVA® in Canada. In March 2009, Merck Serono Australia, following a recommendation from the TGA, announced that it was withdrawing RAPTIVA® from the Australian market. In the second quarter of 2009, Genentech announced and carried out a phased voluntary withdrawal of RAPTIVA® from the U.S. market, based on the association of RAPTIVA® with an increased risk of PML. As a result, sales of RAPTIVA® ceased in the second quarter of 2009.

- In March 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 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 chronic lymphocytic leukemia. In October 2005, we announced the initiation of the second clinical trial of HCD122 in patients with multiple myeloma. In November 2008, we announced the restructuring of this product development collaboration, which involved six development programs including the ongoing HCD122 and LFA102 programs. In exchange for cash and debt reduction on our existing loan facility with Novartis, Novartis has control over the HCD122 and LFA102 programs and the additional ongoing program, as well as the right to expand the development of these programs into additional indications outside of oncology.

- In March 2005, we entered into a contract with the National Institute of Allergy and Infectious Diseases ("NIAID") to produce three monoclonal antibodies designed to protect United States citizens against the harmful effects of botulinum neurotoxin used in bioterrorism. In July 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 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. In October 2011, we announced we had been awarded an additional contract with NIAID to develop broad-spectrum antitoxins for the treatment of human botulism poisoning.

- In December 2010, we entered into a license and collaboration agreement with Servier, to jointly develop and commercialize gevokizumab in multiple indications. Under the terms of the agreement, Servier has worldwide rights to diabetes and cardiovascular disease indications and rights outside the U.S. and Japan to Behçet's uveitis and other inflammatory and oncology indications. We retain development and commercialization rights for Behçet's uveitis and other inflammatory disease and oncology indications in the U.S. and Japan, and have an option to reacquire rights to diabetes and cardiovascular disease indications from Servier in these territories. Should we exercise this option, we will be required to pay Servier an option fee and partially reimburse their incurred development expenses. The agreement contains customary termination rights relating to matters such as material breach by either party, safety issues and patents. Servier also has a unilateral right to terminate the agreement on a country-by-country basis or in its entirety on six months' notice.

- In December 2010, we also entered into a loan agreement with Servier, which provides for an advance of up to €15.0 million and was fully funded in January 2011 with the proceeds converting to approximately $19.5 million using the January 13, 2011 Euro to USD exchange rate. This loan is secured by an interest in our intellectual property rights to all gevokizumab indications worldwide, excluding the U.S. and Japan. The loan has a final maturity date in 2016; however, after a specified period prior to final maturity, the loan is required to be repaid (i) at Servier's option, by applying up to a significant percentage of any milestone or royalty payments owed by Servier under our collaboration agreement and (ii) using a significant percentage of any upfront, milestone or royalty payments we receive from any third party collaboration or development partner for rights to gevokizumab in the U.S. and/or Japan. In addition, the loan becomes immediately due and payable upon certain customary events of default. At December 31, 2011, the €15.0 million outstanding principal balance under this loan agreement would have equaled approximately $19.4 million using the December 31, 2011 Euro to USD exchange rate.

- In December 2011, we entered into a loan agreement with GECC, under which GECC agreed to make a term loan in an aggregate principal amount of $10 million to XOMA (US) LLC, our wholly owned subsidiary, and upon execution of the loan agreement, GECC funded the term loan. The term loan is guaranteed by us and our two other principal subsidiaries, XOMA Ireland Limited and XOMA Technology Ltd. As security for our obligations under the loan agreement, we, XOMA (US) LLC, XOMA Ireland Limited and XOMA Technology Ltd. each granted a security interest pursuant to a guaranty, pledge and security agreement in substantially all of our existing and after-acquired assets, excluding our intellectual property assets (such as those relating to our gevokizumab and anti-botulism products). We are required to repay the principal amount of the Term Loan over a period of 42 consecutive equal monthly installments of principal and accrued interest. The term loan matures on June 30, 2015, and at maturity, we will make an additional payment equal to 5% of the term loan ("Final Payment Fee"). The loan agreement contains customary representations and warranties and customary affirmative and negative covenants, including restrictions on the ability to incur indebtedness, grant liens, make investments, dispose of assets, enter into transactions with affiliates and amend existing material agreements, in each case subject to various exceptions. In addition, the loan agreement contains customary events of default that entitle GECC to cause any or all of the indebtedness under the loan agreement to become immediately due and payable. The events of default include any event of default under a material agreement or certain other indebtedness. We may voluntarily prepay the term loan in full, but not in part, and any voluntary and certain mandatory prepayments are subject to a prepayment premium of 3% in the first year of the loan, 2% in the second year and 1% thereafter, with certain exceptions. We will also be required to pay the Final Payment Fee in connection with any voluntary or mandatory prepayment. Pursuant to the loan agreement, we issued to GECC unregistered stock purchase warrants, which entitle GECC to purchase up to an aggregate of 263,158 unregistered shares of XOMA common stock at an exercise price equal to $1.14 per share, are immediately exercisable and expire on December 30, 2016.

- Effective in January 2012, we entered into an amended and restated agreement with Servier for the U.S. commercialization rights to ACEON® and the development and commercialization in the U.S. of up to three products combining perindopril with other cardiovascular drugs in fixed-dose combinations, or FDCs. This agreement, together with a related trademark license agreement, provides us with exclusive U.S. rights to ACEON® and the first FDC product, and options on two additional FDCs. The arrangement also provides that Servier will supply to us, and we will purchase exclusively from Servier, the active ingredients in ACEON® and the FDCs, in some cases for a limited period. The agreement contains customary termination rights relating to matters such as material breach by either party, insolvency of either party or safety issues. Each party also has the right to terminate the arrangement if the first FDC product does not receive FDA approval by December 31, 2014. Servier also has the right to terminate the arrangement if certain aspects of our commercialization strategy are not successful and Servier does not consent to an alternative strategy or, as to the FDCs, if we breach our obligations to certain of our service providers.

- 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 60 companies. As of March 12, 2012, 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 and rheumatoid arthritis. In the third quarter of 2009, we sold our LUCENTIS® royalty interest to Genentech. In the third quarter of 2010, we sold our CIMZIA® royalty interest.

Because our collaborators, licensees, suppliers and contractors are independent third parties, they may be subject to different risks than we are and have significant discretion in, and different criteria for, determining the efforts and resources they will apply related to their agreements with us. If these collaborators, licensees, suppliers and contractors do not successfully perform the functions for which they are responsible, we may not have the capabilities, resources or rights to do so on our own.

We do not know whether we, our collaborators or licensees will successfully develop and market any of the products that are or may become the subject of any of our collaboration or licensing arrangements. In some cases these arrangements provide for funding solely by our collaborators or licensees, and in other cases, such as our arrangement with Servier for gevokizumab, all of the funding for certain projects and a significant portion of the funding for other projects is to be provided by our collaborator or licensee. Even when we have a collaborative relationship, other circumstances may prevent it from resulting in successful development of marketable products. In addition, third party arrangements such as ours also increase uncertainties in the related decision-making processes and resulting progress under the arrangements, as we and our collaborators or licensees may reach different conclusions, or support different paths forward, based on the same information, particularly when large amounts of technical data are involved. 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, we are uncertain as to the extent of NIAID's demands and the flexibility that will be granted to us in meeting those demands.

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 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.

Gevokizumab

We, in collaboration with Servier, are developing gevokizumab, a potent anti-inflammatory monoclonal antibody targeting IL-1 beta. Other companies are developing other products based on the same or similar therapeutic targets as gevokizumab and these products may prove more effective than gevokizumab. We are aware that:

- Novartis markets and is developing Ilaris® (canakinumab, ACZ885), a fully human monoclonal antibody that selectively binds to and neutralizes IL-1 beta. Since 2009, canakinumab has been approved in over 50 countries for the treatment of children and adults suffering from Cryopyrin-Associated Periodic Syndrome ("CAPS"). Novartis has filed for regulatory approval of canakinumab in the U.S. and Europe for the treatment acute attacks in gouty arthritis. In August 2011, Novartis announced that the FDA had issued a Complete Response letter requesting additional information, including clinical data to evaluate the benefit risk profile of canakinumab in refractory gouty arthritis patients. In September 2011, Novartis announced positive results of a pivotal Phase 3 trial of canakinumab in patients with systemic juvenile idiopathic arthritis and that it plans to seek regulatory approval for this indication in 2012. Novartis is also pursuing other diseases in which IL-1 beta may play a prominent role, such as systemic secondary prevention of cardiovascular events and diabetes.

- Eli Lilly and Company ("Lilly") is developing a monoclonal antibody to IL-1 beta in Phase 1 development for the treatment of cardiovascular disease. In June 2011, Lilly reported results from a Phase 2 study of LY2189102 in 106 patients with Type 2 diabetes, showing a significant ($p<0.05$), early reduction in C reactive protein, moderate reduction in HbA1c and anti-inflammatory effects. We do not know whether LY2189102 remains in development.

- In 2008, Swedish Orphan Biovitrum obtained from Amgen the global exclusive rights to Kineret® (anakinra) for rheumatoid arthritis as currently indicated in its label. In November 2009, the agreement regarding Swedish Orphan Biovitrum's Kineret® license was expanded to include certain orphan indications. Kineret® is an IL-1 receptor antagonist (IL-1ra) which has been evaluated in multiple IL-1 mediated diseases, including indications we are considering for gevokizumab. In addition to other on-going studies, a proof-of-concept clinical trial in the United Kingdom investigating Kineret® in patients with a certain type of myocardial infarction, or heart attack, has been completed. In August 2010, Biovitrum announced that the FDA had granted orphan drug designation to Kineret® for the treatment of CAPS.

- In February 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 CAPS, including Familial Cold Auto-inflammatory Syndrome and Muckle-Wells Syndrome in adults and children 12 and older. In September 2009, Regeneron announced that rilonacept was approved in the European Union for CAPS. In June 2010 and February 2011, Regeneron announced positive results of two Phase 3 clinical trials of rilonacept in gout. In November 2011, Regeneron announced that the FDA had accepted for review Regeneron's supplemental BLA for ARCALYST® for the prevention and treatment of gout.

- Amgen has been developing AMG 108, a fully-human monoclonal antibody that targets inhibition of the action of IL-1. In April 2008, Amgen discussed results from a Phase 2 study in rheumatoid arthritis. AMG 108 showed statistically significant improvement in the signs and symptoms of rheumatoid arthritis and was well tolerated. In January 2011, MedImmune, the worldwide biologics unit for AstraZeneca PLC, announced that Amgen granted it rights to develop AMG 108 worldwide except in Japan.

- In June 2009, Cytos Biotechnology AG announced the initiation of an ascending dose Phase 1/2a study of CYT013-IL1bQb, a therapeutic vaccine targeting IL-1 beta, in Type 2 diabetes. In 2010, this study was extended to include two additional groups of patients.

- We are aware that the following companies have completed or are conducting or planning Phase 3 clinical trials of the following products for the treatment of uveitis: Abbott - HUMIRA® (adalimumab); Lux Biosciences, Inc. - LUVENIQ (voclosporin); Novartis - Myfortic® (mycophenalate sodium) and Santen Pharmaceutical Co., Ltd. - Sirolimus (rapamycin).

Perindopril

We are currently selling ACEON, an angiotensin converting enzyme ("ACE") inhibitor, and developing FDC1, a fixed-dose combination product candidate comprised of perindopril arginine and amlodipine besylate, a calcium channel blocker.

The ACE inhibitor market is highly genericized with all options being available generically. We are aware that:

- The number one product (based on annual sales) within the ACE inhibitor category is lisinopril, formerly marketed by Astra-Zeneca Pharmaceuticals LP under the brands ZESTRIL® or Prinivil®.

- There are multiple options in the fixed-dose combination market combining ACE inhibitors with diuretics, and some options combining an ACE inhibitor with a calcium channel blocker. Current options with a calcium channel blocker are benazepril/amlodipine, formerly marketed by Novartis Pharmaceuticals as Lotrel®, and trandolapril/verapamil, formerly marketed by Abbot Laboratories as Tarka®.

ACE inhibitors are a segment of the larger Renin Angiotensin Aldosterone System, or RAAS, market. This market is comprised of ACE inhibitors and angiotensin receptor blockers (ARB). Both classes act on the RAAS in different ways to control blood pressure. We are aware that:

- The most successful of the ARBs (in terms of annual sales) is valsartan, trade name Diovan®, which is marketed by Novartis. This compound, along with other ARBs, has been developed in multiple fixed-dose combination products: with a diuretic, a calcium channel blocker (amlodipine) and as a triple combining all three.

Our perindopril franchise will compete directly with fixed-dose combinations containing an ACE inhibitor and secondarily with fixed-dose combinations containing an ARB.

XOMA 3AB

We are also developing XOMA 3AB, a combination, or cocktail, of antibodies designed to neutralize the most potent of botulinum toxins. Other companies are developing other products targeting botulism poisoning and these products may prove more effective than XOMA 3AB. We are aware that:

- Cangene Corporation has a contract with the U.S. Department of Health & Human Services, expected to be for $423.0 million, to manufacture and supply an equine heptavalent botulism anti-toxin.

- Emergent BioSolutions, Inc. is currently in development of a botulism immunoglobulin candidate that may compete with our anti-botulinum neurotoxin monoclonal antibodies.

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, which if significant could lead to an impairment on our long-lived assets or restructuring activities. 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.

Manufacturing and quality problems may arise in the future to the extent we continue to perform these manufacturing activities 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.

Failure of our products to meet current Good Manufacturing Practices standards may subject us to delays in regulatory approval and penalties for noncompliance.

Our contract manufacturers are required to produce ACEON® and our clinical product candidates under current Good Manufacturing Practices, or cGMP, in order to meet acceptable standards for use in our clinical trials and for commercial sale, as applicable. If such standards change, the ability of contract manufacturers to produce ACEON® and our product candidates on the schedule we require for our clinical trials or to meet commercial requirements may be affected. In addition, contract manufacturers may not perform their obligations under their agreements with us or may discontinue their business before the time required by us to successfully produce clinical and commercial supplies of ACEON® and our product candidates. We and our contract manufacturers are subject to pre-approval inspections and periodic unannounced inspections by the FDA and corresponding state and foreign authorities to ensure strict compliance with cGMP and other applicable government regulations and corresponding foreign standards. We do not have control over a third-party manufacturer's compliance with these regulations and standards. Any difficulties or delays in our contractors' manufacturing and supply of ACEON® and our product candidates or any failure of our contractors to maintain compliance with the applicable regulations and standards could increase our costs, cause us to lose revenue, make us postpone or cancel clinical trials, prevent or delay regulatory approval by the FDA and corresponding state and foreign authorities, prevent the import and/or export of ACEON® and our product candidates, or cause ACEON® and any of our product candidates that may be approved for commercial sale to be recalled or withdrawn.

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 biotechnology 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.

We are subject to foreign currency exchange rate risks.

We are subject to foreign currency exchange rate risks because substantially all of our revenues and operating expenses are paid in U.S. dollars, but we pay interest and principal obligations with respect to our loan from Servier in Euros. To the extent that the U.S. dollar declines in value against the Euro, the effective cost of servicing our Euro-denominated debt will be higher. Changes in the exchange rate result in foreign currency gains or losses. Although we have managed some of our exposure to changes in foreign currency exchange rates by entering into foreign exchange option contracts, there can be no assurance that foreign currency fluctuations will not have a material adverse effect on our business, financial condition, liquidity or results of operations. In addition, our foreign exchange option contracts are re-valued at each financial reporting period, which may also result in gains or losses from time to time.

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 collaboration and development 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 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 or earlier.

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.

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.

In both the United States and certain foreign jurisdictions, there have been a number of legislative and regulatory proposals to change the healthcare system in ways that could impact our business . In March 2010, the U.S. Congress enacted and President Obama signed into law the Patient Protection and Affordable Care Act, which includes a number of healthcare reform provisions. Assuming this law survives on-going calls for its repeal, the reforms imposed by the law would significantly impact the pharmaceutical industry, most likely in the area of pharmaceutical product pricing. While the law may increase the number of patients who have insurance coverage for our products or product candidates, its cost containment measures could also adversely affect reimbursement for our existing or potential products; however, the full effects of this law cannot be known until these provisions are implemented and the relevant federal and state agencies issue applicable regulations or guidance.

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 has considered 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 the share price of our common stock 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, and a series of related cases is currently pending against us.

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 or indemnified by a third party would have to be paid from cash or other assets, which could have an adverse affect on our business and the value of our common stock. 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. As examples, following are summaries of certain product liability related complaints to which we are a party.

On April 9, 2009, a complaint was filed in the Superior Court of Alameda County, California, in a lawsuit captioned Hedrick et al. v. Genentech, Inc. et al, Case No. 09-446158. The complaint asserts claims against Genentech, us and others for alleged strict liability for failure to warn, strict product liability, negligence, breach of warranty, fraudulent concealment, wrongful death and other claims based on injuries alleged to have occurred as a result of three individuals' treatment with RAPTIVA®. The complaint seeks unspecified compensatory and punitive damages. Since then, additional complaints have been filed in the same court, bringing the total number of filed cases to seventy seven. The cases have been consolidated as a coordinated proceeding.

All of the complaints allege the same claims and seek the same types of damages based on injuries alleged to have occurred as a result of the plaintiffs' treatment with RAPTIVA®. On January 31, 2011, the parties selected ten bellwether cases to prepare for trial. On July 15, 2011, the Court dismissed with prejudice one of the bellwether cases, White v. Genentech, Inc., et al, Case No. RG-09-484026. On September 8, 2011, the Court granted defendants' Motions for Summary Judgment in two bellwether cases, Guerrero (Case No. RG-10-518396) and Harwell (Case No. RG-09-464039), and dismissed both cases. On September 19, 2011, the Court sustained defendants' Demurrer to another case (Young, Case No. RG-11-569879) and dismissed the complaint. On October 19, 2011, the Court granted defendants' Motion for Summary Judgment in another bellwether case, Krawiec v. Genentech, Inc., et al., Case No. RG10-524963, and dismissed the case. On December 15, 2011, the Court granted defendants' Motions for Summary Judgment and dismissed these three bellwether cases: Davidson (Case No. RG10-538635); Hilditch (Case No. RG10-538642); and Ortiz (Case No. RG09-484075). The first trial of a bellwether case (Johnson, Case No. RG10-494957) has been set for June 4, 2012. Even though Genentech has agreed to indemnify us in connection with these matters, there can be no assurance that these or other products liability lawsuits will not result in liability to us or that our insurance or contractual arrangements will provide us with adequate protection against such liabilities.

On August 4, 2010, a petition was filed in the District Court of Dallas County, Texas in a case captioned McCall v. Genentech, Inc., et al., No. 10-09544. The defendants filed a Notice of Removal to the United States District Court for the Northern District of Texas on September 3, 2010. The removed case is captioned McCall v. Genentech, Inc., et al., No. 3:10-cv-01747-B. The petition asserts personal injury claims against Genentech, us and others arising out of the plaintiff's treatment with RAPTIVA®. The petition alleges claims based on negligence, strict liability, misrepresentation and suppression, conspiracy, and actual and constructive fraud. The petition seeks compensatory damages and punitive damages in an unspecified amount. On June 6, 2011, the Court dismissed plaintiff's claims of negligent misrepresentation, fraud, and conspiracy. The Court has issued a scheduling order setting the case for trial between July 9 and August 9, 2012. Even though Genentech has agreed to indemnify us in connection with these matters, there can be no assurance that these or other products liability lawsuits will not result in liability to us or that our insurance or contractual arrangements will provide us with adequate protection against such liabilities

On January 7, 2011, a complaint was filed in the United States District Court for the Northern District of Texas in a case captioned Massa v. Genentech, Inc., et al., No. 4:11CV70. On January 11, 2011, a complaint was filed in the United States District Court for the District of Massachusetts in a case captioned Sylvia, et al. v. Genentech, Inc., et al., No. 1:11-cv-10054-MLW. On June 13, 2011, a complaint was filed in the Supreme Court for the State of New York, Onondaga County. Defendants removed the case to the United States District Court for the Northern District of New York on November 3, 2011. These three complaints allege the same claims against Genentech, us and others and seek the same types of damages as the complaints filed in the Superior Court of Alameda County, California referenced above. Even though Genentech has agreed to indemnify us in connection with these matters, there can be no assurance that these or other products liability lawsuits will not result in liability to us or that our insurance or contractual arrangements will provide us with adequate protection against such liabilities.

On April 8, 2011, four complaints were filed in the United States District Court for the Eastern District of Michigan. The cases are captioned: Muniz v. Genentech, et al., 5:11-cv-11489-JCO-RSW; Tifenthal v. Genentech, et al., 2:11-cv-11488-DPH-LJM; Blair v. Genentech, et al., 2:11-cv-11463-SFC-MJH; and Marsh v. Genentech, et al., 2:11-cv-11462-RHC-MKM. The complaints allege the same claims against Genentech, us and others and seek the same types of damages as the complaints filed in the Superior Court of Alameda County, California referenced above. All four cases were transferred to the United States District Court for the Western District of Michigan. On October 26, 2011, the Court granted the Motions to Dismiss filed by Genentech and the Company in all four actions. On October 31, 2011, Plaintiffs filed a Notice of Appeal in each case in the United States Court of Appeal for the Sixth Circuit. Even though Genentech has agreed to indemnify us in connection with these matters, there can be no assurance that these or other products liability lawsuits will not result in liability to us or that our insurance or contractual arrangements will provide us with adequate protection against such liabilities.

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: John Varian, our Chief Executive Officer; Patrick J. Scannon, M.D., Ph.D., our Executive Vice President and Chief Scientific Officer; Fred Kurland, our Vice President, Finance and Chief Financial Officer; Christopher J. Margolin, our Vice President, General Counsel and Secretary; and Paul D. Rubin, M.D., our Vice President, Clinical Development and Chief Medical Officer. We currently have no key person insurance on any of our employees.

Our ability to use our net operating loss carry-forwards and other tax attributes will be substantially limited by Section 382 of the Internal Revenue Code.

Section 382 of the Internal Revenue Code of 1986, as amended, generally limits the ability of a corporation that undergoes an "ownership change" to utilize its net operating loss carry-forwards ("NOLs") and certain other tax attributes against any taxable income in taxable periods after the ownership change. The amount of taxable income in each taxable year after the ownership change that may be offset by pre-change NOLs and certain other pre-change tax attributes is generally equal to the product of (a) the fair market value of the corporation's outstanding shares (or, in the case of a foreign corporation, the fair market value of items treated as connected with the conduct of a trade or business in the United States) immediately prior to the ownership change and (b) the long-term tax exempt rate (i.e., a rate of interest established by the IRS that fluctuates from month to month). In general, an "ownership change" occurs whenever the percentage of the shares of a corporation owned, directly or indirectly, by "5-percent shareholders" (within the meaning of Section 382 of the Internal Revenue Code) increases by more than 50 percentage points over the lowest percentage of the shares of such corporation owned, directly or indirectly, by such "5-percent shareholders" at any time over the preceding three years.

Based on our initial analysis under Section 382 (which subjects the amount of pre-change NOLs and certain other pre-change tax attributes that can be utilized to an annual limitation), we experienced an ownership change in 2009, which would substantially limit the future use of our pre-change NOLs and certain other pre-change tax attributes per year. We have and will continue to evaluate alternative analyses permitted under Section 382 and IRS notices in order to determine whether or not any ownership changes have occurred and may occur (and if so, when they occurred) that would result in limitations on our NOLs or certain other tax attributes.

We may not realize the expected benefits of our initiatives to reduce costs across our operations, and we may incur significant charges or write-downs as part of these efforts.

We have pursued and may continue to pursue a number of initiatives to reduce costs of our operations. In January 2012, we implemented a workforce reduction of approximately 34% in order to improve our cost structure. As a result, we expect to reduce ongoing internal spending by approximately $14 million in 2012 compared to the 2011 level. We also anticipate taking one-time charges for restructuring and related severance costs totaling approximately $6.0 million during 2012, of which $3.5 million are expected to result in cash charges and $3.8 million are expected to be taken in the first quarter of 2012.

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 188 employees as of March 12, 2012. As of April 6, 2012, upon the completion of our workforce reduction, we will employ 158 employees. We may require additional experienced executive, accounting, research and development, legal, administrative and other personnel from time to time 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.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems and those of our current and any future collaborators, licensees, suppliers, contractors and consultants are vulnerable to damage from cyber−attacks, computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. We could experience failures in our information systems and computer servers, which could be the result of a cyber−attack and could result in an interruption of our normal business operations and require substantial expenditure of financial and administrative resources to remedy. System failures, accidents or security breaches can cause interruptions in our operations and can result in a material disruption of our development programs, commercialization activities and other business operations. The loss of clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. Similarly, we rely on third parties to supply components for and manufacture our product and product candidates, conduct clinical trials of our product candidates and warehouse and distribute ACEON®, and similar events relating to their computer systems could also have a material adverse effect on our business. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the development of gevokizumab, FDC1 or any of our other product candidates and the commercialization of ACEON® could be delayed or otherwise adversely affected.

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 have a significant stockholder, which may limit other stockholders' ability to influence corporate matters and may give rise to conflicts of interest.

Entities controlled by Felix J. Baker and Julian C. Baker beneficially own approximately 30.6% of our outstanding common stock. Accordingly, these entities may exert significant influence over us and any action requiring the approval of the holders of our stock, including the election of directors and approval of significant corporate transactions. These entities have indicated that they may be interested in nominating a member of our board of directors at some future date, but that no decision has been made on whether or not to make such a request. Futhermore, conflicts of interest could arise in the future between us, on the one hand, and these entities, on the other hand, concerning potential competitive business activities, business opportunities, the issuance of additional securities and other matters.

Our shareholder rights agreement and organizational documents contain provisions that may prevent transactions that could be beneficial to our stockholders and may insulate our management from removal.

In February 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 charter and by-laws:

- require certain procedures to be followed and time periods to be met for any stockholder to propose matters to be considered at annual meetings of stockholders, including nominating directors for election at those meetings; and

- authorize our Board of Directors to issue up to 1,000,000 shares of preferred stock without stockholder approval and to set the rights, preferences and other designations, including voting rights, of those shares as the Board of Directors may determine.

In addition, we are subject to the provisions of Section 203 of the Delaware General Corporation Law (the "DGCL"), that may prohibit large stockholders, in particular those owning 15% or more of our outstanding common stock, from merging or combining with us.

These provisions of our shareholder rights agreement, our organizational documents and the DGCL, 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 stock, could limit the ability of stockholders 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, for which we have a sublease tenant under contract through May 2014. These buildings house our research and development laboratories, manufacturing facilities and office space. A separate pilot scale manufacturing facility is owned by us. Our building leases expire in the period from 2013 to 2014 and total minimum lease payments due from January 2012 until expiration of the leases are $12.6 million. We have the option to renew our lease agreements for periods ranging from three to ten years.

On January 15, 2009, we announced a workforce reduction of approximately 42%. As a result, in the second quarter of 2009, we vacated one of our leased buildings and recorded a restructuring charge of $0.5 million primarily related to the net present value of the net future minimum lease payments at the cease-use date, less the estimated future sublease income. Effective December 2010, we entered into a sublease agreement for this building. The remaining liability related to this lease was $0.1 million and $0.2 million at December 31, 2011 and 2010, respectively.

Item 3. Legal Proceedings

On April 9, 2009, a complaint was filed in the Superior Court of Alameda County, California, in a lawsuit captioned Hedrick et al. v. Genentech, Inc. et al, Case No. 09-446158. The complaint asserts claims against Genentech, us and others for alleged strict liability for failure to warn, strict product liability, negligence, breach of warranty, fraudulent concealment, wrongful death and other claims based on injuries alleged to have occurred as a result of three individuals' treatment with RAPTIVA®. The complaint seeks unspecified compensatory and punitive damages. Since then, additional complaints have been filed in the same court, bringing the total number of filed cases to seventy seven. The cases have been consolidated as a coordinated proceeding. All of the complaints allege the same claims and seek the same types of damages based on injuries alleged to have occurred as a result of the plaintiffs' treatment with RAPTIVA®. On January 31, 2011, the parties selected ten bellwether cases to prepare for trial. On July 15, 2011, the Court dismissed with prejudice one of the bellwether cases, White v. Genentech, Inc., et al, Case No. RG-09-484026. On September 8, 2011, the Court granted defendants' Motions for Summary Judgment in two bellwether cases, Guerrero (Case No. RG-10-518396) and Harwell (Case No. RG-09-464039), and dismissed both cases. On September 19, 2011, the Court sustained defendants' Demurrer to another case (Young, Case No. RG-11-569879) and dismissed the complaint. On October 19, 2011, the Court granted defendants' Motion for Summary Judgment in another bellwether case, Krawiec v. Genentech, Inc., et al., Case No. RG10-524963, and dismissed the case. On December 15, 2011, the Court granted defendants' Motions for Summary Judgment and dismissed these three bellwether cases: Davidson (Case No. RG10-538635); Hilditch (Case No. RG10-538642); and Ortiz (Case No. RG09-484075). The first trial of a bellwether case (Johnson, Case No. RG10-494957) has been set for June 4, 2012. Our agreement with Genentech provides for an indemnity of XOMA and payment of legal fees by Genentech which we believe is applicable to these matters. We believe the claims against us to be without merit and intend to defend against them vigorously.

On August 4, 2010, a petition was filed in the District Court of Dallas County, Texas in a case captioned McCall v. Genentech, Inc., et al., No. 10-09544. The defendants filed a Notice of Removal to the United States District Court for the Northern District of Texas on September 3, 2010. The removed case is captioned McCall v. Genentech, Inc., et al., No. 3:10-cv-01747-B. The petition asserts personal injury claims against Genentech, us and others arising out of the plaintiff's treatment with RAPTIVA®. The petition alleges claims based on negligence, strict liability, misrepresentation and suppression, conspiracy, and actual and constructive fraud. The petition seeks compensatory damages and punitive damages in an unspecified amount. On June 6, 2011, the Court dismissed plaintiff's claims of negligent misrepresentation, fraud, and conspiracy. Our agreement with Genentech provides for an indemnity of XOMA and payment of legal fees by Genentech which we believe is applicable to this matter. We believe the claims against us to be without merit and intend to defend against them vigorously. The Court has issued a scheduling order setting the case for trial between July 9 and August 9, 2012.

On January 7, 2011, a complaint was filed in the United States District Court for the Northern District of Texas in a case captioned Massa v. Genentech, Inc., et al., No. 4:11CV70. On January 11, 2011, a complaint was filed in the United States District Court for the District of Massachusetts in a case captioned Sylvia, et al. v. Genentech, Inc., et al., No. 1:11-cv-10054-MLW. On June 13, 2011, a complaint was filed in the Supreme Court for the State of New York, Onondaga County. Defendants removed the case to the United States District Court for the Northern District of New York on November 3, 2011. These three complaints allege the same claims against Genentech, us and others and seek the same types of damages as the complaints filed in the Superior Court of Alameda County, California referenced above. Our agreement with Genentech provides for an indemnity of XOMA and payment of legal fees by Genentech which we believe is applicable to these matters. We believe the claims against us to be without merit and intend to defend against them vigorously.

On April 8, 2011, four complaints were filed in the United States District Court for the Eastern District of Michigan. The cases are captioned: Muniz v. Genentech, et al., 5:11-cv-11489-JCO-RSW; Tifenthal v. Genentech, et al., 2:11-cv-11488-DPH-LJM; Blair v. Genentech, et al., 2:11-cv-11463-SFC-MJH; and Marsh v. Genentech, et al., 2:11-cv-11462-RHC-MKM. The complaints allege the same claims against Genentech, us and others and seek the same types of damages as the complaints filed in the Superior Court of Alameda County, California referenced above. All four cases were transferred to the United States District Court for the Western District of Michigan. On October 26, 2011, the Court granted the Motions to Dismiss filed by Genentech and the Company in all four actions. On October 31, 2011, Plaintiffs filed a Notice of Appeal in each case in the United States Court of Appeal for the Sixth Circuit. Our agreement with Genentech provides for an indemnity of XOMA and payment of legal fees by Genentech which we believe is applicable to this matter. We believe the claims against us to be without merit and intend to defend against them vigorously.

Item 4. Mine Safety Disclosures

Not applicable.

Supplementary Item: Executive Officers of the Registrant

Our executive officers and their respective ages, as of December 31, 2011, and positions are as follows:

Name	Age	Title
John Varian	52	Chief Executive Officer
Patrick J. Scannon, M.D., Ph.D.	64	Executive Vice President and Chief Scientific Officer
Fred Kurland	61	Vice President, Finance and Chief Financial Officer
Christopher J. Margolin, Esq.	65	Vice President, General Counsel and Secretary
Paul D. Rubin, M.D.	58	Vice President, Clinical Development and Chief Medical Officer

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

Business Experience

John Varian was appointed Chief Executive Officer of XOMA in January 2012 after serving as Interim Chief Executive Officer since August 31, 2011. He has served as a XOMA director since December 2008. He was Chief Operating Officer of Aryx Therapeutics from December 2003 through August 2011 and was its Chief Financial Officer from April 2006 through March 2011. Previously, Mr. Varian was Chief Financial Officer of Genset S.A., where he was a key member of the team negotiating the company's sale to Serono S.A. in 2002. From October 1998 to April 2000, Mr. Varian served as Senior Vice President, Finance and Administration of Elan Pharmaceuticals, Inc., joining the company as part of its acquisition of Neurex Corporation. Prior to the acquisition, he served as Neurex Corporation's Chief Financial Officer from June 1997 until October 1998. From 1991 until 1997, Mr. Varian served as the Vice President Finance and Chief Financial Officer of Anergen Inc. Mr. Varian was an Audit Principal / Senior Manager at Ernst & Young from 1987 until 1991 where he focused on life sciences. He is a founding member of the Bay Area Bioscience Center and a former chairman of the Association of Bioscience Financial Officers International Conference. Mr. Varian received a B.B.A. degree from Western Michigan University.

Dr. Scannon is one of our founders and has served as a Director since our formation. Dr. Scannon became Executive Vice President and Chief Scientific Officer in February 2011. Previously he was our Executive Vice President and Chief Medical Officer beginning in March 2009 and served as Executive Vice President and Chief Biotechnology Officer from May 2006 until March 2009, Chief Scientific and Medical Officer from March 1993 until May 2006, Vice Chairman, Scientific and Medical Affairs from April 1992 to March 1993 and our President from our formation until April 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. 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.

Dr. Rubin is our Vice President, Clinical Development and Chief Medical Officer. Dr. Rubin joined the Company in June 2011. Prior to joining XOMA, Dr. Rubin was Chief Medical Officer at Funxional Therapeutics Ltd. He was Chief Executive Officer of Resolvyx Pharmaceuticals, Inc. from 2007 to 2009 and President and Chief Executive Officer of Critical Therapeutics, Inc. from 2002 to 2007. From 1996 to 2002, Dr. Rubin served as Senior Vice President, Development, and later as Executive Vice President, Research & Development at Sepracor. He was responsible for the successful development of all of Sepracor's internally developed approved products including Xopenex®, Lunesta®, Xopenex HFA® and Brovana®. From 1993 to 1996, Dr. Rubin held senior level positions at Glaxo-Wellcome Pharmaceuticals, most recently as Vice President of Worldwide Clinical Pharmacology and Early Clinical Development. During his tenure with Abbott from 1987 to 1993, Dr. Rubin served as Vice President, Immunology and Endocrinology, where he successfully advanced zileuton, the first 5-lipoxygenase inhibitor, from discovery to approval for the treatment of asthma. Dr. Rubin received a BA from Occidental College and his M.D. from Rush Medical College. He completed his training in internal medicine at the University of Wisconsin.

PART II

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

Market for Registrant's Common Equity

Our common stock trades on The NASDAQ Global Market under the symbol"XOMA." All references to numbers of shares of common stock and per-share information in this Annual Report have been adjusted retroactively to reflect the Company's reverse stock split effective August of 2010. The following table sets forth the quarterly range of high and low reported sale prices of our common stock on The NASDAQ Global Market for the periods indicated:

	Price Range	
	High	Low
2011		
First Quarter	$ 7.71	$ 2.77
Second Quarter	3.49	2.17
Third Quarter	2.45	1.38
Fourth Quarter	1.86	1.04
2010		
First Quarter	$ 11.70	$ 6.00
Second Quarter	12.60	6.15
Third Quarter	6.45	2.45
Fourth Quarter	7.48	2.24

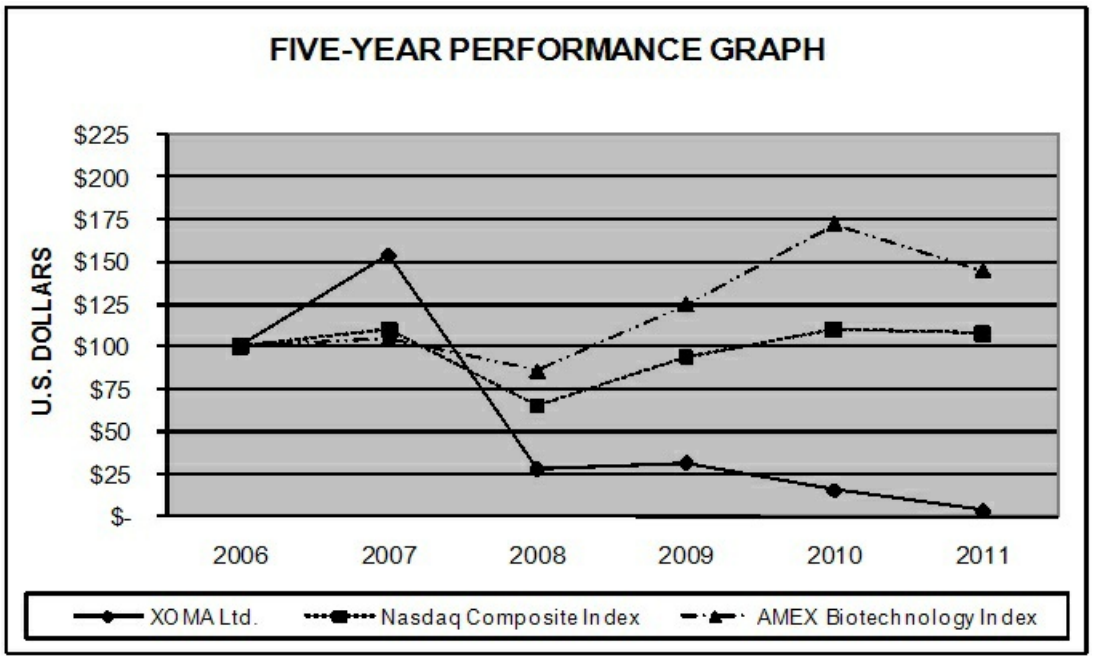
On March 12, 2012, there were 2,062 stockholders of record of our common stock, one of which was Cede & Co., a nominee for Depository Trust Company ("DTC"). All of the shares of our common stock held by brokerage firms, banks and other financial institutions as nominees for beneficial owners are deposited into participant accounts at DTC and are therefore considered to be held of record by Cede & Co. as one stockholder.

Dividend Policy

We have not paid dividends on our common stock. 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 stock in the foreseeable future.

Performance Graph

The following graph compares the five-year cumulative total stockholder 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.



As of December 31,	XOMA Ltd.	Nasdaq Composite Index	AMEX Biotechnology Index
2006	$ 100.00	$ 100.00	$ 100.00
2007	154.09	109.81	104.28
2008	28.18	65.29	85.80
2009	31.82	93.95	124.91
2010	15.55	109.84	172.04
2011	3.48	107.86	144.70

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 2007 through 2011. 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,				
	2011	2010	2009	2008	2007
	(In thousands, except per share amounts)				
Consolidated Statement of Operations Data					
Total revenues [1]	$ 58,196	$ 33,641	$ 98,430	$ 67,987	$ 84,252
Total operating costs and expenses	92,151	100,663	81,867	106,721	86,796
Restructuring costs	-	82	3,603	-	-
(Loss) income from operations	(33,955)	(67,104)	12,960	(38,734)	(2,544)
Other income (expense), net [2]	1,227	(1,625)	(6,683)	(6,894)	(9,782)
Net (loss) income before taxes	(32,728)	(68,729)	6,277	(45,628)	(12,326)
Income tax expense (benefit), net [3]	15	27	5,727	(383)	-
Net (loss) income	$ (32,743)	$ (68,756)	$ 550	$ (45,245)	$ (12,326)
Basic and diluted net (loss) income per share of common stock	$ (1.04)	$ (3.69)	$ 0.05	$ (5.11)	$ (1.45)

	December 31,				
	2011	2010	2009	2008	2007
			(In thousands)		
Balance Sheet Data					
Cash and cash equivalents	$ 48,344	$ 37,304	$ 23,909	$ 9,513	$ 22,500
Short-term investments	-	-	-	1,299	16,067
Restricted cash	-	-	-	9,545	6,019
Current assets	62,695	58,880	32,152	38,704	58,088
Working capital	41,685	23,352	13,474	11,712	34,488
Total assets	78,036	74,252	52,824	67,173	84,815
Current liabilities	21,010	35,528	18,678	26,992	23,600
Long-term liabilities [4]	42,015	15,133	16,620	71,582	60,897
Redeemable convertible preferred stock, at par value	-	1	1	1	1
Accumulated deficit	(886,053)	(853,310)	(784,554)	(785,104)	(739,859)
Total stockholders' equity (net capital deficiency)	15,011	23,591	17,526	(31,401)	318

We have paid no dividends in the past five years.

(1) 2010 includes a non-recurring fee of $4.0 million related to the sale of our CIMZIA® royalty interest to an undisclosed buyer. 2009 includes a non-recurring fee of $25 million related to the sale of our LUCENTIS® royalty interest to Genentech, Inc., a member of the Roche Group ("Genentech"). 2008 includes a non-recurring fee from Novartis AG ("Novartis") of $13.7 million relating to a restructuring of the existing collaboration agreement.

(2) 2010 includes a loss associated with the $4.5 million paid in the first quarter of 2010 to the holders of warrants issued in June 2009, upon modification of the terms.

(3) 2009 includes foreign income tax expense of $5.8 million recognized in connection with the expansion of our existing collaboration with Takeda.

(4) The balance in 2011 increased due to the execution of the €15.0 million loan from Servier, which has a principal balance equal to approximately $19.4 million using the December 31, 2011 Euro to USD exchange rate, and the $10.0 million Term Loan from GECC. The balance as of December 31, 2008 includes $50.4 million from our term loan with Goldman Sachs, which we repaid in 2009. In May 2008, the Company entered into a $55 million amended term loan facility with Goldman Sachs, paying off the remaining balance on the term loan completed in November 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.

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

Overview

We are a leader in the discovery and development of innovative antibody-based therapeutics. Our lead drug candidate is gevokizumab (formerly XOMA 052), a humanized antibody that binds to the inflammatory cytokine interleukin-1 beta ("IL-1 beta"). In collaboration with our partner, Les Laboratoires Servier ("Servier"), gevokizumab is expected to enter global Phase 3 clinical development in 2012 for non-infectious uveitis ("NIU") and Behçet's uveitis. We anticipate Servier will enter gevokizumab into a Phase 2 study in a cardiovascular disease indication during 2012. Separately we have launched a Phase 2 proof-of-concept program for gevokizumab to evaluate additional indications for further development, including a clinical trial in moderate-to-severe inflammatory acne, which began enrolling patients in December 2011, and a clinical trial in erosive osteoarthritis of the hand, for which we plan to initiate enrollment in the second quarter of 2012.

We have entered into a license and collaboration agreement with Servier to jointly develop and commercialize gevokizumab in multiple indications. Gevokizumab is designed to inhibit the pro-inflammatory cytokine IL-1 beta, which is believed to be a primary trigger of pathologic inflammation in multiple diseases.

Our proprietary preclinical pipeline includes classes of antibodies that activate or sensitize the insulin receptor in vivo and represent potential new therapeutic approaches to the treatment of diabetes. We have developed these and other antibodies using some or all of our ADAPT™ antibody discovery and development platform, our ModulX™ technologies for generating allosterically modulating antibodies, and our OptimX™ technologies for optimizing biophysical properties of antibodies, including affinity, immunogenicity, stability and manufacturability.

In January 2012, we announced that we had acquired U.S. rights to the perindopril franchise from Servier. The agreement includes ACEON® (perindopril erbumine), a currently marketed angiotensin converting enzyme ("ACE") inhibitor, and a portfolio of three fixed-dose combination product candidates where perindopril is combined with another active ingredient(s), such as a calcium channel blocker. The proprietary form of perindopril in each of the combination product candidates provides patent protection until December 2023. We assumed commercialization activities for ACEON® in January 2012 following the transfer from Servier's previous licensee. In late February 2012, we initiated enrollment in a Phase 3 trial for perindopril arginine and amlodipine besylate, the first fixed-dose combination product candidate from the perindopril franchise we acquired from Servier. Partial funding for the Phase 3 trial will be provided by Servier; the balance of study expenses, consisting primarily of costs generated by our contract research organization, are expected to be paid by us over time from any profits generated by our ACEON® sales.

Our biodefense initiatives currently include a $65.0 million multiple-year contract funded by the National Institute of Allergy and Infectious Diseases ("NIAID"), a part of the National Institutes of Health ("NIH"), to support our ongoing development of anti-botulism antibody product candidates, of which the first, XOMA 3AB, is in a Phase 1 clinical trial. This contract is the third that NIAID has awarded us for the development of botulinum antitoxins. In October 2011, we announced that we had been awarded a fourth contract for up to $28.0 million over five years to develop broad-spectrum antitoxins for the treatment of human botulism poisoning, bringing the program's total potential awards to approximately $120 million. In January 2012, we announced that we will complete NIAID biodefense contracts currently in place but will not actively pursue future contracts. Should the government choose to acquire XOMA 3AB or other biodefense products in the future, we expect to be able to provide these antibodies through an outside manufacturer.

We also have developed antibody product candidates with premier pharmaceutical companies including Novartis AG ("Novartis") and Takeda Pharmaceutical Company Limited ("Takeda"). Two antibodies developed with Novartis, LFA102 and HCD122 (lucatumumab), are in Phase 1 and/or 2 clinical development by Novartis for the potential treatment of breast or prostate cancer and hematological malignancies, respectively.

Significant Developments in 2011

Gevokizumab

- In December 2010, we entered into an agreement with Servier to jointly develop and commercialize gevokizumab in multiple indications, which provided for a non-refundable upfront payment of $15.0 million that we received in January 2011. In connection with this agreement, Servier will fully fund the first $50.0 million of future gevokizumab global clinical development and chemistry and manufacturing controls ("CMC") expenses, and 50% of further expenses for the Behçet's uveitis indication. Servier has agreed to include the NIU Phase 3 trial discussed below under the terms of the collaboration agreement for Behçet's uveitis discussed above so long as the European Medicines Agency enables the results of the trial to be included in regulatory submissions in the EU. Based upon the timing of anticipated regulatory interactions, we anticipate initiating the NIU Phase 3 trial in the second quarter of 2012.

- In January 2011, we received the full €15.0 million advance allowed under our loan agreement with Servier dated December 30, 2010, converting to U.S. dollar proceeds of approximately $19.5 million.

- In March 2011, we announced that our Phase 2b trial of gevokizumab in Type 2 diabetes in 421 patients did not achieve the primary endpoint of reduction in hemoglobin A1c ("HbA1c") after six monthly treatments with gevokizumab compared to placebo. Significant decreases were observed in C-reactive protein ("CRP"), a biomarker for the risk of heart attack, stroke and other cardiovascular diseases, in all dose groups versus placebo. In addition, significant improvements in high-density lipoprotein ("HDL"), or "good" cholesterol, were observed in two of four gevokizumab dose groups versus placebo. Gevokizumab was well-tolerated in this trial, with no significant differences in adverse events between gevokizumab and placebo and no serious drug-related adverse events.

- In June 2011, we announced top line trial results from our six-month Phase 2a trial in 74 patients where gevokizumab was shown to be well-tolerated with no significant differences in adverse events between gevokizumab and placebo and no serious drug-related adverse events. Evidence of biological activity was observed including a reduction in CRP. There were no differences in glycemic control between the drug and placebo groups as measured by HbA1c levels.

- In November 2011, we announced an expansion of our gevokizumab program together with our collaboration partner Servier. The expanded plan includes a global Phase 3 trial in NIU involving the intermediate and/or posterior segments of the eye, including Behçet's uveitis and a Phase 3 trial outside the U.S. in Behçet's uveitis.

- In December 2011, we initiated a Phase 2 proof-of-concept study to evaluate the efficacy and safety of gevokizumab for the treatment of inflammatory lesions seen in moderate to severe inflammatory acne vulgaris. Approximately 170 patients will be randomized to receive one or two dose levels of gevokizumab or placebo over a three-month period. Dosing in patients began in December 2011.

XMET Activating and Sensitizing Antibodies

- In June 2011, we announced our discovery of two new classes of fully-human monoclonal antibodies, XMetA and XMetS, which activate or sensitize the insulin receptor in vivo, each representing a distinct new therapeutic approach to the treatment of patients with diabetes. Studies of XMetA demonstrated that it reduced fasting blood glucose levels and improved glucose tolerance in a mouse model of diabetes. After six weeks of treatment, there was a statistically significant reduction in HbA1c levels, a standard measure of average blood glucose levels over time, in mice treated with XMetA compared to a control group, and there was a statistically significant reduction in elevated non-HDL cholesterol levels. Studies of XMetS showed enhanced insulin sensitivity and statistically significant improvements in fasting blood glucose levels and glucose tolerance in mice treated with XMetS as compared to a control group, and there was a statistically significant reduction in elevated non-HDL cholesterol levels. These data were presented at the American Diabetes Association's 71st Scientific Sessions.

XOMA 3AB

- In May 2011, the National Institute of Allergy and Infectious Diseases ("NIAID"), part of the National Institutes of Health ("NIH"), informed us that it is initiating a Phase 1 trial of XOMA 3AB, a novel formulation of three antibodies designed to prevent and treat botulism poisoning. This double-blind, dose-escalation study in approximately 24 healthy volunteers is designed to assess the safety and tolerability, and determine the pharmacokinetic profile, of XOMA 3AB.

- In October 2011, we announced that NIAID had awarded us a new contract under Contract No. HHSN272201100031C for up to $28.0 million over 5 years to develop broad-spectrum antitoxins for the treatment of human botulism poisoning.

Management Change

- On August 31, 2011, we announced that Steven B. Engle resigned as Chief Executive Officer, President and Chairman of the Board of the Company. On January 4, 2012, the Company's Board of Directors appointed John Varian, a current Board member, as Chief Executive Officer after serving as Interim Chief Executive Officer for five months. W. Denman Van Ness will continue to serve as Chairman of the Board.

Financing-Related

- In 2011, we sold 821,386 shares of our common stock through Wm Smith & Co. ("Wm Smith") and McNicoll, Lewis & Vlak LLC (now known as MLV & Co. LLC, "MLV") under our At Market Issuance Sales Agreement dated October 26, 2010 (the "2010 ATM Agreement"), for aggregate gross proceeds of $4.4 million, and 5,286,952 shares of our common stock through MLV under our At Market Issuance Sales Agreement dated February 4, 2011 (the "2011 ATM Agreement"), for aggregate gross proceeds of $11.3 million.

- In April 2011, the 2,959 Series B convertible preference shares previously issued to Genentech, Inc. were converted by Genentech into 254,560 shares of our common stock, and the associated liquidation preference of $29.6 million was eliminated.

- In May 2011, we entered into two foreign exchange options contracts in order to manage our foreign currency exposure relating to principal and interest payments on our €15.0 million loan from Servier. Upfront premiums paid on these contracts totaled $1.5 million.

- In December 2011, we entered into a loan agreement (the "Loan Agreement") with General Electric Capital Corporation ("GECC") under which GECC agreed to make, and made, a term loan of $10 million. This loan accrues interest at a fixed rate of 11.71% per annum and is secured by substantially all of our existing and after-acquired assets, excluding our intellectual property assets. We are required to repay the principal amount over a period of 42 consecutive equal monthly installments of principal and accrued interest. The loan matures on June 30, 2015, at which time we will make an additional payment equal to 5% of the loan. We also issued to GECC unregistered stock purchase warrants, which entitle GECC to purchase up to an aggregate of 263,158 unregistered shares of XOMA common stock at an exercise price equal to $1.14 per share. These warrants are immediately exercisable and expire on December 30, 2016.

Other

- Effective December 31, 2011, we changed our jurisdiction of incorporation from Bermuda to Delaware and changed our name from XOMA Ltd. to XOMA Corporation. All outstanding common shares of the former XOMA Ltd. automatically converted into XOMA Corporation common stock on a one-for-one basis.

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

In March 2010, Accounting Standards Codification Topic 605, *Revenue Recognition* was amended to define a milestone and clarify that the milestone method of revenue recognition is a valid application of the proportional performance model when applied to research or development arrangements. Accordingly, a company can make an accounting policy election to recognize a payment that is contingent upon the achievement of a substantive milestone in its entirety in the period in which the milestone is achieved. This guidance was adopted effective January 1, 2011 on a prospective basis and did not have a material effect on our consolidated financial statements.

License and Collaborative Fees

Revenue from non-refundable license, technology access or other payments under license and collaborative agreements 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 re-evaluate it each reporting period. This re-evaluation 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 event, once confirmation is received from the third party and collectability 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 and manufacturing services to collaborative partners, biodefense contractors 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 revenue 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, such as our government 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. Under our contracts with NIAID, a part of the NIH, we bill using NIH provisional rates and thus are subject to future audits at the discretion of NIAID's contracting office. These audits can result in an adjustment to revenue previously reported.

In 2011, the NIH conducted an audit of our actual data for period from January 1, 2007 through December 31, 2009 and developed final billing rates for this period. As a result, we retroactively applied these NIH rates to the invoices from this period resulting in an increase in revenue of $3.4 million from the NIH, excluding $0.9 million billed to the NIH in 2010 resulting from our performance of a comparison of 2009 calculated costs incurred and costs billed to the government under provisional rates. Final rates will be settled through negotiations with the NIH. This revenue has been deferred and will be recognized upon completion of negotiations with and approval by the NIH.

Upfront 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 $1.1 million of deferred up-front fees related to one research and collaboration agreement that is being amortized over one year.

Stock-based Compensation

The valuation of stock-based compensation awards is determined at the date of grant using the Black-Scholes option pricing model (the "Black-Scholes Model"). This model requires inputs such as the expected term of the option, 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. To establish an estimate of expected term, we consider the vesting period and contractual period of the award and our historical experience of stock option exercises, post-vesting cancellations and volatility. To establish an estimate of forfeiture rate, we consider our historical experience of option forfeitures and terminations. 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 stock-based awards granted in future periods. Stock-based compensation expense is recognized ratably over the requisite service period.

Income Taxes

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.

We account for uncertain tax positions in accordance with Accounting Standards Codification Topic 740, *Income Taxes* ("ASC 740"). ASC 740 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 carry-back potential, we have determined that total deferred tax assets should be fully offset by a valuation allowance.

Warrants

We have issued warrants to purchase shares of our common stock in connection with financing activities. We account for some of these warrants as a liability at fair value and others as equity at fair value. The fair value of the outstanding warrants is estimated using the Black-Scholes Model. The Black-Scholes Model requires inputs such as the expected term of the warrants, share price volatility and risk-free interest rate. These inputs are subjective and generally require significant analysis and judgment to develop. For the estimate of the expected term, we use the full remaining contractual term of the warrant. We base our estimate of expected volatility on our historical volatility. The assumptions associated with warrant liabilities are reviewed each reporting period and changes in the estimated fair value of these warrant liabilities are recognized in other income (expense).

Results of Operations

Revenue

Total revenue in 2011 was $58.2 million, compared with $33.6 million in 2010 and $98.4 million in 2009 as shown in the table below (in thousands):

	Year ended December 31,		
	2011	**2010**	**2009**
License and collaborative fees	$ 17,991	$ 2,182	$ 43,822
Contract and other revenue	40,037	27,174	25,492
Royalties	168	4,285	29,116
Total revenues	$ 58,196	$ 33,641	$ 98,430

License and Collaborative Fees

License and collaborative fee revenue includes fees and milestone payments related to the out-licensing of our products and technologies. License and collaborative fee revenue in 2011 was $18.0 million, compared with $2.2 million in 2010 and $43.8 million in 2009. The primary components of license and collaboration fee revenue in 2011 were $16.2 million in revenue recognized related to the collaboration and loan agreements with Servier to jointly develop and commercialize gevokizumab in multiple indications. In addition, we recognized two milestone payments for an aggregate amount of $1.0 million and $0.8 million in up-front fees and annual maintenance fees relating to various out-licensing arrangements.

The primary components of license and collaboration fee revenue in 2010 were four milestone payments recognized for an aggregate amount of $1.2 million, including one milestone from AVEO Pharmaceuticals, Inc. (“AVEO”) for $0.8 million resulting from AVEO’s initiation of a Phase 2 clinical trial to evaluate its AV-299 antibody. In addition, we recognized $1.0 million in up-front fees and annual maintenance fees relating to various out-licensing arrangements.

The primary components of license and collaborative fee revenue in 2009 were $28.1 million in revenue recognized related to the expansion of our collaboration agreement with Takeda in February 2009 and $14.1 million in total revenue, including ancillary services provided, related to two antibody discovery collaboration agreements entered into with Arana Therapeutics Limited (“Arana”) and The Chemo-Sero-Therapeutic Research Institute, a Japanese research foundation known as Kaketsuken in September and October 2009. We also recognized $1.6 million of license and collaborative fee revenue in 2009 related to up-front fees, annual maintenance fees and milestone payments from various out-licensing arrangements.

The generation of future revenue related to license fees and collaborative arrangements is dependent on our ability to attract new licensees to our antibody and BCE technologies and new collaboration partners. We expect license and collaboration fee revenue to decrease in 2012 compared to 2011 levels.

Contract and Other Revenue

Contract and other revenue includes agreements where we provide contracted research and development services to our collaboration partners, including Servier and NIAID. The following table shows the activity in contract and other revenue for the years ended December 31, 2011, 2010, and 2009 (in thousands):

	Year ended December 31,			2010-2011 Increase (Decrease)	2009-2010 Increase (Decrease)
	2011	2010	2009		
Servier	$ 19,348	$ -	$ -	$ 19,348	$ -
NIAID	18,781	21,414	6,632	(2,633)	14,782
Takeda	1,217	3,568	7,549	(2,351)	(3,981)
SRI International	546	1,594	331	(1,048)	1,263
Merck/Schering-Plough	-	468	7,586	(468)	(7,118)
Novartis	-	-	2,459	-	(2,459)
Other	145	130	935	15	(805)
Total revenues	$ 40,037	$ 27,174	$ 25,492	$ 12,863	$ 1,682

The 2011 increase in contract revenue was primarily due to gevokizumab clinical development and CMC activity under the collaboration with Servier. Partially offsetting this increase were decreases in revenue from our NIAID Contract No. HHSN272200800028C ("NIAID 3") due to decreased activity under the contract, our Takeda contracts as a result of the cessation of certain Takeda programs in 2010, and our SRI International subcontract awards due to the successful completion of the services we had agreed to perform in 2011.

The 2010 increase in contract revenue was primarily due to increased activity under our NIAID 3 and SRI International contracts. Partially offsetting these increases are decreases in revenue from our Schering-Plough Research Institute, a division of Schering Corporation, now a subsidiary of Merck & Co., Inc. (referred to herein as "Merck/Schering-Plough") and Takeda contracts as a result of the cessation of certain Merck/Schering-Plough programs in 2009 and certain Takeda programs in both 2009 and 2010. Also, the decrease in revenue from our Manufacturing and Technology Transfer Agreement with Novartis was due to the completion of the work under this agreement in the third quarter of 2009.

Based on expected levels of revenue generating activity related to our Servier and NIAID contracts, we expect contract and other revenue to decrease in 2012 compared to 2011 levels.

The following table shows the activity in deferred revenue for the years ended December 31, 2011, 2010 and 2009 (in thousands):

	Year ended December 31,		
	2011	2010	2009
Beginning deferred revenue	$ 18,130	$ 5,008	$ 17,213
Revenue deferred	12,673	15,949	16,220
Revenue recognized	(17,569)	(2,827)	(28,425)
Ending deferred revenue	$ 13,234	$ 18,130	$ 5,008

We defer revenue until all requirements under our revenue recognition policy are met. In 2011, we deferred revenue from contracts including Servier, NIH and Takeda. In 2010, we deferred revenue from contracts including Servier, NIH, Takeda, Merck/Schering-Plough and AVEO. In 2009, we deferred revenue from contracts including Takeda, Merck/Schering-Plough and Novartis.

We expect a significant portion of the $13.2 million in deferred revenue will be recognized in 2012 with the remainder to be earned during 2013 through 2015. Future amounts may be affected 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.

Royalties

Revenue from royalties was $0.2 million in 2011 compared with $4.3 million in 2010 and $29.1 million in 2009. The decrease in royalties in 2011 was primarily due to the sale of our CIMZIA® royalty interest for net proceeds of $3.7 million in the third quarter of 2010. Royalties earned from sales of CIMZIA® were $0.5 million in 2010, compared with $0.5 million in 2009. We will not receive any further royalties on sales of CIMZIA®.

The decrease in royalties in 2010 was primarily due to the sale, during 2009, of our LUCENTIS® royalty interest to Genentech for net proceeds of $22.3 million in September 2009. Additionally, the cessation of royalties earned from sales of RAPTIVA ® in the second quarter of 2009 further contributed to the decrease in our revenue from royalties. Royalties earned from sales of LUCENTIS® and RAPTIVA ® during 2009 were $5.1 million and $1.2 million, respectively. We will not receive any further royalties on sales of LUCENTIS® or RAPTIVA®. Partially offsetting the decreases in revenue from royalties in 2010 was the sale of our CIMZIA® royalty interest in the third quarter of 2010.

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.

Research and development expenses were $68.1 million in 2011, compared with $77.4 million in 2010 and $58.1 million in 2009. The decrease in research and development expenses of $9.3 million in 2011, as compared to 2010, was primarily due to decreased spending on gevokizumab-related clinical trials.

The increase in research and development expenses of $19.3 million in 2010, as compared to 2009, was primarily due to increased spending on gevokizumab related to the Phase 2 clinical program and spending on NIAID 3 due to increased activity under the contract. Partially offsetting these increases in spending were decreases in spending on Merck/Schering-Plough and Takeda-related contract activities due to the cessation of certain discovery and development programs. In addition, there was decreased spending on Novartis-related contract activities due to the completion of work under agreement in the third quarter of 2009. Research and development expense in 2009 primarily reflects spending on development of gevokizumab, including Phase 1 and Phase 2 clinical trials, and spending on preclinical antibody discovery programs in several indications, and on our contracts with NIAID 3, Takeda and SRI International.

Salaries and related personnel costs are a significant component of research and development expenses. We recorded $34.3 million in research and development salaries and employee-related expenses in 2011, compared with $29.7 million in 2010 and $26.8 million in 2009. Included in these expenses for 2011 were $27.7 million for salaries and benefits, $2.9 million for bonus expense and $3.7 million for stock-based compensation, which is a non-cash expense. The increase of $4.6 million in 2011, as compared to 2010, was primarily due to personnel related costs in connection with increased gevokizumab clinical development and CMC activity under the collaboration with Servier.

Included in these expenses for 2010 were $24.1 million for salaries and benefits, $3.3 million for bonus expense and $2.3 million for stock-based compensation, which is a non-cash expense, compared with $22.2 million, $2.4 million and $2.2 million, respectively, in 2009. The $2.9 million increase in salaries and employee-related expenses in 2010, as compared to 2009, was primarily due to higher salaries and related personnel costs in connection with increased manufacturing activities and work related to NIAID 3.

Our research and development activities can be divided into earlier stage programs and later stage programs. Earlier stage programs include molecular biology, process development, pilot-scale production and preclinical testing. Also included in earlier stage programs are costs related to excess manufacturing capacity, which we expect will decrease in 2012 due to our streamlining objectives to utilize a contract manufacturing organization. Later stage programs include clinical testing, regulatory affairs and manufacturing clinical supplies. Certain research and development segment reclassifications have been made to previously reported amounts to conform to the current year's presentation. The costs associated with these programs approximate the following (in thousands):

	Year ended December 31,		
	2011	**2010**	**2009**
Earlier stage programs	$ 38,302	$ 44,251	$ 36,221
Later stage programs	29,835	33,162	21,910
Total	$ 68,137	$ 77,413	$ 58,131

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. Certain research and development segment reclassifications have been made to previously reported amounts to conform to the current year's presentation. The costs related to internal projects versus collaborative and contract arrangements approximate the following (in thousands):

	Year ended December 31,		
	2011	2010	2009
Internal projects	$ 24,440	$ 52,031	$ 35,130
Collaborative and contract arrangements	43,697	25,382	23,001
Total	$ 68,137	$ 77,413	$ 58,131

In 2011, each of the two programs upon which we incurred the largest amount of expense (gevokizumab and NIAID) accounted for more than 30% but less than 40% of our total research and development expense and one development program (XMet) accounted for more than 10% but less than 20% of our total research and development expense. In 2010, our largest development program (gevokizumab) accounted for more than 40% but less than 50% of our total research and development expense and one development program (NIAID) accounted for more than 30% but less than 40% of our total research and development expense. In 2009, one development program (gevokizumab) accounted for more than 30% but less than 40% of our total research and development expense and one development program (NIAID) accounted for more than 10% but less than 20% of our total research and development expense. All remaining development programs accounted for less than 10% of our total research and development expense in 2011, 2010, and 2009.

We expect our research and development spending in 2012 will increase primarily due to the expected initiation of our Phase 3 clinical program for gevokizumab for NIU indication, the initiation of our Phase 2 proof-of-concept program for gevokizumab to evaluate moderate-to-severe inflammatory acne and the expected initiation of our Phase 2 proof-of-concept program for erosive osteoarthritis of the hand, all under our license and collaboration agreement with Servier. In addition, we plan to announce the final proof-of-concept indication later in 2012. Also contributing to the increase is the initiation of a Phase 3 trial for perindopril arginine in combination with amlodipine besylate.

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.

Selling, General and Administrative Expenses

Selling, general and administrative expenses include salaries and related personnel costs, facilities costs and professional fees. In 2011, selling, general and administrative expenses were $24.0 million compared with $23.3 million in 2010 and $23.7 million in 2009. The $0.7 million increase in selling, general and administrative expenses in 2011 as compared with 2010 was primarily due an increase in salaries and related personnel costs of $2.8 million primarily due to a one-time accrued $1.3 million severance expense and a $0.7 million stock-based compensation charge incurred during the third quarter of 2011 in connection with the resignation of our Chairman, Chief Executive Officer and President and an increase in other stock-based compensation of $0.8 million. Partially offsetting this increase were decreases in financing fees and legal fees of $1.0 million and $0.7 million, respectively.

The $0.4 million decrease in selling, general and administrative expenses in 2010 as compared with 2009 was primarily due a net decrease in financing and professional fees of $0.4 million, as well as a decrease in salaries and related personnel costs of $0.4 million. Partially offsetting these decreases was an increase in other expenses of $0.4 million, including an increase in travel-related costs.

We expect selling, general and administrative expenses in 2012 will decrease approximately 15% to 20% compared to 2011 levels due to decreased salaries and employee-related expenses.

Restructuring Charges

In January 2012, we implemented a restructuring designed to sharpen our focus on value-creating opportunities led by gevokizumab and our unique antibody discovery and development capabilities. The restructuring plan includes a reduction of our personnel by 84 positions, or 34%, of which approximately 50 were eliminated immediately and the remainder will be eliminated by April 6, 2012. See *Subsequent Events* below for further discussion of our January 2012 restructuring.

In January 2009, we announced a workforce reduction of approximately 42%. As part of this workforce reduction, we recorded charges of $3.1 million during 2009 related to severance, other termination benefits and outplacement services, which were fully paid by the end of 2009. There were no additional employee-related restructuring charges in connection with this workforce reduction.

As a result of the workforce reduction, in the second quarter of 2009, we vacated one of our leased buildings and recorded a restructuring charge of $0.5 million primarily related to the net present value of the net future minimum lease payments at the cease-use date, less the estimated future sublease income. Effective December 2010, we entered into a sublease agreement for this building. The remaining liability related to this lease was $0.1 million and $0.2 million at December 31, 2011 and 2010, respectively.

Other Income (Expense)

Interest expense and amortization of debt issuance costs are shown below for the years ended December 31, 2011, 2010 and 2009 (in thousands):

	Year ended December 31,		
	2011	**2010**	**2009**
Interest expense			
Novartis note	$ 341	$ 354	$ 455
Servier loan	2,087	-	-
Goldman Sachs term loan	-	-	3,932
Other	34	31	14
Total interest expense	$ 2,462	$ 385	$ 4,401
Amortization of debt issuance costs			
Goldman Sachs term loan	$ -	$ -	$ 487
Total interest expense	$ 2,462	$ 385	$ 4,888

The increase of $2.1 million in interest expense in 2011 as compared to 2010 was primarily due to interest expense related to the loan with Servier, which was funded in January 2011.

The decrease of $4.5 million in interest expense in 2010 as compared to 2009 was due to the repayment in full of the Goldman Sachs term loan facility in September 2009.

Interest expense for 2012 is expected to increase compared to 2011 due to the December 2011 execution of the Loan Agreement with GECC, for which the full $10.0 million was funded in December 2011.

Other income primarily consisted of gains on revaluation of warrant liabilities, unrealized and realized gains (losses), warrant modification expense, and a loss on debt extinguishment. The following table shows the activity in other income for the years ended December 31, 2011, 2010 and 2009 (in thousands):

	Year ended December 31,			2010-2011 Increase (Decrease)	2009-2010 Increase (Decrease)
	2011	2010	2009		
Other income					
Gain on revaluation of warrant liabilities	$ 3,866	$ 2,282	$ 1,782	$ 1,584	$ 500
Unrealized foreign exchange gain (loss) (1)	(457)	6	-	(463)	6
Realized foreign exchange gain (2)	554	(7)	(1)	561	(6)
Unrealized loss on foreign exchange options	(298)	-	-	(298)	-
Warrant modification expense (3)	-	(4,500)	-	4,500	(4,500)
Loss on debt extinguishment (4)	-	-	(3,645)	-	3,645
Other	24	979	69	(955)	910
Total other income	$ 3,689	$ (1,240)	$ (1,795)	$ 4,929	$ 555

(1) Unrealized foreign exchange gain (loss) for the year ended December 31, 2011 primarily relates to gains (losses) on the re-measurement of the €15 million Servier loan.
(2) Realized foreign exchange gain for the year ended December 31, 2011 primarily relates to the conversion into U.S. dollars of the €15 million cash proceeds received from Servier in January of 2011.
(3) Represents the 2010 loss associated with $4.5 million paid to the holders of warrants issued in June of 2009, upon modification of the terms.
(4) Represents the loss associated with the 2009 repayment of our Goldman Sachs term loan.

Warrants

In December 2011, pursuant to the Loan Agreement, we issued to GECC unregistered stock purchase warrants, which entitle GECC to purchase up to an aggregate of 263,158 unregistered shares of XOMA common stock at an exercise price equal to $1.14 per share. We have accounted for the warrants issued in December 2011 as equity at fair value as further discussed above in *Critical Accounting Estimates: Warrants*. As of December 31, 2011 all of these warrants were outstanding.

In February 2010, we issued warrants to purchase 1,260,000 shares of XOMA's common stock in connection with an underwritten offering. We have accounted for the warrants issued in February 2010 as a liability at fair value as further discussed above in *Critical Accounting Estimates: Warrants*. The fair value of the warrant liability was $0.3 million at December 31, 2011. As of December 31, 2011 all of these warrants were outstanding.

In June 2009, we issued warrants to certain institutional investors as part of a separate registered direct offering. The warrants represent the right to acquire an aggregate of up to 347,826 shares of our common stock over a five year period beginning December 11, 2009 at an exercise price of $19.50 per share. In February 2010, the holders of these warrants agreed to amend the terms of their warrants to remove the provisions that would have required a reduction of the warrant exercise price and an increase in the number of shares issuable on exercise of the warrants each time the Company sold shares of its common stock at a price less than the exercise price of such warrants (the "Eliminated Adjustment Provisions") and we made a cash payment of $4.5 million to these warrant holders, which was recorded in other income (expense). The exercise price of these warrants remained unchanged at $19.50 per share. We have accounted for the warrants issued in February 2010 as a liability at fair value as further discussed above in *Critical Accounting Estimates: Warrants*. The fair value of the warrant liability was $0.1 million at December 31, 2011. As of December 31, 2011 all of these warrants were outstanding.

In May 2009, we issued warrants to an institutional investor as part of a registered direct offering. The warrants represented the right to acquire an aggregate of up to 392,157 shares of our common stock over a five year period beginning May 15, 2009 at an exercise price of $15.30 per share. In February 2010, the holders of these warrants agreed to amend the terms of their warrants to remove the Eliminated Adjustment Provisions and the exercise price of these warrants was reduced from $15.30 per share to $0.015 per share. In the first quarter of 2010, the holders of these warrants exercised all warrants, acquiring 392,157 shares of our common stock for an aggregate exercise price of $5,882.

The following table provides a summary of the changes in fair value of warrant liabilities for the years ended December 31, 2011, 2010 and 2009 (in thousands):

	Warrant Liabilities
Balance at December 31, 2009	$ 4,760
Initial fair value of warrants	4,382
Reclassification of warrant liability to equity upon exercise of warrants	(2,615)
Change in fair value of warrant liabilities included in other income (expense)	(2,282)
Balance at December 31, 2010	4,245
Change in fair value of warrant liabilities included in other income (expense)	(3,866)
Balance at December 31, 2011	$ 379

Income Taxes

There was no material income tax expense for the years ended December 31, 2011 and 2010. We recognized $5.7 million in income tax expense for the year ended December 31, 2009. Income tax expense in 2009 is primarily related to $5.8 million of foreign income tax expense recognized in connection with the expansion of our existing collaboration with Takeda signed in February of 2009. We were paid a $29 million expansion fee, of which $5.8 million was withheld for payment to the Japanese taxing authority. We also recognized $0.1 million of income tax benefit for 2009 relating to research and development refundable credits.

Accounting Standards Codification Topic 740, Income Taxes ("ASC 740") 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 carry-back potential, we have determined that total deferred tax assets should be fully offset by a valuation allowance.

We have recorded cumulative gross deferred tax assets of $240.1 million and $214.3 million at December 31, 2011 and 2010, respectively, principally attributable to the timing of the deduction of certain expenses associated with certain research and development expenses, net operating loss and other carry-forwards. We also recorded corresponding valuation allowances of $240.1 million and $214.3 million at December 31, 2011 and 2010, 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, 2011, we had federal net operating loss carry-forwards (“NOLs”) of approximately $157.4 million and state net operating loss carry-forwards of approximately $311.9 million to offset future taxable income. We also had federal research and development tax credit carry-forwards of approximately $10.5 million and state research and development tax credit carry-forwards of approximately $16.2 million.

Based on our initial analysis under Section 382 of the Internal Revenue Code (which subjects the amount of pre-change NOLs and certain other pre-change tax attributes that can be utilized to an annual limitation), we experienced an ownership change in 2009, which would substantially limit the future use of our pre-change NOLs and certain other pre-change tax attributes per year. We have and will continue to evaluate alternative analyses permitted under Section 382 and IRS notices in order to determine whether or not any ownership changes have occurred and may occur (and if so, when they occurred) that would result in limitations on our NOLs or certain other tax attributes. To the extent that we do not utilize our carry-forwards within the applicable statutory carry-forward periods, either because of Section 382 limitations or the lack of sufficient taxable income, the carry-forwards will expire unused.

We did not have unrecognized tax benefits as of December 31, 2011 and do not expect this to change significantly over the next twelve months. In accordance with ASC 740, we will recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. As of December 31, 2011, we have not accrued interest or penalties related to uncertain tax positions.

Liquidity and Capital Resources

The following table summarizes our cash and cash equivalents, our working capital and our cash flow activities as of the end of, and for each of, the periods presented (in thousands):

	December 31,		2010-2011 Increase
	2011	2010	
Cash and cash equivalents	$ 48,344	$ 37,304	$ 11,040
Working Capital	$ 41,685	$ 23,352	$ 18,333

	Year ended December 31,			2010-2011 Increase (Decrease)	2009-2010 Increase (Decrease)
	2011	2010	2009		
Net cash (used in) provided by operating activities	$ (29,062)	$ (52,537)	$ 7,435	$ 23,475	$ (59,972)
Net cash (used in) provided by investing activities	$ (3,304)	$ (339)	$ 10,575	$ (2,965)	$ (10,914)
Net cash provided by (used in) financing activities	$ 43,979	$ 66,271	$ (3,614)	$ (22,292)	$ 69,885
Effect of exchange rate changes on cash	$ (573)	$ -	$ -	$ (573)	$ -
Net increase in cash and cash equivalents	$ 11,040	$ 13,395	$ 14,396		

Working Capital

The increase in working capital in 2011 as compared to 2010 was primarily due to a decrease of $11.3 million in deferred revenue – current. The decrease in deferred revenue – current was primarily due to the recognition of $14.9 million during the year ended December 31, 2011, related to the $15.0 million license fee received as consideration for the collaboration with Servier. Also contributing to the increase in working capital were reductions of $3.9 million and $1.7 million in warrant liabilities and accounts payable and accrued liabilities, respectively.

Cash (Used in) Provided By Operating Activities

Net cash used in operating activities was $29.1 million for the year ended December 31, 2011, compared with $52.5 million for the same period in 2010. The decrease in net cash used in operating activities was primarily related to the receipt of the $15.0 million license fee received as consideration for the collaboration with Servier and a decrease in cash paid on gevokizumab-related clinical trials. Partially offsetting these decreases in cash used in operating activities was a decrease in accounts payable and an increase in salaries and benefits due to a higher employee headcount.

The $60.0 million change in cash provided by operations in 2009 to cash used in operations in 2010 was primarily due to a decrease in revenue receipts for license and collaborative fees and royalties, and an increase in spending on gevokizumab related to the Phase 2 clinical program. Comparatively, during 2009, we received one-time cash receipts of $23.2 million related to the expansion of our existing collaboration with Takeda and $22.3 million related to the sale of our LUCENTIS® royalty stream to Genentech. In addition, we received $10.0 million in the second half of 2009 related to our two antibody discovery collaboration agreements entered into with Arana and Kaketsuken.

In addition, receivables and related party and other receivables increased by $13.6 million in 2010 primarily due to the $15.0 million up-front fee in connection with the license and collaboration agreement entered into with Servier in December 2010. These decreases in cash provided by operations were partially offset by an increase in the accounts payable and accrued liabilities balance of $2.7 million due to increased research and development expenses and timing of payments.

We expect net cash used in operating activities in 2012 to increase compared to 2011 levels due to increased research and development spending.

Cash Used in Investing Activities

Cash used in investing activities of $3.3 million and $0.3 million for the year ended December 31, 2011 and 2010, respectively, consisted of fixed asset purchases relating to CMC activity. Net cash provided by investing activities of $10.6 million in 2009 primarily consisted of a decrease in the restricted cash balance of $9.5 million due to use of the funds for the repayment of our Goldman Sachs term loan in September 2009. In addition, we received proceeds from maturities of investments of $1.3 million.

Cash Provided by Financing Activities

Net cash provided by financing activities of $44.0 million for the year ended December 31, 2011 was primarily related to loan proceeds of $20.1 million received from Servier, issuance of shares of our common stock for $15.1 million under the 2010 and 2011 ATM agreements, and loan proceeds of $10.0 million received from GECC. The loan proceeds from GECC were partially offset by debt issuance costs of $1.3 million.

Net cash provided by financing activities of $66.3 million for the year ended December 31, 2010 was primarily related to proceeds received from the issuance of shares of our common stock of $70.8 million, including net proceeds of $19.2 million from an underwritten offering in February 2010, $13.9 million from our common share purchase agreement with Azimuth in August 2010, and $37.7 million under the 2009 and 2010 ATM agreements, partially offset by $4.5 million paid to the holders of warrants issued in June 2009 upon modification of the terms.

Net cash used in financing activities of $3.6 million for the year ended December 31, 2009 was primarily related to the repayment in full of the Goldman Sachs term loan, including a principal payment of $8.4 million in the second quarter of 2009, repayment of the remaining outstanding balance of $42.0 million in September 2009, accrued interest to the date of payment of $2.4 million, and payment of a prepayment premium of $2.5 million. This cash used in financing activities was partially offset by proceeds of $49.3 million received from the issuance of shares of our common stock in 2009, including gross proceeds of $26.4 million from an equity line of credit in September 2009, $22 million from two registered direct offerings in May 2009 and June 2009, and $2.8 million from our 2009 ATM Agreement.

Equity Line of Credit

In October of 2008, we entered into a common share purchase agreement (the "2008 Purchase Agreement") with Azimuth, pursuant to which we obtained a committed equity line of credit facility (the "2008 Facility"). From the inception of the 2008 Facility through 2009, we sold a total of 2,815,228 shares of our common stock to Azimuth for aggregate gross proceeds of $33.9 million. This included the sale of 2.3 million shares in two transactions in September of 2009. Offering expenses incurred in 2009 related to sales to Azimuth were $0.4 million. At the end of the third quarter of 2009, the 2008 Facility was no longer in effect, and no additional shares can be issued thereunder.

In July of 2010, we entered into a common share purchase agreement (the "2010 Purchase Agreement") with Azimuth pursuant to which we obtained a committed equity line of credit facility (the "2010 Facility"). In August of 2010, we sold a total of 3,421,407 shares of our common stock under the 2010 Facility for aggregate gross proceeds of $14.2 million, representing the maximum number of shares that could be sold under the 2010 Facility. As a result, the 2010 Facility is no longer in effect, and no additional shares can be issued thereunder.

Registered Direct Offerings

In May of 2009, we entered into a definitive agreement with an institutional investor to sell 784,313 units, with each unit consisting of one share of our common stock and a warrant to purchase 0.50 of a share of our common stock, for gross proceeds of approximately $10.0 million, before deducting placement agent fees and estimated offering expenses of $0.8 million, in a registered direct offering. In the first quarter of 2010, the holders of these warrants exercised all warrants, acquiring 392,157 shares of our common stock for an aggregate exercise price of $5,882.

In June of 2009, we entered into a definitive agreement with certain institutional investors to sell 695,652 units, with each unit consisting of one share of our common stock and a warrant to purchase 0.50 of a share of our common stock, for gross proceeds of approximately $12.0 million, before deducting placement agent fees and estimated offering expenses of $0.8 million, in a second registered direct offering. In February of 2010, the holders of these warrants agreed to amend the terms of their warrants to remove the Eliminated Adjustment Provisions and we made a cash payment of $4.5 million to these warrant holders, which was recorded in other income (expense). As of December 31, 2011 all of these warrants were outstanding.

ATM Agreements

In the third quarter of 2009, we entered into the 2009 ATM Agreement, under which we could sell up to 1.7 million shares of our common stock from time to time through Wm Smith, as our agent for the offer and sale of the shares. From the inception of the 2009 ATM Agreement through October of 2010, the Company sold a total of 1.7 million shares of our common stock through Wm Smith, constituting all of the shares available for sale under the agreement, for aggregate gross proceeds of $12.2 million, including 1.4 million shares sold in 2010 for aggregate gross proceeds of $9.3 million. Total offering expenses related to these sales were $0.4 million.

In the third quarter of 2010, we entered into the 2010 ATM Agreement, with Wm Smith and MLV (the "Agents"), under which we could sell shares of our common stock from time to time through the Agents, as our agents for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under our registration statement on Form S-3 (File No. 333-148342) filed with the Securities and Exchange Commission (the "SEC") on December 26, 2007 and declared effective by the SEC on May 29, 2008. The Agents could sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker.

The Agents could also sell the shares in privately negotiated transactions, subject to our prior approval. From the inception of the 2010 ATM Agreement through May of 2011, we sold a total of 7,560,862 shares of our common stock under this agreement for aggregate gross proceeds of $34.0 million, including 821,386 shares sold in 2011 for aggregate gross proceeds of $4.4 million. Total offering expenses incurred related to sales under the 2010 ATM Agreement from inception to May of 2011 were $1.0 million, including $0.1 million incurred in 2011. In May of 2011, 2010 ATM Agreement expired by its terms, and there will be no further issuances under this facility.

On February 4, 2011, we entered into the 2011 ATM Agreement, with MLV, under which we may sell shares of our common stock from time to time through the MLV, as our agent for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under our registration statement on Form S-3 (File No. 333-172197) filed with the SEC on February 11, 2011 and amended on March 10, 2011, June 3, 2011 and January 3, 2012, which was most recently declared effective by the SEC on January 17, 2012. MLV may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker. MLV may also sell the shares in privately negotiated transactions, subject to our prior approval. From the inception of the 2011 ATM Agreement through December 31, 2011, we sold a total of 5,286,952 shares of our common stock under this agreement for aggregate gross proceeds of $11.3 million. Total offering expenses incurred related to sales under the 2011 ATM Agreement from inception to December 31, 2011, were $0.3 million. Subsequent to December 31, 2011, through March 12, 2012, 2,285,375 additional shares of our common stock were sold through MLV for aggregate gross proceeds of $3.3 million. Total offering expenses related to these sales were approximately $0.1 million.

Underwritten Offering

In February of 2010, we completed an underwritten offering of 2.8 million units, with each unit consisting of one shares of our common stock and a warrant to purchase 0.45 of a share of our common stock, for gross proceeds of approximately $21.0 million, before deducting underwriting discounts and commissions and estimated offering expenses of $1.7 million. The warrants, which represent the right to acquire an aggregate of up to 1.26 million shares of our common stock, are exercisable beginning six months and one day after issuance and have a five-year term and an exercise price of $10.50 per share. As of December 31, 2011 all of these warrants were outstanding.

Servier Loan

In December 2010, we entered into a loan agreement with Servier, which provided for an advance of up to €15.0 million. The loan was fully funded in January 2011, with the proceeds converting to approximately $19.5 million. The loan is secured by an interest in XOMA's intellectual property rights to all gevokizumab indications worldwide, excluding certain rights in the U.S. and Japan. Interest is calculated at a floating rate based on a Euro Inter-Bank Offered Rate ("EURIBOR") and is subject to a cap. The interest rate is reset semi-annually in January and July of each year. The interest rate for the initial interest period was 3.22%. The interest rate has been reset to 3.83% for the six-month period from July 2011 through January 2012 and 3.54% for the six-month period from January 2012 through July 2012. Interest is payable semi-annually; however, the loan agreement provides for a deferral of interest payments over a period specified in the agreement. During the deferral period, accrued interest will be added to the outstanding principal amount for the purpose of interest calculation for the next six-month interest period. On the repayment commencement date, all unpaid and accrued interest shall be paid to Servier, and thereafter, all accrued and unpaid interest shall be due and payable at the end of each six-month period. The loan matures in 2016; however, after a specified period prior to final maturity, the loan is to be repaid (i) at Servier's option, by applying up to a significant percentage of any milestone or royalty payments owed by Servier under our collaboration agreement and (ii) using a significant percentage of any upfront, milestone or royalty payments we receive from any third-party collaboration or development partner for rights to gevokizumab in the U.S. and/or Japan. In addition, the loan becomes immediately due and payable upon certain customary events of default. At December 31, 2011, the outstanding principal balance under this loan was $19.4 million.

GECC Term Loan

In December 2011, we entered into the Loan Agreement with GECC under which GECC agreed to make a term loan in an aggregate principal amount of $10.0 million (the "Term Loan") to our wholly-owned subsidiary XOMA (US) LLC, and upon execution of the Loan Agreement, GECC funded the Term Loan. The Term Loan accrues interest at a fixed rate of 11.71% per annum and is secured by substantially all of our existing and after-acquired assets, excluding our intellectual property assets. We are required to repay the principal amount of the Term Loan over a period of 42 consecutive equal monthly installments of principal and accrued interest, commencing on January 4, 2012, and thereafter on the first calendar day of each succeeding month. The Term Loan matures and is due and payable in full on June 30, 2015, at which time we will make an additional payment equal to 5% of the Term Loan.

In December 2011, pursuant to the Loan Agreement, we issued to GECC unregistered stock purchase warrants, which entitle GECC to purchase up to an aggregate of 263,158 unregistered shares of XOMA common stock at an exercise price equal to $1.14 per share. These warrants are immediately exercisable and expire on December 30, 2016.

Proceeds from the sale of shares under the 2008 Purchase Agreement, the 2010 Purchase Agreement, the 2009 ATM Agreement, the 2010 ATM Agreement, the 2011 ATM Agreement, the Servier loan, the GECC Term Loan, registered direct offerings and other equity offerings are being used to continue development of our gevokizumab product candidate and for other working capital and general corporate purposes. We also used certain of these proceeds to repay the Goldman Sachs term loan in September 2009.

* * *

We have incurred significant operating losses and negative cash flows from operations since our inception. At December 31, 2011, we had cash and cash equivalents of $48.3 million. During 2012, we expect to continue using our cash and cash equivalents to fund ongoing operations. Additional licensing, antibody discovery and development collaboration agreements, government funding and financing arrangements may positively impact our cash balances. Based on our cash reserves and anticipated spending levels, revenue from collaborations including the gevokizumab license and collaboration agreement with Servier, funding from the loan agreement with GECC, our recent public offering, biodefense contracts and licensing transactions and other sources of funding that we believe to be available, we estimate that we have sufficient cash resources to meet our anticipated net cash needs into 2014. 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. 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.

Commitments and Contingencies

Schedule of Contractual Obligations

Payments by period due under contractual obligations at December 31, 2011 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 [a]	$ 12,320	$ 8,084	$ 4,236	$ -	$ -
Debt Obligations[b]					
Principal	43,457	2,857	5,714	34,886	-
Interest	6,953	2,155	3,286	1,512	-
Total	$ 62,730	$ 13,096	$ 13,236	$ 36,398	$ -

(a) Operating leases are net of sublease income of $0.3 million.

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

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 $96 million (assuming one product per contract meets all milestones) have not been recorded on our consolidated balance sheet. We are also obligated to pay royalties, ranging generally from 1.5% to 14% 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. We are unable to determine precisely when and if our payment obligations under the agreements will become due as these obligations are based on future 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

In March 2010, Accounting Standards Codification Topic 605, *Revenue Recognition* was amended to define a milestone and clarify that the milestone method of revenue recognition is a valid application of the proportional performance model when applied to research or development arrangements. Accordingly, a company can make an accounting policy election to recognize a payment that is contingent upon the achievement of a substantive milestone in its entirety in the period in which the milestone is achieved. This guidance was adopted effective January 1, 2011 on a prospective basis and did not have a material effect on the Company's consolidated financial statements.

In May 2011, Accounting Standards Codification Topic 820, *Fair Value Measurement* was amended to develop common requirements for measuring fair value and for disclosing information about fair value measurements in accordance with U.S. generally accepted accounting principles and International Financial Reporting Standards. The Company plans to adopt this guidance as of January 1, 2012 on a prospective basis and does not expect the adoption thereof to have a material effect on the Company's consolidated financial statements.

In June 2011, Accounting Standards Codification Topic 220, *Comprehensive Income* was amended to increase the prominence of items reported in other comprehensive income. Accordingly, a company can present all nonowner changes in stockholders' equity either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The Company plans to adopt this guidance as of January 1, 2012 on a retrospective basis and does not expect the adoption thereof to have a material effect on the Company's consolidated financial statements.

Subsequent Events

2012 Restructuring

In January 2012, we implemented a restructuring designed to sharpen our focus on value-creating opportunities led by gevokizumab and our unique antibody discovery and development capabilities. The restructuring plan includes a reduction of our personnel by 84 positions, or 34%, of which approximately 50 were eliminated immediately and the remainder will be eliminated by April 6, 2012. As a result, we expect to reduce ongoing internal spending by approximately $14 million in 2012 compared to the 2011 level. We also anticipate taking one-time charges for restructuring and related severance costs totaling approximately $6.0 million during 2012, of which $3.5 million are expected to result in cash charges and $3.8 million are expected to be taken in the first quarter of 2012. These staff reductions result primarily from our decisions to utilize a contract manufacturing organization for Phase 3 and commercial antibody production and to eliminate internal research functions that are non-differentiating or that can be obtained cost-effectively by contract service providers.

Acquisition of U.S. Rights to Perindopril Franchise

On January 17, 2012, we announced that we had acquired U.S. rights to the perindopril franchise from Servier. The agreement includes ACEON® (perindopril erbumine), a currently marketed angiotensin converting enzyme ("ACE") inhibitor, and a portfolio of three fixed-dose combination product candidates where perindopril is combined with another active ingredient(s), such as a calcium channel blocker. We assumed commercialization activities for ACEON® in January 2012 following the transfer from Servier's previous licensee. In late February 2012, we initiated enrollment in a Phase 3 trial for perindopril arginine and amlodipine besylate, the first fixed-dose combination product candidate. The trial, named PATH (**P**erindopril **A**mlodipine for the **T**reatment of **H**ypertension), is expected to enroll approximately 816 patients with hypertension to determine the safety and efficacy of the fixed dose combination versus either perindopril or amlodipine alone. Based on regulatory interaction to date, if positive, this trial is expected to be the only additional efficacy trial needed to complement the existing clinical data in support of the submission of an application to the FDA seeking approval for this product candidate. We estimate the total cost of the PATH trial will be between $8 million and $10 million. Partial funding for the PATH trial will be provided by Servier; the balance of study expenses, consisting primarily of costs generated by Medpace, Inc., our contract research organization, are expected to be paid over time from the profits generated by our ACEON® sales.

Underwritten Offering and Amendment to Shareholder Rights Plan

On March 9, 2012, we completed an underwritten public offering of 29,669,154 shares of our common stock, and accompanying warrants to purchase one half of a share of common stock for each share purchased, at a public offering price of $1.32 per share. Total gross proceeds from the offering were approximately $39.2 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $3.0 million. The warrants, which represent the right to acquire an aggregate of up to 14,834,577 shares of common stock, are immediately exercisable and have a five-year term and an exercise price of $1.76 per share.

We have amended our shareholder rights agreement to provide that it will not apply to any person or entity who becomes the beneficial owner of 20% or more but less than 40% of our outstanding common stock with the prior approval of our board of directors, and our board has approved purchasers in the recent public offering becoming beneficial owners of 20% or more but less than 40% of our outstanding common stock as a result of their participation in the offering. As a result, such ownership by any such purchaser will not trigger the provisions of the rights agreement that would give each holder of the rights the right to receive upon exercise that number of common share equivalents having a market value of two times the exercise price. The board's approval in this regard only applies to purchasers in such offering.

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

Certain statements contained herein related to the anticipated size of clinical trials, the anticipated timing of initiation of clinical trials, the expected availability of clinical trial results, the sufficiency of our cash resources, the estimated costs of clinical trials and the amounts of certain revenues and certain costs in comparison to prior years, 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, clinical trials may not reach their anticipated size if trials are not initiated or due to enrollment issues such as unavailability of patients, competing product candidates or unanticipated safety issues; the timing of initiation of or availability of results of clinical trials may be delayed or may never occur as a result of actions or inaction by regulators or our present or future collaboration partners, complications in the design, implementation or third-party approval of clinical trials, complications in the collection or interpretation of statistical data or unanticipated safety issues; 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 revenue or cost sharing arrangements do not materialize, or if funds are not otherwise available on acceptable terms; and our revenues may be lower than anticipated, and our costs (including clinical trial costs) may be higher than expected, due to actions or inactions by regulatory authorities or our present or future collaboration partners, unanticipated safety issues or unavailability of additional financing, licensing or collaboration opportunities. These and other risks, including those related the generally unstable nature of current economic and financial market conditions; the results of discovery research and 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 Food and Drug Administration, 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 or licensing relationships; the ability of collaborators, licensees and other third parties to meet their obligations and their discretion in decision-making; our ability to meet the demands of the United States government agency with which we have entered our government contracts; competition; market demand for products; scale-up, manufacturing 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; and uncertainties as to the costs of protecting intellectual property 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. However, if the need arose to liquidate such securities before maturity, we may experience losses on liquidation.

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, 2011 and 2010 (in thousands, except interest rate):

	Maturity	Carrying Amount (in thousands)	Fair Value (in thousands)	Weighted Average Interest Rate
December 31, 2011				
Cash and cash equivalents	Daily to 90 days	$ 48,344	$ 48,344	0.25%
December 31, 2010				
Cash and cash equivalents	Daily to 90 days	$ 37,304	$ 37,304	0.09%

As of December 31, 2011, we have an outstanding principal balance on our note with Novartis of $14.0 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 2.80% at December 31, 2011. No further borrowing is available under this note.

As of December 31, 2011, we have an outstanding principal balance on our loan with Servier of €15.0 million, which converts to approximately $19.4 million at December 31, 2011. The interest rate on this loan is charged at a floating rate based on a Euro Inter-Bank Offered Rate ("EURIBOR") and subject to a cap. The interest rate for the initial interest period was 3.22%. The interest rate has been reset to 3.83% for six-month period from July 2011 through January 2012 and 3.54% for the six-month period from January 2012 through July 2012. No further borrowing is available under this loan.

As of December 31, 2011, we have an outstanding principal balance on our loan with GECC of $10.0 million, which is to be repaid over a period of 42 consecutive equal monthly installments. The loan accrues interest at a fixed rate of 11.71% per annum. No further borrowing is available under this note.

The variable interest rate related to our long-term debt instruments is based on LIBOR for our Novartis note and EURIBOR for our Servier loan. We estimate that a hypothetical 100 basis point change in interest rates could increase or decrease our interest expense by approximately $0.3 million on an annualized basis. Our loan with GECC is not subject to interest rate risk as it accrues interest at a fixed rate.

Foreign Currency Risk

We hold debt, may incur expenses, and may be owed milestones denominated in foreign currencies. The amount of debt owed, expenses incurred, or milestones owed to us will be impacted by fluctuations in these foreign currencies. When the U.S. dollar weakens against foreign currencies, the U.S. dollar value of the foreign-currency denominated debt, expense, and milestones increases, and when the U.S. dollar strengthens against these currencies, the U.S. dollar value of the foreign-currency denominated debt, expense, and milestones decreases. Consequently, changes in exchange rates will affect the amount we are required to repay on our €15.0 million loan from Servier and may affect our results of operations. Our loan from Servier was fully funded in January 2011, with the proceeds converting to approximately $19.5 million using the January 13, 2011 Euro to USD exchange rate. At December 31, 2011, the €15.0 million outstanding principal balance under this loan agreement would have equaled approximately $19.4 million using the December 31, 2011 Euro to USD exchange rate. In May 2011, in order to manage our foreign currency exposure relating to our principal and interest payments on our loan from Servier, we entered into two foreign exchange option contracts. Our use of derivative financial instruments represents risk management; we do not enter into derivative financial contracts for trading purposes.

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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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.

There were no changes in our internal controls over financial reporting during 2011 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 Chief Executive Officer 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, 2011. 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, 2011, our internal control over financial reporting is effective based on those criteria.

The Company's internal control over financial reporting as of December 31, 2011, 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 Chief Executive Officer 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, 2011, 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 Stockholders of XOMA Corporation:

We have audited XOMA Corporation's internal control over financial reporting as of December 31, 2011, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). XOMA Corporation'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 Corporation maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011, based onthe 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 Corporation as of December 31, 2011 and 2010 and the related consolidated statements of operations, stockholders' equity (net capital deficiency) and cash flows for each of the three years in the period ended December 31, 2011, and our report dated March 14, 2012 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP
San Francisco, California
March 14, 2012

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 Chief Executive Officer (principal executive officer) and the Vice President, Finance and Chief Financial Officer (principal financial and principal 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 2011 Annual General Meeting of Stockholders, 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", "Grants of Plan-Based Awards", "Outstanding Equity Awards as of December 31, 2011", "Option Exercises and Shares Vested", "Pension Benefits", "Non-Qualified Deferred Compensation"* and *"Compensation of Directors"* appearing in our proxy statement for the 2012 Annual General Meeting of Stockholders, and is incorporated herein by reference.

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

Information required by this Item will be included in the sections labeled *"Stock Ownership"* and *"Equity Compensation Plan Information"* appearing in our proxy statement for the 2012 Annual General Meeting of Stockholders, 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 2012 Annual General Meeting of Stockholders, 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 Registered Public Accounting Firm"* appearing in our proxy statement for the 2012 Annual General Meeting of Stockholders, 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 14th day of March 2012.

XOMA CORPORATION

By: /s/ JOHN VARIAN
John Varian
Chief Executive Officer

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/ John Varian **(John Varian)**	Chief Executive Officer (Principal Executive Officer) and Director	March 14, 2012
/s/ Fred Kurland **(Fred Kurland)**	Vice President, Finance and Chief Financial Officer (Principal Financial and Principal Accounting Officer)	March 14, 2012
/s/ Patrick J. Scannon **(Patrick J. Scannon)**	Executive Vice President and Chief Scientific Officer and Director	March 14, 2012
/s/ W. Denman Van Ness **(W. Denman Van Ness)**	Chairman of the Board	March 14, 2012
/s/ William K. Bowes, Jr. **(William K. Bowes, Jr.)**	Director	March 14, 2012
/s/ Peter Barton Hutt **(Peter Barton Hutt)**	Director	March 14, 2012
/s/ Timothy P. Walbert **(Timothy P. Walbert)**	Director	March 14, 2012
/s/ Jack L. Wyszomierski **(Jack L. Wyszomierski)**	Director	March 14, 2012

Index to Consolidated Financial Statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of XOMA Corporation:

We have audited the accompanying consolidated balance sheets of XOMA Corporation as of December 31, 2011 and 2010, and the related consolidated statements of operations, stockholders' equity (net capital deficiency), and cash flows for each of the three years in the period ended December 31, 2011. These consolidated financial statements are the responsibility of XOMA Corporation'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 Corporation at December 31, 2011 and 2010, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2011, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), XOMA Corporation's internal control over financial reporting as of December 31, 2011, 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 14, 2012 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP
San Francisco, California
March 14, 2012

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

	December 31, 2011	December 31, 2010
ASSETS		
Current assets:		
Cash and cash equivalents	$ 48,344	$ 37,304
Trade and other receivables, net	12,332	20,864
Prepaid expenses and other current assets	2,019	712
Total current assets	62,695	58,880
Property and equipment, net	12,709	14,869
Other assets	2,632	503
Total assets	$ 78,036	$ 74,252
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 2,128	$ 3,581
Accrued and other liabilities	10,012	10,658
Deferred revenue	5,695	17,044
Interest bearing obligation – current	2,796	-
Warrant liability	379	4,245
Total current liabilities	21,010	35,528
Deferred revenue – long-term	7,539	1,086
Interest bearing obligations – long-term	33,524	13,694
Other liabilities - long-term	952	353
Total liabilities	63,025	50,661
Commitments and contingencies (Note 11)		
Stockholders' equity:		
Preferred stock, $0.05 par value, 1,000,000 shares authorized		
Series B, 8,000 designated, 0 and 2,959 shares issued and outstanding at December 31, 2011 and 2010, respectively	-	1
Common stock, $0.0075 par value, 92,666,666 shares authorized, 35,107,007 and 28,491,318 shares outstanding at December 31, 2011 and 2010, respectively	263	214
Additional paid-in capital	900,801	876,686
Accumulated deficit	(886,053)	(853,310)
Total stockholders' equity	15,011	23,591
Total liabilities and stockholders' equity	$ 78,036	$ 74,252

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

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

	Year Ended December 31,		
	2011	**2010**	**2009**
Revenues:			
License and collaborative fees	$ 17,991	$ 2,182	$ 43,822
Contract and other revenue	40,037	27,174	25,492
Royalties	168	4,285	29,116
Total revenues	58,196	33,641	98,430
Operating expenses:			
Research and development	68,137	77,413	58,131
Selling, general and administrative	24,014	23,250	23,736
Restructuring	-	82	3,603
Total operating expenses	92,151	100,745	85,470
(Loss) income from operations	(33,955)	(67,104)	12,960
Other income (expense):			
Interest (expense)	(2,462)	(385)	(4,888)
Loss on debt extinguishment	-	-	(3,645)
Other income (expense)	3,689	(1,240)	1,850
Net (loss) income before taxes	(32,728)	(68,729)	6,277
Income tax expense	(15)	(27)	(5,727)
Net (loss) income	$ (32,743)	$ (68,756)	$ 550
Basic and diluted net (loss) income per share of common stock	$ (1.04)	$ (3.69)	$ 0.05
Shares used in computing basic net (loss) income per share of common stock	31,590	18,613	10,993
Shares used in computing diluted net (loss) income per share of common stock	31,590	18,613	11,313

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

XOMA Corporation
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(NET CAPITAL DEFICIENCY)
(in thousands)

	Preferred Stock		Common Stock		Paid-In Capital	Accumulated Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Net Capital Deficiency)
	Shares	Amount	Shares	Amount				
Balance, December 31, 2008	3	$ 1	$ 9,364	$ 70	$ 753,634	$ (2)	$ (785,104)	$ (31,401)
Exercise of stock options, contributions to 401(k) and incentive plans	—	—	135	1	1,358	—	—	1,359
Stock-based compensation expense	—	—	—	—	4,395	—	—	4,395
Sale of shares of common stock	—	—	4,036	30	42,591	—	—	42,621
Comprehensive income (loss):								
Net change in unrealized loss on investments	—	—	—	—	—	2	—	2
Net income	—	—	—	—	—	—	550	550
Comprehensive loss	—	—	—	—	—	—	—	552
Balance, December 31, 2009	3	1	13,536	101	801,978	-	(784,554)	17,526
Exercise of stock options, contributions to 401(k) and incentive plans	—	—	94	1	945	—	—	946
Stock-based compensation expense	—	—	—	—	4,913	—	—	4,913
Sale of shares of common stock	—	—	14,469	109	66,232	—	—	66,341
Exercise of warrants	—	—	392	3	2,618	—	—	2,621
Comprehensive income:								
Net loss	—	—	—	—	—	—	(68,756)	(68,756)
Comprehensive income	—	—	—	—	—	—	—	(68,756)
Balance, December 31, 2010	3	1	28,491	214	876,686	-	(853,310)	23,591
Exercise of stock options, contributions to 401(k) and incentive plans	—	—	253	2	1,099	—	—	1,101
Stock-based compensation expense	—	—	—	—	7,759	—	—	7,759
Sale of shares of common stock	—	—	6,108	45	15,043	—	—	15,088
Conversion of Series B convertible preferred stock	(3)	(1)	255	2	(1)	—	—	-
Issuance of warrants	—	—	—	—	215	—	—	215
Comprehensive loss:								
Net loss	—	—	—	—	—	—	(32,743)	(32,743)
Comprehensive loss	—	—	—	—	—	—	—	(32,743)
Balance, December 31, 2011	-	$ -	$ 35,107	$ 263	$ 900,801	$ -	$ (886,053)	$ 15,011

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

XOMA Corporation
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2011	**2010**	**2009**
Cash flows from operating activities:			
Net (loss) income	$ (32,743)	$ (68,756)	$ 550
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	5,357	5,721	6,831
Common stock contribution to 401(k)	1,046	905	1,198
Stock-based compensation expense	7,759	4,913	4,395
Accrued interest on interest bearing obligations	1,023	353	(1,116)
Revaluation of warrant liability	(3,866)	(2,283)	(1,781)
Amortization of discount on debt and debt issuance costs	1,360	-	487
Unrealized loss on foreign currency exchange	513	-	-
Unrealized loss on foreign exchange options	298	-	-
Warrant modification expense	-	4,500	-
Loss on debt extinguishment	-	-	3,645
Other non-cash adjustments	107	19	12
Changes in assets and liabilities:			
Trade and other receivables, net	8,532	(13,633)	9,455
Prepaid expenses and other assets	(2,469)	199	284
Accounts payable and accrued liabilities	(2,144)	2,650	(2,844)
Deferred revenue	(13,794)	13,122	(12,205)
Other liabilities	(41)	(247)	(1,476)
Net cash (used in) provided by operating activities	(29,062)	(52,537)	7,435
Cash flows from investing activities:			
Proceeds from maturities of investments	-	-	1,300
Transfer of restricted cash	-	-	9,545
Purchase of property and equipment	(3,304)	(339)	(270)
Net cash (used in) provided by investing activities	(3,304)	(339)	10,575
Cash flows from financing activities:			
Proceeds from issuance of long-term debt, net of issuance costs	28,836	-	-
Principal payments of debt	-	-	(50,394)
Payment of prepayment premium on repayment of short-term debt	-	-	(2,543)
Proceeds from issuance of common stock	15,143	70,771	49,323
Payment for modification of warrants	-	(4,500)	-
Net cash provided by (used in) financing activities	43,979	66,271	(3,614)
Effect of exchange rate changes on cash	(573)	-	-
Net increase in cash and cash equivalents	11,040	13,395	14,396
Cash and cash equivalents at the beginning of the period	37,304	23,909	9,513
Cash and cash equivalents at the end of the period	$ 48,344	$ 37,304	$ 23,909
Supplemental Cash Flow Information:			
Cash paid during the year for:			
Interest	$ 7	$ -	$ 5,510
Income taxes	15	16	5,800
Non-cash investing and financing activities:			
Discount on long-term debt	$ (9,114)	$ -	$ -
Issuance and Extinguishment of warrants	$ 215	$ 1,767	$ 6,541
Interest added to principal balances on long-term debt	$ 669	$ 353	$ 462

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

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Description of Business

XOMA Corporation ("XOMA" or the "Company"), a Delaware corporation, discovers and develops innovative antibody-based therapeutics. The Company's products are presently in various stages of development and most are subject to regulatory approval before they can be commercially launched.

2. Basis of Presentation and Significant Accounting Policies

Principles of 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.

Use of Estimates and Reclassifications

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosures. On an on-going basis, management evaluates its estimates including, but not limited to, those related to revenue recognition, research and development expense, long-lived assets, warrant liabilities, derivative instruments 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, such as the Company's billing under government contracts. Under the Company's contracts with the National Institute of Allergy and Infectious Diseases ("NIAID"), a part of the National Institutes of Health ("NIH"), the Company bills using NIH provisional rates and thus are subject to future audits at the discretion of NIAID's contracting office. These audits can result in an adjustment to revenue previously reported.

Reverse Stock Split

All references to numbers of shares of our common stock and per-share information in the accompanying financial statements have been adjusted retroactively to reflect the Company's reverse stock split on August 18, 2010.

Recent Accounting Pronouncements

In March 2010, Accounting Standards Codification Topic 605, *Revenue Recognition* was amended to define a milestone and clarify that the milestone method of revenue recognition is a valid application of the proportional performance model when applied to research or development arrangements. Accordingly, a company can make an accounting policy election to recognize a payment that is contingent upon the achievement of a substantive milestone in its entirety in the period in which the milestone is achieved. This guidance was adopted effective January 1, 2011 on a prospective basis and did not have a material effect on the Company's consolidated financial statements.

In May 2011, Accounting Standards Codification Topic 820, *Fair Value Measurement* was amended to develop common requirements for measuring fair value and for disclosing information about fair value measurements in accordance with U.S. generally accepted accounting principles and International Financial Reporting Standards. The Company plans to adopt this guidance as of January 1, 2012 on a prospective basis and does not expect the adoption thereof to have a material effect on the Company's consolidated financial statements.

In June 2011, Accounting Standards Codification Topic 220, *Comprehensive Income* was amended to increase the prominence of items reported in other comprehensive income. Accordingly, a company can present all nonowner changes in stockholders' equity either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The Company plans to adopt this guidance as of January 1, 2012 on a retrospective basis and does not expect the adoption thereof to have a material effect on the Company's consolidated financial statements.

Revenue Recognition

Revenue is 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 or determinable; and (4) collectability is reasonably assured. The determination of criteria (2) is based on management's judgments regarding whether a continuing performance obligation exists. The 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 collectability of those fees. Allowances are established for estimated uncollectible amounts, if any.

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The Company recognizes revenue from its license and collaboration arrangements, contract services 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 and other arrangements are recognized as revenue upon completion of the milestone event, once confirmation is received from the third party and collectability is reasonably assured. This represents the culmination of the earnings process when the Company has no future performance obligations related to the payment. Milestone payments that are not substantive or 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 and manufacturing services to collaborative partners, biodefense contractors 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 management's 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 revenue should the estimate to complete be extended.

Up-front fees are recognized in the same manner as the final deliverable, which is generally ratably over the period of the continuing performance obligation. 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 or licensees, historical information and forecasted sales trends.

Research and Development Expenses

The Company expenses research and development costs as incurred. Research and development expenses consist of direct costs such as salaries and related personnel costs and material and supply costs, and research-related allocated overhead costs, such as facilities costs. In addition, research and development expenses include costs related to clinical trials. 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.

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Cash and Cash Equivalents and Short-term Investments

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.

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 Company reviews its instruments for other-than-temporary impairment whenever the value of the instrument is less than the amortized cost. 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.

Property and Equipment and Long-Lived Assets

Property and equipment is stated at cost less depreciation. 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).

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 in the future are less than the carrying amounts of those assets.

Warrants

The Company has issued warrants to purchase shares of its common stock in connection with financing activities. The Company accounts for some of these warrants as a liability at fair value and others as equity at fair value. The fair value of the outstanding warrants is estimated using the Black-Scholes Model. The Black-Scholes Model requires inputs such as the expected term of the warrants, share price volatility and risk-free interest rate. These inputs are subjective and generally require significant analysis and judgment to develop. For the estimate of the expected term, the Company uses the full remaining contractual term of the warrant. The Company bases its estimate of expected volatility on its historical volatility. The assumptions associated with warrant liabilities are reviewed each reporting period and changes in the estimated fair value of these warrant liabilities are recognized in other income (expense).

In February 2010, the holders of the May 2009 and June 2009 warrants agreed to amend the terms of their warrants to remove the provisions that would have required a reduction of the warrant exercise price and an increase in the number of shares issuable on exercise of the warrants each time the Company sold shares of its common stock at a price less than the exercise price of such warrants (the "Eliminated Adjustment Provisions"). Prior to the amendments, the Company recorded the warrants issued in May and June of 2009 as a liability at fair value due to the Eliminated Adjustment Provisions and certain other provisions, which was estimated using the Monte Carlo Simulation Model ("Simulation Model").

Income Taxes

The Company accounts for uncertain tax positions in accordance with Accounting Standards Codification Topic 740,*Income Taxes* ("ASC 740"). ASC 740 provides for the recognition of deferred tax assets if realization of such assets is more likely than not.

Net Income (Loss) per Share of Common Stock

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

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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

	December 31,		
	2011	2010	2009
Options for common stock	3,890	2,180	1,156
Convertible preferred stock	67	254	-
Warrants for common stock (1)	1,609	1,535	740
Total	5,566	3,969	1,896

(1) 263 warrants issued in December of 2011

For the year ended December 31, 2009, the following is a reconciliation of the numerators and denominators of the basic and diluted net income per share (in thousands):

	Year ended December 31, 2009
Numerator	
Net income used for basic and diluted net income per share	$ 550
Denominator	
Weighted average shares outstanding used for basic net income per share	10,993
Effect of dilutive stock options	66
Effect of convertible preferred stock	254
Weighted average shares outstanding and dilutive securities used for diluted net income per share	11,313

For the years ended December 31, 2011 and 2010, all outstanding common stock equivalents were considered anti-dilutive and therefore the calculations of basic and diluted net loss per share are the same.

3. Consolidated Financial Statement Detail

Cash and Cash Equivalents

At December 31, 2011, cash equivalents consisted of demand deposits of $21.1 million and money market funds of $27.2 million with maturities of less than 90 days at the date of purchase. At December 31, 2010, cash equivalents consisted of demand deposits of $29.5 million, money market funds of $6.4 million and repurchase agreements of $1.4 million with maturities of less than 90 days at the date of purchase.

Foreign Exchange Options

The Company holds debt and may incur expenses denominated in foreign currencies, which exposes it to market risk associated with foreign currency exchange rate fluctuations between the U.S. dollar and the Euro. The Company is required to make principal and accrued interest payments in Euros on its €15.0 million loan from Les Laboratoires Servier ("Servier") (See *Note 7: Long-Term Debt and Other Arrangements*). In order to manage its foreign currency exposure related to these payments, in May of 2011, the Company entered into two foreign exchange option contracts to buy €15.0 million and €1.5 million on January 2016 and January 2014, respectively. By having these option contracts in place, the Company's foreign exchange rate risk is reduced if the U.S. dollar weakens against the Euro. However, if the U.S. dollar strengthens against the Euro, the Company is not required to exercise these options, but will not receive any refund on premiums paid.

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Upfront premiums paid on these foreign exchange option contracts totaled $1.5 million. The fair values of these option contracts are re-valued at each reporting period and are estimated based on pricing models using readily observable inputs from actively quoted markets. The fair values of these option contracts are included in other assets on the condensed consolidated balance sheet and changes in fair value on these contracts are included in other income (expense) on the condensed consolidated statements of operations.

The foreign exchange options were revalued at December 31, 2011 and had an aggregate fair value of $1.2 million, and the Company recognized a loss of $0.3 million related to the revaluation for the year ended December 31, 2011.

Receivables

Receivables consisted of the following at December 31, 2011 and 2010 (in thousands):

	December 31,	
	2011	2010
Trade receivables, net	$ 11,820	$ 20,309
Other receivables	512	555
Total	$ 12,332	$ 20,864

Property and Equipment

Property and equipment consisted of the following at December 31, 2011 and 2010 (in thousands):

	December 31,	
	2011	2010
Furniture and equipment	$ 33,483	$ 31,700
Buildings, leasehold and building improvements	21,490	21,463
Construction-in-progress	973	203
Land	310	310
	56,256	53,676
Less: Accumulated depreciation and amortization	(43,547)	(38,807)
Property and equipment, net	$ 12,709	$ 14,869

Depreciation and amortization expense was $5.4 million, $5.7 million and $6.8 million for the years ended December 31, 2011, 2010 and 2009, respectively.

Accrued Liabilities

Accrued liabilities consisted of the following at December 31, 2011 and 2010 (in thousands):

	December 31,	
	2011	2010
Accrued management incentive compensation	$ 4,096	$ 4,982
Accrued payroll and other benefits	3,007	2,752
Accrued severance payments	1,207	-
Accrued professional fees	917	1,020
Accrued clinical trial costs	140	1,020
Other	645	884
Total	$ 10,012	$ 10,658

Deferred Revenue

In 2011, the Company deferred $12.7 million of revenue from contracts including Servier, NIH and Takeda Pharmaceutical Company Limited (“Takeda”) and recognized $17.6 million in revenue. In 2010, the Company deferred $15.9 million of revenue from contracts including Servier, NIH, Takeda, Schering-Plough Research Institute, a division of Schering Corporation, now a subsidiary of Merck & Co., Inc. (referred to herein as “Merck/Schering-Plough”) and AVEO Pharmaceuticals, Inc. (“AVEO”) and recognized $2.8 million of revenue.

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The following table shows the activity in deferred revenue for the years ended December 31, 2011 and 2010 (in thousands):

	Year ended December 31,	
	2011	2010
Beginning deferred revenue	$ 18,130	$ 5,008
Revenue deferred	12,673	15,949
Revenue recognized	(17,569)	(2,827)
Ending deferred revenue	$ 13,234	$ 18,130

4. Collaborative, Licensing and Other Arrangements

Collaborative and Other Agreements

Servier

In December 2010, the Company entered into a license and collaboration agreement with Servier, to jointly develop and commercialize gevokizumab (formerly referred to as XOMA 052) in multiple indications, which provided for a non-refundable upfront payment of $15.0 million that was received by the Company in January 2011. The upfront payment was recognized over the eight month period that the initial group of deliverables were provided to Servier. The Company recognized $14.9 million in revenue relating to this upfront payment during the year ended December 31, 2011. In addition, the Company received a loan of €15.0 million, which was fully funded in January 2011, with the proceeds converting to $19.5 million at the date of funding. See *Note 7: Long-Term Debt and Other Arrangements.* Also, the Company retains development and commercialization rights in the U.S. and Japan for all indications except cardiovascular disease and diabetes, and an option to reacquire rights to cardiovascular disease and diabetes indications from Servier in those territories. Servier will fully fund activities to advance the global clinical development and future commercialization of gevokizumab in cardiovascular related diseases and diabetes, as well as the first $50.0 million of future gevokizumab global clinical development and chemistry and manufacturing controls expenses and 50% of further expenses for the Behçet's uveitis indication. For the year ended December 31, 2011, the Company recorded revenue of $34.2 million under this agreement, which included the revenue relating to the upfront payment.

In November 2011, the Company announced plans for expanded gevokizumab clinical development. The plan includes a global Phase 3 trial in non-infectious uveitis involving the intermediate and/or posterior segments of the eye, including Behçet's uveitis ("NIU") and a Phase 3 trial outside the U.S. in Behçet's uveitis. Based on the timing of anticipated regulatory interactions, the Company anticipates initiating the NIU Phase 3 trial in the second quarter of 2012. Servier has agreed to provide funding for the NIU Phase 3 trial under the terms of the collaboration agreement discussed above for the Behçet's uveitis indication so long as the European Medicines Agency enables the results of the trial to be included in regulatory submissions in the EU. In addition, the Company announced a proof-of-concept clinical program to identify additional conditions that may respond to treatment with gevokizumab.

Under the agreement, the Company is eligible to receive a combination of Euro and USD-denominated, development and sales milestones for multiple indications aggregating to a potential maximum of approximately $460 million converted using the December 31, 2011 Euro to US Dollar ("USD") exchange rate (the "12/31/11 Exchange Rate") if XOMA reacquires cardiovascular and/or diabetes rights in the U.S. and Japan. If XOMA does not reacquire these rights, then the milestone payments aggregate to a potential maximum of approximately $800 million converted using the 12/31/11 Exchange Rate. Servier's obligation to pay development and commercialization milestones will continue for so long as Servier is developing or selling products under the agreement.

The Company is also eligible to receive royalties on gevokizumab sales, which are tiered based on sales levels and range from a mid-single digit to up to a mid-teens percentage rate. The Company's right to royalties with respect to a particular product and country will continue for so long as such product is sold in such country.

NIAID

In October 2011, the Company announced that NIAID had awarded the Company a new contract under Contract No. HHSN272201100031C for up to $28.0 million over 5 years to develop broad-spectrum antitoxins for the treatment of human botulism poisoning. The contract work is being performed on a cost plus fixed fee basis over the life of the contract and the Company is recognizing revenue under the arrangement as the services are performed on a proportional performance basis.

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In September 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 anti-botulinum antibody product candidates. 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 performed on a proportional performance basis. In 2011, the NIH conducted an audit of the Company's actual data for period from January 1, 2007 through December 31, 2009 and developed final billing rates for this period. As a result, the Company retroactively applied these NIH rates to the invoices from this period resulting in an increase in revenue of $1.4 million from the NIH, excluding $0.9 million billed to the NIH in 2010 resulting from the Company's performance of a comparison of 2009 calculated costs incurred and costs billed to the government under provisional rates. Final rates will be settled through negotiations with the NIH. This revenue has been deferred and will be recognized upon completion of negotiations with and approval by the NIH. In 2011, the Company recognized revenue of $18.6 million under this contract, compared with $21.2 million in 2010 and $5.1 million in 2009.

In July 2006, the Company was awarded a $16.3 million contract 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 was extended into 2010. The Company is recognizing revenue as the services are performed on a proportional performance basis. This work was complete in the third quarter of 2010. In 2011, the NIH conducted an audit of the Company's actual data for period from January 1, 2007 through December 31, 2009 and developed final billing rates for this period. As a result, the Company retroactively applied these NIH rates to the invoices from this period resulting in an increase in revenue of $2.0 million from the NIH. Final rates will be settled through negotiations with the NIH. This revenue has been deferred and will be recognized upon completion of negotiations with and approval by the NIH. The Company did not recognize revenue under this contract in 2011. In 2010, the Company recognized revenue of $0.2 million under this contract, compared with $1.6 million in 2009.

SRI International

In the third quarter of 2009, the Company began work on two biodefense subcontract awards from SRI International, including a $2.1 million award to develop novel antibody drugs against the virus that causes SARS and a $2.2 million award to develop a novel antibody, known as F10, that has been shown to neutralize group 1 influenza A viruses, including the H1N1 and H5N1 strains. The subcontract awards are funded through NIAID. In September 2011, we successfully completed the contract services we had agreed to perform under the subcontract awards from SRI International. In 2011, the Company recognized revenue of $0.5 million related to these subcontracts, compared with $1.6 million in 2010 and $0.3 million in 2009.

Takeda

In November 2006, the Company entered into a fully funded 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 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 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 targets selected by Takeda. The Company will recognize revenue on the up-front and annual 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 milestones when they are achieved and on the royalties when the underlying sales occur. In 2011, the Company recognized revenue of $2.0 million under this agreement, compared with $3.6 million in 2010 and $7.5 million in 2009.

Under the terms of this agreement, the Company may receive milestone payments aggregating up to $19.0 million relating to one undisclosed product candidate and low single-digit royalties on future sales of all products subject to this license. In addition, in the event Takeda were to develop additional future qualifying product candidates under the terms of the agreement, the Company would be eligible for milestone payments aggregating up to $20.75 million for each such qualifying product candidate. The Company's right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation of all research and development activities with respect to all program antibodies, collaboration targets and/or collaboration products. The Company's right to royalties expires on the later of 13.5 years from the first commercial sale of each royalty-bearing discovery product or the expiration of the last-to-expire licensed patent.

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In February 2009, the Company expanded its existing collaboration agreement 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 may receive milestones of up to $3.25 million per discovery product candidate and low single-digit royalties on future sales of all antibody products subject to this license. The Company's right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation of all research and development activities with respect to all program antibodies, collaboration targets and/or collaboration products. The Company's right to royalties expires on the later of 10 years from the first commercial sale of such royalty-bearing discovery product, or the expiration of the last-to-expire licensed patent.

Novartis

In November 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 potential milestones of up to $14.0 million and royalty rates ranging from 10% to 20% for two ongoing product programs, HCD122 and LFA 102 and options to develop or receive royalties on additional programs. In exchange, Novartis received control over the HCD122 and LFA 102 programs, as well as the right to expand the development of these programs into additional indications outside of oncology. The Company's right to royalty-style payments expires on the later of the expiration of any licensed patent covering each product or 20 years from the launch of each product that is produced from a cell line provided to Novartis by XOMA.

A loan facility of up to $50 million was available to the Company to fund up to 75% of its share of development expenses incurred beginning in 2005. See *Note 7: Long-Term Debt and Other Arrangements* for additional disclosure of the financing arrangement between the Company and Novartis.

In December 2008, the Company entered into a Manufacturing and Technology Transfer Agreement with Novartis, effective July 1, 2008. Under this agreement, XOMA was 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 was fully funded by Novartis and completed in the third quarter of 2009. The Company recognized revenue related to this agreement as the research and development and other services were performed on a time and materials basis. In 2009, the Company recognized revenue of $2.5 million related to this agreement.

Arana

In September 2009, the Company entered into an antibody discovery collaboration with Arana Therapeutics Limited, a wholly-owned subsidiary of Cephalon, Inc. ("Arana"), involving multiple proprietary XOMA antibody research and development technologies, including a new antibody phage display library and a suite of integrated information and data management systems. Arana agreed to pay the Company a fee of $6.0 million, of which $4.0 million was received in the third quarter of 2009 and the remaining $2.0 million was received in the third quarter of 2010. The Company may be entitled to future milestone payments, aggregating up to $3.0 million per product, and low single-digit royalties on product sales. The Company's right to milestone payments expires on the later of the receipt of payment from Arana of the last amount to be paid under the agreement, the cessation by Arana of the use of all research and development technologies or the cessation by Arana of the exercise of the patent rights granted to them. The Company's right to royalties expires five years from the first commercial sale of each royalty-bearing product.

Kaketsuken

In October 2009, the Company entered into an antibody discovery collaboration with The Chemo-Sero-Therapeutic Research Institute, a Japanese research foundation known as Kaketsuken, involving multiple proprietary XOMA antibody research and development technologies, including a new antibody phage display library and a suite of integrated information and data management systems. Kaketsuken agreed to pay the Company a fee of $8.0 million, of which $6.0 million was received in the fourth quarter of 2009 and the remaining $2.0 million was received in the fourth quarter of 2010. The Company may be entitled to future milestone payments, aggregating up to $0.2 million per product, and low single-digit royalties on product sales. The Company's right to milestone payments expires upon the receipt of payment from Kaketsuken of the last amount to be paid pursuant to the agreement. The Company's right to royalties expires 15 years from the first commercial sale of each royalty-bearing discovery product.

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AVEO Pharmaceuticals, Inc. ("AVEO")

In April 2006, the Company entered into an agreement with AVEO to utilize XOMA's HE™ technology to humanize AV-299 under which AVEO paid the Company an up-front license fee and development milestones. Under this agreement the Company created four HE™ 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 2006, as a result of the successful humanization of AV-299, the Company entered into a second agreement with AVEO to manufacture and supply AV-299 in support of early clinical trials. Under the agreement, the Company 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 may be required to pay XOMA annual maintenance fees, additional development milestone payments aggregating up to $6.3 million and low single-digit royalties on product sales in the future. The Company's right to milestone payments expires upon full satisfaction of all financial obligations of AVEO pursuant to the agreement. The Company's right to royalties expires on the later of 15 years from the first commercial sale of each royalty-bearing product or the expiration of the last-to-expire licensed patent.

In April 2007, Merck/Schering-Plough entered into a research, development and license agreement with AVEO concerning AV-299 and other anti-HGF molecules, under which AVEO assigned its entire right, title and interest in, to and under its manufacturing agreement with XOMA to Merck/Schering-Plough. In the third quarter of 2010, AVEO regained its worldwide rights from Merck/Schering-Plough to develop and commercialize AV-299 and other anti-HGF molecules. In 2011, the Company recognized revenue of $0.1 million under this agreement, compared with $0.9 million in 2010 and $0.7 million in 2009.

Merck/Schering-Plough

In May 2006, the Company entered into a fully funded collaboration agreement with Schering-Plough Research Institute, a division of Schering Corporation, now a subsidiary of Merck ("Merck/Schering-Plough") for therapeutic monoclonal antibody discovery and development. Under the agreement, Merck/Schering-Plough made up-front, annual maintenance and milestone payments to the Company, funded its research and development activities related to the agreement and would have paid royalties on sales of products resulting from the collaboration. During the collaboration, the Company discovered therapeutic antibodies against multiple targets selected by Merck/Schering-Plough using multiple human antibody phage display libraries, optimized antibodies through affinity maturation or other protein engineering, used the Company's proprietary HE™ technology to humanize antibody candidates generated by hybridoma techniques, performed preclinical studies to support regulatory filings, developed cell lines and production processes and produced antibodies for initial clinical trials. Merck/Schering-Plough selected the first target at the inception of the agreement and, in December 2006, exercised its right to initiate the additional discovery and development programs. In January 2011, the Company completed the contract services it had agreed to perform under the collaboration agreement with Merck/Schering-Plough.

UCB

In December 1998, the Company licensed its bacterial cell expression technology to Celltech Therapeutics Ltd., now UCB Celltech, a branch of UCB, which utilizes this technology in the production of CIMZIA® for the treatment of moderate-to-severe Crohn's disease and moderate-to-severe rheumatoid arthritis. The license provides for a low single-digit royalty on sales of CIMZIA® in those countries where the bacterial cell expression technology is patented, which includes the U.S. and Canada. In August 2010, the Company sold its royalty interest in CIMZIA® to OrbiMed Advisors, LLC for gross proceeds of $4.0 million. In connection with this transaction, XOMA CDRA LLC, a wholly owned bankruptcy-remote entity, was established to hold the rights, title, and interests under the license agreement with UCB. As a bankruptcy-remote entity, XOMA CDRA LLC has a corporate existence, assets, properties, and creditors separate from the Company's. Accordingly, in calculating the value of its own assets, the Company has not ascribed any value to the assets owned by XOMA CDRA LLC, and the assets of XOMA CDRA LLC will not be available to pay any creditors of the Company. The Company did not recognize revenue under this agreement in 2011. During 2010, including the sale of its royalty interest in CIMZIA®, the Company recognized $4.2 million in revenue compared with $0.5 million in 2009. The Company no longer receives royalties on sales of CIMZIA®.

Genentech, Inc., a wholly-owned member of the Roche Group (referred to herein as "Genentech")

In April 1996, the Company entered into a collaboration agreement with Genentech for the development of RAPTIVA®. In March 2003, it entered into amended agreements which called for the Company 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 2003, the Company elected to pay $29.6 million of the development loan in convertible preference shares, which are convertible into approximately 0.3 million shares of common stock at a price of $116.25 per share. In April 2011, the convertible preference shares were converted by Genentech. The $29.6 million liquidation preference associated with the convertible preference shares was eliminated as a result of this conversion.

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In January 2005, the Company announced a restructuring of its arrangement with Genentech on RAPTIVA®. Under the restructured arrangement, the Company was 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 was 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 the first half of 2009, RAPTIVA® was withdrawn from the commercial drug markets and royalties ceased.

Genentech utilized the Company's bacterial cell expression technology under license to develop LUCENTIS® for the treatment of neovascular wet age-related macular degeneration. The Company was entitled to receive a low single-digit royalty on worldwide sales of LUCENTIS®. In the third quarter of 2009, the Company sold its LUCENTIS® royalty interest to Genentech for $25 million, including royalty revenue from the second quarter of 2009. The Company no longer receives royalties on sales of LUCENTIS ®.

The Company recognized royalty revenue related to its agreements with Genentech of $28.6 million in 2009.

Licensing Agreements

XOMA has granted more than 60 licenses to biotechnology and pharmaceutical companies to use the Company's patented and proprietary technologies relating to bacterial expression of recombinant pharmaceutical products. In exchange, the Company receives license and other fees as well as access to certain of these companies' antibody display libraries, intellectual property and/or services that complement the Company's existing development capabilities and support the Company's own antibody product development pipeline.

Certain of these agreements also 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.

Pfizer

In August 2007, the Company entered into a license agreement with Pfizer Inc. ("Pfizer") for non-exclusive, worldwide rights for XOMA's patented bacterial cell expression technology for research, development and manufacturing of antibody products. Under the terms of the agreement, the Company received a license fee payment of $30 million in 2007.

From 2009 through 2011, the Company received milestone payments relating to four undisclosed product candidates. The Company may also be eligible for additional milestone payments aggregating up to $4.9 million relating to these four product candidates and low single-digit royalties on future sales of all products subject to this license. In addition, the Company may receive potential milestone payments aggregating up to $1.7 million for each additional qualifying product candidate. The Company's right to milestone payments expires on the later of the expiration of the last-to-expire licensed patent or the tenth anniversary of the effective date. The Company's right to royalties expires upon the expiration of the last-to-expire licensed patent. The Company will recognize revenue on milestones when they are achieved and on royalties when the underlying sales occur.

5. Restructuring Charges

On January 15, 2009, the Company announced a workforce reduction of approximately 42%. As part of this workforce reduction, the Company recorded a charge of $3.1 million related to severance, other termination benefits and outplacement services, which were fully paid in 2009. The Company does not expect to incur any additional employee-related restructuring charges in connection with this workforce reduction.

As a result of the workforce reduction, in the second quarter of 2009, the Company vacated one of its leased buildings and recorded a restructuring charge of $0.5 million. Effective December 2010, the Company entered into a sublease agreement for this building. See *Note 11: Commitments and Contingencies* for additional disclosure of the sublease for this building. The remaining liability related to this lease was $0.1 million and $0.2 million at December 31, 2011 and 2010, respectively.

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6. Fair Value Measurements

The Company applies ASC 820, which establishes a framework for measuring fair value and a fair value hierarchy that prioritizes the inputs used in valuation techniques. ASC 820 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 – Observable inputs other than quoted prices in active markets for similar assets or liabilities.

Level 3 – Unobservable inputs.

The following tables set forth the Company's fair value hierarchy for its financial assets (cash equivalents and investments) and liabilities measured at fair value on a recurring basis as of December 31, 2011 and 2010.

Financial assets and liabilities carried at fair value as of December 31, 2011 and 2010 are classified as follows (in thousands):

	Fair Value Measurements at December 31, 2011 Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Money market funds [1]	27,222	-	-	27,222
Foreign exchange options	-	1,202	-	1,202
Total	$ 27,222	$ 1,202	$ -	$ 28,424
Liabilities:				
Warrant liabilities	$ -	$ -	$ 379	$ 379

	Fair Value Measurements at December 31, 2010 Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Repurchase agreements [1]	$ 1,428	$ -	$ -	$ 1,428
Money market funds [1]	6,340	-	-	6,340
Total	$ 7,768	$ -	$ -	$ 7,768
Liabilities:				
Warrant liabilities	$ -	$ -	$ 4,245	$ 4,245

(1) Included in cash and cash equivalents

Due to the unique structure of the secured note agreement with Novartis and since there is no liquid market for this note, there is no practical method to estimate fair value of our long-term debt with Novartis. See *Note 7: Long-Term Debt and Other Arrangements* for additional disclosure of the financing arrangement between the Company and Novartis.

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The fair value of the foreign exchange options at December 31, 2011 was determined using readily observable market inputs from actively quoted markets obtained from various third party data providers. These inputs, such as spot rate, forward rate and volatility have been derived from readily observable market data, meeting the criteria for Level 2 in the fair value hierarchy.

The fair value of the warrant liabilities at December 31, 2011 and 2010 was determined using the Black-Scholes Model, which requires inputs such as the expected term of the warrants, share price volatility and risk-free interest rate. These inputs are subjective and generally require significant analysis and judgment to develop.

The fair value of the warrant liabilities was estimated using the following range of assumptions at December 31, 2011 and 2010:

	December 31, 2011	December 31, 2010
Expected volatility	102.1 - 103.2%	93.5 - 94.9%
Risk-free interest rate	0.4%	2.0%
Expected term	2.9 - 3.1 years	3.9 - 4.1 years

The following table provides a summary of changes in the fair value of the Company's Level 3 financial liabilities for the year ended December 31, 2011 (in thousands):

	Warrant Liabilities
Balance at December 31, 2009	$ 4,760
Initial fair value of warrants	4,382
Reclassification of warrant liability to equity upon exercise of warrants	(2,615)
Change in fair value of warrant liabilities included in other income (expense)	(2,282)
Balance at December 31, 2010	4,245
Change in fair value of warrant liabilities included in other income (expense)	(3,866)
Balance at December 31, 2011	$ 379

7. Long-Term Debt and Other Arrangements

Novartis Note

In May 2005, the Company executed a secured note agreement with Novartis (then Chiron Corporation), which is due and payable in full in June 2015. Under the note agreement, the Company borrowed semi-annually to fund up to 75% of the Company's research and development and commercialization costs under its collaboration arrangement with Novartis, not to exceed $50 million in aggregate principal amount. Interest on the principal amount of the loan accrues at six-month LIBOR plus 2%, which was equal to 2.80% at December 31, 2011, 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 million. The Company has made this election for all interest payments thus far. Loans under the note agreement are secured by the Company's interest in its collaboration with Novartis, including any payments owed to it thereunder.

At December 31, 2011 and 2010, the outstanding principal balance under this note agreement was $14.0 million and $13.7 million. Pursuant to the terms of the arrangement as restructured in November 2008, the Company will not make any additional borrowings under the Novartis note. Accrued interest of $0.3 million, $0.4 million and $0.5 million was added to the principal balance of the loan for the years ended December 31, 2011, 2010 and 2009, respectively.

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Servier Loan

In December 2010, in connection with the license and collaboration agreement entered into with Servier (see*Note 7: Long-Term Debt and Other Arrangements)*, the Company executed a loan agreement with Servier, which provided for an advance of up to €15.0 million. The loan was fully funded in January 2011, with the proceeds converting to approximately $19.5 million. The loan is secured by an interest in XOMA's intellectual property rights to all gevokizumab indications worldwide, excluding certain rights in the U.S. and Japan. Interest is calculated at a floating rate based on a Euro Inter-Bank Offered Rate ("EURIBOR") and subject to a cap. The interest rate is reset semi-annually in January and July of each year. The interest rate for the initial interest period was 3.22%. The interest rate has been reset to 3.83% for the six-month period from July 2011 through January 2012 and 3.54% for the six-month period from January 2012 through July 2012. Interest is payable semi-annually; however, the loan agreement provides for a deferral of interest payments over a period specified in the agreement. During the deferral period, accrued interest will be added to the outstanding principal amount for the purpose of interest calculation for the next six-month interest period. On the repayment commencement date, all unpaid and accrued interest shall be paid to Servier and thereafter, all accrued and unpaid interest shall be due and payable at the end of each six-month period. The loan matures in 2016; however, after a specified period prior to final maturity, the loan is to be repaid (i) at Servier's option, by applying up to a significant percentage of any milestone or royalty payments owed by Servier under the Company's collaboration agreement and (ii) using a significant percentage of any upfront, milestone or royalty payments the Company receives from any third party collaboration or development partner for rights to gevokizumab in the U.S. and/or Japan. In addition, the loan becomes immediately due and payable upon certain customary events of default. At December 31, 2011, the outstanding principal balance under this loan was $19.4 million using the 12/31/11 Exchange Rate. For the year ended December 31, 2011, the Company recorded an unrealized foreign exchange gain of $0.1 million related to the re-measurement of the loan as of December 31, 2011.

The loan has a stated interest rate lower than the market rate based on comparable loans held by similar companies, which represents additional value to the Company. The Company recorded this additional value as a discount to the face value of the loan amount, at its fair value of $8.9 million. The fair value of this discount, which was determined using a discounted cash flow model, represents the differential between the stated terms and rates of the loan, and market rates. Based on the association of the loan with the collaboration arrangement, the Company recorded the offset to this discount as deferred revenue.

The loan discount is amortized under the effective interest method over the expected five-year life of the loan. The Company recorded non-cash interest expense of $1.4 million during the year ended December 31, 2011, resulting from the amortization of the loan discount. At December 31, 2011, the net carrying value of the loan was $12.5 million. For the year ended December 31, 2011, the Company recorded an unrealized foreign exchange loss of $0.6 million related to the re-measurement of the loan discount as of December 31, 2011.

The Company believes that realization of the benefit and the associated deferred revenue is contingent on the loan remaining outstanding over the five-year contractual term of the loan. If the Company were to stop providing service under the collaboration arrangement and the arrangement is terminated, the maturity date of the loan would be accelerated and a portion of measured benefit would not be realized. As the realization of the benefit is contingent, in part, on the provision of future services, the Company is recognizing the deferred revenue over the expected five-year life of the loan. The deferred revenue is amortized under the effective interest method, and the Company recorded $1.4 million of related non-cash revenue during the year ended December 31, 2011.

General Electric Capital Corporation Term Loan

In December 2011, the Company entered into a loan agreement (the "Loan Agreement") with General Electric Capital Corporation ("GECC"), under which GECC agreed to make a term loan in an aggregate principal amount of $10 million (the "Term Loan") to XOMA (US) LLC, a wholly owned subsidiary of the Company, and upon execution of the Loan Agreement, GECC funded the Term Loan. The Term Loan is guaranteed by the Company and its two other principal subsidiaries, XOMA Ireland Limited and XOMA Technology Ltd. As security for their obligations under the Loan Agreement, the Company, XOMA (US) LLC, XOMA Ireland Limited and XOMA Technology Ltd. each granted a security interest pursuant to a guaranty, pledge and security agreement in substantially all of their existing and after-acquired assets, excluding their intellectual property assets (such as those relating to our gevokizumab and anti-botulism products). The Company incurred debt issuance costs of approximately $1.3 million in connection with the Term Loan and will make an additional payment equal to 5% of the Term Loan (the "Final Payment Fee") on the maturity date, or such earlier date as the Term Loan is paid in full. The debt issuance costs and Final Payment Fee are being amortized and accreted, respectively, to interest expense over the term of the Term Loan using the effective interest method.

The Term Loan accrues interest at a fixed rate of 11.71% per annum. We are required to repay the principal amount of the Term Loan over a period of 42 consecutive equal monthly installments of principal and accrued interest, commencing on January 4, 2012, and thereafter on the first calendar day of each succeeding month. The Term Loan matures and is due and payable in full on June 30, 2015.

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The Loan Agreement contains customary representations and warranties and customary affirmative and negative covenants, including restrictions on the ability to incur indebtedness, grant liens, make investments, dispose of assets, enter into transactions with affiliates and amend existing material agreements, in each case subject to various exceptions. In addition, the Loan Agreement contains customary events of default that entitle GECC to cause any or all of the indebtedness under the Loan Agreement to become immediately due and payable. The events of default include any event of default under a material agreement or certain other indebtedness. Upon an event of default, the Term Loan and other obligations under the Loan Agreement will, at the election of GECC, bear interest from and after the occurrence and during the continuation of an event of default at a rate equal to the lesser of 5.0% above the stated rate of interest or the maximum rate allowed by law.

The Company may voluntarily prepay the Term Loan in full, but not in part, and any voluntary and certain mandatory prepayments are subject to a prepayment premium of 3% in the first year of the loan, 2% in the second year and 1% thereafter, although mandatory prepayments in connection with entering into certain exclusive licenses, granting certain negative pledges or incurring certain collaboration-related indebtedness will not be subject to such prepayment premium. The Company will also be required to pay the Final Payment Fee in connection with any voluntary or mandatory prepayment.

In December of 2011, pursuant to the loan agreement, the Company issued to GECC unregistered stock purchase warrants, which entitle GECC to purchase up to an aggregate of 263,158 unregistered shares of XOMA common stock at an exercise price equal to $1.14 per share. These warrants are immediately exercisable and will expire on December 30, 2016. The Company allocated the aggregate proceeds of the GECC Term Loan between the warrants and the debt obligation based on their relative fair values. The fair value of the warrants issued to GECC was determined using the Black-Scholes Model. The warrants fair value of $0.2 million is recorded as a discount to the debt obligation and is being amortized over the term of the loan using the effective interest method. If the maturity of the debt is accelerated in connection with any voluntary or mandatory prepayment, then the remaining discount amortization would be recognized immediately.

Aggregate future principal and final fee payments of the Company's total interest bearing obligations - long-term as of December 31, 2011 are as follows (in thousands):

Year Ending December 31,	Total
2012	$ 2,857
2013	2,857
2014	2,857
2015	35,386
	43,957
Less current portion	(2,857)
Total	$ 41,100

Interest Expense

Interest expense and amortization of debt issuance costs, excluding losses on debt extinguishment, recorded as other expense in the consolidated statement of operations for the year ended December 31, 2011, 2010 and 2009 are shown below (in thousands):

	Year ended December 31,		
	2011	2010	2009
Interest expense			
Novartis note	$ 341	$ 354	$ 455
Servier loan	2,087	-	-
Goldman Sachs term loan	-	-	3,932
Other	34	31	14
Total interest expense	$ 2,462	$ 385	$ 4,401
Amortization of debt issuance costs			
Goldman Sachs term loan	$ -	$ -	$ 487
Total interest expense	$ 2,462	$ 385	$ 4,888

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8. Income Taxes

The total provision for income taxes consists of the following:

	Year ended December 31,		
	2011	2010	2009
Federal income tax provision	$ 15	$ 27	$ (113)
State income tax provision	-	-	6
Foreign income tax provision	-	-	5,834
Total	$ 15	$ 27	$ 5,727

The Company had significant losses in 2011 and 2010, and as a result there was no material income tax expense for the years ended December 31, 2011 and 2010. Income tax expense in 2009 was primarily related to $5.8 million of foreign income tax expense recognized in connection with the expansion of the Company's existing collaboration with Takeda in February of 2009. The Company was paid a $29 million expansion fee, of which $5.8 million was withheld for payment to the Japanese taxing authority. The Company also recognized $0.1 million of income tax benefit for 2009 relating to research and development refundable credits.

The significant components of net deferred tax assets as of December 31, 2011 and 2010 were as follows (in millions):

	December 31,	
	2011	2010
Capitalized research and development expenses	$ 68.7	$ 65.4
Net operating loss carryforwards	135.7	117.4
Research and development and other credit carryforwards	21.6	20.4
Other	14.1	11.1
Total deferred tax assets	240.1	214.3
Valuation allowance	(240.1)	(214.3)
Net deferred tax assets	$ -	$ -

The net increase (decrease) in the valuation allowance was $25.8 million, $24.4 million and $(24.8) million for the years ended December 31, 2011, 2010 and 2009, respectively. No net operating loss carry-forward expired in 2011, 2010 or 2009.

ASC 740 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 carry-back potential, the Company has determined that total deferred tax assets should be fully offset by a valuation allowance.

Based on an initial analysis under Section 382 of the Internal Revenue Code (which subjects the amount of pre-change NOLs and certain other pre-change tax attributes that can be utilized to an annual limitation), the Company experienced an ownership change in 2009, which would substantially limit the future use of its pre-change NOLs and certain other pre-change tax attributes per year. The Company has and will continue to evaluate alternative analyses permitted under Section 382 and IRS notices in order to determine whether or not any ownership changes have occurred and may occur (and if so, when they occurred) that would result in limitations on its NOLs or certain other tax attributes. To the extent that the Company does not utilize its carry-forwards within the applicable statutory carry-forward periods, either because of Section 382 limitations or the lack of sufficient taxable income, the carry-forwards will expire unused.

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 2008 and beyond remain subject to examination by the Internal Revenue Service. The Company's 2009 federal tax return is currently under audit, and we do not expect a material change to our federal income taxes as reported. The Company’s California and Irish income tax returns for tax years 2007 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 carry-forwards that may be used in future years are still subject to adjustment.

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The Company did not have unrecognized tax benefits as of December 31, 2011 and does not expect this to change significantly over the next twelve months. The Company will recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. As of December 31, 2011, the Company has not accrued interest or penalties related to uncertain tax positions.

9. Compensation and Other Benefit Plans

The Company grants qualified and non-qualified stock options, restricted stock units ("RSUs"), common stock and other stock-based awards under various plans to directors, officers, employees and other individuals. Stock options are granted at exercise prices of not less than the fair market value of the Company's common stock on the date of grant. Generally, stock 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). However, certain options granted to employees vest monthly or immediately, certain options granted to directors vest monthly over one year or three years and certain options may fully vest upon a change of control of the Company or may accelerate based on performance-driven measures. Additionally, the Company has an Amended and Restated Employee Stock 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.

Employee Stock Purchase Plan

In 1998, the Company's stockholders approved the original ESPP which provides employees of the Company the opportunity to purchase shares of common stock through payroll deductions. Up to 233,333 shares of common stock are authorized for issuance under the ESPP. An employee may elect to have payroll deductions made under the ESPP for the purchase of shares in an amount not to exceed 15% of the employee's compensation.

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

In 2011, 2010, and 2009, employees purchased 30,044, 5,903 and 14,735 shares of common stock, respectively, under the ESPP. Net payroll deductions under the ESPP totaled $0.1 million, $41,000 and $0.1 million for 2011, 2010 and 2009, respectively.

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 2011 of $16,500 (or $22,000 for employees over 50 years of age). The Company may, at its sole discretion, make contributions each plan year, in cash or in shares of the Company's common stock, 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 $0.9 million for the years ended December 31, 2011, 2010 and 2009, respectively, and 100% was paid in common stock in each year.

Stock Option Plans

Historically, option grants intended as long-term incentive compensation have been made pursuant to the Company's 1981 Share Option Plan (the "Option Plan") and Restricted Share Plan (the "Restricted Plan"). In May of 2010, the Compensation Committee and the full Board adopted, and in July of 2010 the Company's stockholders approved, a new equity-based compensation plan, the 2010 Long Term Incentive and Share Award Plan, which has since been amended and restated as the Amended and Restated 2010 Long Term Incentive and Stock Award Plan (the "Long Term Incentive Plan"). The Long Term Incentive Plan is intended to consolidate the Company's long-term incentive compensation under a single plan, by replacing the Option Plan, the Restricted Plan and the 1992 Directors Share Option Plan (the "Directors Plan") going forward, and to provide a more current set of terms pursuant to which to provide this type of compensation.

The Long Term Incentive Plan grants stock options, restricted stock units, and other stock-based awards to eligible employees, consultants and directors. No further grants or awards will be made under the Option Plan, the Restricted Share Plan or the Directors Plan. Shares underlying options previously issued under the Option Plan, the Restricted Share Plan or the Directors Plan that are currently outstanding will, upon forfeiture, cancellation, surrender or other termination, become available under the Long Term Incentive Plan. Stock-based awards granted under the Long Term Incentive Plan may be exercised when vested and generally expire ten years from the date of the grant or three to six months from the date of termination of employment (longer in case of death or certain retirements). Vesting periods vary based on awards granted, however, certain stock-based awards may vest immediately or may accelerate based on performance-driven measures.

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Up to 8,679,998 shares are authorized for issuance under the stock option plans. As of December 31, 2011, options covering 6,156,415 shares of common stock were outstanding under the stock option plans.

Stock Options

In October 2011, the Board of Directors of the Company approved a grant under the Long Term Incentive Plan for an aggregate of 1,097,926 stock options to certain employees of the Company. These stock options include immediate vesting in an amount equal to each employee's percentage of outstanding options that are exercisable immediately prior to this grant. The remaining portion will vest monthly over two years.

On August 31, 2011, the Company announced that Steven B. Engle resigned as Chairman of the Board, Chief Executive Officer and President of the Company. In the third quarter of 2011, the Company incurred a stock-based compensation charge of approximately $0.7 million, due to a modification to Mr. Engle's stock options as a result of his resignation.

In December of 2010, the Board of Directors of the Company approved a company-wide grant of stock options under the Long Term Incentive Plan and, in the first quarter of 2011, the options for 1,430,840 shares became effective. 1,040,220 of these options were granted subject to stockholder approval of an increase in the number of shares available under the Long Term Incentive Plan. On May 26, 2011, stockholder approval was obtained at the Company's annual general meeting of shareholders. A portion of the 2011 annual options granted include immediate vesting terms with the remainder of the options vesting monthly over two years for employees and one year for directors.

In March of 2010, the Board of Directors of the Company approved a company-wide grant of an aggregate of 865,806 stock options. This grant included 856,006 options that were issued as part of the Company's annual incentive compensation review, of which 596,666 options were granted subject to stockholder approval of an increase in the number of shares available under the Company's existing stock option plans. On July 21, 2010 stockholder approval was obtained at the Company's annual general meeting of shareholders. The options granted as part of this annual incentive compensation review will vest monthly over four years.

In February of 2009, the Board of Directors approved a company-wide grant of 315,333 stock options, of which 304,533 were issued as part of the Company's annual incentive compensation package. These options vest monthly over four years and include an acceleration clause based on meeting certain performance measures. In 2009 and 2010, management estimated the timing and probability of the achievement of the acceleration event, which occurred in December of 2010. The Company recognized compensation expense of $0.2 million and $0.1 million for the years ended December 31, 2010 and 2009, respectively, in connection with the accelerated awards.

Stock Option Plans Summary

A summary of the status of the Company's stock option plans as of December 31, 2011, 2010 and 2009, and changes during the years ended on those dates is presented below:

	2011		2010		2009	
Options:	**Shares**	**Price***	**Shares**	**Price***	**Shares**	**Price***
Outstanding at beginning of year	2,331,450	$ 25.36	1,520,102	$ 38.40	1,320,679	$ 48.60
Granted	2,920,166	2.81	978,264	7.07	432,400	9.00
Exercised	-	-	(19)	8.40	(2,056)	8.40
Forfeited, expired or cancelled	(198,181)	35.56	(166,897)	37.26	(230,921)	41.40
Outstanding at end of year	5,053,435	12.55	2,331,450	25.36	1,520,102	38.40
Exercisable at end of year	3,366,807	$ 16.33	1,259,272	$ 36.51	823,096	$ 49.05

* Weighted-average exercise price

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At December 31, 2011, there were 4,950,008 stock options vested and expected to vest with a weighted-average exercise price of $12.72. The weighted average remaining contractual term of outstanding stock options at December 31, 2011 was 6.9 years and there was no aggregate intrinsic value. The weighted average remaining contractual term of exercisable stock options at December 31, 2011 was 6.5 years and there was no intrinsic value.

Restricted Stock Units ("RSUs")

In October 2011, the Board of Directors of the Company approved a company-wide grant under the Long Term Incentive Plan for an aggregate of 1,177,082 RSUs. The RSUs vest annually over three years in equal increments. RSUs held by employees who qualify for retirement age (defined as employees that are a minimum of 55 years of age and the sum of their age plus years of full-time employment with the Company exceeds 70 years) vest immediately.

Unvested RSU activity for the year ended December 31, 2011 is summarized below:

	Number of Shares	Weighted-Average Grant-Date Fair Value
Unvested balance at December 31, 2010	-	$ -
Granted	1,177,082	1.69
Vested	(272,439)	1.69
Forfeited	(769)	1.69
Unvested balance at December 31, 2011	903,874	$ 1.69

The total grant-date fair value of RSUs that vested during the year ended December 31, 2011 was $0.5 million.

Stock-based Compensation Expense

The Company recognizes compensation expense for all stock-based payment awards made to the Company's employees, consultants and directors based on estimated fair values. The valuation of stock option awards is determined at the date of grant using the Black-Scholes option pricing model. This model requires inputs such as the expected term of the option, expected volatility and risk-free interest rate. To establish an estimate of expected term, the Company considers the vesting period and contractual period of the award and its historical experience of stock option exercises, post-vesting cancellations and volatility. The estimate of expected volatility is based on the Company's historical volatility. The risk-free rate is based on the yield available on United States Treasury zero-coupon issues. To establish an estimate of forfeiture rate, the Company considers its historical experience of option forfeitures and terminations.

The fair value of stock option awards was estimated using the Black-Scholes model with the following weighted average assumptions for the years ended December 31, 2011, 2010 and 2009:

	Year Ended December 31,		
	2011	2010	2009
Dividend yield	0%	0%	0%
Expected volatility	88%	79%	75%
Risk-free interest rate	1.48%	1.67%	2.00%
Expected term	5.4 years	5.3 years	5.6 years

The valuation of RSUs is determined at the date of grant using the closing stock price. The forfeiture rate impacts the amount of aggregate compensation for both stock options and RSUs. To establish an estimate of forfeiture rate, the Company considers its historical experience of option forfeitures and terminations.

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The following table shows total stock-based compensation expense included in the consolidated statements of operations for the years ended December 31, 2011, 2010 and 2009 (in thousands):

	Year Ended December 31,		
	2011	2010	2009
Research and development	$ 3,672	$ 2,302	$ 2,182
Selling, general and administrative	4,087	2,611	2,213
Total stock-based compensation expense	$ 7,759	$ 4,913	$ 4,395

There was no capitalized stock-based compensation cost as of December 31, 2011 or 2010, and there were no recognized tax benefits related to the Company's stock-based compensation expense during the years ended December 31, 2011 or 2010.

10. Capital Stock

Series B Preference Shares

In December 2003, the Company issued 2,959 Series B preference shares to Genentech, Inc. in repayment of $29.6 million of the outstanding balance under a convertible subordinated debt agreement. Pursuant to the rights of the Series B preference shares, the holder of Series B preference shares was not entitled to receive any dividends on the Series B preference shares. The Series B preference shares ranked senior with respect to rights on liquidation, winding-up and dissolution of the Company to all classes of common stock. Upon any voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holder of Series B preference shares would have been entitled to receive $10,000 per Series B preference share (or $29.6 million in the aggregate) before any distribution was made on the common stock. The holder of the Series B preference shares had no voting rights, except as required under Bermuda law.

The holder of Series B preference shares had the right to convert Series B preference shares into shares of common stock at a conversion price equal to $116.25 per share, subject to adjustment in certain circumstances.

In April of 2011, the 2,959 Series B convertible preference shares were converted by Genentech into 254,560 shares of common stock. The $29.6 million liquidation preference associated with the Series B preference shares was eliminated as a result of this conversion.

Shareholder Rights Plan

On February 26, 2003, the Company's Board of Directors unanimously adopted a Shareholder Rights Plan ("Rights Plan"), which was designed to extend the provisions of a similar rights plan originally adopted in October of 1993. Under the Rights Plan, Preferred Stock Purchase Rights ("Rights") are authorized and granted at the rate of fifteen Rights for each outstanding share of common stock. Each Right entitles the registered holder of common stock to buy a fraction of a share of the new series of Preferred Stock ("Series A Preferred Stock") at an exercise price of $30.00, subject to adjustment. The Rights will be exercisable and will detach from the common stock, only if a person or group acquires 20 percent or more of the common stock, 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 stock or if the Board of Directors declares a person or group owning 10 percent or more of the outstanding common stock 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 Preferred Stock (or, in certain circumstances, common stock of the acquiring person) with a value of twice the Rights' exercise price. The Company will generally be entitled to redeem the Rights at $0.015 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 December 31, 2012.

Equity Line of Credit

On October 21, 2008, the Company entered into a common share purchase agreement (the "2008 Purchase Agreement") with Azimuth Opportunity Ltd. ("Azimuth"), pursuant to which it obtained a committed equity line of credit facility (the "2008 Facility") under which the Company could sell up to $60 million of its registered common stock to Azimuth over a 24-month period, subject to certain conditions and limitations. The 2008 Purchase Agreement required a minimum share price of $1.00 per share to allow the Company to issue shares to Azimuth under the 2008 Facility. However, at its election, Azimuth could buy shares below the threshold price at a negotiated discount. The Company was not obligated to utilize any of the $60 million 2008 Facility and remained free to enter other financing transactions. Shares under the 2008 Facility were sold pursuant to a prospectus which forms a part of a registration statement declared effective by the SEC on May 29, 2008. At the end of the third quarter of 2009, the 2008 Facility was no longer in effect, and no additional shares could be issued thereunder.

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From the inception of the 2008 Facility in October of 2008 through December 31, 2009, the Company sold a total of 2,815,228 shares of its common stock to Azimuth for aggregate gross proceeds of $33.9 million. This included the sale of 0.3 million shares under the 2008 Facility in December of 2008 and 2.3 million shares in two transactions in September of 2009 that Azimuth agreed to purchase notwithstanding that the purchase prices were below the minimum price of $1.00 required by the 2008 Purchase Agreement. Under the terms of the 2008 Purchase Agreement, the Company negotiated a discount rate (excluding placement agent fees) of 8.86% for the sale in December of 2008 and 8.0% for the sales in September of 2009. Prior to the successful conclusion of negotiations, Azimuth was not obligated to purchase these shares. Offering expenses incurred from inception of the 2008 Facility through December 31, 2009 related to sales to Azimuth were $0.7 million.

In July of 2010, the Company entered into a common share purchase agreement (the "2010 Purchase Agreement") with Azimuth, pursuant to which the Company obtained a committed equity line of credit facility (the "2010 Facility") under which the Company could sell up to $30 million of its registered common stock to Azimuth over a 12-month period, subject to certain conditions and limitations. The 2010 Purchase Agreement provided that the Company could determine, in its sole discretion, the timing, dollar amount and floor price per share of each draw down under the 2010 Facility, subject to certain conditions and limitations and that the number and price of shares sold in each draw down were generally to be determined by a contractual formula designed to approximate fair market value, less a discount. The 2010 Purchase Agreement also provided that from time to time and in the Company's sole discretion, it could grant Azimuth the right to exercise one or more options to purchase additional 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. The Company also agreed to issue 111,111 shares of common stock to Azimuth upon execution of the agreement relating to the 2010 Facility, in consideration of Azimuth's execution and delivery of that agreement. Shares under the 2010 Facility and the shares the Company agreed to issue to Azimuth upon execution of the agreement relating to the 2010 Facility were sold pursuant to a prospectus which forms a part of a registration statement declared effective by the SEC on May 29, 2008. In August of 2010, the Company sold a total of 3,421,407 shares of common stock under the 2010 Facility for aggregate gross proceeds of $14.2 million, representing the maximum number of shares that could be sold under the 2010 Facility. As a result, the 2010 Facility is no longer in effect, and no additional shares can be issued thereunder.

Registered Direct Offerings

In May of 2009, the Company entered into a definitive agreement with an institutional investor to sell 784,313 units, with each unit consisting of one share of the Company's common stock and a warrant to purchase 0.50 of a share of common stock, for gross proceeds of approximately $10.0 million, before deducting placement agent fees and estimated offering expenses of $0.8 million, in a registered direct offering. The investor purchased the units at a price of $12.75 per unit. The warrants, which represent the right to acquire an aggregate of up to 392,157shares of common stock, were exercisable at any time on or after May 15, 2009 and prior to May 20, 2014 at an exercise price of $15.30 per share. In February of 2010, the holders of these warrants agreed to amend the terms of their warrants to remove the Eliminated Adjustment Provisions and the exercise price of these warrants was reduced from $15.30 per share to $0.015 per share. In the first quarter of 2010, the holders of these warrants exercised all warrants, acquiring 392,157 shares of common stock for an aggregate exercise price of $5,882.

In June of 2009, the Company entered into a definitive agreement with certain institutional investors to sell 695,652 units, with each unit consisting of one share of the Company's common stock and a warrant to purchase 0.50 of a share of common stock, for gross proceeds of approximately $12.0 million, before deducting placement agent fees and estimated offering expenses of $0.8 million, in a second registered direct offering. The investor purchased the units at a price of $17.25 per unit. The warrants, which represent the right to acquire an aggregate of up to 347,826 shares of common stock, are exercisable at any time on or prior to December 10, 2014 at an exercise price of $19.50 per share. As of December 31, 2011 all of these warrants were outstanding.

ATM Agreements

In the third quarter of 2009, the Company entered into an At Market Issuance Sales Agreement (the "2009 ATM Agreement"), under which the Company could sell up to 1.7 million shares of its common stock from time to time through Wm Smith & Co. ("Wm Smith"), as the agent for the offer and sale of the shares. Wm Smith could sell these shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act of 1933, including but not limited to sales made directly on The NASDAQ Global Market, on any other existing trading market for the Company's common stock or to or through a market maker. Wm Smith could also sell the shares in privately negotiated transactions, subject to the Company's approval. The Company paid Wm Smith a commission equal to 3% of the gross proceeds of all shares sold through it as sales agent under the 2009 ATM Agreement but in no event less than $0.02 per share. Shares sold under the 2009 ATM Agreement were sold pursuant to a prospectus which formed a part of a registration statement declared effective by the Securities and Exchange Commission (the "SEC") on May 29, 2008. From the inception of the 2009 ATM Agreement through October of 2010, the Company sold a total of 1.7 million shares of common stock through Wm Smith for aggregate gross proceeds of $12.2 million, including 1.4 million shares sold in 2010 for aggregate gross proceeds of $9.3 million. Total offering expenses related to these sales from inception to October of 2010 were $0.4 million.

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In the third quarter of 2010, the Company entered into an At Market Issuance Sales Agreement (the "2010 ATM Agreement"), with Wm Smith and McNicoll, Lewis & Vlak LLC (the "Agents"), under which the Company could sell shares of its common stock from time to time through the Agents, as the agents for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under the Company's registration statement on Form S-3 (File No. 333-148342) filed with the SEC on December 26, 2007 and declared effective by the SEC on May 29, 2008. The Agents could sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for the Company's common stock or to or through a market maker. The Agents could also sell the shares in privately negotiated transactions, subject to the Company's prior approval. From the inception of the 2010 ATM Agreement through May of 2011, the Company sold a total of 7,560,862 shares of its common stock under this agreement for aggregate gross proceeds of $34.0 million, including 821,386 shares sold in 2011 for aggregate gross proceeds of $4.4 million. Total offering expenses incurred related to sales under the 2010 ATM Agreement from inception to May of 2011 were $1.0 million, including $0.1 million incurred in 2011. In May of 2011, 2010 ATM Agreement expired by its terms, and there will be no further issuances under this facility.

On February 4, 2011, the Company entered into an At Market Issuance Sales Agreement (the "2011 ATM Agreement"), with McNicoll, Lewis & Vlak LLC (now known as MLV & Co. LLC, "MLV"), under which it may sell shares of its common stock from time to time through the MLV, as the agent for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under the Company's registration statement on Form S-3 (File No. 333-172197) filed with the SEC on February 11, 2011 and amended on March 10, 2011, June 3, 2011 and January 3, 2012, which was most recently declared effective by the SEC on January 17, 2012. MLV may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for the Company's common stock or to or through a market maker. MLV may also sell the shares in privately negotiated transactions, subject to the Company's prior approval. From the inception of the 2011 ATM Agreement through December 31, 2011, the Company sold a total of 5,286,952 shares of common stock under this agreement for aggregate gross proceeds of $11.3 million. Total offering expenses incurred related to sales under the 2011 ATM Agreement from inception to December 31, 2011, were $0.3 million. Subsequent to December 31, 2011, through March 12, 2012, 2,285,375 additional shares of common stock were sold through MLV for aggregate gross proceeds of $3.3 million. Total offering expenses related to these sales were approximately $0.1 million.

Underwritten Offering

In February of 2010, the Company completed an underwritten offering of 2.8 million units, with each unit consisting of one share of the Company's common stock and a warrant to purchase 0.45 of a share of common stock, for gross proceeds of approximately $21 million. As of December 31, 2011 all of these warrants were outstanding.

11. Commitments and Contingencies

Collaborative Agreements, Royalties and Milestone Payments

The Company is obligated to pay royalties, ranging generally from 1.5% to 14% 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 $96 million (assuming one product per contract meets all milestones events) 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.

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Leases

As of December 31, 2011, the Company leased administrative, research facilities, and office equipment under operating leases expiring on various dates through May 2014. These leases generally require the Company to pay taxes, insurance, maintenance and minimum lease payments.

The Company estimates future minimum lease commitments to be (in thousands):

	Operating Leases
2012	8,190
2013	3,522
2014	872
Minimum lease payments	$ 12,584

Total rental expense, including other costs required under the Company's leases, was approximately $5.1 million, $5.1 million and $5.2 million for the years ended December 31, 2011, 2010 and 2009, 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 will not be material to its operations.

As a result of the restructuring in the second quarter of 2009, the Company vacated one of its leased buildings. Effective December 2010, the Company entered into a sublease agreement for this building through May of 2014. For the year ended December 31, 2011, the Company recognized $0.1 million in sublease income under this agreement. The Company will receive future sublease income of $0.3 million under this agreement.

Legal Proceedings

On April 9, 2009, a complaint was filed in the Superior Court of Alameda County, California, in a lawsuit captioned Hedrick et al. v. Genentech, Inc. et al, Case No. 09-446158. The complaint asserts claims against Genentech, the Company and others for alleged strict liability for failure to warn, strict product liability, negligence, breach of warranty, fraudulent concealment, wrongful death and other claims based on injuries alleged to have occurred as a result of three individuals' treatment with RAPTIVA®. The complaint seeks unspecified compensatory and punitive damages. Since then, additional complaints have been filed in the same court, bringing the total number of filed cases to seventy seven. The cases have been consolidated as a coordinated proceeding. All of the complaints allege the same claims and seek the same types of damages based on injuries alleged to have occurred as a result of the plaintiffs' treatment with RAPTIVA®. On January 31, 2011, the parties selected ten bellwether cases to prepare for trial. On July 15, 2011, the Court dismissed with prejudice one of the bellwether cases, White v. Genentech, Inc., et al, Case No. RG-09-484026. On September 8, 2011, the Court granted defendants' Motions for Summary Judgment in two bellwether cases, Guerrero (Case No. RG-10-518396) and Harwell (Case No. RG-09-464039), and dismissed both cases. On September 19, 2011, the Court sustained defendants' Demurrer to another case (Young, Case No. RG-11-569879) and dismissed the complaint. On October 19, 2011, the Court granted defendants' Motion for Summary Judgment in another bellwether case, Krawiec v. Genentech, Inc., et al., Case No. RG10-524963, and dismissed the case. On December 15, 2011, the Court granted defendants' Motions for Summary Judgment and dismissed these three bellwether cases: Davidson (Case No. RG10-538635); Hilditch (Case No. RG10-538642); and Ortiz (Case No. RG09-484075). The first trial of a bellwether case (Johnson, Case No. RG10-494957) has been set for June 4, 2012. The Company's agreement with Genentech provides for an indemnity of XOMA and payment of legal fees by Genentech which the Company believes is applicable to these matters. The Company believes the claims against it to be without merit and intends to defend against them vigorously.

On August 4, 2010, a petition was filed in the District Court of Dallas County, Texas in a case captioned McCall v. Genentech, Inc., et al., No. 10-09544. The defendants filed a Notice of Removal to the United States District Court for the Northern District of Texas on September 3, 2010. The removed case is captioned McCall v. Genentech, Inc., et al., No. 3:10-cv-01747-B. The petition asserts personal injury claims against Genentech, the Company, and others arising out of the plaintiff's treatment with RAPTIVA®. The petition alleges claims based on negligence, strict liability, misrepresentation and suppression, conspiracy, and actual and constructive fraud. The petition seeks compensatory damages and punitive damages in an unspecified amount. On June 6, 2011, the Court dismissed plaintiff's claims of negligent misrepresentation, fraud, and conspiracy. The Company's agreement with Genentech provides for an indemnity of XOMA and payment of legal fees by Genentech which the Company believes is applicable to this matter. The Company believes the claims against it to be without merit and intends to defend against them vigorously. The Court has issued a scheduling order setting the case for trial between July 9 and August 9, 2012.

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On January 7, 2011, a complaint was filed in the United States District Court for the Northern District of Texas in a case captioned Massa v. Genentech, Inc., et al., No. 4:11CV70. On January 11, 2011, a complaint was filed in the United States District Court for the District of Massachusetts in a case captioned Sylvia, et al. v. Genentech, Inc., et al., No. 1:11-cv-10054-MLW. On June 13, 2011, a complaint was filed in the Supreme Court for the State of New York, Onondaga County. Defendants removed the case to the United States District Court for the Northern District of New York on November 3, 2011. These three complaints allege the same claims against Genentech, the Company and others and seek the same types of damages as the complaints filed in the Superior Court of Alameda County, California referenced above. The Company's agreement with Genentech provides for an indemnity of XOMA and payment of legal fees by Genentech which the Company believes is applicable to these matters. The Company believes the claims against it to be without merit and intends to defend against them vigorously.

On April 8, 2011, four complaints were filed in the United States District Court for the Eastern District of Michigan. The cases are captioned: Muniz v. Genentech, et al., 5:11-cv-11489-JCO-RSW; Tifenthal v. Genentech, et al., 2:11-cv-11488-DPH-LJM; Blair v. Genentech, et al., 2:11-cv-11463-SFC-MJH; and Marsh v. Genentech, et al., 2:11-cv-11462-RHC-MKM. The complaints allege the same claims against Genentech, the Company and others and seek the same types of damages as the complaints filed in the Superior Court of Alameda County, California referenced above. All four cases were transferred to the United States District Court for the Western District of Michigan. On October 26, 2011, the Court granted the Motions to Dismiss filed by Genentech and the Company in all four actions. On October 31, 2011, Plaintiffs filed a Notice of Appeal in each case in the United States Court of Appeal for the Sixth Circuit. The Company's agreement with Genentech provides for an indemnity of XOMA and payment of legal fees by Genentech which the Company believes is applicable to this matter. The Company believes the claims against it to be without merit and intends to defend against them vigorously.

12. Concentration of Risk, Segment and Geographic Information

Concentration of Risk

Cash equivalents and receivables are financial instruments, which potentially subject the Company to concentrations of credit risk, as well as liquidity risk for certain cash equivalents such as money market funds. The Company has not encountered such issues during 2011.

The Company has not experienced any significant credit losses and does not generally require collateral on receivables. For the year ended December 31, 2011, two customers represented 61% and 32% of total revenue and as of December 31, 2011, these two customers representing 57% and 43% of the accounts receivable balance.

For the year ended December 31, 2010, three customers represented 64%, 13%, and 11% of total revenue and as of December 31, 2010, there were billed receivables of $19.7 million outstanding from two customers representing 72% and 23% of the accounts receivable balance. For the year ended December 31, 2009, two customers represented 36% and 29% of total revenue.

Segment Information

The Company has determined that 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 primarily in the United States.

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Geographic Information

Revenue attributed to the following geographic regions for each of the three years ended December 31, 2011, 2010 and 2009 was as follows (in thousands):

	Year ended December 31,		
	2011	**2010**	**2009**
United States	$ 20,447	$ 25,306	$ 47,656
Europe	35,718	4,728	613
Asia Pacific	2,031	3,607	50,161
Total	$ 58,196	$ 33,641	$ 98,430

13. Subsequent Events

2012 Restructuring

In January 2012, the Company implemented a restructuring designed to sharpen its focus on value-creating opportunities led by gevokizumab and its unique antibody discovery and development capabilities. The restructuring plan includes a reduction of XOMA's personnel by 84 positions, or 34%, of which approximately 50 were eliminated immediately and the remainder will be eliminated by April 6, 2012. The Company anticipates taking one-time charges for restructuring and related severance costs totaling approximately $6.0 million during 2012. These staff reductions result primarily from the Company's decisions to utilize a contract manufacturing organization for Phase 3 and commercial antibody production and to eliminate internal research functions that are non-differentiating or that can be obtained cost-effectively by contract service providers.

Acquisition of U.S. Rights to Perindopril Franchise

On January 17, 2012, the Company announced that it had acquired U.S. rights to the perindopril franchise from Servier. The agreement includes ACEON® (perindopril erbumine), a currently marketed angiotensin converting enzyme ("ACE") inhibitor, and a portfolio of three fixed-dose combination product candidates where perindopril is combined with another active ingredient(s), such as a calcium channel blocker. The Company assumed commercialization activities for ACEON® in January 2012 following the transfer from Servier's previous licensee. In late February 2012, the Company initiated enrollment in a Phase 3 trial for perindopril arginine and amlodipine besylate, the first fixed-dose combination product candidate. The trial, named PATH (**P**erindopril **A**mlodipine for the **T**reatment of **H**ypertension), is expected to enroll approximately 816 patients with hypertension to determine the safety and efficacy of the fixed dose combination versus either perindopril or amlodipine alone. Based on regulatory interaction to date, if positive, this trial is expected to be the only additional efficacy trial needed to complement the existing clinical data in support of the submission of an application to the FDA seeking approval for this product candidate. Partial funding for the PATH trial will be provided by Servier; the balance of study expenses, consisting primarily of costs generated by the Company's contract research organization, are expected to be paid over time from the profits generated by our ACEON® sales.

Underwritten Offering and Amendment to Shareholder Rights Plan

On March 9, 2012, the Company completed an underwritten public offering of 29,669,154 shares of its common stock, and accompanying warrants to purchase one half of a share of common stock for each share purchased, at a public offering price of $1.32 per share. Total gross proceeds from the offering were approximately $39.2 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $3.0 million. The warrants, which represent the right to acquire an aggregate of up to 14,834,577 shares of common stock, are immediately exercisable and have a five-year term and an exercise price of $1.76 per share.

The Company has amended its shareholder rights agreement to provide that it will not apply to any person or entity who becomes the beneficial owner of 20% or more but less than 40% of its outstanding common stock with the prior approval of its board of directors, and its board has approved purchasers in the recent public offering becoming beneficial owners of 20% or more but less than 40% of its outstanding common stock as a result of their participation in the offering. As a result, such ownership by any such purchaser will not trigger the provisions of the rights agreement that would give each holder of the rights the right to receive upon exercise that number of common share equivalents having a market value of two times the exercise price. The board's approval in this regard only applies to purchasers in such offering.

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14. Quarterly Financial Information (unaudited)

The following is a summary of the quarterly results of operations for the years ended December 31, 2011 and 2010:

	Consolidated Statements of Operations			
	Quarter Ended			
	March 31	June 30	September 30	December 31
	(In thousands, except per share amounts)			
2011				
Total revenues[1]	$ 15,595	$ 16,525	$ 16,229	$ 9,847
Total operating costs and expenses	22,716	24,394	23,147	21,894
Other income (expense), net	801	(261)	375	312
Net loss	(6,335)	(8,130)	(6,543)	(11,735)
Basic and diluted net loss per share of common stock	$ (0.22)	$ (0.27)	$ (0.20)	$ (0.34)
2010				
Total revenues[1]	$ 7,202	$ 5,942	$ 10,897	$ 9,601
Total operating costs and expenses	23,140	24,372	27,542	25,691
Other (expense) income, net [2]	(5,847)	2,866	3,013	(1,657)
Net loss	(21,785)	(15,580)	(13,633)	(17,758)
Basic and diluted net loss per share of common stock	$ (1.36)	$ (0.93)	$ (0.69)	$ (0.84)

(1) Revenue in the first three quarters of 2011 includes the recognition of $14.9 million of the non-recurring license fee received as consideration for the collaboration with Servier entered into in December 2010. Revenue in the third quarter of 2010 includes a non-recurring fee of $4.0 million related to the sale of the Company's CIMZIA® royalty interest to an undisclosed buyer.

(2) Other expense of $5.8 million and $1.7 million in the first and fourth quarters of 2010, respectively, and other income of $2.9 million and $3.0 million in the second and third quarters of 2010, respectively primarily relates to a loss on the revaluation of the warrant liabilities.

Exhibit Number	Index to Exhibits
3.1	Certificate of Incorporation of XOMA Corporation (Exhibit 3.1)[1]
3.2	By-laws of XOMA Corporation (Exhibit 3.2)[1]
4.1	Form of Stock Certificate (Exhibit 4.1)[1]
4.2	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)[2]
4.2A	Amendment to Shareholder Rights Agreement dated December 21, 2010 between XOMA Ltd. and Wells Fargo Bank, N.A. as Rights Agent (Exhibit 4.1A)[3]
4.2B	Amendment No. 2 to Shareholder Rights Agreement dated December 31, 2011 between XOMA Corporation and Wells Fargo Bank, N.A. as Rights Agent (Exhibit 4.2)[1]
4.2C	Amendment No. 3 to Shareholder Rights Agreement dated March 5, 2012 between XOMA Corporation and Wells Fargo Bank, N.A. as Rights Agent (Exhibit 4.2)[44]
4.3	Form of Certificate of Designations of Series A Preferred Stock (Annex A to Exhibit 3.1)
4.4	Resolution Regarding Preferences and Rights of Series B Preference Shares (Exhibit B to Exhibit 3)[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]
4.6	Form of Warrant (May 2009 Warrants) (Exhibit 10.2)[6]
4.6A	Form of Amended and Restated Warrant (May 2009 Warrants) (Exhibit 10.5)[7]
4.7	Form of Warrant (June 2009 Warrants) (Exhibit 10.2)[8]
4.7A	Form of Amended and Restated Warrant (June 2009 Warrants) (Exhibit 10.6)[7]
4.8	Form of Warrant (February 2010 Warrants) (Exhibit 10.2)[7]
4.9	Form of Warrant (December 2011 Warrants)*
4.10	Form of Warrant (March 2012 Warrants) (Exhibit 4.1)[44]
10.1	1981 Share Option Plan as amended and restated (Exhibit 10.1)[9]
10.1A	Form of Share Option Agreement for 1981 Share Option Plan (Exhibit 10.1A)[10]
10.2	Restricted Share Plan as amended and restated (Exhibit 10.2)[9]
10.2A	Form of Share Option Agreement for Restricted Share Plan (Exhibit 10.2A)[10]
10.3	2007 CEO Share Option Plan (Exhibit 10.7)[11]
10.4	1992 Directors Share Option Plan as amended and restated (Exhibit 10.3)[9]
10.4A	Form of Share Option Agreement for 1992 Directors Share Option Plan (initial grants) (Exhibit 10.3A)[10]

10.4B	Form of Share Option Agreement for 1992 Directors Share Option Plan (subsequent grants) (Exhibit 10.3B)[10]
10.5	2002 Director Share Option Plan (Exhibit 10.10)[12]
10.6	Amended and Restated 2010 Long Term Incentive and Stock Award Plan (Exhibit 10.1)[13]
10.6A	Form of Stock Option Agreement for Amended and Restated 2010 Long Term Incentive and Stock Award Plan*
10.6B	Form of Restricted Stock Unit Agreement for Amended and Restated 2010 Long Term Incentive and Stock Award Plan*
10.7	Management Incentive Compensation Plan as amended and restated (Exhibit 10.3)[14]
10.7A	CEO Incentive Compensation Plan (Exhibit 10.4A)[10]
10.7B	Amendment No. 1 to CEO Incentive Compensation Plan*
10.7C	Bonus Compensation Plan (Exhibit 10.4B)[10]
10.8	Amended and Restated 1998 Employee Stock Purchase Plan (Exhibit 10.2)[13]
10.9	Form of Amended and Restated Indemnification Agreement for Officers (Exhibit 10.6)[15]
10.9A	Form of Amended and Restated Indemnification Agreement for Employee Directors (Exhibit 10.7)[15]
10.9B	Form of Amended and Restated Indemnification Agreement for Non-employee Directors (Exhibit 10.8)[15]
10.10	Amended and Restated Employment Agreement entered into between XOMA (US) LLC and Steven B. Engle, dated as of December 30, 2008 (Exhibit 10.7)[16]
10.10A	Amended and Restated Employment Agreement entered into between XOMA (US) LLC and Patrick J. Scannon, dated as of December 30, 2008 (Exhibit 10.7A)[16]
10.10B	Employment Agreement entered into between XOMA (US) LLC and Fred Kurland, dated as of December 29, 2008 (Exhibit 10.7B)[6]
10.10C	Amended and Restated Employment Agreement entered into between XOMA (US) LLC and Christopher J. Margolin, dated as of December 30, 2008 (Exhibit 10.7C)[16]
10.10D	Amended and Restated Employment Agreement entered into between XOMA (US) LLC and Charles C. Wells, dated as of December 30, 2008 (Exhibit 10.7D)[16]
10.10E	Employment Agreement effective as of May 31, 2011 between XOMA (US) LLC and Paul Rubin (Exhibit 10.1)[7]
10.10F	Employment Agreement effective as of August 31, 2011 between XOMA (US) LLC and John Varian (Exhibit 10.2)[8]
10.10G	Employment Agreement effective as of January 4, 2012 between XOMA (US) LLC and John Varian*
10.11	Consulting Agreement effective as of August 3, 2007 between XOMA (US) LLC and John L. Castello (Exhibit 10.8)[11]

10.11A	Consulting Agreement effective as of August 31, 2011 between XOMA (US) LLC and Steven B. Engle (Exhibit 10.1)[8]
10.12	Form of Change of Control Severance Agreement entered into between XOMA Ltd. and certain of its executives, with reference schedule (Exhibit 10.12)[3]
10.12A	Change of Control Agreement entered into between XOMA Ltd. and John Varian, dated January 4, 2012*
10.13	Lease of premises at 890 Heinz Street, Berkeley, California dated as of July 22, 1987 (Exhibit 10.12)[9]
10.14	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)[19]
10.15	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)[19]
10.16	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)[19]
10.17	Lease of premises at 2910 Seventh Street, Berkeley, California dated March 25, 1992 (Exhibit 10.16)[9]
10.17A	Fifth amendment to lease of premises at 2910 Seventh Street, Berkeley, California dated June 1, 2006 (Exhibit 10.58)[20]
10.18	Lease of premises at 5860 and 5864 Hollis Street, Emeryville, California dated as of November 2, 2001 (with addendum) (Exhibit 10.19)[21]
10.19	Lease of premises at 2850 Seventh Street, Second Floor, Berkeley, California dated as of December 28, 2001 (with addendum and guaranty) (Exhibit 10.20)[21]
10.20	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)[22]
10.20A	Agreement related to LUCENTIS® License Agreement and RAPTIVA® Collaboration Agreement dated September 9, 2009, by and between XOMA (Bermuda) Ltd., 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 10.18A)[23]
10.21	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)[24]
10.22	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)[15]
10.23	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]

10.24	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)[25]
10.24A	GSSM License Agreement, effective as of May 2, 2008, by and between Verenium 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 10.25A)[3]
10.25	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)[26]
10.25A	Amended and Restated 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)(Exhibit 10.24c)[27]
10.25B	Amendment No. 1 to Amended and Restated Research, Development and Commercialization Agreement, effective as of April 30, 2010, by and between Novartis Vaccines and Diagnostics, Inc. 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)*
10.25C	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)(Exhibit 10.24D)[27]
10.26	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)[28]
10.27	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)[22]
10.27A	Agreement dated July 28, 2006, between XOMA (US) LLC and the National Institute of Allergy and Infectious Diseases (Exhibit 10.60)[20]
10.27B	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)[29]
10.27C	Second Amendment to Agreement dated September 15, 2008, between XOMA (US) LLC and the National Institute of Allergy and Infectious Diseases (Exhibit 10.24C)[30]
10.28	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)[26]

10.29	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)[20]
10.30	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)[15]
10.30A	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)[31]
10.30B	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)[27]
10.31	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)[32]
10.32	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)[33]
10.33	Common Stock Purchase Agreement, dated as of October 21, 2008, by and between XOMA Ltd. and Azimuth Opportunity Ltd. (Exhibit 10.1)[34]
10.33A	Common Stock Purchase Agreement, dated as of July 23, 2010, by and between XOMA Ltd. and Azimuth Opportunity Ltd. (Exhibit 10.1)[35]
10.34	Securities Purchase Agreement dated May 15, 2009, between XOMA Ltd. and the investors named therein (Exhibit 10.1)[6]
10.34A	Engagement Letter dated May 15, 2009 (Exhibit 10.3)[6]
10.34B	Securities Purchase Agreement dated June 5, 2009, between XOMA Ltd. and the investors named therein (Exhibit 10.1)[8]
10.34C	Engagement Letter dated June 4, 2009 (Exhibit 10.3)[8]
10.35	Discovery Collaboration Agreement dated September 9, 2009, by and between XOMA Development Corporation and Arana Therapeutics 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 10.35)[36]
10.36	At Market Issuance Sales Agreement dated July 14, 2009, between XOMA Ltd. and Wm Smith & Co. (Exhibit 10.36)[33]
10.36A	At Market Issuance Sales Agreement dated October 26, 2010, between XOMA Ltd. and Wm Smith & Co. and McNicoll, Lewis & Vlak LLC (Exhibit 10.1)[37]

10.36B	At Market Issuance Sales Agreement dated February 4, 2011, between XOMA Ltd. and McNicoll, Lewis & Vlak LLC (Exhibit 1.2)[38]
10.36C	Amendment to At Market Issuance Sales Agreement dated December 31, 2011, between XOMA Corporation and MLV & Co. LLC (Exhibit 1.2A)[39]
10.37	Discovery Collaboration Agreement dated October 29, 2009, by and between XOMA Development Corporation and The Chemo-Sero-Therapeutic Research Institute (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)[40]
10.38	Underwriting Agreement dated February 2, 2010 (Exhibit 10.1)[7]
10.39	Warrant Amendment Agreement dated February 2, 2010 (May 2009 Warrants) (Exhibit 10.3)[7]
10.39A	Form of Warrant Amendment Agreement dated February 2, 2010 (June 2009 Warrants) (Exhibit 10.4)[7]
10.40	Royalty Purchase Agreement, dated as of August 12, 2010, by and among XOMA CDRA LLC, XOMA (US) LLC, XOMA Ltd. and the buyer named therein (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 10.38)[41]
10.41	Collaboration and License Agreement dated as of December 30, 2010, by and between XOMA Ireland Limited, Les Laboratoires Servier and Institut de Recherches Servier (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 10.42)[3]
10.41A	Amended and Restated Collaboration and License Agreement dated as of February 14, 2012, by and between XOMA Ireland Limited, Les Laboratoires Servier and Institut de Recherches Servier (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)*
10.41B	Loan Agreement dated as of December 30, 2010, by and between XOMA Ireland Limited and Les Laboratoires Servier (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 10.42A)[43]
10.42	Foreign Exchange and Options Master Agreement (FEOMA) dated as of May 16, 2011, between Royal Bank of Canada and XOMA Ltd., with letter agreement dated May 17, 2011 (Exhibit 10.1)[43]
10.43	Loan Agreement dated as of December 30, 2011, among XOMA (US) LLC, as Borrower, XOMA Ltd., as Parent, each other loan party from time to time party thereto, General Electric Capital Corporation, as Agent, and each other lender from time to time party thereto (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)*
10.43A	Guaranty, Pledge and Security Agreement dated as of December 30, 2011, among XOMA (US) LLC, each other guarantor from time to time party thereto and General Electric Capital Corporation, as Agent (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)*
10.44	Amended and Restated License and Commercialization Agreement effective as of January 11, 2012, by and between Les Laboratoires Servier 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)*
10.44A	Amended and Restated Trademark License Agreement entered into as of January 11, 2012, between Biofarma 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)*
10.45	Master Services Agreement dated as of November 9, 2009, between Medpace, Inc. 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)*
10.45A	Amendment No. 1 to Master Services Agreement dated as of October 4, 2011, between Medpace, Inc. 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)*
21.1	Subsidiaries of the Company*
23.1	Consent of Independent Registered Public Accounting Firm*
31.1	Certification of John Varian, 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 John Varian, 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 14, 2012 furnished herewith
101. INS	XBRL Instance Document
101. SCH	XBRL Schema Document
101. CAL	XBRL Caluculation Linkbase Document
101. DEF	XBRL Definition Linkbase Document
101. LAB	XBRL Label Linkbase Document

101. PRE	XBRL Presentation Linkbase Document

Footnotes:

* Filed herewith

1 Incorporated by reference to the referenced appendix to the Company's Current Report on Form 8-K filed January 3, 2012.

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 Annual Report on Form 10-K for the fiscal year ended December 31, 2010.

4 Incorporated by reference to the referenced exhibit to the Company's Amendment No. 1 to Form 8-K/A filed April 18, 2003.

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 Current Report on Form 8-K filed May 19, 2009.

7 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed February 2, 2010.

8 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed June 10, 2009.

9 Incorporated by reference to the referenced exhibit to the Company's Registration Statement on Form S-8 (File No. 333-171429) filed December 27, 2010.

10 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.

11 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed August 7, 2007.

12 Incorporated by reference to the referenced exhibit to the Company's Registration Statement on Form S-8 (File No. 333-151416) filed June 4, 2008.

13 Incorporated by reference to the referenced exhibit to the Company's Post-Effective Amendment No. 1 to Registration Statements on Form S-8 (File Nos. 333-108306, 333-151416, 333-171429 and 333-174730) filed January 3, 2012.

14 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed November 6, 2007.

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, 2006.

16 Incorporated by reference to the referenced exhibit to the Company's Amendment No. 2 to Annual Report on Form 10-K/A for the fiscal year ended December 31, 2009 filed December 27, 2010.

17 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed June 16, 2011.

18 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed September 1, 2011.

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, 1997, as amended.

20 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.

21 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.

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, 2004.

23 Incorporated by reference to the referenced exhibit to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2009.

24 Incorporated by reference to the referenced exhibit to Amendment No. 2 to the Company's Quarterly Report on Form 10Q/A for the quarterly period ended March 31, 2002 filed December 12, 2002.

25 Incorporated by reference to the referenced exhibit to the Company's Amendment No. 2 on Form 8-K/A filed March 19, 2004.

26 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.

27 Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2008.

28 Incorporated by reference to the referenced exhibit to the Company's Amendment No. 1 on Form 8-K/A filed October 26, 2004.

29 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.

30 Incorporated by reference to the referenced exhibit to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2010.

31 Incorporated by reference to the referenced exhibit to Amendment No. 1 to the Company's Quarterly Report on Form 10Q/A for the quarterly period ended March 31, 2007 filed on March 5, 2010.

32 Incorporated by reference to the referenced exhibit to Amendment No. 2 to the Company's Quarterly Report on Form 10Q/A for the quarterly period ended June 30, 2008 filed on March 5, 2010.

33 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed September 13, 2007.

34 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed October 22, 2008.

35 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed July 23, 2010.

36 Incorporated by reference to the referenced exhibit to Amendment No. 1 to the Company's Quarterly Report on Form 10Q/A for the quarterly period ended September 30, 2009 filed on March 5, 2010.

37 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed October 26, 2010.

38 Incorporated by reference to the referenced exhibit to the Company's Registration Statement on Form S-3 (File No. 333-172197) filed February 11, 2011.

39 Incorporated by reference to the referenced exhibit to the Company's Post-Effective Amendment No. 1 to Registration Statement on Form S-3 (File No. 333-172197) filed January 3, 2012.

40 Incorporated by reference to the referenced exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2009.

41 Incorporated by reference to the referenced exhibit to Amendment No. 2 to the Company's Quarterly Report on Form 10Q/A for the quarterly period ended September 30, 2010 filed on April 4, 2011.

42 Incorporated by reference to the referenced exhibit to Amendment No. 1 to the Company's Annual Report on Form 10-K/A for the fiscal year period ended December 31, 2010 filed on May 26, 2011.

43 Incorporated by reference to the referenced exhibit to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2011.

44 Incorporated by reference to the referenced exhibit to the Company's Current Report on Form 8-K filed March 7, 2012.

EXHIBIT 4.9

WARRANT

NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). SUBJECT TO SECTION 6 BELOW, AND EXCEPT IN COMPLIANCE WITH RULE 144 UNDER THE ACT, NO SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR HOLDER, SATISFACTORY TO COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT OR RECEIPT OF A NO-ACTION LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION.

WARRANT TO PURCHASE 263,158 COMMON SHARES

THIS CERTIFIES THAT, for value received, GE Capital Equity Investments, Inc. ("Holder") is entitled to subscribe for and purchase two hundred sixty-three thousand one hundred fifty-eight (263,158) shares of fully paid and nonassessable shares of Common Stock of XOMA Ltd., a Bermuda exempted company ("Company"), at the Warrant Price (as hereinafter defined), subject to the provisions and upon the terms and conditions hereinafter set forth. As used herein, the term "Common Stock" shall mean Company's presently authorized common shares, US$0.0075 par value per share, and any shares into which such common shares may hereafter be converted or exchanged and the term "Warrant Shares" shall mean the shares of Common Stock which Holder may acquire pursuant to this Warrant and any other shares into which such shares of Common Stock may hereafter be converted or exchanged.

1 . Warrant Price. The "Warrant Price" shall initially be one and 14/100 dollars ($1.14) per share, subject to adjustment as provided in Section 7 below; provided that at no time shall the Warrant Price be less than the then current par value of any Common Stock to be issued hereunder.

2. Conditions to Exercise. The purchase right represented by this Warrant may be exercised at any time, or from time to time, in whole or in part during the term commencing on the date hereof and ending at 5:00 P.M. Pacific time on the fifth anniversary of the date of this Warrant (the "Expiration Date").

3. Method of Exercise or Conversion; Payment; Issuance of Shares; Issuance of New Warrant.

(a) Cash Exercise. Subject to Section 2 hereof, the purchase right represented by this Warrant may be exercised by Holder hereof, in whole or in part, by the surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto) at the principal office of Company (as set forth in Section 18 below) and by payment to Company, by certified or bank check, or wire transfer of immediately available funds, of an amount equal to the then applicable Warrant Price per share multiplied by the number of Warrant Shares then being purchased (the "Aggregate Purchase Price"). In the event of any exercise of the rights represented by this Warrant, certificates for the shares of Common Stock so purchased shall be in the name of, and delivered to, Holder hereof, or as such Holder may direct (subject to the terms of transfer contained herein and upon payment by such Holder hereof of any applicable transfer taxes). Such delivery shall be made within 30 days after exercise of this Warrant and at Company's expense and, unless this Warrant has been fully exercised or expired, a new Warrant having terms and conditions substantially identical to this Warrant and representing the portion of the Warrant Shares, if any, with respect to which this Warrant shall not have been exercised, shall also be issued to Holder hereof within 30 days after exercise of this Warrant.

(b) Cashless Exercise. Notwithstanding anything contained herein to the contrary, the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price (with the consideration for such exercise being Holder's surrender of a portion of this Warrant equal to the difference between "A" and the "Net Number" set forth below), elect instead to receive upon such exercise the "Net Number" of shares of Common Stock determined according to the following formula (a "Cashless Exercise"):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A = the total number of shares with respect to which this Warrant is then being exercised.

B = the Weighted Average Price of the shares of Common Stock (as reported by Bloomberg) for the five (5) consecutive Trading Days ending on the date immediately preceding the date of the Exercise Notice.

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

(c) Certain Definitions. For the purpose of this Warrant: "Weighted Average Price" means, for any security as of any date, the dollar volume-weighted average price for such security on The Nasdaq Global Market (the "Principal Market") during the period beginning at 9:30:01 a.m., New York Time (or such other time as the Principal Market publicly announces as the official open of trading), and ending at 4:00:00 p.m., New York Time (or such other time as the Principal Market publicly announces is the official close of trading) as reported by Bloomberg through its "Volume at Price" function, or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York Time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York Time (or such other time as such market publicly announces is the official close of trading) as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. All such determinations are to be appropriately adjusted for any share dividend, share split, share combination or other similar transaction during the applicable calculation period. "Trading Day" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded; provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time).

(d) Automatic Exercise. To the extent this Warrant is not previously exercised, it shall be deemed to have been automatically converted in accordance with Sections 3(b) and 3(c) hereof (even if not surrendered) as of immediately before its expiration, involuntary termination or cancellation (including pursuant to Section 3(e)(ii)) if the then-Weighted Average Price of a Warrant Share exceeds the then-Warrant Price, unless Holder notifies Company in writing to the contrary prior to such automatic exercise.

(e) Treatment of Warrant Upon Acquisition of Company.

(i) Certain Definitions. For the purpose of this Warrant: "Acquisition" means any sale, license, assignment, or other disposition of all or substantially all of the assets of Company, or any reorganization, consolidation, amalgamation or merger of Company, or sale of outstanding Company securities by holders thereof, where the holders of Company's securities as of immediately before the transaction beneficially own less than a majority of the outstanding voting securities of the successor or surviving entity as of immediately after the transaction. For purposes of this Section 3(e), "Affiliate" shall mean any person or entity that owns or controls directly or indirectly ten percent (10%) or more of the voting capital stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person's or entity's officers, directors, joint venturers or partners, as applicable. Company shall provide Holder with written notice of any proposed Acquisition not later than ten (10) business days prior to the closing thereof setting forth the material terms and conditions thereof, and shall provide Holder with copies of the draft transaction agreements and other documents in connection therewith and with such other information respecting such proposed Acquisition as may reasonably be requested by Holder.

(ii) Acquisition for Cash. Holder agrees that, in the event of an Acquisition in which the sole consideration is cash, this Warrant shall be automatically exercised (or terminate) as provided in Section 3(d) on and as of the closing of such Acquisition to the extent not previously exercised.

(iii) Asset Sale. In the event of an Acquisition that is an arms length sale of all or substantially all of Company's assets (and only its assets) to a third party that is not an Affiliate of Company (a "True Asset Sale"), Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition, or (b) permit the Warrant to continue until the Expiration Date if Company continues as a going concern following the closing of any such True Asset Sale.

(iv) Assumption of Warrant. Upon the closing of any Acquisition other than as particularly described in Section 3(e)(ii) or 3(e)(iii) above, Company shall, unless Holder requests otherwise, cause the surviving or successor entity to assume this Warrant and the obligations of Company hereunder, and this Warrant shall, from and after such closing, be exercisable for the same class, number and kind of securities, cash and other property as would have been paid for or in respect of the shares issuable (as of immediately prior to such closing) upon exercise in full hereof as if such shares had been issued and outstanding on and as of such closing, at an aggregate Warrant Price equal to the aggregate Warrant Price in effect as of immediately prior to such closing (and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant).

4. Representations and Warranties of Holder and Company.

(a) Representations and Warranties by Holder. Holder represents and warrants to Company with respect to this purchase as follows:

(i) Evaluation. Holder has substantial experience in evaluating and investing in private placement transactions of securities of companies similar to Company so that Holder is capable of evaluating the merits and risks of its investment in Company and has the capacity to protect its interests.

(ii) Resale. Except for transfers to an affiliate of Holder, Holder is acquiring this Warrant and the Warrant Shares issuable upon exercise of this Warrant (collectively the "Securities") for investment for its own account and not with a view to, or for resale in connection with, any distribution thereof. Holder understands that the Securities have not been registered under the Securities Act of 1933, as amended (the "Act") by reason of a specific exemption from the registration provisions of the Act which depends upon, among other things, the bona fide nature of the investment intent as expressed herein.

(iii) Rule 144. Holder acknowledges that the Securities must be held indefinitely unless subsequently registered under the Act or an exemption from such registration is available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

(iv) Accredited Investor. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

(v) Opportunity To Discuss. Holder has had an opportunity to discuss Company's business, management and financial affairs with its management and an opportunity to review Company's facilities. Holder understands that such discussions, as well as the written information issued by Company, were intended to describe the aspects of Company's business and prospects which Company believes to be material but were not necessarily a thorough or exhaustive description.

(b) Representations and Warranties by Company. Company hereby represents and warrants to Holder that the statements in the following paragraphs of this Section 4(b) are true and correct (a) as of the date hereof and (b) except where any such representation and warranty relates specifically to an earlier date, as of the date of any exercise of this Warrant.

(i) Corporate Organization and Authority. Company (a) is an exempted company duly incorporated, validly existing, and in good standing (in each case, or the equivalent) in its jurisdiction of incorporation (or equivalent), (b) has the corporate (or equivalent) power and authority to own and operate its properties and to carry on its business as now conducted and as proposed to be conducted; and (c) is qualified as a foreign corporation in all jurisdictions where such qualification is required, except where failure to so qualify would not reasonably be expected to have a material adverse effect on Company and its subsidiaries, taken as a whole.

(ii) Corporate Power. Company has all requisite legal and corporate (or equivalent) power and authority to execute, issue and deliver this Warrant, to issue the Warrant Shares issuable upon exercise or conversion of this Warrant, and to carry out and perform its obligations under this Warrant.

(iii) Authorization; Enforceability. All corporate (or equivalent) action on the part of Company, its officers, directors and shareholders necessary for the authorization, execution, delivery and performance of its obligations under this Warrant and for the authorization, issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise of this Warrant has been taken and this Warrant constitutes the legally binding and valid obligation of Company enforceable in accordance with its terms.

(iv) Valid Issuance of Warrant and Warrant Shares . This Warrant has been validly issued and is free of restrictions on transfer other than restrictions on transfer set forth herein and under applicable state and federal securities laws. The Warrant Shares issuable upon exercise or conversion of this Warrant, when issued, sold and delivered in accordance with the terms of this Warrant for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this Warrant and under applicable state and federal securities laws. Subject to applicable restrictions on transfer, the issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise or conversion of this Warrant are not subject to any preemptive or other similar rights or any liens or encumbrances except as specifically set forth in Company's Memorandum of Continuance (or then-current equivalent) ("Memorandum of Continuance") or this Warrant. Assuming the accuracy of the representations and warranties of Holder set forth in Section 4(a) hereof, the offer, sale and issuance of the Warrant Shares, as contemplated by this Warrant, are exempt from the prospectus and registration requirements of applicable United States federal and state securities laws, and neither Company nor any authorized agent acting on its behalf has or will take any action hereafter that would cause the loss of such exemption.

(v) No Conflict. The execution, delivery, and performance of this Warrant will not result in (a) any violation of, be in conflict with, or constitute a default under, with or without the passage of time or the giving of notice (1) any provision of Company's Memorandum of Continuance or Bye-Laws; (2) any provision of any judgment, decree, or order to which Company is a party, by which it is bound, or to which any of its material assets are subject; (3) any contract, obligation, or commitment to which Company is a party or by which it is bound; or (4) any statute, rule, or governmental regulation applicable to Company, or (b) the creation of any lien, charge or encumbrance upon any assets of Company except, in the case of clauses (a)(3) and (a)(4), to the extent that such violation, conflict or default would not reasonably be expected to have a material adverse effect on Company and its subsidiaries, taken as a whole.

(vi) Reports. Company has previously furnished or made available to Holder complete and accurate copies, as amended or supplemented, of its (a) Annual Report on Form 10-K for the fiscal year ended December 31, 2010, as filed with the Securities and Exchange Commission (the "SEC"), and (b) all other reports filed by Company under Section 13 or subsections (a) or (c) of Section 14 of the Securities Exchange Act of 1934 (as amended, the "Exchange Act") with the SEC since December 31, 2010 (such reports are collectively referred to herein as the "Company Reports"), provided that notification to Holder by facsimile transmission or electronic transmission of the Company Reports as filed on the Securities and Exchange Commission's Next-Generation EDGAR System shall have satisfied the notice and delivery requirements of this clause (vi). The Company Reports complied in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder when filed.

5. Legends.

(a) Legend. Each certificate representing the Warrant Shares shall be endorsed with substantially the following legend:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED (UNLESS SUCH TRANSFER IS TO AN AFFILIATE OF HOLDER) UNLESS COVERED BY AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT, A "NO ACTION" LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO SUCH TRANSFER, A TRANSFER MEETING THE REQUIREMENTS OF RULE 144 OF THE SECURITIES AND EXCHANGE COMMISSION, OR (IF REASONABLY REQUIRED BY COMPANY) AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY SUCH TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

Company need not enter into its stock records a transfer of Warrant Shares unless the conditions specified in the foregoing legend are satisfied. Company may also instruct its transfer agent not to allow the transfer of any of the Warrant Shares unless the conditions specified in the foregoing legend are satisfied.

(b) Removal of Legend and Transfer Restrictions. The legend relating to the Act endorsed on a certificate pursuant to paragraph 5(a) of this Warrant shall be removed and Company shall issue a certificate without such legend to Holder if (i) the Securities are registered under the Act and a prospectus meeting the requirements of Section 10 of the Act is available or (ii) Holder provides to Company an opinion of counsel for Holder reasonably satisfactory to Company, a no-action letter or interpretive opinion of the staff of the SEC reasonably satisfactory to Company, or other evidence reasonably satisfactory to Company, to the effect that public sale, transfer or assignment of the Securities may be made without registration and without compliance with any restriction such as Rule 144.

6. Transfers of Warrant.

(a) In connection with any transfer by Holder of this Warrant, Company may require the transferee to provide Company with written representations and warranties that transferee is acquiring this Warrant and the shares of Common Stock to be issued upon exercise for investment purposes only and not with a view to any sale or distribution, and may require Holder to provide a legal opinion, in form and substance satisfactory to Company and its counsel, stating that such transfer is exempt from the registration and prospectus delivery requirements of the Act and the Companies Act 1981 of Bermuda (the "Companies Act"); provided, that Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder. Following any transfer of this Warrant, the transferee shall surrender this Warrant to Company in exchange for a new warrant of like tenor and date, executed by Company. Upon any partial transfer, Company will execute and deliver to Holder a new warrant of like tenor with respect to the portion of this Warrant not so transferred. Subject to the foregoing, this Warrant is transferable on the books of Company at its principal office by the registered Holder hereof upon surrender of this Warrant properly endorsed. Holder shall not have any right to transfer any portion of this Warrant to any direct competitor of Company.

(b) So long as the general permission for the issuance and subsequent transfer of securities of Company (for so long as any Equity Security of Company remains listed on an appointed stock exchange, as defined in the Companies Act) from and/or to a non-resident of Bermuda given by the Bermuda Monetary Authority dated 1 June 2005 has not been revoked, Company shall ensure that the common shares of Company shall remain listed on NASDAQ or on an appointed stock exchange (as defined in the Companies Act), and where such general permission has been revoked or is no longer in effect, Company shall obtain consent under the Bermuda Exchange Control Act 1972 (and its related regulations) from the Bermuda Monetary Authority for the free issue and transfer of all of the Equity Securities of Company to and between non-residents of Bermuda for exchange control purposes. As used herein, "Equity Security" means a share issued by Company which entitles the holder to vote for or appoint one or more directors or a security which by its terms is convertible into a share which entitles the holder to vote for or appoint one or more directors.

7. Adjustment for Certain Events. The number and kind of securities purchasable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) Reclassification or Merger. In case of (i) any reclassification (including, without limitation, any redomestication pursuant to Section 388 of the Delaware General Corporation Law or any similar state law) or change of securities of the class issuable upon exercise of this Warrant (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any merger or amalgamation of Company with or into another corporation (other than a merger or amalgamation with another corporation in which Company is the acquiring and the surviving or continuing corporation and which does not result in any reclassification or change of outstanding securities issuable upon exercise of this Warrant), or (iii) any sale of all or substantially all of the assets of Company, Company, or such successor or purchasing corporation, as the case may be, shall duly execute and deliver to Holder a new Warrant (in form and substance satisfactory to Holder of this Warrant), or Company shall make appropriate provision without the issuance of a new Warrant, so that Holder shall have the right to receive, at a total purchase price not to exceed that payable upon the exercise of the unexercised portion of this Warrant, and in lieu of the Warrant Shares theretofore issuable upon exercise or conversion of this Warrant, the kind and amount of shares of stock, other securities, money and property receivable upon such reclassification, change, merger, sale or amalgamation by a holder of the number of shares of Common Stock then purchasable under this Warrant, or in the case of such a merger, sale or amalgamation in which the consideration paid consists all or in part of assets other than securities of the successor or purchasing corporation, at the option of Holder, the securities of the successor or purchasing corporation having a value at the time of the transaction equivalent to the value of the Warrant Shares purchasable upon exercise of this Warrant at the time of the transaction. Any new Warrant shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 7. The provisions of this subparagraph (a) shall similarly apply to successive reclassifications, changes, mergers, amalgamations and transfers.

(b) Subdivision or Combination of Shares. If Company at any time while this Warrant remains outstanding and unexpired shall subdivide or combine its outstanding shares of Common Stock, the Warrant Price shall be proportionately decreased and the number of Warrant Shares issuable hereunder shall be proportionately increased in the case of a subdivision and the Warrant Price shall be proportionately increased and the number of Warrant Shares issuable hereunder shall be proportionately decreased in the case of a combination.

(c) Stock Dividends and Other Distributions. If Company at any time while this Warrant is outstanding and unexpired shall (i) pay a dividend with respect to Common Stock payable in Common Stock, then the Warrant Price shall be adjusted, from and after the date of determination of shareholders entitled to receive such dividend or distribution, to that price determined by multiplying the Warrant Price in effect immediately prior to such date of determination by a fraction (A) the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such dividend or distribution, and (B) the denominator of which shall be the total number of shares of Common Stock outstanding immediately after such dividend or distribution; or (ii) make any other distribution with respect to Common Stock (except any distribution specifically provided for in Sections 7(a) and 7(b)), then, in each such case, provision shall be made by Company such that Holder shall receive upon exercise of this Warrant a proportionate share of any such dividend or distribution as though it were Holder of the Warrant Shares as of the record date fixed for the determination of the shareholders of Company entitled to receive such dividend or distribution.

(d) Adjustment of Number of Shares. Upon each adjustment in the Warrant Price, the number of Warrant Shares purchasable hereunder shall be adjusted, to the nearest whole share, to the product obtained by multiplying the number of Warrant Shares purchasable immediately prior to such adjustment in the Warrant Price by a fraction, the numerator of which shall be the Warrant Price immediately prior to such adjustment and the denominator of which shall be the Warrant Price immediately thereafter.

8. Notice of Adjustments; Redemption. Whenever any Warrant Price or the kind or number of securities issuable under this Warrant shall be adjusted pursuant to Section 7 hereof, Company shall prepare a certificate signed by an officer of Company setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the Warrant Price and number or kind of shares issuable upon exercise of this Warrant after giving effect to such adjustment, and shall cause copies of such certificate to be mailed (by certified or registered mail, return receipt required, postage prepaid) within thirty (30) days of such adjustment to Holder as set forth in Section 18 hereof.

9. Financial and Other Reports. If at any time prior to the earlier of the Expiration Date and the complete exercise of this Warrant, Company is no longer subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, Company shall furnish to Holder (a) unaudited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements within 30 days of each month end, in a form acceptable to Holder and certified by Company's president, chief executive officer, chief financial officer or general counsel, (b) Company's complete annual audited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements certified by an independent certified public accountant selected by Company and acceptable to Holder (it being understood that Ernst & Young LLP is acceptable to Holder) within 120 days of the fiscal year end or, if sooner, within 5 business days of Company's Board of Directors receiving the audit and (c) within 30 days of the end of each calendar quarter, an updated capitalization table of Company in a form mutually acceptable to Holder and Company. All such annual statements are to be prepared using GAAP and all monthly financial statements delivered to Holder are to be prepared in accordance with historical practices and consistent in form to those financial statements previously provided to Holder. Company and Holder agree that the forms of balance sheets, statements of operations, cash flow statements and capitalization tables of Company previously accepted by Holder (or any affiliate of Holder) shall be deemed acceptable for the purposes of this Section 9.

10. Currency. All references to "dollars" and the sign "$" in this Warrant shall be to the lawful money of the United States of America.

11. No Fractional Shares. No fractional share of Common Stock will be issued in connection with any exercise or conversion hereunder, but rather the number of shares of Common Stock to be issued shall rounded up to the nearest whole number.

12. Charges, Taxes and Expenses. Issuance of certificates for shares of Common Stock upon the exercise or conversion of this Warrant shall be made without charge to Holder for any Bermuda, United States or state of the United States documentary stamp tax or other incidental expense with respect to the issuance of such certificate, all of which taxes and expenses shall be paid by Company, and such certificates shall be issued in the name of Holder.

13. No Shareholder Rights Until Exercise. Except as expressly provided herein, this Warrant does not entitle Holder to any voting rights or other rights as a shareholder of Company prior to the exercise hereof.

14. Registry of Warrant. Company shall maintain a registry showing the name and address of the registered Holder of this Warrant. This Warrant may be surrendered for exchange or exercise, in accordance with its terms, at such office or agency of Company, and Company and Holder shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

15. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft, or destruction, of indemnity reasonably satisfactory to it, and, if mutilated, upon surrender and cancellation of this Warrant, Company will execute and deliver a new Warrant, having terms and conditions substantially identical to this Warrant, in lieu hereof.

16. Miscellaneous.

(a) Issue Date. The provisions of this Warrant shall be construed and shall be given effect in all respect as if it had been issued and delivered by Company on the date hereof.

(b) Successors. This Warrant shall be binding upon any successors or assigns of Company.

(c) Headings. The headings used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant.

(d) Saturdays, Sundays, Holidays. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday or a Sunday or shall be a legal holiday in the State of New York, then such action may be taken or such right may be exercised on the next succeeding day not a legal holiday.

(e) Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

17. No Impairment. Company will not, by amendment of its Memorandum of Continuance, Bye-Laws or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of Holder hereof against impairment.

18. Addresses. Any notice required or permitted hereunder shall be in writing and shall be mailed by overnight courier, registered or certified mail, return receipt requested, and postage prepaid, or otherwise delivered by hand or by messenger, addressed as set forth below, or at such other address as Company or Holder hereof shall have furnished to the other party in accordance with the delivery instructions set forth in this Section 18.

If to Company:	XOMA Ltd. 2910 Seventh Street Berkeley, CA 94710 Attention: Legal Department
If to Holder:	GE Capital Equity Investments, Inc. c/o GE Healthcare Financial Services, Inc. Two Bethesda Metro Center, Suite 600 Bethesda, Maryland 20814 Attn: Senior Vice President of Risk – Life Science Finance
With copies to:	GE Healthcare Financial Services, Inc. Two Bethesda Metro Center, Suite 600 Bethesda, Maryland 20814 Attn: General Counsel and GE Equity 201 Merritt 7 Norwalk, Connecticut 06851 Attn: Team Leader –HFS/XOMA

If mailed by registered or certified mail, return receipt requested, and postage prepaid, notice shall be deemed to be given five (5) days after being sent, and if sent by overnight courier, by hand or by messenger, notice shall be deemed to be given when delivered (if on a business day, and if not, on the next business day).

19. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS WARRANT OR THE WARRANT SHARES.

20. GOVERNING LAW. THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Company has caused this Warrant to be executed by its officer thereunto duly authorized.

XOMA LTD.

By: _____

Name: _____

Tilte: _____

Dated as of:_____ _____, 2011

NOTICE OF EXERCISE

To:
XOMA Ltd.
2910 Seventh Street
Berkeley, CA 94710
Attention: Legal Department

1. The undersigned warrantholder ("Holder") elects to acquire common shares (the "Common Stock") of XOMA Ltd. (the "Company"), pursuant to the terms of the Warrant dated December 30, 2011 (the "Warrant").

2. Holder exercises its rights under the Warrant as set forth below:

( ) Holder elects to purchase _____ shares of Common Stock as provided in Section 3(a) and tenders herewith a check in the amount of $_____ as payment of the purchase price.

( ) Holder elects a Cashless Exercise (as defined in the Warrant) with respect to _____ shares of Common Stock as provided in Section 3(b) of the Warrant.

3. Holder surrenders the Warrant with this Notice of Exercise.

Holder represents that it is acquiring the aforesaid shares of Common Stock for investment and not with a view to or for resale in connection with distribution and that Holder has no present intention of distributing or reselling the shares.

Please issue a certificate representing the shares of the Common Stock in the name of Holder or in such other name as is specified below:

Name: _____

Address: _____

Taxpayer I.D.: _____

GE CAPITAL EQUITY INVESTMENTS, INC.

By: _____
Name:
Tilte:

Dated as of:_____ _____,20___

EXHIBIT 10.6A

[Form of]

Stock Option Agreement

Under the XOMA Corporation

Amended and Restated 2010 Long Term Incentive and Stock Award Plan

(A)	**Optionee:**	**(E)**	**Option Number:**
(B)	**Grant Date:**	**(F)**	**Expiration Date:**
(C)	**Shares:**	**(G)**	**Exercise Price:**
(D)	**Share Installments:**	**(H)**	**Option Type:**

XOMA Corporation has granted you an option to purchase the number of Shares shown in item (C) above (the "Optioned Shares") at the Exercise Price per share shown in item (G) above. This option is subject to the terms of the Company's Amended and Restated 2010 Long Term Incentive and Stock Award Plan (the "Plan"), the terms of which are incorporated herein by reference, and to the terms and conditions set forth in this Stock Option Agreement (this "Agreement"). If item (H) above indicates this is an incentive stock option, it is intended to be entitled to special tax treatment under Section 422 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), and if item (H) above indicates this is a non-qualified stock option, it is not entitled to such special tax treatment. Capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

The details of your option are as follows:

1. **Term**. The term of this option commences on the Grant Date shown in item (B) above and, except as provided in Section 4 and Subsection 5(a) hereof, expires at the close of business on the Expiration Date shown in item (F) above, which is Ten (10)[1] years from the Grant Date. Upon the Expiration Date or upon the sooner termination of this option under Section 4 or Subsection 5(a), this option will cease to be exercisable and have no further force or effect whatsoever.

2. **Transferability**. If this option is a non-qualified stock option, it may be transferred or assigned by you to your spouse or descendent (any such spouse or descendent, your "Immediate Family Member") or a corporation, partnership, limited liability company or trust so long as all of the stockholders, partners, members or beneficiaries thereof, as the case may be, are either you or your Immediate Family Member, provided that (i) there may be no consideration for any such transfer and (ii) subsequent transfers of the transferred option will be prohibited other than by will or the laws of descent and distribution. Following transfer, the option will continue to be subject to the same terms and conditions as were applicable immediately prior to transfer, provided that for purposes of this Agreement any references to "you" will refer to the transferee. The events of Termination of Service will continue to be applied with respect to you, following which the option will be exercisable by the transferee only to the extent, and for the periods specified, in this Agreement.

[1] Not to exceed 10 years.

If this option is an incentive stock option, the option shall be exercisable during your lifetime only by you and shall not be assignable or transferable otherwise than by will or by the laws of descent and distribution.

3. **Exercise Schedule**. The option granted herein is or will become exercisable as set forth in the Exercise Schedule attached to this Agreement.

4. **Effect of Termination of Service**.

a. If your Termination of Service occurs at any time during the option term for any reason other than as provided in Subsections (b), (c), (d) or (e) below, then the period for exercising this option will be limited to the six-month period commencing with the date of your Termination of Service; provided that in no event will this option be exercisable at any time after the Expiration Date. During any such limited period of exercisability, this option may not be exercised for more than the number of Optioned Shares (if any) for which it is exercisable at the date of your Termination of Service. Upon the expiration of any such limited period of exercisability or (if earlier) upon the Expiration Date, this option will terminate and cease to be outstanding.

b. If your Termination of Service is due to your death at a time when the option remains outstanding, then this option [ill become fully exercisable on the date of death even if the option was not fully exercisable prior to death, and will remain exercisable for a twelve-month period following the date of death; provided that in no event shall this option be exercisable at any time after the Expiration Date. Upon the expiration of such twelve-month period or (if earlier) upon the Expiration Date, this option will terminate and cease to be outstanding. Upon your death, the option will be exercisable by the personal representative of your estate or by the person or persons to whom the option is transferred pursuant to Section 2 above, provided any such exercise occurs prior to the earlier of (i) the expiration of the twelve-month period following the date of your death or (ii) the specified Expiration Date of the option term.

c. If you become permanently disabled and, by reason thereof your Termination of Service occurs at any time during the option term, then you will have a period of twelve months (commencing with the date of such Termination of Service) during which to exercise this option; provided, that in no event shall this option be exercisable at any time after the Expiration Date. During such limited period of exercisability, this option may not be exercised for more than the number of Optioned Shares (if any) for which this option is exercisable at the date of your Termination of Service. Upon the expiration of such limited period of exercisability or (if earlier) upon the Expiration Date, this option will terminate and cease to be outstanding. You will be deemed to be permanently disabled if you are, 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 twelve (12) consecutive months or more, unable to perform your usual duties for the Company or its Subsidiaries.

d. If you retire at or after age fifty-five (55) and the sum of your age on the date of retirement plus years of full-time employment or consultancy with the Company exceeds seventy (70) ("Retirement") and if by reason thereof your Termination of Service occurs at any time during the option term, then this option will become fully exercisable as of the date of Retirement (even if the option was not fully exercisable prior to Retirement) and will remain exercisable for the full option term until the Expiration Date as if you had not incurred a Termination of Service. On the Expiration Date, the option will terminate and cease to be outstanding.

e. Should (i) your Termination of Service occur for cause (including, but not limited to, any act of dishonesty, willful misconduct, fraud, embezzlement or theft, any unauthorized disclosure or use of confidential information or trade secrets or, if you have an employment or consulting agreement with the Company, termination thereunder "for cause" (or any similar concept) as provided in such agreement), or (ii) you make or attempt to make any unauthorized use or disclosure of confidential information or trade secrets of the Company or its Subsidiaries, then in any such event this option will terminate and cease to be exercisable immediately upon the date of such Termination of Service or such unauthorized use or disclosure of confidential or secret information or attempt thereat.

5. **Change in Control**.

a. In the event of a Change in Control, except as provided below, this option shall, at the time of the Change in Control, become fully exercisable for the total number of Shares purchasable under such. However, this option shall not be so accelerated if and to the extent such option is, in connection with the Change in Control, either to be assumed by the successor corporation or parent thereof or to be replaced with comparable options to purchase capital stock of the successor corporation or parent thereof, such comparability to be determined by the Committee.

b. The Committee will use reasonable efforts to provide you with written notice of a Change in Control at least ten business days prior to the effective date.

c. This Agreement will 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, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

6. **Privilege of Share Ownership**. The holder of this option will not have any rights of a stockholder with respect to the Optioned Shares until such individual has exercised the option, paid the Exercise Price and been issued a certificate for, or had his or her securities account credited with, the purchased Shares.

7. **Manner of Exercising Option**.

a. In order to exercise this option with respect to all or any part of the Optioned Shares for which this option is at the time exercisable, you (or in the case of exercise after your death, your executor, administrator, heir, legatee or transferee as the case may be) must take the following actions:

i. Provide the Secretary of the Company with written notice of such exercise, specifying the number of Optioned Shares with respect to which the option is being exercised.

ii. Pay the Exercise Price for the purchased Optioned Shares in one or more of the following alternative forms: (A) full payment in cash or by check payable to the Company's order; (B) full payment in Shares of the Company valued at Fair Market Value (as such term is defined in the Plan) on the exercise date; (C) full payment in combination of Shares of the Company valued at Fair Market Value on the exercise date and cash or check payable to the Company's order; or (D) payment effected through a broker-dealer sale and remittance procedure pursuant to which you (I) will provide irrevocable written instructions to the designated broker-dealer to effect the immediate sale of the purchased Shares and remit to the Company, out of the sale proceeds, an amount equal to the aggregate Exercise Price payable for the purchased Shares plus all applicable Federal and State income and employment taxes required to be withheld by the Company by reason of such purchase and (II) will provide written directives to the Company to deliver the certificates for the purchased Shares directly to such broker-dealer.

iii. Furnish to the Company appropriate documentation that the person or persons exercising the option, if other than you, have the right to exercise this option.

b. In no event may this option be exercised for any fractional share.

8. **Compliance with Laws and Regulations**.

a. The exercise of this option and the issuance of Optioned Shares upon such exercise will be subject to compliance by the Company and by you with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange on which the Company's Shares may be listed at the time of such exercise and issuance.

b. In connection with the exercise of this option, you will execute and deliver to the Company such representations in writing as may be requested by the Company in order for it to comply with the applicable requirements of Federal and State securities laws.

9. **Restrictive Legends**. If and to the extent any Optioned Shares acquired under this option are not registered under the Securities Act of 1933, the certificates for such Optioned Shares will be endorsed with restrictive legends, including (without limitation) the following:

> "The Shares represented by this certificate have not been registered under the Securities Act of 1933. The Shares have been acquired for investment and may not be sold or offered for sale in the absence of (a) an effective registration statement for the shares under such Act, (b) a 'no action' letter of the Securities and Exchange Commission with respect to such sale or offer, or (c) an opinion of counsel to the Company that registration under such Act is not required with respect to such sale or offer."

10. **Successors and Assigns**. Except to the extent otherwise provided in Section 2 and Subsection 5(a), the provisions of this Agreement will inure to the benefit of, and be binding upon your successors, administrators, heirs, legal representatives and assigns and the successors and assigns of the Company.

11. **Liability of the Company**.

a. If the Optioned Shares covered by this Agreement exceed, as of the Grant Date, the number of Shares which may without stockholder approval be issued under the Plan, then this option will be void with respect to such excess shares unless stockholder approval of an amendment sufficiently increasing the number of Shares issuable under the Plan is obtained in accordance with the provisions of the Plan.

b. The inability of the Company to obtain approval from any regulatory body having authority deemed by the Company to be necessary to the lawful issuance and sale of any Shares pursuant to this option will relieve the Company of any liability in respect of the non-issuance or sale of such Shares as to which such approval will not have been obtained.

12. **No Employment or Consulting Contract; No Right to Nomination**. If you are an employee of or consultant to the Company, nothing in this Agreement or in the Plan will confer upon you any right to continue in the employ or service of the Company for any period of time or interfere with or otherwise restrict in any way the rights of the Company (or any Subsidiary or Affiliate of the Company employing or retaining you) or you, which rights are hereby expressly reserved by each, to terminate your employee or consultant status as the case may be, at any time for any reason whatsoever, with or without cause. If you are a director, neither this Agreement nor any action taken hereunder will be construed as giving you any right to be nominated for re-election to the Board of Directors of the Company.

13. **Notices**. Any notice required to be given or delivered to the Company under the terms of this Agreement will be in writing and addressed to the Company in care of its Secretary at its principal offices. Any notice required to be given or delivered to you will be in writing and addressed to you at the address indicated below your signature line herein. All notices will be deemed to be given or delivered upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

14. **Construction**. This Agreement and the option evidenced hereby are made and granted pursuant to the Plan and are in all respects limited by and subject to the express terms and provisions of the Plan. Any dispute regarding the interpretation of this Agreement will be submitted to the Committee for resolution. The decision of the Committee will be final, binding and conclusive. Questions regarding this option or the Plan should be referred to the Legal Department of the Company.

15. **Governing Law**. The interpretation, performance, and enforcement of this Agreement will be governed by the laws of Delaware.

16. **Additional Terms Applicable to an Incentive Stock Option**. If this option is an incentive stock option, the following terms and conditions will apply to the grant:

a. This option will cease to qualify for favorable tax treatment as an incentive stock option under the Code if (and to the extent) this option is exercised for Optioned Shares: (i) more than three months after the date you cease to be an employee for any reason other than death or permanent disability (as defined in Subsection 4(c)) or (ii) more than one (1) year after the date you cease to be an employee by reason of permanent disability.

b. Except in the event of a Change in Control under Section 5, this option will not become exercisable in the calendar year in which granted if (and to the extent) the aggregate fair market value (determined at the Grant Date) of the Company's Shares for which this option would otherwise first become exercisable in such calendar year would, when added to the aggregate fair market value (determined as of the respective date or dates of grant) of the Company's Shares for which this option or one or more other post-1986 incentive stock options granted to you prior to the Grant Date (whether under the Plan or any other option plan of the Company or any parent or Subsidiary) first become exercisable during the same calendar year, exceed One Hundred Thousand Dollars ($100,000) in the aggregate. To the extent the exercisability of this option is deferred by reason of the foregoing limitation, the deferred portion will first become exercisable in the first calendar year or years thereafter in which the One Hundred Thousand Dollar ($100,000) limitation of this Section 16(b) would not be contravened.

c. Should the exercisability of this option be accelerated upon a Change in Control in accordance with Section 5, then this option will qualify for favorable tax treatment as an incentive stock option under the Federal tax laws only to the extent the aggregate fair market value (determined at the Grant Date) of the Company's Shares for which this option first becomes exercisable in the calendar year in which the Change in Control occurs does not, when added to the aggregate fair market value (determined as of the respective date or dates of grant) of the Company's Shares for which this option or one or more other post-1986 incentive stock options granted to you prior to Grant Date (whether under the Plan or any other option plan of the Company or any parent or Subsidiary) first become exercisable during the same calendar year, exceed One Hundred Thousand Dollars ($100,000) in the aggregate.

d. To the extent that this option fails to qualify as an incentive stock option under the Federal tax laws, you will recognize compensation income in connection with the acquisition of one or more Optioned Shares hereunder, and you must make appropriate arrangements for the satisfaction of all Federal, State or local income tax withholding requirements and Federal social security employee tax requirements applicable to such compensation income.

17. **Additional Terms Applicable to a Non-Qualified Stock Option**. In the event this option is a non-qualified stock option, you hereby agree to make appropriate arrangements with the Company or Subsidiary thereof by which you are employed or retained for the satisfaction of all Federal, State or local income tax withholding requirements and Federal social security employee tax requirements applicable to the exercise of this option.

XOMA Corporation

By: _____

Dated: _____

I hereby agree to be bound by the terms and conditions of this Agreement and the Plan.

By: _____

Dated: _____

If the optionee resides in California or another community property jurisdiction, I, as the optionee's spouse, also agree to be bound by the terms and conditions of this Agreement and the Plan.

By: _____

Dated: _____

Exercise Schedule

EXHIBIT 10.6B

[Form of]

Restricted Stock Unit Agreement

Under the XOMA Corporation

Amended and Restated 2010 Long Term Incentive and Stock Award Plan

(A) Recipient:

(B) Grant Date:

(C) Shares:

(D) Share Installments:

(E) Payroll Number (if applicable):

XOMA Corporation has awarded you Restricted Stock Units (the "Restricted Stock Units") to receive the number of Shares shown in item (C) above (the "Awarded Shares"). This award is subject to the terms of the Company's Amended and Restated 2010 Long Term Incentive and Stock Award Plan (the "Plan"), the terms of which are incorporated herein by reference, and to the terms and conditions set forth in this Restricted Stock Unit Agreement (this "Agreement"). Capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

The details of your award are as follows:

1. **Grant Date**. This award was granted on the Grant Date shown in item (B) above.

2. **Transferability**. This award shall not be assignable or transferable otherwise than by will or by the laws of descent and distribution.

3 . **Vesting Schedule**. The award granted herein is or will become vested, and the deferral period for the Restricted Stock Units shall expire, as set forth in the Vesting Schedule attached to this Agreement.

4. **Effect of Termination of Service**.

a. If your Termination of Service is due to your death at a time when this award is not fully vested, then this award will become fully vested on the date of death. Upon your death, the Awarded Shares to be distributed will be distributed to the personal representative of your estate.

b. If you become permanently disabled and, by reason thereof your Termination of Service occurs at any time when this award is not fully vested, then this award will become fully vested as of the date of your Termination of Service. You will be deemed to be permanently disabled if you are, 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 twelve (12) consecutive months or more, unable to perform your usual duties for the Company or its Subsidiaries.

c. [If you retire at or after age fifty-five (55) and the sum of your age on the date of retirement plus years of full-time employment with the Company exceeds seventy (70) ("Retirement") and if by reason thereof your Termination of Service occurs at any time when this award is not fully vested, then this award will become fully vested as of the date of Retirement.][1]

d. Should (i) your Termination of Service occur for any reason other than as provided in Subsection (a), (b) or (c) above (including, but not limited to, for any act of dishonesty, willful misconduct, fraud, embezzlement or theft, any unauthorized disclosure or use of confidential information or trade secrets or, if you have an employment agreement with the Company, termination thereunder "for cause" (or any similar concept) as provided in such agreement), or (ii) you make or attempt to make any unauthorized use or disclosure of confidential information or trade secrets of the Company or its Subsidiaries, then in any such event this award will cease to vest and the unvested portion hereof shall be forfeited immediately upon the date of such Termination of Service or such unauthorized use or disclosure of confidential or secret information or attempt thereat.

5. **Change in Control**.

a. In the event of a Change in Control, this award shall, at the time of the Change in Control, become fully vested for the total number of Awarded Shares not previously vested and distributed.

b. The Committee will use reasonable efforts to provide you with written notice of a Change in Control at least ten business days prior to the effective date.

c. This Agreement will 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, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

6. **Distribution of Shares**. Subject to Section 10 below, on the dates the Restricted Stock Units become vested as provided in this Agreement, the Company shall distribute to you the number of Awarded Shares corresponding to the number of Restricted Stock Units then held by you that become vested on such dates. You will need to establish an "Employee Stock Plans" account at E*Trade Financial (or an equivalent account at another broker designated by the Company) in order to have Awarded Shares distributed to you. You agree that a portion of the Awarded Shares otherwise distributable on each such date, in an amount sufficient to satisfy the minimum amount of taxes required to be withheld in connection with such vesting and distribution, will not be distributed to you but will instead be sold on the distribution date at prevailing market prices and the proceeds thereof used to satisfy such withholding obligation. The Company may refuse to deliver Awarded Shares to you if you do not have arrangements satisfactory to the Company that will ensure your compliance with the foregoing in place prior to the applicable distribution date.

[1] In awards to directors, replace with "[Intentionally omitted.]"

7. **Privilege of Share Ownership**. The holder of this award will not have any rights of a stockholder with respect to the Awarded Shares until such individual has been issued a certificate for, or had his or her securities account credited with, the Awarded Shares.

8. **Dividend Equivalents**. The Restricted Stock Units are awarded without Dividend Equivalents.

9. **Compliance with Laws and Regulations**.

a. The issuance of Awarded Shares upon vesting will be subject to compliance by the Company and by you with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange on which the Company's Shares may be listed at the time of such exercise and issuance.

b. In connection with the distribution of the Awarded Shares, you will execute and deliver to the Company such representations in writing as may be requested by the Company in order for it to comply with the applicable requirements of Federal and State securities laws.

10. **Withholding**. As provided in Section 9(c) of the Plan, the Company is authorized to withhold from this award any amount of withholding or other taxes due in connection with this award, including the authority to withhold Awarded Shares to satisfy the minimum amount of taxes required to be withheld. Nothing herein shall limit the Company's right, to the extent permitted or required by law, to deduct from any payment of any kind otherwise due to you, federal, state, local and foreign taxes of any kind required by law to be withheld at such time and not otherwise satisfied.

11. **Restrictive Legends**. If and to the extent any Awarded Shares distributed under this award are not registered under the Securities Act of 1933, the certificates for such Awarded Shares will be endorsed with restrictive legends, including (without limitation) the following:

> "The Shares represented by this certificate have not been registered under the Securities Act of 1933. The Shares have been acquired for investment and may not be sold or offered for sale in the absence of (a) an effective registration statement for the shares under such Act, (b) a 'no action' letter of the Securities and Exchange Commission with respect to such sale or offer, or (c) an opinion of counsel to the Company that registration under such Act is not required with respect to such sale or offer."

12. **Successors and Assigns**. Except to the extent otherwise provided in Section 2, the provisions of this Agreement will inure to the benefit of, and be binding upon your successors, administrators, heirs, legal representatives and assigns and the successors and assigns of the Company.

13. **Liability of the Company**.

a. If the Awarded Shares covered by this Agreement exceed, as of the Grant Date, the number of Shares which may without stockholder approval be issued under the Plan, then this award will be void with respect to such excess shares unless stockholder approval of an amendment sufficiently increasing the number of Shares issuable under the Plan is obtained in accordance with the provisions of the Plan.

b. The inability of the Company to obtain approval from any regulatory body having authority deemed by the Company to be necessary to the lawful issuance and sale of any Shares pursuant to this award will relieve the Company of any liability in respect of the non-issuance or sale of such Shares as to which such approval will not have been obtained.

14. **No Employment Contract; No Right to Nomination.** If you are an employee of the Company, nothing in this Agreement or in the Plan will confer upon you any right to continue in the employ or service of the Company for any period of time or interfere with or otherwise restrict in any way the rights of the Company (or any Subsidiary or Affiliate of the Company employing or retaining you) or you, which rights are hereby expressly reserved by each, to terminate your employee status as the case may be, at any time for any reason whatsoever, with or without cause. If you are a director, neither this Agreement nor any action taken hereunder will be construed as giving you any right to be nominated for re-election to the Board of Directors of the Company.

15. **Notices**. Any notice required to be given or delivered to the Company under the terms of this Agreement will be in writing and addressed to the Company in care of its Secretary at its principal offices. Any notice required to be given or delivered to you will be in writing and addressed to you at the address indicated below your signature line herein. All notices will be deemed to be given or delivered upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

16. **Construction**. This Agreement and the award evidenced hereby are made and granted pursuant to the Plan and are in all respects limited by and subject to the express terms and provisions of the Plan. Any dispute regarding the interpretation of this Agreement will be submitted to the Committee for resolution. The decision of the Committee will be final, binding and conclusive. Questions regarding this award or the Plan should be referred to the Legal Department of the Company.

17. **Governing Law**. The interpretation, performance, and enforcement of this Agreement will be governed by the laws of Delaware.

18. **Section 409A**. 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. Notwithstanding any provision to the contrary in this Agreement, if you are deemed on the date of your "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 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 your "separation from service," or (ii) the date of your death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 18 (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 you in a lump sum and any remaining payments 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 upon or following a termination of service that are considered deferred compensation under Section 409A, references to your "termination of service" (and corollary terms) with the Company shall be construed to refer to your "separation from service" (within the meaning of Treas. Reg. Section 1.409A-1(h)) with 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. The Agreement may be amended in any respect deemed necessary by the Committee in order to preserve compliance with Section 409A of the Code.

XOMA Corporation

By: _____

Name:
Title:

Dated: _____

I hereby agree to be bound by the terms and conditions of this Agreement and the Plan.

By: _____

Name:

Dated: _____

If the recipient resides in California or another community property jurisdiction, I, as the recipient's spouse or domestic partner, also agree to be bound by the terms and conditions of this Agreement and the Plan.

By: _____

Name:

Dated: _____

Vesting Schedule

EXHIBIT 10.7B

AMENDMENT NO. 1 TO THE XOMA LTD.
CEO INCENTIVE COMPENSATION PLAN

The XOMA Ltd. CEO Incentive Compensation Plan (the "Plan") is hereby amended, effective as of October 27, 2011, by amending Sections 2(a) and 2(b) of the Plan to read in their entirety as follows:

"(a) It is the intention of the Board that awards to the CEO share vary depending on: (1) the extent of achievement of Company Objectives; (2) the CEO's Base Salary; (3) the CEO's performance based on the criteria set forth in the Company's CEO evaluation form; and (4) the CEO's achievement of certain individual performance objectives to be determined from time to time by the Board in its sole discretion.

"(b) Company and individual performance goals for the CEO are to be weighted as follows:

Company Objectives	**CEO Evaluation Form Criteria**	**Individual Performance Objectives**
50%	30%	20%"

EXHIBIT 10.10G

OFFICER EMPLOYMENT AGREEMENT

This Officer Employment Agreement ("Agreement"), dated this 4th day of January, 2012, 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 John Varian ("Employee"), an individual residing at 930 Noe Street, San Francisco, California 94114.

WHEREAS, the Company wishes to enter into this Agreement to retain or assure the Company of the continued services of Employee; and

WHEREAS, Employee is willing to enter into this Agreement and to serve or 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 employ or to continue to employ Employee, and Employee agrees to be or 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. Employee shall devote his reasonable best efforts and substantially all of his time and attention to his employment by the Company. He shall perform the duties of Chief Executive Officer, and/or such other reasonable duties as may be determined from time to time by the Chairman of the Board of Directors of the Company ("Chairman"). During his employment with the Company, Employee may not accept part time consulting or other business or non-profit opportunities without first obtaining written approval from the Chairman; provided that Employee may serve on the board of directors of up to two additional companies at any one time not in "direct competition" (as that term is defined in Section 8(a) hereof) with the Company with the approval of the Chairman, which approval will not be unreasonably withheld.

3. Term of Employment. This Agreement shall become effective and the term of employment pursuant to this Agreement shall commence on January 4, 2012 and continue until January 3, 2013. This Agreement will be automatically extended (without further action by the parties) for an additional one–year term thereafter and again on each subsequent one-year anniversary thereof unless it is terminated by either the Employee or the Company at any time with thirty (30) days prior written notice, unless Employee is otherwise terminated by the Company or he resigns from the Company pursuant to Section 6 hereof.

4. Compensation and Reimbursement of Expenses.

(a) Compensation. For all services rendered by Employee as Chief Executive Officer, during his employment under this Agreement, the Company shall pay Employee as compensation a base salary at a rate of not less than $475,000.00 per annum. In addition, Employee shall be a participant in the Company's CEO Incentive Compensation Plan ("CICP"). All taxes and governmentally required withholding shall be deducted in conformity with applicable laws.

(b) Share Options. Employee will be granted share options and/or other share or share-based awards from time to time as per the Company's standard practices and subject to approval by the Company's Board of Directors.

(c) Reimbursement of Expenses. The Company shall pay or reimburse Employee for all reasonable travel and other expenses incurred by Employee in performing 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 his duties and consistent with past Company practice.

(d) Vacation. Employee will be entitled to four weeks of vacation time each year during the term of this Agreement.

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 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. Termination of Employment.

(a) Termination by Employee. As provided in Section 3, Employee has the right to terminate his employment with the Company at any time and for any reason. Employee will not be entitled to any severance pay or other benefits from the Company if he terminates his employment with the Company, except if such termination is for Good Reason in accordance with the terms hereof. In case of termination of this Agreement for Good Reason by Employee, Employee shall be entitled to the severance pay and other benefits set forth in Section 7 hereof. "Good Reason" shall mean, unless remedied by the Company within sixty (60) days after the receipt of written notice from the Employee as provided below or consented to in writing by the Employee, (i) the material diminution of any material duties or responsibilities of the Employee; or (ii) 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 sixty (60) 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 in order to qualify for the severance pay and other benefits set forth in Section 7 hereof.

(b) Termination by the Company Without Cause. Employee may be terminated by the Company without Cause (as defined below), but in such case, Employee shall be entitled to the severance pay and other benefits set forth in Section 7 hereof.

(c) Termination Upon Death or Permanent Disability. Except as required by law and as provided in Section 7 hereof, all benefits and other rights of Employee hereunder shall be terminated by the death or permanent disability of the Employee. For the purposes of this Agreement, permanent disability is defined as Employee being incapable of performing his duties to the Company by reason of any medically determined physical or mental impairment that can be expected to last for a period of more than six consecutive months from the first date of the Employee's absence due to the disability. The Company will give Employee at least four weeks written notice of termination due to such disability.

(d) Termination by the Company for Cause. The Company may terminate Employee's employment for cause, in which case, Employee will not be entitled to any severance pay. For the purposes of this Agreement, the Company will have Cause to terminate Employee's employment as the result of:

(i) willful material fraud or material dishonesty in connection with Employee's performance hereunder;

(ii) failure by Employee to materially perform the material duties of his job as Chief Executive Officer, as documented pursuant to the Company's performance management process and procedures;

(iii) material breach of this Agreement or the Company's policies set forth on the Company's Intranet Portal under "Policy Manual";

(iv) misappropriation of a material business opportunity of the Company;

(v) misappropriation of any Company funds or property; or

(vi) conviction of, or the entering of, a plea of guilty, or no contest, with respect to a felony or the equivalent thereof.

(e) Notice and Opportunity to Cure. Notwithstanding the foregoing, it shall be a condition precedent to the Company's right to terminate the Employee's employment for the reasons set forth in Sections 6(d)(ii) or (iii) of this Agreement that (i) the Company shall first have given the Employee written notice stating with specificity the reason for the termination ("breach") and (ii) if such breach is capable of cure or remedy, Employee will have a period of thirty (30) days after the notice is given to remedy the breach, unless such breach cannot be cured or remedied within thirty (30) days, in which case the period for remedy or cure shall be extended for a reasonable time (not to exceed an additional thirty (30) days), provided the Employee has made and continues to make a diligent effort to effect such remedy or cure.

(f) Resignation from the Board of Directors of the Company's Parent Company ("Board"). If Employee is a member of the Board at the time of termination of his employment with the Company (regardless of the reason(s) therefor), Employee shall be deemed to have resigned from the Board effective as of the date of such termination of employment, unless Employee and the Company agree otherwise in writing.

(g) Return of Company Property. Upon termination of employment for any reason, Employee shall immediately return to the Company all documents, telephones, computers, pagers, keys, credit cards, other property and records of the Company, and all copies thereof, within Employee's possession, custody or control.

7. Severance Pay and Other Benefits. The following provisions of this Section 7 shall apply upon the occurrence of an event of termination as provided in Section 6(a) for Good Reason, Section 6(b) or Section 6(c).

(a) Cash Severance Pay. The Company shall pay Employee, or in the event of his subsequent death or permanent disability, his beneficiary or beneficiaries of his estate, as the case may be, as severance pay or liquidated damages, or both, (i) a severance payment in an amount equal to Employee's annual base salary as in effect immediately prior to the termination, and (ii) a severance payment equal to a prorated portion of the Employee's annual target bonus 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) during which the Employee was employed by the Company prior to the occurrence of the termination during such fiscal year, and the denominator of which shall be 12; provided that if Employee has been an officer of the Company for less than one year at the time of such termination, Employee's severance pay shall be limited to an amount equal to .5 times Employee's annual base salary as in effect immediately prior to the termination ; and provided further, if Employee is terminated other than for Cause under Section 6(d) above, after December 31 of any year in which he was a participant in the CICP, Employee shall be entitled to receive his bonus payment for the year just ended consistent with his performance against his CICP objectives. 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 Change of Control Severance Agreement, effective as of January 4, 2012, 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 7(a)(i) above, shall be paid in monthly installments over twelve (12) months (the "Severance Payment Period"), with the first two (2) of such monthly installments being paid after expiration of any revocation period therefore and sixty (60) days after the date of termination and the remaining monthly installments being paid monthly thereafter until fully paid. The severance payments described in Section 7(a)(ii) above, 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 7(c) and Section 7(e) below.

(b) Group Health Coverage and Certain Other Benefits. In addition, during a period of twelve (12) months following an event of termination under Section 6(a), for Good Reason only, or Section 6(b), (i) the Company shall pay for the full cost of the coverage 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 (A) 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 (B) 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 (ii) 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 twelve (12) month period in this Section 7(b) upon the employment of the Employee 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, the outstanding balance of such loan shall be immediately due and payable, together with any accrued and unpaid interest thereon.

(c) Section 409A of the Code. Notwithstanding any provision to the contrary in this Agreement, if the Employee is deemed on the date of his "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 of the code 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 7(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.

(d) Outplacement Program. Upon the occurrence of an event of termination under Section 6(a) for Good Reason or Section 6(b), Employee will immediately become entitled to participate in a twelve (12) month executive outplacement program provided by an executive outplacement service selected by the Company, at the Company's expense not to exceed fifteen thousand dollars ($15,000) paid directly to the outplacement service.

(e) Release of Claims. As a condition of entering into this Agreement and receiving the severance benefits under this Section 7, 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.

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

(a) Confidential Information and Competitive Conduct. 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 Employee confirms that such information constitutes the exclusive property of the Company. Employee shall not otherwise act or conduct 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 Sections 6(a) or (b), 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 itself be deemed to constitute such competition. Employee recognizes that the possible restrictions on his activities which may occur as a result of his performance of his obligations under this Section 8 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 marketing and sale of biological materials intended for use as therapeutic 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 marketing and sale of which is an active part of the Company's business plan at the time of Employee's termination.

(b) Agreement Not to Solicit Employees. Employee agrees that during the term of his employment with the Company or any entity owned by or affiliated with the Company (whether pursuant to this Agreement or otherwise), and for one (1) year following the termination thereof for any reason whatsoever, he will not, either directly or indirectly, on his own behalf or in the service or on behalf of others, solicit or divert, attempt to solicit or divert or induce or attempt to induce to discontinue employment with the Company, or any subsidiary or affiliate thereof, any person employed by the Company, or any subsidiary or affiliate thereof, whether or not such employee is a full time employee or a temporary employee of the Company, or any subsidiary or affiliate thereof, and whether or not such employment is for a determined period or is at-will.

(c) Non-Disparagement. The Employee and the Company agree to refrain from (i) any defamation, libel or slander or any communication of any facts or opinions that might tend to disparage, degrade or harm the reputation of the other and its respective officers, directors, employees, representatives, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns or (ii) 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.

(d) 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 Sections 8(a), (b) or (c) above, (i) his rights to any future payments or other benefits hereunder shall terminate immediately; (ii) the Company's obligations to make such payments and provide such benefits shall cease immediately; and (iii) Employee shall refund to the Company all termination payments received by Employee pursuant to this Agreement.

(e) Understanding of Covenants. The Employee represents that the Employee (i) is familiar with the foregoing covenants not to compete, not to solicit 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.

(f) 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 8 and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

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) 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, 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(b) 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.

(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.

(c) Notices. 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.

10. 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.

11. Miscellaneous Provisions.

(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. The parties agree that any legal disputes concerning this Agreement, or Employee's next employment, will be filed in Alameda County, California.

14. Legal Fees. If any action or proceeding in arbitration or law is commenced to enforce any of the provisions or rights under this Agreement or Exhibit A hereto, the unsuccessful party to such action or proceeding, as determined by arbitration or by the court in a final judgment or decree, will pay the successful party all costs, expenses, and reasonable attorney's fees incurred therein by such party (including, without limitation, such costs, expenses and fees on any appeal), and if such successful party will recover judgment in any such action or proceedings, such costs, expenses and attorneys' fees will be included as part of such judgment.

15. Arbitration. All claims or controversies between Employee and the Company relating in any manner whatsoever to Employee's employment with the Company or the termination of that employment shall be resolved by arbitration in front of one neutral arbitrator in accordance with the then applicable Employment Dispute Resolution rules of the American Arbitration Association ("the AAA Rules"). Claims subject to arbitration shall include contract claims, tort claims and claims relating to compensation and stock options, as well as claims based on any federal, state, or local law, statute, or regulation, including but not limited to any claims arising under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act ("Arbitrable Claims"). However, claims for unemployment insurance, claims under applicable workers' compensation laws, and claims under the National Labor Relations Act shall not be subject to arbitration. The arbitrator shall apply the same substantive law, with the same statutes of limitations and same remedies that would apply if the claims were brought in a court of law. The arbitrator shall have the authority to consider and decide pre-hearing motions, including dispositive motions.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument

17. Effect of Prior Agreements. This Agreement contains the entire understanding between the parties hereto and, effective as of January 4, 2012, shall replace and supersede all prior employment agreements between the Company and Employee, but shall not replace or 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 in which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

IN WITNESS WHEREOF, each of the parties hereto has signed this Agreement, and it shall be effective as of January 4, 2012.

XOMA (US) LLC

By: Christopher J. Margolin
Vice President, General Counsel and Secretary

John Varian

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 John Varian (the "Employee").

WHEREAS, the Employee was employed by the Company; and

WHEREAS, the Company and the Employee have entered into an Officer Employment Agreement effective as of January 4, 2012 (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 full and complete 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 based on contract, tort or statute including, but not limited to, 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/or the California Labor Code and all amendments to each such Act/statute 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 post-termination obligations set forth in Section 8 of 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 Legal Department at 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 injuries that have not yet been reported to the Company's workers' compensation carrier and 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 10.12A

CHANGE OF CONTROL SEVERANCE AGREEMENT

This Change of Control Severance Agreement (the "Agreement") dated this 4th day of January, 2012 (the "Effective Date"), is between John Varian (the "Employee") and XOMA Corporation, a Delaware corporation (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 have agreed to enter into this Agreement to provide the Employee with certain severance benefits upon the Employee's termination of employment following a Change of Control.

D. XOMA (US) LLC, a wholly-owned subsidiary of the Company, and the Employee have previously entered into an Officer Employment Agreement effective as of January 4, 2012 (the "Existing Agreement"), that provides the Employee with certain severance benefits upon the Employee's termination of employment.

E. 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 that the Company will have the right to terminate Employee's employment as the result of :

(i) willful material fraud or material dishonesty in connection with Employee's performance hereunder;

(ii) failure by Employee to materially perform the material duties of his job as Vice President, General Counsel and Secretary, as documented pursuant to the Company's performance management process and procedures;

(iii) material breach of this Agreement or the Company's policies set forth on the Company's Intranet Portal under "Policy Manual";

(iv) misappropriation of a material business opportunity of the Company;

(v) misappropriation of any Company funds or property; or

(vi) conviction of, or the entering of, a plea of guilty, or no contest, with respect to a felony or the equivalent thereof.

(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 terminating 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 eighteen (18) 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 become effective on January 4, 2012 and 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. Employment. The Company and the Employee acknowledge that, effective as of January 4, 2012, the Employee's employment shall be, and shall continue to be, governed by the Existing Agreement and applicable law. If the Employee's employment terminates after January 4, 2012, 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 2 times Employee's annual base salary as in effect immediately prior to the Involuntary Termination, plus (B) an amount equal to 2 times Employee's target bonus as in effect for the fiscal year in which the Involuntary Termination occurs; provided that if Employee has been an officer of the Company for less than one year at the time of such termination, Employee's severance pay shall be limited to an amount equal to Employee's annual base salary as in effect immediately prior to the Involuntary Termination. 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) above shall be paid in monthly installments over nine (9) months (the "Severance Payment Period"), with the first two (2) of such monthly installments being paid in a lump sum sixty (60) days after the date of termination and the remaining monthly installments being paid monthly thereafter until fully paid. 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 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, (A) the Company shall make available and pay for the full cost of the coverage 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 twenty-four (24) month period in this Section 4(c)(ii) upon the employment of the Employee 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, 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 "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 of the Code 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) Resignation from the Board of Directors of the Company ("Board"). If Employee is a member of the Board at the time of termination of his employment with the Company (regardless of the reason(s) therefor), Employee shall be deemed to have resigned from the Board effective as of the date of such termination of employment, unless Employee and the Company agree otherwise in writing.

(v) 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 permanent 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 permanent 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.

(f) Release of Claims. As a condition of entering into this Agreement and receiving the benefits under this 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.

5. Post-Termination Obligations. All payments and benefits provided to Employee under this Agreement shall be subject to Employee's compliance with the following provisions during the term of his employment and/or a Change of Control Protection Period.

(a) Confidential Information and Competitive Conduct. 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 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 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. Employee recognizes that the possible restrictions on his activities which may occur as a result of his performance of his obligations under this Section 5 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 marketing and sale of biological materials intended for use as therapeutic 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 marketing and sale 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 (i) any defamation, libel or slander or any communication of any facts or opinions that might tend to disparage, degrade or harm the reputation of the other and its respective officers, directors, employees, representatives, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns or (ii) 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) Agreement Not to Solicit Employees. Employee agrees that during the term of his employment with the Company or any entity owned by or affiliated with the Company (whether pursuant to this Agreement or otherwise), and for one (1) year following the termination thereof for any reason whatsoever, he will not, either directly or indirectly, on his own behalf or in the service or on behalf of others, solicit or divert, attempt to solicit or divert or induce or attempt to induce to discontinue employment with the Company, or any subsidiary or affiliate thereof, any person employed by the Company, or any subsidiary or affiliate thereof, whether or not such employee is a full time employee or a temporary employee of the Company, or any subsidiary or affiliate thereof, and whether or not such employment is for a determined period or is at-will.

(d) 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 Sections 5(a), (b) or (c) above, (i) his rights to any future payments or other benefits hereunder shall terminate immediately, (ii) the Company's obligations to make such payments and provide such benefits shall cease immediately; and (iii) Employee shall refund to the Company all termination payments received by Employee pursuant to this Agreement.

(e) Understanding of Covenants. The Employee represents that the Employee (i) is familiar with the foregoing covenants not to compete, and not to disparage and not to solicit employees, 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.

(f) Remedies. Employee agrees that monetary damages would not be ade-quate compensation for any loss incurred by the Company by reason of a breach of the provisions of this Section 5 and hereby agrees to waive the defense in any action for spe-cific performance that a remedy at law would be adequate.

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. 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.

9. Arbitration. All claims or controversies between Employee and the Company relating in any manner whatsoever to Employee's employment with the Company or the termination of that employment shall be resolved by arbitration in front of one neutral arbitrator in accordance with the then applicable Employment Dispute Resolution rules of the American Arbitration Association ("the AAA Rules"). Claims subject to arbitration shall include contract claims, tort claims and claims relating to compensation and stock options, as well as claims based on any federal, state, or local law statute, or regulation, including but not limited to any claims arising under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act ("Arbitrable Claims"). However, claims for unemployment insurance, claims under applicable workers' compensation laws, and claims under the National Labor Relations Act shall not be subject to arbitration. The arbitrator shall apply the same substantive law with the same statutes of limitations and same remedies that would apply if the claims were brought in a court of law. The arbitrator shall have the authority to consider and decide pre-hearing motions, including dispositive motions.

10. 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) 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. The parties agree that any legal disputes concerning this Agreement, or Employee's next employment, will be filed in Alameda County, California.

(e) 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.

(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, 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.

(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.

(i) Effect of Prior Agreements. This Agreement contains the entire understanding between the parties hereto and, effective as of November 1 2012, shall replace and supersede all prior change of control severance agreements between the Company and Employee, but shall not replace or supersede any indemnification agreement between the Employee and the Company (or its successor or acquirer), any share award agreement between the Employee and the Company (or its successor or acquirer), or any employee benefit plan in which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, and it shall be effective as of January 4, 2012.

COMPANY:

XOMA CORPORATION

By: _____

Christopher J. Margolin
Vice President, General Counsel and Secretary

EMPLOYEE:

_____

John Varian

EXHIBIT A

FORM RELEASE OF CLAIMS AGREEMENT

This Release of Claims Agreement (this "Agreement") is made and entered into by and between XOMA Corporation (the "Company") and John Varian (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 January 4, 2012 (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 full and complete 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 based on contract, tort or statute including, but not limited to, 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/or the California Labor Code and all amendments to each such Act/statute 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 post-termination obligations set forth in Section 5 of 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 Legal Department of the Company by the close of business on the seventh (7th) 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 injuries that have not yet been reported to the Company's workers' compensation carrier, 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 CORPORATION

By: _____

Title:

Date:

EMPLOYEE

_____

Name:

Date:

EXHIBIT 10.25B

[*] indicates that a confidential portion of the text of this agreement has been omitted.

AMENDMENT NO. 1 TO AMENDED AND RESTATED
RESEARCH, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT

This Amendment No. 1 to Amended and Restated Research, Development and Commercialization Agreement (this "**Amendment**") is effective as of April 30, 2010 (the "**Amendment 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 Amendment, capitalized terms shall have the meanings set forth in Article 1 of the Amended and Restated Agreement (as defined below).

RECITALS

1. The Parties entered into that certain Amended and Restated Research, Development and Commercialization Agreement effective as of July 1, 2008 (the "**Amended and Restated Agreement**").

2. The Parties now wish to amend the Amended and Restated Agreement on the terms set forth below.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. Amendment. Section 2.1(c)(i)(B) of the Amended and Restated Agreement is hereby amended and restated to read in its entirety as follows:

[*]

Section 3.6(c) of the Amended and Restated Agreement is hereby amended and restated to read in its entirety as follows:

"(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 the following rates during the applicable Royalty-Style Payment Period:

(i) [*] of the portion of the aggregate Net Sales for such Reactivated Product in each calendar year that is equal to or less than [*];

(ii) [*] of the portion of the aggregate Net Sales for such Reactivated Product in each calendar year that is greater than [*]; and

(iii) [*] of the portion of the aggregate Net Sales for such Reactivated Product in each calendar year that is greater than [*]."

Section 2. **Effect of Amendment.** Except as expressly stated herein, the Amended and Restated Agreement shall remain in full force and effect.

Section 3. **Counterparts.** This Amendment 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.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 to Amended and Restated Research, Development and Commercialization Agreement in duplicate originals by their proper officers as of the Amendment Effective Date.

XOMA (US) LLC	NOVARTIS VACCINES AND DIAGNOSTICS, INC.
By: _____	By: _____
Name: Christopher J. Margolin	Name :
Title: Vice President, General Counsel and Secretary	Title

EXHIBIT 10.41A

[*] indicates that a confidential portion of the text of this agreement has been omitted.

AMENDED AND RESTATED
COLLABORATION AND LICENSE AGREEMENT

This Amended and Restated Collaboration and License Agreement (the "**Agreement**") is made and entered into as of February 14, 2012 (the "**Amendment Effective Date**") by and between **XOMA Ireland Limited**, a company with limited liability organized under the laws of the Republic of Ireland, having a place of business at 26 Upper Pembroke Street, Dublin 2, Ireland ("**XOMA**") on the first part, and **Les Laboratoires Servier**, a corporation organized and existing under the laws of France, having offices at 50 rue Carnot, 92284 Suresnes, France and **Institut de Recherches Servier**, a corporation organized and existing under the laws of France, having offices at 3 rue de la République, 92150 Suresnes, France (these two entities jointly referred to as "**Servier**") on the second part. XOMA and Servier are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

Recitals

A. Servier is a pharmaceutical company committed to researching, developing, manufacturing and marketing novel products of high therapeutic value for human medicine.

B. XOMA owns and controls certain intellectual property related to and has conducted clinical trials with respect to its proprietary IL-1β antibody designated as XOMA 052.

C. Servier and XOMA have established a collaboration for the continued development, regulatory approval and commercialization of products containing XOMA 052, with XOMA retaining certain exclusive development and commercialization rights in the U.S. and in Japan and Servier having exclusive development and commercialization rights in the rest of the world, in accordance with the terms and conditions set forth in a Collaboration and License Agreement (the "**Original Agreement**") dated as of December 30, 2010 (the "**Effective Date**").

D. The Parties desire to amend and restate the Original Agreement as set forth herein.

Now, Therefore, in consideration of the foregoing premises and the mutual promises, covenants and conditions contained in this Agreement, the Parties agree as follows:

1. Definitions

Capitalized terms used in this Agreement (other than the headings of the Sections or Articles) have the following meanings set forth in this Article 1, or, if not listed in this Article 1, the meanings as designated in the text of this Agreement.

1.1 "**Acquiror**" has the meaning set forth in Section 15.5.

1.2 **"Affiliate"** means, with respect to a particular Party, a person, corporation, partnership, or other entity that controls, is controlled by or is under common control with such Party. For the purposes of the definition in this Section 1.2, the word "**control**" (including, with correlative meaning, the terms "**controlled by**" or "**under the common control with**") means the actual power, either directly or indirectly through one (1) or more intermediaries, to direct or cause the direction of the management and policies of such entity by the ownership of at least fifty percent (50%) of the voting stock of such entity.

1.3 **"Alliance Manager"** has the meaning set forth in Section 2.7.

1.4 **"Amendment Effective Date"** has the meaning set forth in the first paragraph of this Agreement.

1.5 **"Behçet's and Non Infectious Uveitis Pivotal Trials" means the Behçet's Pivotal Trial(s) and the Non Infectious Uveitis Pivotal Trial(s).**

1.6 **"Behçet's Disease"** means a rare inflammatory disorder, also referred to as Behçet's Syndrome, involving the small blood vessels.

1.7 **"Behçet's Pivotal Trial"** means an adequate and well-controlled study (as defined in 21 CFR § 314.126) or foreign equivalent thereof to be conducted with the Product for use in the treatment of Behçet's Uveitis, as further detailed in the Behçet's Uveitis and Non Infectious Uveitis Development Plan.

1.8 **"Behçet's Uveitis"** means Non Infectious Uveitis resulting from Behçet's Disease.

1.9 **"Behçet's Uveitis and Non Infectious Uveitis Development Plan"** has the meaning set forth in Section 3.3(a).

1.10 **"Biosimilar Product"** means, with respect to the Product in a given country of the Licensed Territory or Retained Territory, any pharmaceutical biologic product that (a) is similar to the Product; (b) has the same route of administration as the Product; (c) obtained regulatory approval under a biosimilar application submitted in accordance with the then-current rules and regulations in such country that referred to or relied on data submitted by Servier, or one of its Affiliates or sublicensees, in an application for Regulatory Approval for the Product in such country; and (d) is sold in the same country as the Product by a Third Party that is not a sublicensee of Servier or its Affiliates and did not purchase such product in a chain of distribution that included any of Servier or its Affiliates or sublicensees.

1.11 "**BLA**" means a Biologic License Application, as defined in the United States Public Health Service Act, as amended, and applicable regulations promulgated thereunder by the FDA, or any equivalent application that replaces such application in the U.S.

1.12 **"Bulk Drug Substance"** means Licensed Antibody in bulk form.

1.13 "**Cardiometabolic Field**" means the prevention or treatment of Cardiometabolic Indications.

1.14 "**Cardiometabolic Indications**" means: (i) [*]; (ii) Type 2 diabetes (diabetes mellitus type 2); and (iii) [*] cardiovascular indications [*].

1.15 "**Cardiometabolic Indications Option**" has the meaning set forth in Section 3.5.

1.16 "**Claims**" has the meaning set forth in Section 13.1.

1.17 "**CMC Activities**" means the Manufacturing and other activities necessary or useful for generating the CMC Information required for Regulatory Approval of the Licensed Product, including Manufacture of validation and/or clinical trial materials, that are necessary or useful to obtain or maintain Regulatory Approval of a Product.

1.18 **"CMC Costs"** means all costs incurred by or on behalf of either Party that are [*]. CMC Costs shall include [*]. For clarity, [*].

1.19 **"CMC Information"** means Information related to the chemistry, manufacturing and controls of the Bulk Drug Substance or Licensed Product, as specified by FDA or other applicable Regulatory Authority.

1.20 **"Commercialization Plan"** has the meaning set forth in Section 5.4.

1.21 **"Commercialize"** means to promote, market, distribute, sell (and offer for sale or contract to sell) or provide product support for a Product. For clarity, **"Commercializing"** and **"Commercialization"** have a correlative meaning.

1.22 **"Committee"** means the JEC, JSC, JDC and/or JMC, or any other committee established by the Parties pursuant to Section 2.1, as the case may be

1.23 **"Competing Product"** means any pharmaceutical product other than the Product, which binds to, and inhibits or modulates, IL-1 as its primary mode of action.

1.24 **"Confidential Information"** of a Party means any and all Information of such Party that is disclosed to the other Party under this Agreement, whether in oral, written, graphic, or electronic form. All Information disclosed by either Party or its Affiliates pursuant to the Mutual Confidentiality Agreement between Servier and [*] dated 01/11/2010 (the "**Confidentiality Agreement**") shall be deemed to be such Party's Confidential Information disclosed hereunder.

1.25 **"Controlled"** means, with respect to any compound, material, Information or intellectual property right, that the applicable Party owns or has a license to such compound, material, Information or intellectual property right and has the ability to grant to the other Party access, a license or a sublicense (as applicable) to such compound, material, Information or intellectual property right as provided for herein without violating the terms of any agreement or other arrangements with any Third Party existing at the time such Party would be first required hereunder to grant the other Party such access, license or sublicense.

1.26 "**Current Good Manufacturing Practice**" or "**cGMP**" means the then-current standards for the manufacture of pharmaceutical products, pursuant to (a) the FD&C Act (21 U.S.C. 321 et seq.); (b) relevant United States regulations in Title 21 of the United States Code of Federal Regulations (including Parts 11, 210, and 211); (c) EC Directive 2003/94 EC of October 8, 2003; (d) the EC Guide to Good Manufacturing Practice for Medicinal Intermediate Products; (e) the International Conference on Harmonization (ICH) ICH Q7A Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients; (f) any Japanese laws, rules, guidelines, or regulations corresponding to the subject matter of the foregoing; and (g) all additional Regulatory Authority documents or regulations that replace, amend, modify, supplant or complement any of the foregoing.

1.27 **"CV Indication"** means the first cardiovascular indication to be determined by the JSC and approved by the JEC.

1.28 **"CV Indication Development Plan"** has the meaning set forth in Section 3.4(a).

1.29 **"Develop"** or **"Development"** means, with respect to a Product, all activities relating to preparing and conducting non-clinical studies and other analyses, clinical studies, and regulatory activities (e.g., preparation of regulatory applications).

1.30 **"Development Budget"** has the meaning set forth in Section 3.2(a).

1.31 **"Development Costs"** means all costs incurred by or on behalf of either Party [*]. Development Costs shallspecifically exclude any costs [*]. Development Costs shall include [*].

1.32 **"Diligent Efforts"** means, with respect to a Party's obligations under this Agreement, the carrying out of such obligations or tasks with a level of efforts and resources consistent with the level of efforts and resources each Party usually dedicates to, and consistent with the commercially reasonable practices of a similarly situated company in the pharmaceutical industry (in the case of Servier) or biotechnology industry (in the case of XOMA) for, the research, development or commercialization of a similarly situated pharmaceutical product as the Product and at a similar stage of development or commercialization, taking into account efficacy, safety, patent and regulatory exclusivity, anticipated or approved labeling, present and future market potential, competitive market conditions, the profitability of the Product in light of pricing and reimbursement issues, and all other relevant factors. Diligent Efforts shall be determined on a market-by-market or country by country basis, and indication-by-indication basis, and it is anticipated that the level of efforts required shall be different for different markets and indications and shall change over time, reflecting changes in the status of the Product and markets involved. It is also anticipated that the application of Diligent Efforts may result, in the case of Servier, in its determination not to seek Regulatory Approval for and/or Commercialize the Product in one or more countries of the Licensed Territory that are other than the Significant Markets.

1.33 **"Dollars"** or **"$"** means the legal tender of the United States of America.

1.34 "**Early Option Exercise**" has the meaning set forth in Section 3.5(a).

1.35 "**Early Option Exercise Date**" has the meaning set forth in Section 3.5(a).

1.36 **"Effective Date"** has the meaning set forth in Recital C of this Agreement.

1.37 "**EMA**" means the European Medicines Agency or any successor entity.

1.38 **"EU"** means the European Union, as its membership may be altered from time to time, and any successor thereto. The member countries of the European Union as of the Effective Date are Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and United Kingdom as well as Norway and Iceland.

1.39 "Executive Officers" means the Chief Executive Officer of XOMA and the Chief Executive Officer of Servier (or their respective designees).

1.40 **"FDA"** means the United States Food and Drug Administration, and any successor thereto.

1.41 **"First Commercial Sale"** means, with respect to a Product in a particular country, the first commercial sale of such Product in such country after all needed Regulatory Approvals have been obtained in such country. Sale of a Product by Servier to an Affiliate or a sublicensee shall not constitute a First Commercial Sale; in addition, in no event shall any sales for pre-marketing, testing, or sampling be deemed a First Commercial Sale.

1.42 **"Flash 2b Report"** means the flash report of the results of the Phase 2b Study containing information with respect to whether the primary and secondary endpoints were met, expected to be produced within seven (7) days of the database lock for such study.

1.43 **"Full Data Set"** means the full data set from the Phase 2b Study, including safety information (but which is not the final report of such study), expected to be produced within [*] days of the database lock for such study.

1.44 **"Global Research and Development Plan"** has the meaning set forth in Section 3.2(a).

1.45 **"Governmental Authority"** means any multi-national, federal, state, local, municipal, provincial or other government authority of any nature (including any governmental division, prefecture, subdivision, department, agency, bureau, branch, office, commission, council, court or other tribunal).

1.46 "**IFRS**" means International Financial Reporting Standards, as they exist from time to time, consistently applied.

1.47 **"IL-1β**" means a cytokine protein with a human proprotein form represented by the sequence of amino acids 1-269 of GenBank Accession Number NP_000567.1 and a human mature protein form represented by the sequence of amino acids 117-269 of GenBank Accession Number NP_000567.1.

1.48 **"IND"** means an Investigational New Drug Application submitted to the FDA for approval to commence human clinical trials, or the foreign equivalent of such application in a country other than the U.S.

1.49 "**Indemnified Party**" has the meaning set forth in Section 13.3.

1.50 "**Indemnifying Party**" has the meaning set forth in Section 13.3.

1.51 **"Information"** means all information, techniques, technology, practices, trade secrets, inventions (whether patentable or not), methods, knowledge, know-how, skill, experience, data, results (including pharmacological, toxicological and clinical test data and results), analytical and quality control data, results or descriptions, software and algorithms.

1.52 "**Initial Behçet's Development Plan**" has the meaning set forth in Section 3.3(a).

1.53 "**Initial T2D Development Plan**" has the meaning set forth in Section 3.4(a).

1.54 "**Initial Non Infectious Uveitis Development Plan**" has the meaning set forth in Section 3.3(a).

1.55 **"Initiation"** of a clinical trial means the first dosing of the first subject in such clinical trial.

1.56 **"Joint Executive Committee"** or **"JEC"** has the meaning set forth in Section 2.2(a).

1.57 **"Joint Inventions"** has the meaning set forth in Section 9.1.

1.58 **"Joint Invention Patents"** has the meaning set forth in Section 9.1.

1.59 **"Joint Manufacturing Committee"** or **"JMC"** has the meaning set forth in Section 2.5(a).

1.60 **"Joint Research and Development Committee"** or **"JDC"** has the meaning set forth in Section 2.4(a).

1.61 **"Joint Steering Committee"** or **"JSC"** has the meaning set forth in Section 2.3(a).

1.62 "**Late Option Exercise**" has the meaning set forth in Section 3.5(b).

1.63 "**Late Option Exercise Date**" has the meaning set forth in Section 3.5(b).

1.64 **"Laws"** means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of any federal, national, multinational, state, provincial, county, city or other political subdivision, domestic or foreign.

1.65 "**Lead Cardiometabolic Indications**" means Type 2 diabetes and the CV Indication.

1.66 "**Licensed Antibody**" means: XOMA 052 (gevokizumab), an IgG2 humanized monoclonal antibody that binds to IL-1b, as well as any fragment, derivative, modification or subunit of such antibody.

1.67 **"Licensed Product"** means any therapeutic or prophylactic product that comprises or incorporates the Licensed Antibody as an active pharmaceutical ingredient alone or in combination with one or more other active agents.

1.68 "Licensed Territory" means all countries in the world other than the Retained Territory.

1.69 "**Major Cardiometabolic Indications**" means any of the following: (a) Type 2 diabetes (diabetes mellitus type 2); or (b) any of the following indications that Servier determines, in good faith and in consultation with XOMA, have projected annual peak sales in the Licensed Territory of the applicable Product of at least [*].

1.70 "Major European Countries" means France, Germany, Italy, Spain and the United Kingdom.

1.71 "Major Markets" means the U.S., each of the Major European Countries, and Japan.

1.72 "Manufacturing" means all activities related to the production, manufacture, processing, filling, finishing, packaging, labeling, inspection, receiving, holding and shipping of Bulk Drug Substance, Licensed Antibody, Products, or any raw materials or packaging materials with respect thereto, or any intermediate of any of the foregoing, including process and cost optimization, process development, qualification and validation, equipment and facility qualification and validation, commercial manufacture, stability and release testing, quality assurance and quality control. For clarity, **"Manufacture"** and **"Manufactured"** have correlative meanings.

1.73 "Manufacturing Plan" has the meaning set forth in Section 6.2.

1.74 "Marketing Authorization Application" or "**MAA**" means: (a) in the United States, a BLA, and (b) in any other country or regulatory jurisdiction, an equivalent application for regulatory approval required before commercial sale or use of a Product (or with respect to a subsequent indication) in such country or regulatory jurisdiction.

1.75 "**Material Impact**" means, with respect to a Party, a material adverse impact on the regulatory status or the commercial sales of the Product in such Party's applicable territory.

1.76 "Materials" means all compositions of matter, cells, cell lines, assays, samples, animal models and physical, biological or chemical material, but excluding Bulk Drug Substance or Product transferred in accordance with Article 6.

1.77 "**MHLW**" means the Japanese Ministry of Health, Labour and Welfare or any successor entity.

1.78 "Net Sales" Except as provided below with respect to clinical trial samples, in the case of sales by or for the benefit of Servier, its Affiliates, and its sublicensees (the "Seller") to independent, unrelated persons ("**Buyers**") in bona fide arm's length transactions, "Net Sales" means the gross amount billed or invoiced by Seller with respect to the Product, less the following deductions, in each case to the extent actually allowed and taken by such Buyers and not otherwise recovered by or reimbursed to Seller in connection with such Product ("**Permitted Deductions**"): [*]. "Net Sales" shall not include any consideration received with respect to a sale, use or other disposition of any Product in a country as part of a clinical trial necessary to obtain Regulatory Approval in such country. All of the foregoing elements of Net Sales calculations shall be determined in accordance with IFRS or successor standards and guidelines thereto. In the case of transfers of Product between any of Servier, its sublicensees, and affiliates of any of the foregoing, for subsequent sale, rental, lease or other transfer of such Products to third parties, Net Sales shall be the gross invoice or contract price charged to the third party customer for that Product, less the deductions set forth in clauses (i) through (viii) above.

In the event that a Product consists of a combination of the Licensed Antibody with one or more other active agents, Net Sales, for the purpose of determining royalty payments, shall be discussed and agreed to by the Parties taking into account the relative value of the Licensed Antibody and of the other active agents.

1.79 "New Servier Patents" means any Patent Controlled by Servier or its Affiliates at any time during the Term that (a) is useful for the Development, Manufacture or Commercialization of the Licensed Antibody or Product in the Territory, (b) is not a Servier Collaboration Patent, and (c) provided that, to the extent Servier has paid or is required to pay any royalties or other amounts to any Third Party for use or assignment to it of any such Patent, XOMA has agreed prior to its acceptance of a license to such Patent to pay its portion of such fees or royalties. For clarity, the use of "Affiliate" in this definition shall exclude any Third Party that becomes an Affiliate of Servier.

1.80 "Non Infectious Uveitis" means non infectious inflammation of the uvea, including without limitation Behçet's Uveitis.

1.81 "Non Infectious Uveitis Pivotal Trial" means an adequate and well-controlled study (as defined in 21 CFR § 314.126) or foreign equivalent thereof to be conducted with the Product for use in the treatment of Non Infectious Uveitis, as further detailed in the Behçet's Uveitis and Non Infectious Uveitis Development Plan.

1.82 "Original Agreement" has the meaning set forth in Recital C of this Agreement.

1.83 "Patent" means all: (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 in accordance with or as permitted by the terms of this Agreement or by mutual written agreement), including any substitution, extension, registration, confirmation, reissue, re-examination, supplementary protection certificates, confirmation patents, patent of additions, renewal or any like filing thereof; (b) pending applications for letters patent which have not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority or court for whatever reason (and from which no appeal is or can be taken), and/or abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written consent, including any continuation, division or continuation-in-part thereof and any provisional applications; and (c) any international counterparts to (a) and (b) above.

1.84 "Permitted Deductions" has the meaning set forth in Section 1.78.

1.85 "**Phase 2 Clinical Trial**" means a study of the Product in human patients to determine initial efficacy, pharmacological effect, or dose range and/or regimen finding before embarking on any Phase 3 Clinical Trial, as further defined in 21 C.F.R. 312.21(b), as amended from time to time, or the corresponding foreign regulations.

1.86 **"Phase 2a Study"** means that certain Phase 2a clinical trial being conducted by XOMA or its Affiliates as of the Effective Date and referred to as X052118, with respect to the Product in Type 2 diabetes.

1.87 "**Phase 2 Results Package**" means all of the following: (a) the interim top line data summary from the Phase 2a Study, (b) the Flash 2b Report, and (c) all then-existing safety data related to the Product.

1.88 "**Phase 2b Study**" means that certain Phase 2b clinical trial being conducted by XOMA or its Affiliates as of the Effective Date and referred to as X052078, with respect to the Product in Type 2 diabetes.

1.89 **"Phase 3 Clinical Trial**" means a pivotal study (whether or not denominated a "Phase 3" clinical study under applicable regulations) in human patients with a defined dose or a set of defined doses of a Product designed to ascertain efficacy and safety of such Product for the purpose of enabling the preparation and submission of Marketing Authorization Applications to the competent Regulatory Authorities in a country of the Licensed Territory or Retained Territory, as further defined in 21 C.F.R. 312.21(c), as amended from time to time, or the corresponding foreign regulations.

1.90 **"Pre-Exercise Period"** means the period running from the Effective Date until the later of (i) Early Option Exercise, (ii) Late Option Exercise or (iii) expiration of the Cardiometabolic Indications Option unexercised.

1.91 "**Product**" means any Licensed Product in final form.

1.92 **"Product Infringement"** has the meaning set forth in Section 9.4(a).

1.93 **"Product Marks"** has the meaning set forth in Section 5.5.

1.94 **"Product Specifications"** means the specifications for Bulk Drug Substance, attached hereto as Exhibit 1.94, which shall be updated (a) as required in connection with obtaining Regulatory Approval or continuing compliance with regulatory requirements and (b) as agreed upon in writing from time to time by Servier and XOMA.

1.95 "**Quality Agreement**" has the meaning set forth in Section 6.10.

1.96 **"Regulatory Approval"** means any and all approvals (including supplements, amendments, pre- and post-approvals, but excluding pricing and reimbursement approvals), licenses, registrations or authorizations of any national, supra-national (e.g., the European Commission or the Council of the EU), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity, that are necessary for the manufacture, distribution, use or sale of a Product in a regulatory jurisdiction.

1.97 **"Regulatory Authority"** means the applicable national (e.g., the FDA), supra-national (e.g., the EMA), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity that, in each case, governs the Regulatory Approval of a Product in such applicable regulatory jurisdiction.

1.98 **"Regulatory Materials"** means regulatory applications, submissions, notifications, registrations, Regulatory Approvals and/or other filings made to or with, or other approvals granted by, a Regulatory Authority that are necessary or reasonably desirable in order to Develop, Manufacture, market, sell or otherwise Commercialize a Product in a particular country or regulatory jurisdiction.

1.99 "**Remaining Field**" means the prevention or treatment of all human diseases or conditions (including uveitis and Behçet's Uveitis), other than those human diseases and conditions comprising the Cardiometabolic Field.

1.100 **"Retained Territory"** means (a) the U.S. and (b) Japan, including its territories and possessions.

1.101 **"Retained Territory License Agreement"** has the meaning set forth in Section 3.1(b).

1.102 **"Servier Collaboration Patent(s)"** means any Sole Invention Patent(s) owned by Servier or its Affiliates pursuant to Section 9.1.

1.103 **"Servier Indemnitees"** has the meaning set forth in Section 13.2.

1.104 **"Servier Know-How"** means all Information and Materials that are Controlled by Servier or its Affiliates as of the Effective Date or during the Term and are necessary or useful for the Development, Manufacture or Commercialization of the Bulk Drug Substance or Product and provided that, to the extent Servier has paid or is required to pay any royalties or other amounts to any Third Party for use or assignment to it of any such Information and/or Materials, XOMA has agreed prior to its acceptance of a license to such Information and/or Materials, to pay its portion of such fees or royalties. For clarity, the use of "Affiliate" in this definition shall exclude any Third Party that becomes an Affiliate of Servier.

1.105 **"Servier Patents"** means any (a) New Servier Patents and (b) Servier Collaboration Patents.

1.106 **"Servier Technology"** means the Servier Patents and Servier Know-How and Servier's interest in the Joint Invention Patents.

1.107 "**Servier Withholding Tax Action**" has the meaning set forth in Section 8.14(c).

1.108 **"Significant Markets"** means [*].

1.109 **"Sole Inventions"** has the meaning set forth in Section 9.1.

1.110 **"Sole Invention Patents"** has the meaning set forth in Section 9.1.

1.111 **"Specific Diligent Efforts"** means, [*].

1.112 **"Successful EOP2 Meeting"** means an FDA End of Phase 2 meeting at which, [*].

1.113 **"Supply Agreement"** has the meaning set forth in Section 6.5(b).

1.114 **"T2D Development Plan"** has the meaning set forth in Section 3.4(a).

1.115 **"T2D Phase 2 Studies**" means collectively the Phase 2a Study and the Phase 2b Study.

1.116 **"Term"** has the meaning set forth in Section 11.1.

1.117 **"Territory-Specific Work"** means any clinical or non-clinical study performed by a Party that is required only by Regulatory Authorities in that Party's territory (i.e., the Licensed Territory with respect to Servier, or the Retained Territory with respect to XOMA), and not by the Regulatory Authorities in the other Party's territory.

1.118 **"Third Party"** means any person or entity other than: (a) XOMA; (b) Servier; or (c) an Affiliate of either Party.

1.119 **"Third Party Partner"** has the definition set forth in Section 3.1(b).

1.120 "**Unsponsored Work**" has the meaning set forth in Section 3.8(b).

1.121 "**U.S.**" means the United States of America, including all possessions and territories thereof.

1.122 **"XOMA Background Patents"** means those Patents listed on Exhibit 1.122 as of the Effective Date.

1.123 **"XOMA Collaboration Patent(s)"** means any Sole Invention Patent(s) owned by XOMA or its Affiliates pursuant to Section 9.1.

1.124 **"XOMA Indemnitees"** has the meaning set forth in Section 13.1.

1.125 **"XOMA Know-How"** means all Information and Materials that are Controlled by XOMA or its Affiliates as of the Effective Date or during the Term and are necessary or useful for the Development, Manufacture or Commercialization of a Licensed Product or Manufacture of Bulk Drug Substance, including the Know-How listed on Exhibit 1.125 attached hereto. For clarity, the use of "Affiliate" in this definition shall exclude any Third Party that becomes an Affiliate of XOMA.

1.126 "**XOMA Manufacturing Costs**" means [*]. XOMA Manufacturing Costs shall not include [*]. For purposes of this definition, [*].

1.127 **"XOMA Patents"** means the XOMA Background Patents and the XOMA Collaboration Patents.

1.128 **"XOMA Technology"** means the XOMA Patents and XOMA Know-How and XOMA's interest in the Joint Invention Patents.

2. Collaboration; Committees

2.1 **Collaboration Overview.** The Parties desire and intend to collaborate with respect to the Development, Manufacture and Commercialization of Products as and to the extent set forth in this Agreement, focusing initially on the Development of the Product for Behçet's Uveitis, Non Infectious Uveitis and the Lead Cardiometabolic Indications, with XOMA retaining rights to the Product with respect to the Remaining Field in the Retained Territory, Servier being granted exclusive rights to the Product with respect to all indications (i.e., the Remaining Field and the Cardiometabolic Field) in the Licensed Territory and the Cardiometabolic Indications in the Retained Territory, and XOMA having an option to re-acquire such rights in the Retained Territory as set forth in this Agreement (the " **Collaboration**"). The Parties intend that their respective organizations will work together to facilitate the success, effectiveness and quality of the Collaboration to maximize the commercial opportunity for the Product to the benefit of both Parties, all in accordance with the terms and conditions of this Agreement. The Parties shall establish the committees as described in this Article 2 and may from time-to-time establish other committees or sub-committees to report to the Joint Steering Committee in order to effectively implement the Collaboration as jointly agreed by the Parties.

2.2 Joint Executive Committee.

(a) Establishment. As of the Amendment Effective Date, the Parties have established a joint executive committee (the "**Joint Executive Committee**" or **"JEC"**), all in accordance with this Section 2.2. Each Party shall initially appoint at least three (3) representatives to the JEC. The JEC membership and procedures are further described in Section 2.8.

(b) Specific Responsibilities of the JEC. The JEC shall in particular, in accordance with the decision-making principles set forth in Section 2.9, manage the overall Collaboration (including but not limited to the intellectual property strategy, resources allocation and major changes to the Collaboration requiring amendments to the Agreement) and resolve any disputed matter of the JSC.

2.3 Joint Steering Committee.

(a) Establishment. As of the Amendment Effective Date, the Parties have established a joint steering committee (the "**Joint Steering Committee**" or **"JSC"**) to monitor and oversee their activities under this Agreement, all in accordance with this Section 2.3. Each Party shall initially appoint at least three (3) representatives to the JSC. The JSC membership and procedures are further described in Section 2.8.

(b) Specific Responsibilities of the JSC. The JSC shall in particular, in accordance with the decision-making principles set forth in Section 2.9:

(i) coordinate the activities of the Parties under this Agreement, including facilitating communications between the Parties with respect to the Development, Manufacture and Commercialization of Licensed Antibody, Bulk Drug Substance, and Product;

(ii) provide a forum for discussion of the Development, Manufacture, and Commercialization of the Product;

(iii) review and approve the T2D Development Plan and the Behçet's Uveitis and Non Infectious Uveitis Development Plan and any other Global Research and Development Plans and associated Development Budgets and any annual or interim updates and proposed amendments thereto;

(iv) review and approve the Manufacturing Plan and associated budget and any annual or interim updates and proposed amendments thereto;

(v) review and discuss Servier's Commercialization Plan and related activities with respect to the Product throughout the Licensed Territory and (if applicable) the Retained Territory, including pre-launch and go-to-market strategies;

(vi) direct and oversee the JDC, JMC and any other operating committee established by the JSC, on all significant issues that fall within the purview of such committees;

(vii) attempt to resolve issues presented to it by, and disputes within, the other Committees, including the JDC and JMC, in accordance with Section 2.9; and

(viii) perform such other duties as are expressly assigned to the JSC in this Agreement, and perform such other functions as appropriate to further the purposes of this Agreement as may be allocated to it by written agreement of the Parties.

2.4 Joint Research and Development Committee.

(a) Establishment. As of the Amendment Effective Date, the Parties have established a joint research and development committee (the "**Joint Research and Development Committee**" or "**JDC**") to monitor and coordinate the Development of Products under this Agreement. Each Party shall initially appoint at least three (3) representatives to the JDC. The JDC membership and procedures are further described in Section 2.8.

(b) Specific Responsibilities of the JDC. The JDC shall in particular, in accordance with the decision-making principles set forth in Section 2.9:

(i) coordinate the activities of the Parties under and oversee the implementation of the T2D Development Plan, the Behçet's Uveitis and Non Infectious Uveitis Development Plan, the CV Indication Development Plan, and any other Global Research and Development Plans agreed to by the Parties;

(ii) prepare annual and interim updates to the Global Research and Development Plans;

(iii) provide a forum for and facilitate communications between the Parties with respect to the Development of the Product, including any additional indications proposed by either Party to be jointly pursued;

(iv) monitor and coordinate all regulatory actions, communications and submissions for Products under each Global Research and Development Plan;

(v) perform such other functions as may be appropriate to further the purposes of this Agreement with respect to the Development of Products, as directed by the JSC or the JEC;

(vi) review proposed Unsponsored Work and Territory-Specific Work; and

(vii) discuss and coordinate review of investigator-led clinical studies and provide notice thereof as appropriate to the JMC.

2.5 Joint Manufacturing Committee.

(a) Establishment. As of the Amendment Effective Date, the Parties have established a joint manufacturing committee (the "**Joint Manufacturing Committee**" or "**JMC**") to monitor and oversee the CMC Activities and other activities related to the Manufacture of Bulk Drug Substance and the Product, for Development and Commercial use under this Agreement. Each Party shall initially appoint at least three (3) representatives to the JMC. The JMC membership and procedures are further described in Section 2.8.

(b) Specific Responsibilities of the JMC. The JMC shall in particular, in accordance with the decision-making principles set forth in Section 2.9:

(i) discuss, approve and oversee implementation of and progress against the Global Research and Development Plans as they relate to CMC Activities;

(ii) review the Manufacturing Plan and associated budget and propose updates and amendments thereto to the JSC, for approval;

(iii) coordinate and facilitate cooperation and flow of Information between the Parties with respect to the Manufacture and supply of Bulk Drug Substance and the Product for clinical and commercial use in accordance with Article 6;

(iv) coordinate and facilitate the transfer from XOMA to Servier of the XOMA Know-How as and to the extent provided in Article 6; and

(v) perform such other functions as may be appropriate to further the purposes of this Agreement with respect to the Manufacture of Bulk Drug Substance or the Product, as directed by the JSC or the JEC.

2.6 Program Director. As of the Amendment Effective Date, each Party has appointed and notified the other Party of the identity of a representative having the appropriate qualifications, including a general understanding of pharmaceutical development, to act as its program director under this Agreement (the "**Program Director**"). The Program Directors shall serve as the primary contact points between the Parties for the purpose of providing each Party with information on the progress of each Party's development activities under this Agreement on a day to day basis. The Program Directors shall also be primarily responsible for facilitating the flow of information and otherwise promoting communication, coordination and collaboration between the Parties. The Program Directors shall attend all JSC and JDC meetings, and shall have the right to attend all other Committee meetings except the JEC meetings, and shall support the co-chairpersons of each Committee in the discharge of their responsibilities. A Program Director may also bring any matter in relation to the Development to the attention of any Committee if such Program Director reasonably believes that such matter warrants such attention. Each Party may replace its Program Director at any time upon written notice to the other Party.

2.7 Alliance Manager. As of the Amendment Effective Date, each Party has appointed and notified the other Party of the identity of a representative having the appropriate qualifications, including a general understanding of pharmaceutical development and commercialization issues, to act as its alliance manager under this Agreement (the "**Alliance Manager**"). The Alliance Managers shall serve as the primary business contact points between the Parties for the purpose of providing each Party with information on the progress of each Party's business related activities under this Agreement and for any activities not falling within the scope of responsibility of the Program Director. The Alliance Managers shall also be primarily responsible for facilitating the flow of information and otherwise promoting communication, coordination and collaboration between the Parties. The Alliance Managers shall attend all JSC and JDC meetings, and shall have the right to attend all other Committee meetings other than JEC meetings. An Alliance Manager may also bring any matter to the attention of any Committee if such Alliance Manager reasonably believes that such matter warrants such attention. Each Party may replace its Alliance Manager at any time upon written notice to the other Party.

2.8 General Committee Membership and Procedures.

(a) Membership. Each of Servier and XOMA shall designate representatives with appropriate expertise to serve as members of each Committee, and each representative may serve on more than one Committee as appropriate in view of the individual's expertise. Each Party may replace its Committee representatives at any time upon written notice to the other Party. Each Committee shall have co-chairpersons. Servier and XOMA shall each select from their representatives a co-chairperson for each of the Committees, and each Party may change its designated co-chairpersons from time to time upon written notice to the other Party. The co-chairpersons of each Committee shall be responsible for calling meetings and preparing and circulating meeting agendas and minutes, but the co-chairpersons shall have no additional powers or rights beyond those held by other Committee members.

(b) Meetings. Each Committee shall hold meetings at such times as it elects to do so, provided that unless the Parties otherwise agree in writing to a different frequency for such meetings, each Committee shall meet at least twice each calendar year, and provided further that the Parties shall, to the extent practicable, schedule meetings of different Committees on the same day and in the same location. Either Party may also call a special meeting of a Committee (by videoconference or teleconference) by at least ten (10) business days prior written notice to the other Party in the event such Party reasonably believes that a significant matter must be addressed prior to the next regularly scheduled meeting, and such Party shall provide the applicable Committee no later than ten (10) business days prior to the special meeting with materials reasonably adequate to enable an informed decision. No later than ten (10) business days prior to any Committee meeting, the co-chairpersons of such Committee shall prepare and circulate an agenda for such meeting; provided, however, that either Party may propose additional topics to be included on such agenda, either prior to or in the course of such meeting. Each Committee may invite non-members (including consultants and advisors of a Party who are under an obligation of confidentiality consistent with this Agreement) to participate in its meetings, provided that such non-member participants shall have no voting authority at such meetings. Each Committee may meet in person, by videoconference or by teleconference, provided however, at least one (1) meeting of each Committee per calendar year shall be in person unless the Parties mutually agree in writing to waive such requirement in lieu of a videoconference or teleconference. In-person Committee meetings shall be held alternately in Berkeley, California, U.S. and Paris, France. Each Party shall bear the expense of its respective Committee members' participation in Committee meetings. Committee meetings shall be effective only if at least one (1) representative of each Party is present or participating in such meeting. The co-chairpersons of a Committee shall be responsible for preparing reasonably detailed written minutes of all meetings of such Committee that reflect, without limitation, all material decisions made at such meetings. The co-chairpersons shall send draft meeting minutes to each member of such Committee for review and approval promptly after each Committee meeting. Such minutes shall be deemed approved unless one or more members of such Committee objects to the accuracy of such minutes within thirty (30) days of receipt.

2.9 Decision Making.

(a) Within JSC and Operating Committees. All decisions within the JSC, JDC, JMC or any other operating Committee other than the JEC shall be made by consensus, with the co-chairperson from each Party having each one (1) vote. If a dispute arises which cannot be resolved within any Committee other than the JSC and the JEC, the representatives of either Party may cause such dispute to be referred to the JSC for resolution. If after reasonable discussion and good faith consideration of the other Party's views on a particular matter before the JSC, including any disputes referred to the JSC by another Committee, the JSC is still unable to reach a unanimous decision on such matter for a period of [*] days, then either Party may cause such dispute to be referred to the JEC for resolution as provided in Section 2.9(b) below.

(b) Within the JEC. Upon being referred a disputed matter from the JSC under Section 2.9(a), or arising within the JSC, the JEC shall consider such matter and discuss it in good faith, and shall strive to seek consensus in its actions and decision making process. If after reasonable discussion and good faith consideration of the other Party's views on a particular matter before the JEC, including any disputes referred to the JEC by another Committee, the JEC is still unable after a period of [*] days to reach a unanimous decision on such matter, then either Party may upon notice to the other Party, refer such matter to the Executive Officers of the Parties for attempted resolution by good faith negotiations within [*] days after such notice is received, including at least one (1) in person meeting of the Executive Officers within [*] days after such notice is received. If the Executive Officers are not able to resolve such disputed matter within [*] days and either Party wishes to pursue the matter, then:

(i) [*]; and

(ii) [*].

(c) Exceptions. Notwithstanding the preceding Sections 2.9(b)(i) and (ii):

(i) Neither Party shall have the unilateral right to decide any dispute with respect to the Development of the Product, whether pursuant to a Global Research and Development Plan, or any Unsponsored Work, where the other Party believes in good faith that such a decision would have a substantial likelihood of having a Material Impact; provided, however, that where such a decision involves the safety of the Product in the deciding Party's territory (including, by way of example, the content of the safety section of the Product label, whether a recall should be conducted in such deciding Party's territory, or whether a particular clinical study should be terminated in its territory for safety reasons), the deciding Party shall nonetheless have the final say with respect to such safety matter, notwithstanding that the other Party has asserted that the effect thereof has a substantial likelihood of having a Material Impact.

(ii) Neither Party shall be permitted to use its final say to (A) increase the total aggregate Development Budget for a given year with respect to the Development activities included in a Global Research and Development Plan, or the total aggregate budget for the Manufacturing Plan for a given year with respect to CMC Activities, in each case by more than [*] percent ([*]%) of the initial total aggregate budgeted amount for such year included in such plan, or (B) change the trial design of any global clinical trial included in any Global Research and Development Plan (including endpoints, sample size, inclusion and exclusion criteria).

(d) Limitations of Committee Authority. Each Committee shall have solely the powers expressly assigned to it in this Article 2 and elsewhere in this Agreement or as otherwise agreed to by the Parties in writing. A Committee shall not have any power to amend, modify, or waive compliance with the terms of this Agreement. It is expressly understood and agreed that the control of decision-making authority by XOMA or Servier, as applicable, pursuant to this Section 2.9, so as to resolve a disagreement or deadlock on a Committee or between the Executive Officers for any matter will not authorize either Party to unilaterally modify or amend, or waive its own compliance with, the terms of this Agreement.

(e) Good Faith. In conducting themselves on Committees, and in exercising their rights under this Section 2.9, all representatives of both Parties shall consider, reasonably and in good faith, all input received from the other Party, and shall use reasonable efforts to reach consensus on all matters before them. Each Party's Committee members shall perform its responsibilities and exercise any decision making authority based on the principles of commercially reasonable Development of Products, consistent with good pharmaceutical practices and commercially reasonable consideration of the optimal balance of maximizing long-term profits derived from the sale of Products in the context of the estimated costs for Development of such Products and other relevant considerations. Notwithstanding anything to the contrary in this Agreement, neither Party nor any of its Affiliates shall be required to take, or shall be penalized for not taking, any action that is not in compliance with such Party's ethical business practices and policies or that such Party reasonably believes is not in compliance with applicable Laws.

2.10 Discontinuation of Participation on a Committee.

(a) Each Committee, including the JSC and the JEC, shall continue to exist until the first to occur of (i) the Parties mutually agreeing to disband the Committee, or (ii) either Party providing to the other written notice of its intention to disband and no longer participate in such Committee.

(b) Once the JSC and the JEC are disbanded in accordance with Section 2.10(a), such Committee shall have no further obligations under this Agreement and, thereafter, the Program Directors will be the contact persons for the exchange of information under this Agreement, and decisions of such Committee shall be decisions as between the Parties, subject to the final decision making authority under Section 2.9 and the other terms of this Agreement.

3. Development of Products

3.1 General.

(a) **Overview**. The Parties desire and intend to collaborate in planning and conducting Development of the Product for each of Behçet's Uveitis, Non Infectious Uveitis and the Lead Cardiometabolic Indications, and potentially other indications, as and to the extent provided in this Agreement, and pursuant to a separate Global Research and Development Plan for each indication, it being understood that each Party may act either itself or through one or more licensees, sublicensees or subcontractors in its respective territory as permitted under this Agreement. The Parties intend to coordinate and harmonize their collaborative Development activities where practical, including nonclinical and clinical studies, and manufacturing scale-up, to minimize Development Costs and maximize Development efficiencies in both the Licensed Territory and the Retained Territory. Unless otherwise specified in a Global Research and Development Plan, each Party shall be responsible and have the final decision-making authority for all Development activities (as and to the extent not prohibited under and subject to Section 2.9) conducted in its own territory (i.e., the Licensed Territory for Servier and the Retained Territory for XOMA), including those portions of global or U.S. or EU clinical trials conducted in such territory and set forth in a Global Research and Development Plan. With respect to indications other than the Lead Cardiometabolic Indications, Behçet's Uveitis and Non Infectious Uveitis, the Parties may agree to pursue such indications singly or jointly, as provided in Section 3.8.

(b) **Third Party Partner.** Servier acknowledges and understands that XOMA intends to enter into, in its sole discretion, one or more license or partnership agreements with one or more Third Parties under which XOMA grants any such Third Party exclusive license rights to Develop and or Commercialize the Products in one or more Cardiometabolic Indications (subject to XOMA having exercised its Cardiometabolic Indications Option) and/or one or more indications in the Remaining Field, in some or all of the Retained Territory (each such Third Party, a "**Third Party Partner"** and each such agreement, a **"Retained Territory License Agreement"**). Servier agrees that, if XOMA enters into such a Retained Territory License Agreement with a Third Party Partner, then such Third Party Partner shall have all rights to participate in the Development of Products in the Retained Territory that XOMA at such time enjoys (as and to the extent limited by such Retained Territory License Agreement), and that, subject to Servier's consent not to be unreasonably withheld, but which will be considered only after having received a copy of the Retained Territory License Agreement (redacted with respect to those portions of such agreement that are not relevant to the deliberation and work of such Committees or do not otherwise impact governance of the overall relationship), XOMA has the right to offer to such Third Party Partner the right to participate in the Committees established under this Agreement, and in the Development and regulatory collaboration of the Parties under this Agreement, in order to facilitate the effective and efficient communications regarding and Development of Products throughout both the Retained Territory and the Licensed Territory. Servier thus agrees that, on written notice by XOMA to Servier after XOMA's entry into a Retained Territory License Agreement with a Third Party Partner, subject to the terms of any such Retained Territory License Agreement:

(i) Subject to the aforementioned Servier consent, such Third Party Partner shall have the right to have a reasonable number of its representatives attend and participate at all Committee meetings, and the vote of any such representatives shall be included within the vote of XOMA;

(ii) Subject to the aforementioned Servier consent, XOMA shall have the right to designate one or more representatives of such Third Party Partner to act as XOMA's representatives (in replacement thereof) on any particular Committee (including the JSC but not the JEC);

(iii) Subject to the aforementioned Servier consent, Servier shall cooperate fully with such Third Party Partner with respect to the Development of Products, to the extent that Servier has the obligation under this Agreement to cooperate with XOMA as to such activities;

(iv) To the extent XOMA and/or such Third Party Partner(s) desire to conduct additional human clinical studies with respect to the Product for use in seeking Regulatory Approval for, or Commercializing the Product in the Retained Territory, any such studies or trials would be subject to Section 3.8, and, to the extent Servier on the one hand, and XOMA and its Third Party Partner, on the other hand, do not agree to pursue jointly any such study as provided in Section 3.8, such study shall be "Unsponsored Work" as provided thereunder and any data with respect to the Product generated thereunder (the "Third Party Data"), shall be available for use by Servier in the Licensed Territory to the extent provided in Section 3.8; and

(v) XOMA shall have the right to disclose to such Third Party Partner all Information regarding Products and all Regulatory Materials disclosed by Servier to XOMA under this Agreement, for use by the Third Party Partner in its Development and Commercialization of Products in the Retained Territory, consistent with Section 4.4(a) and Article 10.

3.2 Global Research and Development Plans.

(a) The Development of the Product under this Agreement for each of the Lead Cardiometabolic Indications, Behçet's Uveitis and Non Infectious Uveitis, and any other indication the Parties agree to pursue jointly, shall be conducted pursuant to a reasonably comprehensive written research and development plan (each, a **"Global Research and Development Plan"**), which shall include a detailed budget for all Development activities set forth in such plan (each, a **"Development Budget"**), and which shall include the resource allocations for the Parties based upon the general principle that the allocation shall endeavor to take advantage of the respective resources, capabilities and expertise of XOMA and Servier, respectively. The Global Research and Development Plan also shall set forth the specific activities to be conducted by each Party and the estimated timeline for Development of the Product in order to obtain the data that the Parties intend will be useful, by both Parties, to obtain Regulatory Approvals of the Product in the U.S. and the EU. The Global Research and Development Plan shall also specify the plans and estimated timeline for preparing the necessary Regulatory Materials for obtaining Regulatory Approval in such countries. Servier shall be the sponsor of all clinical studies conducted in the Licensed Territory and shall be solely responsible for Development activities and for obtaining Regulatory Approval for the Product in the Licensed Territory, and XOMA shall be the sponsor of all clinical studies conducted in the Retained Territory and shall be solely responsible for Development activities and for obtaining Regulatory Approval for the Product in the Retained Territory.

(b) Amendments. Beginning with the first full calendar year following the Effective Date, on an annual basis (no later than [*]), or more often as the JDC deems appropriate, the JDC shall review, consult with the JMC as appropriate, and, as required, prepare an update and amendment to each then-current Global Research and Development Plan, for approval by the JSC. Each such updated and amended Global Research and Development Plan shall reflect any changes, additions, re-prioritization of studies and/or indications within, and/or reallocation of resources with respect to, the Development of the Product for the Lead Cardiometabolic Indications, Behçet's Uveitis and Non Infectious Uveitis, and any additional indications agreed to pursuant to Section 3.8(a), as applicable. Once approved by the JSC, an amended Global Research and Development Plan shall become effective and supersede the previous Global Research and Development Plan as of the date of such approval.

3.3 Development of Product for Behçet's Uveitis and Non Infectious Uveitis.

(a) Initial Plans for Behçet's Uveitis and Non Infectious Uveitis. An initial Global Research and Development Plan for Behçet's Uveitis, which contains the initial design of a Behçet's Pivotal Trial and the preliminary Development Budget for continued Development of the Product for Behçet's Uveitis [*], is attached to this Agreement as Exhibit 3.3(a) (the "**Initial Behçet's Development Plan**"). An initial Global Research and Development Plan for Non Infectious Uveitis, which contains the initial design of a Non Infectious Uveitis Pivotal Trial and the preliminary Development Budget for continued Development of the Product for Non Infectious Uveitis will be attached to this Agreement as Exhibit 3.3(b) (the "**Initial Non Infectious Uveitis Development Plan**"). The Parties shall update such plans as needed in accordance with Section 3.2(b) (such updated plans, the **"Behçet's Uveitis and Non Infectious Uveitis Development Plan"**). In the event that [*], then each Party shall have the option, on [*] days prior written notice to the other Party, of pursuing or not pursuing the Development of the Product in Behçet's Uveitis and/or Non Infectious Uveitis in that Party's territory. If either Party elects to pursue the Development of the Product in Behçet's Uveitis and/or Non Infectious Uveitis, as of the date of the other party's notice, then such Party shall do so according to its own plan, as Territory-Specific Work and Unsponsored Work.

(b) Responsibilities. Following the Effective Date, the Parties shall commence and conduct the Behçet's and Non Infectious Uveitis Pivotal Trials and other required studies in accordance with the timeframes and allocation of responsibilities set forth in the Behçet's Uveitis and Non Infectious Uveitis Development Plan. The Behçet's Pivotal Trial will be conducted by Servier acting as the sponsor in the Licensed Territory and Japan, and a separate Non Infectious Uveitis Pivotal Trial will be conducted by XOMA acting as the sponsor in the Retained Territory and some countries of the Licensed Territory indicated by Servier in writing in its sole discretion. XOMA shall be responsible for conducting CMC Activities and providing certain clinical trial materials as set forth in Sections 6.4 and 6.5 with respect to the Behçet's and Non Infectious Uveitis Pivotal Trials and any other related trial.

(c) Development Costs and CMC Costs.

Servier shall be responsible for (i) all Development Costs under the Development Budget for the Behçet's Uveitis and Non Infectious Uveitis Development Plan, up to [*] Dollars ($[*]), [*], and (ii) all CMC Costs for all CMC Activities associated with studies contemplated under such plan or under any plan for the Development of the Product referred to in the last sentence of Section 3.3(a), up to [*] Dollars ($[*]). Any amounts incurred in accordance with the Development Budget and Behçet's Uveitis and Non Infectious Uveitis Development Plan in excess of the above maxima shall be shared equally by the Parties; provided such amounts are not greater than [*]% of the budgeted amounts set forth in the Development Budget for such plan, unless the Parties agree in writing to share amounts in excess of [*]% of the budgeted amounts, which agreement shall not be unreasonably withheld. XOMA shall be reimbursed amounts expended under this Section 3.3(c) and the Parties shall reconcile their expenses incurred under this Section 3.3(c), all as provided in Section 3.6.

(d) For clarity, XOMA's exercise or failure to exercise the Cardiometabolic Indications Option shall have no effect on this Section 3.3 and the Parties' obligations and responsibilities hereunder with respect to Development of the Product for Behçet's Uveitis and/or Non Infectious Uveitis.

3.4 Development of Product for Lead Cardiometabolic Indications.

(a) Initial Plan for Lead Cardiometabolic Indications. An initial Global Research and Development Plan for Type 2 diabetes, which contains the initial plan, including study outlines and estimated timelines, and the preliminary Development Budget for the Development of the Product for Type 2 diabetes [*], will be established by the Parties within [*] days following the Effective Date or at such later time as the Parties shall agree is appropriate and will be attached to this Agreement by reference as Exhibit 3.4(a) (the "**Initial T2D Development Plan**"). The Parties shall update such plan as needed in accordance with Section 3.2(b) (such updated plan, the **"T2D Development Plan"**). The initial Global Research and Development Plan for the Development of the Product for the CV Indication through Regulatory Approval in the U.S. and EU (the **"CV Indication Development Plan"**) will be prepared within [*] days of the determination by the JSC/JEC of the CV Indication.

(b) Review of Phase 2 Results in Type 2 Diabetes.

(i) XOMA will discuss with Servier the data analysis plan prior to database lock for the Phase 2b Study. Promptly after, but no later than [*] days from XOMA's receipt of the Flash 2b Report from the Phase 2b Study, XOMA shall supply the Phase 2 Results Package to Servier. XOMA shall thereafter provide the Full Data Set to Servier, for its review, as soon thereafter as it becomes available, but in no event later than [*] days from such data becoming available. After receipt by Servier of the Phase 2 Results Package and the Full Data Set from XOMA, the Parties shall evaluate such results, [*].

(ii) If Servier does not desire to pursue Development, or does not agree on the path for such Development [*], and XOMA does or has a different plan for pursuing such Development or Regulatory Approval in the Retained Territory, XOMA shall, notwithstanding its not having exercised the Cardiometabolic Indications Option at such time, have all rights [*] and, subject to prior approval by Servier (such approval not to be unreasonably withheld), [*]. However, in such case, XOMA would not have the right [*] unless and until it exercised the Cardiometabolic Indications Option pursuant to Section 3.5, and would do so at its or its Third Party Partner's cost and expense, as Unsponsored Work, in accordance with Section 3.8(b), unless the Parties otherwise agree. If instead Servier does desire to pursue Development, or a different path for such Development, and XOMA does not, Servier shall nonetheless have all rights to proceed with such continued Development, and XOMA's rights under the Cardiometabolic Indications Option shall remain in place as such Development progresses.

(c) Responsibilities and Costs During Pre-Exercise Period. XOMA shall be responsible for completing the conduct of the T2D Phase 2 Studies in accordance with the T2D Development Plan, and Servier shall be responsible for conducting or requesting that XOMA conduct, and for all Development Costs associated with, all other Development activities for the Products, including as required additional Phase 2 Clinical Trials, during the Pre-Exercise Period, subject to repayment of a portion of such costs under Section 8.5 following XOMA's exercise of the Cardiometabolic Indications Option. Following completion and evaluation of pre-clinical pharmacological studies and the determination of the CV Indication, should the data warrant, Servier shall commence a Phase 2 Clinical Trial of the Product in the CV Indication. XOMA would be responsible for conducting CMC Activities and providing certain clinical trial materials as set forth in Sections 6.4 and 6.5 with respect to the Lead Cardiometabolic Indications, and Servier shall be responsible for all CMC Costs associated therewith, subject to repayment of a portion of such costs under Section 8.5 following XOMA's exercise of the Cardiometabolic Indications Option. Reimbursement of XOMA's Development Costs and CMC Costs under this Section 3.4(c) shall be in accordance with Section 3.6.

(d) Responsibilities and Costs Post Early Option Exercise. If XOMA exercises the Early Option Exercise, and except in the case where XOMA pursued Development of the Product in Type 2 diabetes independently as provided in Section 3.4(b)(ii), then:

(i) [*] Servier has determined to move into Phase 3 Clinical Trials in the CV Indication in the Licensed Territory, then XOMA (or its licensee) shall be responsible for conducting in the Retained Territory Phase 3 Clinical Trials of the Product in the CV Indication that are designed to meet the requirements of both the FDA and EMA for Regulatory Approval in the U.S. and EU, respectively, and Servier shall be responsible for conducting in the Licensed Territory such Phase 3 Clinical Trials of the Product, all in accordance with the then-current CV Indication Development Plan (the **"Joint Phase 3 Program"**); and

(ii) Servier would also be responsible for any then-ongoing clinical trials of the Product in Type 2 diabetes, in accordance with the then-current T2D Development Plan.

Servier shall be solely responsible for all Development Costs, in the first instance, incurred after the date of Early Option Exercise to conduct any Joint Phase 3 Program, as set forth in the Development Budget for the T2D or CV Development Plan, as the case may be, provided that Servier shall have the right to [*]. Notwithstanding the foregoing, following Early Option Exercise of the Cardiometabolic Indications Option, if XOMA enters into a Retained Territory License Agreement for one or more Cardiometabolic Indications, [*], and XOMA thereafter shall be responsible for its [*] percent ([*]%) share on an ongoing basis, and shall [*] commencing with the effective date of the Retained Territory License Agreement. In addition, following such exercise, the Parties will share the CMC Costs incurred following the date of such exercise, for such Development in the Lead Cardiometabolic Indications, in accordance with the Manufacturing Plan, with XOMA responsible for [*] percent ([*]%) of such costs and Servier responsible for [*] percent ([*]%) of such costs.

(e) Responsibilities if No Early Option Exercise. If XOMA does not effect an Early Option Exercise, until any Late Option Exercise, Servier shall be responsible itself for conducting all Phase 3 Clinical Trials of the Product in the Lead Cardiometabolic Indications and shall not be required to include in such trials any patients residing in the Retained Territory, but shall nonetheless ensure that the study design, endpoints and protocols for such Phase 3 Clinical Trials meet EMA and FDA (except for any studies or requirements that are required only by FDA and not also by EMA) requirements for Regulatory Approval of the Product in the Lead Cardiometabolic Indications. Servier shall be solely responsible for all Development Costs incurred to conduct all such Phase 3 Clinical Trials of the Product in the Lead Cardiometabolic Indications as set forth in the T2D and CV Development Plans, subject to repayment of a portion of such costs under Section 8.5 in the event XOMA exercises its Late Option Exercise of the Cardiometabolic Indications Option.

(f) Responsibilities If No Option Exercise. Where XOMA does *not* exercise even its Late Option Exercise, Servier (or its sublicensees) shall remain solely responsible for all Development Costs and CMC Costs incurred in connection with the further Development of the Product in the Lead Cardiometabolic Indications and any other Cardiometabolic Indications, and shall continue to provide for review and approval by the JSC of updated T2D and CV Development Plans to so reflect such Development, for both the Licensed Territory and the Retained Territory.

3.5 Cardiometabolic Indications Option. Subject to the terms and conditions of this Agreement, Servier hereby grants to XOMA an option to re-acquire all rights (including the right to Develop and Commercialize) to the Product for use in the Cardiometabolic Field, in the Retained Territory (the "**Cardiometabolic Indications Option**") as set forth in this Section 3.5. XOMA may exercise such option by written notice to Servier and payment of the Option Exercise amount set forth in Section 8.5, within the applicable time periods set forth below:

(a) **Early Option Exercise.** XOMA shall have the right to first exercise the Cardiometabolic Indications Option (the **"Early Option Exercise"**) at any time following the Effective Date until the date which is no later than [*] days following the first [*] ("**Early Option Exercise Date**"); or

(b) **Late Option Exercise.** To the extent XOMA does not affect an Early Option Exercise, it shall nonetheless have the right to exercise the Cardiometabolic Indications Option (the **"Late Option Exercise"**) after the Early Option Exercise Date, but no later than [*] days after the earlier of (i) [*] required for the submission of the MAA for Type 2 diabetes or (ii) [*] required for the submission of the MAA for the CV indication, but in any event prior to submission of any MAA for the Product for Type 2 diabetes or for the CV Indication (**"Late Option Exercise Date**").

(c) **Effect of Exercise**. Any exercise by XOMA of the Cardiometabolic Indications Option would result in (i) termination of the license granted to Servier under Section 7.1(a)(ii)(B) effective as of such time as the payment of the Option Exercise Fee is received, (ii) reversion to XOMA of the right to use the XOMA Technology to Develop and Commercialize the Product, and Manufacture Product for use in the Cardiometabolic Indications in the Retained Territory, and (iii) an obligation to reimburse Servier the relevant percentages of its Development Costs and CMC Costs as are set forth in Section 8.5.

3.6 Reconciliation and Reimbursement.

(a) With respect to Development Costs or CMC Costs incurred by XOMA during the prior calendar quarter and which are to be reimbursed as provided under Section 3.3(c) or 3.4(c), (d) or (e), such reimbursement shall be done on the basis of documented employee hours worked, multiplied by fully burdened FTE rates (on the basis of rates indicated in Exhibit 3.6(a), such rates not to be increased beyond the inflation rate in California as measured by the Consumer Price Index) and documented incurred out of pocket material and Third Party services costs comprising such Development Costs or CMC Costs, as the case may be. XOMA shall invoice Servier for such amounts on a calendar quarterly basis, and Servier shall pay each such invoice within [*] days after receipt thereof.

(b) With respect to Development Costs or CMC Costs incurred by the Parties at such time as they are sharing such costs, as provided in Section 3.3(c) and Section 3.4(d), within [*] days after the end of each calendar [*], each Party shall provide the other Party with a detailed, activity-based statement of such Development Costs or CMC Costs (the **"Cost Report"**) (or in each case an estimate of any portions thereof where actuals are not known as of such time) as well as details of any adjustments to be made to the amounts submitted in the previous calendar quarter, in a format to be agreed-upon by the Parties; provided that neither Party's Development Costs or CMC Costs incurred in connection with the Development of the Product or CMC Activities undertaken in connection therewith which are greater than [*]% of the amount budgeted therefor shall be subject to cost sharing as provided herein unless the other Party has agreed to such overage, such agreement not to be unreasonably withheld. Within [*] days after the end of the calendar quarter, Servier shall provide XOMA with a written report (the **"Reconciliation Report"**) setting forth in a format to be agreed-upon by the Parties, the calculations of each Party's share of such Development Costs or CMC Costs. Such Reconciliation Report shall include for such calendar quarter the (i) total Development Costs and total CMC Costs incurred by each Party, and each Party's respective share thereof, and (ii) the net payment due from one Party to the other Party in accordance with this Section 3.6(b). Any net payment owed from one Party to the other Party shall be paid within [*] days following such reconciliation (i.e. within [*] days after the end of the calendar quarter) provided that if a Party disputes an amount provided in such Reconciliation Report then such disputed amount shall be reviewed by the JDC (with respect to Joint Development Cost), or JMC (with respect to a CMC Cost), as applicable, and any net payment owed with respect to the undisputed amounts shall be paid within a [*] day period. If requested by a Party, any invoices or other supporting documentation for any payments to a Third Party shall be promptly provided.

3.7 Unsponsored Work and Territory-Specific Work. The costs for all Unsponsored Work (defined below), and Territory-Specific Work, shall be borne solely ıe Party undertaking such activities except as provided in Section 3.3(c)(ii).

3.8 Additional Studies or Indications.

(a) Either Party shall have the right, through the JDC, to propose that one or more additional human clinical studies (beyond what is then included in the applicable Global Research and Development Plan) be conducted for a Lead Cardiometabolic Indication or that one or more additional indications in the Cardiometabolic Field (other than a Lead Cardiometabolic Indication) or the Remaining Field (other than Behçet's Uveitis or Non Infectious Uveitis) be pursued for Development of the Product, and shall provide the JDC with any supporting data or publications supporting any such proposal. In such event, the JDC shall consider such proposal and evaluate the supporting data and Information in good faith. If both Parties' JDC representatives agree to conduct such proposed Development, the JDC shall prepare an amendment to the applicable Global Research and Development Plan to include the proposed studies, for approval by the JSC, and the Parties shall have the diligence obligations with respect to such additional studies or indications as provided in Sections 3.9 and 5.6. The Parties shall share all costs and expenses incurred to conduct such activities in accordance with the applicable budget and in the proportions set forth in Sections 3.3(c), 3.4(d), and Section 8.5, as the case may be.

(b) If the non-proposing Party (i) does not believe that such additional human clinical studies are necessary for Regulatory Approval of the Product in the applicable Lead Cardiometabolic Indication, or is not interested in pursuing a proposed new indication, (ii) does not wish to fund such proposed activities, and (iii) does not reasonably believe that such proposed activities are substantially likely to create a Material Impact, then the proposing Party shall have the right to perform the proposed activities (the "**Unsponsored Work**") at its own expense. The proposing Party shall deliver to the JDC all proposed plans for such Unsponsored Work in advance of commencing such activities and deliver an update on such Unsponsored Work at each meeting of the JDC. Promptly following completion of the Unsponsored Work, the proposing Party shall deliver to the JDC the top-line data summary and shall disclose all other Information resulting from such Unsponsored Work to the other Party pursuant to Section 4.4. Notwithstanding anything to the contrary in this Agreement, the non-proposing Party shall have access to and the right to use all Information resulting from the Unsponsored Work solely as necessary to comply with the regulatory requirements in its territory in particular with respect to safety reporting and a Party's license rights to such Information shall be limited solely to such purpose. If, following completion of any Unsponsored Work, the non-proposing Party wishes to have the right to use the resulting Information (beyond the rights pursuant to the immediately preceding sentence of this Section 3.8(b)), it may do so upon reimbursing the proposing Party for [*] percent ([*]%) of its reasonable documented costs and expenses of the Unsponsored Work. Once the non-proposing Party has reimbursed such amounts, the Information from such Unsponsored Work shall be included in the proposing Party's licensed know-how, the activities shall no longer be considered Unsponsored Work, and the applicable indication shall be subject to milestone payments as and to the extent specified under Article 8. If however, the non-proposing Party does in good faith believe the proposed activities are substantially likely to create a Material Impact, the Parties shall submit the matter for resolution in accordance with Sections 2.9(b) or 2.9(c); provided that if, pursuant to Section 2.9(b), the Executive Officers are not able to resolve the matter within the applicable [*]-day period, then either Party may submit the matter for non-binding mediation under Section 14.2 followed by binding arbitration under Section 14.3, if applicable.

3.9 Development Diligence; Standards of Conduct. Each Party shall use Diligent Efforts to carry out the activities assigned to it under the Global Research and Development Plans. Each Party shall conduct its activities under the Global Research and Development Plans in a good scientific manner and in compliance in all material respects with all applicable Laws. Servier will use Diligent Efforts to Develop and obtain Regulatory Approval for the Product in the Lead Cardiometabolic Indications, Behçet's Uveitis, Non Infectious Uveitis and any additional indications agreed pursuant to Section 3.8(a) in the Licensed Territory and, following the Pre-Exercise Period, if XOMA has not exercised the Cardiometabolic Indications Option, for the Lead Cardiometabolic Indications and any additional Cardiometabolic Indications agreed pursuant to Section 3.8(a) in the Retained Territory, itself or through one or more sublicensees. The Parties agree that as and to the extent Development of the Product is terminated for any indication, they will discuss in good faith another indication to pursue, either jointly or independently as Unsponsored Work.

3.10 Opt-Out Rights of Either Party in Cardiometabolic Field. If XOMA exercises the Cardiometabolic Indications Option under Section 3.5, and thereafter the Parties are conducting a Joint Phase 3 Program or otherwise jointly conducting and funding one or more studies with respect to the Product in a given Cardiometabolic Indication, then on an indication-by-indication basis, upon [*] days written notice, either Party shall have the right to "opt-out" of its obligations to jointly conduct such program for such indication; provided, however, that regardless of such election to so opt-out, the opting-out Party would nonetheless be responsible for its allocated percentage of all Development Costs and CMC Costs allocable to any then-ongoing studies or trials with respect to such Indication, and would have all rights under Section 4.4 to reference and use the data and other results of any such trials or studies, it being understood that any studies or trials initiated and conducted thereafter by the non-opting-out Party would be Unsponsored Work as to which the opting-out Party has only those rights as specified in Section 3.8(b).

3.11 Development Records and Reports. Each Party shall maintain complete and accurate records (in the form of technical notebooks and/or electronic files where appropriate) of all work conducted by it or on its behalf under the Global Research and Development Plans and all Information resulting from such work. Such records, including any electronic files where such Information may also be contained, shall fully and properly reflect all work done and results achieved in the performance of the Global Research and Development Plans in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes. Each Party shall have the right to review and copy such records maintained by the other Party at reasonable times, but no less than [*] in any one calendar year, and to obtain access to originals (including the databases) to the extent needed for patent or regulatory purposes or for other legal proceedings. Each Party shall provide the other party and the JDC with regular reports detailing its Development activities under the Development Plan and the results of such activities at each regularly scheduled JDC meeting, at a level of detail reasonably sufficient to enable the other Party to determine the reporting Party's compliance with its Diligent Efforts obligations under Section 3.9. The Parties may agree to set up an electronic data room in order to manage the exchange of information in a secure manner.

3.12 **Subcontracts**. Each Party may perform any of its Development obligations under this Agreement through one or more subcontractors and consultants upon written notice to the JDC, provided that (a) such Party remains responsible for the work allocated to, and payment to, such subcontractors and consultants as it selects to the same extent it would if it had done such work itself; (b) the subcontractors and consultants undertake in writing obligations of confidentiality and non-use regarding Confidential Information that are substantially the same as those undertaken by the Parties pursuant to Article 10 hereof; and (c) the subcontractors and consultants agree in writing to assign all intellectual property developed in the course of performing any such work under the Global Research and Development Plans to the Party retaining such subcontractors or consultants.

3.13 Personnel. All employees, agents and subcontractors of each Party and its Affiliates conducting activities under this Agreement shall, prior to commencing any such activities, be under written obligation to assign any inventions and related intellectual property rights to the Party by whom they are employed or for whom they are providing services (or its designated Affiliate). The Parties acknowledge and agree that this Agreement shall be deemed to be a joint research agreement under 35 U.S.C. §103(c).

4. Regulatory Matters

4.1 **Lead Regulatory Party.** In general, XOMA shall be the lead Party for, and have the final say with respect to, subject to Section 2.9, regulatory activities regarding the Product in the Retained Territory for the Remaining Field and, if XOMA exercises the Cardiometabolic Indications Option, for the Cardiometabolic Indications. Servier (or its designee for the Retained Territory) shall be the lead Party for, and have the final say with respect to, subject to Section 2.9, all regulatory activities regarding the Product in the Licensed Territory for all indications and in the Retained Territory for the Cardiometabolic Indications if XOMA does not exercise the Cardiometabolic Indications Option before expiration thereof. Except for those clinical studies commenced prior to the Effective Date and unless otherwise agreed by the Parties, Servier shall be the sponsor of all clinical studies of the Product performed in the Licensed Territory, and XOMA (or its licensee) shall be the sponsor of all clinical studies performed in the Retained Territory; provided that if XOMA does not exercise the Cardiometabolic Indications Option before expiration thereof, Servier's designee shall be the sponsor of all clinical studies performed in the Retained Territory for the Product in any Cardiometabolic Indication. To the extent a Party for a given clinical trial requires that the other Party conduct some part of such trial or interact with Regulatory Authorities in such other Party's territory, such other Party will reasonably consider such request and should the latter accept it, it shall be the sponsor of such component of such trial in its territory.

4.2 Ownership of Regulatory Dossier. Servier will own all Regulatory Materials for the Product in the Licensed Territory, and XOMA will own all Regulatory Materials for the Product in the Retained Territory, for all indications. Following the Pre-Exercise Period, where XOMA has not exercised the Cardiometabolic Indications Option, and upon the sublicense by Servier, if any, of the rights to the Product in such indications in the Retained Territory to a Third Party, XOMA shall be obligated at such time to assign over to such Third Party, upon request, any such Regulatory Materials for the Product for the Cardiometabolic Indications. XOMA will also manage and control the drug master file for the Licensed Antibody, to which Servier shall have full access and the right to reference for the exercise of its licenses to the Product.

4.3 Regulatory Rights, Diligence and Responsibilities. Servier shall use Diligent Efforts to prepare and file all necessary Regulatory Materials for the Product with Regulatory Authorities and to seek Regulatory Approval for the Product in the Lead Cardiometabolic Indications, in Behçet's Uveitis and in Non Infectious Uveitis in the Major European Countries, and shall be responsible for preparing and filing all necessary Regulatory Materials for the Product with Regulatory Authorities and seeking Regulatory Approval for the Product in all other indications in the Licensed Territory, in each case as relevant, in accordance with the Global Research and Development Plans. XOMA shall use Diligent Efforts to prepare and file all necessary Regulatory Materials for the Product with Regulatory Authorities and seeking Regulatory Approval for the Product in the Retained Territory in all indications other than the Cardiometabolic Indications and, upon exercise of the Cardiometabolic Indications Option, in the Cardiometabolic Indications in the Retained Territory, in accordance with the Global Research and Development Plans. Each Party shall keep the other Party informed of regulatory developments relating to the Product in its respective territory through regular reports at the JDC meetings. Each Party shall send Regulatory Materials (in the case of Servier for the EMA) in draft form to the other Party and give the latter a reasonable period of time (not exceeding [*] days) to comment on such drafts of Regulatory Materials. Each Party shall notify the other Party of any Regulatory Materials (other than routine correspondence) submitted to or received from any Regulatory Authorities respectively in the Retained Territory for XOMA and in the Major European Countries for Servier and shall provide the other Party with copies thereof. Each Party shall provide the other Party with reasonable advance notice of all meetings, conferences, and discussions scheduled with any Regulatory Authority (in the case of Servier for the EMA) concerning the Product, and shall consider in good faith any input from the other Party in preparing for such meetings, conferences or discussion. Unless prohibited by applicable Laws, XOMA shall have the right to attend any such meetings, conferences or discussions of Servier with EMA. If XOMA elects not to or cannot attend such meetings, conferences or discussions, Servier shall provide written summaries of such meetings, conferences or discussions in English as soon as practicable after the conclusion thereof. Following the last Phase 2 Clinical Trial for Type 2 diabetes, as determined by the JDC, XOMA agrees to schedule and attend an End of Phase 2 Meeting with the FDA with respect to the anticipated Phase 3 clinical program for Type 2 diabetes, should the data warrant. Servier will have the option, but not the obligation, to have representatives of Servier present at such meeting.

4.4 Rights of Reference; Use of Data.

(a) Promptly after the Effective Date, XOMA shall work with Servier to facilitate the timely transfer of the XOMA Know-How related to the Product (other than the XOMA Know-How related to Manufacturing, which is covered by Section 6.8). Such transfer shall occur in a manner and following a reasonable schedule to be established by the JSC. XOMA shall provide access to Servier to copies of relevant material, Information, reports and data, including pre-clinical data, clinical data, and any data that have been provided to Regulatory Authorities for the purpose of obtaining Regulatory Approval. Except with respect to Unsponsored Work, each Party shall make available to the other Party all data and results generated under any Global Research and Development Plan and, for use in complying with safety reporting obligations in its territory, all data generated under any Unsponsored Work or Territory-Specific Work; and each Party shall have the right to cross reference, file or incorporate by reference any Regulatory Materials filed by the other Party (or for which the other Party has a right of reference and a right to transfer such right of reference to such first Party) for the Product in order to support regulatory filings that such Party is permitted to make under this Agreement for the Product and to enable such Party to fulfill its obligations and exploit it rights under this Agreement to Develop, Manufacture (subject to Article 6), or Commercialize the Product. Each Party shall, on written request by the other Party (or its Affiliate or licensee), provide to the requesting Party and to any specified Regulatory Authority a letter, in the form reasonably required by the requesting Party, acknowledging that the requesting Party has the right of reference to any such Regulatory Materials for all purposes consistent with the Development and Commercialization of Product in the applicable country. Further, each Party shall ensure that any other party to which such Party assigns any such Regulatory Materials agrees in writing that the other Party has the above rights of reference, and to provide to such other Party (or its Affiliate or licensee) and to any specified Regulatory Authority a letter, in the form reasonably required by the requesting Party, acknowledging that the requesting Party has the right of reference to any such Regulatory Materials for all such purposes.

(b) During the Term, on a regular basis, each Party shall present reports at JDC meetings on its activities under the Global Research and Development Plans and all regulatory activities with respect to Products in its territory, at a level of detail to be agreed by the JDC; provided, however, that any such presentation shall include at least a summary of the resulting data from all studies conducted by a Party with respect to the Product.

(c) All preclinical, non-clinical, analytical, manufacturing, and clinical data and associated reports disclosed by one Party to the other under this Agreement, other than Unsponsored Work or Territory-Specific Work, may be used by the receiving Party subject to the terms of this Agreement solely for the purpose of Developing, seeking and obtaining Regulatory Approval and Commercializing the Product in its respective territory and field. Each Party shall have the right to share any and all such data and other Regulatory Materials received from the other Party with its Affiliates and any Third Party sublicensees or licensees in its respective territory solely for the purpose of Developing, seeking and obtaining Regulatory Approval and Commercializing the Product in its respective territory and field. Access to and use of such pre-clinical and clinical data are given by each Party to the other Party without cost (except as otherwise provided herein) on an "as is" basis without any warranty of any kind. Each receiving Party accepts all risk and liability in relation to the use of the data received from the other Party and shall indemnify and hold harmless the Party providing such data from any Third Party's claim(s) based upon such data as provided in Article 13.

4.5 Recalls. Any decision to initiate a recall or withdrawal of a Product shall be made by Servier in the Licensed Territory and by XOMA in the Retained Territory; provided that Parties shall discuss in good faith and coordinate their efforts with respect to any such recalls. After the Pre-Exercise Period, if XOMA does not exercise the Cardiometabolic Indications Option, Servier (or its sublicensee) shall have the right to initiate a recall or withdrawal of a Product for the Cardiometabolic Field in the Retained Territory. In the event of any recall or withdrawal, such Party shall take any and all necessary action to implement such recall or withdrawal in accordance with applicable Laws, with assistance from the other Party as reasonably requested by the deciding Party. The costs of any such recall or withdrawal shall be borne solely by the deciding Party in the applicable territory and field.

5. Commercialization

5.1 Overview. Servier shall have sole control and responsibility for the Commercialization of Products in the Licensed Territory and shall bear all costs and expenses associated with the Commercialization of Products in the Licensed Territory; and XOMA shall have sole control and responsibility for the Commercialization of Products in the Retained Territory and shall bear all costs and expenses associated with the Commercialization of Products in the Retained Territory; provided, however that following the Pre-Exercise Period, if XOMA does not exercise the Cardiometabolic Indications Option, then Servier shall have sole control and responsibility, itself or through a Third Party sublicensee, for the Commercialization of Products in the Retained Territory in the Cardiometabolic Field, subject to compliance with this Agreement, and shall bear all costs and expenses associated therewith. The Party with responsibility for Commercialization in a territory and field shall be referred to as the "**Commercializing Party**" for such territory and field.

5.2 Sales and Distribution. It is understood that as between the Parties, the Commercializing Party shall be solely responsible for handling all returns, order processing, invoicing and collection, distribution, and receivables for Products in the applicable territory and indication.

5.3 Ex-Territory Sales. Neither Party shall engage in any advertising or promotional activities relating to the Product directed primarily to customers or other buyers or users of the Product located outside its territory or accept orders for Products from or sell Products into such other Party's territory for its own account or for the Commercializing Party's account, and if such other Party receives any order for Products in the Commercializing Party's territory, it shall refer such orders to the Commercializing Party for acceptance or rejection.

5.4 Commercialization Plan for Licensed Territory. Servier shall pursue Commercialization of the Product in the Licensed Territory, in accordance with its normal business practices for its internal products at a similar stage. Servier shall deliver an initial Commercialization plan to XOMA no later than [*] months prior to the anticipated date of the first filing of the first MAA for the Product in the Licensed Territory (the "**Commercialization Plan**"). After the establishment of the initial Commercialization Plan, Servier shall prepare updates and amendments to such Commercialization Plan at least annually and deliver such updated Commercialization Plan to XOMA no later than October 31st of each calendar year.

5.5 Trademarks. Servier shall have the right to brand the Products in the Licensed Territory using trademarks and trade names it determines appropriate for the Products, which may vary by country or within a country ("**Product Marks**"). Each Party shall not, and shall ensure that its Affiliates and sublicensees will not, make any use of the trademarks or house marks of the other Party or its Affiliates or licensees (including their corporate names) or any trademark confusingly similar thereto. Servier shall own all rights in the Product Marks and shall register and maintain the Product Marks in the Retained Territory (if XOMA does not exercise the Cardiometabolic Indications Option) and other countries it determines reasonably necessary at its own cost and expense. XOMA shall have the right to brand the Products in the Retained Territory in the Remaining Field, and, in the event that XOMA exercises the Cardiometabolic Indications Option, in the Cardiometabolic Indications, using trademarks and trade names it determines appropriate for the Products at XOMA's cost and expense. Following the Pre-Exercise Period, if XOMA does not exercise the Cardiometabolic Indications Option, Servier shall have the right to convey to any sublicensee in the Retained Territory the right to brand the Products for the Cardiometabolic Indications, subject to coordination with and the approval of XOMA, not to be unreasonably withheld, to ensure that no confusion arise in the Retained Territory with respect to Products for use in the Remaining Field and those for use in the Cardiometabolic Indications.

5.6 Commercial Diligence. During the Term, Servier shall use Diligent Efforts to Commercialize the Products throughout the Licensed Territory [*], including in [*] of the Major European Countries, in the Cardiometabolic Field and in the Remaining Field. Without limiting the generality of the foregoing, Servier [*], including in [*] of the Major European Countries, in Behçet's Uveitis, in Non Infectious Uveitis and in each Lead Cardiometabolic Indication pursuant to Section 3.8(a). After the Pre-Exercise Period, if XOMA does not exercise the Cardiometabolic Indications Option, Servier shall include in any sublicense agreement with respect to the Retained Territory, that such sublicensee [*] to Commercialize the Product in the U.S. and Japan in each Lead Cardiometabolic Indication and each additional Cardiometabolic Indication agreed pursuant to Section 3.8(a), in each case provided that it receives Regulatory Approval in such countries. To the extent Servier determines not to apply for Regulatory Approval, for and/or launch the Product [*], it shall promptly notify XOMA and terminate this Agreement with respect to such Significant Markets in accordance with Section 11.2.

5.7 Standards of Conduct. Each Party shall in all respects comply with all applicable Laws and applicable guidelines concerning the advertising, sales and marketing of prescription drug products in Commercializing Products under this Agreement, including without limitation the Foreign Corrupt Practices Act of 1977, as amended (" **FCPA**") and any applicable local anti-bribery laws.

5.8 Limitations and Protections in Retained Territory in Event of No Option Exercise. Following the Pre-Exercise Period and where XOMA does not exercise or allows to lapse the Cardiometabolic Indications Option, the following shall apply thereafter:

(a) Limitations on Development.

(i) Except as expressly approved in advance in writing by the Parties, neither Servier, nor any of its Affiliates or sublicensees shall, directly or through any Third Party, sponsor, conduct or cause to be conducted, otherwise assist in, supply any Licensed Antibody or Product for use in connection with, fund or otherwise support any human clinical trial (including without limitation any investigator sponsored studies) using such Licensed Antibody or Product for any indication or use in the Remaining Field, in the Retained Territory.

(ii) Except as expressly approved in advance in writing by the Parties, neither XOMA, nor any of its Affiliates, licensees or sublicensees shall, directly or through any Third Party, sponsor, conduct or cause to be conducted, otherwise assist in, supply any Licensed Antibody or Product for use in connection with, fund or otherwise support any human clinical trial (including without limitation any investigator sponsored studies) using such Licensed Antibody or Product for any indication or use in the Cardiometabolic Field, in the Retained Territory.

(b) Limitations on Commercialization Activities

(i) Subject to any applicable law, Servier and its sublicensees (and their respective Affiliates) shall not knowingly promote or sell (or encourage or facilitate the sale of) (a) any Product for use in the Remaining Field in the Retained Territory. Servier and its sublicensees (and their respective Affiliates) shall not provide funding to or otherwise support continuing education programs for sales representatives and/or medical professionals in which information is provided about the use of any Product for use in the Remaining Field in the Retained Territory.

(ii) Subject to any applicable law, XOMA and its licensees (and their respective Affiliates) shall not knowingly promote or sell (or encourage or facilitate the sale of) any Product for use in the Cardiometabolic Field in the Retained Territory. XOMA and its licensees (and their respective Affiliates) shall not provide funding to or otherwise support continuing education programs for sales representatives and/or medical professionals in which information is provided about the use of any Product for use in the Cardiometabolic Field in the Retained Territory.

(c) Tracking of Sales of Product. Should XOMA not exercise the Cardiometabolic Indications Option, the Parties agree to discuss, through the JSC and/or JEC, potential mechanisms to be put in place with respect to the tracking of sales of the Product as between the Cardiometabolic Indications and the Remaining Field in the Retained Territory.

(d) Each of Servier and XOMA shall ensure that any license or sublicense agreement it enters into with respect to the Retained Territory include the foregoing obligations.

6. Manufacturing

6.1 Overview. The Manufacture of Product shall be overseen and coordinated by the Joint Manufacturing Committee and conducted pursuant to the Manufacturing Plan. In general and subject to the terms of this Agreement, (a) XOMA shall be primarily responsible for conducting the CMC Activities, (b) XOMA shall be responsible for Manufacturing Bulk Drug Substance for clinical and commercial use for the Licensed Territory and the Retained Territory, (c) Servier shall be responsible for Manufacturing finished Product from such Bulk Drug Substance for sale of Products in the Licensed Territory, and (d) where XOMA does not exercise its Cardiometabolic Indications Option, Servier, or at Servier's choice XOMA (for a period not to exceed [*] years from First Commercial Sale in the Retained Territory) or a Third Party designated by Servier, shall be responsible for Manufacturing finished Product from such Bulk Drug Substance for sale of Products in the Cardiometabolic Field in the Retained Territory.

6.2 **Manufacturing Plan**. XOMA shall prepare and propose to the JMC for discussion purposes a detailed plan for CMC Activities, including process development and scale-up, Manufacture of Bulk Drug Substance, Manufacture of finished Product from Bulk Drug Substance, and any other matters related to the Manufacture of the Product, as well as a quarter-by-quarter budget for such activities (including direct costs, external costs, costs of raw materials, capital improvements required in connection therewith, and the like), such a detailed plan will be submitted for approval to the JSC (the "**Manufacturing Plan**"). The Manufacturing Plan will include only those capital expenditures by XOMA that are fully dedicated to the production of Bulk Drug Substance, and will provide allocations of costs for those costs that are shared between Bulk Drug Substance and other products of XOMA. An initial Manufacturing Plan for Development of the Product for Behçet's Uveitis for calendar year 2011 is attached to this Agreement as Exhibit 6.2. The Parties, through the JMC, shall make good faith efforts to review such initial Manufacturing Plan and agree upon any revisions, amendments or additions thereto, for the Product for Behçet's Uveitis, Non Infectious Uveitis and the Lead Cardiometabolic Indications for the subsequent [*] years, and have it approved by the JSC within [*] days after the Amendment Effective Date. On an annual basis, the JMC shall have prepared by XOMA and shall propose any amended or revised Manufacturing Plan for approval by the JSC by no later than [*] of each year, the budget for which shall govern the activities to be conducted during the following calendar year to enable appropriate scale up activity and financial planning.

6.3 **Future Planning**. The Parties through the JMC shall continue discussing a mutually beneficial arrangement for the harmonized Manufacture of Bulk Drug Substance for Commercialization and Development use by Servier, consistent with the following principles, and amend the Manufacturing Plan to reflect such arrangement:

(a) Maintain quality control standards and uniform specifications for the Bulk Drug Substance and finished Product;

(b) Enable speed to market for initial launch and subsequent indications;

(c) Mitigate risks to ensure the uninterrupted supply of Bulk Drug Substance and finished Product.

(d) Minimize XOMA Manufacturing Costs.

6.4 **CMC Activities**. XOMA shall be responsible for the performance of CMC Activities for Bulk Drug Substance, including associated regulatory activities, in accordance with the Manufacturing Plan. Prior to XOMA's exercise of the Cardiometabolic Indications Option and thereafter if XOMA does not exercise such option, Servier shall reimburse XOMA for all documented costs incurred by XOMA in performing such activities in accordance with the Manufacturing Plan and the budget contained therein, as provided in Article 3. If XOMA exercises the Cardiometabolic Indications Option, XOMA shall reimburse certain of these costs as provided in Section 8.5, and the Parties shall thereafter share such costs for the Cardiometabolic Field as provided in Section 3.4(d).

6.5 **Supply of Bulk Drug Substance**. Until such time as Servier may establish a second source of Bulk Drug Substance as contemplated in Section 6.7, Servier, its Affiliates and sublicensees shall purchase exclusively from XOMA, and XOMA shall Manufacture and supply exclusively to Servier or its Affiliates or sublicensees, subject to the terms of this Article 6, and to the terms of the Supply Agreement (as defined below), all Bulk Drug Substance required by Servier, its Affiliates and sublicensees for Development use and for Commercial use.

(a) **Clinical Use**. Bulk Drug Substance for clinical use by Servier will be supplied either as finished Product in vials or as Bulk Drug Substance, at Servier's option. Manufacture and supply of Bulk Drug Substance will be included within CMC Activities under the Manufacturing Plan, and all related costs will be included in CMC Costs under Section 6.4. XOMA's manufacture and supply of Bulk Drug Substance to Servier for clinical use will be governed by a supply agreement, containing commercially reasonable terms mutually agreed by the Parties, including terms for sales forecasting, inventory builds and safety stock requirements, an initial version of which will be entered into on or before the Amendment Effective Date (the "**Initial Supply Agreement**").

(b) **Commercial Use.**

(i) At a time to be determined by the JMC, and reasonably sufficiently in advance of the anticipated First Commercial Sale of a Product, the Parties will amend the Initial Supply Agreement to include commercial use and reflect then-available relevant Information (as amended, the "**Supply Agreement**"). XOMA will supply Bulk Drug Substance to Servier for commercial use at a price equal to [*]% of the XOMA Manufacturing Costs for such Bulk Drug Substance.

(ii) For the avoidance of doubt, no cost or expense shall be counted more than once in calculating XOMA's actual Manufacturing costs or the XOMA Manufacturing Costs even if such cost or expense falls into more than one of the cost categories that comprise such cost. The Parties agree that each shall use its good faith efforts to reduce the XOMA Manufacturing Costs, including, where appropriate, the procurement of raw materials by using Servier's internal procurement infrastructure.

(c) **Existing Inventory**. Servier shall only purchase from XOMA, and XOMA shall sell to Servier, XOMA's existing inventory of phase 2 clinical materials and XOMA's existing inventory of phase 3 clinical materials that are necessary and suitable for the performance of clinical studies by Servier. Servier shall purchase such inventory reasonably in advance of the time Servier intends to use such inventory pursuant to a forecast to be agreed by the Parties.

6.6 **Manufacture of Finished Product.** For all Product sold by or on behalf of Servier, except for the Products sold in the Retained Territory (which is discussed under Section 6.1), Servier shall be responsible for final Manufacture of the finished Product from Bulk Drug Substance, including fill and finish and packaging, at Servier's expense; provided that upon Servier's request, XOMA shall arrange for a Third Party selected and approved by Servier to conduct final Manufacture of the Product for Servier from Bulk Drug Substance supplied by XOMA, including fill and finish and packaging, at Servier's expense. Where Servier requests that XOMA be responsible for final Manufacture of finished Product from Bulk Drug Substance for sale in the Retained Territory, the Parties shall discuss the terms and conditions of such final Manufacture at such time.

6.7 Manufacturing Facilities. XOMA shall ensure that (a) prior to the first filing of an MAA for the Product with the EMA, there is at least one facility qualified to manufacture Bulk Drug Substance for MAA submission to the EMA and (b) prior to the filing of an MAA for the first Major Cardiometabolic Indication for the Product with the EMA, there is a second facility qualified to manufacture Bulk Drug Substance for MAA submission to the EMA; provided that, where upon timely request by Servier, such second Bulk Drug Substance manufacturing facility is to be located in the EU and owned by Servier or by a Third Party contract manufacturer selected by Servier (the "**Servier Facility**"), the costs and expenses of qualifying and constructing such Servier Facility shall be borne by Servier; and provided further, that where Servier does not so request, XOMA shall establish such second facility outside the EU, at its own expense. In connection with such request by Servier regarding the Servier Facility, the Parties shall discuss in good faith and cooperate with respect to the transfer of XOMA Know-How related to the Manufacture of Bulk Drug Substance and Product to the Servier Facility pursuant to Section 6.8.

6.8 Transfer of XOMA Know-How and Manufacturing Technology.

(a) At Servier's request and expense, and on a schedule determined by the JMC, XOMA shall disclose (and provide copies, as applicable) to either Servier or the Third Party manufacturer selected by Servier under Section 6.7, all XOMA Know-How necessary or useful to enable Servier or such Third Party manufacturer (as appropriate) to Manufacture Bulk Drug Substance. For clarity, nothing in this Section 6.8 with respect to XOMA's obligation to transfer XOMA Know-How to Servier shall limit XOMA's right to use any such XOMA Know-How to fulfill XOMA's obligations to Manufacture and supply Bulk Drug Substance to Servier under this Agreement or the Supply Agreement. In addition, XOMA shall make available to Servier, on a reasonable consultation basis, advice of its technical personnel as may reasonably be requested by Servier in connection with such transfer of XOMA Know-How. [*].

(b) Servier and/or its Third Party manufacturer shall use the XOMA Know-How transferred under Section 6.8(a) solely for the purpose of Manufacturing Bulk Drug Substance and finished Products in accordance with the terms and conditions of this Agreement, and for no other purpose.

(c) Servier acknowledges and agrees that XOMA may condition its agreement to transfer any XOMA Know-How to a Third Party manufacturer on the execution of a confidentiality agreement between such Third Party manufacturer and XOMA that contains terms substantially equivalent to those of Article 10.

6.9 Audits.

(a) XOMA shall maintain, for at least [*] years from the date of creation, accurate records and accounts of costs of Manufacturing the Bulk Drug Substance in order to allow Servier to determine the accuracy of the calculation of XOMA Manufacturing Costs. Upon the written request of Servier and not more than once in any calendar year, XOMA shall permit an independent certified public accounting firm of internationally recognized standing, selected by Servier and reasonably acceptable to XOMA and under binder of confidentiality, to have access during normal business hours to such of the records of XOMA as may be reasonably necessary to verify the accuracy of such calculations hereunder for any year ending not more than [*] months prior to the date of such request. The accounting firm shall disclose to Servier only whether the records are correct or not and the specific details concerning any discrepancies. The findings of such inspection shall be XOMA's Confidential Information for the purposes of Article 10; provided that Servier shall have the right to disclose such findings to any sublicensee or Affiliate in accordance with Article 10.

(b) If such accounting firm concludes that Servier has overpaid for the Bulk Drug Substance supplied during such period, XOMA shall refund Servier the amount overpaid within [*] days after the receipt of such accounting firm's written report so concluding. If such accounting firm concludes that additional amounts were owed by Servier for the for the Bulk Drug Substance supplied during such period, Servier shall pay the additional amounts to XOMA within [*] days after the receipt of such accounting firm's written report so concluding. Any such audit of records shall be at Servier's expense; *provided* that in the event such audit discloses an overpayment of more than [*] percent ([*]%) between the amounts paid and the amounts due to XOMA, XOMA shall pay the expense of such audit.

6.10 Quality Agreement. In connection with the negotiation of the Supply Agreement, the Parties have entered into a separate quality agreement setting forth the responsibilities of the quality organizations of each Party with respect to the cGMP manufacture of the Product, which is to be amended on or before the Amendment Effective Date (the "**Quality Agreement**"). In the event of any conflict or inconsistency between the Quality Agreement and this Agreement, the Quality Agreements shall govern with respect to matters related to quality, and this Agreement shall govern with respect to all other matters.

6.11 Safety Data Exchange Agreement. As soon as reasonably practicable after the Amendment Effective Date, but in no event later than 90 days thereafter, the pharmacovigilance departments of both Parties shall meet and agree on a safety data exchange agreement ("**Safety Data Exchange Agreement**") which when executed shall be incorporated herein as Exhibit 6.11.

7. Licenses and Related Rights

7.1 Licenses to Servier.

(a) License Grant. Subject to the terms and conditions of this Agreement and the agreements set forth on Exhibit 7.1(a), XOMA hereby grants Servier:

(i) a co-exclusive (with XOMA) royalty free license, with the right to sublicense as provided in Section 7.1(c), under the XOMA Technology to (A) Develop Products in the Cardiometabolic Field and in the Remaining Field in the Licensed Territory (subject to the last sentence of Section 4.1 and to Section 3.3(b) above), and (B) in the Cardiometabolic Field in the Retained Territory, subject to earlier termination in the event of XOMA's exercise of the Cardiometabolic Indications Option, solely in accordance with the Global Research and Development Plans and/or this Agreement;

(ii) an exclusive, royalty-bearing license, with the right to sublicense as provided in Section 7.1(c), under the XOMA Technology to use, sell, offer for sale, distribute, import, export and otherwise Commercialize Products in (A) the Remaining Field and the Cardiometabolic Field in the Licensed Territory during the Term and (B) the Cardiometabolic Field in the Retained Territory, during the Term, but subject to earlier termination in the event of XOMA's exercise of the Cardiometabolic Indications Option; and

(iii) an exclusive, worldwide, royalty-free license under the XOMA Technology, with the right to sublicense as provided in Section 7.1(c), to make and have made finished Product from Bulk Drug Substance supplied by XOMA, (A) for use in the Development or Commercialization of Products in the Remaining Field and the Cardiometabolic Field in the Licensed Territory and (B) for use in the Development or Commercialization of Products in the Cardiometabolic Field in the Retained Territory, until such time as and subject to XOMA's exercise of the Cardiometabolic Indications Option. In addition, XOMA hereby grants to Servier a license to manufacture or have manufactured Bulk Drug Substance (X) solely for use in the Development or Commercialization of Products in and for the Licensed Territory, and (Y) for use in the Development or Commercialization of Products solely in the Cardiometabolic Field in the Retained Territory, until such time as and subject to XOMA's exercise of the Cardiometabolic Indications Option, all as and to the extent provided in Sections 6.7 and 6.8.

(b) XOMA Retained Rights. It is understood that at all times XOMA and its Affiliates retain (i) the exclusive right to Develop and Commercialize the Product in the Remaining Field in the Retained Territory, (ii) the right to practice the XOMA Technology as and to the extent needed in connection with its activities under this Agreement in fulfillment of its obligations hereunder, (iii) the right to Manufacture Bulk Drug Substance in the Licensed Territory and the Retained Territory and (iv) the right to use and practice the XOMA Technology outside the scope of the licenses granted to Servier in Section 7.1(a).

(c) Sublicense Rights.

(i) Servier shall have the right to grant sublicenses of the licenses granted to it under Section 7.1(a)(i)(A), Section 7.1(a)(ii)(A), and Section 7.1(a)(iii)(A) and 7.1(a)(iii)(X) to any of its Affiliates. Servier shall have the right to grant sublicenses of the licenses granted to it under Section 7.1(a)(i)(A), Section 7.1(a)(ii)(A), and Section 7.1(a)(iii)(A) to any Third Parties with the prior written consent of XOMA, not to be unreasonably withheld;

(ii) Servier shall have the right to grant sublicenses of the licenses granted to it under Section 7.1(a)(i)(B), Section 7.1(a)(ii)(B) and Section 7.1(a)(iii)(B) to any of its Affiliates. Servier shall have the right to grant sublicenses of the licenses granted to it under Section 7.1(a)(i)(B), Section 7.1(a)(ii)(B), Section 7.1(a)(iii)(B), and Section 7.1(a)(iii)(Y) to any Third Parties with the prior written consent of XOMA, not to be unreasonably withheld, but only in the event XOMA does not exercise its Cardiometabolic Indications Option; for clarity, where XOMA does not exercise such option at the Early Option Exercise Date, Servier shall have no right to sublicense such rights until after the Late Option Exercise Date;

provided that in the case of Third Parties: (w) Servier shall provide XOMA with prior written notice with respect to any such sublicense, and a redacted copy thereof, (x) Servier shall remain responsible for the compliance with this Agreement by such sublicensee(s), (y) each such sublicense agreement shall be consistent with the terms and conditions of this Agreement, and (z) Servier shall require, in substance, any sublicensee of XOMA Technology in the Cardiometabolic Field in the Retained Territory to defend, indemnify and hold harmless the XOMA Indemnitees from any and all damages or other amounts payable to a Third Party claimant, to the extent resulting from Claims against them that arise from or are based on: (A) the use of XOMA Technology in connection with the Development, Manufacture or Commercialization of the Product by or on behalf of such sublicensee or its affiliates in the Retained Territory; or (B) the use by such sublicensee in the Retained Territory of pre-clinical and clinical data and information supplied by XOMA to Servier under Section 4.4(c) (and sublicensed or transferred to such sublicensee), except in the case of XOMA's fraud, gross negligence or willful misconduct.

7.2 Licenses to XOMA.

(a) License Grant. Subject to the terms and conditions of this Agreement, Servier hereby grants XOMA:

(i) a non-exclusive, royalty-free license, with the right to sublicense as provided in Section 7.2(b), under the Servier Technology to Develop Products in the Cardiometabolic Field (subject to XOMA's exercise of the Cardiometabolic Indications Option) and in the Remaining Field solely in accordance with the Global Research and Development Plans and/or this Agreement;

(ii) a non-exclusive, royalty-free license, with the right to sublicense as provided in Section 7.2(b), under the Servier Technology to use, sell, offer for sale, distribute, import, export and otherwise Commercialize Products in (A) the Remaining Field in the Retained Territory during the Term and (B) upon XOMA's exercise of the Cardiometabolic Indications Option, the Cardiometabolic Field in the Retained Territory; and

(iii) a non-exclusive, worldwide license under the Servier Technology to Manufacture Bulk Drug Substance and Product.

(b) Sublicense Rights. XOMA shall have the right to grant sublicenses of the license granted to it under Section 7.2(a) to any of its Affiliates. XOMA shall have the right to grant sublicenses of the license granted to it under Section 7.2(a) to any Third Parties, with the prior written consent of Servier, which shall not be unreasonably withheld: (i) XOMA shall provide Servier with prior written notice with respect to any such sublicense, (ii) XOMA shall remain responsible for the compliance with this Agreement by such sublicensee(s), and (iii) each such sublicense agreement shall be consistent with the terms and conditions of this Agreement.

(c) Exclusive Rights Option. Should XOMA desire to convert any of the licenses granted under Section 7.2(a) from non-exclusive to exclusive, upon reasonable written notice to Servier, the Parties shall negotiate in good faith the terms upon which Servier will grant such exclusive rights.

7.3 Negative Covenants.

(a) Servier covenants that it will not, and will not permit any of its Affiliates or sublicensees to, use or practice any XOMA Technology outside the scope of the license granted to it under Section 7.1 above. XOMA covenants that it will not, and will not permit any of its Affiliates or sublicensees to, use or practice any Servier Technology outside the scope of the license granted to it under Section 7.2 above.

(b) XOMA agrees that during a period of [*] years following the First Commercial Sale of the Product in the Licensed Territory, it shall not, itself or through one or more Affiliates or Third Parties, sell, offer for sale, distribute, promote or market any Competing Product (x) for use in any indication in the Licensed Territory, and (y) in the event of expiration of the Cardiometabolic Indications Option without exercise by XOMA, in the Retained Territory for use in any Cardiometabolic Indication.

(c) Servier agrees that during a period of [*] years following the First Commercial Sale of the Product by or on behalf of XOMA in the Retained Territory, it shall not, itself or through one or more Affiliates or Third Parties, sell, offer for sale, distribute, promote or market any Competing Product (x) for use in any indication in the Licensed Territory, (y) for use in any indication in the Retained Territory if XOMA exercises the Cardiometabolic Indications Option, or (z) for use in any indication, other than Cardiometabolic Indications, in the Retained Territory, in the event of expiration of the Cardiometabolic Indications Option without exercise by XOMA.

(d) Sections 7.3(b) and 7.3(c) shall survive termination of this Agreement as follows:

(i) Upon early termination of this Agreement by Servier under Section 11.2 (whether in its entirety or in a given country or region) or by XOMA under Section 11.4 , Section 7.3(c) shall survive (in the terminated country/region(s) or, if the Agreement is terminated in its entirety, in the Licensed Territory and Retained Territory) until the earlier of (A) [*] years following the First Commercial Sale of the Product in the Retained Territory by or on behalf of XOMA, or (B) [*] years following the effective date of such termination. However, in the event of such termination, XOMA's obligations under Section 7.3(b) shall terminate in the terminated country/region(s) or in the Licensed Territory in its entirety, as applicable.

(ii) Upon termination of this Agreement by Servier under Section 11.3, Servier's obligations under Sections 7.3(c) and XOMA's obligations under Section 7.3(b) shall terminate in the terminated region(s) or in the Licensed Territory and Retained Territory in their entirety, as applicable.

(iii) Upon termination of this Agreement by Servier under Section 11.4, XOMA's obligations under Section 7.3(b) shall survive until the earlier of (A) [*] years following the First Commercial Sale of the Product in the Licensed Territory, or (B) [*] years following the effective date of termination; and Servier's obligations under Section 7.3(c) shall terminate.

(iv) Upon termination of this Agreement by XOMA under Section 11.5, Servier's obligations under Section 7.3(c) shall survive in the terminated jurisdiction(s) until the earlier of (A) [*] years following the First Commercial Sale of the Product by or on behalf of XOMA in the Retained Territory, or (B) [*] years following the effective date of termination; and Section 7.3(b) shall terminate in the terminated jurisdiction(s).

7.4 **No Implied Licenses**. Except as explicitly set forth in this Agreement, neither Party shall be deemed by estoppel or implication to have granted the other Party any license or other right to any intellectual property of such Party.

8. PAYMENTS

8.1 **Notification, Payment and Invoicing**. Any and all amounts payable by a Party to the other Party under this Agreement shall be invoiced as follows:

- by XOMA to LES LABORATOIRES SERVIER, 22 rue Garnier, 92200 Neuilly sur Seine, France, VAT FR08085480796, to the attention of [*].
- by Servier to XOMA Ireland Limited, 26 Upper Pembroke Street, Dublin 2, Ireland, VAT IE 6327875R, to the attention of [*].

Unless otherwise indicated below, payment shall be made within [*] days of receipt of the corresponding invoice. Each Party shall inform the other Party promptly and no later than within [*] days of the occurrence of an event triggering a payment obligation on the informing Party.

8.2 **Upfront Payment.** Servier has paid to XOMA a one-time, non-refundable and non-creditable upfront cash payment of Fifteen Million Dollars ($15,000,000).

8.3 **Cash Advance to XOMA**. Servier has provided to XOMA an advance of funds in the total amount of fifteen million euro (€15,000,000), in accordance with a separate loan agreement entered into by and between the Parties contemporaneous with the Original Agreement (the "**Loan Agreement**").

8.4 **Phase 3 Initiation Milestone.** Regardless of whether XOMA has at such time exercised the Cardiometabolic Indications Option, Servier shall make a one-time, non-refundable and non-creditable milestone payment to XOMA of Twenty Million Dollars ($20,000,000) within [*] days after the Initiation of the first Phase 3 Clinical Trial for the Product by or on behalf of Servier in and for the Licensed Territory in Type 2 diabetes and receipt of the corresponding invoice.

8.5 **XOMA Payments on Option Exercise**. XOMA shall be obligated to make the applicable following payments to Servier upon exercise of the Cardiometabolic Indications Option:

	Early Option Exercise	**Late Option Exercise**
Option Exercise amount for patent and know-how access	$[*]	$[*]
Reimbursement of CMC Costs Incurred Prior to Exercise for CMC Activities for Cardiometabolic Indications – Percent of Total Costs Incurred	[*]%	[*]%
Reimbursement of Development Costs Incurred Prior to Exercise for Clinical Studies for Cardiometabolic Indications – Percent of Total Costs Incurred	[*]%	[*]%

XOMA shall pay the Option Exercise amount for patent and know-how access within [*] days of exercise of the option and receipt of the corresponding invoice. Subject to Article 3, as of the date of exercise of the option, XOMA shall be obligated to reimburse Servier for XOMA's share (as determined above) of the CMC Costs and Development Costs incurred by Servier prior to the option exercise date (the "**Reimbursable Costs**") in accordance with the following schedule: (A) for the Early Option Exercise, during the period from the date of option exercise until the [*] anniversary of such date, no payments would be owed, but commencing with the first calendar [*] after the [*] anniversary, and for the [*] calendar [*] thereafter, XOMA would be obligated to pay [*] of the total Reimbursable Costs within [*] days following the end of such calendar [*] and receipt of the corresponding invoice; and (B) for the Late Option Exercise, during the period from the date of option exercise until the [*] month anniversary of such date, no payments would be owed, but commencing with the first calendar [*] after such [*] month anniversary, and for the [*] calendar [*] thereafter, XOMA would be obligated to pay [*] of the total Reimbursable Costs within [*] days following the end of such calendar [*] and receipt of the corresponding invoice. Following exercise of the option, the ongoing CMC Costs and Development Costs for the Cardiometabolic Indications shall be handled as provided in Article 3.

8.6 Milestone Payments if XOMA Exercises the Cardiometabolic Indications Option

(a) General. If XOMA exercises the Cardiometabolic Indications Option, Servier shall make one-time, non-refundable and non-creditable milestone payments to XOMA within [*] days after the achievement of each applicable milestone event by Servier or its Affiliates or sublicensees as provided below and receipt of the corresponding invoice.

(b) Development and Regulatory Milestones for Major Cardiometabolic Indications. The following milestone payments shall be payable to XOMA for one or more Products to achieve the following milestone events:

Milestone Event	Milestone Payment
Initiation of the first Phase 3 Clinical Trial for each of the first [*] Major Cardiometabolic Indications other than Type 2 diabetes	€[*]
Acceptance for filing of MAA by EMA for each of the first [*] Major Cardiometabolic Indications	€[*]
Regulatory Approval by EMA (centralized) for each of the first [*] Major Cardiometabolic Indications	€[*]

For clarity, the maximum total amount payable under this Section 8.6(b) if all milestones are achieved would be €[*]. Whether a Cardiometabolic Indication is a Major Cardiometabolic Indication shall be determined by Servier in good faith, in consultation with XOMA. To the extent XOMA disagrees, in good faith, with any determination by Servier that an indication is not a Major Cardiometabolic Indication, the Parties shall attempt to resolve such dispute by good-faith negotiations between the Executive Officers and if not resolved within [*] days after notice of XOMA's disagreement, Servier shall have the final say and shall not be required to pay the foregoing milestones with respect to such Cardiometabolic Indication. Rather, in such a case, Servier shall be required to pay milestones as provided under Section 8.6(c) below, up to the limits provided in such section; it being understood that the maximum number of Cardiometabolic Indications for which Servier would owe milestones under this Section 8.6(b) and Section 8.6(c), in the aggregate, is [*]. Further, if Net Sales of the Product for such Cardiometabolic Indication in the Licensed Territory achieve at least [*] euros (€[*]) during any annual period starting on October 1st, then Servier shall so notify XOMA and the amounts set forth above (i.e., an aggregate of [*] euros (€[*])) minus such amounts as were previously paid to XOMA pursuant to Section 8.6(c), if any, shall thereafter be due and owing within [*] days of receipt of invoice from XOMA.

(c) Development and Regulatory Milestones for Non-Major Cardiometabolic Indications. Servier shall pay the following milestone payments to XOMA for one or more Products, for each of the first [*] Indications in the Cardiometabolic Field which are not determined to be Major Cardiometabolic Indications, to achieve the designated milestone event within [*] days of the achievement of each such milestone event and receipt of the corresponding invoice:

Milestone Event	Milestone Payment
Acceptance for filing of MAA by EMA	€[*]
Regulatory Approval by EMA	€[*]

(d) Sales Milestones. Servier shall make the following one-time, non-refundable and non-creditable sales milestone payments to XOMA when the aggregate Net Sales of all Products in the Licensed Territory first reach the thresholds specified below in any [*]-month period. Such payments shall be made no later than [*] days after the end of the period in which each such sales milestone event is achieved and receipt of the corresponding invoice.

Threshold for Aggregate Net Sales in the Licensed Territory	Milestone Payment
€[*]	€[*]
€[*]	€[*]
€[*]	€[*]
€[*]	€[*]
€[*]	€[*]

To the extent more than one sales threshold is reached in any given [*]-month period, then the applicable milestone payment for each such achievement shall be due and owing with respect to such period. If during the Pre-Exercise Period any sales milestone becomes due in accordance with this Section 8.6(d), such amount shall be due and owing. If following the Pre-Exercise Period, however, the Cardiometabolic Indications Option is not exercised, the Net Sales milestones then due and owing thereafter are only those set forth below under Section 8.8(d) and not those listed above; provided that any amounts paid as of such time under the above schedule shall be credited against the first Net Sales milestone owed under Section 8.8(d). For example, should the payment of €[*] have been paid, and XOMA does not exercise the Cardiometabolic Indications Option, and subsequently Servier achieves worldwide Net Sales of $[*], the payment owed would be $[*] minus €[*].

8.7 Regulatory Milestones for Remaining Field Indications. Irrespective of whether XOMA exercises the Cardiometabolic Indications Option, Servier shall pay the following milestone payments to XOMA, within [*] days of the achievement of the applicable milestone event and receipt of the corresponding invoice, for one or more Products to achieve the following milestones for each of the first [*] Indications in the Remaining Field, other than Behçet's Uveitis and Non Infectious Uveitis, to achieve the designated milestone event:

Milestone Event	Milestone Payment
Acceptance for filing of MAA by EMA	€[*]
Regulatory Approval by EMA	€[*]

No development or regulatory milestone payments will be due for Behçet's Uveitis or Non Infectious Uveitis. For clarity, the maximum total amount payable under this Section 8.7 is €[*]. As used in this Article 8, "**Indication**" means an indication for the Product that is the subject of a separate MAA or supplemental MAA or any new indication requiring an amendment to the MAA.

8.8 Development and Regulatory Milestone Payments if XOMA Does Not Exercise the Cardiometabolic Indications Option

(a) General. If XOMA does not exercise the Cardiometabolic Indications Option, Servier shall make one-time, non-refundable and non-creditable development and regulatory milestone payments to XOMA within [*] days after the achievement of each applicable milestone event by Servier or its Affiliates or sublicensees as set forth below and receipt of the corresponding invoice.

(b) Major Cardiometabolic Indications Field. The following milestone payments shall be payable to XOMA for achievement of the following milestones by one or more Products:

Milestone Event	Milestone Payment
Initiation of the first Phase 3 Clinical Trial for each of the first [*] Major Cardiometabolic Indications other than Type 2 diabetes	€[*]
Acceptance for filing of MAA by FDA for each of the first [*] Major Cardiometabolic Indications	€[*]
Acceptance for filing of MAA by EMA for each of the first [*] Major Cardiometabolic Indications	€[*]
Filing of MAA with MHLW for each of the first [*] Major Cardiometabolic Indications	€[*]
Regulatory Approval by FDA for each of the first [*] Major Cardiometabolic Indications	€[*]
Regulatory Approval by EMA for each of the first [*] Major Cardiometabolic Indications	€[*]
Regulatory Approval by MHLW for each of the first [*] Major Cardiometabolic Indications	€[*]

For clarity, the maximum total amount payable under this Section 8.8(b) shall be €[*]. Whether a Cardiometabolic Indication is a Major Cardiometabolic Indication shall be determined by Servier in good faith, in consultation with XOMA. To the extent XOMA disagrees, in good faith, with any determination by Servier that an indication is not a Major Cardiometabolic Indication, the Parties shall attempt to resolve such dispute by good-faith negotiations between the Executive Officers and if not resolved within [*] days after notice of XOMA's disagreement, Servier shall have the final say and shall not be required to pay the foregoing milestones with respect to such Cardiometabolic Indication. Rather, in such a case, Servier shall be required to pay milestones as provided under Section 8.8(c) below, up to the limits provided in such section; it being understood that the maximum number of Cardiometabolic Indications for which Servier would owe milestones under this Section 8.8(b) and Section 8.8(c), in the aggregate, is [*]. Further, if Net Sales of the Product for such Cardiometabolic Indication in the Licensed Territory achieve at least [*] euros (€[*]) during any annual period starting on October 1st, then Servier shall so notify XOMA and the amounts set forth above (i.e., up to an aggregate of [*] euros (€[*]), depending on where such Product has been approved) minus such amounts as were previously paid to XOMA pursuant to Section 8.8(c), if any, shall thereafter be due and owing within [*] days of receipt of invoice from XOMA.

(c) Non-Major Cardiometabolic Indications. Servier shall pay the following milestone payments to XOMA for one or more Products, for each of the first [*] Indications in the Cardiometabolic Field which are not determined to be Major Cardiometabolic Indications, to achieve the designated milestone event within [*] days of the achievement of each such milestone event and receipt of the corresponding invoice:

Milestone Event	Milestone Payment
Acceptance for filing of MAA by EMA, FDA or MHLW, whichever occurs first	€[*]
Regulatory Approval by EMA, FDA or MHLW, whichever occurs first	€[*]

(d) Sales Milestones. Servier shall make the following one-time, non-refundable and non-creditable sales milestone payments to XOMA when the aggregate worldwide Net Sales of all Products first reach the thresholds specified below in any [*]-month period. Such payments shall be made no later than [*] days after the end of the period in which each such sales milestone event is achieved and receipt of the corresponding invoice.

Threshold for Aggregate Annual Worldwide Net Sales	Milestone Payment
$[*]	$[*]
$[*]	$[*]
$[*]	$[*]
$[*]	$[*]

To the extent more than one sales threshold is reached in any given year, then the applicable milestone payment for each such achievement shall be due and owing with respect to such year.

8.9 Royalty Payments.

(a) Royalties in Licensed Territory. Subject to the other applicable terms of this Section 8.9, and regardless of whether XOMA exercises the Cardiometabolic Indications Option, Servier shall pay to XOMA quarterly non-refundable, non-creditable royalties on Net Sales of Products in the Licensed Territory during such quarter, on a Product-by-Product and a country-by-country basis, as calculated by multiplying the total Net Sales of such Product in such country during such quarter by the applicable royalty rate as determined in the following royalty rate table. As used herein, "**Daily Cost of Treatment**" for a particular Product in a country means the average Net Sales per unit of the Product for such country in a specific calendar quarter (converted to Euros), divided by the number of days between each use of such Product as specified in the label for such Product in the country (e.g., per unit Net Sales divided by 30 for a Product labeled to be administered once per month).

Daily Cost of Treatment	Royalty Rate
Less than or equal to [*]	[*]%
Greater than [*] and less than or equal to [*]	[*]%
Greater than [*] and less than or equal to [*]	[*]%
Greater than [*] and less than or equal to [*]	[*]%
Greater than [*]	[*]%

In addition, Servier shall pay to XOMA (to the extent applicable) the following additional quarterly non-refundable, non-creditable royalties on Net Sales of Products in the Licensed Territory during such quarter, depending upon the Purchase Cost Ratio (as defined below) of such Product for the quarter, on a Product-by-Product and country-by-country basis, such royalties to be calculated by multiplying the applicable royalty rate set forth in the royalty rate table below by the total Net Sales of the Product in such country during such quarter. As used herein, "**Purchase Cost**" means, with respect to a particular Product for commercial sale in a particular country during a calendar quarter, the actual total amount paid by Servier to XOMA for its purchase of the amount of Bulk Drug Substance actually contained in such Product sold in such quarter (i.e., the XOMA Manufacturing Cost for such amount of Bulk Drug Substance purchased, plus [*]% of such cost). As used herein, " **Purchase Cost Ratio**" means, with respect to a particular Product for commercial sale in a particular country during a calendar quarter, the Purchase Cost for such Product divided by the average Net Sales per unit of such Product sold in the country during such quarter, expressed as a percentage.

Purchase Cost Ratio for a Product	Additional Royalty Rate
Less than [*]% but greater than or equal to [*]% of Net Sales per unit	[*]%
Less than [*]% but greater than or equal to [*]% of Net Sales per unit	[*]%
Less than [*]% of Net Sales per unit	[*]%

The Parties agree that if any factors affecting the profitability of the Product in the Licensed Territory change materially during the Term, the Parties will meet and discuss in good faith possible modifications to the royalty scheme for the Product in the Licensed Territory set forth in this Section 8.9(a) in light of such changing factors.

(b) Royalties in Retained Territory. Subject to Sections 8.9(c) and 8.9(d), if XOMA does not exercise the Cardiometabolic Indications Option, in addition to royalties under Section 8.9(a), Servier shall pay to XOMA non-refundable, non-creditable royalties on Net Sales of Products by Servier, its Affiliates and sublicensees for use in the Cardiometabolic Indications in the Retained Territory, as calculated by multiplying the applicable royalty rates set forth in the royalty rate table below by the corresponding amount of incremental Net Sales in the Retained Territory of all Products in a calendar year (the **"Total Annual Net Sales"**).

Net Sales of all Products in Retained Territory	Royalty Rate
For that portion of Total Annual Net Sales less than $[*]	[*]%
For that portion of Total Annual Net Sales greater than or equal to $[*] but less than $[*]	[*]%
For that portion of Total Annual Net Sales greater than or equal to $[*] but less than $[*]	[*]%
For that portion of Total Annual Net Sales greater than or equal to $[*] but less than $[*]	[*]%
For that portion of Total Annual Net Sales equal to or greater than $[*]	[*]%

(c) Royalty Term. Royalties under this Section 8.9 with respect to a particular Product and country will be payable for so long as such Product is sold in such country.

(d) Royalty Adjustments.

(i) Third Party Royalty Offset. If, after the Effective Date, Servier or its sublicensee or designee: (A) is required, as agreed by the Parties in good faith, or absent such agreement, in the reasonable opinion of an independent expert selected by the Parties, to obtain a license from any Third Party under patent rights controlled by such Third Party in order to make, have made, use, sell, offer for sale or import a Licensed Antibody and/or a Product in any country, and pursuant to such license is required to pay a royalty or a lump sum payment to the Third Party based on sales of the Product containing such Licensed Antibody in such country, or (B) is required by any court of competent jurisdiction, due to infringement of patent rights controlled by such Third Party in any country(ies), to pay such a royalty to such a Third Party based on sales of such Product in such country(ies), then Servier may deduct from the milestones payments or royalties that would otherwise be due to XOMA on Net Sales resulting from the sales of such Product in such country in a calendar quarter the amount paid by Servier to such Third Party with respect to the sale of such Product for such country during such calendar quarter; provided that in no event shall the operation of this Section 8.9(d)(i) reduce the royalties or milestones payment due to XOMA for any Product below [*] percent ([*]%) of the amount that otherwise would have become due under this Agreement for such country.

(ii) Biosimilar Competition. On a country by country basis, following expiration of all XOMA Patents and Servier Collaboration Patents claiming a particular Product and the first commercial sale of a Biosimilar Product to such Product in such country, if, during any calendar quarter, the unit volume of sales of all such Biosimilar Product(s) in such country during such quarter are more than [*] percent ([*]%) of the total unit volume of sales of (i) all such Biosimilar Products plus (ii) such Product's unit volume of sales in such country, then the royalty rates under Section 8.9(a) or (b), as applicable, shall be reduced by [*] percent ([*]%) in any given calendar quarter with respect to the sales such Product in such country.

(e) Royalty Reports and Payments. Within [*] days following the end of each calendar [*] following the First Commercial Sale of a Product by Servier or its Affiliate or sublicensee anywhere in the Licensed Territory or Retained Territory, Servier shall provide XOMA with a report containing the following information for the applicable calendar quarter, on a Product-by-Product basis: (i) gross sales and Net Sales of Product consolidated in Euros, (ii) a calculation of the royalty payment due on such sales, including a calculation of the Purchase Cost used in the determination of such royalty, (iii) an accounting of the number of units and prices for the Product sold, grouped by the Daily Cost of Treatment in the countries in the Licensed Territory, (iv) the adjustment, if any, made in accordance with the terms of Section 8.9(d), as well as any other details reasonably requested by XOMA.

8.10 Payment Method. All payments due under this Agreement to XOMA shall be made by bank wire transfer in immediately available funds to an account designated by XOMA. All royalty payments arising from Net Sales in the Licensed Territory shall be made in Euros. All other payments, including any royalties arising from sales in the Retained Territory in the Cardiometabolic Indications, shall be made either in Dollars or in Euros as indicated in the corresponding section of this Agreement or as agreed by the Parties.

8.11 Late Payment. If either Party fails to make any payment due to the other Party under this Agreement, then interest shall accrue on a daily basis at the rate equal to one month LIBOR (for payment in Dollars) or EURIBOR (for payments in Euros) plus [*] basis points per annum, or at the maximum rate permitted by applicable Law, whichever is the lower.

8.12 Foreign Exchange. Conversion of sales recorded in local currencies to Euros shall be performed in a manner consistent with Servier's normal practices used to prepare its audited financial statements for internal and external reporting purposes, which uses a widely accepted source of published exchange rates.

8.13 Records; Inspection. Servier shall, and shall ensure that its Affiliates and sublicensee(s) will, keep complete, true and accurate books of account and records for the purpose of determining the payments to be made under this Agreement. Such books and records shall be kept for at least [*] years following the end of the calendar year to which they pertain. Such records shall be open for inspection during such period by independent accountants, solely for the purpose of verifying payment statements hereunder. Such inspections shall be made no more than [*] each calendar year, on reasonable notice during normal business hours. Any unpaid amounts (plus interest as set forth in Section 8.11) that are discovered shall be paid promptly by Servier. Inspections conducted under this Section 8.13) shall be at the expense of XOMA, unless the inspection discloses an underpayment by Servier of [*] percent ([*]%) or more of the amount due for any period covered by the inspection, whereupon all costs relating to the inspection for such period shall be paid promptly by Servier.

8.14 Taxes.

(a) Taxes on Income. Each Party shall be solely responsible for the payment of all taxes imposed on its share of income arising directly or indirectly from the efforts of the Parties under this Agreement.

(b) Tax Cooperation. The Parties agree to cooperate with one another and use reasonable efforts to reduce or eliminate tax withholding or similar obligations in respect of royalties, milestone payments, and other payments made by Servier to XOMA under this Agreement. Servier agrees that under current bilateral income tax Treaty between France and Ireland, payments made by Servier to XOMA under this Agreement are not subject to withholding tax in France. To the extent Servier is required to deduct and withhold taxes on any payment to XOMA, Servier shall pay the amounts of such taxes to the proper Governmental Authority in a timely manner and promptly transmit to XOMA an official tax certificate or other evidence of such withholding sufficient to enable XOMA to claim such payment of taxes. XOMA shall provide Servier, who shall complete any required portions of, any tax forms that may be reasonably necessary in order for Servier not to withhold tax or to withhold tax at a reduced rate under an applicable bilateral income tax treaty, including Forms 5000-EN and 5003-EN. Each Party shall provide the other with reasonable assistance to enable the recovery, as permitted by applicable Laws, of withholding taxes, value added taxes, or similar obligations resulting from payments made under this Agreement, such recovery to be for the benefit of the Party bearing such withholding tax or value added tax. Servier shall require its sublicensees to cooperate with XOMA in a manner consistent with this Section 8.14(b).

(c) Taxes Resulting From Servier Action. If Servier is required to make a payment to XOMA that is subject to a deduction or withholding of tax, then (i) if such withholding or deduction obligation arises as a result of any action by Servier, including any assignment or sublicense, or any failure on the part of Servier or its Affiliate to comply with applicable Laws or filing or record retention requirements, that has the effect of modifying the tax treatment of the Parties hereto (a "**Servier Withholding Tax Action**"), then the sum payable by Servier (in respect of which such deduction or withholding is required to be made) shall be increased to the extent necessary to ensure that XOMA receives a sum equal to the sum that it would have received had no such Servier Withholding Tax Action occurred, and (ii) otherwise, the sum payable by Servier (in respect of which such deduction or withholding is required to be made) shall be made to XOMA after deduction of the amount required to be so deducted or withheld, which deducted or withheld amount shall be remitted to the proper Governmental Authority in accordance with applicable Laws.

(d) Other Taxes. Each Party shall be solely responsible for the payment of Value Added Tax, custom duties, registration duties, transfer taxes, stamp duties and any other taxes or duties imposed to it in relation with the payments made under this Agreement.

(e) XOMA Obligations. The provisions of subsections (b) and (c) above shall apply *mutatis mutandis* to XOMA where XOMA is the paying Party.

9. INTELLECTUAL PROPERTY

9.1 Ownership of Inventions. Each Party shall own all inventions, whether or not patentable, made solely by its or its Affiliates' own employees, agents, or independent contractors in the course of conducting its or its Affiliates' activities under this Agreement, together with all intellectual property rights therein (" **Sole Inventions**"). The Parties shall jointly and equally own any inventions, whether or not patentable, that are made jointly by employees, agents, or independent contractors of each Party or its Affiliates in the course of conducting its or its Affiliates' activities under this Agreement, together with all intellectual property rights therein (" **Joint Inventions**"). Inventorship shall be determined in accordance with U.S. patent laws. All Patents claiming patentable Sole Inventions (but not Joint Inventions) shall be referred to herein as "**Sole Invention Patents**". All Patents claiming patentable, jointly owned Joint Inventions shall be referred to herein as "**Joint Invention Patents**". Except to the extent either Party is restricted by the licenses granted to the other Party or its Affiliates under this Agreement, each Party and its Affiliates shall be entitled to practice and exploit the Joint Inventions and the Joint Invention Patents without the duty of accounting or seeking consent from the other Party.

9.2 Disclosure. Each Party shall promptly disclose to the other Party all Sole Inventions and Joint Inventions, including any invention disclosures or other similar documents, submitted to it by its or its Affiliates' employees, agents or independent contractors describing inventions that are either Sole Inventions or Joint Inventions, and all Information relating to such inventions to the extent necessary for the preparation, filing and prosecution of any Patent with respect to such invention. Upon the disclosure of a Joint Invention or Sole Invention pursuant to this Section 9.2, the Parties shall promptly discuss such Joint Invention or Sole Invention and (a) confirm its status as either a Joint Invention or a Sole Invention in light of the ownership principles set forth in Section 9.1 and (b) determine whether to file a patent application claiming such Joint Invention or Sole Invention; provided that the Party owning such Sole Invention shall nonetheless have the right to file for such patent application.

9.3 Patent Prosecution.

(a) Budget. With respect to the second and third calendar quarters of the Term, each Party has provided to the other Party, and within [*] days after the beginning of each calendar quarter thereafter, each Party shall provide to the other Party, a reasonably detailed budget setting forth its estimated costs and expenses for the subsequent six (6)-month period for the preparation, filing, prosecution and maintenance of all Patents whose costs and expenses such other Party is (or may be) responsible for under this Section 9.3. At either Party's request, the Parties shall promptly discuss such budget(s), and the providing Party shall provide any additional Information as the other Party may reasonably request.

(b) XOMA Patents and Joint Invention Patents.

(i) Licensed Territory. Except as otherwise provided in this Section 9.3(b)(i), XOMA shall be solely responsible for the preparation, filing, prosecution and maintenance of the XOMA Patents in its own name, and Joint Invention Patents in the name of Servier and XOMA, in the Licensed Territory, using patent counsel reasonably acceptable to Servier. The Parties shall discuss and confer with respect to the overall patent strategy with respect to the XOMA Patents and any Joint Invention Patents in the Licensed Territory. XOMA shall keep Servier advised of the status of all communications and actual and prospective filings and submissions regarding the XOMA Patents and Joint Invention Patents in the Licensed Territory, and shall give Servier a reasonable opportunity (but in no event less than ten (10) business days) to review and comment on any such communications, filings, filing date and submissions proposed to be sent to any patent office. XOMA shall incorporate all reasonable comments of Servier before making any substantive filing or submission related to the XOMA Patents or Joint Invention Patents in the Licensed Territory, provided that such comments are obtained at least [*] business days prior to the deadline for filing. If XOMA no longer wishes to maintain or prosecute any XOMA Patent or Joint Invention Patent in the Licensed Territory, then XOMA shall give reasonable notice to Servier, and thereafter, Servier may, upon written notice to XOMA, prosecute and maintain such XOMA Patent or Joint Invention Patent in its own name, and XOMA shall execute all required documents in order to assign to Servier such XOMA Patent or XOMA's interest in such Joint Invention Patent, at XOMA's expense. Servier shall be solely responsible for all costs and expenses incurred by XOMA or its Affiliates after the Effective Date and associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of the XOMA Patents and Joint Invention Patents in the Licensed Territory. Notwithstanding the foregoing, if Servier no longer desires to retain its license under any XOMA Patent or Joint Invention Patent in the Licensed Territory, and desires to cease payment of the costs of prosecution and maintenance thereof, it shall have the right to terminate such license to such Patent, and terminate reimbursement to XOMA of such costs, upon [*] days written notice; provided that with respect to any such Joint Invention Patent, Servier shall execute all required documents in order to assign to XOMA Servier's interest in such Joint Invention Patent, at Servier's expense.

(ii) Retained Territory.

(1) XOMA shall have the sole authority and control over the preparation, filing, prosecution and maintenance of the XOMA Patents in its own name, and Joint Invention Patents in the name of XOMA and Servier, in the Retained Territory, at XOMA's sole cost and expense, provided that XOMA shall update Servier from time to time on the status of such Patent prosecution and maintenance efforts; provided, however, that if the Cardiometabolic Indications Option expires without exercise thereof by XOMA, Section 9.3(b)(ii)(2) below shall apply to the XOMA Patents and Joint Invention Patents in the Retained Territory, and not this Section 9.3(b)(ii)(1).

(2) After expiration of the Cardiometabolic Indications Option without exercise thereof by XOMA, except as otherwise provided in this Section 9.3(b)(ii)(2), XOMA shall be solely responsible for the preparation, filing, prosecution and maintenance of the XOMA Patents and Joint Invention Patents in the Retained Territory, using patent counsel reasonably acceptable to Servier. The Parties (including any sublicensee of Servier) shall discuss and confer with respect to the overall patent strategy with respect to the XOMA Patents and any Joint Invention Patents in the Retained Territory. XOMA shall keep Servier advised of the status of all communications and actual and prospective filings and submissions regarding such XOMA Patents and Joint Invention Patents in the Retained Territory, and shall give Servier a reasonable opportunity (but in no event less than [*] business days) to review and comment on any such communications, filings and submissions proposed to be sent to any patent office. With respect to those XOMA Patents and Joint Invention Patents in the Retained Territory that are relevant to the Cardiometabolic Field (e.g., that claim the use of the Licensed Antibody to treat a Cardiometabolic Indication) (the "**XOMA Retained Territory Cardiometabolic Patents**"), XOMA shall incorporate all reasonable comments of Servier before making any substantive filing or submission related to such Patents, provided that such comments are obtained at least [*] business days prior to the deadline for filing. For all other XOMA Patents and Joint Invention Patents in the Retained Territory, XOMA shall consider Servier's comments in good faith. If XOMA no longer wishes to maintain or prosecute any XOMA Patent or Joint Invention Patent in the Retained Territory, then XOMA shall give reasonable notice to Servier, and thereafter, Servier may, upon written notice to XOMA, prosecute and maintain such XOMA Patent or Joint Invention Patent in its own name and at its sole expense, and XOMA shall execute all required documents in order to assign to Servier such XOMA Patent or XOMA's interest in such Joint Invention Patent, at XOMA's expense. Servier shall be responsible for [*]% of all costs and expenses incurred by XOMA or its Affiliates after the expiration of the Cardiometabolic Indications Option, associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of the XOMA Retained Territory Cardiometabolic Patents, and XOMA shall be responsible for [*]% of such costs and expenses. XOMA shall be solely responsible for all costs and expenses incurred by XOMA or its Affiliates associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all XOMA Patents and Joint Invention Patents in the Retained Territory that are not XOMA Retained Territory Cardiometabolic Patents.

(c) Servier Patents.

(i) Licensed Territory. Servier shall have sole authority and control over the preparation, filing, prosecution and maintenance of the Servier Patents in the Licensed Territory, at Servier's sole cost and expense, provided that Servier shall update XOMA from time to time on the status of such Patent prosecution and maintenance efforts in the Licensed Territory.

(ii) Retained Territory. Except as otherwise provided in this Section 9.3(c)(ii), Servier shall be solely responsible for the preparation, filing, prosecution and maintenance of the Servier Patents in the Retained Territory, using patent counsel reasonably acceptable to XOMA. The Parties (including any sublicensee of Servier) shall discuss and confer with respect to the overall patent strategy with respect to the Servier Patents in the Retained Territory. Servier shall keep XOMA advised of the status of all communications and actual and prospective filings and submissions regarding the Servier Patents, and shall give XOMA a reasonable opportunity (but in no event less than ten (10) business days) to review and comment on any such communications, filings and submissions proposed to be sent to any patent office. Servier shall incorporate all reasonable comments of XOMA before making any substantive filing or submission related to the Servier Patents in the Retained Territory, provided that such comments are obtained at least [*] business days prior to the deadline for filing. If Servier no longer wishes to maintain or prosecute any Servier Patent in the Retained Territory, then Servier shall give reasonable notice to XOMA, and thereafter, XOMA may, upon written notice to Servier, prosecute and maintain such Patent in its own name, and Servier shall execute all required documents in order to assign to XOMA such Patent, at Servier's expense. XOMA shall be solely responsible for all costs and expenses incurred by Servier or its Affiliates associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of the Servier Patents in the Retained Territory. Notwithstanding the foregoing, if the Cardiometabolic Indications Option expires without exercise thereof by XOMA, then (A) for those Servier Patents in the Retained Territory that are relevant to the Remaining Field (e.g., that claim the use of the Licensed Antibody to treat a Remaining Field Indication) (the "**Servier Retained Territory Remaining Field Patents**"), XOMA shall be responsible for [*]% of all costs and expenses incurred by Servier or its Affiliates after the expiration of the Cardiometabolic Indications Option, associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of the Servier Retained Territory Remaining Field Patents, and Servier shall be responsible for [*]% of such costs and expenses, and (B) for all other Servier Patents in the Retained Territory, Servier shall be solely responsible for all costs and expenses incurred by Servier or its Affiliates after the expiration of the Cardiometabolic Indications Option, associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of such Patents, and Servier shall not be obligated to incorporate all reasonable comments of XOMA with respect thereto, but shall consider XOMA's comments in good faith.

(d) Patent Term Extension. XOMA and Servier shall cooperate with each other and shall use Diligent Efforts in obtaining patent term extension (including any pediatric exclusivity extensions as may be available) or supplemental protection certificates or their equivalents in any country.

(e) Data Exclusivity. With respect to data exclusivity periods (such as those periods listed in the Biologics Price Competition and Innovation Act of 2009 and the Patient Protection and Affordable Care Act, as amended, or foreign equivalents of such laws), Servier shall use Diligent Efforts consistent with its obligations under applicable Laws (including any applicable consent order) to seek, maintain and enforce all such data exclusivity periods available for the Products in the Licensed Territory and, if XOMA does not exercise the Cardiometabolic Indications Option, in the Retained Territory.

(f) Cooperation. Each Party shall provide the other Party all reasonable assistance and cooperation in the patent prosecution efforts provide above in this Section 9.3, including providing any necessary powers of attorney and executing any other required documents or instruments for such prosecution.

9.4 Enforcement of Patents.

(a) Notification and Dispute Resolution. If either Party becomes aware of any existing or threatened infringement of any XOMA Patents, Joint Invention Patents or Servier Patents, which infringing activity involves the manufacture, use, import, offer for sale or sale of any Product in the Licensed Territory or the Retained Territory (a "**Product Infringement**"), it shall promptly notify the other Party in writing to that effect, and the Parties will consult with each other regarding any actions to be taken with respect to such Product Infringement. The Parties (including any sublicensee of Servier) shall discuss and confer with respect to the overall strategy with respect to any Patent litigation strategy under this section 9.4 with respect to a XOMA Patent or Joint Invention Patent in the Licensed Territory (and Retained Territory, with respect to the Cardiometabolic Field in the event of failure by XOMA to exercise the Cardiometabolic Indications Option), or Servier Patents, except with respect to those Servier Patents listed under section 9.3(c)(ii)(B) in the event of failure by XOMA to exercise the Cardiometabolic Indications Option, or Joint Invention Patent in the Retained Territory; any disputes arising with respect to such strategy or litigation tactics shall be submitted for resolution to an independent patent counsel approved by both Parties for resolution, pursuant to an expedited procedure, so as not to prejudice the proposing Party's response or action.

(b) XOMA Patents and Joint Invention Patents.

(i) Licensed Territory. XOMA shall have the first right, but shall not be obligated, to bring an infringement action against any person or entity engaged in a Product Infringement of the XOMA Patents and Joint Invention Patents in the Licensed Territory, at XOMA's cost and expense. If XOMA does not desire to bring such an action or to continue to pursue such action with respect to any such Patent (or to settle or otherwise secure the abatement of such Product Infringement), it shall so notify Servier prior to the earlier of: (A) [*] days following XOMA's receipt or delivery of the notice under Section 9.4(a), or (B) [*] days before the deadline, if any, set forth in the applicable Laws for the filing of such actions, in which event Servier shall have the right to bring and control any such action, at its own expense and by counsel of its own choice. In addition, to the extent XOMA does not so notify Servier within a reasonable time to allow Servier to bring such action, XOMA shall bring such action on behalf of, under the direction of, and at the expense of, Servier.

(ii) Retained Territory. XOMA shall have the first right, but shall not be obligated, to bring an infringement action against any person or entity engaged in a Product Infringement of the XOMA Patents and Joint Invention Patents in the Retained Territory, at XOMA's cost and expense. If the Cardiometabolic Indications Option expires without XOMA's exercise thereof, and if XOMA does not desire to bring such an action or to continue to pursue such action with respect to any such Patent (or to settle or otherwise secure the abatement of such Product Infringement), it shall so notify Servier prior to the earlier of: (A) [*] days following XOMA's receipt or delivery of the notice under Section 9.4(a), or (B) [*] days before the deadline, if any, set forth in the applicable Laws for the filing of such actions, in which event, Servier shall have the right to bring and control any such action, at its own expense and by counsel of its own choice. In addition, to the extent XOMA does not so notify Servier within a reasonable time to allow Servier to bring such action, XOMA shall bring such action on behalf of, under the direction of, and at the expense of, Servier.

(c) Servier Patents. Servier shall have the first right, but shall not be obligated, to bring an infringement action against any person or entity engaged in any infringement of the Servier Patents in the Licensed Territory or the Retained Territory, at Servier's cost and expense. If Servier does not desire to bring such an action or to continue to pursue such action with respect to any such Patent in the Retained Territory (or to settle or otherwise secure the abatement of such Product Infringement) it shall so notify XOMA prior to the earlier of: (i) [*] days following Servier's receipt or delivery of the notice under Section 9.4(a), or (ii) [*] days before the deadline, if any, set forth in the applicable Laws for the filing of such actions, in which event XOMA shall have the right to bring and control any such action, at its own expense and by counsel of its own choice. In addition, to the extent Servier does not so notify XOMA within a reasonable time to allow XOMA to bring such action, Servier shall bring such action on behalf of, under the direction of, and at the expense of, XOMA.

(d) Cooperation. Each Party shall provide to the enforcing Party under this Section 9.4 reasonable assistance in such enforcement, at such enforcing Party's request and expense, including joining such action as a party plaintiff if required by applicable Laws to pursue such action. The enforcing Party shall keep the other Party regularly informed of the status and progress of such enforcement efforts and shall reasonably consider the other Party's comments on any such efforts, subject to Section 9.4(a). To the extent that the non-enforcing Party owns or controls the Patent being enforced, it shall be entitled to separate representation in such matter by counsel of its own choice and at its own expense, but such Party shall at all times cooperate fully with the enforcing Party. Neither Party shall have the right to settle any patent infringement litigation under this Section 9.4 without the prior written consent of such other Party, such consent not to be unreasonably withheld or delayed.

(e) Expenses and Recoveries. The enforcing Party bringing a claim, suit or action under Section 9.4(b) or 9.4(c) shall be solely responsible for any expenses incurred by such Party as a result of such claim, suit or action. If such Party recovers monetary damages in such claim, suit or action, such recovery shall be allocated first to the reimbursement of any expenses incurred by the Parties in such litigation (including, for this purpose, a reasonable allocation of expenses of internal counsel), and any remaining amounts shall be allocated as follows: (i) in the case of any recovery for a Product Infringement of a XOMA Patent or Joint Invention Patent in the Licensed Territory, [*] percent ([*]%) to Servier and [*] percent ([*]%) to XOMA, (ii) in the case of any recovery for a Product Infringement of a XOMA Patent or Joint Invention Patent in the Retained Territory, one hundred percent (100%) retained by XOMA, but, where XOMA does not exercise the Cardiometabolic Indications Option, and such recovery relates to a Product Infringement in the Cardiometabolic Field, [*] percent ([*]%) to Servier and [*] percent ([*]%) to XOMA, (iii) in the case of any recovery for a Product Infringement of a Servier Patent in the Licensed Territory, one hundred percent (100%) retained by Servier, and (iv) in the case of any recovery for a Product Infringement of a Servier Patent in the Retained Territory, [*] percent ([*]%) to XOMA and [*] percent ([*]%) to Servier or, where XOMA does not exercise the Cardiometabolic Indications Option, and such recovery relates to a Product Infringement in the Cardiometabolic Field, one hundred percent (100%) to Servier.

9.5 Patent Oppositions and Other Proceedings.

(a) If a XOMA Patent or Joint Invention Patent in the Licensed Territory becomes the subject of any proceeding commenced by a Third Party in connection with an opposition, action for declaratory judgment, nullity action, interference or other attack upon the validity, title or enforceability thereof, then XOMA shall have the first right, but not the obligation, to control such defense at its own expense using counsel of its own choice. If XOMA decides that it does not wish to defend against such action, it shall notify Servier reasonably in advance of all applicable deadlines, and Servier shall thereafter have the right, but not the obligation, to assume defense of such action at its own expense.

(b) If a XOMA Patent or Joint Invention Patent in the Retained Territory becomes the subject of any proceeding commenced by a Third Party in connection with an opposition, action for declaratory judgment, nullity action, interference or other attack upon the validity, title or enforceability thereof, then XOMA shall have the first right, but not the obligation, to control such defense at its own expense using counsel of its own choice. If XOMA decides that it does not wish to defend against such action with respect to a Joint Invention Patent, it shall notify Servier reasonably in advance of all applicable deadlines, and Servier shall thereafter have the right, but not the obligation, to assume defense of such action with respect to such Patent at its own expense. If the Cardiometabolic Indication Option expires without exercise by XOMA, and if XOMA decides that it does not wish to defend against such action with respect to a XOMA Patent that is a XOMA Retained Territory Cardiometabolic Patent, it shall notify Servier reasonably in advance of all applicable deadlines, and Servier shall thereafter have the right, but not the obligation, to assume defense of such action with respect to such Patent at its own expense.

(c) If a Servier Patent becomes the subject of any proceeding commenced by a Third Party in connection with an opposition, action for declaratory judgment, nullity action, interference or other attack upon the validity, title or enforceability thereof, then Servier shall have the first right, but not the obligation, to control such defense at its own expense using counsel of its own choice. If Servier decides that it does not wish to defend against such action with respect to a Servier Patent in the Retained Territory, it shall notify XOMA reasonably in advance of all applicable deadlines, and XOMA shall thereafter have the right, but not the obligation, to assume defense of such action at its own expense.

(d) The Party controlling any defense under this Section 9.5 (other than XOMA under Section 9.5(b) in the Retained Territory, or Servier under Section 9.5(c) in the Licensed Territory) shall permit the non-controlling Party to participate in the proceedings to the extent permissible under applicable Laws and to be represented by its own counsel at the non-controlling Party's expense. Notwithstanding any of the foregoing, the Party controlling any infringement action pursuant to Section 9.4 shall also have the sole right to control the response to any attack on the validity, title, or enforceability of a Patent that is asserted by the alleged infringer(s) as a counterclaim or affirmative defense in such action, subject to Section 9.6. Neither Party shall have the right to settle any proceeding under this Section 9.5 with respect to any XOMA Patent or Joint Invention Patent without the prior written consent of such other Party, such consent not to be unreasonably withheld or delayed.

(e) The Parties (including any sublicensee of Servier) shall discuss and confer with respect to the overall strategy with respect to any Patent litigation strategy under this Section 9. 5 with respect to a XOMA Patent or Joint Invention Patent in the Licensed Territory (and Retained Territory, with respect to the Cardiometabolic Field in the event of failure by XOMA to exercise the Cardiometabolic Indications Option), or Servier Patents or Joint Invention Patent in the Retained Territory; any disputes arising with respect to such strategy or litigation tactics shall be submitted for resolution to an independent patent counsel approved by both Parties for resolution, pursuant to an expedited procedure, so as not to prejudice the proposing Party's response or action.

9.6 Patents Licensed From Third Parties. Each Party's rights under this Article 9 with respect to the prosecution, maintenance and enforcement of any XOMA Background Patent that is licensed by XOMA or its Affiliates from a Third Party or any New Servier Patent that is licensed by Servier or its Affiliates from a Third Party, shall be subject to the rights of such Third Party to prosecute, maintain and enforce such Patent.

9.7 Patent Marking. Servier and its Affiliates and sublicensees shall mark Products marketed and sold by Servier or its Affiliates or sublicensee hereunder with appropriate patent numbers or indices, where required by applicable Laws; provided, however, that Servier shall only be required to so mark such Product to the extent such markings or such notices would affect recoveries of damages or equitable remedies available under applicable Laws with respect to infringements of patents in the applicable jurisdiction.

9.8 Infringement of Third Party Rights. If any Product used or sold by Servier or its Affiliates or sublicensees becomes the subject of a Third Party's claim or assertion of infringement of such Third Party's intellectual property rights in any jurisdiction, Servier shall promptly notify XOMA, and the Parties shall agree on and enter into a "common interest agreement" wherein the Parties agree to their shared, mutual interest in the outcome of such potential dispute, and thereafter, the Parties shall promptly meet to consider the claim or assertion and the appropriate course of action. Unless agreed otherwise by the Parties, Servier shall be solely responsible for defending itself and, except as provided in the next sentence, XOMA, against any such claim or assertion in the Licensed Territory, at its sole expense. To the extent XOMA engages separate counsel in such defense, it would be at its own cost and expense. Servier shall keep XOMA fully informed of such claim and its defense, and shall reasonably consider and seek to accommodate any timely comments of XOMA with respect thereto.

10. CONFIDENTIALITY

10.1 Confidentiality Obligations. The Parties agree that during the Term and for a period of [*] years thereafter, a Party receiving Confidential Information of the other Party shall: (a) use Diligent Efforts to maintain in confidence such Confidential Information (but not less than those efforts as such Party uses to maintain in confidence its own proprietary industrial information of similar kind and value); (b) not disclose such Confidential Information to any Third Party without prior written consent of the other Party, except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties; and (c) not use such other Party's Confidential Information for any purpose except those permitted by this Agreement or in connection with exercising such Party's or its Affiliates' rights and/or fulfilling their obligations under this Agreement or any other agreement between the Parties or their Affiliates.

10.2 Exceptions. The obligations in Section 10.1 shall not apply with respect to any portion of the other Party's Confidential Information that the receiving Party can show by competent written proof:

(a) was known to the receiving Party, other than under an obligation of confidentiality, at the time of disclosure by the disclosing Party;

(b) was generally available to the public or otherwise part of the public domain, at the time of disclosure by the other Party;

(c) becomes generally available to the public or otherwise part of the public domain after the disclosure by the other Party, other than through any act or omission of the receiving Party in breach of this Agreement;

(d) is subsequently disclosed to the receiving Party by a Third Party who has a legal right to make such disclosure and who did not obtain such information directly or indirectly from the other Party; or

(e) is subsequently independently developed by employees or contractors of the receiving Party who had no access to or knowledge of the other Party's Confidential Information.

10.3 Authorized Disclosure. A Party may disclose to a Third Party the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances; provided that notice of any such disclosure shall be provided as soon as practicable to the other Party:

(a) filing or prosecuting Patents in accordance with Section 9.3;

(b) complying with the requirement of Regulatory Authorities with respect to obtaining and maintaining Regulatory Approval of Products;

(c) prosecuting or defending litigation as contemplated by this Agreement;

(d) disclosure to its or its Affiliates' employees, agents, consultants, contractors, licensees or sublicensees on a need-to-know basis for the sole purpose of performing its or its Affiliates' obligations or exercising its or its Affiliates' rights under this Agreement or any other agreement between the Parties or their Affiliates; provided that in each case, the disclosees are bound by written obligations of confidentiality and non-use consistent with those contained in this Agreement;

(e) disclosure to any bona fide potential or actual investor, Acquiror or merger partner or other potential or actual financial partner for the sole purpose of evaluating an actual or potential investment, acquisition or other business relationship; provided that in connection with such disclosure, the disclosing Party shall use all reasonable efforts to inform each disclosee of the confidential nature of such Confidential Information and cause each disclosee to treat such Confidential Information as confidential; provided, however, that where such potential Acquiror or merger partner is at such time a competitor of Servier in the Licensed Territory, i.e., a company clinically developing or commercializing in the Licensed Territory a product in one or several indications where the Product is being developed or is planned to be developed by Servier (and, where XOMA has not exercised the Cardiometabolic Indications Option, the same applies in the Retained Territory), XOMA shall prior to such disclosure obtain Servier's approval with respect to such disclosure; or

(f) complying with applicable Laws, including regulations promulgated by applicable security exchanges, court orders or administrative subpoenas or orders.

Notwithstanding the foregoing, in the event a Party is required to make a disclosure of the other Party's Confidential Information pursuant to Sections 10.3(c) or (f), such Party shall promptly notify the other Party of such required disclosure and shall use reasonable efforts to assist the other Party, at such other Party's expense, in obtaining a protective order preventing or limiting the required disclosure.

10.4 Publicity; Terms of Agreement.

(a) Each Party shall have the right to make its own public announcement of the execution of this Agreement in accordance with its internal policies and legal requirements, provided the other Party agrees with the content of such public announcement, except to the extent any such content of such announcement is required by applicable Law or the exchange on which such Party's securities are traded, as determined by such Party's counsel.

(b) After release of such press release, if either Party desires to make a public announcement concerning the material terms of this Agreement, such Party shall give reasonable prior advance notice of the proposed text of such announcement to the other Party for its prior review and approval (except as otherwise provided herein), such approval not to be unreasonably withheld, except that in the case of a press release or governmental filing required by law, regulation or stock exchange rules, the disclosing Party shall provide the other Party with such advance notice as it reasonably can and shall not be required to obtain approval therefor. A Party commenting on such a proposed press release or governmental filing shall provide its comments, if any, within [*] business days after receiving the press release for review. Further, Servier agrees that XOMA has the right to issue a press release with respect to the occurrence of the following events under this Agreement, provided that Servier is afforded a reasonable opportunity (but not more than [*] business days) to review the content of such press release prior to its release: (i) filing and/or approvals of any regulatory applications; (ii) initiation and summary results of a clinical trial; (iii) the receipt, and, where deemed material, the amount, of each milestone payment received under this Agreement; and (iv) commercial launch of a Product in a country or region in the Retained Territory or in the Licensed Territory (to the extent agreed by Servier that such launch has occurred). Neither Party shall be required to seek the permission of the other Party to repeat any information regarding the terms of this Agreement or any amendment thereto that has already been publicly disclosed by such Party, or by the other Party, in accordance with this Section 10.4, provided such information remains accurate as of such time.

(c) The Parties acknowledge that either or both Parties may be obligated to file under applicable Laws a copy of this Agreement with the U.S. Securities and Exchange Commission ("**SEC**") or other Governmental Authorities. Each Party shall be entitled to make such a required filing, provided that it requests confidential treatment of the commercial terms and sensitive technical terms hereof and thereof to the extent such confidential treatment is reasonably available to such Party and permitted by such Governmental Authority. In the event of any such filing, each Party will provide the other Party with a copy of the Agreement marked to show provisions for which such Party intends to seek confidential treatment and shall reasonably consider and incorporate the other Party's comments thereon to the extent consistent with the legal requirements, with respect to the filing Party, governing disclosure of material agreements and material information that must be publicly filed.

10.5 Technical Publications. Neither Party may publish peer reviewed manuscripts, or give other forms of public disclosure such as abstracts and presentations, of results of studies carried out under this Agreement, without the opportunity for prior review and coordination by the other Party, except to the extent required by applicable Laws. A Party seeking publication shall provide the other Party the opportunity to review and comment on any proposed publication which relates to the Product at least [*] days prior to its intended submission for publication. The other Party shall provide the Party seeking publication with its comments in writing, if any, within [*] days after receipt of such proposed publication. The Party seeking publication shall consider in good faith any comments thereto provided by the other Party and shall comply with the other Party's request to remove any and all of such other Party's Confidential Information from the proposed publication. In addition, the Party seeking publication shall delay the submission for a period up to [*] days in the event that the other Party can demonstrate reasonable need for such delay, including the preparation and filing of a patent application. If the other Party fails to provide its comments to the Party seeking publication within such [*]-day period, such other Party shall be deemed not to have any comments, and the Party seeking publication shall be free to publish in accordance with this Section 10.5 after the [*]-day period has elapsed. The Party seeking publication shall provide the other Party with a copy of the manuscript at the time of the submission. Each Party agrees to acknowledge the contributions of the other Party and its employees in all publications as scientifically appropriate.

10.6 Equitable Relief. Each Party acknowledges that its breach of this Article 10 could cause irreparable harm to the other Party, which might not be reasonably or adequately compensated in damages in an action at law. By reasons thereof, each Party agrees that the other Party may be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to preliminary and permanent injunctive and other equitable relief to prevent or curtail any actual or threatened breach of the obligations relating to Confidential Information set forth in this Article 10 by the other Party.

11. TERM AND TERMINATION

11.1 Term. This Agreement became effective on the Effective Date and, unless earlier terminated pursuant to this Article 11, shall remain in effect on a Product-by-Product basis, for so long as Servier is developing or selling such Product in any country in the Licensed Territory and, where XOMA does not exercise the Cardiometabolic Indications Option, the Retained Territory (the "**Term**").

11.2 Unilateral Termination by Servier. Notwithstanding the above, Servier shall be permitted to terminate the Agreement with respect to the EU or in its entirety or, with respect to countries outside the EU only, on a country-by-country basis, without cause and without damages due by Servier to XOMA, its Affiliates, licensees or sub-licensees on account of such termination, upon [*] days prior written notice to XOMA (it being understood that Servier shall at all times remain liable for all costs incurred by it under this Agreement during such notice period).

11.3 Termination for Safety or Public Health Reasons. Notwithstanding Section 11.2, if Servier determines that a safety or public health issue has arisen which is demonstrated by clinically relevant events which are documented and which relate to the Licensed Antibody or the Product, it shall immediately notify XOMA, and it shall be permitted to terminate the Agreement with respect to the EU or in its entirety or, with respect to countries outside the EU only, on a country-by-country basis, promptly, but in any event within [*] days of Servier's determination of such issue.

11.4 Termination for Material Breach. Each Party shall have the right to terminate this Agreement in its entirety immediately upon written notice to the other Party if the other Party materially breaches its obligations under this Agreement and, after receiving written notice identifying such material breach in reasonable detail, fails to cure such material breach within [*] days from the date of such notice (or within [*] business days from the date of such notice in the event such material breach is solely based on the breaching Party's failure to pay any amounts due hereunder). Where such breach is not curable, the termination shall become effective upon receipt of the termination notice by the breaching Party.

11.5 Termination for Patent Challenge. XOMA shall have the right to terminate this Agreement immediately upon written notice to Servier if Servier or its Affiliates or sublicensees (directly or indirectly, individually or in association with any other person or entity) challenge the validity, enforceability or scope of any XOMA Patent anywhere in the Licensed Territory or Retained Territory; provided that such termination right shall be for the country of the challenged Patent only or, for a challenged Patent in a member state of the European Patent Organisation, for all such member states.

11.6 Effects of Termination of the Agreement. Upon any early termination of this Agreement, in its entirety or on a country-by-country or EU basis:

(a) Termination of License to Servier. All licenses granted to Servier under Section 7.1 shall terminate, but in the case of termination on a country-by-country or EU basis, solely to the extent such licenses relate to those countries so terminated.

(b) Servier License. Other than termination on the basis of a public health and safety reason under Section 11.3, or termination by Servier on the basis of a material breach of the Agreement by XOMA under Section 11.4, or except where Servier can reasonably demonstrate that Commercializing the Product in the terminated country(ies) is detrimental to Servier's sales in the non-terminated countries, Servier hereby grants to XOMA, effective only in the event of such termination and upon the request of XOMA, an exclusive, irrevocable license (with the right to grant sublicenses through multiple tiers) under the Servier Technology to research, Develop, make, have made, use, sell, offer for sale, import and otherwise Commercialize the Products in such terminated country(ies), which shall bear royalties at a rate equal to the lower of (x) [*]% of Net Sales (defined mutatis mutandis with the definition in Section 1.78) in any country in which a Product has received Regulatory Approval prior to the effective date of termination, or [*]% of Net Sales (defined mutatis mutandis with the definition in Section 1.78) in any country in which a Product has not received Regulatory Approval prior to the effective date of termination, or (y) such royalty rate as was then being paid by Servier as of the time of such termination.

(c) Regulatory Materials; Data. Other than termination on the basis of a public health and safety reason under Section 11.3, or termination by Servier on the basis of a material breach of the Agreement by XOMA under Section 11.4 (provided that in such case Servier, upon XOMA's request, would agree to discuss in good faith such a transfer of such materials and approvals), or except where Servier can reasonably demonstrate that Commercializing the Product in the terminated country(ies) is detrimental to Servier's sales in the non-terminated countries, effective only in the event of such termination Servier hereby transfers to XOMA, at XOMA's costs, the Regulatory Materials, and Regulatory Approvals, and the related data relating to the Product in such terminated country.

(d) Transition Assistance. Promptly upon request by XOMA, but in no event commencing later than [*] days after the effective date of termination, Servier shall provide such assistance, at no cost to XOMA, as may be reasonably necessary or useful for XOMA to commence or continue Developing, Manufacturing or Commercializing the Product in the terminated country(ies), to the extent Servier is then performing or having performed such activities, including transferring or amending as appropriate, upon request of XOMA, any agreements or arrangements with Third Party vendors to Develop, Manufacture, distribute, sell or otherwise Commercialize the Product in such terminated country(ies). To the extent that any such contract between Servier and a Third Party is not assignable to XOMA, Servier shall reasonably cooperate with XOMA to arrange to continue to provide such services for a reasonable time after termination.

(e) Remaining Inventories. If this Agreement is terminated in a given country, XOMA shall have the right, upon its request, to obtain from Servier, at cost, any or all of the inventory of Products (or components thereof) held by Servier as of the date of such termination (that are not committed to be supplied to any Third Party or sublicensee, in the ordinary course of business, as of the date of termination). XOMA shall notify Servier within [*] days after the date of termination whether XOMA elects to exercise such right.

(f) Assignment of Patents by Servier. With respect to any or all of those XOMA Patents and Joint Invention Patents in the terminated countries, or in all countries if this Agreement is terminated in its entirety, that were assigned by XOMA to Servier under Section 9.3(b), upon XOMA's request, Servier shall assign to XOMA (i) all of its right, title and interest in such XOMA Patents and (ii) a one-half interest in such Joint Invention Patents, in each case on commercially reasonable terms to be negotiated by the Parties in good faith upon such termination.

(g) Assignment of Patents by XOMA. With respect to any or all of those Servier Patents and Joint Invention Patents in the terminated countries, or in all countries if this Agreement is terminated in its entirety, that were assigned by Servier to XOMA under Section 9.3(c), upon Servier's request, XOMA shall assign to Servier (i) all of its right, title and interest in such Servier Patents and (ii) a one-half interest in such Joint Invention Patents, in each case on commercially reasonable terms to be negotiated by the Parties in good faith upon such termination.

11.7 Survival. Termination or expiration of this Agreement shall not affect any rights or obligations of the Parties under this Agreement that have accrued prior to the date of termination or expiration. Notwithstanding anything to the contrary, the following provisions shall survive any expiration or termination of this Agreement: Sections 6.9, 6.11, 7.3 (as and to the extent provided therein), 8.11, 8.13, 9.1, 10.1, 10.2, 10.3, 10.4, 10.6, 11.6, 11.7, 12.5, 15.4, 15.5, 15.7, 15.8, 15.9, 15.10, 15.11 and 15.12 and Articles 1, 13 and 14.

12. REPRESENTATIONS AND WARRANTIES AND COVENANTS

12.1 Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party as follows:

(a) Corporate Existence. As of the Effective Date, it is a company or corporation duly organized, validly existing, and in good standing, if applicable, under the Laws of the jurisdiction in which it is incorporated.

(b) Corporate Power, Authority and Binding Agreement. As of the Effective Date, (i) it has the corporate power and authority and the legal right to enter into this Agreement and perform its obligations hereunder; (ii) it has taken all necessary corporate action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; and (iii) this Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid, and binding obligation of such Party that is enforceable against it in accordance with its terms.

12.2 Additional Representations and Warranties of XOMA. XOMA represents and warrants to Servier that, as of the Effective Date:

(a) Title; Encumbrances. It has sufficient legal and/or beneficial title, ownership or license, free and clear from any mortgages, pledges, liens, security interests, conditional and installment sale agreements, encumbrances, charges or claims of any kind, of the XOMA Technology to grant the licenses to Servier as purported to be granted pursuant to this Agreement.

(b) Sufficiency. The XOMA Background Patents are all of the Patents owned or Controlled by XOMA or its Affiliates as of the Effective Date that claim the composition, manufacture or use of a Licensed Antibody and/or Product. To XOMA's and its Affiliates' knowledge, none of the Development, Manufacture, or Commercialization of the Product as it exists as of the Effective Date, interferes with, infringes, misappropriates or otherwise violates any intellectual property rights of any Third Party in a manner that would reasonably result in a material adverse effect on the marketability of the Product.

(c) Pending or Threatened Proceedings. To XOMA's and its Affiliates' knowledge, [*], there is no claim, investigation, suit, action or proceeding pending against XOMA or its Affiliates before or by any governmental entity or arbitrator that (i) relates to the Licensed Antibody and the XOMA Background Patents or (ii) prevents the execution of this Agreement.

(d) Intellectual Property Proceedings. To XOMA's and its Affiliates' knowledge, the XOMA Background Patents are valid and enforceable. Neither XOMA nor any of its Affiliates have received any written communication alleging that any of the XOMA Background Patents are unpatentable, invalid or unenforceable or are subject to interference, reexamination, reissue, revocation, opposition, appeal or other administrative proceeding.

(e) Regulatory Data. XOMA has disclosed or made available to Servier in writing (i) any and all study reports, data and information provided to any Regulatory Authority, and (ii) all filings and correspondence between XOMA and its Affiliates and any Regulatory Authority, in the case of both (i) and (ii) relating to the Licensed Antibody.

(f) Due Diligence Data. To XOMA's and its Affiliates' knowledge, [*], the documents containing the technical information and Know-How disclosed or made available to Servier prior to the Effective Date are true and accurate copies of what they purport to be in all material respects. XOMA has made available to Servier all information in its (or its Affiliates') possession or control relating to the Licensed Antibody and the Development, Manufacture and Commercialization of the Licensed Antibody or the Product, that XOMA believes, [*], is material to the marketability of the Product in the Licensed Territory.

(g) Notice of Infringement or Misappropriation. Neither XOMA nor its Affiliates have received any written notice from any Third Party asserting or alleging that any research or development of the Licensed Antibody or Licensed Product by XOMA or its Affiliates prior to the Effective Date infringed or misappropriated the intellectual property rights of such Third Party.

12.3 Additional Representations and Warranties of Servier. Servier represents and warrants to XOMA that, as of the Effective Date, to Servier's knowledge, it does not own or Control any Patents covering or claiming the manufacture, use, sale, offer for sale, or import of any Licensed Antibody.

12.4 Mutual Covenants.

(a) No Debarment. In the course of the Development of Products, neither Party nor its Affiliates shall use any employee or consultant who has been debarred by any Regulatory Authority, or, to such Party's or its Affiliates' knowledge, is the subject of debarment proceedings by a Regulatory Authority. Each Party shall notify the other Party promptly upon becoming aware that any of its or its Affiliates' employees or consultants has been debarred or is the subject of debarment proceedings by any Regulatory Authority.

(b) Compliance. Each Party and its Affiliates shall comply in all material respects with all applicable Laws in the Development, Manufacture and Commercialization of the Product and performance of its obligations under this Agreement.

12.5 Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR NON-MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, ARE MADE OR GIVEN BY OR ON BEHALF OF A PARTY, AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED. Servier understands and acknowledges that the Products are the subject of ongoing clinical research and development and that XOMA cannot assure the safety or usefulness of any Product.

13. INDEMNIFICATION AND LIMITATION OF LIABILITY

13.1 Indemnification by Servier. Servier shall defend, indemnify, and hold XOMA and its Affiliates and their respective officers, directors, employees, and agents (the "**XOMA Indemnitees**") harmless from any and all damages or other amounts payable to a Third Party claimant, as well as any reasonable attorneys' fees and costs of litigation incurred by such XOMA Indemnitees, all to the extent resulting from claims, suits, proceedings or causes of action brought by such Third Party ("**Claims**") against such XOMA Indemnitees that arise from or are based on: (a) the Development, Manufacture or Commercialization of the Product by or on behalf of Servier or its Affiliates or its or their sublicensees (excluding in all cases XOMA or its Affiliates) in the Licensed Territory; (b) the breach of any of Servier's obligations under this Agreement, including Servier's representations and warranties set forth herein; (c) the willful misconduct or gross negligence of any Servier Indemnitee; or (d) the use by Servier in the Licensed Territory of pre-clinical and clinical data and information supplied by XOMA to Servier under Section 4.4(c), except in the case of XOMA's fraud or willful misconduct (it being understood that Servier's defense obligations shall remain in effect). The foregoing indemnity obligation shall not apply to any Claim to the extent such Claim arises from or is based on any activity set forth in Section 13.2(b) or (c).

13.2 Indemnification by XOMA. XOMA shall defend, indemnify, and hold Servier and its Affiliates and their respective officers, directors, employees, and agents (the **"Servier Indemnitees"**) harmless from and against any and all damages or other amounts payable to a Third Party claimant, as well as any reasonable attorneys' fees and costs of litigation incurred by such Servier Indemnitees, all to the extent resulting from Claims against such Servier Indemnitees that arise from or are based on (a) the Development, Manufacture or Commercialization of the Product by or on behalf of XOMA or its Affiliates or its or their sublicensees (excluding in all cases Servier, its Affiliates or its sublicensees) in the Retained Territory ; (b) the breach of any of XOMA's obligations under this Agreement, including XOMA's representations and warranties set forth herein; (c) the willful misconduct or gross negligence of any XOMA Indemnitee; or (d) the use by XOMA in the Retained Territory of pre-clinical and clinical data and information supplied by Servier to XOMA under Section 4.4(c), except in the case of Servier's fraud or willful misconduct (it being understood that XOMA's defense obligations shall remain in effect). The foregoing indemnity obligation shall not apply to any Claim to the extent that such Claim arises from or is based on any activity set forth in Section 13.1(b) or (c).

13.3 Conditions to Indemnification. The Party claiming indemnity under this Article 13 (the "**Indemnified Party**") shall give written notice to the Party from whom indemnity is being sought (the "**Indemnifying Party**") promptly after learning of such Claim, provided that the failure to promptly provide such notice shall not relieve the Indemnifying Party of any of its indemnification obligations hereunder except to the extent that the Indemnifying Party's defense of the relevant Claim is prejudiced by such failure. The Indemnified Party shall provide the Indemnifying Party with reasonable assistance, at the Indemnifying Party's expense, in connection with the defense of the Claim for which indemnity is being sought. The Indemnified Party may participate in and monitor such defense with counsel of its own choosing at its sole expense; provided, however, the Indemnifying Party shall have the right to assume and conduct the defense of the Claim with counsel of its choice. The Indemnifying Party shall not settle any Claim without the prior written consent of the Indemnified Party, not to be unreasonably withheld, unless the settlement involves only the payment of money. So long as the Indemnifying Party is actively defending the Claim in good faith, the Indemnified Party shall not settle or compromise any such Claim without the prior written consent of the Indemnifying Party. If the Indemnifying Party does not assume and conduct the defense of the Claim as provided above, (a) the Indemnified Party may defend against, consent to the entry of any judgment, or enter into any settlement with respect to such Claim in any manner the Indemnified Party may deem reasonably appropriate (and the Indemnified Party need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith), and (b) the Indemnifying Party shall remain responsible to indemnify the Indemnified Party as provided in this Article 13.

13.4 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

13.5 Insurance. Each Party shall procure and maintain insurance, including product liability insurance, with respect to its activities hereunder and which is consistent with normal business practices of prudent companies similarly situated at all times during which any Product is being clinically tested in human subjects or commercially distributed or sold. Each Party shall provide the other Party with evidence of such insurance upon request and shall provide the other Party with written notice at least [*] days prior to the cancellation, non-renewal or material changes in such insurance. It is understood that such insurance shall not be construed to create a limit of either Party's liability with respect to its indemnification obligations under this Article 13.

14. Dispute Resolution.

14.1 Disputes. The Parties recognize that disputes as to certain matters may from time to time arise that 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 14 to resolve any controversy or claim arising out of, relating to or in connection with any provision of this Agreement, if and when a dispute arises under this Agreement.

14.2 Internal Resolution; Mediation. With respect to all disputes arising between the Parties under this Agreement, including, without limitation, any alleged breach under this Agreement or any issue relating to the interpretation or application of this Agreement, if the Parties are unable to resolve such dispute within [*] days after such dispute is first identified by either Party in writing to the other, the Parties shall refer such dispute to the Executive Officers (or their designees) for attempted resolution by good faith negotiations within [*] days after such notice is received, including at least one (1) in person meeting of the Executive Officers within [*] days after such notice is received. If the Executive Officers of the Parties are not able to resolve such disputed matter within [*] days and either Party wishes to pursue the matter, the Parties agree to submit the disputed matter for non-binding mediation (with the understanding that the role of the mediator shall not be to render a decision but to assist the Parties in reaching a mutually acceptable resolution), using a mutually agreed upon mediator selected from [*], in [*], for a period of not more than [*] days.

14.3 Binding Arbitration. If the Parties are unable to resolve a dispute relating to any alleged breach under this Agreement or any issue relating to the interpretation or application of this Agreement and such disputed matter is not resolved by non-binding mediation under Section 14.2 within [*] days and either Party wishes to pursue the matter, each such dispute, controversy or claim, subject to Section 14.4, shall be finally resolved by binding arbitration administered by the International Chamber of Commerce ("**ICC**") pursuant to its Dispute Resolution Rules then in effect, and judgment on the arbitration award may be entered in any court having jurisdiction thereof. The Parties agree that:

(a) The arbitration shall be conducted by a panel of three persons experienced in the pharmaceutical business. Within [*] days after initiation of arbitration, each Party shall select one person to act as arbitrator and the two Party-selected arbitrators shall select a third arbitrator within [*] days of their appointment. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be appointed by the ICC. The place of arbitration shall be [*], and all proceedings and communications shall be in English.

(b) Either Party may apply to the arbitrators for interim injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either Party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any injunctive or provisional relief necessary to protect the rights or property of that Party pending the arbitration award. The arbitrators shall have no authority to award punitive or any other type of damages not measured by a Party's compensatory damage. Each Party shall bear its own costs and expenses and attorneys' fees and an equal share of the arbitrators' fees and any administrative fees of arbitration, unless the arbitrators determine that a Party has incurred unreasonable expense due to vexatious or bad faith position taken by the other Party, in which event, the arbitrators may make an award of all or any portion of such expenses so incurred.

(c) Reasons for the arbitrators' decisions should be complete and explicit, including reasonable determinations of law and fact. The written reasons should also include the basis for any damages awarded and a statement of how the damages were calculated. Such a written decision shall be rendered by the arbitrators following a full comprehensive hearing, no later than [*] months following the selection of the arbitrators under Section 14.3(a).

(d) Except to the extent necessary to confirm an award or as may be required by applicable Laws, neither Party nor any arbitrator may disclose the existence, content, or results of an arbitration without the prior written consent of both Parties. In no event shall an arbitration be initiated after the date when commencement of a legal or equitable proceeding based on the dispute, controversy or claim would be barred by the applicable statute of limitations.

14.4 Patent Disputes. Notwithstanding Section 14.3, any dispute, controversy or claim relating to the scope, validity, enforceability or infringement of any Patent covering the manufacturing, use, importation, offer for sale or sale of a Product shall be submitted to a court of competent jurisdiction in the country in which such Patent was granted.

15. MISCELLANEOUS

15.1 Entire Agreement; Amendments. This Agreement, including the Exhibits hereto and the Supply Agreement, Quality Agreement, and Safety Data Exchange Agreement contemplated hereunder, and the Loan Agreement, sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth in this Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

15.2 Rights in Bankruptcy. All licenses granted under this Agreement by Servier or XOMA 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(34A) of the U.S. Bankruptcy Code. The Parties agree that the Parties, as licensees of such rights under this Agreement, shall retain and may fully exercise all of their 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 either Party under the U.S. Bankruptcy Code, the Party hereto that is not a party to such proceeding shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property (including all Information related to such intellectual property and rights of reference with respect to Regulatory Approvals), and same, if not already in their possession, shall be promptly delivered to them (a) upon any such commencement of a bankruptcy proceeding upon their written request therefore, unless the Party subject to such proceeding continues to perform all of its obligations under this Agreement, or (b) if not delivered or granted under (a) above, following the rejection of this Agreement by or on behalf of the Party subject to such proceeding upon written request therefore by the non-subject Party.

15.3 Force Majeure. Each Party shall be excused from the performance of its obligations under this Agreement to the extent that such performance is prevented by force majeure (as defined below) and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, "**force majeure**" shall include conditions beyond the control of the Parties, including an act of God, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe.

15.4 Notices. Any notices given under this Agreement shall be in writing, addressed to the Parties at the following addresses, and delivered by person, by facsimile (with receipt confirmation), or by FedEx or other reputable courier service. Any such notice shall be deemed to have been given: (a) as of the day of personal delivery; (b) one (1) day after the date sent by facsimile service; or (c) on the day of successful delivery to the other Party confirmed by the courier service. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

If to XOMA:
XOMA Ireland Limited
26 Upper Pembroke Street
Dublin 2
Ireland
Attention: Company Secretary
FAX: 353 1 637 3989

With copies (which shall not constitute notice) to:
A & L Goodbody
North Wall Quay
IFSC
Dublin 1
Attention: Seamus O'Croinin
FAX: 353 1 649 2649

If to Servier:
LES LABORATOIRES SERVIER
22 rue Garnier
92200 Neuilly Sur Seine
France
Attention: Direction de la Coopération Scientifique
FAX : +33.1.55.72.39.00

15.5 Assignment. Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, except that a Party may make such an assignment without the other Party's consent to its Affiliates, including in connection with any re-domiciling of such Party or its Affiliates, or to a Third Party successor to substantially all of the business of such Party to which this Agreement relates (such Third Party, an "**Acquiror**"), whether in a merger, sale of stock, sale of assets or other transaction. Any successor or assignee of rights and/or obligations permitted hereunder shall, in writing to the other Party, expressly assume performance of such rights and/or obligations. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this Section 15.5 shall be null, void and of no legal effect.

15.6 Performance by Affiliates. Each Party may discharge any obligations and exercise any right hereunder through any of its Affiliates. Each Party hereby guarantees the performance by its Affiliates of such Party's obligations under this Agreement, and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. Any breach by a Party's Affiliate of any of such Party's obligations under this Agreement shall be deemed a breach by such Party, and the other Party may proceed directly against such Party without any obligation to first proceed against such Party's Affiliate.

15.7 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.

15.8 Severability. If any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

15.9 No Waiver. Any delay in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.

15.10 Independent Contractors. Each Party shall act solely as an independent contractor, and nothing in this Agreement shall be construed to give either Party the power or authority to act for, bind, or commit the other Party in any way. Nothing herein shall be construed to create the relationship of partners, principal and agent, or joint-venture partners between the Parties.

15.11 Governing Law. Resolution of all disputes, controversies or claims arising out of, relating to or in connection with this Agreement or the performance, enforcement, breach or termination of this Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of [*], without regard to conflicts of law rules.

15.12 Construction of this Agreement. Except where the context otherwise requires, wherever used, the use of any gender shall be applicable to all genders, and the word "**or**" is used in the inclusive sense. When used in this Agreement, "**including**" means "**including without limitation**". References to either Party include the successors and permitted assigns of that Party. The headings of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The Parties have each consulted counsel of their choice regarding this Agreement and have jointly prepared this Agreement, and, accordingly, no provisions of this Agreement shall be construed against either Party on the basis that the Party drafted this Agreement or any provision thereof. If the terms of this Agreement conflict with the terms of any Exhibit, then the terms of this Agreement shall govern. The official text of this Agreement and any Exhibits hereto, any notice given or accounts or statements required by this Agreement, and any dispute proceeding related to or arising hereunder, shall be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference shall be made only to this Agreement as written in English and not to any other translation into any other language.

15.13 Privileges. If a Party is entitled to attorney-client or attorney work product privileges from disclosure established under public policy provisions, such privileges shall apply and may be invoked by the other Party.

15.14 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be an original and all of which shall constitute together the same document. Counterparts may be signed and delivered by facsimile, or electronically in PDF format, each of which shall be binding when sent.

[Signature page follows.]

In Witness Whereof, the Parties have executed this Agreement in duplicate originals by their proper officers as of the Amendment Effective Date.

Les Laboratoires Servier

By:

Name: [*]

Title: [*]

By:

Name: [*]

Title: [*]

Institut de Recherches Servier

By:

Name: [*]

Title:[*]

XOMA Ireland Limited

By:

Name: [*]

Title: [*]

Exhibits

Exhibit 1.94	Product Specifications
Exhibit 1.122	XOMA Background Patents as of Effective Date
Exhibit 1.125	XOMA Know-How as of Effective Date
Exhibit 3.3(a)	Initial Behçet's Development Plan
Exhibit 3.3(b)	Initial Non Infectious Uveitis Development Plan
Exhibit 3.4(a)	Initial T2D Development Plan
Exhibit 3.6(a)	FTE Rates
Exhibit 6.2	Initial Manufacturing Plan
Exhibit 6.11	Safety Data Exchange Agreement
Exhibit 7.1(a)	Third Party Agreements

Exhibit 1.94
Product Specifications

[*]

Exhibit 1.122
XOMA Background Patents as of Amendment Effective Date

FAMILY 1
Title: IL1-BETA BINDING ANTIBODIES AND FRAGMENTS THEREOF
Inventors: Linda Masat; Mary Haak-Frendscho; Gang Chen; Arnold Horwitz; Marina Roell

COUNTRY	APP. NO.	FILE DATE	PATENT/PUBLICATION
US Provisional	60/692,830	06/21/05	
PCT	PCT/US06/024261	06/21/06	WO07/002261
US	11/472,813	06/21/2006	7,531,166
US	12/218,914	07/18/2008	7,582,742
US	12/463,741	05/11/2009	7,744,865
US	12/463,844	05/11/2009	7,744,866
US	12/464,006	05/11/2009	7,829,093
US	12/464,323	05/12/2009	7,988,968
US	12/464,381	05/12/2009	7,943,121
Australia	2006 262179	06/21/2006	AU2006262179 B2
Brazil	PI0612273-6	06/21/2006	BRPI0612273 A2
Canada	2,612,760	06/21/2006	CA2612760 A1
China	2006 80026551.9	06/21/2006	CN101228188 A
Europe:	06773749.4	06/21/2006	1899378
Austria	06773749.4	06/21/2006	1899378
Belgium	06773749.4	06/21/2006	1899378
Bulgaria	06773749.4	06/21/2006	1899378
Cyprus	06773749.4	06/21/2006	1899378
Czech Republic	06773749.4	06/21/2006	1899378
Denmark	06773749.4	06/21/2006	1899378
Estonia	06773749.4	06/21/2006	E004059
Finland	06773749.4	06/21/2006	1899378
France	06773749.4	06/21/2006	1899378
Germany	06773749.4	06/21/2006	60 2006 010 072.8-08
Greece	06773749.4	06/21/2006	1899378
Hungary	06773749.4	06/21/2006	E 007716
Iceland	06773749.4	06/21/2006	1899378
Ireland	06773749.4	06/21/2006	1899378
Italy	06773749.4	06/21/2006	73749BE/2009
Latvia	06773749.4	06/21/2006	1899378
Lithuania	06773749.4	06/21/2006	1899378
Luxembourg	06773749.4	06/21/2006	1899378
Monaco	06773749.4	06/21/2006	1899378
Netherlands	06773749.4	06/21/2006	1899378
Poland	06773749.4	06/21/2006	1899378
Portugal	06773749.4	06/21/2006	1899378
Romania	06773749.4	06/21/2006	1899378
Slovak Republic	06773749.4	06/21/2006	1899378
Slovenia	06773749.4	06/21/2006	1899378
Spain	06773749.4	06/21/2006	1899378

Sweden	06773749.4	06/21/2006	1899378
Switzerland	06773749.4	06/21/2006	1899378
Turkey	06773749.4	06/21/2006	TR 2009 09878 T4
United Kingdom	06773749.4	06/21/2006	1899378
Europe	09 174 190.0	10/27/2009	2163562 A2
Europe	10 179 088.9	09/23/2010	2314623 A1
Europe	10 179 089.7	09/23/2010	2322552 A2
Hong Kong	09100795.8	06/21/2006	1123560A
Hong Kong	10107181.2	07/27/2010	1140781A
Hong Kong	11111525.8	10/26/2011	
Hong Kong	11112428.4	11/27/2011	
Israel	188094	06/21/2006	188094
Israel	202630	12/09/2009	202630
India	320/CHENP/2008	06/21/2006	
Japan	2008-518374	06/21/2006	2008-543340
Korea	10-2008-7001520	06/21/2006	KR20080039875 A
Mexico	MX/a/2007/016032	06/21/2006	282003
Mexico	MX/a/2010/002638	03/08/2010	
New Zealand	565138	06/21/2006	
Philippines	1-2007-502895	06/21/2006	
Russian Federation	2008102135	06/21/2006	RU2008102135 A
Singapore	200718904-6	06/21/2006	140638
South Africa	2008/00555	06/21/2006	2008/00555

FAMILY 2
Title: METHODS FOR TREATMENT OF IL-1BETA RELATED DISEASES
Inventors: Alan M. Solinger; Patrick J. Scannon; Robert J. Bauer; David Alleva

COUNTRY	APP. NO.	FILE DATE	PATENT/PUBLICATION
US Provisional	60/871,046	12/20/06	
US Provisional	60/908,389	03/27/07	
US Provisional	60/911,033	04/10/07	
PCT	PCT/US07/088411	12/20/07	WO 08/077145
US	11/961,764	12/20/2007	7,695,718
US	12/710,842	02/23/2010	8,101,166
US	12/757,885	04/09/2010	2011-0038859-A1
Europe	07 869 675.4	12/20/2007	EP2094306 A2
Australia	2007333635	12/20/2007	AU2007333635 A1
Brazil	PI 0720928-2	12/20/2007	
Canada	2,673,592	12/20/2007	
China	200780051536.4	12/20/2007	CN 101616690A
Hong Kong	10102012.8	02/25/2010	1135323A
India	4626/DELNP/2009	12/20/2007	
Indonesia	W00 2009 01721	12/20/2007	050.2064A
Japan	2009-543229	12/20/2007	2010-514694
Mexico	MX/a/2009/006709	12/20/2007	
Russia	2009127066	12/20/2007	
South Africa	2009/04660	12/20/2007	2009/04660

FAMILY 3
Title: METHODS FOR TREATMENT OF GOUT
Inventors: Alan M. Solinger

COUNTRY	APP. NO.	FILE DATE	PATENT/PUBLICATION
US Provisional	61/015,633	12/20/2007	
US Provisional	61/059,378	06/06/2008	
US Provisional	61/095,191	09/08/2008	
PCT	PCT/US08/087519	12/18/2008	WO 2009/086003
Australia	2008343085	07/12/2010	
Canada	2,710,252	06/18/2010	
China	200880126879.7	08/13/2010	
Europe	08866346.3	12/18/2008	2 391 650 A1
Mexico	MX/a2010/006823	06/18/2019	293693
Russia	2010129783	07/20/2010	

FAMILY 4
Title: METHODS FOR THE TREATMENT OF RHEUMATOID ARTHRITIS Inventors: Alan M. Solinger, Alexander Owyang

COUNTRY	APP. NO.	FILE DATE	PATENT/PUBLICATION
US Provisional	61/059,711	06/05/08	
US Provisional	61/095,232	09/08/08	
PCT	PCT/US09/46441	12/06/2010	WO 2009/149370
Canada	2,727,171	12/06/2010	
Australia	2009256072	12/14/2010	
Europe	09759528.4	12/22/2010	2 293 816 A1

FAMILY 5
Title: METHODS FOR TREATING OR PREVENTING IL-1BETA RELATED DISEASES
Inventors: Patrick J. Scannon, Alan M. Solinger, Robert J. Bauer

COUNTRY	APP. NO.	FILE DATE	PATENT/PUBLICATION
US Provisional	61/094,842	09/05/08	
US Provisional	61/121,451	12/10/08	
PCT	PCT/US09/56086	09/04/2009	WO 2010/028275
US	13/062,457	03/04/2011	
Australia	2009289547	03/02/2011	
Canada	2,735,940	03/02/2011	
Europe	09 812 306.0	04/04/2011	2 341 936 A1
Japan	2011-526241	03/04/2011	

FAMILY 6
Title: METHODS FOR IMPROVEMENT OF BETA CELL FUNCTION
Inventors: Patrick J. Scannon, Alan M. Solinger, Robert J. Bauer

COUNTRY	APP. NO.	FILE DATE	PATENT/PUBLICATION
US Provisional	61/094,857	09/05/08	
US Provisional	61/121,486	12/10/08	
PCT	PCT/US09/56084	09/04/2009	WO 2010/028273
US	13/062,461	03/04/2011	
Australia	2009289545	03/03/2011	
Canada	2,735,939	03/02/2011	
Europe	09 812 304.5	04/04/2011	2 341 935 A1
Japan	2011-526240	03/04/2011	

FAMILY 7
Title: CARDIOVASCULAR RELATED USES OF IL-1BETA ANTIBODIES AND BINDING FRAGMENTS THEREOF
Inventors: Patrick J. Scannon, Alan M. Solinger, Jeffrey D. Feldstein

COUNTRY	APP. NO.	FILE DATE	PATENT/PUBLICATION
US Provisional	61/182,679	05/29/09	
US Provisional	61/252,571	10/16/09	
US Provisional	61/313,001	03/11/10	
US	12/790,738	05/28/2010	2010-0316651-A1
PCT	PCT/US10/36761	05/28/2010	WO 2010/138939
Australia	2010253924	12/12/2011	
Brazil	PCT/US10/36761	11/29/2011	
Canada	2,763,161	11/22/2011	
China	PCT/US10/36761	01/20/2012	
Eurasia	201101643	12/15/2011	
Europe	10 781 360.2	12/20/2011	
Indonesia	W00 2011 04690	12/21/2011	
Israel	216660	11/28/2011	
India	9944/DELNP/2011	12/16/2011	
Japan	PCT/US10/36761	11/28/2011	
Korea	10-2011-7031198	12/27/2011	
Mexico	MX/a/2011/012666	12/28/2011	
New Zealand	597024	12/12/2011	
Philippines	1-2011-502479	11/28/2011	
Singapore	201108772-3	11/28/2011	
South Africa	2011/09050	12/08/2011	

FAMILY 8
RESERVED

FAMILY 9
Title: METHODS FOR THE TREATMENT OF IL-1BETA RELATED CONDITIONS
Inventors: Alan M. Solinger, Ahmet Gül

COUNTRY	APP. NO.	FILE DATE	PATENT/PUBLICATION
US	61/332,658	05/07/2010	
US	61/334,125	05/12/2010	
PCT	PCT/US11/35646	05/06/2011	WO 2011/140522

Exhibit 1.125
XOMA Know-How as of Effective Date

[*]

Exhibit 3.3(a)
Initial Behçet's Development Plan

[*]

Exhibit 3.3(b)

Non-Infectious Uveitis Development Plan

Exhibit 3.4(a)
Initial T2D Development Plan

Exhibit 3.6(a)
FTE Rates

2010 Budgeted Rates	
Quality	$ [*]
Pilot Plant	$ [*]
Analytical Development	$ [*]
PAM	$ [*]
Manufacturing	$ [*]
Formulation Development	$ [*]
Materials Mgmt	$ [*]
Clinical Development	$ [*]
Regulatory Affairs	$ [*]
Bioanalytical Development	$ [*]
NonClinical Safety Evaluation	$ [*]
Pharmacokinetics	$ [*]

Exhibit 6.2
Initial Manufacturing Plan

[*]

Exhibit 6.11
Safety Data Exchange Agreement

Exhibit 7.1(a)
Third Party Agreements

- Non-Exclusive XOMA License Agreement by and between XOMA Corporation (the predecessor in interest of XOMA Ltd.) and Genentech, Inc., effective as of December 30, 1998.[1]
- [*][2]
- License Agreement by and between the University of Zurich and XOMA (US) LLC, effective as of April 11, 2007[3]

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[1] Assigned to XOMA Technology Ltd., pursuant to an Assignment and Assumption Agreement between XOMA Ltd. and XOMA Technology Ltd., effective as of May 31, 1999.

[2] [*]

[3] Assigned to XOMA Technology Ltd. Pursuant to an Assignment and Assumption Agreement between XOMA (US) LLC and XOMA Technology Ltd., effective as of December 30, 2010.

EXHIBIT 10.43

[*] indicates that a confidential portion of the text of this agreement has been omitted.

LOAN AGREEMENT

Dated as of December 30, 2011

among

XOMA (US) LLC,
as Borrower,

XOMA LTD.,
as Parent,

and

Each Other Loan Party
From Time to Time Party Hereto

and

GENERAL ELECTRIC CAPITAL CORPORATION,
as Agent

and

Each Other Lender
From Time to Time Party Hereto

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of December 30, 2011 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Agreement") is among GENERAL ELECTRIC CAPITAL CORPORATION ("GECC"), in its capacity as agent for Lenders (as defined below) (together with its successors and assigns in such capacity, "Agent"), the financial institutions who are or hereafter become parties to this Agreement as lenders (together with GECC, collectively the "Lenders", and each individually, a "Lender"), XOMA (US) LLC, a Delaware limited liability company ("Borrower"), XOMA Ltd., a Bermuda exempted company and as such entity may be discontinued from Bermuda pursuant to Sections 132G and 132H of the Companies Act of 1981 of Bermuda and converted to a Delaware corporation pursuant to Section 388 of the Delaware General Corporation Law ("Parent") and the other entities or persons, if any, who are or hereafter become parties to this Agreement as guarantors (together with Parent, each a "Guarantor" and collectively, the "Guarantors", and together with Borrower, each a "Loan Party" and collectively, the "Loan Parties").

RECITALS

Borrower wishes to borrow funds from Lenders, and Lenders desire to make a term loan, severally, but not jointly, to Borrower pursuant to the terms and conditions of this Agreement.

AGREEMENT

Each of the parties hereto agree as follows:

1. DEFINITIONS.

As used in this Agreement, all capitalized terms shall have the definitions as provided herein. Any accounting term used but not defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, as in effect from time to time ("GAAP") and all calculations shall be made in accordance with GAAP. The term "financial statements" shall include the accompanying notes and schedules. All other terms used but not defined herein shall have the meaning given to such terms in the Uniform Commercial Code as adopted in the State of New York, as amended and supplemented from time to time (the "UCC").

2. LOANS AND TERMS OF PAYMENT.

2.1 **Term Loan**.

(a) Commitment. Subject to the terms and conditions hereof, each Lender, severally, but not jointly, agrees to make a term loan (the "Term Loan") to Borrower on the Closing Date (as defined below) in an aggregate principal amount equal to such Lender's commitment as identified on Schedule A hereto (such commitment of each Lender as it may be amended to reflect assignments made in accordance with this Agreement or terminated or reduced in accordance with this Agreement, its "Commitment", and the aggregate of all such commitments, the "Commitments"). Notwithstanding the foregoing, the aggregate principal amount of the Term Loan made hereunder shall not exceed $10,000,000 (the "Total Commitment"). Each Lender's obligation to fund the Term Loan shall be limited to such Lender's Pro Rata Share (as defined below) of the Term Loan. As of the Closing Date, GECC shall be the only Lender, shall hold 100% of the Commitments and, subject to the terms and conditions hereof, will fund 100% of the Term Loan on the Closing Date. After funding of the Term Loan all references in this Agreement to the Commitments shall mean the outstanding principal amount of the Term Loans.

(b) [Reserved]

(c) Funding of Term Loan. Upon the terms and subject to the conditions set forth herein, each Lender, severally and not jointly, shall make available to Agent its Pro Rata Share of the requested Term Loan, in lawful money of the United States of America in immediately available funds, to the Collection Account (as defined below) prior to 11:00 a.m. (New York time) on the Closing Date. Agent shall, unless it shall have determined that one of the conditions set forth in Section 4.1 has not been satisfied, by 4:00 p.m. (New York time) on such day, credit the amounts received by it in like funds (net of any amounts due and payable to Agent) to Borrower by wire transfer to, unless otherwise specified in a Disbursement Letter (as defined below), the following deposit account of Borrower (or such other deposit account as specified in writing by an authorized officer of Borrower and acceptable to Agent):

Bank Name: Wells Fargo Bank
Bank Address: One Kaiser Plaza, Suite 850
Oakland, CA 94612
ABA#: 121000248
Account #: 4375-679073
Beneficiary Name: XOMA (US) LLC
Ref: XOMA (US) LLC

(d) Notes. The Term Loan made by each Lender shall be evidenced by this Agreement, and if requested by a Lender, a promissory note substantially in the form of Exhibit A hereto (each a "Note" and, collectively, the "Notes").

(e) Agent May Assume Funding. Unless Agent shall have received notice from a Lender prior to the date of any particular Term Loan that such Lender will not make available to Agent such Lender's Pro Rata Share of the Term Loan, Agent may assume that such Lender has made such amount available to it on the date of the Term Loan in accordance with subsection (c) of this Section 2.1, and may (but shall not be obligated to), in reliance upon such assumption, make available a corresponding amount for the account of Borrower on such date. If and to the extent that such Lender shall not have so made such amount available to Agent, such Lender and Borrower severally agree to repay to Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the day such amount is made available to Borrower until the day such amount is repaid to Agent, at (i) in the case of Borrower, a rate per annum equal to the interest rate applicable thereto pursuant to Section 2.2(a), and (ii) in the case of such Lender, a floating rate per annum equal to, for each day from the day such amount is made available to Borrower until such amount is reimbursed to Agent, the weighted average of the rates on overnight federal funds transactions among members of the Federal Reserve System, as determined by Agent in its sole discretion (the "Federal Funds Rate") for the first Business Day and thereafter, at the interest rate applicable to the Term Loan. If such Lender shall repay such corresponding amount to Agent, the amount so repaid shall constitute such Lender's loan included in the Term Loan for purposes of this Agreement.

2.2 **Interest and Repayment.**

(a) Interest. The Term Loan shall accrue interest in arrears from the date made until the Term Loan is fully repaid at a fixed per annum rate of interest equal to 11.71%. All computations of interest and fees calculated on a per annum basis shall be made by Agent on the basis of a 360-day year, in each case for the actual number of days occurring in the period for which such interest and fees are payable. Each determination of an interest rate or the amount of a fee hereunder shall be made by Agent and shall be conclusive, binding and final for all purposes, absent manifest error.

(b) Payments of Principal and Interest.

(i) Interest Payments. Borrower shall pay accrued interest to Agent, for the ratable benefit of the Lenders, in arrears on January 4, 2011 and on the first day of each calendar month occurring thereafter (including January 4, 2011, each, a "Scheduled Payment Date").

(ii) Principal Payments. Borrower shall pay principal to Agent, for the ratable benefit of the Lenders, in forty-one (41) equal consecutive payments of $238,095.24 on each Scheduled Payment Date and one final payment, in an amount equal to the entire remaining principal balance of the Term Loan, on June 30, 2015.

(iii) Payments Generally. Notwithstanding the foregoing provisions of this Section 2.2(b), all unpaid principal and accrued interest and other outstanding Obligations with respect to the Term Loan is due and payable in full to Agent, for the ratable benefit of Lenders, on the earliest of (A) June 30, 2015 (the "Scheduled Maturity Date"), and (B) the date that the Term Loan otherwise becomes due and payable hereunder, whether by acceleration of the Obligations pursuant to Section 8.2 or otherwise (the earlier of (A) and (B), the "Term Loan Maturity Date"). Each scheduled payment of interest or principal hereunder is referred to herein as a "Scheduled Payment." Without limiting the foregoing, all Obligations shall be due and payable on the Term Loan Maturity Date. "Obligations" means the Term Loan and all other debt, monetary liabilities, obligations and liabilities of any kind whatsoever of Borrower or any other Loan Party to any one or more of the Agent, any Lender, or any other holder of Obligations arising under or in connection with the Transaction Documents irrespective of whether the debts, liabilities or obligations (1) are for principal, interest, fees, charges, losses, costs or expenses, prepayment of premiums, indemnities, reimbursements or other sums; (2) accrue after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceedings, and whether or not allowed in such case or proceeding; (3) are actual, prospective, contingent or otherwise; (4) are now existing or arising in the future; (5) are at any time ascertained or unascertained; (6) are owed or incurred by or on the account of any Loan Party alone, or severally or jointly with any other person; (7) are owed to or incurred for the account of Agent or any Lender alone, or severally or jointly with any other person; or (8) comprise any combination of the above.

(c) No Reborrowing. Once the Term Loan is repaid or prepaid, it cannot be reborrowed.

(d) Payments. All payments (including prepayments) to be made by any Loan Party under any Transaction Document shall be made by wire transfer or ACH transfer in immediately available funds (which shall be the exclusive means of payment hereunder) in U.S. dollars, without setoff or counterclaim to the Collection Account (as defined below) before 3:00 p.m. (New York time) on the date when due. All payments received by Agent after 3:00 p.m. (New York time) on any Business Day or at any time on a day that is not a Business Day may, in Agent's sole discretion, be deemed to be received on the next Business Day. Whenever any payment required under this Agreement would otherwise be due on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension. As used herein, the term "Collection Account" means the following account of Agent (or such other account as Agent shall identify to Borrower in writing):

Bank Name: Deutsche Bank
Bank Address: New York, NY
ABA Number: 021 001 033
Account Number: 50271079
Account Name: GECC HH Cash Flow Collections
Ref: XOMA (US) LLC/CFN HFS2968

(e) Withholdings and Increased Costs. All payments shall be made free and clear of any taxes, withholdings, duties, impositions or other similar charges imposed by any governmental authority (collectively, "Taxes") (other than (1) any Taxes imposed on or measured by net income or overall gross income or receipts, franchise Taxes, and branch profits or similar Taxes, in each case imposed as a result of any present or former connection between the Agent and/or the applicable Lender and the taxing jurisdiction (other than a connection arising solely from the Transaction Documents, including as a result of the Agent or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to, the Transaction Documents); (2) any U.S. federal withholding Tax imposed on amounts payable to or for the account of any Lender pursuant to any Requirement of Law in effect on the date on which such Lender acquires its applicable interest in the Term Loan (or changes its lending office), except to the extent that such Lender (or Lender's assignor, if any) was entitled, immediately prior to such change in lending office (or assignment), to additional amounts in respect of such withholding tax and (3) any U.S. federal withholding tax imposed pursuant to Section 1471 through 1474 of the Internal Revenue Code of 1986, as amended, and any amended or successor version that is substantially comparable (collectively, "Excluded Taxes"), such that Agent and Lenders will receive the entire amount of any Obligations (net only of Excluded Taxes), regardless of source of payment. If Agent or any Lender shall have reasonably determined that the introduction of or any change in, after the date hereof, any law, treaty, governmental (or quasi-governmental) rule, regulation, guideline or order (other than with respect to (1) any Taxes imposed on or with respect to any payment under any Transaction Documents or (2) any Excluded Taxes) reduces the rate of return on Agent or such Lender's capital as a consequence of its obligations hereunder or increases the cost to Agent or such Lender of agreeing to make or making, funding or maintaining the Term Loan, then Borrower shall from time to time upon demand by Agent or such Lender (with a copy of such demand to Agent) promptly pay to Agent for its own account or for the account of such Lender, as the case may be, additional amounts sufficient to compensate Agent or such Lender for such reduction or for such increased cost. A certificate as to the amount of such reduction or such increased cost submitted by Agent or such Lender (with a copy to Agent) to Borrower shall be conclusive and binding on Borrower, absent manifest error, provided that, neither Agent nor any Lender shall be entitled to payment of any amounts under this Section 2.2(e) unless it has delivered such certificate to Borrower within 180 days after the occurrence of the changes or events giving rise to the increased costs to, or reduction in the amounts received by, Agent or such Lender; provided further that notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case of this clause (b) pursuant to Basel III, shall in each case be deemed to be introduced or changed after the date hereof, regardless of the date enacted, adopted or issued. This provision shall survive the termination of this Agreement. Any Lender claiming any additional amounts payable pursuant to this Section 2.2(e) shall use its reasonable efforts (consistent with its internal policies and Requirements of Law (as defined below)) to designate a different lending office for funding or booking the Commitments and Term Loans if, in the sole judgment of such Lender, such designation would reduce any such additional amounts (or any similar amount that may thereafter accrue) in the future, would not subject such Lender to any unreimbursed cost or expense and would not be otherwise disadvantageous to such Lender. Borrower hereby agrees to pay all costs and expenses incurred by any Lender in connection with such designation.

(f) Loan Records. Each Lender shall maintain in accordance with its usual practice accounts evidencing the Obligations of Borrower to such Lender resulting from such Lender's Pro Rata Share of the Term Loan, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. Agent shall maintain in accordance with its usual practice a register on its books to record the Term Loan and any other extensions of credit made by Lenders hereunder, and all payments thereon made by Borrower. The entries made in such register shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the Obligations recorded therein; provided, however, that no error in such register and no failure of any Lender or Agent to maintain any such register shall affect the obligations of Borrower to repay the Obligations in accordance with their terms. The parties shall treat the registered Lender as the Lender for all purposes of this Agreement, notwithstanding any notice to the contrary.

2.3 **Prepayments.**

(a) Voluntary Prepayments. Borrower may voluntarily prepay, upon five (5) Business Days' prior written notice to Agent (which notice may be conditioned upon the closing of a related acquisition or refinancing transaction), the Term Loan in full, but not in part.

(b) Mandatory Prepayments.

(i) If any Loan Party shall at any time or from time to time make or agree to make a Transfer pursuant to Section 7.3(b), and the aggregate amount of net proceeds received by the Loan Parties and their Subsidiaries in connection with such Transfer and all other Transfers occurring during such fiscal year exceeds $100,000, then (i) Borrower shall promptly notify Agent of such proposed Transfer (including the amount of estimated net proceeds to be received by a Loan Party and/or such Subsidiary in respect thereof) and (ii) promptly upon receipt by a Loan Party and/or such Subsidiary of such net proceeds of such Transfer, the Borrower shall deliver, or cause to be delivered, such net proceeds to Agent as a prepayment of the Term Loan (unless otherwise waived in writing by the Requisite Lenders), which prepayment shall be applied to the remaining installments of the Term Loan in inverse order of maturity. Notwithstanding the foregoing and provided no Default or Event of Default has occurred and is continuing, such prepayment shall not be required to the extent a Loan Party or such Subsidiary reinvests such net proceeds of such Transfer in productive assets (other than inventory) of a kind then used or usable in the business of the Loan Parties or such Subsidiary, within ninety (90) days after the date of such Transfer; provided that the Borrower notifies Agent of such Loan Party's or such Subsidiary's intent to reinvest and of the completion of such reinvestment at the time such proceeds are received and when such reinvestment occurs, respectively.

(ii) If any Loan Party or any of its Subsidiaries shall at any time or from time to time (x) make or agree to make an exclusive license for the use of any Loan Party's or its Subsidiaries' Intellectual Property (other than (1) the XMET Intellectual Property (as defined below), (2) pursuant to the [*] Disposition or (3) licenses that could not result in a legal transfer of title of the licensed property but that are exclusive in respects other than territory or that are exclusive as to territory only as to discreet geographical areas outside of the United States), or (y) grant any negative pledges on any Intellectual Property or any of its other assets permitted under clause (e) of the second sentence of Section 7.1, then simultaneously with such license becoming effective or such negative pledge being granted, as the case may be, unless otherwise waived in writing by the Lenders, the Borrower shall either (A) prepay the Term Loan and all other Obligations in full or (B) have deposited cash collateral for the Obligations in an amount equal to the then outstanding principal balance of the Term Loan in a deposit account under the full dominion and control of the Agent pursuant to a cash collateral agreement in form and substance satisfactory to the Agent. If any Loan Party or any of its Subsidiaries shall at any time or from time to time create, incur, assume or permit to exist any Lien on any Intellectual Property or any of its other assets permitted under clause (g) of the first sentence of Section 7.1, then simultaneously with such Lien being created, incurred, assumed or permitted to exist, the Borrower shall prepay the Term Loan and all other Obligations in full unless the Lenders shall have waived such prepayment in writing.

(iii) If any Loan Party or any of its Subsidiaries shall at any time or from time to time (x) make or agree to make an exclusive license for the use of any XMET Intellectual Property (other than licenses that could not result in a legal transfer of title of the licensed property but that are exclusive in respects other than territory or that are exclusive as to territory only as to discreet geographical areas outside of the United States), or (y) grant any Liens on any XMET Assets permitted under clause (i) of the first sentence of Section 7.1 or any negative pledges on any XMET Assets permitted under clause (g) of the second sentence of Section 7.1, then simultaneously with such license becoming effective or such Lien or negative pledge being granted, as the case may be, unless otherwise waived in writing by the Lenders, the Borrower shall prepay the Term Loan in an amount equal to the amount set forth in the table below opposite the month in which such license becomes effective or such Lien or negative pledge is granted. "XMET Assets" means (A) the XMET Intellectual Property, (B) all statistical data and regulatory filings solely related to the insulin receptor antibodies which form the Loan Parties' "XMet" program and (C) all raw materials and inventory created, developed, acquired or manufactured solely with respect to the insulin receptor antibodies which form the Loan Parties' "XMet" program (1) on or prior to entering into an XMET License Agreement, or (2) thereafter with funding from third parties pursuant to the XMET License Agreement. "XMET Intellectual Property" means any Intellectual Property related to the insulin receptor antibodies which form the Loan Parties' "XMet" program. "XMET License Agreement" means an agreement between one or more Loan Parties and a third party collaboration partner containing a license permitted under Section 7.3(c) with respect to the XMET Intellectual Property.

Month	Prepayment Amount
December 2011	$2,500,000.00
January 2012	$2,440,476.19
February 2012	$2,380,952.38
March 2012	$2,321,428.57
April 2012	$2,261,904.76
May 2012	$2,202,380.95
June 2012	$2,142,857.14
July 2012	$2,083,333.33
August 2012	$2,023,809.52
September 2012	$1,964,285.71
October 2012	$1,904,761.90
November 2012	$1,845,238.10
December 2012	$1,785,714.29
January 2013	$1,726,190.48
February 2013	$1,666,666.67
March 2013	$1,607,142.86
April 2013	$1,547,619.05
May 2013	$1,488,095.24
June 2013	$1,428,571.43
July 2013	$1,369,047.62
August 2013	$1,309,523.81
September 2013	$1,250,000.00
October 2013	$1,190,476.19
November 2013	$1,130,952.38
December 2013	$1,071,428.57
January 2014	$1,011,904.76
February 2014	$952,380.95
March 2014	$892,857.14
April 2014	$833,333.33
May 2014	$773,809.52
June 2014	$714,285.71
July 2014	$654,761.90
August 2014	$595,238.10
September 2014	$535,714.29
October 2014	$476,190.48
November 2014	$416,666.67
December 2014	$357,142.86
January 2015	$297,619.05
February 2015	$238,095.24
March 2015	$178,571.43
April 2015	$119,047.62
May 2015	$59,523.81
June 2015	$0.00

(c) Prepayment Obligation. Upon the date of any prepayment of the Term Loan permitted or required under this Agreement, Borrower shall pay to Agent, for the ratable benefit of the Lenders, a sum equal to (i) the outstanding principal amount of the Term Loan being prepaid and all accrued interest thereon, plus (ii) to the extent that the Term Loan is prepaid in full, the Final Payment Fee, plus (iii) subject to the final sentence of this clause (c), the Prepayment Premium as yield maintenance for the loss of a bargain and not as a penalty. The "Prepayment Premium" shall mean, with respect to any Term Loan being prepaid, an amount equal to (A) 3% of the principal amount of such Term Loan being prepaid, if such prepayment is made on or before the one year anniversary of the Term Loan, (B) 2% of the principal amount of such Term Loan being prepaid, if such prepayment is made after the one year anniversary of the Term Loan but on or before the two year anniversary of the Term Loan, and (C) 1% of the principal amount of such Term Loan being prepaid, if such prepayment is made after the two year anniversary of the Term Loan but before the Scheduled Maturity Date.

Notwithstanding the foregoing, the Borrower shall not be required to pay the Prepayment Premium in connection with any prepayment of the Term Loan under the following circumstances:

(x) the prepayment of the Term Loan is required under clause (b) above; or

(y) (i) any Loan Party desires to incur Indebtedness in connection with a bona fide corporate collaboration in the ordinary course of business and consistent with past practice, (ii) no Default or Event of Default has occurred and is continuing, and (iii) the incurrence of such Indebtedness is approved by the board of directors of the applicable Loan Party, but such Indebtedness does not otherwise satisfy the requirements of Section 7.2(i) and the Requisite Lenders do not approve the incurrence of such Indebtedness within fifteen (15) Business Days (or such shorter period of time as Agent shall agree) after receipt by Agent of a written request for such consent, together with a reasonably detailed description of such Indebtedness and copies of such documents related thereto as Agent shall request, then within thirty (30) days after the Requisite Lenders reject such incurrence of Indebtedness and upon three (3) Business Days' prior written notice to Agent.

2.4 **Late Fees.** If Agent does not receive any Scheduled Payment or other payment under any Transaction Document from any Loan Party within five (5) days after its due date, then, at Agent's election, such Loan Party agrees to pay to Agent for the ratable benefit of all Lenders, a late fee equal to (a) 5.0% of the amount of such unpaid payment or (b) such lesser amount that, if paid, would not cause the interest and fees paid by such Loan Party under this Agreement to exceed the Maximum Lawful Rate (as defined below) (the "Late Fee").

2.5 **Default Rate.** The Term Loan and other Obligations shall bear interest, at the election of Agent or the Requisite Lenders (as defined below) (or automatically while any Event of Default (as defined below) under Section 8.1(g) exists), from and after the occurrence and during the continuation of an Event of Default, at a rate equal to the lesser of (a) 5.0% above the rate of interest applicable to such Obligations as set forth in Section 2.2(a) immediately prior to the occurrence of the Event of Default and (b) the Maximum Lawful Rate (the "Default Rate"). The application of the Default Rate shall not be interpreted or deemed to extend any cure period or waive any Default or Event of Default or otherwise limit Agent's or any Lender's right or remedies hereunder. All interest payable at the Default Rate shall be payable on demand.

2.6 **Lender Fees**.

(a) Closing Fee. On the Closing Date, Borrower shall pay to Agent, for the benefit of Lenders in accordance with their Pro Rata Shares, a non-refundable closing fee in an amount equal to $100,000, which fee shall be fully earned when paid.

(b) Final Payment Fee. On the date upon which the outstanding principal amount of the Term Loan is repaid in full, or if earlier, is required to be repaid in full (whether by scheduled payment, voluntary prepayment, acceleration of the Obligations pursuant to Section 8.2 or otherwise), Borrower shall pay to Agent, for the ratable accounts of Lenders, a fee equal to 5% of the original principal amount of the Term Loan (the "Final Payment Fee"), which Final Payment Fee shall be deemed to be fully-earned on the date the Term Loan is made.

2.7 **Maximum Lawful Rate.** Anything herein, any Note or any other Transaction Document (as defined below) to the contrary notwithstanding, the obligations of Loan Parties hereunder and thereunder shall be subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by Agent and Lenders would be contrary to the provisions of any law applicable to Agent and Lenders limiting the highest rate of interest which may be lawfully contracted for, charged or received by Agent and Lenders, and in such event Loan Parties shall pay Agent and Lenders interest at the highest rate permitted by applicable law ("Maximum Lawful Rate"); provided, however, that if at any time thereafter the rate of interest payable hereunder or thereunder is less than the Maximum Lawful Rate, Loan Parties shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Agent and Lenders is equal to the total interest that would have been received had the interest payable hereunder been (but for the operation of this paragraph) the interest rate payable since the making of the Term Loan as otherwise provided in this Agreement, any Note or any other Transaction Document.

2.8 **Authorization and Issuance of the Warrants.** Parent has duly authorized the issuance to Lenders (or their respective affiliates or designees) of stock purchase warrants substantially in the form of the warrant attached hereto as Exhibit E (collectively, the "Warrants") evidencing Lenders' (or their respective affiliates or designees) right to acquire their respective Pro Rata Share of up to 263,158 common shares of Parent at an exercise price of $1.14 per share. The exercise period shall expire five (5) years from the date such Warrants are issued.

3. [RESERVED].

4. CONDITIONS OF CREDIT EXTENSIONS

4.1 **Conditions Precedent to Term Loan.** No Lender shall be obligated to make its Pro Rata Share of the Term Loan, or to take, fulfill, or perform any other action hereunder, until (i) the following have been delivered to Agent (the date on which the Lenders make the Term Loan after all such conditions shall have been satisfied in a manner satisfactory to Agent and the Lenders or waived in accordance with this Agreement, the "Closing Date"):

(a) a counterpart of this Agreement duly executed by each Loan Party, each Lender and Agent;

(b) a certificate executed by the Secretary of Borrower, the form of which is attached hereto as Exhibit B-1 (the "US Secretary's Certificate"), providing verification of incumbency and attaching (i) such Loan Party's board resolutions approving the transactions contemplated by this Agreement and the other Transaction Documents and (ii) such Loan Party's governing or constituent documents;

(c) a certificate executed by a Director of XOMA Ireland Limited, an Irish private limited company ("XOMA Ireland"), the form of which is attached hereto as Exhibit B-2 (each and collectively, the "Irish Director's Certificate"), providing certain verifications and certificates and attaching (i) such Loan Party's board resolutions approving the transactions contemplated by this Agreement and the other Transaction Documents and (if applicable) powers of attorney under which such documents are signed and (ii) such Loan Party's governing or constituent documents;

(d) a certificate executed by the Secretary or a Director of each of Parent and XOMA Technology Ltd., a Bermuda exempted company ("XOMA Technology", together with Parent, the "Bermuda Entities"), the form of which is attached hereto as Exhibit B-3 (each and collectively, the "Bermuda Secretary's Certificate", and together with the US Secretary's Certificate and the Irish Director's Certificate, the "Secretary Certificates"), providing certain verifications and certificates and attaching (i) such Loan Party's board resolutions approving the transactions contemplated by this Agreement and the other Transaction Documents and (if applicable) powers of attorney under which such documents are signed and (ii) such Loan Party's governing or constituent documents;

(e) copies of UCC financing statements, other public notice filings, collateral assignments, and termination statements, with respect to the Collateral as Agent shall request (for the purposes of this Agreement, "Collateral" means any and all assets of any Loan Party now owned or hereafter acquired, upon which a Lien is purported to be created by any Transaction Document; provided, however that in no event shall a mortgage be required on the leasehold interests of Borrower under its leases with respect to the Space Lease Locations (as defined below in Section 6.13));

(f) certificates of insurance evidencing the insurance coverage, and satisfactory additional insured and lender loss payable endorsements, in each case as required pursuant to Section 6.4 herein;

(g) current lien, judgment, bankruptcy and tax lien search results (including equivalent Irish searches with respect to XOMA Ireland and Bermuda searches with respect to the Bermuda Entities) demonstrating that there are no other Liens (as defined below) on the Collateral, other than Permitted Liens (as defined below) and Liens being terminated on or prior to the Closing Date;

(h) a Warrant in favor of each Lender (or its affiliate or designee);

(i) a certificate of status/good standing/compliance of each Loan Party from the jurisdiction of such Loan Party's organization (with respect to any jurisdiction outside of the United States, to the extent applicable) and a certificate of foreign qualification from each jurisdiction where such Loan Party's failure to be so qualified could reasonably be expected to have a Material Adverse Effect (as defined below), in each case as of a recent date acceptable to Agent;

(j) an Access Agreement (as defined below in Section 6.6) for any third party location other than the Space Lease Locations where any of the following are located: (i) any Loan Party's principal place of business, (ii) any Loan Party's books or records or (iii) Collateral with an aggregate value in excess of $400,000;

(k) a mortgage, deed of trust or other document granting a Lien in favor of the Agent for the benefit of the Lenders as security for the Obligations (a "Mortgage") over the real property owned by Parent located at 901 Heinz Ave., Berkeley, CA 94710, together with each document (including title policies or marked-up unconditional insurance binders (in each case, together with copies of all documents referred to therein), maps, ALTA (or TLTA, if applicable) as-built surveys (in form and as to date that is sufficiently acceptable to the title insurer issuing title insurance to the Agent for such title insurer to deliver endorsements to such title insurance as reasonably requested by the Agent), flood zone searches and/or certificates, zoning reports, environmental assessments and reports, environmental indemnity agreements, appraisals required to comply with the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended ("FIRREA"), and evidence regarding recording and payment of fees, insurance premiums and taxes) that the Agent may reasonably request, to create, register, perfect, maintain, evidence the existence, substance, form or validity of or enforce a valid lien on such real property in favor of the Agent as security for the Obligations, subject only to such Liens as the Agent may approve (all such documents referred to herein as "Mortgage Supporting Documents");

(l) opinions of legal counsel, in form and substance satisfactory to Agent;

(m) one or more completed perfection certificates from each Loan Party, duly executed by such Loan Party (each and collectively, the "Perfection Certificate"), a form of which Agent previously delivered to Borrower;

(n) one or more Account Control Agreements (as defined below), in form and substance reasonably acceptable to Agent, duly executed by the applicable Loan Parties and the applicable depository or financial institution, for each deposit and securities account to the extent required pursuant to Section 7.10;

(o) a guaranty, pledge and security agreement governed by New York law (the "US Security Agreement"), in form and substance satisfactory to Agent, executed by Parent and each of its Subsidiaries except XOMA Development Corporation, a Delaware corporation ("XOMA Development"), XOMA (Bermuda) Ltd., a Bermuda exempted company ("XOMA Bermuda"), XOMA CDRA LLC, XOMA LS Limited and XOMA Limited (UK);

(p) a Debenture granted by each of the Bermuda Entities (the "Bermuda Debentures") and a charge over the shares in XOMA Technology granted by the Parent (the "Bermuda Share Charge") each governed by Bermuda law (the "Bermuda Security Agreements"), in form and substance satisfactory to Agent, executed by the Bermuda Entities;

(q) (i) a Debenture granted by XOMA Ireland in favor of the Agent for the benefit of the Lenders ("Irish Debenture"), (ii) an Irish Share Charge granted by Parent dated on or about the Closing Date in favor of the Agent for the benefit of the Lenders ("Irish Charge"), (iii) an Irish Companies Registration Office Form C1 with respect to the Irish Debenture, (iv) an Irish Companies Registration Office Form C1 with respect to the US Security Agreement, (v) an Irish Companies Registration Office Form 8E with respect to the US Security Agreement (vi) an Irish Companies Registration Office Form 8E with respect to the Irish Charge, (vi) any document of title for any Collateral that is pledged, mortgaged or subject to a fixed charge under the Transaction Documents (including any stock or share certificate) and blank share transfers for any Irish Shares forming part of the Collateral, (vii) executed but undated letters of resignation from each of the directors, alternate directors and Secretary of XOMA Ireland, (viii) the share certificate which validly and correctly evidences Parent's 100% shareholding in XOMA Ireland, executed under seal, in each case in form and substance satisfactory to Agent, executed by Parent and XOMA Ireland and (ix) all notices of assignment required to be served by the Company under the Irish Debenture together with all signed and dated acknowledgements to such notices of assignment;

(r) all certificates representing all securities being pledged pursuant to the US Security Agreement and Bermuda Security Agreements together with related undated powers or endorsements duly executed in blank;

(s) an amendment to the limited liability company agreement of Borrower, in form and substance acceptable to Agent;

(t) a disbursement instruction letter, in form and substance satisfactory to Agent and the Lenders, executed by each Loan Party, Agent and each Lender (the "Disbursement Letter");

(u) a Master Intercompany Promissory Note, in form and substance satisfactory to Agent and Lenders, executed by each Loan Party (the "Master Intercompany Note") and endorsed to Agent; and

(v) all other documents and instruments as Agent or any Lender may reasonably deem necessary or appropriate to effectuate the intent and purpose of this Agreement (together with the Agreement, the Notes, the Warrants, the Account Control Agreements, the Access Agreements, the Perfection Certificate, the Mortgage, the US Security Agreement, Irish Debenture, Irish Charge, Bermuda Security Agreements, the Secretary Certificates, the Disbursement Letter, and all other agreements, instruments, documents and certificates executed and/or delivered to or in favor of the Agent or any Lender from time to time in connection with this Agreement or the transactions contemplated hereby, the "Transaction Documents");

(ii) Agent and Lenders shall have received the fees required to be paid by Borrower, and Borrower shall have reimbursed Agent and Lenders for all of their fees, costs and expenses for which an invoice has been presented at least one Business Day prior to the Closing Date; and

(iii) (a) all representations and warranties in Section 5 below shall be true as of the date of the Term Loan; (b) no Event of Default or any other event, which with the giving of notice or the passage of time, or both, would constitute an Event of Default (such event, a "Default"), has occurred and is continuing or would result from the making of the Term Loan; and (c) Agent shall have received a certificate from an authorized officer of each Loan Party confirming each of the foregoing.

5. REPRESENTATIONS AND WARRANTIES OF LOAN PARTIES.

Each Loan Party, jointly and severally, represents, warrants and covenants to the Agent and each Lender that:

5.1 **Due Organization and Authorization.** Each Loan Party's exact legal name is as set forth in the Perfection Certificate and each Loan Party is, and will remain, duly organized, existing and in good standing under the laws of the jurisdiction of its organization (with respect to any jurisdiction outside of the United States, to the extent applicable) as specified in the Perfection Certificate (or, with respect to any Loan Party organized in a jurisdiction outside of the United States on the Closing Date which discontinues and relocates after the Closing Date to a jurisdiction within the United States pursuant to the Parent Redomestication or a Subsidiary Redomestication (as such terms are defined below in Section 7.4), under the laws of such new jurisdiction of organization, has its chief executive office at the location specified in the Perfection Certificate, and is, and will remain, duly qualified and licensed in every jurisdiction wherever necessary to carry on its business and operations, except where the failure to be so qualified and licensed could not reasonably be expected to have a Material Adverse Effect (defined below in Section 5.4). This Agreement and the other Transaction Documents have been duly authorized, executed and delivered by each Loan Party and constitute legal, valid and binding agreements enforceable in accordance with their terms. The execution, delivery and performance by each Loan Party of each Transaction Document executed or to be executed by it is in each case within such Loan Party's powers. As of the Closing Date, neither the [*] Subsidiary nor the [*] Subsidiary (each as defined below in Section 7.7) has been formed.

5 . 2 **Required Consents.** No filing, registration, qualification with, or approval, consent or withholding of objections from, any governmental authority or instrumentality or any other entity or person is required with respect to the entry into, or performance by any Loan Party of, any of the Transaction Documents, except any obtained on or before the Closing Date (including but not limited to the Form C1 in the Irish Companies Registration Office in respect of the Irish Debenture and the Form 8E in the Irish Companies Registration Office in respect of the Irish Charge).

5.3 **No Conflicts.** The entry into, and performance by each Loan Party of, the Transaction Documents will not (a) violate any of the organizational documents of such Loan Party, (b) violate any material law, rule, regulation, order, award or judgment applicable to such Loan Party, or (c) result in any breach of or constitute a default under, or result in the creation of any lien, security interest, mortgage, charge, assignment, pledge, claim or encumbrance of any kind (any of the foregoing, a "Lien") on any of such Loan Party's property (except for Liens in favor of Agent, on behalf of itself and Lenders) pursuant to, any indenture, mortgage, deed of trust, bank loan, credit agreement, any agreement between any Loan Parties or Subsidiaries of Loan Parties on the one hand and (A) Novartis Vaccines and Diagnostics, Inc. (f/k/a Chiron Corporation) ("Novartis") or any of its affiliates or (B) Les Laboratoires Servier ("Servier") or Institut de Recherches Servier or any of their respective affiliates on the other hand, or any other Material Agreement (as defined below) to which such Loan Party is a party. As used herein, "Material Agreement" means (i) the agreements between certain Loan Parties or Subsidiaries of Loan Parties and (A) Novartis or any of its affiliates and (B) Servier or Institut de Recherches Servier or any of their respective affiliates, in each case listed on Schedule B hereto, (ii) the Medpace Agreement, (iii) any agreement or contract to which such Loan Party is a party and which either resulted in the receipt or payment of amounts in the aggregate exceeding $250,000 (or $500,000 with respect to any employment agreement) in the prior calendar year or could reasonably be expected to result in the receipt or payment of amounts in the aggregate exceeding $250,000 (or $500,000 with respect to any employment agreement) in the current calendar year or any year thereafter through and including the 2015 calendar year (but excluding calendar years ending thereafter), and (iv) any agreement or contract to which such Loan Party is a party the termination of which could reasonably be expected to have a Material Adverse Effect. A list of all Material Agreements as of the Closing Date is set forth on Schedule B. All material agreements of the Loan Parties or Subsidiaries of the Loan Parties on the Closing Date with Novartis, Servier or Institut de Recherches Servier or any of their respective affiliates are set forth on Schedule B. As of the Closing Date, the Borrower has provided to the Agent, or made available to the Agent through an electronic dataroom, a true and correct copy of all Material Agreements and all amendments and modifications thereto.

5.4 **Litigation.** There are no actions, suits, proceedings or investigations pending against or, to the knowledge of any Loan Party, affecting any Loan Party before any court, federal, state, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or, to the knowledge of any Loan Party, any basis thereof, which could reasonably be expected to have a Material Adverse Effect, or which questions the validity of the Transaction Documents, or the other documents required thereby or any action to be taken pursuant to any of the foregoing, nor does any Loan Party have reason to believe that any such actions, suits, proceedings or investigations are threatened. As used in this Agreement, the term "Material Adverse Effect" means a material adverse effect on (a) the operations, business, assets, properties, or condition (financial or otherwise) of Borrower, individually, or the Loan Parties taken as a whole, (b) the ability of the Borrower individually to perform any of its obligations under any Transaction Document to which it is a party or the ability of the other Loan Parties taken as a whole to perform any of their obligations under any Transaction Document to which any of them are party, (c) the legality, validity or enforceability of any Transaction Document, (d) the rights and remedies of Agent or any Lender under any Transaction Document or (e) the validity, perfection or priority of any Lien in favor of Agent, on behalf of itself and the Lenders, on any of the Collateral.

5.5 **Financial Statements.** All annual and quarterly financial statements delivered to Agent and Lenders pursuant to Section 6.3 have been prepared in accordance with GAAP (subject, in the case of unaudited financial statements, to the absence of footnotes and normal year end audit adjustments), and all monthly financial statements delivered to the Agent and Lenders pursuant to Section 6.3 have been prepared in accordance with historical practices and are consistent in form to those financial statements previously provided to Agent. Since the date of the most recent audited financial statements, no event has occurred which has had or could reasonably be expected to have a Material Adverse Effect.

5.6 **Use of Proceeds; Margin Stock.** The proceeds of the Term Loan shall be used for working capital and general corporate purposes. No Loan Party and no Subsidiary of any Loan Party is engaged in the business of purchasing or selling margin stock (within the meaning of Regulations T, U and X of the Board of Governors of the Federal Reserve System) ("Margin Stock") or extending credit for the purpose of purchasing Margin Stock. As of the Closing Date, no Loan Party and no Subsidiary of any Loan Party owns any Margin Stock.

5.7 **Collateral.** Each Loan Party is, and will remain, the sole and lawful owner, and in possession of, the Collateral, and has the sole right and lawful authority to grant the security interest described in this Agreement. The assets of each Loan Party and of each Subsidiary of each Loan Party are, and will remain, free and clear of all Liens, except for (a) Liens in favor of Agent, on behalf of itself and the Lenders, to secure the Obligations, (b) Liens (i) with respect to the payment of taxes, assessments or other governmental charges or (ii) of suppliers, carriers, materialmen, warehousemen, workmen or mechanics and other similar Liens, in each case imposed by law and arising in the ordinary course of business, and securing amounts that are not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves or other appropriate provisions are maintained on the books of the applicable Loan Party in accordance with GAAP and which do not involve, in the reasonable judgment of Agent, any risk of the sale, forfeiture or loss of any of the Collateral (a "Permitted Contest"), (c) Liens existing on the date hereof and set forth onSchedule B hereto, (d) Liens securing Indebtedness (as defined in Section 7.2 below) permitted under Section 7.2(c) below, provided that (i) such Liens exist prior to the acquisition of, or attach substantially simultaneous with, or within 20 days after, the acquisition, repair, improvement or construction of such property financed by such Indebtedness, and (ii) such Liens do not extend to any property of a Loan Party other than the property (and proceeds thereof) acquired or built, or the improvements or repairs, financed by such Indebtedness, (e) licenses described in Section 7.3(c) below, (f) pledges or cash deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other types of social security benefits (but not including any lien imposed by ERISA) that secure amounts that are not yet due or payable, (g) statutory bankers' liens or rights of set off in deposit or securities accounts in favor of the financial institution at which such deposit or securities account is located, provided that to the extent an Account Control Agreement is required for such deposit or securities account, such liens or rights of set off have been waived or subordinated in a manner satisfactory to Agent therein, (h) zoning restrictions, easements, rights of way, encroachments or other restrictions on the use of, and other minor defects or irregularities in title with respect to, any real property of any Loan Party or its Subsidiaries so long as the same do not materially impair the value or use of such real property by such Loan Party or such Subsidiary, (i) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business to the extent such lease is not otherwise prohibited hereunder, (j) Liens arising from judgments, decrees or attachments that do not constitute an Event of Default hereunder, (k) Liens of landlords (i) arising by statute or (ii) under any lease entered into in the ordinary course of business, in each case on fixtures and movable tangible property located on the real property leased or subleased from such landlord, securing amounts that are not yet due or that are being contested pursuant to a Permitted Contest and which are subordinated to the security interests of the Agent and Lenders granted under the Transaction Documents pursuant to an Access Agreement (or, with respect to clause (i) only, under any lease for which no Access Agreement is required hereunder), (l) Liens incurred in the extension, renewal or refinancing of Indebtedness secured by Liens described in clause (d) above, provided that any such extension, renewal or replacement Liens shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced may not be increased, and (m) Liens expressly permitted under the first sentence of Section 7.1 below (all of such Liens described in the foregoing clauses (a) through (m) are referred to herein as "Permitted Liens").

5.8 **Compliance with Laws.**

(a) Each Loan Party is and will remain in compliance in all material respects with all laws, statutes, ordinances, rules and regulations applicable to it.

(b) Without limiting the generality of the immediately preceding clause (a), each Loan Party further agrees that it and each of its Subsidiaries is and will remain in compliance in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control, and all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. No Loan Party nor any of its Subsidiaries, Affiliates or joint ventures (i) is a person or entity designated by the U.S. Government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List") with which a U.S. person or entity cannot deal with or otherwise engage in business transactions, (ii) is a person or entity who is otherwise the target of U.S. economic sanctions laws such that a U.S. person or entity cannot deal or otherwise engage in business transactions with such person or entity, or (iii) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Transaction Document would be prohibited under U.S. law.

(c) Each Loan Party and each of its Subsidiaries is in compliance with (i) the Trading with the Enemy Act of 1917, Ch. 106, 40 Stat. 411, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (ii) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56, as amended (the "Patriot Act"), and (iii) other federal or state laws relating to "know your customer" and anti-money laundering rules and regulations. No part of the proceeds of the Term Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

(d) Each Loan Party has met the minimum funding requirements of the United States Employee Retirement Income Security Act of 1974 (as amended, "ERISA") with respect to any employee benefit plans subject to ERISA. No Loan Party is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940.

5.9 **Intellectual Property.** The Intellectual Property (defined below) is and will remain free and clear of all Liens, except for Liens described in clauses (a), (b)(i), (c) and (e) of Section 5.7 and clauses (b), (c), (e), (g) and (h) of the first sentence of Section 7.1. No Loan Party has nor will it enter into any agreement or financing arrangement in which a negative pledge in such Loan Party's Intellectual Property (other than the Excluded Negative Pledge Assets as defined below) is granted to any party. As of the Closing Date no Loan Party has any interest in, or title to any Intellectual Property except as disclosed in the Perfection Certificate. Each Loan Party owns or has rights to use all Material Intellectual Property, without any actual infringement or claimed infringement that has been asserted against and received in writing by such Loan Party upon the rights of third parties. "Intellectual Property" means any and all copyrights, trademarks, servicemarks, patents, design rights, software, trade secrets and intangible rights of a Loan Party and any applications, registrations, products, awards, judgments, amendments, renewals, extensions and improvements related thereto. "Material Intellectual Property" means all Intellectual Property that is material to the conduct of the business of the Loan Parties taken as a whole.

5.10 **Solvency.** Both before and after giving effect to the Term Loan, the transactions contemplated herein, and the payment and accrual of all transaction costs in connection with the foregoing, each Loan Party is and will be Solvent. As used herein, "Solvent" means, with respect to a Loan Party on a particular date, that on such date (a) the fair value of the property (including intangibles and goodwill) of such Loan Party is greater than the total amount of liabilities, including contingent liabilities, of such Loan Party; (b) the present fair salable value of the assets of such Loan Party is not less than the amount that will be required to pay the probable liability of such Loan Party on its debts as they become absolute and matured; (c) such Loan Party does not intend to, and does not believe that it will, incur debts or liabilities beyond such Loan Party's ability to pay as such debts and liabilities mature; (d) such Loan Party is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Loan Party's property would constitute an unreasonably small capital; (e) such Loan Party is not "insolvent" within the meaning of Section 101(32) of the United States Bankruptcy Code (11 U.S.C. § 101, et seq.), as amended from time to time; (f) such Loan Party is not deemed unable to pay its debts in accordance with section 162 of the Companies Act of 1981 of Bermuda; and (g) such Loan Party is able to pay its debts as they fall due. The amount of contingent liabilities (such as litigation, guaranties and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can be reasonably be expected to become an actual or matured liability.

5.11 **Taxes; Pension.** All foreign, United States federal, California and other material state and local tax returns, reports and statements, including information returns, required by any governmental authority to be filed by each Loan Party and its Subsidiaries have been filed on a timely basis with the appropriate governmental authority and all foreign, United States federal, California and other material state and local taxes, levies, assessments and similar charges have been paid prior to the date on which any fine, penalty, interest or late charge may be added thereto for nonpayment thereof (or any such fine, penalty, interest, late charge or loss has been paid), excluding taxes, levies, assessments and similar charges or other amounts which are the subject of a Permitted Contest. Proper and accurate amounts have been withheld by each Loan Party from its respective employees for all periods in compliance with applicable laws and such withholdings have been timely paid to the respective governmental authorities. Each Loan Party has made all contributions required to be made to all present pension, profit sharing and deferred compensation plans in accordance with their terms, and no Loan Party has withdrawn from participation in, or has permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of a Loan Party, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental authority.

5.12 **Full Disclosure.** Loan Parties hereby confirm that all of the information disclosed on the Perfection Certificate is true, correct and complete as of the date of this Agreement. No representation, warranty or other statement made by or on behalf of a Loan Party to Agent or Lenders (including in any certificate, instrument, agreement or document delivered pursuant to this Agreement or any other Transaction Document) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein in light of the circumstances under which they were made not misleading, it being recognized by Agent and Lenders that the projections and forecasts provided by Loan Parties in good faith and based upon reasonable and stated assumptions are not to be viewed as facts and that actual results during the period or periods covered by any such projections and forecasts may differ from the projected or forecasted results.

5.13 **Regulatory Compliance**.

(a) Each Loan Party has, and it and its products are in conformance with, all registrations, authorizations, approvals, licenses, permits, clearances, certificates, and exemptions issued or allowed by the U.S. Food and Drug Administration or any successor thereto ("FDA") or any comparable governmental authority (including but not limited to new drug applications, abbreviated new drug applications, biologics license applications, investigational new drug applications, over-the-counter drug monograph, product recertifications, manufacturing approvals and authorizations, pricing and reimbursement approvals, labeling approvals or their foreign equivalent, controlled substance registrations, and wholesale distributor permits) (hereinafter "Registrations") that are material to the conduct of the business of the Loan Parties taken as a whole. To the knowledge of each Loan Party, neither the FDA nor any comparable governmental authority is considering limiting, suspending, or revoking such Registrations or changing the marketing classification or labeling or other significant parameter affecting the products of the Loan Parties in any material respect. To the knowledge of each Loan Party, there is no false or materially misleading information or significant omission in any product application or other submission to the FDA or any comparable governmental authority. The Loan Parties have fulfilled and performed their obligations under each Registration in all material respects, and no event has occurred or condition or state of facts exists which would constitute a material breach or default under, or would cause revocation or termination of, any such Registration. To the knowledge of each Loan Party, no event has occurred or condition or state of facts exists which would present potential product liability that could reasonably be expected to result in a Material Adverse Effect related, in whole or in part, to any Loan Party's activities or products that are subject to Public Health Laws. To the knowledge of each Loan Party, any third party that is a manufacturer or contractor for the Loan Parties is in compliance in all material respects with all Registrations required by the FDA or comparable governmental authority and all Public Health Laws insofar as they reasonably pertain to the manufacture of product components or products regulated as medical devices and marketed or distributed by the Loan Parties. "Public Health Laws" means all applicable Requirements of Law relating to the procurement, development, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, sale, or promotion of any drug, medical device, food, dietary supplement, or other product (including, without limitation, any ingredient or component of the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.) and similar state laws, controlled substances laws, pharmacy laws, or consumer product safety laws.

(b) All products designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold or marketed by or on behalf of the Loan Parties that are subject to the jurisdiction of the FDA or a comparable governmental authority, have been and are being designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold and marketed in compliance in all material respects with the Public Health Laws and all other Requirements of Law, including, without limitation, clinical and non-clinical evaluation, product approval or clearance, premarketing notification, good manufacturing practices, labeling, advertising and promotion, record-keeping, establishment registration and listing, reporting of recalls, and adverse event reporting.

(c) No Loan Party is subject to any obligation arising under an administrative or regulatory action, proceeding, investigation or inspection by or on behalf of a governmental authority (including, without limitation, the FDA), warning letter, notice of violation letter, consent decree, or request for information or other notice, response or commitment, the compliance with which may reasonably be expected to have a Material Adverse Effect, that is made to or with the FDA or any comparable governmental authority, and no such obligation has been threatened. Except as otherwise disclosed on Schedule B, there is no, and there is no act, omission, event, or circumstance of which any Loan Party has knowledge that would reasonably be expected to give rise to or lead to any civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, warning letter, proceeding or request for information pending against any Loan Party. To each Loan Party's knowledge, there has not been any violation of any Public Health Laws by any Loan Party in its product development efforts, submissions, record keeping and reports to the FDA or any other comparable governmental authority that could reasonably be expected to require or lead to investigation, corrective action or enforcement, regulatory or administrative action that could reasonably be expected to have a Material Adverse Effect. To the knowledge of each Loan Party, there are no civil or criminal proceedings relating to any Loan Party or any officer, director or employee of any Loan Party that involve a matter within or related to the FDA's any other comparable governmental authority's jurisdiction except as otherwise disclosed on Schedule B.

(d) As of the Closing Date, no Loan Party is undergoing any inspection related to any activities or products of the Loan Parties that are subject to Public Health Laws, or any other governmental authority investigation except as set forth on Schedule B.

(e) During the period of six calendar years immediately preceding the Closing Date, no Loan Party has introduced into commercial distribution any products manufactured by or on behalf of any Loan Party or distributed any products on behalf of another manufacturer that were upon their shipment by any Loan Party adulterated or misbranded in violation of 21 U.S.C. § 331. The Loan Parties have not received any notice or communication from the FDA or comparable governmental authority alleging material noncompliance with any Requirement of Law. Except as otherwise disclosed on Schedule B, no product has been seized, withdrawn, recalled, detained, or subject to a suspension (other than in the ordinary course of business) of research, manufacturing, distribution or commercialization activity, and there are no facts or circumstances reasonably likely to cause (i) the seizure, denial, withdrawal, recall, detention, public health notification, safety alert or suspension of manufacturing or other activity relating to any product; (ii) a change in the labeling of any product suggesting a compliance issue or risk; or (iii) a termination, seizure or suspension of manufacturing, researching, distributing or marketing of any product. No proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, revocation, suspension, import detention, or seizure of any product are pending or threatened against any Loan Party.

(f) No Loan Party nor any of its respective officers, directors, employees, agents or contractors (i) have been excluded or debarred from any federal healthcare program (including without limitation Medicare or Medicaid) or any other federal program or (ii) have received notice from the FDA or any other comparable governmental authority with respect to debarment or disqualification of any person that could reasonably be expected to have a Material Adverse Effect. No Loan Party nor any of its respective officers, directors, employees, agents or contractors have been convicted of any crime or engaged in any conduct for which (x) debarment is mandated or permitted by 21 U.S.C. § 335a or (y) such person or entity could be excluded from participating in the federal health care programs under Section 1128 of the Social Security Act or any similar law. To the knowledge of each Loan Party, no officer, employee or agent of any Loan Party, has (aa) made any untrue statement of material fact or fraudulent statement to the FDA or any other comparable governmental authority; (bb) failed to disclose a material fact required to be disclosed to the FDA or any other comparable governmental authority; or (cc) committed an act, made a statement, or failed to make a statement that would reasonably be expected to provide the basis for the FDA or any other comparable governmental authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (September 10, 1991).

"Requirements of Law" means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and other legally binding requirements of any governmental authority that are applicable to such Person or any of its property.

"Person" means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or governmental authority.

5.14 **Environmental Matters.** In each case as of the Closing Date and except where any failures to comply would not reasonably be expected to result in, either individually or in the aggregate, Environmental Liabilities (as defined below) in excess of $250,000 to the Loan Parties and their Subsidiaries, (a) the operations of each Loan Party and each Subsidiary of each Loan Party are and have been in compliance with all applicable Environmental Laws (as defined below), including obtaining, maintaining and complying with all Permits (as defined below) required by any applicable Environmental Law, (b) no Loan Party and no Subsidiary of any Loan Party is party to, and no Loan Party and no Subsidiary of any Loan Party and no real property currently (or to the knowledge of any Loan Party previously) owned, leased, subleased, operated or otherwise used by or for any such Person is subject to or the subject of, any contractual obligation or any pending (or, to the knowledge of any Loan Party, threatened) order, action, investigation, suit, proceeding, audit, claim, demand, dispute or notice of violation or of potential liability or similar notice relating in any manner to any Environmental Law, (c) no Lien in favor of any governmental authority securing, in whole or in part, Environmental Liabilities has attached to any property of any Loan Party or any Subsidiary of any Loan Party and, to the knowledge of any Loan Party, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such property, (d) no Loan Party and no Subsidiary of any Loan Party has caused or suffered to occur any Release (as defined below) of Hazardous Materials (as defined below), (e) to the knowledge of any Loan Party there has been no Release of Hazardous Materials at any real property currently (or to the knowledge of any Loan Party previously) owned, leased, subleased, operated or otherwise used by or for any such Loan Party and each Subsidiary of each Loan Party and (f) no Loan Party and no Subsidiary of any Loan Party (i) has permitted any current or former tenant to engage in operations in violation of any Environmental Law or (ii) knows of any facts, circumstances or conditions reasonably constituting notice of a violation of any Environmental Law by any of them, including receipt of any information request or notice of potential responsibility under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or similar Environmental Laws.

"Environmental Laws" means all Requirements of Law and Permits imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, or the workplace (in each case to the extent related to Hazardous Materials), the environment, Hazardous Materials, and natural resources, including public notification requirements and environmental transfer of ownership, notification or approval statutes.

"Environmental Liabilities" means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses (including without limitation, those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and reasonable fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise (including (i) costs of all actions required by applicable Environmental Laws to (x) clean up, remove, treat or in any other way address any Hazardous Material in the indoor or outdoor environment, (y) prevent or minimize any Release or threat of a Release so that a Hazardous Material does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (z) perform pre-remedial studies and investigations and post-remedial monitoring and care with respect to any Hazardous Material (collectively "Remedial Actions") and (ii) natural resource damages and costs and expenses of investigation and feasibility studies, including the cost of environmental consultants and attorneys' costs) that may be imposed on, incurred by or asserted against any Loan Party or any Subsidiary of any Loan Party as a result of, or related to, any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, strict liability, criminal or civil statute or common law or otherwise, arising under any Environmental Law, including without limitation arising in connection with any Release or threat of a Release and resulting from the ownership, lease, sublease or other operation or use of property by any Loan Party or any Subsidiary of any Loan Party, whether on, prior or after the date hereof.

"Hazardous Material" means any substance, material or waste that is classified, regulated or could otherwise give rise to liability under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including without limitation, petroleum or any fraction thereof, asbestos, polychlorinated biphenyls and radioactive substances.

"Permits" means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any governmental authority, in each case applicable to such Person or any of its property or to which such Person or any of its property is subject.

"Release" means any release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material into or through the environment.

5.15 **XOMA Bermuda and XOMA Development**. As of the Closing Date and for long as such entity continues to exist, neither XOMA Bermuda nor XOMA Development (i) has any assets, (ii) has any Indebtedness or other liabilities, or (iii) conducts any business beyond the maintenance of its legal existence.

6. AFFIRMATIVE COVENANTS.

6.1 **Good Standing.** Each Loan Party shall maintain its and each of its Subsidiaries' existence and good standing (with respect to any jurisdiction outside of the United States, to the extent applicable) in its jurisdiction of organization (other than as a result of the Parent Redomestication, any Subsidiary Redomestication or the Permitted Dissolutions (as defined in Section 6.13 below) and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect. Each Loan Party shall maintain, and shall cause each of its Subsidiaries to maintain, in full force all licenses, approvals and agreements, the loss of which could reasonably be expected to have a Material Adverse Effect. "Subsidiary" means, with respect to a Loan Party, any entity the management of which is, directly or indirectly controlled by, or of which an aggregate of more than 50% of the outstanding voting capital stock (or other voting equity interest) is, at the time, owned or controlled, directly or indirectly by, such Loan Party or one or more Subsidiaries of such Loan Party, and, unless the context otherwise requires each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

6.2 **Notice to Agent and the Lenders.** Loan Parties shall provide Agent with (a) notice of any change in any material respect (except that in each case such materiality qualifier shall not be applicable to any representation or warranty that is already expressly qualified or modified by materiality in the text thereof) in the accuracy of the Perfection Certificate promptly (but in any event within six (6) Business Days) after the date on which any Responsible Officer (as defined below) of a Loan Party obtains knowledge of the occurrence of any such change, (b) notice of the occurrence of any Default or Event of Default, promptly (but in any event within three (3) Business Days) after the date on which any Responsible Officer of a Loan Party obtains knowledge of the occurrence of any such event, (c) copies of all statements, reports and notices made available generally by any Loan Party to its securityholders and all documents filed with the Securities and Exchange Commission ("SEC") or any securities exchange or governmental authority exercising a similar function, promptly (but in any event within five (5) Business Days) after delivering such information to such persons; provided that notification to Agent by facsimile transmission or electronic transmission of the filing of any such statement, report or notice on the SEC's Next-Generation EDGAR System shall satisfy the notice and delivery requirements of this clause (c), (d) a report of any legal actions pending or threatened against any Loan Party or any Subsidiary that could reasonably be expected to result in damages or costs to any Loan Party or any Subsidiary of $150,000 or more in excess of applicable insurance coverage, promptly (but in any event within five (5) Business Days) after receipt of notice thereof by a Responsible Officer of a Loan Party, including without limitation any such legal actions alleging potential or actual violations of any Public Health Law, (e) a list of new applications or registrations that any Loan Party has made or filed in respect of any Intellectual Property or any material change in status of any outstanding application or registration (other than any change in status on an application or registration prosecuted by a third party of which a Responsible Officer of the Loan Parties or the Borrower's Director of Intellectual Property has no knowledge) concurrently with the delivery of each quarterly compliance certificate delivered pursuant to Section 6.3, (f) notice of any breach or other event constituting a default or event of default under any Material Agreement, promptly (but in any event within three (3) Business Days) after the date on which any Responsible Officer of a Loan Party obtains knowledge of the occurrence of any such event, (g) notice of any amendments to, and copies of all statements, reports and notices (other than non-material amendments, statements, reports and notices delivered in the ordinary course of business) delivered to or by a Loan Party in connection with any Material Agreement, promptly (but in any event within five (5) Business Days) after the execution of any such amendment or the receipt of any statement, report or notice by a Responsible Officer of any Loan Party, (h) copies of any notice that the FDA or comparable governmental authority is limiting, suspending or revoking any Registration, changing the market classification, distribution pathway or parameters or labeling of the products of the Loan Parties, or considering any of the foregoing, promptly (but in any event within three (3) Business Days) after receipt thereof by a Responsible Officer of any Loan Party, (i) notice that any Loan Party has become subject to any administrative or regulatory action, FDA or comparable governmental authority inspection, Form FDA 483 observation, warning letter, notice of violation letter, or other enforcement action, or notice, response or commitment, the compliance with which may be reasonably expected to have a Material Adverse Effect, made to or with the FDA or any comparable governmental authority, or notice that any product of any Loan Party has been seized, withdrawn, recalled, detained, or subject to a suspension of manufacturing, or the commencement of any proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, suspension, import detention, or seizure of any product are pending or threatened against any Loan Party, promptly (but in any event within three (3) Business Days) after receipt thereof by a Responsible Officer of any Loan Party and (j) notice of any material adverse deviation from the most recent annual operating plan of Borrower delivered to Agent and Lenders in accordance with Section 6.3 promptly (but in any event within three (3) Business Days) after the date on which any Responsible Officer of a Loan Party obtains knowledge thereof. "Responsible Officer" shall mean the chief executive officer, president, chief financial officer, chief medical officer, vice president of finance, general counsel, executive vice president, chief scientific officer, vice president of regulatory affairs and compliance, and any other officer with substantially the same responsibility as any of the above.

6 . 3 **Financial Statements.** Borrower shall deliver to Agent and Lenders (a) unaudited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements of Parent and its Subsidiaries in the form attached hereto as Exhibit D-1 within 30 days of the end of each calendar month, certified by Parent's president, chief executive officer, chief financial officer or general counsel, and (b) quarterly unaudited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements of Parent and its Subsidiaries for each of the first three fiscal quarters of each fiscal year of Parent and annual audited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements of Parent and its Subsidiaries, certified by a recognized firm of certified public accountants, in each case within five (5) Business Days after such statements are required to be provided to the SEC. All audited financial statements delivered pursuant to this Section 6.3 shall be accompanied by the report of an independent certified public accounting firm acceptable to Agent (it being agreed that Ernst & Young LLP is acceptable to Agent) which report shall (i) contain an unqualified opinion, stating that such consolidated financial statements present fairly in all material respects the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years and (ii) not include any explanatory paragraph expressing substantial doubt as to going concern status. All such annual and quarterly statements are to be prepared using GAAP (subject, in the case of unaudited financial statements, to the absence of footnotes and normal year end audit adjustments) and are to be in compliance with applicable SEC requirements. All financial statements delivered pursuant to this Section 6.3 shall be accompanied by a compliance certificate, signed by the chief financial officer or general counsel of Parent, in the form attached hereto as Exhibit D-2, and the management discussion and analysis that is filed by the Parent with the SEC for the respective fiscal period. Borrower shall deliver to Agent and Lenders (i) as soon as available and in any event not later than 75 days after the end of each fiscal year of Parent, the annual operating plan for Parent, on a consolidated basis, approved by the Board of Directors of Parent, for the current fiscal year, and (ii) such budgets, sales projections, or other business, financial, corporate affairs and other information as Agent or any Lender may reasonably request from time to time.

6 . 4 **Insurance.** Each Loan Party, at its expense, shall maintain, and shall cause each Subsidiary to maintain, insurance (including, without limitation, (a) comprehensive general liability, hazard, and business interruption insurance and (b) with respect to any real property subject to a Mortgage which is located in a Special Flood Hazard Area (as defined below), Federal Flood Insurance (as defined below), or to the extent not available, private flood insurance, in each case with respect to all of its properties and businesses (including, the Collateral), in such amounts and covering such risks as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and in any event with deductible amounts, insurers and policies that shall be reasonably acceptable to Agent. Borrower shall deliver to Agent certificates of insurance evidencing such coverage, together with endorsements to such policies naming Agent as a lender loss payee or additional insured, as appropriate, in form and substance reasonably satisfactory to Agent. Each policy shall provide that coverage may not be canceled by the insurer except upon 30 days prior written notice to Agent and shall not be subject to co-insurance. Each Loan Party appoints Agent as its attorney-in-fact to make, settle and adjust all claims under and decisions with respect to such Loan Party's policies of insurance, and to receive payment of and execute or endorse all documents, checks or drafts in connection with insurance payments. Agent shall not act as such Loan Party's attorney-in-fact unless an Event of Default has occurred and is continuing. The appointment of Agent as any Loan Party's attorney in fact is a power coupled with an interest and is irrevocable until all of the Obligations are paid in full in cash. Proceeds of insurance shall be applied, at the option of Agent, to repair or replace the Collateral or to reduce any of the Obligations. "Federal Flood Insurance" means Federally backed Flood Insurance available under the program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, that mandates the purchase of flood insurance to cover real property improvements located in Special Flood Hazard Areas in participating communities and provides protection to property owners through a Federal insurance program. "Special Flood Hazard Area" means an area that the Federal Emergency Management Agency's current flood maps indicate has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year.

6.5 **Taxes.** Each Loan Party shall, and shall cause each Subsidiary to, timely file all foreign, United States federal, California and other material state and local tax reports and pay and discharge all foreign, United States federal, California and other material state and local taxes, assessments and governmental charges or levies imposed upon it, or its income or profits or upon its properties or any part thereof, before the same shall be in default and before the date on which penalties attach thereto, except to the extent such taxes, assessments and governmental charges or levies are the subject of a Permitted Contest.

6.6 **Agreement with Landlord/Bailee.** Unless otherwise agreed to by Agent in writing, each Loan Party shall obtain and maintain a landlord consent and/or bailee letter in favor of Agent executed by the applicable landlord or bailee (in the form attached hereto as Exhibit C-1 or Exhibit C-2, as applicable, or in such other form as is reasonably acceptable to Agent, each an "Access Agreement")) with respect to any real property (other than real property owned in fee simple by a Loan Party) on which (a) a Loan Party's principal place of business is located, (b) a Loan Party's books or records are located or (c) Collateral is located (other than Collateral with an aggregate value of less than of $400,000) as Agent may require. If Agent agrees in writing that a Loan Party shall not be required to obtain and maintain an Access Agreement with respect to any real property described in the immediately preceding sentence, then concurrently with the delivery of each compliance certificate pursuant to Section 6.3, the Borrower shall certify to Agent (1) that all payments under such lease have been paid when due and (2) that no default or event of default exists under such lease.

6.7 **Real Property.** Upon request of the Agent, each Loan Party shall deliver to it (a) an appraisal complying with and to the extent required by FIRREA, (b) within forty-five days of receipt of notice from Agent that real property of the Loan Parties is located in a Special Flood Hazard Area, Federal Flood Insurance, and (c) a Mortgage on any real property owned by any Loan Party, together with all Mortgage Supporting Documents relating thereto (or, if such real property is located in a jurisdiction outside the United States, similar documents deemed appropriate by the Agent to obtain the equivalent in such jurisdiction of a first-priority mortgage on such owned real property).

6.8 **Protection of Intellectual Property.** Each Loan Party shall take all necessary actions to: (a) protect, defend and maintain the validity and enforceability of its Material Intellectual Property, (b) promptly advise Agent in writing of material infringements of its Material Intellectual Property and take all appropriate actions to enforce its rights in its Material Intellectual Property against infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, (c) not allow any Material Intellectual Property to be abandoned, forfeited or dedicated to the public without Agent's written consent, and (d) notify Agent promptly, but in any event within ten (10) Business Days, if it knows or has reason to know (i) that any application or registration relating to any Material Intellectual Property may become abandoned or dedicated, or (ii) if any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) has occurred regarding such Loan Party's ownership of any Material Intellectual Property, its right to register the same, or to keep and maintain the same. Each Loan Party shall remain liable under each of its Intellectual Property licenses pursuant to which it is a licensee ("Licenses") to observe and perform all of the material conditions and material obligations to be observed and performed by it thereunder. None of Agent or any Lender shall have any obligation or liability under any such License by reason of or arising out of this Agreement, the granting of a Lien, if any, in such License or the receipt by Agent (on behalf of itself and Lenders) of any payment relating to any such License. None of Agent or any Lender shall be required or obligated in any manner to perform or fulfill any of the obligations of any Loan Party under or pursuant to any License, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any License, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or which it may be entitled at any time or times.

6.9 **Special Collateral Covenants**.

(a) Each Loan Party shall remain in possession of its respective Collateral solely at (i) the location(s) specified on the Perfection Certificate, except (A) as expressly permitted under Sections 7.3 or 7.5, (B) to the extent such Collateral is in transit or undergoing maintenance or repair, or (C) to the extent such Collateral constitutes "work in process" in the ordinary course of business temporarily in the possession of a third party, and (ii) other locations where portable goods of a de minimis value (such as laptops, phones and other similar equipment) may be located in the ordinary course of business; except that Agent, on behalf of itself and the Lenders, shall have the right to possess (x) any chattel paper or instrument that constitutes a part of the Collateral, (y) any other Collateral in which Agent's security interest (on behalf of itself and the Lenders) may be perfected only by possession and (z) any Collateral after the occurrence of an Event of Default in accordance with this Agreement and the other Transaction Documents.

(b) Each Loan Party shall (i) use the Collateral only in its trade or business, (ii) maintain all of the Collateral in good operating order and repair, normal wear and tear excepted, and (iii) use and maintain the Collateral only in compliance with manufacturers' recommendations or prudent industry practices and all applicable laws, in each case except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(c) The Agent and Lenders do not authorize and each Loan Party agrees it shall not (i) remove any of its cash, Cash Equivalents or tangible assets from, or maintain any of its cash, Cash Equivalents or tangible assets outside of, the continental United States or (ii) remove any of its intangible assets from, or maintain any of its intangible assets outside of, the United States, Bermuda or Ireland, except in each case, (A) registrations of Intellectual Property in each applicable jurisdiction of registration, (B) as expressly permitted under clauses (a)(i)(B), (a)(i)(C) and (a)(ii) of this Section 6.9, (C) office furniture and other related office equipment with an aggregate value not to exceed $25,000, and (D) cash and Cash Equivalents in deposit accounts or securities accounts maintained in Ireland so long as for purposes of this clause (D), (1) the Agent has a first priority perfected Lien in such deposit accounts or security accounts pursuant to fully executed Account Control Agreements, and (2) no cash or Cash Equivalents are transferred from deposit accounts or securities accounts in the United States to deposit accounts or securities accounts in Ireland other than an amount equal to the actual out-of-pocket costs, fees and expenses incurred or to be incurred by XOMA Ireland in the ordinary course of business and used by XOMA Ireland to pay such costs, fees and expenses within five (5) Business Days of such transfer, so long as (x) before and after giving effect to such transfer, no Default or Event of Default shall have occurred and be continuing or would result therefrom and (y) after giving effect to such transfer and the payment of the related out-of-pocket costs, fees and expenses, the aggregate amount of cash and Cash Equivalents maintained by the Loan Parties in deposit accounts and securities accounts outside the United States does not exceed $3,000,000 (or the Euro equivalent thereof).

(d) Each Loan Party shall pay promptly when due all documentary, stamp, recording, excise and other similar taxes, charges, license fees, and assessments levied or assessed on any of the Collateral, on its use, or on this Agreement or any of the other Transaction Documents. At its option, Agent may, upon written notice to the applicable Loan Party and only after the occurrence of an Event of Default, discharge taxes, Liens, security interests or other encumbrances at any time levied or placed on the Collateral and may pay for the maintenance, insurance and preservation of the Collateral and effect compliance with the terms of this Agreement or any of the other Transaction Documents. Each Loan Party agrees to reimburse Agent, on demand, all costs and expenses incurred by Agent in connection with such payment or performance and agrees that such reimbursement obligation shall constitute Obligations.

(e) Each Loan Party shall, at all times, keep reasonably accurate and complete records of the Collateral.

(f) Each Loan Party agrees and acknowledges that any third person who may at any time possess all or any portion of the Collateral shall be deemed to hold, and shall hold, the Collateral as the agent of, and as pledge holder for, Agent (on behalf of itself and Lenders). Agent may at any time give notice to any third person described in the preceding sentence that such third person is holding the Collateral as the agent of, and as pledge holder for, Agent (on behalf of itself and Lenders).

(g) Each Loan Party shall, during normal business hours, and in the absence of a Default or an Event of Default, upon three (3) Business Days' prior notice, as frequently as Agent reasonably determines to be appropriate: (i) provide Agent (who may be accompanied by representatives of any Lender at such Lender's sole expense except as otherwise agreed in Section 10.6) and any of its officers, employees and agents access to the properties, facilities, principal advisors and employees (including officers) of each Loan Party and to the Collateral, (ii) permit Agent (who may be accompanied by representatives of any Lender at such Lender's sole expense except as otherwise agreed in Section 10.6), and any of its officers, employees and agents, to inspect, audit and make extracts from any Loan Party's books and records (or at the request of Agent, deliver true and correct copies of such books and records to Agent), and (iii) permit Agent (who may be accompanied by representatives of any Lender at such Lender's sole expense), and its officers, employees and agents, to inspect, audit, appraise, review, evaluate and make test verifications and counts of the Collateral of any Loan Party; provided, that, so long as no Default or Event of Default has occurred and is continuing, the Loan Parties shall only be required to reimburse Agent and any applicable Lender for costs and expenses under Section 10.6 with respect to two (2) such inspections and audits under thisSection 6.9(g) during any calendar year. Upon Agent's request, each Loan Party will promptly notify Agent in writing of the location of any Collateral. If a Default or Event of Default has occurred and is continuing or if access is necessary to preserve or protect the Collateral as determined by Agent, each such Loan Party shall provide such access to Agent and to each Lender at all times and without advance notice, and shall reimburse Agent and any applicable Lender for all reasonable costs and expenses incurred in connection therewith. Each Loan Party shall make available to Agent and its auditors or counsel, as quickly as is possible under the circumstances, originals or copies of all books and records that Agent may reasonably request. Notwithstanding any other provision of this Agreement or any other Transaction Document, so long as no Default or Event of Default then exists, each Loan Party shall have the right in its good faith business judgment to deny or restrict the Agent, the Lenders and their respective representatives, access to highly confidential and proprietary scientific data and specifications.

6.10 **Further Assurances.** Each Loan Party shall, upon request of Agent, furnish to Agent such further information, execute and deliver to Agent such documents and instruments (including, without limitation, UCC financing statements, Mortgages and Mortgage Supporting Documents) and shall do such other acts and things as Agent may at any time reasonably request relating to the perfection or protection of the security interest created by this Agreement or any other Transaction Document or for the purpose of carrying out the intent of this Agreement and the other Transaction Documents.

6.11 **Compliance with Law.** Each Loan Party shall comply with all applicable statutes, rules, regulations, standards, policies and orders administered or issued by any governmental authority having jurisdiction over it, its business or its products, except where the failure to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Without limiting the generality of the foregoing, each Loan Party shall comply with all Public Health Laws and their implementation by any applicable governmental authority and all lawful requests of any governmental authority applicable to its products, except where the failure to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. All products developed, manufactured, tested, distributed or marketed by or on behalf of any Loan Party that are subject to the jurisdiction of the FDA or comparable governmental authority shall be developed, tested, manufactured, distributed and marketed in compliance with the Public Health Laws and any other Requirements of Law, including, without limitation, product approval or premarket notification, good manufacturing practices, labeling, advertising, record-keeping, and adverse event reporting, and have been and are being tested, investigated, distributed, marketed, and sold in compliance with Public Health Laws and all other Requirements of Law, except where the failure to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

6.12 **Environmental Matters.** Each Loan Party shall, and shall cause each of its Subsidiaries to, comply with, and maintain its real property, whether owned, leased, subleased or otherwise operated or used, in compliance with, all applicable Environmental Laws (including by implementing any Remedial Actions necessary to achieve such compliance) or that is required by orders or legally binding directives of any governmental authority under any applicable Environmental Law except where the failure to comply would not reasonably be expected to, individually or in the aggregate, result in Environmental Liabilities (excluding legal fees and expenses) in excess of $250,000. Without limiting the foregoing, if an Event of Default is continuing or if Agent at any time has a reasonable basis to believe that there exist violations of Environmental Laws by any Loan Party or any Subsidiary of any Loan Party or that there exist any Environmental Liabilities, in each case that could reasonably be expected to result in Environmental Liabilities in excess of $250,000, then each Loan Party shall, promptly upon receipt of request from Agent, cause the performance of, or allow Agent and its Related Persons access to such real property for the purpose of conducting, such environmental audits and assessments, including subsurface sampling of soil and groundwater, and cause the preparation of such reports, in each case as Agent may from time to time reasonably request. Such audits, assessments and reports, to the extent not conducted by Agent or its designee, shall be conducted and prepared by reputable environmental consulting firms reasonably acceptable to Agent and shall be in form and substance reasonably acceptable to Agent.

6.13 **Post Closing Covenants**.

(a) Letters of Resignation. No later than 30 days after the Closing Date (or such later date as the Agent shall approve in writing), Borrower shall deliver executed but undated letters of resignation from each of the directors, alternate directors and Secretary of XOMA Technology to the extent the same are not delivered to Agent on or before the Closing Date.

(b) Access Agreement. No later than 45 days after the Closing Date (or such later date as the Agent shall approve in writing), the Loan Parties shall have used commercially reasonable efforts to deliver Access Agreements for the leased locations of the Loan Parties located at (i) 2910 7th St., Berkeley, CA 94710, (ii) 830/890 Heinz Ave., Berkeley, CA 94710, (iii) 804 Heinz Ave., Berkeley, CA 94710, (iv) 5854/5860 Hollis St., Emeryville, CA 94608, and (v) 820 Heinz Ave., Berkeley, CA 94710 (collectively, the "Space Lease Locations").

(c) Subsidiary Dissolutions. On or prior to March 31, 2012 (or such later date as the Agent shall approve in writing), each of XOMA Bermuda and XOMA Development shall either (x) be dissolved and/or its existence terminated and all assets of XOMA Bermuda or XOMA Development, as the case may be, shall be transferred to another Loan Party organized in the U.S. (or in the case of XOMA Bermuda another Loan Party organized in Bermuda) prior to such dissolution and/or termination (the "Permitted Dissolutions") or (y) have become a Loan Party (with all of its capital stock pledged to secure the Obligations) pursuant to such joinder agreements, guaranties and security documents as the Agent shall require, accompanied by legal opinions, filings, board resolutions, organizational documents of the type that would have been delivered if XOMA Bermuda or XOMA Development, as the case may be, had been a Loan Party on the Closing Date.

7. NEGATIVE COVENANTS

7.1 **Liens.** No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any Intellectual Property or any of its other assets, other than (a) Liens of the type described in clauses (a) through (l) of Section 5.7 above, (b) Liens granted by the [*] Subsidiary on the [*] (as defined below) and proceeds thereof securing Indebtedness permitted under Section 7.2(d) below, (c) Liens granted by the [*] Subsidiary on the [*] (as defined below) and proceeds thereof securing Indebtedness permitted under Section 7.2(e) below, (d) Liens on Excluded Negative Pledge Assets in favor of the applicable third party that is the counterparty to the applicable permitted collaboration or development arrangement with a Loan Party or other permitted transaction relating to the Excluded Negative Pledge Assets securing obligations of such Loan Party arising under such arrangement or transaction, (e) Liens in favor of the United States government on inventions and other Intellectual Property created or produced pursuant to contractual obligations between any Loan Party and the United States government pursuant to 48 C.F.R. 52.227-11 (or by incorporation of such statute into any contractual obligations), (f) solely to the extent the transactions described in that certain Royalty Purchase Agreement (the "CIMZIA Royalty Purchase Agreement"), dated as of August 12, 2010, by and among XOMA CDRA LLC, a Delaware limited liability company ("XOMA CDRA"), Borrower, Parent and the purchaser named therein are recharacterised as a secured financing, Liens granted by XOMA CDRA on the Purchased Interest and Additional Collateral (in each case as defined in the CIMZIA Royalty Purchase Agreement as in effect on the date hereof), (g) Liens securing Indebtedness permitted to be incurred under Section 7.2(i) so long as such Liens do not extend to any property of any Loan Party other than the Intellectual Property and/or related contract rights that are the subject of the collaboration to which such Indebtedness relates, (h) to the extent it constitutes a Lien, the obligation of the Borrower to [*] (as defined in Section 7.2(l) below) and (i) Liens on any XMET Assets securing obligations other than Indebtedness pursuant to an XMET License Agreement so long as such Liens do not extend to any property of any Loan Party other than the XMET Assets that are the subject of such XMET License Agreement. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, grant any negative pledges on any Intellectual Property or any of its other assets, other than (a) this Section 7.1, (b) negative pledges on the [*] and proceeds thereof in favor of the holders of the Indebtedness permitted under Section 7.2(d) below, (c) negative pledges on the [*] and proceeds thereof in favor of the holders of the Indebtedness permitted under Section 7.2(e) below, (d) other restrictions applying only to Excluded Negative Pledge Assets imposed by the applicable third party that is the counterparty to the applicable permitted collaboration arrangement or other permitted transaction relating to such Excluded Negative Pledge Asset, (e) negative pledges on the Intellectual Property and/or contract rights that are the subject of a collaboration of the type referred to in Section 7.2(i), (f) negative pledges or other restrictions in any document or instrument governing Liens permitted pursuant to Section 5.7(d) provided that any such negative pledge or restriction contained therein relates solely to the asset or assets subject to such permitted Liens, and (g) negative pledges or other restrictions with respect to the XMET Assets set forth in an XMET License Agreement so long as such negative pledges and other restrictions do not extend to any property of any Loan Party other than the XMET Assets that are the subject of such XMET License Agreement.

"Excluded Negative Pledge Asset" shall mean Excluded Collateral (as defined in the US Security Agreement) consisting of (a) Intellectual Property constituting XOMA-052 (including without limitation all Collateral (as defined in that certain Loan Agreement, dated as of December 30, 2010, by and between XOMA Ireland and Servier, as in effect on the date hereof, the "Servier Loan Agreement")), or Anti-Botulism Antibody Products (as defined below), (b) the Borrower's contract rights in the collaboration and related agreements (the "Novartis Contract Rights") currently in place with Novartis (including without limitation all Collateral (as defined in that certain Secured Note Agreement, dated as of May 26, 2005, by and between Novartis and Borrower, as amended and as in effect as of the date hereof, the "Novartis Loan Agreement")), (c) the [*], the [*] and proceeds thereof and (d) solely to the extent the transactions described in the CIMZIA Royalty Purchase Agreement are recharacterised as a secured financing, the assets of XOMA CDRA pledged under the CIMZIA Royalty Purchase Agreement (including the Purchased Interest and Additional Collateral as such terms are defined in the CIMZIA Royalty Purchase Agreement as in effect on the date hereof). As used herein, "Anti-Botulism Antibody Products" means the antibody products known as XOMA 3AB (antibodies to serotype A), XOMA 3BB (antibodies to serotype B), XOMA 3EB (antibodies to serotype E) and XOMA 4CD (antibodies to serotype C and D), as well as the planned antibody products to the F and G serotypes.

7.2 **Indebtedness.** No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly create, incur, assume, permit to exist, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness (as hereinafter defined), except for

(a) the Obligations;

(b) Indebtedness existing on the date hereof and set forth on Schedule B to this Agreement;

(c) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness, together with any Indebtedness incurred pursuant to clause (m) below to refinance such Indebtedness (or other refinancings thereof), does not exceed $500,000 at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made); provided, however, that any change in GAAP occurring after the Closing Date shall not cause any lease existing on the date such change becomes effective that was not a capitalized lease prior to such change to be deemed a capitalized lease, and the obligations with respect thereto shall not constitute capitalized lease obligations;

(d) Indebtedness of the [*] Subsidiary so long as no Loan Party or any other Subsidiary or Affiliate of any Loan Party is directly, contingently or otherwise indirectly obligated with respect to such Indebtedness or otherwise provides any form of credit support to secure such Indebtedness;

(e) Indebtedness of the [*] Subsidiary so long as no Loan Party or any other Subsidiary or Affiliate of any Loan Party is directly, contingently or otherwise indirectly obligated with respect to such Indebtedness or otherwise provides any form of credit support to secure such Indebtedness;

(f) Indebtedness of XOMA Ireland owed to Servier pursuant to the Servier Loan Agreement in an aggregate principal amount not to exceed €17,500,000;

(g) Indebtedness of Borrower owed to Novartis pursuant to the Novartis Loan Agreement in an aggregate principal amount not to exceed $17,000,000;

(h) Indebtedness owing by any Loan Party to another Loan Party, provided that (i) each Loan Party shall have executed and delivered to each other Loan Party a demand note (each, an "Intercompany Note") to evidence such intercompany loans or advances owing at any time by each Loan Party to the other Loan Parties, which Intercompany Note shall be in form and substance reasonably satisfactory to Agent (it being agreed that the form signed and delivered on the Closing Date pursuant to Section 4.1(u) is satisfactory to Agent and satisfies the requirements of this Section 7.2(h)) and shall be pledged and delivered to Agent pursuant to the Pledge Agreement as additional Collateral for the Obligations, (ii) any and all Indebtedness of any Loan Party to another Loan Party shall be subordinated to the Obligations pursuant to the subordination terms set forth in each Intercompany Note, and (iii) no Default or Event of Default would occur either before or after giving effect to any such Indebtedness;

(i) Indebtedness incurred in connection with a bona fide corporate collaboration in the ordinary course of business and consistent with past practice; provided, that (i) such Indebtedness shall be unsecured except to the extent permitted to be secured pursuant to Section 7.1(g), (ii) no Default or Event of Default shall have occurred and be continuing both before and after incurring such Indebtedness, (iii) the incurrence of such Indebtedness shall have been approved by the board of directors of the applicable Loan Party, (iv) the aggregate outstanding principal amount of all such Indebtedness, together with any Indebtedness incurred pursuant to clause (m) below to refinance such Indebtedness (or other refinancings thereof), does not exceed $10,000,000 at any time, (v) such Indebtedness shall not require any Loan Party to make any payments prior to the date that is at least 180 days after the Termination Date (as defined below in Section 10.10) other than regularly scheduled interest payments at a rate not to exceed 14.05% per annum, and (vi) such Indebtedness is otherwise on, and subject to, such terms and conditions as are reasonably acceptable to Agent;

(j) Indebtedness of any Loan Party arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business in an aggregate amount not to exceed $10,000 at any time outstanding, provided that any such Indebtedness is extinguished within ten (10) Business Days of its incurrence;

(k) obligations of any Loan Party under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks to any Loan Party arising from fluctuations in currency values or interest rates entered into in the ordinary course of business and not for speculative purposes, so long as the aggregate exposure of the Loan Parties does not exceed $4,000,000 at any time;

(l) obligations owed by the Borrower to Medpace, Inc. pursuant to that certain Amendment No. 1 thereto, dated as of October 4, 2011, by and among the Borrower and Medpace, Inc. (the "Medpace First Amendment"), which amends that certain Master Services Agreement, dated as of November 9, 2009, by and among the Borrower and Medpace, Inc. (as so amended, the "Medpace Agreement"), in an aggregate principal amount not to exceed $[*], less any payments of such obligations by the Loan Parties under the Medpace First Amendment from time to time;

(m) extensions, refinancings, modifications, amendments and restatements of any items of Indebtedness described in clauses (c), (f), (g) and (i) above, provided that the principal amount thereof is not increased (other than an increase in the amount of accrued and unpaid interest, prepayment premiums and other fees and expenses associated with such extension, refinancing, modification, amendment or restatement), and the terms thereof are not modified to impose more burdensome terms upon any Loan Party or its Subsidiary, as the case may be; and

(n) other Indebtedness not otherwise permitted under this Section 7.2 in aggregate principal amount not to exceed $100,000 at any time.

The term "Indebtedness" means, with respect to any person, at any date, without duplication, (i) all obligations of such person for borrowed money, (ii) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments, or upon which interest payments are customarily made, (iii) all obligations of such person to pay the deferred purchase price of property or services, but excluding obligations to trade creditors incurred in the ordinary course of business and not past due by more than 90 days, (iv) all capital lease obligations of such person, (v) the principal balance outstanding under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product, (vi) all obligations of such person to purchase securities (or other property) which arise out of or in connection with the issuance or sale of the same or substantially similar securities (or property), (vii) all contingent or non-contingent obligations of such person to reimburse any bank or other person in respect of amounts paid under a letter of credit or similar instrument, (viii) all equity securities of such person subject to repurchase or redemption otherwise than at the sole option of such person, (ix) all "earnouts" and similar payment obligations of such person (it being understood, for the purposes of this clause (ix), that milestone and royalty payments to be made in the ordinary course of business pursuant to licensing agreements permitted hereunder, which do not constitute seller financing, shall not be deemed to be "earnouts"), (x) all indebtedness secured by a Lien on any asset of such person, whether or not such indebtedness is otherwise an obligation of such person, (xi) all obligations of such person under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that person arising from fluctuations in currency values or interest rates, in each case whether contingent or matured, and (xii) all obligations or liabilities of others guaranteed by such person.

7.3 **Dispositions.** No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, convey, sell, rent, lease, sublease, mortgage, license, transfer or otherwise dispose of (collectively, "Transfer") any of the Collateral or any Intellectual Property, except for the following (collectively, "Permitted Dispositions"): (a) sales of inventory in the ordinary course of business, (b) dispositions by a Loan Party or any of its Subsidiaries of tangible assets that are no longer used or useful in the business of such Loan Party or Subsidiary for cash and fair value so long as (i) no Default or Event of Default exists at the time of such disposition or would be caused after giving effect thereto and (ii) the fair market value of all such assets disposed of does not exceed $1,000,000 in any calendar year, (c) non-exclusive licenses and exclusive licenses for the use of any Loan Party's Intellectual Property in the ordinary course of business, so long as (i) no Default or Event of Default has occurred and is continuing at the time of such Transfer or would result therefrom, (ii) such license constitutes an arms-length transaction in the ordinary course of business (and in the case of an exclusive license, made in connection with a bona fide corporate collaboration in the ordinary course of business and approved by the board of directors of the applicable Loan Party) and the terms of which, on their face, (A) do not provide for a sale or assignment (other than to the extent such assignment constitutes a Lien permitted under clause (g) or (i) of the first sentence of Section 7.1) of any Intellectual Property and (B) do not restrict (other than as permitted under clause (e) or (g) of the second sentence of Section 7.1) such Loan Party's ability to pledge, grant a security interest in or Lien on, or assign or otherwise Transfer any Intellectual Property, (iii) the applicable Loan Party delivers seven (7) Business Days prior written notice and a brief summary of the terms of such license to Agent, (iv) the applicable Loan Party delivers to Agent copies of the final executed licensing documents in connection with such license within five (5) Business Days upon consummation of such license (provided that the applicable Loan Party shall use commercially reasonable efforts to ensure that the confidentiality provisions of such licensing documentation permit the applicable Loan Party to deliver such documents to Agent, and if the applicable Loan Party fails to obtain such permission, the applicable Loan Party shall deliver to Agent and Lenders such licensing documentation redacted to the extent necessary to comply with such confidentiality restrictions) and (v) all royalties, milestone payments or other proceeds arising from the licensing agreement are paid to a deposit account or securities account that is governed by an Account Control Agreement, (d) Transfers of Antibody Libraries and Related Assets (as defined below) in the ordinary course of business, on arms-length terms, to unaffiliated third parties so long as (i) no Default or Event of Default has occurred and is continuing at the time of such Transfer, (ii) the applicable Loan Party delivers seven (7) Business Days prior written notice and a brief summary of the terms of such sale to Agent, (iii) the applicable Loan Party delivers to Agent copies of the final executed transaction documents within five (5) Business Days upon consummation of such transaction and (iv) all proceeds arising from such transaction are paid to a deposit account or securities account that is governed by an Account Control Agreement, (e) the Transfer of the [*] to the [*] Subsidiary upon formation thereof, provided that at the time of such Transfer no Default or Event of Default shall be continuing or would result therefrom, (f) the Transfer of the [*] to the [*] Subsidiary upon formation thereof, provided that at the time of such Transfer no Default or Event of Default shall be continuing or would result therefrom, (g) Transfers of assets from any Loan Party or any Subsidiary thereof to Borrower, (h) Transfers of Intellectual Property from any Loan Party or any Subsidiary thereof to XOMA Technology in the ordinary course of business consistent with past practice, (i) Transfers of assets between XOMA Ireland and XOMA Technology, (j) Transfers of cash and Cash Equivalents expressly permitted pursuant to clause (D) of the exception to Section 6.9(c) and (k) the [*] Disposition so long as (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) the Borrower delivers seven (7) Business Days prior written notice and a brief summary of the terms of the [*] Disposition to Agent, (iii) the Borrower delivers to Agent copies of the final executed documents in connection with the [*] Disposition within five (5) Business Days of consummation of the [*] Disposition and (iv) all royalties, milestone payments or other proceeds arising from the [*] Disposition are paid to a deposit account or securities account that is governed by an Account Control Agreement. As used herein "Antibody Libraries and Related Assets" shall mean (a) specific collections of polynucleotides encoding antibodies and their associated biological materials, (b) intellectual property and know-how related thereto or to the use thereof, (c) materials, intellectual property and know-how embodying the Targeted Affinity Enhancement™ technology or other technology made available by XOMA for improving or enhancing the affinity of antibodies and (d) the informatics and other materials-handling systems, associated software applications and related data systems and know-how related thereto made available by XOMA for use in connection therewith. As used herein, the "[*] Disposition" shall mean the Transfer of all or a portion of the Intellectual Property identified on Schedule C to [*], a Delaware corporation, or one or more of its affiliates.

7.4 **Change in Name, Location or Executive Office; Change in Business; Change in Fiscal Year.** No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to: (a) change its name or its jurisdiction of organization; (b) relocate its chief executive office prior to providing a duly executed Access Agreement with respect to such new location; (c) engage in any business other than or reasonably related or incidental to the businesses currently engaged in by such Loan Party or Subsidiary; (d) cease to conduct business substantially in the manner conducted by such Loan Party or Subsidiary as of the date of this Agreement; or (e) change its fiscal year end; except, in each case with respect to clauses (a), (b), (c) and (d), pursuant to (A) the Parent Redomestication or any Subsidiary Redomestication and only upon 30 days prior written notification to Agent and delivery of all reaffirmations, perfection certificates, legal opinions or other documents or information reasonably requested by Agent in connection therewith, or (B) the Permitted Dissolutions. The term "Parent Redomestication" means the (i) conversion of Parent to a Delaware corporation pursuant to the provisions of Section 388 of the Delaware General Corporation Law, (ii) discontinuance of Parent's registration in Bermuda pursuant to the provisions of Sections 132G and 132H of the Companies Act 1981 of Bermuda and (iii) any exchange of shares in the capital of Parent registered as a Bermuda exempted company for capital stock in Parent organized as a Delaware corporation on a one-for-one basis to the extent necessary to give effect to such conversion. The term "Subsidiary Redomestication" means (i) the conversion of any wholly owned Subsidiary of Parent which is organized in a jurisdiction outside of the United States to an entity organized in a jurisdiction within the United States and (ii) the exchange of capital stock of such Subsidiary organized in a jurisdiction outside of the United States for the capital stock of such Subsidiary as organized in a jurisdiction inside of the United States to the extent necessary to give effect to such conversion.

7.5 **Mergers or Acquisitions.** No Loan Party shall merge or consolidate, and no Loan Party shall permit any of its Subsidiaries to merge or consolidate, with or into any other person or entity (other than (a) mergers of a Subsidiary into Borrower in which Borrower is the surviving entity, (b) mergers of a Subsidiary of Parent (other than Borrower) into a Loan Party (other than Parent) in which such Loan Party is the surviving entity, and (c) mergers of a Subsidiary of Parent which is not a Loan Party into another Subsidiary of Parent which is not a Loan Party) or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another person or entity or all or substantially all of the assets constituting any line of business, division, branch, operating division or other unit operation of another person or entity.

7.6 **Restricted Payments.** No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries (other than the [*] Subsidiary and the [*] Subsidiary) to, (a) declare or pay any dividends or make any other distribution or payment on account of or redeem, retire, defease or purchase any capital stock (other than the payment of dividends to Borrower and any exchange of capital stock required to complete the Parent Redomestication or any Subsidiary Redomestication), (b) purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness other than regularly scheduled or mandatory repayments of Indebtedness permitted to be incurred under Section 7.2 (provided that no such regularly scheduled or mandatory repayments of Indebtedness of Subsidiaries that are not Loan Parties shall be directly or indirectly funded by any Loan Party), (c) make any payment in respect of management fees or consulting fees (or similar fees) to any equityholder or other Affiliate of a Loan Party other than as set forth on Schedule B, (d) be a party to or bound by an agreement that restricts a Subsidiary from paying dividends or otherwise distributing property to Borrower or (e) make any payments on account of intercompany Indebtedness permitted under Section 7.2 (except in accordance with the terms of the applicable Intercompany Note then in effect with respect to such intercompany Indebtedness); provided, that for any taxable period for which Borrower is either a disregarded entity or a partnership for U.S. federal or applicable state or local income tax purposes or is a member of a consolidated, combined or similar income tax group of which Parent or any other direct or indirect parent of Borrower is the common parent, Borrower may make distributions to fund the income tax liability of Parent (or such other common parent) to the extent such liability is attributable to Borrower and/or its Subsidiaries.

7.7 **Investments.** No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly (a) acquire or own, or make any loan, advance or capital contribution (an "Investment") in or to any person or entity (other than to another Loan Party to the extent permitted under the terms and conditions set forth in Section 7.2(h)), (b) acquire or create any Subsidiary, or (c) engage in any joint venture or partnership with any other person or entity, other than: (i) Investments existing on the date hereof and set forth on Schedule B to this Agreement, (ii) Investments in cash and Cash Equivalents (as defined below), (iii) loans or advances to employees of Borrower or any of its Subsidiaries to finance travel, entertainment and relocation expenses and other ordinary business purposes in the ordinary course of business as presently conducted, provided that the aggregate outstanding principal amount of all loans and advances permitted pursuant to this clause (iii) shall not exceed $50,000 at any time, (iv) Investments consisting of accounts receivable, endorsements for collection, deposits or similar Investments arising in the ordinary course of business, (v) any Investment consisting of intercompany Indebtedness extended by a Loan Party to another Loan Party to the extent permitted under Section 7.2(h), (vi) the contribution of the [*] to the [*] Subsidiary upon formation thereof, provided that at the time of such contribution no Default or Event of Default shall be continuing or would result therefrom, (vii) the contribution of the [*] to the [*] Subsidiary so long as at the time of such contribution no Default or Event of Default shall be continuing or would result therefrom, (viii) Investments made in connection with purchases of inventory, supplies, material or equipment in the ordinary course of business, (ix) Investments received as consideration in connection with the [*] Disposition and (x) capital contributions by Parent to any Loan Party (clauses (i) through (x) collectively, the "Permitted Investments").

The term "Cash Equivalents" means (v) any readily-marketable securities (i) issued by, or directly, unconditionally and fully guaranteed or insured by the United States federal government or (ii) issued by any agency of the United States federal government the obligations of which are fully backed by the full faith and credit of the United States federal government, (w) any readily-marketable direct obligations issued by any other agency of the United States federal government, any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case having a rating of at least "A-1" from S&P or at least "P-1" from Moody's, (x) any commercial paper rated at least "A-1" by S&P or "P-1" by Moody's and issued by any entity organized under the laws of any state of the United States, (y) any U.S. dollar-denominated time deposit, insured certificate of deposit, overnight bank deposit or bankers' acceptance issued or accepted by (i) Agent or (ii) any commercial bank that is (A) organized under the laws of the United States, any state thereof or the District of Columbia, (B) "adequately capitalized" (as defined in the regulations of its primary federal banking regulators) and (C) has Tier 1 capital (as defined in such regulations) in excess of $250,000,000 or (z) shares of any United States money market fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clause (v), (w), (x) or (y) above with maturities which shall not exceed 396 days, (ii) has net assets in excess of $500,000,000 and (iii) has obtained from either S&P or Moody's the highest rating obtainable for money market funds in the United States; provided, however, that the maturities of all obligations specified in any of clauses (v), (w), (x) and (y) above shall not exceed 365 days. For the avoidance of doubt, "Cash Equivalents" does not include (and each Loan Party is prohibited from purchasing or purchasing participations in) any auction rate securities or other corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a Dutch auction.

Notwithstanding the foregoing the Borrower may form (1) a special purpose entity after the Closing Date (the "[*] Subsidiary") for the purpose of [*] (the "[*] Activities") and/or (2) a special purpose entity after the Closing Date (the "[*] Subsidiary") for the purpose of [*] (as defined below) (the "[*] Activities"); provided, that at the option of the Borrower, the [*] Subsidiary and the [*] Subsidiary may be the same entity and have the combined purposes set forth above. Neither the [*] Subsidiary nor the [*] Subsidiary shall be required to be a Loan Party. At any time when it is a Subsidiary of a Loan Party, the [*] Subsidiary shall not engage in any activities other than the [*] Activities and activities reasonably related thereto and shall not have any assets other than immaterial assets and the [*]. At any time when it is a Subsidiary of a Loan Party, the [*] Subsidiary shall not engage in any activities other than the [*] Activities and activities reasonably related thereto and shall not have any assets other than immaterial assets and the [*]. No Loan Party or any other Subsidiary thereof shall be obligated directly, contingently or otherwise indirectly for any obligation or liability of the [*] Subsidiary or [*] Subsidiary. No funds or assets of any Loan Party shall be expended after the Closing Date on or in connection with the [*] or the [*] (whether for development costs, legal fees, debt or equity financing transaction costs or otherwise) in excess of $600,000 in the aggregate (excluding (A) funds provided by a third party for such purpose and (B) up to an additional $600,000 for which a written commitment has been received from a third party for reimbursement of such expended funds). No Liens may be granted or Indebtedness incurred in connection with the [*] or the [*] until such [*] has been Transferred to the [*] Subsidiary or the [*] have been transferred to the [*] Subsidiary, respectively, other than Liens permitted under clause (h) of the first sentence of Section 7.1 and Indebtedness permitted under Section 7.2(l).

"[*]" means [*].

7.8 **Transactions with Affiliates.** No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly enter into or permit to exist any transaction with any Affiliate (as defined below) of a Loan Party or any Subsidiary of a Loan Party except for (i) transactions that are in the ordinary course of such Loan Party's or such Subsidiary's business, upon fair and reasonable terms that are no more favorable to such Affiliate than would be obtained in an arm's length transaction, (ii) transactions solely among Loan Parties that are expressly permitted hereunder, (iii) tax distributions by Borrower expressly permitted under the proviso to Section 7.6, and (iv) any exchange of capital stock required to give effect to the Parent Redomestication or any Subsidiary Redomestication. As used herein, "Affiliate" means, with respect to a Loan Party or any Subsidiary of a Loan Party, (a) each person that, directly or indirectly, owns or controls 5.0% or more of the stock or membership interests having ordinary voting power in the election of directors or managers of such Loan Party or such Subsidiary, and (b) each person that controls, is controlled by or is under common control with such Loan Party or such Subsidiary.

Without limitation of the foregoing, in no event shall any Loan Party engage, or permit any of its Subsidiaries to engage, in any transaction with the [*] Subsidiary or [*] Subsidiary except for (i) administrative (including legal and human resources) support services provided to the [*] Subsidiary and/or [*] Subsidiary on reasonable and customary terms that do not interfere with the business of any Loan Party or any of its Subsidiaries, (ii) any Transfer to the [*] Subsidiary of the [*] upon fair and reasonable terms no less favorable to any Loan Party or any of its Subsidiaries than would be obtained in a comparable arm's length transaction with a person or entity other than the [*] Subsidiary, provided that at the time of such Transfer no Default or Event of Default shall be continuing or would result therefrom, (iii) any Transfer to the [*] Subsidiary of the [*] upon fair and reasonable terms no less favorable to any Loan Party or any of its Subsidiaries than would be obtained in a comparable arm's length transaction with a person or entity other than the [*] Subsidiary, provided that at the time of such Transfer no Default or Event of Default shall be continuing or would result therefrom, (iv) transactions between the [*] Subsidiary and [*] Subsidiary which do not directly or indirectly involve or otherwise adversely affect any Loan Party or any other Subsidiary of any Loan Party, (v) other transactions in the ordinary course of business and undertaken in good faith and not for purposes of evading any covenant or restriction in any Transaction Document and upon fair and reasonable terms no less favorable to any Loan Party or any of its Subsidiaries than would be obtained in a comparable arm's length transaction with a person or entity other than the [*] Subsidiary or [*] Subsidiary and which is disclosed in writing to Agent, and (vi) the expenditure by the Loan Parties of up to $600,000 in the aggregate (excluding (A) funds provided by a third party for such purpose and (B) up to an additional $600,000 for which a written commitment has been received from a third party for reimbursement of such expended funds) after the Closing Date on or in connection with the [*] or the [*] (whether for development costs, legal fees, debt or equity financing transaction costs or otherwise) expressly permitted under Section 7.7.

7.9 **Compliance.** No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, (a) fail to comply with the laws and regulations described in clauses (b) or (c) of Section 5.8 herein, or (b) use any portion of the Term Loan to purchase, become engaged in the business of purchasing or selling, or extend credit for the purpose of purchasing or carrying Margin Stock.

7.10 **Deposit Accounts and Securities Accounts.** No Loan Party shall directly or indirectly maintain or establish any deposit account or securities account, unless Agent, the applicable Loan Party or Loan Parties and the depository institution or securities intermediary at which the account is or will be maintained enter into a deposit account control agreement or securities account control agreement (or, in respect of XOMA Ireland, a Notice of Assignment and Acknowledgment of Assignment in the form set forth on Schedule 2 to the Irish Debenture), as the case may be, in form and substance satisfactory to Agent (an "Account Control Agreement") (which agreement shall provide, among other things, that (i) such depository institution or securities intermediary has no rights of setoff or recoupment or any other claim against such deposit or securities account (except as agreed to by Agent), other than for payment of its service fees and other charges directly related to the administration of such account and for returned checks or other items of payment, and (ii) such depository institution or securities intermediary shall comply with all instructions of Agent without further consent of such Loan Party or Loan Parties, as applicable, including, without limitation, an instruction by Agent to comply exclusively with instructions of Agent with respect to such account (such notice, a "Notice of Exclusive Control"), in each case with such modifications as may be acceptable to the Agent), prior to or concurrently with the establishment of such deposit account or securities account (or in the case of any such deposit account or securities account maintained as of the date hereof, on or before the Closing Date). Except as provided in the last sentence of this Section 7.10, each Loan Party shall deposit all of its cash and Cash Equivalents into deposit accounts or securities accounts, as applicable, which are subject to Account Control Agreements. Agent may only give a Notice of Exclusive Control with respect to any deposit account or securities account at any time at which an Event of Default has occurred and is continuing. At the request of Agent, Borrower shall create or designate a dedicated deposit account or accounts to be used exclusively for payroll or withholding tax purposes. Notwithstanding anything herein to the contrary, this Section 7.10 shall not apply to (a) any deposit account exclusively used for payroll, payroll taxes, or other employee wage and benefit payments to or for the benefit of the Loan Parties' employees, provided that the aggregate balance in such accounts does not exceed the amount necessary to make the immediately succeeding payroll, payroll tax or benefit payment (or such minimum amount as may be required by any Requirement of Law with respect to such accounts), as applicable, (b) any zero-balance disbursement account, and (c) any deposit account or securities account the average daily balance of which in the aggregate, together with the average daily balance of all such other deposit accounts and securities accounts excluded pursuant to this clause (c), shall not exceed $100,000 (all accounts described in clause (a) through (c) of this sentence are referred to as "Excluded Accounts").

7.11 **Amendments to Other Agreements**. No Loan Party shall amend, modify or waive any provision of (a) any Material Agreement or (b) any of such Loan Party's organizational or constitutional documents, in each case without the prior written consent of Agent and the Requisite Lenders (unless the net effect of such amendment, modification or waiver is not adverse in any material respect to any Loan Party, Agent or the Lenders).

8. DEFAULT AND REMEDIES.

8.1 **Events of Default.** Loan Parties shall be in default under this Agreement and each of the other Transaction Documents if (each of the following, an "Event of Default"):

(a) Borrower shall fail to pay (i) any principal when due, or (ii) any interest, fees or other Obligations (other than as specified in clause (i)) within a period of three (3) Business Days after the due date thereof (other than on the Term Loan Maturity Date) under any of the Transaction Documents;

(b) any Loan Party breaches any of its obligations under Section 6.1 (solely as it relates to maintaining its existence), Section 6.2, Section 6.3, Section 6.4 (solely by reason of non-payment of premiums by a Loan Party or any such default that relates to property or casualty insurance policies), or Article 7;

(c) any Loan Party breaches any of its other obligations under any of the Transaction Documents and fails to cure such breach within 30 days after the earlier of (i) the date on which a Responsible Officer of such Loan Party becomes aware, or through the exercise of reasonable diligence should have become aware, of such failure and (ii) the date on which notice shall have been given to Borrower from Agent;

(d) any warranty, representation or statement made or deemed made by or on behalf of any Loan Party in any of the Transaction Documents or otherwise in connection with any of the Obligations shall be false or misleading in any material respect at the time such warranty, representation or statement was made or deemed made;

(e) Collateral with an aggregate value in excess of $100,000 is subjected to attachment, execution, levy, seizure or confiscation in any legal proceeding or otherwise, and no bond is posted or protective order obtained to negate such risk, and such legal proceeding shall not have been vacated or discharged for a period of 20 consecutive days, and there shall not be in effect (by reason of a pending appeal or otherwise) any stay of enforcement thereof;

(f) one or more judgments, orders or decrees shall be rendered against any Loan Party or any Subsidiary of a Loan Party that exceeds by more than $250,000 any insurance coverage applicable thereto (to the extent the relevant insurer has been notified of such claim and has not denied coverage therefor), or one or more non-monetary judgments, orders or decrees shall be rendered against any Loan Party or any Subsidiary of a Loan Party that could reasonably be expected to result in a Material Adverse Effect, and in either case (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order or decree or (ii) such judgment, order or decree shall not have been vacated or discharged for a period of 30 consecutive days and there shall not be in effect (by reason of a pending appeal or otherwise) any stay of enforcement thereof;

(g) (i) any Loan Party or any Subsidiary of a Loan Party shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts generally, shall make a general assignment for the benefit of creditors, or shall cease doing business as a going concern, (ii) any proceeding shall be instituted by or against any Loan Party or any Subsidiary of a Loan Party seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, composition of it or its debts or any similar order, in each case under any law relating to bankruptcy, examination, insolvency or reorganization or relief of debtors or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee, Irish law examiner, conservator, liquidating agent, liquidator, other similar official or other official with similar powers, in each case for it or for any substantial part of its property and, in the case of any such proceedings instituted against (but not by or with the consent of) such Loan Party or such Subsidiary, either such proceedings shall remain undismissed or unstayed for a period of 45 days or more or any action sought in such proceedings shall occur or (iii) any Loan Party or any Subsidiary of a Loan Party shall take any corporate or similar action or any other action to authorize any action described in clause (i) or (ii) above;

(h) a Material Adverse Effect has occurred;

(i) (i) any provision of any Transaction Document shall fail to be valid and binding on, or enforceable against, a Loan Party party thereto, or (ii) any Transaction Document purporting to grant a security interest to secure any Obligation shall fail to create a valid and enforceable security interest on any Collateral with a value in excess of $100,000 purported to be covered thereby or such security interest shall fail or cease to be a perfected Lien with the priority required in the relevant Transaction Document except to the extent that any such loss of perfection or priority results from the failure of the Agent to file UCC financing statements or continuation statements or other equivalent filings, or any Loan Party shall state in writing that any of the events described in clause (i) or (ii) above shall have occurred;

(j) (i) any Loan Party or any Subsidiary of a Loan Party defaults under any Material Agreement (after any applicable grace period contained therein), (ii) (A) any Loan Party or any Subsidiary of a Loan Party fails to make (after any applicable grace period) any payment when due (whether due because of scheduled maturity, required prepayment provisions, acceleration, demand or otherwise) on any Indebtedness (other than the Obligations) of such Loan Party or such Subsidiary having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $300,000 ("Material Indebtedness"), (B) any other event shall occur or condition shall exist under any contractual obligation relating to any such Material Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of (without regard to any subordination terms with respect thereto), the maturity of such Material Indebtedness or (C) any such Material Indebtedness shall become or be declared to be due and payable, or be required to be prepaid, redeemed, defeased or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof, or (iii) Borrower or any Subsidiary defaults (beyond any applicable grace period) under any obligation for payments due or otherwise under any lease agreement that meets the criteria for the requirement of an Access Agreement under Section 6.6 and, as a result thereof, the landlord thereunder has the right to terminate such lease agreement;

(k) (i) any of the chief executive officer or the chief financial officer of Borrower as of the date hereof shall cease to be involved in the day to day operations (including research development) or management of the business of Borrower, unless a permanent or interim successor of such officer is appointed by the board of directors of the Borrower within 90 days of such cessation of involvement, and such successor is in compliance with the Office of Foreign Assets Control, money-laundering, anti-terrorism, SEC, drug/device laws and regulations, and other similar regulations (in each case, to the extent applicable to a natural Person), (ii) Parent shall cease to own and control all of the economic and voting rights associated with ownership of all of the outstanding capital stock of all classes of the Borrower and each other Loan Party on a fully-diluted basis, (iii) the acquisition, directly or indirectly, by any person or group (as such term is used in Section 13(d)(3) of the Securities Exchange Act of 1934) of more than thirty-five percent (35%) of the voting power of the voting stock of Parent by way of merger or consolidation or otherwise, (iv) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the board of directors of Parent (together with any new directors whose election by the board of directors of Parent or whose nomination for election by the stockholders of Parent was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office, or (v) Borrower ceases to own and control, directly or indirectly, all of the economic and voting rights associated with the outstanding voting capital stock (or other voting equity interest) of each of its Subsidiaries; provided, however, that (x) the consummation of the Parent Redomestication, any Subsidiary Redomestication or the Permitted Dissolutions in each case as expressly permitted hereunder shall not constitute an Event of Default under this clause (k) and (y) the [*] Subsidiary and the [*] Subsidiary may issue voting and/or economic equity interests to an unrelated third party for fair value as determined by the board of directors of such entities;

(l) (i) The FDA or any other governmental authority initiates enforcement action against any Loan Party or any supplier of a Loan Party that causes any Loan Party to recall, withdraw, remove or discontinue marketing any of its products which could reasonably be expected to have a Material Adverse Effect of the type described in clauses (b), (c), (d) and (e) of the definition thereof; (ii) [*]; (iii) any Loan Party conducts a mandated or voluntary recall which could reasonably be expected to result in liability and expense to the Loan Parties of $[*] or more; or (iv) any Loan Party enters into a settlement agreement with the FDA or any other governmental authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of $[*] or more, or that could reasonably be expected to have a Material Adverse Effect of the type described in clauses (b), (c), (d) and (e) of the definition thereof.

8.2 **Lender Remedies.** Upon the occurrence and during the continuance of any Event of Default, Agent may, and at the written request of the Requisite Lenders shall, terminate the Commitments and declare any or all of the Obligations to be immediately due and payable, without demand or notice to any Loan Party and the accelerated Obligations shall bear interest at the Default Rate pursuant to Section 2.5, provided that, upon the occurrence of any Event of Default specified in Section 8.1(g) above, the Obligations shall be automatically accelerated. After the occurrence and during the continuance of an Event of Default, Agent shall have (on behalf of itself and Lenders) all of the rights and remedies of a secured party under the UCC, and under any other applicable law.

8.3 **Application of Proceeds.** Proceeds from any Transfer of the Collateral or from any Transfer of the Intellectual Property (other than Permitted Dispositions) and all payments made to or proceeds of Collateral or Intellectual Property received by Agent during the continuance of an Event of Default shall be applied as follows: (a) first, to pay all fees, costs, indemnities, reimbursements and expenses then due to Agent under the Transaction Documents in its capacity as Agent under the Transaction Documents, until paid in full in cash, (b) second, to pay all fees, costs, indemnities, reimbursements and expenses then due to Lenders under the Transaction Documents in accordance with their respective Pro Rata Shares, until paid in full in cash, (c) third, to pay all interest on the Term Loan then due to Lenders in accordance with their respective Pro Rata Shares (other than interest, fees, expenses and other amounts accrued after the commencement of any proceeding referred to in Section 8.1(g) if a claim for such amounts is not allowable in such proceeding), until paid in full in cash, (d) fourth, to pay all principal on the Term Loan then due to Lenders in accordance with their respective Pro Rata Shares, until paid in full in cash, (e) fifth, to pay all other Obligations then due to Lenders in accordance with their respective Pro Rata Shares (including, without limitation, all interest, fees, expenses and other amounts accrued after the commencement of any proceeding referred to in Section 8.1(g) whether or not a claim for such amounts is allowable in such proceeding), until paid in full in cash, and (f) finally, to Borrower or as otherwise required by law. Borrower shall remain fully liable for any deficiency.

9. THE AGENT.

9.1 **Appointment of Agent**.

(a) Each Lender hereby appoints GECC (together with any successor Agent pursuant to Section 9.6) as Agent under the Transaction Documents and authorizes Agent to (a) execute and deliver the Transaction Documents and accept delivery thereof on its behalf from Loan Parties, (b) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Agent under such Transaction Documents and (c) exercise such powers as are reasonably incidental thereto. The provisions of this Article 9 are solely for the benefit of Agent and the Lenders and none of Loan Parties nor any other person shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement and the other Transaction Documents, Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Loan Party or any other person. Agent shall have no duties or responsibilities except for those expressly set forth in this Agreement and the other Transaction Documents. The duties of Agent shall be mechanical and administrative in nature and Agent shall not have, or be deemed to have, by reason of this Agreement, any other Transaction Document or otherwise a fiduciary or trustee relationship in respect of any Lender. Except as expressly set forth in this Agreement and the other Transaction Documents, Agent shall not have any duty to disclose, and shall not be liable for failure to disclose, any information relating to Borrower or any of its Subsidiaries that is communicated to or obtained by GECC or any of its affiliates in any capacity.

(b) Without limiting the generality of clause (a) above, Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Transaction Documents (including in any other bankruptcy, insolvency or similar proceeding), and each person making any payment in connection with any Transaction Document to any Lender is hereby authorized to make such payment to Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of Agent and the Lenders with respect to any Obligation in any proceeding described in any bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Lender), (iii) act as collateral agent for Agent and each Lender for purposes of the perfection of all Liens created by the Transaction Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Transaction Documents, (vi) except as may be otherwise specified in any Transaction Document, exercise all remedies given to Agent and the other Lenders with respect to the Collateral, whether under the Transaction Documents, applicable law or otherwise and (vii) execute any amendment, consent or waiver under the Transaction Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Loan Party with, and cash and cash equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed. Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Transaction Document by or through any trustee, co-agent, employee, attorney-in-fact and any other person (including any Lender). Any such person shall benefit from this Article 9 to the extent provided by Agent.

(c) If Agent shall request instructions from Requisite Lenders or all affected Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Transaction Document, then Agent shall be entitled to refrain from such act or taking such action unless and until Agent shall have received instructions from Requisite Lenders or all affected Lenders, as the case may be, and Agent shall not incur liability to any person by reason of so refraining. Agent shall be fully justified in failing or refusing to take any action hereunder or under any other Transaction Document (a) if such action would, in the opinion of Agent, be contrary to law or any Transaction Document, (b) if such action would, in the opinion of Agent, expose Agent to any potential liability under any law, statute or regulation or (c) if Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting hereunder or under any other Transaction Document in accordance with the instructions of Requisite Lenders or all affected Lenders, as applicable.

9.2 **Agent's Reliance, Etc**. Neither Agent nor any of its affiliates nor any of their respective directors, officers, agents, employees or representatives shall be liable for any action taken or omitted to be taken by it or them hereunder or under any other Transaction Documents, or in connection herewith or therewith, except for damages caused by its or their own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. Without limiting the generality of the foregoing, Agent: (a) may treat the payee of any Note as the holder thereof until such Note has been assigned in accordance with Section 10.1; (b) may consult with legal counsel, independent public accountants and other experts, whether or not selected by it, and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts; (c) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Requisite Lenders, (d) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations made in or in connection with this Agreement or the other Transaction Documents; (e) shall not have any duty to inspect the Collateral (including the books and records) or to ascertain or to inquire as to the performance or observance of any provision of any Transaction Document, whether any condition set forth in any Transaction Document is satisfied or waived, as to the financial condition of any Loan Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from Borrower or any Lender describing such Default or Event of Default clearly labeled "notice of default"; (f) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Transaction Document or any other instrument or document furnished pursuant hereto or thereto; and (g) shall incur no liability under or in respect of this Agreement or the other Transaction Documents by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopy, telegram, cable or telex) believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties.

9.3 **GECC and Affiliates.** For so long as GECC is a Lender hereunder, it shall have the same rights and powers under this Agreement and the other Transaction Documents as any other Lender and may exercise the same as though it were not Agent; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include GECC in its individual capacity. GECC and its affiliates may lend money to, invest in, and generally engage in any kind of business with, Borrower, any of Borrower's Subsidiaries, any of their Affiliates and any person who may do business with or own securities of Borrower, any of Borrower's Subsidiaries or any such Affiliate, all as if GECC were not Agent and without any duty to account therefor to Lenders. GECC and its affiliates may accept fees and other consideration from Borrower for services in connection with this Agreement or otherwise without having to account for the same to Lenders. Each Lender acknowledges the potential conflict of interest between GECC as a Lender holding disproportionate interests in the Term Loan and GECC as Agent, and expressly consents to, and waives, any claim based upon, such conflict of interest.

9.4 **Lender Credit Decision**. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender and based on the financial statements referred to in Section 6.3 and such other documents and information as it has deemed appropriate, made its own credit and financial analysis of each Loan Party and its own decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement. Each Lender acknowledges the potential conflict of interest of each other Lender as a result of Lenders holding disproportionate interests in the Term Loan, and expressly consents to, and waives, any claim based upon, such conflict of interest.

9.5 **Indemnification**. Lenders shall and do hereby indemnify Agent (to the extent not reimbursed by Loan Parties and without limiting the obligations of Loan Parties hereunder), ratably according to their respective Pro Rata Shares from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against Agent in any way relating to or arising out of this Agreement or any other Transaction Document or any action taken or omitted to be taken by Agent in connection therewith; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from Agent's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. Without limiting the foregoing, each Lender agrees to reimburse Agent promptly upon demand for its Pro Rata Share of any out-of-pocket expenses (including reasonable counsel fees) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement and each other Transaction Document, to the extent that Agent is not reimbursed for such expenses by Loan Parties. The provisions of this Section 9.5 shall survive the termination of this Agreement.

9.6 **Successor Agent**. Agent may resign at any time by delivering five (5) days prior notice of such resignation to the Lenders and the Borrower, effective on the date set forth in such notice. Upon any such resignation, the Requisite Lenders shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by the Requisite Lenders and shall have accepted such appointment within 30 days after the resigning Agent's giving notice of resignation, then the resigning Agent may, on behalf of Lenders, appoint a successor Agent, which shall be a Lender, if a Lender is willing to accept such appointment, or otherwise shall be a commercial bank or financial institution or a subsidiary of a commercial bank or financial institution if such commercial bank or financial institution is organized under the laws of the United States of America or of any State thereof and has a combined capital and surplus of at least $300,000,000. If no successor Agent has been appointed pursuant to the foregoing, within 30 days after the date such notice of resignation was given by the resigning Agent, the Requisite Lenders shall thereafter perform all the duties of Agent hereunder until such time, if any, as the Requisite Lenders appoint a successor Agent as provided above. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning Agent. Upon the earlier of the acceptance of any appointment as Agent hereunder by a successor Agent or the effective date of the resigning Agent's resignation, the resigning Agent shall be discharged from its duties and obligations under this Agreement and the other Transaction Documents, except that any indemnity rights or other rights in favor of such resigning Agent shall continue. After any resigning Agent's resignation hereunder, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was acting as Agent under this Agreement and the other Transaction Documents.

9.7 **Setoff and Sharing of Payments**. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default and subject to Section 9.8(e), each Lender is hereby authorized at any time or from time to time upon the direction of Agent, without notice to Borrower or any other person, any such notice being hereby expressly waived, to offset and to appropriate and to apply any and all balances held by it at any of its offices for the account of Borrower (regardless of whether such balances are then due to Borrower) and any other properties or assets at any time held or owing by that Lender or that holder to or for the credit or for the account of Borrower against and on account of any of the Obligations that are not paid when due. Any Lender exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Lenders or holders shall sell) such participations in each such other Lender's or holder's Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so offset or otherwise received with each other Lender or holder in accordance with their respective Pro Rata Shares of the Obligations. Borrower agrees, to the fullest extent permitted by law, that (a) any Lender may exercise its right to offset with respect to amounts in excess of its Pro Rata Share of the Obligations and may sell participations in such amounts so offset to other Lenders and holders and (b) any Lender so purchasing a participation in the Term Loan made or other Obligations held by other Lenders or holders may exercise all rights of offset, bankers' lien, counterclaim or similar rights with respect to such participation as fully as if such Lender or holder were a direct holder of the Term Loan and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the offset amount or payment otherwise received is thereafter recovered from the Lender that has exercised the right of offset, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest. The term "Pro Rata Share" means, with respect to any Lender at any time, the percentage obtained by dividing (x) the Commitment of such Lender then in effect (or, if such Commitment is terminated, the aggregate outstanding principal amount of the Term Loan owing to such Lender) by (y) the Total Commitment then in effect (or, if the Total Commitment is terminated, the outstanding principal amount of the Term Loan owing to all Lenders).

9.8 **Advances; Payments; Non-Funding Lenders; Information; Actions in Concert**.

(a) Advances; Payments. If Agent receives any payment for the account of Lenders on or prior to 1:00 p.m. (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on such Business Day. If Agent receives any payment for the account of Lenders after 1:00 p.m. (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on the next Business Day. To the extent that any Lender has failed to fund any such payments and Term Loans (a "Non-Funding Lender"), Agent shall be entitled to set off the funding short-fall against that Non-Funding Lender's Pro Rata Share of all payments received from Borrower.

(b) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Loan Party and such related payment is not received by Agent, then Agent will be entitled to recover such amount (including interest accruing on such amount at the Federal Funds Rate for the first Business Day and thereafter, at the rate otherwise applicable to such Obligation) from such Lender on demand without setoff, counterclaim or deduction of any kind.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to a Loan Party or paid to any other person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Transaction Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to a Loan Party or such other person, without setoff, counterclaim or deduction of any kind.

(c) Non-Funding Lenders. The failure of any Non-Funding Lender to make the Term Loan or any payment required by it hereunder shall not relieve any other Lender (each such other Lender, an "Other Lender") of its obligations to make the Term Loan, but neither any Other Lender nor Agent shall be responsible for the failure of any Non-Funding Lender to make the Term Loan or make any other payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Transaction Document or constitute a "Lender" (or be included in the calculation of "Requisite Lender" hereunder) for any voting or consent rights under or with respect to any Transaction Document. At Borrower's request, Agent or a person reasonably acceptable to Agent shall have the right with Agent's consent and in Agent's sole discretion (but shall have no obligation) to purchase from any Non-Funding Lender, and each Non-Funding Lender agrees that it shall, at Agent's request, sell and assign to Agent or such person, all of the Commitments and all of the outstanding Term Loans of that Non-Funding Lender for an amount equal to the principal balance of all Term Loans held by such Non-Funding Lender and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment Agreement (as defined below).

(d) Dissemination of Information. Agent shall use reasonable efforts to provide Lenders with any notice of Default or Event of Default received by Agent from, or delivered by Agent to Borrower, with notice of any Event of Default of which Agent has actually become aware and with notice of any action taken by Agent following any Event of Default; provided that Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Agent's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. Lenders acknowledge that Borrower is required to provide financial statements to Lenders in accordance with Section 6.3 hereto and agree that Agent shall have no duty to provide the same to Lenders.

(e) Actions in Concert. Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement, the Notes or any other Transaction Documents (including exercising any rights of setoff) without first obtaining the prior written consent of Agent and Requisite Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the Notes shall be taken in concert and at the direction or with the consent of Agent and Requisite Lenders.

10. MISCELLANEOUS.

10.1 **Assignment.**

(a) Subject to the terms of this Section 10.1, each Lender shall have the right to sell, transfer or assign, at any time or times, all or a portion of its rights and obligations hereunder and under the other Transaction Documents, its Commitment, its Term Loans or any portion thereof or interest therein, including any Lender's rights, title, interests, remedies, powers or duties thereunder; provided, however, that any such sale, transfer or assignment shall: (i) except in the case of a sale, transfer or assignment to a Qualified Assignee (as defined below), require the prior written consent of Agent and the Requisite Lenders (which consent shall not be unreasonably withheld, conditioned or delayed); (ii) require the execution of an assignment agreement in form and substance reasonably satisfactory to, and acknowledged by, Agent (an "Assignment Agreement"); (iii) be conditioned on such assignee Lender representing to the assigning Lender and Agent that it is purchasing the applicable Commitment and/or Term Loans to be assigned to it for its own account, for investment purposes and not with a view to the distribution thereof; (iv) be in an aggregate amount of not less than $1,000,000, unless such assignment is made to an existing Lender or an affiliate of an existing Lender or is of the assignor's (together with its affiliates') entire interest of the Term Loans or is made with the prior written consent of Agent; and (v) include a payment to Agent of an assignment fee of $3,500 (unless otherwise agreed by Agent); providedfurther, however, that so long as no Default or Event of Default has occurred and is continuing, assignments of all or any portion of the Term Loan (or any rights or obligations under the Transaction Documents) to any Non-Eligible Lender (as defined below) shall require the prior consent of the Borrower, which consent shall not be unreasonably withheld, delayed or conditioned, and the consent of Borrower shall be deemed to have been given if Borrower has not delivered an objection in writing within five (5) Business Days of a request for such consent. In the case of an assignment by a Lender under this Section 10.1(a), the assignee shall have, to the extent of such assignment, the same rights, benefits and obligations as all other Lenders hereunder. The assigning Lender shall be relieved of its obligations hereunder with respect to its Commitment and Term Loans, as applicable, or assigned portion thereof from and after the date of such assignment. Borrower hereby acknowledges and agrees that any assignment shall give rise to a direct obligation of Borrower to the assignee and that the assignee shall be considered to be a "Lender". In the event any Lender assigns or otherwise transfers all or any part of the Commitments and Obligations, Borrower shall, upon the assignee's or the assignor's request, execute new Notes in exchange for the Notes, if any, being assigned. Agent may amend Schedule A to this Agreement to reflect assignments made in accordance with this Section 10.1.

As used herein, "Qualified Assignee" means (a) any Lender and any affiliate of any Lender and (b) any commercial bank, savings and loan association or savings bank or any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act) which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which has a rating of BBB or higher from S&P and a rating of Baa2 or higher from Moody's at the date that it becomes a Lender and in each case of clauses (a) and (b), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that no person proposed to become a Lender after the Closing Date that holds any subordinated debt or stock issued by any Loan Party or its Affiliates shall be a Qualified Assignee.

As used herein, "Non-Eligible Lender" means (a) any hedge fund or private equity fund that is engaged in the business of purchasing distressed debt or (b) any entity that has (i) become subject to a voluntary or involuntary case under the U.S. Bankruptcy Code or any similar bankruptcy laws, (ii) a custodian, conservator, receiver or similar official appointed for it or any substantial part of such entity's assets, or (iii) made a general assignment for the benefit of creditors, been liquidated, or otherwise been adjudicated as, or determined by any governmental authority having regulatory authority over such entity or its assets to be, insolvent or bankrupt, and in the case of this clause (b), Agent has determined that such entity is reasonably likely to fail to fund any payments required to be made by it (if any) under the Transaction Documents.

(b) In addition to the other rights provided in this Section 10.1, each Lender may, without notice to or consent from Agent or any Loan Party, sell participations to one or more persons or entities in or to all or a portion of its rights and obligations under the Transaction Documents (including all of its rights and obligations with respect to the Term Loans); provided, however, that, whether as a result of any term of any Transaction Document or of such participation, (i) no such participant shall have a commitment, or be deemed to have made an offer to commit, to make the Term Loan hereunder, and, no such participant shall be liable for any obligation of such Lender hereunder, (ii) such Lender's rights and obligations, and the rights and obligations of the Loan Parties and Agent and other Lenders towards such Lender, under any Transaction Document shall remain unchanged and each other party hereto shall continue to deal solely with such Lender, which shall remain the holder of the Obligations, and in no case shall a participant have the right to enforce any of the terms of any Transaction Document, and (iii) the consent of such participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Transaction Document or to exercise or refrain from exercising any powers or rights such Lender may have under or in respect of the Transaction Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in clauses (ii), (iii) and (viii) of subsection 10.9(c) hereof.

10.2 **Notices.** All notices, requests or other communications given in connection with this Agreement shall be in writing, shall be addressed to the parties at their respective addresses set forth on the signature pages hereto below such parties' name or in the most recent Assignment Agreement executed by any Lender, or in the case of any Loan Party to the address of the Parent (or, solely in the case of service of process or other documents in accordance with Section 10.3 below, the address of the Borrower), unless and until a different address may be specified in a written notice to the other party delivered in accordance with this Section, and shall be deemed given (a) on the date of receipt if delivered by hand, (b) on the date of sender's receipt of confirmation of proper transmission if sent by facsimile transmission, (c) on the next Business Day after being sent by a nationally-recognized overnight courier, and (d) on the fourth Business Day after being sent by registered or certified mail, postage prepaid. As used herein, the term "Business Day" means and includes any day other than Saturdays, Sundays, or other days on which commercial banks in New York, New York are required or authorized to be closed.

10.3 **Process Agent.** Each Loan Party irrevocably, (a) nominates as its agent, to receive service of process or other documents, the Borrower; and (b) agrees that service of process or documents on that agent or any other person appointed under clause (a) will be sufficient service on it. The process agent named above irrevocably and unconditionally accepts that appointment. Each Loan Party shall ensure that the process agent remains authorized to accept service on its behalf. If the process agent ceases to have an office in the place specified, each Loan Party shall ensure that at all times there is another person in that place acceptable to the Agent to receive process on its behalf. Each Loan Party shall promptly notify the Agent in writing of the appointment of such other person.

10.4 **Correction of Transaction Documents.** Agent may correct patent errors and fill in all blanks in this Agreement or the Transaction Documents consistent with the agreement of the parties.

10.5 **Performance.** Time is of the essence of this Agreement. This Agreement shall be binding, jointly and severally, upon all parties described as the "Borrower" and their respective successors and assigns, and shall inure to the benefit of Agent, Lenders, and their respective successors and assigns; provided, however, that (a) any assignment by any Lender shall be subject to the provisions of Section 10.1 and (b) no Loan Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Agent and Lenders pursuant to Section 10.9.

10.6 **Payment of Fees and Expenses.** Loan Parties agree, jointly and severally, to pay or reimburse upon demand for all reasonable fees, costs and expenses incurred by Agent (and solely with respect to clause (d), the Lenders) in connection with (a) the investigation, preparation, negotiation, execution, administration of, or any amendment, modification, waiver or termination of, this Agreement or any other Transaction Document, (b) any legal advice relating to Agent's rights or responsibilities under any Transaction Document, (c) the administration of the Loans and the facilities hereunder and any other transaction contemplated hereby or under the Transaction Documents and (d) the enforcement, assertion, defense or preservation of Agent's and Lenders' rights and remedies under this Agreement or any other Transaction Document, in each case of clauses (a) through (d), including, without limitation, reasonable attorneys' fees and expenses, reasonable fees and expenses of consultants, auditors (including internal auditors) and appraisers and UCC and other corporate search and filing fees and wire transfer fees. Borrower further agrees that such fees, costs and expenses shall constitute Obligations. This provision shall survive the termination of this Agreement. For the avoidance of doubt, this Section 10.6 shall not apply to Taxes, which shall be governed exclusively by Section 2.2(e) and Section 6.9(d).

10.7 **Indemnity Provisions**.

(a) General Indemnity. Each Loan Party shall and does hereby jointly and severally indemnify and defend Agent, Lenders, and their respective successors and assigns, and their respective directors, officers, employees, consultants, attorneys, agents and affiliates (each an "Indemnitee") from and against all liabilities, losses, damages, expenses, penalties, claims, actions and suits (including, without limitation, related reasonable attorneys' fees) of any kind whatsoever arising, directly or indirectly, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with this Agreement, the other Transaction Documents or any of the transactions contemplated hereby or thereby (the "Indemnified Liabilities"); provided that, no Loan Party shall have any obligation to any Indemnitee with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of such Indemnitee as determined by a final non-appealable judgment of a court of competent jurisdiction. In no event shall any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business or anticipated savings). Each Loan Party, the Agent and each Lender waives, releases and agrees (and each Loan Party shall cause each other Loan Party to waive, release and agree) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor. This provision shall survive the termination of this Agreement.

(b) Environmental Liabilities. Without limiting the foregoing, "Indemnified Liabilities" includes all Environmental Liabilities imposed on, incurred by or asserted against any Indemnitee, including those arising from, or otherwise involving, any property of any Loan Party or any affiliate of any Loan Party or any actual, alleged or prospective damage to property or natural resources or harm or injury alleged to have resulted from any Release or threatened Release of Hazardous Materials on, upon or into such property or natural resource or any property on or contiguous to any real property owned or leased by any Loan Party or any affiliate of any Loan Party, whether or not, with respect to any such Environmental Liabilities, any Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor-in-interest to any Loan Party or any affiliate of any Loan Party or the owner, lessee or operator of any property of any Loan Party or any affiliate of any Loan Party through any foreclosure action, in each case except to the extent such Environmental Liabilities (i) are incurred following foreclosure by Agent or following Agent or any Lender having become the successor-in-interest to any Loan Party or any affiliate of any Loan Party and (ii) are attributable to such Indemnitee.

(c) Foreign Currency Indemnity. If, at any time (i) the Agent or any Lender, receiver, or an attorney receives or recovers any amount payable by a Loan Party including: (A) under any judgment or order of any government authority, (B) for any breach of this Agreement or any other Transaction Document, (C) on the liquidation or bankruptcy of any Loan Party or any proof or claim in that liquidation or bankruptcy, or (D) any other thing into which the obligations of any Loan Party may have become merged; and (ii) the currency in which the payment is made is not in US Dollars; each Loan Party, jointly and severally, indemnifies the Agent and each Lender, receiver, or attorney against any shortfall between the amount payable in US Dollars and the amount actually or notionally received or recovered by the Agent and each Lender, receiver, or attorney after the currency in which the payment is made is converted or translated into US Dollars under clause (d) below.

(d) Conversion of Currencies. In making any currency conversion under clause (c) above, the Agent and any Lender, receiver, or attorney may itself or through its bankers (in a manner consistent with their usual practices) purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and amounts and at the time it thinks fit.

(e) For the avoidance of doubt, this Section 10.7 shall not apply to Taxes, which shall be governed exclusively by Section 2.2(e) and Section 6.9(d).

(f) Continuing Indemnities and Evidence of Loss. Each indemnity of a Loan Party in this Agreement or any other Transaction Document is a continuing obligation of the Loan Party, despite any settlement of account or the occurrence of any other thing, and remains in full force and effect until the Obligations are fully and finally repaid. Each indemnity of a Loan Party in this Agreement or any other Transaction Document is an additional, separate and independent obligation of a Loan Party and no one indemnity limits the general nature of any other indemnity. Each indemnity of a Loan Party in this Agreement or any other Transaction Document survives the termination of this Agreement or any other Transaction Document. A certificate given by an officer of the Agent or any Lender detailing the amount of any loss covered by any indemnity in this Agreement or any other Transaction Document is sufficient evidence of such loss.

10.8 **Rights Cumulative.** Agent's and Lenders' rights and remedies under this Agreement or otherwise arising are cumulative and may be exercised singularly or concurrently. Neither the failure nor any delay on the part of Agent or any Lender to exercise any right, power or privilege under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of that or any other right, power or privilege. NONE OF AGENT OR ANY LENDER SHALL BE DEEMED TO HAVE WAIVED ANY OF ITS RESPECTIVE RIGHTS UNDER THIS AGREEMENT OR UNDER ANY OTHER AGREEMENT, INSTRUMENT OR PAPER SIGNED BY BORROWER UNLESS SUCH WAIVER IS EXPRESSED IN WRITING AND SIGNED BY AGENT, REQUISITE LENDERS OR ALL LENDERS, AS APPLICABLE. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.

10.9 **Entire Agreement; Amendments, Waivers**.

(a) This Agreement and the other Transaction Documents constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior understandings (whether written, verbal or implied) with respect to such subject matter. Section headings contained in this Agreement have been included for convenience only, and shall not affect the construction or interpretation of this Agreement.

(b) Except for actions expressly permitted to be taken by Agent, no amendment, modification, termination or waiver of any provision of this Agreement or any other Transaction Document, or any consent to any departure by a Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by Agent, Borrower, and Lenders having more than (x) 50% of the aggregate Commitments of all Lenders or (y) if such Commitments have expired or been terminated, 50% of the aggregate outstanding principal amount of the Term Loans (the "Requisite Lenders"). Except as set forth in clause (c) below, all such amendments, modifications, terminations or waivers requiring the consent of any Lenders shall require the written consent of Requisite Lenders.

(c) No amendment, modification, termination or waiver of any provision of this Agreement or any other Transaction Document shall, unless in writing and signed by Borrower, Agent and each Lender directly affected thereby: (i) increase or decrease any Commitment of any Lender or increase or decrease the Total Commitment (which shall be deemed to affect all Lenders), (ii) reduce the principal of or rate of interest on any Obligation or the amount of any fees payable hereunder (other than waiving the imposition of the Default Rate), (iii) postpone the date fixed for or waive any payment of principal of or interest on the Term Loan, or any fees hereunder, (iv) release all or substantially all of the Collateral, or consent to a transfer of all or substantially all of the Intellectual Property, in each case except as otherwise expressly permitted in the Transaction Documents (which shall be deemed to affect all Lenders), (v) subordinate the Lien on all or substantially all of the Collateral granted in favor of Agent securing the Obligations (which shall be deemed to affect all Lenders), (vi) release a Loan Party from, or consent to a Loan Party's assignment or delegation of, such Loan Party's obligations hereunder and under the other Transaction Documents or any Guarantor from its guaranty of the Obligations (which shall be deemed to affect all Lenders), (vii) amend, modify, terminate or waive Section 8.3, 9.7 or 10.9(b) or (c), or (viii) amend or modify the definition of "Requisite Lenders".

(d) Notwithstanding any provision in this Section 10.9 to the contrary, no amendment, modification, termination or waiver affecting or modifying the rights or obligations of Agent hereunder shall be effective unless signed by Borrower, Agent and Requisite Lenders.

(e) Each Lender hereby consents to the release by Agent of any Lien held by Agent for the benefit of itself and the Lenders in any or all of the Collateral to secure the Obligations upon (i) the occurrence of any Permitted Disposition pursuant to Section 7.3 and (ii) the termination of the Commitments and the payment and satisfaction in full of the Obligations.

Notwithstanding the foregoing, this Agreement may be amended without the written consent of the Requisite Lenders and solely with the consent of the Agent, Parent and Borrower in order to effect technical amendments to this Agreement in connection with or arising out of the Parent Redomestication or any Subsidiary Redomestication.

10.10 **Binding Effect.** This Agreement shall continue in full force and effect until the Termination Date; provided, however, that the provisions of this Section 10.10 and Sections 2.2(e), 9.5, 10.6 and 10.7 and the other indemnities contained in the Transaction Documents shall survive the Termination Date. The surrender, upon payment or otherwise, of any Note or any of the other Transaction Documents evidencing any of the Obligations shall not affect the right of Agent to retain the Collateral for such other Obligations as may then exist or as it may be reasonably contemplated will exist in the future. This Agreement and the grant of a security interest in the Collateral pursuant to any Transaction Document shall automatically be reinstated if the Agent or any Lender is ever required to return or restore the payment of all or any portion of the Obligations (all as though such payment had never been made). "Termination Date" means the date on which all of the Obligations are paid in full in cash, all of the Commitments hereunder are terminated, and this Agreement shall have been terminated.

10.11 **Use of Logo.** Each Loan Party authorizes Agent to use its name, logo and/or trademark without notice to or consent by such Loan Party, in connection with certain promotional materials that Agent may disseminate to the public. The promotional materials may include, but are not limited to, brochures, video tape, internet website, press releases, tombstones, advertising in newspaper and/or other periodicals, lucites, and any other materials relating the fact that Agent has a financing relationship with Borrower and such materials may be developed, disseminated and used without Loan Parties' review. Nothing herein obligates Agent to use a Loan Party's name, logo and/or trademark, in any promotional materials of Agent. Loan Parties shall not, and shall not permit any of its respective Affiliates to, issue any press release or other public disclosure (other than any document filed with any governmental authority relating to a public offering of the securities of Borrower or otherwise required to be filed by any Loan Party with the SEC) using the name, logo or otherwise referring to General Electric Capital Corporation, GE Healthcare Financial Services, Inc. or of any of their affiliates, the Transaction Documents or any transaction contemplated herein or therein without at least two (2) Business Days prior written notice to and the prior written consent of Agent unless, and only to the extent that, Loan Parties or such Affiliate is required to do so under applicable law and then, only after consulting with Agent prior thereto.

10.12 **Waiver of Jury Trial.** EACH OF THE LOAN PARTIES, AGENT AND LENDERS UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE OTHER TRANSACTION DOCUMENTS, ANY OF THE INDEBTEDNESS SECURED HEREBY, ANY DEALINGS AMONG LOAN PARTIES, AGENT AND/OR LENDERS RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG LOAN PARTIES, AGENT AND/OR LENDERS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. THIS WAIVER IS IRREVOCABLE. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING. THE WAIVER ALSO SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.13 Governing Law and Jurisdiction.

(a) GOVERNING LAW. THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS (EXCLUDING THOSE TRANSACTION DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL, PROVIDED, HOWEVER, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN NEW YORK SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL CONTINUE TO APPLY TO THAT EXTENT.

(b) SUBMISSION TO JURISDICTION. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY EXECUTING THIS AGREEMENT HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. NOTWITHSTANDING THE FOREGOING, THE AGENT AND OTHER LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST ANY LOAN PARTY (OR ANY PROPERTY OF SUCH LOAN PARTY) IN THE COURT OF ANY OTHER JURISDICTION THE AGENT OR THE LENDERS DEEM NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR OTHER SECURITY FOR THE OBLIGATIONS. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, THAT ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH JURISDICTIONS.

(c) NON-EXCLUSIVE JURISDICTION. NOTHING CONTAINED IN THIS SECTION 10.13 SHALL AFFECT THE RIGHT OF AGENT OR THE LENDERS TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW OR COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION.

10.14 **Confidentiality**. Each Lender and Agent agrees to use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Transaction Document and designated in writing by any Loan Party as confidential, except that such information may be disclosed (a) with the Borrower's consent, (b) to such Lender's or Agent's Related Persons (as defined below), as the case may be, that are advised of the confidential nature of such information and are instructed to keep such information confidential in accordance with the terms hereof, (c) to the extent such information presently is or hereafter becomes (i) publicly available other than as a result of a breach of this Section 10.14 or (ii) available to such Lender or Agent or any of their Related Persons, as the case may be, from a source (other than any Loan Party) not known by them to be subject to disclosure restrictions, (d) to the extent disclosure is required by any applicable law, rule, regulation, court decree, subpoena or other legal, administrative, governmental or regulatory request, order or proceeding or otherwise requested or demanded by any governmental authority, (e) to the extent necessary or customary for inclusion in league table measurements, (f) (i) to the National Association of Insurance Commissioners or any similar organization, any examiner or any nationally recognized rating agency or (ii) otherwise to the extent consisting of general portfolio information that does not identify Loan Parties, (g) to current or prospective assignees or participants and to their respective Related Persons, in each case to the extent such assignees, participants or Related Persons agree to be bound by provisions substantially similar to the provisions of this Section 10.14 (and such persons or entities may disclose information to their respective Related Persons in accordance with clause (b) above), (h) to any other party hereto, and (i) in connection with the exercise or enforcement of any right or remedy under any Transaction Document, in connection with any litigation or other proceeding to which such Lender or Agent or any of their Related Persons is a party or bound, or to the extent necessary to respond to public statements or disclosures by Loan Parties or their Related Persons referring to a Lender or Agent or any of their Related Persons. In the event of any conflict between the terms of this Section 10.14 and those of any other contractual obligation entered into with any Loan Party (whether or not a Transaction Document), the terms of this Section 10.14 shall govern. "Related Persons" means, with respect to any person or entity, each affiliate of such person or entity and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such person or entity or any of its affiliates.

10.15 **USA Patriot Act**. Each Lender that is subject to the Patriot Act hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act.

10.16 **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

[*Signature Page Follows****]***

IN WITNESS WHEREOF, each Loan Party, Agent and Lenders, intending to be legally bound hereby, have duly executed this Agreement in one or more counterparts, each of which shall be deemed to be an original, as of the day and year first aforesaid.

BORROWER:

XOMA (US) LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

PARENT:

XOMA LTD., a Bermuda exempted company

By: _____
Name: _____
Title: _____

EACH GUARANTOR:

XOMA TECHNOLOGY LTD., a Bermuda exempted company

By: _____
Name: _____
Title: _____

XOMA IRELAND LIMITED, an Irish private limited company

By: _____
Name: _____
Title: _____

Address For Notices For All Loan Parties:

c/o XOMA Ltd.
2910 Seventh Street
Berkeley, CA 94710
Attention: Legal Department
Phone: (510) 201-7200
Facsimile: (510) 649-7571

AGENT AND LENDER:

GENERAL ELECTRIC CAPITAL CORPORATION

By: _____

Name: _____

Title: Duly Authorized Signatory

Address For Notices:

General Electric Capital Corporation
c/o GE Healthcare Financial Services, Inc.
Two Bethesda Metro Center, Suite 600
Bethesda, Maryland 20814
Attention: Senior Vice President of Risk – Life Science Finance
Phone: (301) 961-1640
Facsimile: (301) 664-9855

With a copy to:

General Electric Capital Corporation
c/o GE Healthcare Financial Services, Inc.
Two Bethesda Metro Center, Suite 600
Bethesda, Maryland 20814
Attention: General Counsel
Phone: (301) 961-1640
Facsimile: (301) 664-9866

EXHIBIT 10.43A

[*] indicates that a confidential portion of the text of this agreement has been omitted.

GUARANTY, PLEDGE AND SECURITY AGREEMENT

Dated as of December 30, 2011

among

XOMA (US) LLC

and

Each Other Grantor
From Time to Time Party Hereto

and

GENERAL ELECTRIC CAPITAL CORPORATION,
as Agent

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ANNEX

Annex 1 Form of Joinder Agreement

GUARANTY, PLEDGE AND SECURITY AGREEMENT (this "Agreement"), dated as of December 30, 2011, by XOMA (US) LLC, a Delaware limited liability company (the "Company"), XOMA LTD., a Bermuda exempted company and as such entity may be discontinued from Bermuda pursuant to Sections 132G and 132H of the Companies Act of 1981 of Bermuda, as amended (the "Companies Act") and converted to a Delaware corporation pursuant to Section 388 of the Delaware General Corporation Law ("Parent") and each of the other entities listed on the signature pages hereto or that becomes a party hereto pursuant toSection 5.5 (together with Parent and the Company, the "Grantors"), in favor of General Electric Capital Corporation ("GECC"), in its capacity as agent for the Lenders (defined below) (together with its successors and permitted assigns, in each such capacity the "Agent").

W I T N E S S E T H:

WHEREAS, pursuant to that certain Loan Agreement, dated as of the date hereof, among Agent, the financial institutions who are parties thereto from time to time as lenders (collectively, the "Lenders"), the Company, Parent and the other entities or persons, if any, who hereafter become parties thereto as guarantors (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"; capitalized terms used herein without definition are used as defined in the Loan Agreement), the Lenders have agreed to make extensions of credit to the Company upon the terms and subject to the conditions set forth therein;

WHEREAS, the Company is a direct wholly-owned subsidiary of Parent;

WHEREAS, each Grantor (other than the Company) has agreed to guaranty the Obligations of the Company (such Grantors other than the Company sometimes referred to herein individually as a "Guarantor" and collectively as "Guarantors");

WHEREAS, each Grantor will derive substantial direct and indirect benefits from the making of the extensions of credit under the Loan Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make extensions of credit to the Company under the Loan Agreement that the Grantors shall have executed and delivered this Agreement to the Agent, for the benefit of the Lenders;

NOW, THEREFORE, in consideration of the premises and to induce the Lenders to make extensions of credit to the Company under the Loan Agreement, each Grantor hereby agrees as follows:

ARTICLE I

GUARANTY

Section 1.1 Guaranty. Each Guarantor hereby, jointly and severally, absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, the full and punctual payment when due, whether at stated maturity or earlier, by reason of acceleration, mandatory prepayment or otherwise in accordance with any Transaction Document, of the Term Loan and all other Obligations of the Company whether existing on the date hereof or hereinafter incurred or created (the "Guaranteed Obligations"). This guaranty by each Guarantor hereunder constitutes a guaranty of payment and not of collection. To the extent the Obligations are increased or reduced from time to time in accordance with the Transaction Documents, the Guaranteed Obligations shall be correspondingly increased or reduced.

Section 1.2 Limitation of Guaranty. Any term or provision of this Agreement or any other Transaction Document to the contrary notwithstanding, the maximum aggregate amount for which any Guarantor shall be liable hereunder shall not exceed the maximum amount for which such Guarantor can be liable without rendering this Agreement or any other Transaction Document, as it relates to such Guarantor, subject to avoidance under applicable laws relating to fraudulent conveyance or fraudulent transfer (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and Section 548 of title 11, United States Code or any applicable provisions of comparable laws) (collectively, "Fraudulent Transfer Laws"). Any analysis of the provisions of this Agreement for purposes of Fraudulent Transfer Laws shall take into account the right of contribution established in Section 1.3 and, for purposes of such analysis, give effect to any discharge of intercompany debt as a result of any payment made under this Agreement.

Section 1.3 Contribution. To the extent that any Guarantor shall be required hereunder to pay any portion of any Guaranteed Obligation exceeding the greater of (a) the amount of the economic benefit actually received by such Guarantor and its Subsidiaries from the Term Loan and the other Obligations and (b) the amount such Guarantor would otherwise have paid if such Guarantor had paid the aggregate amount of the Guaranteed Obligations (excluding the amount thereof repaid by the Company) in the same proportion as such Guarantor's net worth on the date enforcement is sought hereunder bears to the aggregate net worth of all the Guarantors on such date, then such Guarantor shall be reimbursed by such other Guarantors for the amount of such excess, pro rata, based on the respective net worth of such other Guarantors on such date.

Section 1.4 Authorization; Other Agreements. The Agent is hereby authorized, without notice to or demand upon any Guarantor and without discharging or otherwise affecting the obligations of any Guarantor hereunder and without incurring any liability hereunder, from time to time, to do each of the following:

(a) (i) modify, amend, supplement, renew, extend, increase the principal amount of and/or the rate of interest on, modify any other payment terms of, or otherwise change, (ii) accelerate or otherwise change the time, place, manner or term of payment of, or (iii) waive or otherwise consent to noncompliance with, any Guaranteed Obligation or any Transaction Document, in each case in accordance with the terms of the Loan Agreement;

(b) apply to the Guaranteed Obligations any sums by whomever paid or however realized to any Guaranteed Obligation in such order as provided in the Transaction Documents;

(c) refund at any time any payment received by Agent in respect of any Guaranteed Obligation other than payments required to be made by the Company in accordance with the terms of the Loan Agreement;

(d) (i) sell, exchange, enforce, waive, substitute, liquidate, terminate, release, abandon, fail to perfect, subordinate, accept, substitute, surrender, exchange, affect, impair or otherwise alter or release any Collateral (as defined below) for any Guaranteed Obligation or any other guaranty therefor in any manner, (ii) receive, take, request, accept and hold additional Collateral to secure any Guaranteed Obligation or additional guarantees in respect of the Guaranteed Obligations, (iii) add, release or substitute any one or more other Guarantors, or any other guarantors, makers or endorsers of any Guaranteed Obligation or any part thereof and (iv) otherwise deal in any manner with the Company, any other Guarantor, and any other guarantor, maker or endorser of any Guaranteed Obligation or any part thereof;

(e) settle, release, compromise, collect or otherwise liquidate the Guaranteed Obligations; and

(f) exercise any other rights available to it under the Loan Agreement and other Transaction Documents.

Section 1.5 Guaranty Absolute and Unconditional. Each Guarantor hereby waives and agrees not to assert any defense, whether arising in connection with or in respect of any of the following, and hereby agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be discharged or otherwise affected by any circumstance other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor hereby agrees as follows:

(a) the Agent may enforce this Agreement in accordance with the terms of the Loan Agreement upon the occurrence of an Event of Default notwithstanding any dispute between the Company and Agent and/or any Lender with respect to the existence of such Event of Default;

(b) the obligations of each Guarantor hereunder are independent of the Obligations of the Company under the Transaction Documents and the obligations of any other guarantor (including any other Guarantor) of the Obligations of the Company under the Transaction Documents, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against the Company or any of such other guarantors and whether or not Guarantor is the alter ego of any of the Company and whether or not the Company is joined in any such action or actions;

(c) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid, and if Agent and/or any Lender is awarded a judgment in any suit brought to enforce any Guarantor's obligations hereunder, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations; and

(d) to waive and not to assert any claim, setoff, counterclaim or defense, whether arising in connection with or in respect of any of the following, and hereby agrees that its obligations under this Agreement shall not be reduced, limited, impaired, discharged or terminated as a result of, or otherwise affected by, any of the following (which may not be pleaded and evidence of which may not be introduced in any proceeding with respect to this Agreement, in each case except as otherwise agreed in writing by Agent):

i. the invalidity or unenforceability of any obligation of the Company or any other Guarantor under any Transaction Document (including any amendment, consent or waiver thereto), or any security for, or other guaranty of the Guaranteed Obligations or any part of them, or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations or any part of them;

ii. any rescission, waiver, amendment, modification of, or consent to departure from, any of the terms or provisions of any Transaction Document or any agreement or instrument executed or delivered in connection therewith;

iii. the absence of (A) any attempt to collect any Guaranteed Obligation or any part thereof from the Company or any other Guarantor or other action to enforce any of the same, (B) any action to enforce any Transaction Document, any provision thereof, or any lien thereunder, or (C) any act to assert or enforce any claim, right, demand, power or remedy whether arising under any Transaction Document, at law, in equity or otherwise;

iv. the failure by any Person to take any steps to perfect and maintain any lien on, or to preserve any rights with respect to, any Collateral;

v. any workout, insolvency, bankruptcy proceeding, reorganization, arrangement, liquidation or dissolution by or against the Company, any other Guarantor or any Subsidiary of any Guarantor or any procedure, agreement, order, stipulation, election, action or omission thereunder, including any discharge or disallowance of, or bar or stay against collecting, any Guaranteed Obligation (or interest thereon) in or as a result of any such proceeding;

vi. any foreclosure, whether or not through judicial sale, and any other sale or transfer of Collateral or any election following the occurrence of an Event of Default by Agent to proceed separately against any Collateral in accordance with Agent's rights under any applicable law;

vii. any other defense, setoff, counterclaim or any other circumstance that might otherwise constitute a legal or equitable discharge of the Company, any other Guarantor or any Subsidiary of any Guarantor, in each case other than the payment in full of the Guaranteed Obligations; or

viii. diligence, promptness, presentment, requirements for any demand or notice hereunder including any of the following: (A) any demand for payment or performance and protest and notice of protest; (B) any notice of acceptance; (C) any presentment, demand, protest or further notice or other requirements of any kind with respect to any Guaranteed Obligation (including any accrued but unpaid interest thereon) becoming immediately due and payable, (D) any other notice in respect of the Guaranteed Obligations or any part of them, (E) any defense arising by reason of any disability or other defense of the Company or any other Guarantor and (F) any defense based on Agent's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to gross negligence or willful misconduct as determined by a final, non-appealable determination by a court of competent jurisdiction. Until the Guaranteed Obligations have been indefeasibly paid in full, each Guarantor further unconditionally and irrevocably agrees not to (X) enforce or otherwise exercise any right of subrogation or any right of reimbursement or contribution or similar right against the Company or any other Guarantor by reason of any Transaction Document or any payment made thereunder or (Y) assert any claim, defense, setoff or counterclaim it may have against any other Grantor or set off any of its obligations to such other Grantor against obligations of such Grantor to such Guarantor.

Section 1.6 Subordination of Other Indebtedness. Any Indebtedness of the Company or any other Grantor now or hereafter held by any Guarantor is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness of the Company or such other Grantor to such Guarantor collected or received by such Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Agent on behalf of the Lenders and shall forthwith be paid over to Agent for the benefit of the Lenders to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of such Guarantor under any other provision of this Agreement; provided that prior to the occurrence of an Event of Default, Guarantors may borrow, repay and reborrow intercompany Indebtedness from the Company to the extent such intercompany Indebtedness is permitted under Section 7.2 of the Loan Agreement.

Section 1.7 Reliance. Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Company, each other Guarantor and any other guarantor, maker or endorser of any Guaranteed Obligation or any part thereof, and of all other circumstances bearing upon the risk of nonpayment of any Guaranteed Obligation or any part thereof, that diligent inquiry would reveal, and each Guarantor hereby agrees that Agent and the Lenders shall not have any duty to advise any Guarantor of information known to it regarding such condition or any such circumstances. In the event Agent or any Lender, in its sole discretion, undertakes at any time or from time to time to provide any such information to any Guarantor, Agent or such Lender, as applicable, shall be under no obligation to (a) undertake any investigation not a part of its regular business routine, (b) disclose any information that Agent or such Lender, as applicable, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (c) make any future disclosures of such information or any other information to any Guarantor.

Section 1.8 Continuing Guaranty. This guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been paid in full. Each Guarantor hereby irrevocably waives any right to revoke this guaranty as to future transactions giving rise to any Guaranteed Obligations.

ARTICLE II

SECURITY AGREEMENT; PROVISIONS RELATING TO
ACCOUNTS COLLATERAL AND INVENTORY COLLATERAL

Section 2.1 Grant of Security Interest. Each Grantor, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations and Guaranteed Obligations (as the case may be) of such Grantor (together, the "Secured Obligations"), hereby mortgages, grants, pledges, hypothecates and assigns to Agent, on behalf of the Lenders, a continuing first priority lien on and security interest in, upon, and to, all right, title and interest in and to any and all property and interests in property of each Grantor whether now owned or hereafter owned, created, acquired or arising, and regardless of where located, including, without limitation, all of the following properties and interests in properties (collectively, the "Collateral"):

(a) all Accounts;

(b) all Chattel Paper (whether tangible or electronic);

(c) all Commercial Tort Claims, as more particularly described in the Perfection Certificate;

(d) all Deposit Accounts;

(e) all cash and Cash Equivalents

(f) all Documents;

(g) all Equipment;

(h) all Fixtures;

(i) all Goods;

(j) all Instruments;

(k) all Inventory;

(l) all Letter-of-Credit Rights and letters of credit;

(m) lla General Intangibles, Payment Intangibles and other rights to payment, including, without limitation, all Rights to Payment (as defined in Section 2.2) and all Indebtedness owing to such Grantor from another Grantor (which Indebtedness shall be evidenced by a promissory note in the form of the Master Intercompany Note delivered pursuant to Section 4.1(u) of the Loan Agreement or in such other form as may be acceptable to Agent), including all right, title and interest of such Grantor in instruments evidencing any Indebtedness owed to such Grantor or other obligations, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time (such Indebtedness collectively, the "Pledged Debt");

(n) lla Investment Property and Financial Assets (other than Excluded Equity (as defined herein)), including, without limitation, 100% of the shares of the outstanding capital stock or other equity interests, of any class, of each Subsidiary of such Grantor and all certificates evidencing the same (collectively, the "Pledged Securities", and together with the Pledged Debt, the "Pledged Collateral"), together with, in each case:

(i) all shares, securities, stock, equity interests, moneys or property representing a dividend on any of the Pledged Securities, or representing a distribution or return of capital upon or in respect of the Pledged Securities, or resulting from a split-up, revision, reclassification or other like change of the Pledged Securities or otherwise received in exchange therefor, and any subscription warrants, rights or options issued to the holders of, or otherwise in respect of, the Pledged Securities, and

(ii) without affecting the obligations of such Grantor under any provision prohibiting such action hereunder, in the event of any consolidation or merger in which the issuer of any Pledged Security is not the surviving entity, all shares of each class of the capital stock of the successor corporation (unless such successor corporation is such Grantor itself), or all other stock, as applicable, formed by or resulting from such consolidation or merger (the Pledged Securities, together with all other certificates, shares, securities, Stock, properties or moneys as may from time to time be pledged hereunder pursuant to this clause (ii) and clause (i) above being herein collectively called the "Securities Collateral");

(o) all Contracts and other contract rights (including, without limitation, rights under any lease, license or other agreements);

(p) all Securities Entitlements;

(q) all Software;

(r) all other tangible and intangible personal property whatsoever of such Grantor; and

(s) all Proceeds, Supporting Obligations, products, insurance claims, offspring, accessions, rents, profits, income, benefits, additions, attachments, accessories, substitutions and replacements of, to, arising out of or related to any of the Collateral and, to the extent related to any Collateral, all books, correspondence, credit files, records, invoices and other documents (including, without limitation, all tapes, cards, computer runs and other documents and documents in the possession or under the control of such Grantor or any computer bureau or service company from time to time acting for such Grantor);

provided, however, notwithstanding the foregoing, no Lien or security interest is hereby granted on (i) subject to the limitations set forth in Section 2.2, any Grantor's interest in any Intellectual Property (as defined in Section 2.2) (including without limitation all "Collateral" (as defined in that certain Loan Agreement dated as of December 30, 2010 by and between XOMA Ireland and Les Laboratoires Servier)), (ii) share capital or capital stock, as the case may be, of XOMA Bermuda, XOMA LS Limited, XOMA Limited (UK), XOMA Development and XOMA CDRA ("Excluded Equity"), (iii) the Novartis Contract Rights to the extent (A) such Novartis Contract Rights are collateral for Indebtedness permitted under Section 7.2(f) of the Loan Agreement and (B) a Lien in favor of Agent is prohibited by the agreements governing such Indebtedness, provided, that upon the termination or expiration of any such prohibition, the Novartis Contract Rights shall automatically be subject to the security interest granted in favor of Agent hereunder and become part of the Collateral, and provided further that the Collateral shall include all proceeds, products, substitutions and replacements of the Novartis Contract Rights, (iv) the [*] and proceeds thereof, (v) the assets pledged in connection with the sale of the CIMZIA royalty stream (including without limitation the "Purchased Interest" and the "Additional Collateral" as defined in the CIMZIA Royalty Purchase Agreement), (vi) raw materials paid for or the cost of which has been reimbursed by the National Institute for Allergy and Infectious Disease or another agency of the U.S. government which are being or will be utilized in the conduct of activities under one or more contracts between any Grantor and NIAID or any such other agency, (vii) property owned by any Grantor that is subject to a purchase money Lien or a capital lease permitted under the Loan Agreement if the contractual obligation pursuant to which such Lien is granted (or in the document providing for such capital lease) prohibits, or requires the consent of any person other than the Borrower and its Affiliates which has not been obtained as a condition to the creation of, any other Lien on such property and (viii) any permit or license (A) issued by a governmental authority to any Grantor or agreement to which any Grantor is a party or (B) for the use of another person's Intellectual Property, in each case, only to the extent and for so long as the terms of such permit, license or agreement or any requirement of law applicable thereto, validly prohibit the creation by such Grantor of a security interest in such permit, license or agreement in favor of the Agent and Lenders (after giving effect to Sections 9-406(d), 9-407(a), 9-408(a), or 9-409 of the UCC (or any successor provision or provisions) (the assets described in clauses (i) – (viii) referred to herein as the "Excluded Collateral").

Unless otherwise specified herein, the following terms have the meanings ascribed to them in the UCC (as defined below),provided, that if such term shall be defined differently in multiple divisions or articles of the UCC, the definitions for such terms specified in Article or Division 9 of the UCC shall control: "Accounts", "Account Debtor", "Chattel Paper", "Commercial Tort Claims", "Contracts", "Deposit Accounts", "Documents", "Equipment", "Financial Asset" "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-Credit Rights", "Payment Intangible", "Proceeds", "Securities", "Securities Account", "Security Entitlement", "Software" and "Supporting Obligations". As used herein, "UCC" means the Uniform Commercial Code as from time to time in effect in the State of New York; provided, however, that, in the event that, by reason of mandatory provisions of any applicable requirement of law, any of the attachment, perfection or priority of Agent's security interest in any Collateral is governed by the Uniform Commercial Code of a jurisdiction other than the State of New York, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of the definitions related to or otherwise used in such provisions.

Section 2.2 Intellectual Property and Rights to Payment. The Collateral shall not include any intellectual property of any Grantor, which shall be defined as any and all copyrights, trademarks, servicemarks, patents, design rights, and trade secrets of a Grantor and any applications, registrations, amendments, renewals, extensions and improvements with respect thereto (collectively, "Intellectual Property") now owned or hereafter acquired;provided however, that the Collateral shall include all cash, royalty fees, claims, products, awards, judgments, insurance claims, other proceeds, accounts and general intangibles that consist of rights of a Grantor to receive payment with respect to the Intellectual Property and all income, royalties and proceeds at any time due or payable to a Grantor with respect to the Intellectual Property and any of the foregoing, including, without limitation, (i) all rights of any Grantor to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof and (ii) any claims for damages that any Grantor has the right to assert with respect to any past, present or future infringement of any Intellectual Property, together with all accessions and additions thereto, proceeds and products thereof (including, without limitation, any proceeds resulting under insurance policies of any Grantor) or proceeds from the sale, licensing or other disposition of all or any part of, or rights in, the Intellectual Property by or on behalf of a Grantor ("Rights to Payment"). Notwithstanding the foregoing, to the extent it is necessary under applicable law to have a security interest in the underlying Intellectual Property in order for Agent to have (i) a security interest in the Rights to Payment and (ii) a security interest in any payments with respect to Rights to Payment that are received after the commencement of a bankruptcy or insolvency proceeding, then the Collateral shall automatically, and effective as of the date hereof, include the Intellectual Property (other than (A) the Excluded Negative Pledge Assets and (B) any other Intellectual Property subject to an agreement with a third party permitted under the second sentence of Section 7.1 of the Loan Agreement that prohibits the pledge of such Intellectual Property) to the extent necessary to permit attachment and perfection of Agent's security interest (on behalf of itself and Lenders) in the Rights to Payment and any payments in respect thereof that are received after the commencement of any bankruptcy or insolvency proceeding.

Section 2.3 Other Agreements with Respect to Intellectual Property. Agent hereby agrees on behalf of the Lenders that, if Agent obtains a security interest in the Intellectual Property pursuant to the last sentence of Section 2.2, Agent will not exercise any remedies (under the UCC or otherwise) with respect to the Intellectual Property (other than remedies with respect to Rights to Payment or any other proceeds of the Intellectual Property). Nothing in the last sentence of Section 2.2 shall (a) restrict the Grantors from entering into agreements with respect to Intellectual Property that are otherwise permitted under the Transaction Documents or (b) require the Grantors to seek any third party's consent to the pledge of any Intellectual Property to the Agent that is subject to a negative pledge permitted under the second sentence of Section 7.1 of the Loan Agreement. Notwithstanding Section 3.11(b), the filing of a security agreement with the United States Patent and Trademark Office or United States Copyright Office shall not be required in connection with any security interest on the Intellectual Property described in the last sentence of Section 2.2.

Section 2.4 Security Agreement.. This Agreement shall constitute a security agreement as that term is used in the Uniform Commercial Code in effect in the jurisdiction(s) in which each Grantor is organized and in the jurisdiction(s) in which the Collateral is situated.

ARTICLE III

REPRESENTATIONS AND WARRANTIES; COVENANTS

To induce Agent and the Lenders to enter into the Transaction Documents, each Grantor hereby represents, warrants and covenants to Agent and the Lenders, for as long as any Secured Obligation remains outstanding, as follows:

Section 3.1 Representations Warranties and Covenants of Transaction Documents.

(a) Each of the representations and warranties as to such Grantor made by the Company or such Grantor in Article 5 (Representations and Warranties of Loan Parties) of the Loan Agreement are true and correct on each date as required by the Loan Agreement.

(b) Each Grantor shall comply with all covenants and other provisions applicable to it under the Transaction Documents.

Section 3.2 Changes to Name, Location, Jurisdiction(a) . Except as permitted under Section 7.4 of the Loan Agreement, no Grantor shall, and no Grantor shall permit any of its Subsidiaries to, (a) change its name or its jurisdiction of organization, (b) relocate its chief executive office, (c) engage in any business other than or reasonably related or incidental to the businesses currently engaged in by such Grantor or Subsidiary, (d) cease to conduct business substantially in the manner conducted by such Grantor or Subsidiary as of the date of this Agreement or (e) change its fiscal year end. Within five years before the date of this Agreement, no Grantor has conducted business under or used any other name (whether corporate, partnership or assumed) other than as shown on the Perfection Certificate. Each Grantor is the sole owner of all names listed on the Perfection Certificate.

Section 3.3 Title; No Other Liens; Locations(a) . Each Grantor has good title to (or valid leasehold interests in) all its real and personal property and shall retain such good title, except for minor defects in title that do not (a) materially affect the value or access to such property or (b) interfere with (i) its ability to conduct its business as currently conducted, (ii) its ability to utilize such properties for their intended purposes, or (iii) its right and power to Transfer such property, subject to no lien, other than Permitted Liens. All of the Collateral, and all other property and assets of such Grantor that are necessary to the conduct of such Grantor's business (other than leased property), is owned by such Grantor or the rights to same are held by such Grantor in its name, and none of the Collateral or any such property or assets (other than leased property) are owned or the rights thereto held in the name of any other entity. The real estate listed on the Perfection Certificate constitutes all of the real property owned, leased or used by such Grantor in its business. As of the Closing Date, the only places of business of such Grantor, and the places where it keeps all Collateral and records concerning the Collateral, are at the addresses set forth on the Perfection Certificate or as otherwise permitted pursuant to Section 6.9 of the Loan Agreement. The Perfection Certificate also lists the owner of record of each such property. Each Grantor's chief executive office is located in the state and at the address shown on the Perfection Certificate. No Collateral is held by any bailee or warehouseman for which such bailee or warehouseman has issued a negotiable document (as defined in Section 7-104 of the UCC or any similar section under any equivalent UCC).

Section 3.4 Deposit Accounts.

(a) No Grantor has any Deposit Accounts, Securities Accounts or other bank or investment accounts except as described on the Perfection Certificate or as expressly permitted under Section 7.10 of the Loan Agreement.

(b) As of the Closing Date, each Grantor is the sole entitlement holder or account holder, as applicable, of each of the Securities Accounts and Deposit Accounts set forth on the Perfection Certificate under the heading "Investment Property; Instruments; Accounts", and such Grantor has not consented to, and is not otherwise aware of, any Person (other than Agent) having "control" (as used in this Section 3.4 "control" shall have the meaning provided under Sections 9-104 and 9-106 of the UCC or any similar sections under any equivalent UCC) over, or any other interest in, any such Securities Account or Deposit Account or any money deposited therein or any securities or other property credited thereto.

(c) Each Grantor has taken all actions necessary or desirable to establish Agent's control over any Securities Accounts and Deposit Accounts to the extent required by Section 7.10 of the Loan Agreement.

(d) No Grantor shall close or terminate any Securities Account or Deposit Account without the prior consent of Agent and unless (i) a successor or replacement account has been established with the consent of Agent with respect to which successor or replacement account an Account Control Agreement has been entered into by the appropriate Grantor, Agent and the securities intermediary or depository institution at which such successor or replacement account is to be maintained or (ii) all funds or securities, as the case may be, from such Securities Account or Deposit Account have been transferred to an existing Securities Account or Deposit Account then subject to an Account Control Agreement in accordance with Section 7.10 of the Loan Agreement.

(e) Prior to or concurrently with the establishment of any new Securities Account or Deposit Account, such Grantor shall deliver to Agent a notice of the existence and nature of such account, a supplement to the Perfection Certificate containing a specific description of such account and an Account Control Agreement entered into by the appropriate Grantor, Agent and the securities intermediary or depository institution at which such account is to be maintained, which Account Control Agreement shall comply with the requirements set forth in Section 7.10 of the Loan Agreement.

Section 3.5 Investments; Pledged Collateral.

(a) No Grantor has any outstanding advances to, or owns or holds any equity or long-term debt investments in, any Person, except as described on the Perfection Certificate or as expressly permitted under Section 7.7 of the Loan Agreement.

(b) All Pledged Securities pledged by such Grantor hereunder, (i) have been duly authorized, validly issued and are fully paid and nonassessable (other than Pledged Securities in limited liability companies and partnerships), and (ii) constitute the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with their terms. As of the Closing Date, (x) all Pledged Securities pledged by such Grantor hereunder are listed on the Perfection Certificate and constitute that percentage of the issued and outstanding equity of all classes of each issuer thereof as set forth on the Perfection Certificate and (y) any certificates evidencing such Pledged Securities have been delivered to Agent.

(c) The Pledged Debt pledged by such Grantor hereunder (i) as of the Closing Date is listed on the Perfection Certificate, (ii) to the Grantor's knowledge has been duly authorized and validly issued and delivered, and (iii) to the Grantor's knowledge constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, except as enforceability may be limited by laws affecting creditors' rights and principles of equity, and is not in default. As of the Closing Date, all instruments (other than instruments with an aggregate value not to exceed $100,000) evidencing such Pledged Debt have been delivered to Agent.

(d) Upon the occurrence and during the continuance of an Event of Default, Agent shall be entitled to exercise all of the rights of the Grantor granting the security interest in any Pledged Collateral, and a transferee or assignee of such Pledged Collateral shall become a holder of such Pledged Collateral to the same extent as such Grantor and with respect to the Pledged Securities and, upon the sale or other disposition by Agent of the entire interest of such Grantor, such Grantor shall, by operation of law, cease to be a holder of such Pledged Securities.

Section 3.6 Commercial Tort Claims.

(a) The only Commercial Tort Claims with an aggregate value in excess of $100,000 of any Grantor existing on the date hereof (regardless of whether the amount, defendant or other material facts can be determined and regardless of whether such Commercial Tort Claim has been asserted, threatened or has otherwise been made known to the obligee thereof or whether litigation has been commenced for such claims) are those listed on the Perfection Certificate.

(b) Each Grantor, if it shall acquire any interest in any Commercial Tort Claim with a value, when taken together with all other Commercial Tort Claims of the Grantors, of more than $100,000 in the aggregate (whether from another Person or because such Commercial Tort Claim shall have come into existence), (i) shall, promptly upon such acquisition, deliver to Agent, in each case in form and substance satisfactory to Agent, a notice of the existence and nature of such Commercial Tort Claim and a supplement to the Perfection Certificate containing a specific description of such Commercial Tort Claim, (ii) agrees that Section 2.1 shall apply to such Commercial Tort Claim and (iii) shall execute and deliver to Agent, in each case in form and substance satisfactory to Agent, any document, and take all other action, deemed by Agent to be reasonably necessary or appropriate for Agent to obtain, on behalf of the Lenders, a first priority perfected security interest in all such Commercial Tort Claims.

Section 3.7 Instruments and Tangible Chattel Paper.

(a) No amount payable to any Grantor under or in connection with any account is evidenced by any instrument or tangible chattel paper that has not been delivered to Agent, properly endorsed for transfer, to the extent delivery is required below by Section 3.7(b);

(b) If any amount payable under or in connection with any Collateral owned by any Grantor in excess of $100,000 in the aggregate shall be or become evidenced by an instrument or tangible chattel paper, other than such instruments delivered to and in the possession of Agent, such Grantor shall mark all such instruments and tangible chattel paper with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest of General Electric Capital Corporation, as Agent" and, at the request of Agent, shall promptly deliver such instrument or tangible chattel paper to Agent, duly indorsed in a manner satisfactory to Agent.

Section 3.8 Letter of Credit Rights. If any Grantor is or becomes the beneficiary of a letter of credit with a value, when taken together with all other letters of credit of which any Grantor is a beneficiary, in excess of $100,000 in the aggregate that is not a supporting obligation of any Collateral, such Grantor shall promptly, and in any event within five (5) Business Days after becoming a beneficiary, notify Agent thereof and at Agent's request, use its commercially reasonable efforts to enter into a contractual obligation with Agent, the issuer of such letter of credit or any nominated Person with respect to the Letter-of-Credit Rights under such letter of credit, which contractual obligation shall (A) assign such Letter of Credit Rights to Agent, (B) be sufficient to grant Agent control (within the meaning of Section 9-107 of the UCC or any similar section under any equivalent UCC) of such Letter of Credit Rights, and (C) be in form and substance reasonably satisfactory to Agent.

Section 3.9 Electronic Chattel Paper. If any amount in excess of $100,000 in the aggregate payable under or in connection with any Collateral owned by any Grantor shall be or become evidenced by electronic chattel paper, such Grantor shall take all steps necessary to grant Agent control (within the meaning of Section 9-105 of the UCC or any similar section under any equivalent UCC) of all such electronic chattel and all "transferable records" as defined in each of the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Commerce Act.

Section 3.10 Accounts Administration.

(a) All data and other information (other than immaterial data and information) relating to Accounts or other intangible Collateral shall at all times be kept by such Grantor at its chief executive office listed in the Perfection Certificate and, except in the ordinary course of business in which case Agent shall be promptly notified in writing no later than ten (10) Business Days after such move, shall not be moved from such locations without obtaining the prior written consent of Agent, which consent shall not be unreasonably withheld.

(b) Each Grantor shall keep accurate and complete records in all material respects of its Accounts and all payments and collections thereon and sales thereof.

(c) Agent shall have the right at any time after the occurrence and during the continuation of an Event of Default to notify Account Debtors that Accounts have been assigned to Agent.

(d) No Grantor has made, or will make, any agreement with any Account Debtor other than with respect to Accounts with an aggregate value of no more than $100,000 per fiscal year for (i) any extension of the time for payment of the Account, (ii) any compromise or settlement for less than the full amount thereof, (iii) any release of any Account Debtor from liability therefor, or (iv) any deduction therefrom except a discount or allowance for prompt or early payment allowed by such Grantor in the ordinary course of its business consistent with its historical practices and as previously disclosed to Agent in writing.

Section 3.11 Creation, Preservation and Perfection of Security Interests

(a) The security interest granted to Agent hereby constitutes a valid, first priority security interest in the presently existing Collateral (subject to Permitted Liens), and will constitute a valid first priority security interest in Collateral acquired after the date hereof (subject to Permitted Liens).

(b) Each Grantor shall furnish all filings, certificates, documents and instruments necessary (except to the extent otherwise provided herein or in any other Transaction Document) or otherwise required pursuant to the Transaction Documents to perfect Agent's security interest in the Collateral, including but not limited to any certificates evidencing the Securities Collateral and all UCC financing statements. Upon request of Agent, each Grantor shall furnish to Agent such further information, execute and deliver to Agent such additional documents and instruments (including, without limitation, additional UCC financing statements) and do such other acts and things as Agent may at any time reasonably request relating to the perfection or protection of the security interest created by this Agreement or for the purpose of carrying out the intent of this Agreement. Without limiting the foregoing, each Grantor shall cooperate and do all acts deemed necessary or advisable by Agent to continue a perfected first priority security interest in the Collateral, subject only to Permitted Liens, and shall obtain and furnish to Agent any subordinations, releases, landlord waivers, lessor waivers, mortgage waivers, or control agreements, and similar documents as may be from time to time requested by, and in form and substance satisfactory to, Agent, or as otherwise required by any Transaction Document. Each Grantor authorizes Agent to file financing statements in all appropriate jurisdictions and amendments thereto describing the Collateral and containing any other information required by the applicable UCC to perfect Agent's security interest granted hereby. Each Grantor irrevocably grants to Agent the power to sign such Grantor's name and generally to act on behalf of such Grantor to execute and file applications for title, transfers of title, financing statements, notices of lien and other documents pertaining to any or all of the Collateral, and obtain and promptly deliver to Agent such certificate showing the lien of this Agreement with respect to the Collateral.

(c) No Grantor shall grant "control" (within the meaning of Sections 8-106, 9-104, 9-105, 9-106, 9-107 of the UCC, as applicable, or any similar sections under any equivalent UCC) of any Collateral to any Person other than Agent, except with respect to Collateral subject to a Permitted Lien.

ARTICLE IV

REMEDIAL PROVISIONS

Section 4.1 UCC and Other Remedies.

(a) U CC Remedies. During the continuance of an Event of Default, Agent may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to any Secured Obligation, all rights and remedies of a secured party under the UCC or any other applicable law.

(b) D isposition of Collateral. Without limiting the generality of the foregoing, Agent may, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived to the extent permitted by applicable law), during the continuance of any Event of Default (personally or through its agents or attorneys), (i) enter upon the premises where any Collateral is located, without any obligation to pay rent, through self-help, without judicial process, without first obtaining a final judgment or giving any Grantor or any other Person notice or opportunity for a hearing on Agent's claim or action, (ii) collect, receive, appropriate, remove and realize upon any Collateral or store the Collateral on the premises and (iii) Transfer or grant an option or options to purchase and deliver all or any part of any Collateral (and enter into contractual obligations to do any of the foregoing), in one or more parcels at a public or private sale or sales, at any exchange, broker's board or office of Agent or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Notwithstanding the foregoing, Agent's rights under this paragraph are subject to the applicable limitations under federal law and regulations. Agent shall have the right, upon any such public sale or sales and, to the extent permitted by the UCC and other applicable requirements of law, upon any such private sale, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption of any Grantor, which right or equity is hereby waived and released.

(c) M anagement of the Collateral. Each Grantor further agrees, that, during the continuance of any Event of Default, (i) at Agent's request, it shall assemble the Collateral and make it available to Agent at places that Agent shall reasonably select, whether at such Grantor's premises or elsewhere, (ii) without limiting the foregoing, Agent also has the right to require that each Grantor store and keep any Collateral pending further action by Agent and, while any such Collateral is so stored or kept, provide such guards and maintenance services as shall be reasonably necessary to protect the same and to preserve and maintain such Collateral in good condition, (iii) until Agent is able to Transfer any Collateral, Agent shall have the right to hold or use such Collateral to the extent that it deems appropriate for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by Agent, (iv) Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of Agent's remedies (for the benefit of the Lenders), with respect to such appointment without prior notice or hearing as to such appointment and (v) Agent may render any or all of the Collateral unusable at a Grantor's premises and may dispose of such Collateral on the premises without liability for rents or costs. Agent shall not have any obligation to any Grantor to maintain or preserve the rights of any Grantor as against third parties with respect to any Collateral while such Collateral is in the possession of Agent.

(d) Application of Proceeds. Agent shall apply the cash proceeds of any action taken by it pursuant to this Section 4.1 to the Obligations in accordance with Section 8.3 of the Loan Agreement.

(e) Direct Obligation. Neither Agent nor any Lender shall be required to make any demand upon, or pursue or exhaust any right or remedy against, any Grantor, any other Loan Party or any other Person with respect to the payment of the Obligations or to pursue or exhaust any right or remedy with respect to any Collateral therefor or any direct or indirect guaranty thereof. All of the rights and remedies of Agent and the Lenders under any Transaction Document shall be cumulative, may be exercised individually or concurrently and not exclusive of any other rights or remedies provided by any requirement of law. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against Agent or any Lender, any valuation, stay, appraisement, extension, redemption or similar laws and any and all rights or defenses it may have as a surety, now or hereafter existing, arising out of the exercise by them of any rights hereunder. Any notice that Agent is required to give to a Grantor under the UCC of the time and place of any public sale or the time after which any private sale or other intended disposition of the Collateral is to be made shall be deemed to constitute reasonable notice if such notice is given in accordance with this Agreement at least five (5) Business Days prior to such action.

(f) Commercially Reasonable. To the extent that applicable requirements of law impose duties on Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is not commercially unreasonable for Agent to do any of the following:

i. fail to incur significant costs, expenses or other liabilities reasonably deemed as such by Agent to prepare any Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition;

ii. fail to obtain permits, or other consents, for access to any Collateral or for the collection or transfer of any Collateral, or, if not required by other requirements of law, fail to obtain permits or other consents for the collection or disposition of any Collateral to the extent reasonably determined by Agent to be burdensome;

iii. fail to exercise remedies against account debtors or other persons obligated on any Collateral or to remove liens on any Collateral or to remove any adverse claims against any Collateral;

iv. a dvertise dispositions of any Collateral through publications or media of general circulation, whether or not such Collateral is of a specialized nature or to contact other Persons, whether or not in the same business as any Grantor, for expressions of interest in acquiring any such Collateral;

v. e xercise collection remedies against account debtors and other persons obligated on any Collateral, directly or through the use of collection agencies or other collection specialists, hire one or more professional auctioneers to assist in the disposition of any Collateral, whether or not such Collateral is of a specialized nature or, to the extent deemed appropriate by Agent, obtain the services of other brokers, investment bankers, consultants and other professionals to assist Agent in the collection or disposition of any Collateral, or utilize Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets to dispose of any Collateral;

vi. d ispose of assets in wholesale rather than retail markets;

vii. disclaim disposition warranties, such as title, possession or quiet enjoyment; or

viii. purchase insurance or credit enhancements to insure Agent against risks of loss, collection or disposition of any Collateral or to provide to Agent a guaranteed return from the collection or disposition of any Collateral.

Notwithstanding anything to the contrary in this Section 4.1 or elsewhere in this Agreement, Agent shall use commercially reasonable efforts to maintain the confidentiality of any proprietary information of the Grantors.

Each Grantor acknowledges that the purpose of this Section 4.1 is to provide a non-exhaustive list of actions or omissions that are commercially reasonable when exercising remedies against any Collateral and that other actions or omissions by Agent or any Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 4.1. Without limitation upon the foregoing, nothing contained in this Section 4.1 shall be construed to grant any rights to any Grantor or to impose any duties on Agent that would not have been granted or imposed by this Agreement or by applicable requirements of law in the absence of this Section 4.1.

Section 4.2 Accounts and Payments in Respect of General Intangibles and Instruments.

(a) In addition to, and not in substitution for, any similar requirement in the Loan Agreement or any other Transaction Document, at any time during the continuance of an Event of Default (whether or not any such Event of Default has resulted in acceleration pursuant to Section 8.2 of the Loan Agreement), Agent shall have the following rights and remedies:

i. Any payment of Accounts or payment in respect of General Intangibles, when collected by any Grantor, shall be held in trust for Agent and, at Agent's request, segregated from such other funds of such Grantor and shall be turned over to Agent, or to such other bank or Person as may be approved by Agent, within two (2) Business Days immediately upon receipt in the identical form received.

ii. If requested by Agent, each Grantor shall deliver to Agent all original and other documents evidencing, and relating to, the contractual obligations and transactions that gave rise to any Account or any payment in respect of General Intangibles, including all original orders, invoices and shipping receipts.

iii. Any of Agent's officers, employees or agents shall have the right, at any time or times hereafter, in the name of Agent or any designee of Agent, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone or otherwise, including, but not limited to, verification of each Grantor's compliance with applicable laws. Each Grantor shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over any Grantor's affairs, all of which contacts each Grantor hereby irrevocably authorizes.

iv. Agent may limit or terminate the authority of a Grantor to collect its Accounts or amounts due under General Intangibles or Instruments or any part thereof and, in its own name or in the name of others, communicate with Account Debtors to verify with them to Agent's satisfaction the existence, amount and terms of any Account or amounts due under any General Intangible or Instrument.

v. Agent shall have the right at any time to (A) notify any Account Debtor of any Grantor or any obligor on any Instrument that such Accounts, General Intangibles and Instruments, as applicable, have been assigned to Agent and that payments in respect thereof shall be made directly to Agent (for the benefit of the Lenders) (and once such notice has been given to an Account Debtor, such Grantor shall not give any contrary instructions to such Account Debtor without Agent's prior written consent) and (B) enforce such Grantor's rights against such Account Debtors and obligors of Accounts, General Intangibles and Instruments.

(b) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each Account and each payment in respect of General Intangibles to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither Agent nor any Lender shall have any obligation or liability under any agreement giving rise to an Account or a payment in respect of a General Intangible by reason of or arising out of any Transaction Document or the receipt by Agent or any Lender of any payment relating thereto, nor shall Agent or any Lender be obligated in any manner to perform any obligation of any Grantor under or pursuant to any agreement giving rise to an Account or a payment in respect of a General Intangible, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

Section 4.3 Pledged Collateral.

(a) Voting Rights. During the continuance of an Event of Default, upon notice by Agent to the relevant Grantor or Grantors, Agent or its nominee may exercise (A) any voting, consent, corporate and other right pertaining to the Pledged Collateral at any meeting of shareholders, partners or members, as the case may be, of the relevant issuer or issuers of Pledged Collateral or otherwise and (B) any right of conversion, exchange and subscription and any other right, privilege or option pertaining to the Pledged Collateral as if it were the absolute owner thereof (including the right to exchange at its discretion any Pledged Collateral upon the merger, amalgamation, consolidation, reorganization, recapitalization or other fundamental change in the corporate or equivalent structure of any issuer of Pledged Collateral, the right to deposit and deliver any Pledged Collateral with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as Agent may determine), all without liability except to account for property actually received by it; provided, however, that Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(b) Proxies. In order to permit Agent to exercise the voting and other consensual rights that it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions that it may be entitled to receive hereunder, (i) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to Agent all such proxies, dividend payment orders and other instruments as Agent may from time to time reasonably request and (ii) without limiting the effect of clause (i) above, such Grantor hereby grants to Agent an irrevocable proxy to vote all or any part of the Pledged Collateral and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Collateral would be entitled (including giving or withholding written consents of shareholders, partners or members, as the case may be, calling special meetings of shareholders, partners or members, as the case may be, and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any Transfer of any Pledged Collateral on the record books of the issuer thereof) by any other Person (including the issuer of such Pledged Collateral or any officer or agent thereof) during the continuance of an Event of Default and which proxy shall only terminate upon determination by Agent in its sole discretion that the Event of Default that gave rise to such proxy has been cured or the payment in full of the Secured Obligations.

(c) Authorization of Issuers. Each Grantor hereby expressly irrevocably authorizes and instructs, without any further instructions from such Grantor, each issuer of any Pledged Collateral pledged hereunder by such Grantor to (i) comply with any instruction received by it from Agent in writing that states that an Event of Default is continuing and is otherwise in accordance with the terms of this Agreement and each Grantor agrees that such issuer shall be fully protected from liabilities to such Grantor in so complying and (ii) unless otherwise expressly permitted hereby, pay any dividend or make any other payment with respect to the Pledged Collateral directly to Agent.

Section 4.4 Proceeds to be Turned over to and Held by Agent. Except as otherwise provided in the Loan Agreement, this Agreement or any other Transaction Document, all proceeds of any Collateral received by any Grantor hereunder in cash or Cash Equivalents shall be held by such Grantor in trust for Agent and the other Lenders and shall, upon Agent's request during the continuance of an Event of Default, promptly upon receipt by any Grantor, be segregated and turned over to Agent in the exact form received (with any necessary endorsement). All such proceeds of Collateral and any other proceeds of any Collateral received by Agent in cash or Cash Equivalents shall be held by Agent as collateral security for the Secured Obligations and shall not constitute payment thereof until applied to the Secured Obligations in accordance with the relevant provisions of the Loan Agreement.

Section 4.5 Registration Rights.

(a) If, in the opinion of Agent, it is necessary or advisable to transfer any portion of the Pledged Collateral by registering such Pledged Collateral under the provisions of the Securities Act of 1933 (the "Securities Act"), each relevant Grantor shall cause the issuer thereof to do or cause to be done all acts as may be, in the opinion of Agent, necessary or advisable to register such Pledged Collateral or that portion thereof to be transferred under the provisions of the Securities Act, all as directed by Agent in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto and in compliance with the securities or "Blue Sky" laws of any jurisdiction that Agent shall designate.

(b) Each Grantor recognizes that Agent may be unable to effect a public sale of any Pledged Collateral by reason of certain prohibitions contained in the Act and applicable state or foreign securities laws or otherwise or may determine that a public sale is impracticable, not desirable or not commercially reasonable and, accordingly, may resort to one or more private sales thereof to a restricted group of purchasers that shall be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. Agent shall be under no obligation to delay a sale of any Pledged Collateral for the period of time necessary to permit the issuer thereof to register such securities for public sale under the Securities Act or under applicable state securities laws even if such issuer would agree to do so.

(c) Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of any portion of the Pledged Collateral pursuant to this Section 4.5 valid and binding and in compliance with all applicable requirements of law. Each Grantor further agrees that a breach of any covenant contained in this Section 4.5 will cause irreparable injury to Agent and other Lenders, that Agent and the other Lenders have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 4.5 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defense against an action for specific performance of such covenants except for a defense that no Event of Default has occurred.

Section 4.6 Grant of Licenses. For the purpose of enabling Agent to exercise rights and remedies under this Article IV, each Grantor hereby grants to Agent at such time as Agent shall be lawfully entitled to exercise such rights and remedies (a) an irrevocable, nonexclusive, worldwide license (exercisable without payment of royalty or other compensation to such Grantor), to use or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof and (b) an irrevocable license (without payment of rent or other compensation to such Grantor) during the continuance of an Event of Default to use, operate and occupy all real property owned, operated, leased, subleased or otherwise occupied by such Grantor.

Section 4.7 Appointment of Agent. Each Grantor hereby irrevocably appoints Agent (and any of Agent's designated officers or employees), with full power of substitution, as such Grantor's true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of the Transaction Documents, during the continuance of an Event of Default to take any appropriate action and to execute any document or instrument that may be necessary or desirable to accomplish the purposes of the Transaction Documents, and, without limiting the generality of the foregoing, each Grantor hereby gives Agent (and any of Agent's designated officers or employees) the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any of the following when an Event of Default shall be continuing: (i) endorse such Grantor's name on any checks or other forms of payment or security that may come into Agent's possession; (ii) settle and adjust disputes and claims respecting such Grantor's Accounts directly with Account Debtors, for amounts and upon terms which Agent determines to be reasonable; and (iii) do such other and further acts and deeds in the name of such Grantor that Agent may deem necessary or desirable to enforce its rights in or to any of the Collateral (on behalf of the Lenders). The appointment of Agent as each Grantor's attorney in fact is a power coupled with an interest and is irrevocable until the Termination Date.

Section 4.8 Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of any Collateral are insufficient to pay the Secured Obligations and the fees and disbursements of any attorney employed by Agent or any Lender to collect such deficiency.

ARTICLE V

MISCELLANEOUS

Section 5.1 Reinstatement. Each Grantor agrees that, if any payment made by any Loan Party or other Person and applied to the Secured Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, then, if, prior to any of the foregoing, any provision of this Agreement (including the guaranty of such Grantor hereunder) shall have been terminated, cancelled or surrendered, such provision, and any lien or other Collateral securing such Grantor's liability hereunder that may have been released or terminated by virtue of such termination, cancellation or surrender, shall be reinstated in full force and effect and such prior termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of any such Grantor in respect of any lien or other Collateral securing such obligation or the amount of such payment.

Section 5.2 Independent Obligations. The obligations of each Grantor hereunder are independent of and separate from the Secured Obligations. If any Secured Obligation is not paid when due, or upon any Event of Default, Agent may, at its sole election, proceed directly and at once, without notice, against any Grantor and any Collateral to collect and recover the full amount or any portion of any Secured Obligation then due, without first proceeding against any other Grantor or any other Loan Party or any other Collateral and without first joining any other Grantor or any other Loan Party in any proceeding.

Section 5.3 No Waiver by Course of Conduct. Neither Agent nor any Lender shall, by any act (except, with respect to the Loan Agreement, by a written instrument pursuant to Section 10.9 of the Loan Agreement), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of Agent or any Lender, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by Agent or any Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that Agent or such Lender would otherwise have on any future occasion.

Section 5.4 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.9 of the Loan Agreement.

Section 5.5 Additional Grantors. If, at the option of the Company or as required pursuant to the Transaction Documents, the Company shall cause any Subsidiary of Parent that is not a Grantor to become a Grantor hereunder, such Subsidiary shall execute and deliver to Agent a Joinder Agreement substantially in the form of Annex 1 and shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Grantor party hereto as of the date hereof.

Section 5.6 Notices. All notices, requests and demands to or upon Agent or any Grantor hereunder shall be effected in the manner provided for in Section 10.2 of the Loan Agreement.

Section 5.7 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of Agent and its successors and assigns; provided, however, that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of Agent.

Section 5.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or by electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

Section 5.9 Interpretation. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. The terms "herein," "hereof" and similar terms refer to this Agreement as a whole and not to any particular Article, Section or clause in this Agreement. References herein to an Annex, Article, Section or clause refer to the appropriate Annex to, or Article, Section or clause of this Agreement. The Recitals hereto are incorporated in and made a part of this Agreement to the same extent as if set forth in full herein.

Section 5.10 Severability. Any provision of this Agreement being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of this Agreement or any part of such provision in any other jurisdiction.

Section 5.11 Payments; Foreign Currency Indemnity. Any payments made by any Grantor under this Agreement shall be made in accordance with the requirements set forth in Sections 2.2(d) and 10.7(c) and (d) of the Loan Agreement.

Section 5.12 Release of Liens. The lien and security interest created hereunder shall be automatically released (i) with respect to all Collateral upon the payment in full of all Obligations, (ii) with respect to Collateral that is sold or to be sold as part of or in connection with any sale permitted under the Loan Agreement to a Person that is not a Grantor, or (iii) if approved, authorized or ratified in writing in accordance with the Loan Agreement. Upon such release Agent shall, upon the request and at the sole cost and expense of the Grantors, assign, transfer and deliver to Grantor, against receipt and without recourse to or warranty by Agent except as to the fact that Agent has not encumbered the released assets, such of the Collateral or any part thereof to be released as may be in possession of Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof and proper documents and instruments (including UCC 3 termination financing statements or releases) acknowledging the release of such Collateral.

Section 5.13 Waiver of Jury Trial. EACH OF THE GRANTORS, THE AGENT AND LENDERS UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE OTHER TRANSACTION DOCUMENTS, ANY OF THE OBLIGATIONS SECURED HEREBY, ANY DEALINGS AMONG GRANTORS, THE AGENT AND/OR LENDERS RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG GRANTORS, THE AGENT AND/OR LENDERS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. THIS WAIVER IS IRREVOCABLE. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING. THE WAIVER ALSO SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 5.14 GOVERNING LAW AND JURISDICTION.

(a) GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL, PROVIDED, HOWEVER, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN NEW YORK SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL CONTINUE TO APPLY TO THAT EXTENT.

(b) SUBMISSION TO JURISDICTION. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH GRANTOR EXECUTING THIS AGREEMENT HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. NOTWITHSTANDING THE FOREGOING, THE AGENT AND THE LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST ANY GRANTOR (OR ANY PROPERTY OF SUCH GRANTOR) IN THE COURT OF ANY OTHER JURISDICTION THE AGENT OR THE LENDERS DEEM NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR OTHER SECURITY FOR THE OBLIGATIONS. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, THAT ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH JURISDICTIONS.

(c) SERVICE OF PROCESS. ANY PROCESS IN ANY ACTION WITH RESPECT TO THIS AGREEMENT SHALL BE DULY SERVED TO THE GRANTORS IN ACCORDANCE WITH SECTION 10.2 OF THE LOAN AGREEMENT, OR IF SERVED BY ANY OTHER MEANS PERMITTED BY APPLICABLE LAW.

(d) NON-EXCLUSIVE JURISDICTION. NOTHING CONTAINED IN THIS SECTION 5.13 SHALL AFFECT THE RIGHT OF THE AGENT OR THE LENDERS TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW OR COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY GRANTOR IN ANY OTHER JURISDICTION.

[signatures follow]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered as of the date first above written.

GRANTORS:

XOMA (US) LLC, a Delaware limited liability company

By: _____
Name:
Title:

XOMA LTD., a Bermuda exempted company

By: _____
Name:
Title:

XOMA TECHNOLOGY LTD., a Bermuda exempted company

By: _____
Name:
Title:

XOMA IRELAND LIMITED, an Irish private limited company

GIVEN under the **COMMON SEAL** of
XOMA IRELAND LIMITED
in the presence of:

_____
Director

_____
Director/Secretary

_____
Witness Signature

_____
Witness Name

_____
Witness Occupation and Address

ACCEPTED AND AGREED
as of the date first above written:

GENERAL ELECTRIC CAPITAL CORPORATION,
as Agent for Lenders

By:_____
Name:
Title: Duly Authorized Signatory

[SIGNATURE PAGE - US GUARANTY, PLEDGE AND SECURITY AGREEMENT]

ANNEX 1
TO
GUARANTY, PLEDGE AND SECURITY AGREEMENT

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT, dated as of _____ __, 20__, is delivered pursuant to Section 5.5 of the Guaranty, Pledge and Security Agreement, dated as of December 30, 2011, by XOMA (US) LLC, XOMA LTD. and the other Grantors party thereto from time to time in favor of General Electric Capital Corporation, as Agent (the "Guaranty"). Capitalized terms used herein without definition are used as defined in the Guaranty.

By executing and delivering this Joinder Agreement, the undersigned, as provided in Section 5.5 of the Guaranty, hereby becomes a party to the Guaranty as a Grantor thereunder with the same force and effect as if originally named as a Grantor therein and, without limiting the generality of the foregoing, expressly assumes all obligations and liabilities of a Grantor thereunder and hereby agrees to be bound as a Grantor for purposes thereof.

The undersigned hereby represents and warrants that each of the representations and warranties contained in Article III of the Guaranty applicable to it is true and correct on and as the date hereof as if made on and as of such date.

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED
as of the date first above written:

GENERAL ELECTRIC CAPITAL CORPORATION,
as Agent for Lenders

By: _____
Name:
Title: Duly Authorized Signatory

EXHIBIT 10.44

[*] indicates that a confidential portion of the text of this agreement has been omitted.

AMENDED AND RESTATED LICENSE AND COMMERCIALIZATION AGREEMENT
BY AND BETWEEN
LES LABORATOIRES SERVIER
AND
XOMA IRELAND LIMITED

AMENDED AND RESTATED LICENSE AND COMMERCIALIZATION AGREEMENT

This AMENDED AND RESTATED LICENSE AND COMMERCIALIZATION AGREEMENT (this "***Agreement***") is effective as of January 11, 2012 (the "***Effective Date***") by and between LES LABORATOIRES SERVIER ("***Servier***"), a corporation organized and existing under the laws of France having offices at 22 rue Garnier, 92200 Neuilly-sur-Seine, France, and XOMA IRELAND LIMITED ("***XOMA***"), a company organized and existing under the laws of the Republic of Ireland, having offices at 26 Upper Pembroke Street, Dublin 2, Ireland. Servier and XOMA are each referred to herein by name or individually as a "***Party***" or collectively as the "***Parties***."

BACKGROUND

WHEREAS, Servier owns or controls intellectual property rights related to, and itself is commercializing, pharmaceutical products containing as an active pharmaceutical ingredient perindopril in combination with other active pharmaceutical ingredients including amlodipine;

WHEREAS, XOMA has expertise, either itself or through Third Parties (as hereinafter defined), in the manufacture, development, regulatory approval, promotion and sales of pharmaceutical products in the Territory (as hereinafter defined);

WHEREAS, XOMA wishes to obtain an exclusive license, and Servier wishes to exclusively license to XOMA, certain Intellectual Property Rights (as hereinafter defined) in order for XOMA to manufacture, have manufactured, develop, promote, market, sell and have sold Licensed Products (as hereinafter defined) in the Territory;

WHEREAS, in support of the foregoing, Servier will supply XOMA with API (as hereinafter defined) for the manufacture and sale of Licensed Products in the Territory;

WHEREAS, Servier and XOMA LS Limited ("***XOMA LS***"), a sister company of XOMA entered into a License and Commercialization Agreement as of July 7, 2010 (the "***Original Agreement Effective Date***"), which was assigned to XOMA on February 24, 2011, and which has previously been amended (as so amended, the "***Original Agreement***");

WHEREAS, the Parties desire to expand the license granted in the Original Agreement, effective as of the Effective Date, to include the licensing for Commercialization (as hereinafter defined) in the Territory of an additional Licensed Product (as hereinafter defined) in order to facilitate and optimize the Commercialization in the Territory of the Initial Licensed Product (as hereinafter defined);

WHEREAS, Servier desires to grant such Commercialization license to XOMA and appoint XOMA as Servier's exclusive commercial partner in the Territory for the perindopril erbumine drug currently being marketed by Abbott (as hereinafter defined) in the Territory as ACEON®;

WHEREAS, with respect to the Commercialization of ACEON, for the safety and health of patients and the continuity of the availability of such product in the market, XOMA has agreed to act in accordance with the Guiding Principle (as hereinafter defined); and

WHEREAS, XOMA desires to [*], and Servier wishes to [*].

NOW, **THEREFORE**, in consideration of the premises and mutual covenants herein below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following terms shall have the meanings indicated:

(a) **"*Abbott*"** means Abbott Products Operations AG and its Affiliates.

(b) "***Abbott Termination Agreement***" means the agreement between Abbott and Servier, dated as of November 23, 2011, pursuant to which Abbott's rights to ACEON are terminated and Abbott agrees to transition the ACEON product to XOMA.

(c) "***ACEON***" means all pharmaceutical preparations, in all dosage strengths, formulations and methods of administration, that contain ACEON API as the sole active ingredient for use in the Field, including without limitation those being marketed in the Territory as of the Effective Date under the trade name ACEON®.

(d) "***ACEON API***" means the active pharmaceutical ingredient known under the INN perindopril associated with the erbumine salt.

(e) "***ACEON Required Minimum Promotional Efforts***" means, with respect to ACEON: (i) in the event XOMA [*] or (ii) unless and until XOMA [*], Commercializing ACEON using efforts no less than those efforts commonly expended by pharmaceutical companies in connection with the promotion of products at a similar stage of product life and commercial potential in the Territory, in any event, with respect to (i) and (ii), in accordance with the Guiding Principle, and including: (A) filling wholesaler orders in accordance with practices commonly applied by other pharmaceutical companies to similar pharmaceutical products and, where applicable, in a manner consistent with such wholesalers' required practices, (B) maintaining no less than [*] days of finished goods inventory of ACEON on hand or readily available (except solely by reason of a failure by Servier to meet its obligations under this Agreement with respect to the supply thereof or by reason of force majeure (as defined in Section 18.9)), (C) providing Servier with a Promotion Plan for ACEON when and as required by Section 9.1 and implementing such Promotion Plan, and (D) providing Servier with sales estimates and reports relating to ACEON when and as required by Section 11.5.

(f) "***Additional Combination Product(s)***" means all pharmaceutical preparations, in all dosage strengths, formulations and methods of administration, that combine (i) the Perindopril API and (ii) one or more other active pharmaceutical ingredients, including the Indapamide API alone and the Indapamide API together with the Amlodipine API, in each case as active pharmaceutical ingredients for use in the Field. Notwithstanding the foregoing, "Additional Combination Product(s)" shall not include the Initial Licensed Product or any pharmaceutical preparation that combines the Perindopril API and any active pharmaceutical ingredient other than Amlodipine API or Indapamide API that becomes the subject of one or more Servier research programs after the Original Agreement Effective Date.

(g) "***Affiliate***" of a Party means:

(i) any company or other entity in which more than fifty percent (50%) of the voting rights, shares or other equity interests are owned or controlled, directly or indirectly (including pursuant to any option, warrant or similar arrangement), by said Party, and/or

(ii) any company or other entity which owns or controls, directly or indirectly (including pursuant to any option, warrant or similar arrangement), more than fifty percent (50%) of the voting rights, shares or other equity interests of said Party, and/or

(iii) any company or other entity in which more than fifty percent (50%) of the voting rights, shares or other equity interests are owned or controlled, directly or indirectly (including pursuant to any option, warrant or similar arrangement), by a company or other entity referred to in clause (ii) hereinabove.

(h) "***Amlodipine API***" means the active pharmaceutical ingredient known under the INN amlodipine and any salt, derivative, chelate, clathrate, polymorph, isomer (either structural or optical), acid, base, pro-drug or metabolite thereof.

(i) "***API***" means, collectively or singularly as the context dictates, the Perindopril API, the Amlodipine API, the ACEON API and, upon exercise by XOMA of the Option with respect to any Additional Combination Product containing the Indapamide API, the Indapamide API.

(j) "***Approval Deadline***" means, with respect to the Marketing Approval of the Initial Licensed Product, December 31, 2014.

(k) "***Business Day***" means a day that is not a Saturday, Sunday or a day on which banking institutions in San Francisco, California U.S.A. and/or Paris, France, are authorized by Law to remain closed.

(l) "***Change of Control***" means if (at any time) any individual or entity (corporate or otherwise), or any group of individuals and/or entities acting together (other than any Affiliates), acquires more than fifty percent (50%) of the equity interests of a Party and/or more than fifty percent (50%) of the equity interests of any of its direct or indirect parent companies or by other means attains the power of taking, legally or factually, control of such Party.

(m) "***Clinical Supplies***" has the meaning set forth in Schedule 6 of this Agreement.

(n) [*]

(o) "***Commercialization***" means, with respect to Licensed Products, any and all processes and activities conducted to establish and maintain sales for such Licensed Products, including maintaining Marketing Approval, manufacturing or having manufactured Licensed Products from API, selling, offering for sale, detailing, marketing, promoting, storing, transporting, supporting, distributing, and importing the API. "***Commercialize***" and "***Commercializing***" shall have their correlative meanings.

(p) "***Competing Product(s)***" means, with respect to a Party, all pharmaceutical preparations, in all dosage strengths, formulations and methods of administration, developed, licensed, commercialized or otherwise owned or controlled by or on behalf of such Party for use in hypertension, other than, in the case of XOMA, a Licensed Product.

(q) "***Confidential Information***" means confidential and proprietary information or materials of a Party, including but not limited to marketing, technical, financial, legal, product and business affairs information, furnished, disclosed or made available to the other Party and/or its Affiliates or learned from or through a Party's exercise of its rights pursuant to this Agreement and any memoranda, analyses, studies, reports, summaries or similar documents prepared by or for the Party receiving Confidential Information that contain, reflect, interpret or are based on Confidential Information received from the other Party. With respect to Servier, Servier's Confidential Information shall include Servier Know-How.

(r) "***Data***" means any and all research, pharmacology, medicinal chemistry, pre-clinical, clinical, commercial, marketing, process development, manufacturing and other data or information, including investigator reports (both preliminary and final), statistical analyses, expert opinions and reports, safety and other electronic databases, in each case specifically related or directed to the API and/or the Licensed Product(s).

(s) "***Development***" means those activities required and/or useful to obtain and maintain Marketing Approval and includes pre-clinical and clinical studies, formulation, pharmacodynamics, quality assurance/quality control, regulatory affairs, report writing and statistical analysis. "***Develop***" and "***Developing***" shall have their correlative meanings.

(t) "***Diligent Efforts***" means (i) with respect to XOMA, a commitment by or on behalf of XOMA of a level of resources and efforts to (a) seek and procure Marketing Approval (with respect to Licensed Products other than ACEON) and (b) Commercialize each of the Licensed Products, in the case of clauses (a) and (b), applied by XOMA, its Sublicensees and designees, consistent with XOMA's practices in diligently and actively pursuing the Commercialization of its other pharmaceutical products at a similar stage of product life, safety, efficacy and commercial potential, intellectual property protection, scientific merit and the then prevailing regulatory environment and status with respect thereto but in no event less than the high professional standards and level of resources, and efforts for Commercialization commonly applied by other pharmaceutical companies to their pharmaceutical products at a similar stage of product life, safety, efficacy and commercial potential, intellectual property protection, scientific merit and the then prevailing regulatory environment and status with respect thereto, and (ii) with respect to Servier, a commitment by or on behalf of Servier of a level of resources and efforts to fulfill its obligations hereunder applied by Servier, its Affiliates and Sublicensees, consistent with Servier's practices in diligently and actively conducting similar activities with respect to its other pharmaceutical products at a similar stage of product life, safety, efficacy and commercial potential, intellectual property protection, scientific merit and the then prevailing regulatory environment and status with respect thereto but in no event less than the high professional standards and level of resources, and efforts to conduct such activities commonly applied by other pharmaceutical companies to their pharmaceutical products at a similar stage of product life, safety, efficacy and commercial potential, intellectual property protection, scientific merit and the then prevailing regulatory environment and status with respect thereto.

(u) "***Exclusivity Period***" means the period beginning on the Original Agreement Effective Date and ending on the last day of the latest to expire of any exclusivity period granted pursuant to Section 505(c)(3)(E) or (j)(5)(F) of the U.S. Food, Drug and Cosmetic Act and the rules and regulations thereunder, including 21 C.F.R. § 314.108, for the Initial Licensed Product or any Additional Licensed Product.

(v) "***FDA***" means the United States Food and Drug Administration or any successor entity thereto.

(w) "***Field***" means the treatment of humans for hypertension or other cardiovascular diseases.

(x) "***First Commercial Sale***" means, with respect to a particular Licensed Product, the first commercial sale in an arms'-length transaction in the Territory of such Licensed Product by or on behalf of XOMA, its Affiliates or its Sublicensees, as applicable.

(y) "***GAAP***" means then-current generally accepted accounting principles in the United States of America as established by the Financial Accounting Standards Board or any successor entity or other entity generally recognized as having the right to establish such principles, in each case consistently applied.

(z) "***Generic Competition***" means sales in the Territory of a Generic Product by one or more Third Parties with whom XOMA, its Sublicensees and designees have no contractual or other relationship regarding API or Licensed Product in excess of [*] percent ([*]%) of the aggregate of both: (i) sales of such Generic Product in the Territory and (ii) sales by XOMA, its Sublicensees and designees of the Licensed Product that uses the same combination of APIs as such Generic Product in the Territory, in each case calculated on a moving annual total (MAT) basis.

(aa) "***Generic Product***" means, after Marketing Approval of a Licensed Product other than ACEON in the Territory, any other product designated for human use that uses the same combination of APIs as that contained in such Licensed Product.

(bb) "***GLP***" means the then-current good laboratory practice (or similar standards) for the performance of laboratory activities for pharmaceutical products as are required by any Regulatory Authority in the applicable jurisdiction.

(cc) "***Guiding Principle***" means that XOMA will use Diligent Efforts to (i) effectuate the timely transition of the Commercialization of ACEON from Abbott to XOMA in a manner intended to minimize the future impact on the availability of ACEON to patients using ACEON, and (ii) Commercialize ACEON in a manner intended to maintain the sales of such product in the Territory and prepare for the Commercialization of the Initial Licensed Product.

(dd) "***Indapamide API***" means the active pharmaceutical ingredient known under the INN indapamide and any salt, derivative, chelate, clathrate, polymorph, isomer (either structural or optical), acid, base, pro-drug or metabolite thereof.

(ee) "***Initial Licensed Product***" means all pharmaceutical preparations, in all dosage strengths, formulations and methods of administration, that combine the Amlodipine API and the Perindopril API as active ingredients for use in the Field.

(ff) "***INN***" means International Nonproprietary Name.

(gg) "***Insolvency Event***" means, with respect to any Party, the occurrence of any of the following: (i) such Party shall commence a voluntary case concerning itself under any bankruptcy, liquidation or insolvency code; (ii) an involuntary case is commenced against such Party and the petition is not contested within [*] Business Days, or is not dismissed within [*] days, after commencement of the case; (iii) a custodian is appointed for, or takes charge of, all or substantially all of the property of such Party or such Party commences any other proceedings under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to such Party or there is commenced against such Party any such proceeding which remains undismissed for a period of [*] days; (iv) any order of relief or other order approving any such case or proceeding is entered; (v) such Party is adjudicated insolvent or bankrupt; (vi) such Party suffers any appointment of any custodian, receiver or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of [*] days; (vii) such Party makes a general assignment for the benefit of creditors; (viii) such Party shall fail to pay, or shall make a duly authorized statement that it is unable to pay, or shall be unable to pay, its debts generally as they become due; (ix) such party shall call a meeting of its creditors generally with a view to arranging a compromise or adjustment of its debts; or (x) any corporate, limited liability company, partnership or individual action, as applicable, is taken by such Party for the purpose of effecting any of the foregoing.

(hh) "***Intellectual Property Rights***" means all Patent, Know-How, trade secret and any other proprietary and intellectual property rights pertaining to Licensed Products.

(ii) "***Know-How***" means all scientific and technical information and know-how, trade secrets, Data and technology now or hereafter during the term of this Agreement (whether patented, patentable or not) owned, developed or acquired by a Party or any of its Affiliates or as to which such Party or any of its Affiliates has the right to license, which specifically relate or are directed to the Licensed Products, including but not limited to (i) medical, clinical, toxicological or other scientific Data; and (ii) processes and analytical methodology useful in the development, testing, analysis, manufacturing or packaging of the Licensed Products.

(jj) "***Law***" means, individually and collectively, any and all laws, ordinances, rules, directives and regulations of any kind whatsoever of any governmental or regulatory authority within the applicable jurisdiction.

(kk) "***Licensed Product(s)***" means (i) the Initial Licensed Product, (ii) ACEON, and (iii) upon exercise by XOMA of the Option with respect to any Additional Combination Product, such Additional Combination Product.

(ll) "***Losses***" means any and all losses, liabilities, costs and expenses (including reasonable attorneys' fees and expenses), debts and other obligations arising out of or resulting from third party claims, judgments, damages, arbitral awards, and amounts paid in settlement of claims, judgments, legal (including but not limited to judicial, arbitral and administrative) proceedings and the like.

The foregoing shall include (but is not limited to) Losses arising out of or resulting from physical injury, death or product liability and similar third party claims.

(mm) "***Marketing Approval***" means all approvals, licenses, registrations or authorizations necessary for the Commercialization by XOMA, its Sublicensees or designees of a Licensed Product in the Territory, including, if applicable, the pricing thereof. Marketing Approval shall be deemed to have been received upon first receipt by XOMA, its Sublicensee or designee of notice from the FDA or other applicable Regulatory Authority in the Territory that Commercialization of a Licensed Product by XOMA, its Sublicensee or designee has been approved in a jurisdiction within the Territory.

(nn) "***NDA***" means a New Drug Application, including all supplements and amendments thereto, for the approval of the Licensed Product(s) as a new drug by the FDA.

(oo) "***Net Sales***" are recorded according to GAAP (including invoices and accruals). Net Sales means adjusted gross amount invoiced on all sales (***Gross Sales***") of the Licensed Products (including, but not limited to, hospital sales, mail orders and retail sales) by XOMA or through or by its Sublicensees in the Territory, through customary commercial channels of distribution to an independent Third Party in bona fide arms length sales, less the following deductions:

(i) customs tariffs and duties, insurance charges (in each case, when invoiced as additional charges), and allowances for bad debts; and

(ii) Returns (including additional returns accrual) and rebates excluding cash discounts, which Returns shall not exceed [*] percent ([*]%) of Gross Sales on a quarterly basis; and

(iii) discounts actually given for managed care rebates, Medicaid rebates, Medicare rebates, chargebacks, TRICARE rebates and patient assistance program rebates; and

(iv) Recalls;

provided, that deductions pursuant to clauses (i), (ii) and (iii) shall not exceed in the aggregate [*] percent ([*]%) of Gross Sales on a quarterly basis.

For purposes of clarification, if a particular deduction falls under more than one category set forth above, such deduction shall only be taken once.

Any recalls falling out of the definition of Recalls shall be excluded from the determination of Net Sales.

Sales taxes, value added taxes and any other taxes when invoiced as additional charges are excluded from Net Sales.

(pp) "***Option Term***" means, with respect to an Additional Combination Product that combines the Perindopril API and Indapamide API alone, the period beginning on the Original Agreement Effective Date and ending on the earlier of (x) the [*] anniversary thereof or (y) beginning [*] months after the acceptance by the FDA of the NDA submission for the Initial Licensed Product, [*]days following Servier's written request to get a waiver from XOMA as mentioned in Section 2.2. below.

"***Option Term***" also means, with respect to any other Additional Combination Product, including an Additional Combination Product that combines the Perindopril API, the Amlodipine API and the Indapamide API, the period beginning [*] months after the acceptance by the FDA of the NDA submission for the Initial Licensed Product and ending [*] days following receipt by XOMA of all Data in Servier's control useful for an NDA submission by XOMA in the Territory of such Additional Combination Product.

(qq) "***Other Product(s)***" means any pharmaceutical product not supplied by Servier which contains as its active ingredient(s) and/or consists of perindopril erbumine, the Amlodipine API and/or the Indapamide API.

(rr) "***Patent***" means any of the following, whether existing now or in the future anywhere in the world: (i) patents and patent applications; (ii) continuations, continuations-in-part, divisionals and substitute applications with respect to any such patent application; (iii) any patents issued based on or claiming priority to any such patent applications; (iv) any reissue, reexamination, renewal, extension (including any supplemental protection certificate) or restoration of any such patents; (v) any confirmation patent or registration patent or patent of addition based on any such patents; and (vi) any other patents and patent applications that dominate the foregoing patents.

(ss) "***Perindopril API***" means the active pharmaceutical ingredient known under the INN perindopril associated with the arginine salt.

(tt) "***Perindopril Arginine Monotherapy Product***" means all pharmaceutical preparations, in all dosage strengths, formulations and methods of administration, that contain Perindopril API as the sole active ingredient for use in the Field.

(uu) "***Promotion Plan***" means the plan developed by XOMA for promotion of the Licensed Products in the Territory.

(vv) "***Promotional Material***" means all Licensed Product packaging and labeling, and all written, printed, graphic, electronic, audio or video matter, including journal advertisements, sales visual aids, leave behind items, formulary binders, reprints, direct mail, direct-to consumer advertising, broadcast advertisements and sales reminder aids, for example, scratch pads, pens and other like items, in each case created by XOMA or directly on its behalf and used or intended for use in connection with any promotion of a Licensed Product.

(ww) "***Recalls***" means Licensed Products recalled by XOMA (i) for quality, safety or other issues pertaining to the manufacture of API, if supplied by Servier, or (ii) following Servier's request.

(xx) "***Regulatory Authority***" means any federal, national, multinational, state, provincial or local regulatory agency, department, bureau or other governmental entity with authority over the Marketing Approval, Commercialization or other use of the Licensed Products in any jurisdiction, including the FDA.

(yy) "***Regulatory Costs***" means all costs and expenses incurred by or on behalf of XOMA in the course of Development, including the costs of Regulatory Filings and maintenance fees, pricing and reimbursement filing and maintenance fees and costs relating to approval by FDA of one or more of the Licensed Products.

(zz) "***Regulatory Filings***" means all submissions, applications, filings to any Regulatory Authority.

(aaa) "***Returns***" means all Licensed Products returned to XOMA by any independent Third Party.

(bbb) "***Royalties***" means the royalties provided for in Sections 11.4(a) and (b).

(ccc) "***Safety and Public Health Issues***" means significant safety and public health issues arising after the Original Agreement Effective Date which are demonstrated by clinically relevant events which are documented and which relate to the Licensed Products. It is understood and agreed that anything deemed to be a safety or public health issue by a Regulatory Authority shall conclusively be presumed to be a Safety and Public Health Issue.

(ddd) "***Servier Intellectual Property***" means all Intellectual Property Rights owned or controlled by Servier, including the patents listed on Schedule 1.1(ddd).

(eee) "***Servier Know-How***" means Know-How owned, developed or controlled by or on behalf of Servier.

(fff) "***Specified Change of Control***" means a Change of Control of XOMA resulting in XOMA being controlled by or under common control with an entity that, immediately prior to such Change of Control, actively competes with Servier in the hypertension field alone or in [*] of the following therapeutic fields: stroke, acute coronary syndrome, chronic stable angina, heart failure, myocardial infarction, atherothrombosis and coronary artery diseases.

(ggg) "***Sublicensee***" means, with respect to a particular Party, an Affiliate of such Party or a Third Party which is a sublicensee of such Party's rights hereunder or a Third Party which acts on behalf of such Party in accordance with the applicable terms and conditions of this Agreement.

(hhh) "***Territory***" means the United States of America and its territories and possessions.

(iii) "***Third Party***" means any entity other than XOMA or Servier, or their respective Affiliates.

(jjj) "***Trademark***" means the trademark(s) owned by Biofarma and licensed to XOMA pursuant to a separate trademark license agreement, executed by the Parties on the same day as this Agreement, for commercialization of the Licensed Products in the Territory (the "***Trademark Agreement***").

(kkk) "***Transition Period***" means the period commencing on the Effective Date and ending on the date of the First Commercial Sale of ACEON.

(lll) "***XOMA Know-How***" means all Know-How hereafter owned, developed or acquired by or on behalf of XOMA or its Sublicensee(s).

1.2 Additional Definitions. Each defined term used in this Agreement but not set forth in Section 1.1 is defined in the body of this Agreement as indicated below.

Term	**Section**
"***Abbott License Agreement***"	2.4
"ACEON Gross Sales"	15.4
"***Additional Studies***"	11.2(b)
"***Agreement Improvements***"	12.1
"***Annual ACEON Net Sales***"	11.4(b)
"***Arbitration***"	16.1
"***CIOMS***"	8.2(b)
"***Co-Chair***"	7.4
"***Common Document Format***"	4.1(a)(i)
"***Coordinating Committee***"	7.1
"***Dispute***"	16.1
"***Dispute Resolution***"	7.6
"***Dutraco***"	2.4
"***Egis***"	5.3
"***Electronic Report***"	8.1(b)(ii)
"***Enabling Party***"	8.4(e)
"***E-ROOM***"	8.1(a)
"***Filing Party***"	8.4(e)
"Gross Sales"	**1.1(oo)**
"***Initial Period***"	15.1
"***Initial Plan***"	9.1
"***Medical Journals***"	13.1(a)(iii)

Term	Section
"***Medpace Agreement***"	15.2(i)
"***Minimum Net Sales Amounts***"	9.5
"***Negotiations***"	2.3
"***Option***"	2.2
"***Paragraph IV Notice***"	12.3(b)
"***Perindopril Arginine Monotherapy Exclusivity Period***"	2.3
"Reimbursement Obligation"	15.4
"***Request for Arbitration***"	16.2
"***Safety Data Exchange Agreement***"	8.2(a)(i)
"***Sales Milestone***"	11.3(b)
"***Scientific Meeting***"	13.1(a)(ii)
"***Scientific Paper***"	13.1(a)(iii)
"***Servier Indemnitees***"	17.1
"***Study***"	3.1(a)
"***Subteam***"	7.3
"***Technical Conditions***"	8.1(a)
"***Third-Party Claim***"	17.2
"***Transfer***"	18.1
"***WSD***"	8.2(c)

1.3 Interpretation. References to Articles, Sections and Schedules contained herein or attached hereto shall refer to Articles and Sections of this Agreement or its Schedules as applicable. The terms of each Schedule hereto are expressly incorporated herein by reference as if fully set forth herein. The words "including," "includes" and words of similar import shall be deemed to be followed by "without limitation."

ARTICLE 2
LICENSE; OPTION

2.1 License. In accordance with the terms of this Agreement, Servier hereby grants to XOMA a non-sublicensable (except as set forth in Section 5.2), non-transferable, non-assignable (except as set forth in Section 18.1), exclusive (even as to Servier) right and license under the Servier Intellectual Property to make, have made, use, sell, offer for sale and import, including the Development, registration and Commercialization of, Licensed Products in the Territory during the term of this Agreement, *provided*, *however*, that during the Transition Period, the foregoing rights shall be co-exclusive with Abbott, its Affiliates and sublicensees solely with respect to ACEON to the extent necessary to permit Abbott to fulfill its obligations as already granted under the Termination Agreement.

2.2 Additional Combination Products. During the Option Term, XOMA shall have the exclusive option (the "***Option***") to include in the license granted in Section 2.1 one or more Additional Combination Products, and Servier shall not (a) engage in any sales, distribution or transfer in the Territory of a particular Additional Combination Product or (b) solicit any offers, respond substantively to any inquiries except as required by Law or order after notice thereof to XOMA, conduct any negotiations or enter into any agreement with any Third Party regarding rights to a particular Additional Combination Product in the Territory without first receiving a written waiver from XOMA of the Option regarding such Additional Combination Product. In the event XOMA exercises the Option with respect to a particular Additional Combination Product during the Option Term, it shall provide Servier with a written notice, whereupon, for no additional consideration, (i) all references herein to API shall be deemed to include the Indapamide API and/or the other additional active pharmaceutical ingredient(s) to be included in such Additional Combination Product, (ii) all references herein to Licensed Products shall be deemed to include such Additional Combination Product, (iii) the definition of "Servier Intellectual Property" shall be amended to specifically include any and all Patents owned or controlled by Servier related to such Additional Combination Product, the Indapamide API and/or the other additional active pharmaceutical ingredient(s) to be included in such Additional Combination Product or any method of use of any of the foregoing, and (iv) XOMA shall have the right to terminate its rights and obligations under this Agreement with respect to such Additional Combination Product (but only such Additional Combination Product) as provided in Section 15.3 for any of the reasons set forth in clauses (c), (d) or (f) thereof (as if such provisions referred to such Additional Combination Product rather than the Initial Licensed Product). In the event XOMA exercises the Option, the Parties will, in good faith, discuss and agree on the representations and warranties substantially similar to those set forth in this Agreement that Servier will make in relation to those Additional Combination Products. Pending exercise by XOMA of the Option, Servier agrees not to intentionally take any action, or omit to take any action, that would prevent it or its Affiliates from being able to give representations and warranties in relation to the Additional Combination Products substantially similar to those set forth in this Agreement. The Parties agree to discuss in good faith their respective activities and strategies with respect to Development of the Additional Licensed Products, whether or not XOMA has yet exercised its Option with respect thereto.

2.3 Option on Perindopril Arginine as a Monotherapy. For [*] years after the Effective Date, XOMA shall have the first right to negotiate with Servier to reach agreement with respect to one or more Perindopril Arginine Monotherapy Products, and Servier shall not (a) engage in any sales, distribution or transfer in the Territory of Perindopril Arginine Monotherapy Products or (b) solicit any offers, respond substantively to any inquiries, except as required by Law or order after notice thereof to XOMA, conduct any negotiations or enter into any agreement with any Third Party regarding rights to Perindopril Arginine Monotherapy Products in the Territory without first either conducting negotiations with XOMA in accordance with this Section 2.3 or receiving a written waiver from XOMA of its rights under this Section 2.3. Any negotiations required under this Section 2.3 ("***Negotiations***") will be initiated by either Party by written notice to the other Party. The Parties agree to conduct all Negotiations in good faith, with reasonable diligence and for a period of not more than [*] days after the date of such notice or such other period as the Parties shall then agree in writing (the "***Perindopril Arginine Monotherapy Exclusivity Period***"). In the event Negotiations are conducted in accordance with this Section 2.3 but the Parties have not reached written agreement at the end of the Perindopril Arginine Monotherapy Exclusivity Period, Servier shall be free to sell, or negotiate with Third Parties regarding rights to, Perindopril Arginine Monotherapy Products in the Territory; *provided*, *however*, that Servier shall not enter into any arrangement or agreement with a Third Party granting rights to Perindopril Arginine Monotherapy Products on royalty, sales or development milestone and upfront payment terms and their monetary equivalents (but, for the avoidance of doubt, not with respect to any other commercial terms) that are more favorable to such Third Party than those offered to XOMA during the Negotiations without first offering XOMA a reasonable opportunity to enter into an agreement with Servier on such more favorable royalty, sales or development milestone and upfront payment terms and their monetary equivalents. In the event the Parties enter into a written agreement with respect to Perindopril Arginine Monotherapy Products, the additional financial and other terms agreed to by the Parties with respect thereto shall be set forth in an amendment to this Agreement or a separate agreement, as the Parties shall determine. For the avoidance of doubt, Servier shall not have an obligation to commence Negotiations with respect to Perindopril Arginine Monotherapy Products if no notice initiating the same is given prior to the [*] anniversary of the Effective Date, but the Parties shall continue any Negotiations initiated prior to such [*] anniversary until completion of the Perindopril Arginine Monotherapy Exclusivity Period, regardless of whether such [*] anniversary occurs during such period.

2.4 Special Provisions Relating to ACEON. The Parties acknowledge that (i) the rights to ACEON are currently held by Abbott pursuant to Patent and Know-How License Agreement dated April 29, 1999, between Adir and Dutraco S.A. ("***Dutraco***"), predecessor to Solvay Pharmaceuticals, which is a predecessor to Abbott (the "***Abbott License Agreement***"), whereby Adir granted rights to Dutraco relating to the drug product Perindopril, and the Abbott License Agreement has been disclosed to XOMA in redacted form; and (ii) Servier, XOMA and Abbott are entering into the Abbott Termination Agreement dated as of the Effective Date pursuant to which Abbott's rights to ACEON will be terminated, and Abbott has agreed to transition to XOMA all aspects of the Commercialization of ACEON. Accordingly, the Parties hereby agree that, while Servier shall use commercially reasonable efforts to facilitate the transition from Abbott to XOMA of the ACEON program, Servier shall not be responsible for Abbott's failures or breaches of the Abbott Termination Agreement not caused by Servier.

ARTICLE 3
DEVELOPMENT STUDIES

3.1 Prior to Marketing Approval.

(a) For each Licensed Product (other than ACEON), upon full receipt of all of the Data and Know-How to be delivered pursuant to Article 4, XOMA shall use Diligent Efforts to perform or have performed at its own expense and in the Field any Development required by the FDA to be conducted by or on behalf of XOMA in order to obtain Marketing Approval for such Licensed Product (other than ACEON) in the Territory. However, SERVIER agrees to partially fund the study indicated in Schedule 3.1(a) below in the amount of [*] Euros ([*] €) [*] (hereinafter the "***Study***"). Provided the above condition is met, in no event will XOMA invoice such amount to Servier before October 1, 2011. Upon receipt of the invoice, Servier shall pay it within [*] days. The Parties undertake to discuss and use reasonable best efforts to agree on an additional funding by Servier of the above-mentioned study that will be embodied in a separate amendment to this Agreement.

(b) XOMA shall draw up a development plan, following FDA requirements, indicating the studies, tests and protocol concept sheets XOMA plans to undertake or have undertaken to achieve Marketing Approval for the Licensed Product(s) (other than ACEON) in the Territory and their expected dates of completion. It is understood and agreed that the dates XOMA sets forth in the development plan are estimates only.

(c) XOMA shall provide Servier with a copy of the development plan and Servier shall have up to [*] days to discuss and review such development plan with XOMA. To the extent XOMA makes any material modifications to such plan, XOMA shall provide Servier with copies of such modified plan and Servier shall have up to [*] days to discuss and review such material modifications with XOMA.

(d) All decisions with respect to XOMA Development activities, including the content of the development plan, shall be made by XOMA in its sole discretion after taking into good faith consideration any comments of Servier.

3.2 Following Marketing Approval. Aside from the covenant in Section 5.1 to use Diligent Efforts to maintain a Marketing Approval, XOMA shall have no obligation with respect to the Development of the relevant Licensed Product(s) following such Marketing Approval.

ARTICLE 4
PROVISION OF DATA AND KNOW-HOW

4.1 Transfer of Data and Know-How.

(a) Existing Data and Know-How. Servier and XOMA acknowledge that they did meet within [*] Business Days following the Original Agreement Effective Date to discuss their respective responsibilities under this Section 4.1(a)(i) and agree on (A) a plan for Data transfer and Know-How disclosure in accordance with this Section 4.1(a)(i), (B) a comprehensive list of documents and other materials to which such plan shall apply and (C) one or more appropriate document formats common to both Parties ("***Common Document Format***") in which such transfers and disclosures shall be made. As soon as reasonably practicable but in any event within [*] days after such meeting, or as otherwise agreed at such meeting, Servier shall (x) transfer to XOMA in Common Document Format all Data which would be useful for Regulatory Filings for the Initial Licensed Product in the Territory, (y) provide XOMA and its designees with access to all Data which Servier or its Affiliates used in Regulatory Filings for the Initial Licensed Product in the European Union, as well as written notice to XOMA indicating that such Data is available to it, and (z) disclose and provide to XOMA and its designees the Servier Know-How which is necessary or useful for the manufacture of the Initial Licensed Product. XOMA acknowledges and agrees that Data provided or accessed pursuant to this Section in electronic form shall be acceptable. XOMA acknowledges that Servier is not in possession of the existing Data, Know-How, documents and other materials required to be transferred and disclosed to XOMA in connection with the Commercialization of ACEON in the Territory and agrees to seek such information directly from Abbott.

(b) Additional Combination Product Data and Know-How. Servier and XOMA shall meet within [*] Business Days following the exercise by XOMA of the Option in accordance with Section 2.2 for each Additional Combination Product to discuss their respective responsibilities under this Section 4.1(b) with respect thereto and agree on (i) a plan for Data transfer and Know-How disclosure in accordance with this Section 4.1(b), (ii) a comprehensive list of documents and other materials to which such plan shall apply and (iii) the Common Document Format(s) in which such transfers and disclosures shall be made. As soon as reasonably practicable but in any event within [*] days after such meeting, or as otherwise agreed at such meeting, Servier shall (x) transfer to XOMA in Common Document Format all Data which would be useful for Regulatory Filings for such Additional Combination Product in the Territory, and (y) provide XOMA and its designees with access to all Data which Servier or its Affiliates used in Regulatory Filings for such Additional Combination Product in the European Union , as well as written notice to XOMA indicating that such Data is available to it, and (z) disclose and provide to XOMA and its designees the Servier Know-How which is necessary or useful for the manufacture of such Additional Combination Product. XOMA acknowledges and agrees that Data provided or accessed pursuant to this Section in electronic form shall be acceptable.

(c) Future Data and Know-How.

(i) By Servier. Within [*] Business Days of the end of each calendar quarter during the term of this Agreement or at the request of any Regulatory Authority, Servier and its Affiliates shall (A) provide XOMA and its designees with access in Common Document Format to all previously undisclosed Data and Regulatory Filings relating to the Licensed Products that are in Servier's or its Affiliate's possession or control and necessary or useful to obtain or maintain Marketing Approval in the Territory for any Licensed Products, as well as written notice to XOMA indicating that such Data is available to it and describing such Data in reasonable detail, and (B) disclose and provide to XOMA and its designees any previously undisclosed Servier Know-How which is necessary or useful for the manufacture of the Licensed Products. Without limiting the foregoing, XOMA shall have the right to reference Servier's Know-How and Regulatory Filings relating to the Licensed Products, to file such items with Regulatory Authorities and to access and use non-confidential portions thereof, for purposes of Development and Commercialization of Licensed Products in accordance with this Agreement. XOMA acknowledges and agrees that Data accessed pursuant to this Section in electronic form shall be acceptable.

(ii) By XOMA. Within [*] Business Days of the end of each calendar quarter during the term of this Agreement, XOMA shall provide Servier with access in Common Document Format to all previously undisclosed XOMA Know-How and Regulatory Filings, but not including any proprietary information that is not subject to XOMA's activities under this Agreement, relating to the Licensed Products that are in XOMA's possession or control, as well as written notice to Servier indicating that such Data is available to it and describing such Data in reasonable detail. Without limiting the foregoing, Servier shall have the right to reference the XOMA Know-How and XOMA's Regulatory Filings, but not including any proprietary information that is not subject to XOMA's activities under this Agreement, relating to the Licensed Products, to file such items with Regulatory Authorities and to access and use non-confidential portions thereof, for purposes of development and Commercialization of Licensed Products outside of the Territory and otherwise in accordance with this Agreement. Notwithstanding anything herein to the contrary, in all agreements with Third Parties involving XOMA Know-How, XOMA shall require that such Third Parties provide Servier with access to all such XOMA Know-How, to the extent reasonably necessary to obtain or maintain marketing approval outside the Territory. Servier acknowledges and agrees that Data accessed pursuant to this Section in electronic form shall be acceptable.

4.2 Cooperation. The Parties agree to cooperate and provide reasonable assistance to each other in order to ensure that each Party is able to make use of the Data and Know-How transferred pursuant to this Article 4 as contemplated hereby.

ARTICLE 5
COMMERCIAL MATTERS

5.1 General. For Licensed Products other than ACEON, XOMA shall use Diligent Efforts, on a Licensed Product-by-Licensed Product basis to (a) obtain and/or maintain Marketing Approval for such Licensed Products, and all other applicable approvals for any such Licensed Product labeling or Promotional Materials in the Territory; and unless otherwise agreed or required by applicable Law, all such approvals shall be owned by and be held in the name of XOMA or its Affiliates, and (b) upon receipt of Marketing Approval for such a Licensed Product effect commercial sales thereof. With respect to ACEON, for the period beginning on the Effective Date, and ending on the [*] anniversary of the Effective Date (subject to termination of this Agreement in accordance with the terms hereof or by operation of law), XOMA shall (i) use Diligent Efforts to maintain Marketing Approval for ACEON, and all other applications and approvals for ACEON labeling or Promotional Materials in the Territory; and unless otherwise agreed or required by applicable Law, all such approvals shall be owned by and be held in the name of XOMA or its Affiliates, and (ii) fulfill the ACEON Required Minimum Promotional Efforts with respect to commercial sales thereof, it being understood and agreed that XOMA shall have no further obligation to use any Diligent Efforts or fulfill any ACEON Required Minimum Promotional Efforts with respect to ACEON following the expiration or termination of such [*] year period. XOMA shall give good faith consideration to Servier's comments with respect to all Regulatory Filings and correspondence but shall retain sole decision making authority with respect thereto. XOMA shall have the exclusive right to seek (with respect to Licensed Products other than ACEON) and/or maintain the Marketing Approval for the Licensed Products in the Territory.

5.2 Use of Third Parties. Upon notice to Servier and subject to the terms and conditions of this Agreement, XOMA shall have the right to contract any part of its rights hereunder to Third Parties to assist XOMA in fulfilling its obligations and exercising its rights under this Agreement, *provided* that such Affiliates or Third Parties, as the case may be, are bound by a written agreement that is consistent with the terms of this Agreement and, as applicable, the Trademark License Agreement, including confidentiality and intellectual property ownership provisions, which written agreements (with proprietary and other confidential information appropriately redacted) will be provided to Servier by XOMA upon execution thereof. For the purposes of this Agreement, all obligations on the part of XOMA shall be deemed to be obligations on the part of XOMA and any such Affiliates or Third Parties, as applicable. Subject to Section 18.1, nothing in this Section 5.2 shall permit XOMA to sublicense all of its rights and obligations under this Agreement in their entirety to a single Third Party.

5.3 Competing Products. As partial consideration for the Parties' respective rights and obligations set forth herein, each Party covenants and agrees that during the Exclusivity Period, none of it, its Affiliates or any Sublicensees shall, directly or indirectly, through assisting a Third Party or otherwise, market, distribute, sell, promote or commercialize any Competing Products in the Territory without the prior written consent of the other Party, other than, in the case of Egis Pharmaceuticals Hungary ("***Egis***"), the Amlodipine API or any other active pharmaceutical ingredient or raw materials for any generic version of a pharmaceutical product in the Field.

5.4 Other Products. As partial consideration for the license grants set forth herein, except as set forth in Article 6 below or Schedule 6 hereto, XOMA covenants and agrees that during the term of this Agreement, none of it or its Affiliates shall, directly or indirectly (through a Sublicensee or assisting a Third Party or otherwise), market, manufacture, distribute, sell, promote, commercialize or otherwise take any actions with respect to any Other Products without the prior written consent of Servier.

5.5 Outside and Within the Territory. Servier shall have sole decision-making authority with regard to Commercialization of Licensed Products outside the Territory, and XOMA shall have sole decision-making authority with regard to Commercialization of Licensed Products in the Territory.

5.6 Costs. All costs relating to Marketing Approval in the Territory and the fulfillment of XOMA's rights and obligations hereunder shall be entirely borne by XOMA. All costs relating to Marketing Approval outside the Territory shall be entirely borne by Servier.

5.7 Commencement of ACEON Sales.

(a) XOMA agrees to cooperate with Abbott to undertake the transition of the Commercialization of ACEON using Diligent Efforts in accordance with the Guiding Principle. XOMA acknowledges and agrees that Servier may be irreparably harmed in the event of an interruption of the supply of ACEON to patients. The Parties shall work in a timely manner and cooperate with each other and with Abbott and the manufacturer of Licensed Products from API during the Transition Period to effect a smooth transition of the manufacturing and commercial activities in the Territory relating to ACEON to XOMA and to effectuate the First Commercial Sale of ACEON promptly.

(b) In the event that the First Commercial Sale of ACEON has not occurred prior to or on February 29, 2012, for reasons other than (i) any failure by Servier to meet its obligations under this Agreement or otherwise provide reasonably requested assistance to XOMA, (ii) any failure by Abbott to provide or disclose information or materials which failure has a material adverse effect on the transition of ACEON to XOMA, or (iii) any action or inaction by Abbott while it was responsible for ACEON that was not known to XOMA prior to the Effective Date, then (x) XOMA shall pay to Servier, as liquidated damages and not as a penalty, an amount equal to Three Thousand Seven Hundred and Fifty U.S. Dollars (US $3,500) for each portion of or full calendar week thereafter until the date of First Commercial Sale of ACEON and (y) the Parties shall negotiate in good faith to solve the issue(s) preventing the First Commercial Sale of ACEON.

(c) In the event that First Commercial Sale of ACEON has not occurred prior to or on May 30, 2012, then either Party shall have the option to terminate all of its rights and obligations under this Agreement with respect to ACEON, effective upon written notice to the other Party, other than any liquidated damages pursuant to Section 5.7(a) that are accrued and unpaid by XOMA at the time of such termination.

ARTICLE 6
SUPPLY

6.1 Supply of API.

(a) Subject to the terms of Sections 6.2 and 6.4 below and Schedule 6 hereto, Servier will supply to XOMA and XOMA agrees to purchase (a) (i) exclusively from Servier the Perindopril API, (ii) exclusively from Servier the ACEON API, (iii) exclusively from Servier for a period of [*] years from the Original Agreement Effective Date the Amlodipine API, and (iv) exclusively from Servier for a period of [*] years upon exercise of XOMA's Option, the Indapamide API, in each case for the Licensed Products for testing, manufacturing, marketing and sale in the Territory, and (b) at XOMA's option from Servier the Clinical Supplies for testing in the Territory, in each case on the terms and conditions and at the prices indicated in Schedule 6 hereto, which are hereby incorporated herein and made a part hereof. XOMA and/or its Sublicensees, as applicable, shall be responsible for manufacturing the Licensed Products from the API(s) provided by Servier to XOMA.

(b) For the safety and health of patients and the continuity of the availability of ACEON on the market in the Territory, XOMA agrees that it shall work with Abbott to coordinate the delivery of remaining ACEON inventory to XOMA in a timely manner.

6.2 Cessation of Supply of API. Should Servier decide to cease the supply of any API, for Commercialization purposes, to XOMA, Servier shall inform XOMA at least [*] months before its decision takes effect.

(a) XOMA shall then have the opportunity to purchase the API (except Perindopril API as indicated in Section 6.2(b) below) from any Third Party; and

(b) Notwithstanding any provision to the contrary in this Agreement, Servier shall have the opportunity to propose to XOMA that XOMA's supply of Perindopril API, for Commercialization purposes, be provided by a Third Party supplier but manufactured by Servier, in which case such Third Party (the "***Designated Third Party***") would have sole and exclusive responsibility for any third party products liability claims relating to such Perindopril API, without any recourse to Servier. XOMA undertakes to accept such proposal provided (i) such Third Party supplier's selling price for such Perindopril API shall be equal to or below Servier's selling price for Perindopril API then in effect, (ii) any required Regulatory Approvals relating to the proposal shall have been obtained, without incremental charge to or expense by XOMA, and (iii) an agreement, on commercially reasonable terms, pursuant to which such Perindopril API will be so provided shall have been successfully negotiated between XOMA and the Designated Third Party.

6.3 Use of Perindopril API. XOMA undertakes to use the Perindopril API, whether supplied by Servier or a Third Party, solely (i) with the Amlodipine API in the Initial Licensed Product and, (ii) subject to XOMA exercising the Option, with the Amlodipine API and/or Indapamide API in the Additional Combination Products. Servier or such Third Party supplier, as the case may be, will supply Perindopril API exclusively to XOMA.

6.4 Infringement, Etc. Upon a decision by a court of competent jurisdiction that manufacture of API by Servier or a Third Party acting on Servier's behalf infringes, misappropriates or otherwise violates any intellectual property rights of any Third Party, and Servier refuses in its absolute discretion to modify its manufacturing processes in a manner that in XOMA's reasonable determination avoids such infringement, misappropriation or violation, XOMA shall, notwithstanding the terms of Section 6.1 above, be entitled to, with immediate effect, purchase such API from any Third Party designated by Servier. It is understood and agreed that Servier shall directly contract with such Third Party on commercially reasonable terms which are reasonably acceptable to XOMA and shall employ diligent efforts to have XOMA supplied by such Third Party.

ARTICLE 7
GOVERNANCE

7.1 Coordinating Committee. Promptly following the Original Agreement Effective Date, the Parties shall have established a joint coordinating committee (the "***Coordinating Committee***") to review the conduct and progress of clinical studies (if any), Marketing Approval and Commercialization inside the Territory. The Coordinating Committee shall be responsible for, among other things: reviewing the development plan (if any) and the Promotion Plan, discussing Servier's strategy for promotion of Licensed Products outside the Territory as relevant to the promotion of Licensed Products inside the Territory, reviewing the work of the Subteams (as hereinafter defined) if so desired or needed, monitoring the relevant competitive landscape for the Licensed Products in the Territory, and undertaking and/or approving such other matters as are specifically provided for the Coordinating Committee under this Agreement. XOMA shall keep the Coordinating Committee reasonably informed of progress and results of its activities under the Promotion Plan through its members on the Coordinating Committee and as otherwise provided herein.

7.2 Committee Membership. The Coordinating Committee shall be comprised of an equal number of representatives from each of Servier and XOMA. The exact number of such representatives shall initially be four (4) for each of Servier and XOMA, or such other number as the Parties may agree. The members of the Coordinating Committee shall represent the functions set forth on Schedule 7.2. Either Party may replace its respective committee representatives at any time with prior written notice to the other Party. In the event a Coordinating Committee member from either Party is unable to attend or participate in a Coordinating Committee meeting, the Party who designated such representative may designate a substitute representative for the meeting in its sole discretion.

7.3 Subteams. From time to time, the Coordinating Committee may establish subteams to oversee particular projects or activities, and such subteams will be constituted as the Coordinating Committee approves (each, a "***Subteam***"). If any Subteam is unable to reach a decision on any matter after endeavoring in good faith to do so, such matter shall be referred to the Coordinating Committee for resolution as provided in Section 7.6.

7.4 Committee Co-Chairs. Each Party shall appoint one of its members to the Coordinating Committee to co-chair the Coordinating Committee's meetings (each, a "***Co-Chair***"). The Co-Chairs shall (a) ensure the orderly conduct of the Coordinating Committee's meetings, (b) attend each Coordinating Committee meeting (either in-person, by videoconference or telephonically), and (c) prepare and issue written minutes of each meeting within thirty (30) days thereafter accurately reflecting the discussions and decisions of such meeting. Unless otherwise agreed, the Coordinating Committee shall have at least one (1) representative with relevant decision-making authority from each Party such that the Coordinating Committee is able to effectuate all of its decisions within the scope of its responsibilities. In the event the Co-Chair from either Party is unable to attend or participate in a Coordinating Committee meeting, the Party who designated such Co-Chair may designate a substitute Co-Chair for the meeting in its sole discretion.

7.5 Committee Meetings. The Coordinating Committee shall meet quarterly, or as often as otherwise agreed by the Parties, and such meetings may be conducted by telephone, videoconference or in person as determined by the Co-Chairs. As appropriate, other employee representatives of the Parties may attend Coordinating Committee meetings as observers. Each Party may also call for special meetings of the Coordinating Committee to resolve particular matters requested by such Party and within the areas of responsibility of the Coordinating Committee. Each Co-Chair shall ensure that its Coordinating Committee members receive adequate notice of such meetings.

7.6 Decision Making. Decisions of the Coordinating Committee shall be made by consensus of the Co-Chairs at any meeting. In order to make any decision, the Coordinating Committee must have present (in person, by videoconference or telephonically) at least the Co-Chair of each Party. Notwithstanding the foregoing, in the event of a disagreement between the Parties, XOMA shall have final decision-making authority on matters relating to the Commercialization and Development of the Licensed Products in the Territory. The Coordinating Committee shall have no authority to amend, modify or waive compliance with this Agreement. In the event that the Coordinating Committee cannot reach agreement with respect to any matter that is subject to its decision-making authority (other than Commercialization and Development matters described above), then the matter shall be resolved pursuant to the provisions set forth in Article 16 ("***Dispute Resolution***").

7.7 Interactions Between the Coordinating Committee or Subteams and Internal Teams. The Parties recognize that while they will establish the Coordinating Committee and Subteams for the purposes hereof, each Party maintains internal structures (including its own committees, teams and review boards) that will be involved in administering such Party's activities under this Agreement. The Parties shall establish procedures to facilitate communications between the Coordinating Committee and Subteams hereunder and the relevant internal committees, teams or boards within each Party in order to maximize the efficiency of the Parties' activities pursuant to this Agreement.

7.8 Day-to-Day Decision-Making Authority. XOMA shall have decision-making authority with respect to the day-to-day operations of the Development and Commercialization of Licensed Products in the Territory, *provided* that such decisions are not inconsistent with the Promotion Plan, other decisions of the Coordinating Committee and any Subteams within the scope of their authority specified therein, or the express terms and conditions thereof.

ARTICLE 8
INFORMATION SHARING AND INTERACTIONS WITH REGULATORY AUTHORITIES

8.1 E-ROOM.

(a) Scope. The Parties hereby agree to set-up an e-room (the "***E-ROOM***") that shall contain documents shared by the Parties for the transfer of Know-How for the Development, registration and Commercialization of Licensed Products, general correspondence, and any other documents or data to be transferred by a Party to the other pursuant to this Agreement. The restricted conditions for access to the E-ROOM will be discussed and agreed during the first Coordinating Committee meeting.

(b) Suitable Means of Proof.

(i) The Parties acknowledge that the report attached hereto as Schedule 8.1(b)(i) represents an exhaustive list of the contents of the E-ROOM as of the Original Agreement Effective Date.

(ii) The Parties acknowledge that the report attached hereto as Schedule 8.1(b)(ii) includes all of the items to be added to the E-ROOM related to ACEON and/or ACEON API as of the Effective Date.

(iii) Thereafter, the electronic report generated automatically by EMC Documentum eRoom — an example of which is attached hereto as Schedule 8.1(b)(iii) — (the "***Electronic Report***") shall be deemed by the Parties to constitute satisfactory and conclusive evidence of any and all modifications introduced in the content of the E-ROOM (new information, alterations, deletions, etc.) as of the date such Electronic Report was generated.

(iv) Any information which both Parties can have access to according to the Technical Conditions shall be considered to have been transmitted to a Party as of the date it first appeared on an Electronic Report.

(c) Undertaking of each Party. The Electronic Report is automatically sent by e-mail to the declared users of each Party, unless a user changes its notification settings to stop receiving it. Therefore, it is each Party's own responsibility to keep a copy of the Electronic Reports as long as necessary for evidence purposes.

8.2 Exchange of Safety Information.

(a) SDEA.

(i) The Parties will cooperate in the collection, review, assessment, tracking and filing of information related to adverse events associated with the Licensed Products, including in accordance with applicable FDA regulations, including 21 CFR §§ 312.32, 314.80, and with comparable Laws in countries within and outside the Territory. As soon as reasonably practicable after the Original Agreement Effective Date, but in no event later than [*] days thereafter, the pharmacovigilance departments of both Parties shall meet and determine the approach to be taken for the collection, review, assessment, tracking and filing of information related to adverse events associated with the Licensed Products, which shall be documented in a separate mutually acceptable safety data exchange agreement (the "***Safety Data Exchange Agreement***") between the Parties; *provided*, *however*, that this Agreement shall control in the event of any conflict between the terms of this Agreement and such Safety Data Exchange Agreement. Until such time as the Parties have entered into the Safety Data Exchange Agreement, the Parties will exchange safety information, regardless of causality, involving or associated with the use of the Licensed Products, on the following schedule:

(A) All serious adverse event information will be exchanged within [*] days after the receipt of such information by a Party or by any of the Party's Affiliates, agents or Sublicensees.

(B) Non-serious adverse event information will be exchanged on either Party's reasonable request.

(ii) The Parties acknowledge that an initial Safety Data Exchange Agreement has been entered into by them effective as of May 6, 2011. Simultaneously with the execution of this Agreement, the Parties are entering into an additional Safety Data Exchange Agreement; *provided*, *however*, that this Agreement shall control in the event of any conflict between the terms of this Agreement and either the initial or such additional Safety Data Exchange Agreement. All references to the "Safety Data Exchange Agreement" herein shall be deemed to be references to both the initial and such additional Safety Data Exchange Agreement, as applicable.

(b) All adverse event information shall be exchanged in a Council for International Organizations of Medical Sciences (the "***CIOMS***") I report format or a substantially similar report format.

(c) Each Party shall maintain a safety database for the Licensed Products as follows: (i) by XOMA, in the Territory and (ii) by Servier, outside the Territory, each consistent with pharmaceutical industry practice and all applicable Laws (the "***WSD***"). Within [*] Business Days of the Original Agreement Effective Date (with respect to Licensed Products other than ACEON) and the Effective Date (with respect to ACEON), Servier will provide XOMA with a paper and electronic copy of the most recent safety report from the WSD. Thereafter, the applicable provisions of this Article 8 shall apply.

(d) Each Party agrees to keep the other Party fully informed of all Safety and Public Health Issues related to the Licensed Products, and shall in good faith discuss and consult with the other Party through the Coordinating Committee prior to exercising any termination rights hereunder due to Safety and Public Health Issues.

8.3 Material Data. Each Party shall provide to the other Party, within [*] days of the completion of all study reports for a clinical study, a summary in the English language of material Data in such study reports relating to the Licensed Products. For purposes of this Section 8.3, Data shall be considered material if it (a) is intended for use in any submission to the FDA or any other Regulatory Authority, or (b) will have any significant effect, whether positive or negative, on the Development or Commercialization of any Licensed Products. For avoidance of doubt, this Section 8.3 includes, but is not limited to, the exchange of electronic databases in a mutually agreeable format.

8.4 Regulatory Submissions.

(a) Exchange of regulatory documents in draft form. Copies of all draft material submissions submitted after the Original Agreement Effective Date to the FDA or to any European Member State's Regulatory Authority by each Party in seeking Marketing Approval for and replies thereto and to the extent reasonably practicable all other material correspondence with the applicable Regulatory Authority covering the Licensed Products shall be provided to the other Party promptly upon draft completion but in no event less than [*] days before being submitted or sent, during which time the other Party shall have a reasonable opportunity, not to exceed [*] days, to review such submissions or correspondence and consult with the submitting Party with respect thereto. Information provided under this provision shall include but not be limited to:

Briefing books and slides relating to consultation meetings with the Regulatory Authority

IND submissions (or their international equivalents), initial submissions, serials, annual updates

Clinical reports of pivotal studies

Module 2 overviews

Module 2 summaries

CMC module 3 files

Draft labeling

Formal answers to questions.

After any such consultation and taking into consideration any comments from the other Party, the submitting Party shall determine the final form of all material submissions and correspondence in its sole discretion. Final copies including clinical databases for individual studies, integrated analysis and case report forms of all material submissions and correspondence shall be promptly provided to the other Party in the English language.

Each Party shall provide the other with a copy of any marketing approval letters received respectively from the FDA and any European Member State's Regulatory Authority within [*] days of their receipt. For all other countries outside the Territory, Servier will provide and update XOMA on a [*] -month basis with a table of the marketing approvals received in each such country.

(b) Governance. XOMA will determine the regulatory plans and strategies for the Licensed Products in the Territory, and Servier will determine the same outside the Territory. XOMA will file all Regulatory Filings with respect to the Licensed Products and will be responsible for obtaining and maintaining the NDA and the Marketing Approvals throughout the Territory in the name of XOMA or its Affiliates, and Servier will file the same and be responsible for the same outside the Territory. Each Party will keep the other Party reasonably updated on the status of each such Regulatory Filings. Upon Servier's written notice to XOMA that a modification to the marketing approval of a Licensed Product in the European Union has been adopted by the reference member state and implemented by each European member state, XOMA shall, where applicable, promptly request that the FDA update the Marketing Approval of such Licensed Product to reflect such modification.

(c) Consultation; Information. XOMA shall promptly provide Servier upon its reasonable prior written request with (i) copies of all Regulatory Filings relating to Licensed Products in the Territory; (ii) copies of all material correspondence with Regulatory Authorities in the Territory (including minutes of any meetings, telephone conferences and/or discussions with such Regulatory Authority) pertaining to Licensed Products; and (iii) reasonable advance notice (to the extent practicable) of meetings, scheduled or unscheduled, with any Regulatory Authority in the Territory that pertain to the Licensed Products. Consistent with applicable Laws, XOMA shall afford Servier's representatives a reasonable opportunity to comment on such Regulatory Filings, and shall consider such comments in good faith, and, to the extent not prohibited by applicable Law, shall afford Servier's representatives an opportunity to attend all such meetings with relevant Regulatory Authorities, to the extent reasonably practicable under the circumstances. Servier shall promptly inform XOMA of (x) all Regulatory Filings outside the Territory pertaining to Licensed Products; (y) all material issues raised by Regulatory Authorities outside the Territory pertaining to Licensed Products; and (z) the dates of, and a summary of matters discussed at, any meetings, scheduled or unscheduled, with any Regulatory Authority within the European Union that pertain to the Licensed Products.

(d) Coordinating Committee Review. In addition to the consultation set forth in Section 8.4(c) above with respect to Regulatory Filings and meetings with Regulatory Authorities, XOMA's Commercialization activities, including the content and subject matter of, and strategy for, any application for Regulatory Approval, all correspondence submitted to Regulatory Authorities related to clinical trial design, all proposed labeling and decisions from Regulatory Agencies with respect thereto, and all post-Marketing Approval labeling discussions and decisions with Regulatory Authorities (including the final approved labeling), and post-Marketing Approval labeling changes or expansions, in each case relating in any way to a Licensed Product, shall be subject to reasonable review by the Coordinating Committee, subject in all events to Section 7.6.

(e) Cooperation. Each Party agrees to make its personnel reasonably available, upon reasonable notice to the other Party, at their respective places of employment to consult with the other Party on issues arising related to the activities conducted in accordance with this Agreement or otherwise relating to regulatory matters involving the Licensed Products, including any request from any Regulatory Authority, including regulatory, scientific, technical and clinical testing issues, or otherwise. Each Party (the "***Enabling Party***") agrees to cooperate with the other (the "***Filing Party***"), at its request, to comply with specific requests of a Regulatory Authority (such as requests to inspect clinical trial sites), with respect to Data supplied or to be supplied by the Enabling Party to the Filing Party for filing with such Regulatory Authority, or with respect to Licensed Product supplied by the Enabling Party. The Enabling Party shall ensure that its contractors likewise comply with this Section 8.4(e).

8.5 Control of Approvals. XOMA or its Affiliates shall own and control all Marketing Approvals for the Licensed Products in the Territory. Servier or its Affiliates shall own and control all regulatory approvals for the Licensed Products outside the Territory.

8.6 Regulatory Authority Inquiries. Each Party shall notify the other Party within [*] Business Days after it receives information about the initiation of any investigation, review or inquiry by a Regulatory Authority concerning (i) non-clinical or clinical research relating to the API or the Licensed Products; or (ii) the manufacturing, distribution, promotion or sale of the Licensed Products and/or API; *provided*, that Servier's obligations under this Section 8.6 shall relate only to Regulatory Authorities in the European Union.

ARTICLE 9
PROMOTION

9.1 Promotion Plan. Within [*] days following (a) with respect to the Initial Licensed Product, the Original Agreement Effective Date, (b) with respect to ACEON, [*], and (c) with respect to any Additional Combination Product, XOMA's exercise of the Option with respect to such Additional Combination Product in accordance with Section 2.2, XOMA shall prepare and submit to Servier for its review and comments, such comments to be consistent with Servier's worldwide promotion of such Licensed Product, and which comments XOMA will consider in good faith, a Territory-wide Promotion Plan for each Licensed Product (the "***Initial Plan***"). The Initial Plan shall cover the period from its creation date up to the end of the then-current calendar year or, if fewer than [*] days remain before the end of the then-current calendar year, the end of the following calendar year. Then, on or before each succeeding September 30, starting on (a) in the case of the Initial Licensed Product, September 30, [*], (b) in the case of ACEON, September 30, [*], and (c) in the case of any Additional Licensed Product, the next September 30 that is more than [*] days after submission of the Initial Plan with respect to such Additional Licensed Product, XOMA shall prepare and submit to Servier for its review and comments, such comments to be consistent with Servier's worldwide promotion of such Licensed Product, and which comments XOMA will consider in good faith, a Territory-wide preliminary Promotion Plan for each Licensed Product for the coming calendar year. On or before December 30 of each calendar year, starting on (a) in the case of the Initial Licensed Product, December 30, [*], (b) in the case of ACEON, December 30, [*], and (c) in the case of any Additional Licensed Product, the next December 30 that is more than [*] days after submission of the Initial Plan with respect to such Additional Licensed Product, XOMA shall update each Promotion Plan to include detailed plans for the following calendar year, and shall submit such updated Promotion Plan to Servier for its review and comment. Each final Promotion Plan shall include a detailed description of each promotion activity to be conducted in the Territory thereunder, including, as applicable:

(a) general strategies for Commercialization of the Licensed Products with an outline of specific Commercialization activities;

(b) reimbursement strategies and plans for Licensed Products;

(c) marketing plans, including advertising, public relations programs, branding initiatives, market positioning, market research and pricing analysis;

(d) number of sales representatives, account managers, medical liaisons and medical affairs personnel or alike to be used;

(e) nature of promotional activities including awareness plans;

(f) medical education programs and materials, including professional symposia and speaker and peer-to-peer activity programs, to be used in the promotion of Licensed Products;

(g) development and implementation of training programs and training materials;

(h) good faith sales forecasts for Licensed Products;

(i) price and discounts per third party payers, and plans to obtain listing for Licensed Products; and

(j) a detailed, estimated budget for all the foregoing.

In all cases, XOMA will in good faith consider the comments of Servier.

9.2 Amendments. XOMA shall review the Promotion Plans on a regular basis during each calendar year and shall promptly submit any proposed material modifications of such plans to Servier for review and comment in accordance with the terms of this Article 9.

9.3 Promotional Literature. No later than [*] days prior to the First Commercial Sale of a Licensed Product (other than ACEON) in the Territory, XOMA shall provide Servier with a representative example of its proposed promotional literature, and Servier shall have the right to make comments or observations thereon within [*] days of its receipt thereof, which comments XOMA shall consider in good faith. Thereafter, XOMA shall provide Servier with a representative example of its promotional literature as soon as practicable after Servier's written request, and Servier shall have the right to make comments or observations thereon within [*] days of its receipt thereof, which comments XOMA shall consider in good faith. Notwithstanding the foregoing, XOMA shall have no right or license to use Servier's logo in XOMA's promotional literature.

9.4 Costs of Commercialization. XOMA shall be responsible for all promotion and all costs associated with the Commercialization of Licensed Products in the Territory. Servier shall be responsible for all promotion and all costs associated with the Commercialization of Licensed Products outside the Territory.

9.5 Minimum Net Sales. Beginning [*] months from receipt by XOMA of Marketing Approval for the Initial Licensed Product and subject to the provisions of Section 18.10 hereof and Section 9.3 of Schedule 6**,** XOMA shall achieve aggregate Net Sales of all Licensed Products (other than ACEON) (i) during the first period of [*] consecutive calendar quarters of not less than [*] U.S. Dollars (US$[*]) and then (ii) during each subsequent period of [*] consecutive calendar quarters of not less than [*] U.S. Dollars (US$[*]) (the "***Minimum Net Sales Amounts***"); *provided*, that XOMA may, at its option, satisfy its obligation under this Section 9.5 by paying Servier, in addition to the Royalties paid or payable under Section 11.4 for such [*]-quarter periods, an additional amount equal to the then applicable royalty rate on the difference between the Minimum Net Sales Amount and the actual aggregate Net Sales of all Licensed Products (other than ACEON) for such period. Notwithstanding the foregoing, should Generic Competition commence in the Territory, the Minimum Net Sales Amount shall thereafter be reduced by a percentage equal to the percentage of sales attributable to Generic Competition for such period. Any payment pursuant to this Section 9.5 shall be payable in the time period set forth in Section 11.4 with respect to the applicable calendar quarter.

9.6 Grey Market Sales. To the extent permitted by applicable Law, Servier shall and shall cause its Affiliates and Sublicensees to use Diligent Efforts to prevent "grey market" sales from Canada or Mexico by Third Parties of any Licensed Products in the Territory and, at a minimum, utilize reasonable safeguards to prevent the foregoing, *provided* such Third Parties have been supplied Licensed Products by Servier, its Affiliates or Sublicensees. In the event XOMA presents Servier with clear evidence of the re-sale or distribution of Licensed Products by the above mentioned Third Parties, Servier will promptly and vigorously investigate the circumstances and pursue appropriate remedies it may have against any such Third Party, such remedy to be determined in Servier's sole discretion.

ARTICLE 10
INSURANCE

XOMA shall obtain and maintain, during the term of this Agreement and thereafter for the duration of any applicable statute of limitations, comprehensive general liability insurance, including Licensed Products liability insurance and coverage for clinical trials, with reputable and financially secure insurance carriers in a form and at levels, respectively, that are reasonable and customary in the pharmaceutical industry for companies of comparable size and activities, but in any event shall be a minimum of [*] U.S. Dollars (US$[*]) per occurrence with an annual aggregate limit of not less than [*] U.S. Dollars (US$[*]), with Servier named as an additional insured party/loss payee, as applicable. The premium of any insurance will be borne XOMA. Such liability insurance shall be maintained on a claims made basis to provide such protection so long as a Third Party claim may arise in connection with the Licensed Product. XOMA shall furnish to Servier on request certificates issued by the insurance company setting forth the amount of the liability insurance.

ARTICLE 11
FINANCIAL TERMS

11.1 License Fee. As partial consideration for the rights granted hereunder, within [*] Business Days following the Original Agreement Effective Date, XOMA paid or caused to be paid to Servier a non-refundable cash payment in the amount of One Million Five Hundred Thousand U.S. Dollars (US$1,500,000).

11.2 Regulatory Milestones. As partial consideration for the rights granted hereunder, XOMA shall make milestone payments to Servier based on regulatory achievements as set forth below.

(a) Initial Licensed Product. XOMA shall notify Servier in writing within [*] Business Days of the first achievement of each of the milestone events in the table below with respect to the Initial Licensed Product, and the corresponding milestone payment shall be due within [*] Business Days of XOMA's receipt of an invoice therefor from Servier.

Event	**Payment**
Upon acceptance by the FDA of the NDA submission for the Initial Licensed Product	[*] U.S. Dollars (US$[*])
Upon Marketing Approval for the Initial Licensed Product	[*] U.S. Dollars (US$[*])

(b) Additional Combination Products. XOMA shall notify Servier in writing within [*] Business Days of the first achievement of each of the milestone events in the table below with respect to each Additional Combination Product, and the corresponding milestone payment shall be due within [*] Business Days of XOMA's receipt of an invoice therefor from Servier.

Event	**Payment**
Upon confirmation by the FDA that an NDA submission for such Additional Combination Product will be accepted without requiring one or more additional clinical trials	[*] U.S. Dollars (US$[*])
Upon Marketing Approval for such Additional Combination Product.	[*] U.S. Dollars (US$[*]) However, should the FDA require with the Marketing Approval additional clinical studies or Phase IV studies (hereinafter referred to as "***Additional Studies***"), then the external expenses incurred by XOMA and duly documented for the performance of the Additional Studies above [*] U.S. Dollars (US$[*]), if any, shall be deducted from the amount of [*]U.S. Dollars (US$[*]) due to Servier, without Servier being obliged to pay any sum to XOMA.

(c) For the avoidance of doubt, each of the payments set forth in this Section 11.2 shall be payable only once with respect to the Licensed Product to which it applies.

11.3 Sales Milestones.

(a) As partial consideration for the rights granted hereunder, XOMA shall make milestone payments to Servier based on sales as set forth below.

Sales Milestone	**Payment**
First Commercial Sale of Initial Licensed Product	[*] U.S. Dollars (US$[*])
Annual Net Sales of a Licensed Product (other than ACEON) in the Territory amounting to US$[*]	[*] U.S. Dollars (US$[*])
Annual Net Sales of a Licensed Product (other than ACEON) in the Territory amounting to US$[*]	[*] U.S. Dollars (US$[*])

(b) For purposes of this Agreement, the "***Sales Milestone***" means the first time during the first calendar year that annual Net Sales in the Territory achieve the corresponding level of sales, *i.e*., US$[*] for the first Sales Milestone and US$[*] for the second Sales Milestone.

(c) XOMA shall inform Servier within [*] days of achieving any of the foregoing Sales Milestones so that Servier may promptly issue an appropriate invoice. The corresponding milestone payment shall be due within [*] Business Days of XOMA's receipt of such invoice from Servier. It is understood and agreed between the Parties that the above Sales Milestone payments shall be payable with respect to each Licensed Product (other than ACEON) one time only, even if the corresponding Sales Milestone is met on more than one occasion. A sample invoice for the Sales Milestone payments is attached as Schedule 11.3(c).

11.4 Royalties.

(a) Licensed Products Other Than ACEON. As partial consideration for the rights granted hereunder, and subject to Section 11.6, XOMA shall pay to Servier within [*] days after the end of each calendar quarter, royalties on Net Sales of Licensed Products other than ACEON, on a product-by-product basis, as calculated by multiplying [*] percent ([*]%) by the amount of Net Sales in the Territory in a calendar year.

(b) ACEON. As partial consideration for the rights granted hereunder, XOMA shall pay to Servier within [*] days after the end of each calendar quarter ending after the Effective Date, royalties on Net Sales of ACEON in the Territory, as calculated by multiplying the applicable royalty rates set forth in the royalty rate table below by the corresponding amount of incremental Net Sales in the Territory of ACEON in a calendar year ("***Annual ACEON Net Sales***"):

Net Sales of ACEON in the Territory	Royalty Rate
For that portion of Annual ACEON Net Sales less than or equal to US$[*]	[*]%
For that portion of Annual ACEON Net Sales greater than US$[*] but less than or equal to US$[*]	[*]%
For that portion of Annual ACEON Net Sales greater than US$[*] but less than or equal to US$[*]	[*]%
For that portion of Annual ACEON Net Sales greater than US$[*]	[*]%

11.5 Royalty Payments and Reports.

(a) Each Royalty shall be payable quarterly only once with respect to the Licensed Products. XOMA shall provide a report to Servier of the sales estimates within [*] Business Days after the end of each calendar [*] in substantially the form attached hereto as Schedule 11.5 setting forth (i) the amount of Gross Sales in U.S. Dollars of the Licensed Products in such [*], (ii) any deductions and/or withholding from such amount of Gross Sales as permitted pursuant to the definition of Net Sales, (iii) a calculation of Net Sales in U.S. Dollars of the Licensed Products for such [*], (iv) the amount of aggregate Net Sales in U.S. Dollars of the Licensed Products on a cumulative per year basis for the current year, and (v) the amount of Royalty due in U.S. Dollars on Net Sales with respect to such [*].

(b) XOMA shall also provide a report to Servier of:

(i) the sales estimates within [*] Business Days after the end of each calendar [*] with the same information as above, and

(ii) the actual sales within [*] days after the end of each calendar [*] with the same information as above. Upon receipt of each such report that relates to a calendar [*], Servier will issue an invoice for the amount reflected on such report as being payable with respect to such calendar [*]. Within [*] days after receipt of such invoice but not later than [*] days after the end of each calendar [*], XOMA shall make the royalty payment reflected in such report and invoice with respect to such calendar [*].

(c) XOMA shall provide a report to Servier of the annual sales no later than [*] of each calendar year. Such report shall be certified by an executive officer of XOMA as accurate and in accordance with generally accepted accounting principles (to the extent applicable).

11.6 Adjustments to Royalties.

(a) Should Generic Competition, determined on a Licensed Product (other than ACEON)-by-Licensed Product (other than ACEON) basis, commence in the Territory, the royalty rate set forth in Section 11.4 for such Licensed Product (other than ACEON) shall be automatically reduced to [*] percent ([*]%).

(b) If any of XOMA, its Sublicensees or designees are (i) required in the reasonable opinion of an independent intellectual property expert mutually agreed to by the Parties to obtain a license from any Third Party in order to make, have made, use, sell, offer for sale or import any Licensed Product (other than ACEON) and pursuant to such license are required to pay a royalty based on sales of such Licensed Product (other than ACEON) or (ii) required by any court of competent jurisdiction to pay damages and/or such a royalty to such a Third Party, then XOMA's obligation to pay Royalties under Section 11.4 shall be reduced by the amount paid to such Third Party; *provided*, that in no event shall the aggregate Royalties payable to Servier be reduced pursuant to this Section 11.6 to less than [*] percent ([*]%).

11.7 Price for API and Clinical Supplies. The prices for API and Clinical Supplies provided by Servier are indicated in Schedule 6.

11.8 Payments Generally. All payments to Servier under this Agreement shall be made by wire transfer to a bank account designated by Servier, in Euros in an amount converted from the U.S. Dollar amount of such payment set forth in or determined in accordance with this Agreement at the exchange rate in effect on the date of payment. Any payments or portions thereof due hereunder which are not paid when due shall bear interest equal to the lesser of (i) one-month LIBOR plus [*] basis points per annum or (ii) the maximum rate permitted by Law, calculated on the number of days such payment is delinquent. This Section 11.8 shall in no way limit any other remedies available to either Party.

11.9 Taxes. In the event that any Royalties or other payments due from XOMA to Servier under this Article 11 are subject to withholding tax required by Law to be paid to the taxing authority of any country, the amount of such tax may be withheld from the applicable Royalties or other payment due Servier. XOMA shall pay such tax on behalf of Servier and shall furnish Servier with evidence of withholding tax paid. Any such payments made by XOMA to an applicable taxing authority shall constitute payments made to Servier under this Article 11 and in no event shall XOMA be liable for any payments in excess of amounts due to Servier under this Article 11, whether or not in the form of any taxes, duties, levies or other similar charges, including related interest, additions to tax and penalties, in respect of any payments pursuant to this Article 11.

11.10 Audit Rights. Servier shall have the right, at its own expense, no more than once per calendar year, to inspect XOMA's relevant financial books and records through an independent internationally recognized auditor designated by Servier and approved by XOMA, such approval not to be unreasonably withheld or delayed, and subject to reasonable obligations of confidentiality, upon at least [*] days advance written notice for the purpose of confirming XOMA's compliance with the terms hereof. In the event that the foregoing audit reveals an underpayment by XOMA, within [*] days of the receipt of the auditor's report, XOMA shall remit payment to Servier of the amount of the underpayment plus interest as set forth in Section 11.8 above. Servier shall bear the costs incurred in connection with such inspection and audit, all in accordance with the terms and conditions of this Agreement. Any overpayments shall promptly be refunded to XOMA.

ARTICLE 12
INTELLECTUAL PROPERTY

12.1 Inventions. The ownership of any improvements made by XOMA or its Sublicensees to the Servier Intellectual Property that include, are based on, or are derived from, API or Licensed Product or the Servier Know-How ("***Agreement Improvements***") shall be determined in accordance with the laws of inventorship of the United States. XOMA shall, and hereby does, assign to Servier its entire rights, title and interest in and to the Agreement Improvements, including to XOMA's interest in joint inventions made with Servier and inventions made by or on behalf of XOMA arising out of clinical studies performed with Perindopril API and/or Indapamide API, but excluding any intellectual property rights arising during the course of XOMA's discovery or development activities outside the scope of this Agreement (even where such activities involve the use of the API), on a worldwide basis. XOMA undertakes to have the above provisions reflected in its agreements with Sublicensees to the benefit of Servier. Upon assignment of the Agreement Improvements to Servier, Servier shall, and hereby does, grant to XOMA, so long as this Agreement is in force, an exclusive, royalty-free, sublicensable (to Sublicensees only) right under the Agreement Improvements to make, have made, use, sell, offer for sale and import, including the Development and Commercialization of, Licensed Products in the Territory.

12.2 No Other Rights. Except for the rights expressly granted under this Agreement, no right, title, or interest of any nature whatsoever is granted whether by implication, estoppel, reliance or otherwise by either Party to the other Party. ALL RIGHTS WITH RESPECT TO TECHNOLOGY OR INTELLECTUAL PROPERTY RIGHTS THAT ARE NOT SPECIFICALLY GRANTED HEREIN ARE RESERVED TO THE OWNER OF SUCH TECHNOLOGY OR INTELLECTUAL PROPERTY RIGHTS.

12.3 Intellectual Property Litigation.

(a) Notice and Cooperation. Each Party shall promptly notify the other, to the extent such Party becomes aware of it, (i) of any suspected or threatened infringement of any Servier Patent(s), (ii) of any claim that XOMA's, or its Affiliates' or Sublicensees', exercise of the rights granted under the Servier Intellectual Property hereunder infringes any rights or patents of a Third Party, (iii) of any claims of alleged patent infringement by XOMA or Servier with respect to the manufacture, use, sale, offer for sale or importation of the API or the Licensed Products, (iv) of any suspected or actual misappropriation of Servier Know-How, and (v) of any infringement or dilution of the Trademark.

(b) Paragraph IV Notice. As soon as permissible and practicable, XOMA shall list all Servier Patents that are permitted by applicable Regulatory Authorities in the "Orange Book" as pertaining to the Initial Licensed Product or Additional Combination Product(s), as the case may be. In the event that either Party receives a patent certification notice in accordance with 21 U.S.C. §§ 355(b)(2)(A)(iv) or (j)(2)(A)(vii)(IV), as amended (a "***Paragraph IV Notice***"), relating to the Servier Intellectual Property, that Party shall promptly provide a copy of such Paragraph IV Notice to the other Party, in any event within [*] Business Days after receipt by the first Party.

(c) XOMA Right to Assert Claim/Defend Claim. XOMA may in its sole discretion, but shall not be required to, bring legal action against any of the actions identified in Section 12.3(a)(i), (iv) or (v), or Section 12.3(b), in the Territory, or defend against any claim identified in Section 12.3(a)(ii) or (iii) in the Territory. Prior to bringing or defending a legal action, XOMA shall discuss its intention with Servier, and shall consider Servier's input in good faith. In the event XOMA brings or defends against any such action, which shall be at its own cost, Servier shall cooperate fully with XOMA at Servier's expense, including if required to bring such action, furnishing a power of attorney and furnishing documents and information and executing all necessary documents as XOMA may request. At Servier's expense, XOMA shall provide Servier: (i) with a summary or list of all material documents relating to the merits of the action that XOMA intends to file with the court (including but not limited to all briefs) and, if requested by Servier, advance copies of all of the foregoing, and (ii) a reasonable amount of time for Servier to review and comment upon the documents, and XOMA shall consider Servier's comments in good faith. At Servier's expense, XOMA shall copy Servier on all material correspondence between XOMA and the other side or its counsel that pertains directly to the merits of the action. Similarly, at Servier's expense, XOMA shall provide Servier with copies of all material pleadings, briefs, and merits-related correspondence received from the other side in the action, and shall otherwise keep Servier apprised of all material developments in the litigation. All materials provided by XOMA to Servier under this Section 12.3(c) shall be treated as confidential. In any such litigation brought or defended by XOMA, XOMA shall be entitled to receive all of the damages and other proceeds (compensatory as well as enhanced or punitive damages) and, after deducting its reasonable attorneys' fees and other litigations costs and expenses, the remainder of such damages (if any) shall be treated as Net Sales and XOMA shall calculate and pay to Servier the applicable royalty under Article 11. In any action or defense initiated by XOMA under this Section 12.3(c), Servier shall be entitled to, and if legally required shall, join the action so long as XOMA retains at all times the sole right to direct the action (including the choice of its own counsel). Servier is entitled to be independently represented by counsel of its choice, at its expense. In case XOMA and Servier agree to jointly prosecute a claim or jointly defend against a claim, the Parties shall each be entitled to reimbursement of its reasonable attorneys fees and out-of-pocket costs from the damages or settlement proceeds, after which the remainder of the proceeds shall be treated as Net Sales and XOMA shall calculate and pay to Servier the applicable royalty under Article 11. It is understood and agreed that proceeds from any settlement or damages award shall, after reimbursement to the Parties of their reasonable attorneys fees and out-of-pocket costs, be counted towards achievement of a sales milestone event under Article 11 above (it being understood that for the purposes of such sales milestones, the Parties shall agree upon a reasonable allocation of such proceeds among calendar years in proportion to what Net Sales during such years would have been).

(d) Servier Right to Assert/Defend Claim. XOMA shall promptly notify Servier if XOMA decides that it will not bring legal action or defend under Section 12.3(c), and in any event, said notice shall be provided the later of: (i) [*] from the notice provided pursuant to Section 12.3(a) or (ii) [*] weeks prior to the time limit, if any, set forth in the appropriate laws and regulations for the filing, defense, or answer of such actions (including, but not limited to the 45-day limit under U.S. law for filing an infringement action against an ANDA filing). Upon receipt by Servier of XOMA's notice of intent to decline action, or in the event that no communication is received by Servier, within [*] after notice was provided under Section 12.3(a), Servier may, but shall not be required to, bring legal action or defend against any claim identified in Section 12.3(a), in which event Servier shall act in its own name and at its own cost and XOMA shall cooperate fully with Servier at XOMA's expense, including if required to bring such action, furnishing to Servier a power of attorney. In any such litigation brought by Servier, Servier shall be entitled to receive all of the damages or settlement proceeds after reimbursement to XOMA of its reasonable attorneys fees and out-of-pocket costs from the damages or settlement proceeds.

(e) Cooperation. When either Party is bringing or defending an action under this Article 12, then (i) upon request by a Party defending any claim of the type described in Section 12.3(a)(iii), the other Party will assist in the defense against such claim, and (ii) neither Party shall settle, consent to judgment or otherwise voluntarily dispose of the suit or action without the prior written consent of the other Party, which consent shall not be unreasonably delayed, conditioned, or withheld.

12.4 Drug Price Competition and Patent Rights Term Restoration Act of 1984.

(a) Subject to Section 12.5, XOMA shall fully cooperate with Servier at Servier's expense with respect to all patent applications, and take all actions necessary to obtain patent extensions, for any Servier Intellectual Property pursuant to the provision of, and to obtain the benefits under, the Drug Price Competition and Patent Rights Term Restoration Act of 1984 and any amendments thereof. XOMA will act diligently under the terms of this Agreement to petition for the maximum extension possible under a reasonable interpretation of the relevant law. Servier agrees to execute such further authorization and instruments and take such further actions as may be requested by XOMA to implement the foregoing. The Parties agree to cooperate in an effort to avoid loss of any rights which may otherwise be available to the Parties hereto under the provisions of the Drug Price Competition and Patent Term Restoration Act of 1984 as follows:

(i) Servier shall provide relevant patent information to XOMA so that XOMA, as NDA applicant, may inform the FDA.

(ii) Servier shall grant XOMA access and cross-reference rights to relevant Servier Data, such as clinical or other regulatory files.

(b) As to the matters listed below, XOMA shall formulate its strategy and present the strategy, along with all material documentation, to Servier not less than [*] weeks in advance of the start of any relevant statutory time period for taking action. XOMA shall discuss with Servier the proposed strategy and shall take Servier's comments in good faith (including, but not limited to, any opinions of counsel provided by Servier) regarding:

(i) which of Servier's Intellectual Property shall be extended by XOMA (or its Affiliates) during the [*] day period following NDA approval; and

(ii) appropriate listings in the Orange Book within the proper timeframe under the relevant law.

XOMA shall have the final decision as to the foregoing matters.

(c) The Parties shall cooperate with each other in obtaining patent term restoration or supplementary protection certificates or their equivalents in any country worldwide where applicable to the Servier Intellectual Property.

12.5 Patent Prosecution, Maintenance and Ownership. Servier, at its expense, shall file, prosecute and maintain the Servier Intellectual Property, and shall be responsible for all post-grant proceedings and actions, including patent interferences, reexaminations, reissuances, appeals, oppositions and revocation proceedings. XOMA shall have reasonable access to the files and other material included in all such proceedings and actions as well as all pending applications in the Servier Intellectual Property in the Territory. Servier shall keep XOMA reasonably informed with respect to the prosecution thereof including providing XOMA with copies of each office action with enough lead time to enable XOMA to review same and comment on any of Servier's proposed responses thereto. Servier, its agents and attorneys, will give due consideration to all reasonable suggestions and comments of XOMA regarding any aspect of such patent prosecution or proceeding. If Servier intends to abandon any Servier Intellectual Property, then XOMA shall have the option to obtain ownership of such Servier Intellectual Property free of charge and to continue to prosecute and maintain such Servier Intellectual Property in its own name and at its own expense. Servier shall notify XOMA of such intent at least [*] days prior to Servier abandoning such Intellectual Property. Servier shall provide XOMA with reasonable assistance and cooperate with XOMA regarding the prosecution and maintenance of any Intellectual Property that XOMA has elected to obtain.

12.6 Patent Marking. XOMA and its Affiliates or Sublicensees will mark all API or Licensed Product sold or otherwise disposed of by XOMA or its Affiliates in compliance with applicable patent marking provisions in the Territory.

ARTICLE 13
PUBLICATION; CONFIDENTIALITY

13.1 Publications.

(a) Press Releases. Each Party shall be free to:

(i) issue press releases or other public statements relating to, either Party's activities concerning the Licensed Products, including but not limited to regulatory or commercial activities; *provided*, *however*, that the Party proposing to issue such press release shall have provided to the other Party a draft of such press release at least [*] Business Days (or a shorter period of time if required by Law) prior to the release thereof and shall have considered, in good faith, the observations and suggestions, if any, of the other Party with respect thereto;

(ii) present at symposia and other meetings of healthcare professionals, and international, national or regional congresses, conferences or meetings organized by a professional society or organization (any such occasion, a "***Scientific Meeting***"); *provided*, *however*, that (A) the Party presenting at any such Scientific Meeting shall have complied with the provisions of Section 13.1(c) with respect to such presentation, and (B) XOMA shall not organize or sponsor any satellite symposia outside the Territory, and (C) Servier shall not organize or sponsor any satellite symposia in the Territory.

(iii) publish in medical and scientific journals and similar publications ("***Medical Journals***") articles and papers, including, but not limited to, primary reports of data, pooled analyses, theses, dissertations and review papers concerning the Licensed Products which have been prepared by or on behalf of one of the Parties, for publication outside or in the Territory and related to studies conducted after the Original Agreement Effective Date outside or in the Territory concerning the Licensed Products (each a "***Scientific Paper***"); *provided*, *however*, that the Party proposing to publish such Scientific Paper shall have complied with the provisions of Section 13.1(b) with respect to such Scientific Paper; and

(iv) disclose any clinical trial data concerning the Licensed Products in clinical trial registries;*provided*, *however*, that the Party proposing to make such disclosure shall have provided the other Party at least [*] Business Days prior to such disclosure, a detailed description of the proposed disclosure and shall have, in good faith, considered the comments made by the other Party.

(b) Scientific Papers. Each Party shall provide to the other, prior to submission of any Scientific Paper to a Medical Journal, a draft of such Scientific Paper. Commencing with the receipt of such draft Scientific Paper, the receiving Party shall have [*] Business Days to notify the sending Party of its observations and suggestions with respect thereto; it being understood that, during such [*]-day period, no submission for publication thereof shall take place and the Parties shall discuss these suggestions. The Party proposing to publish such Scientific Paper shall, in good faith, consider the comments made by the other Party, particularly if the Scientific Paper involves disclosure of confidential information or disclosure that may be otherwise prejudicial to the other Party's opportunity to obtain any patent rights. The sending Party shall provide to the receiving Party copies of any final Scientific Paper accepted by a Medical Journal, not less than [*] Business Days prior to the planned publication thereof (upon availability and distribution of such information assuming that providing such information is acceptable taking into consideration the publishers' need to comply with any healthcare compliance guidelines).

(c) Scientific Meetings. Each Party shall provide to the other, prior to submission or presentation, as the case may be, copies of (i) all abstracts that will be submitted for publication in connection with any international Scientific Meeting (and with respect to XOMA, also with any national Scientific Meeting) and (ii) all posters or other written materials that will be presented at such Scientific Meeting, in each case, concerning the Licensed Product which have been prepared by or on behalf of one of the Parties, for submission or presentation outside or in the Territory. Commencing with the receipt of any such abstract, poster or other written material the receiving Party shall have [*] Business Days to inform the sending Party of its observations and suggestions with respect thereto; it being understood that, during such [*] Business Day period, no submission or presentation thereof shall take place and the Parties shall discuss these suggestions. The Party proposing to publish such an abstract or make such a presentation shall, in good faith, consider the comments made by the other Party, particularly if the abstract or presentation involves disclosure of confidential information or disclosure that may be otherwise prejudicial to the other Party's opportunity to obtain any patent rights. The sending Party shall provide to the receiving Party copies of all final abstracts and all final posters or other written materials accepted for publication or to be presented [*] Business Days prior to the planned publication or presentation thereof (upon availability and distribution of such information assuming that providing such information is acceptable taking into consideration the publishers' need to comply with any healthcare compliance guidelines). The Parties shall use good faith and commercially reasonable efforts to provide the other Party with draft slide presentations in accordance with the foregoing time periods.

(d) Each Party agrees that it will not unreasonably withhold or delay its consent to requests for extensions of the above timelines (in Sections 13.1(a), (b) and (c)) in the event that material late breaking data becomes available. In order to optimize the review time lines set forth in Sections 13.1(a), (b) and (c), each Party shall nominate one individual to be included in the internal review process of the other Party.

(e) Deferral of Disclosures. If either Party believes that any proposed press release or other public statement, or any publication, presentation, or other disclosure would disclose any Confidential Information or would otherwise be prejudicial to its opportunity to obtain any patent rights, then the effected Party shall notify the publishing Party within the timeframe provided for in Section 13.1(f) as applicable, or if not applicable, as soon as practicable after receipt of the proposed press release or other public statement, publication, presentation, or other disclosure, and the publishing Party shall refrain from making such press release, other public statement, publication, presentation or other disclosure for an additional [*] days from the last day of the period otherwise provided for herein to enable the preparation and filing of any necessary patent applications.

(f) Failure to Object to Disclosure. If the Party proposing any press release or other public statement, or any publication, presentation, or other disclosure receives no objection from the other Party within the following timeframes:

(i) [*] Business Days after the other Party's receipt of any proposed press release or other public statement pursuant to Section 13.1(a)(i);

(ii) [*] Business Days after the other Party's receipt of any proposed scientific paper to be submitted to a medical journal pursuant to Section 13.1(a)(ii);

(iii) [*] Business Days after the other Party's receipt of any proposed abstracts that will be submitted for publication in connection with a Scientific Meeting and any posters, slide presentations or other written materials that will be presented at a Scientific Meeting pursuant to Section 13.1(a)(iii);

(iv) [*] Business Days after the other Party's receipt of any notification of any proposed disclosure of clinical trial data pursuant to Section 13.1(a)(iv);

then the Party proposing such press release, other public statement, publication, presentation, or other disclosure shall be free to proceed with the same without further reference to or agreement from other Party.

(g) No Rights to Use Name of Other Party. Neither Party shall use the name of the other Party in any publicity or advertising without the prior written consent of the other Party.

(h) Existence and Terms of Agreement. As to the announcement of the existence and terms of the collaboration between the Parties under this Agreement and the Trademark Agreement, without first obtaining the written consent of the other Party and agreement upon the nature and text of such announcement or disclosure, the Parties shall not publicly disclose any information about any such agreements to Third Parties; *provided*, *however*, that a Party may make any disclosure where in a Party's reasonable legal opinion it is required by applicable Law or applicable stock exchange regulation or legal process on the condition that the disclosing Party shall notify the other Party prior to making such disclosure, and the other Party shall have the right to review such disclosure prior to release and to comment on such disclosure and the disclosing Party shall reasonably implement such comments; *provided*, *further*, that the disclosing Party shall not be required to delay such disclosures by more than [*] Business Days or a shorter period of time if required by Law. In connection with any filing by either Party of a copy of this Agreement and the Trademark Agreement with the U.S. Securities and Exchange Commission (or the national securities exchange or other stock market on which such Party's securities are traded), the filing Party shall endeavor to obtain confidential treatment of economic and trade secret information. Reasonably in advance of filing, the filing Party shall provide to the other Party a copy of the proposed filing and the Parties shall work cooperatively in good faith, taking into consideration the other Party's suggestions, regarding the information for which the filing Party will seek to obtain confidential treatment. Each Party agrees that it shall reasonably cooperate with the other with respect to all disclosures regarding this Agreement and the Trademark Agreement to the U.S. Securities Exchange Commission or any other Governmental Authority, including requests for confidential treatment of proprietary information of either Party included in any such disclosure.

(i) Obligations. It is understood and agreed that XOMA's obligations to inform and cooperate with Servier under this Section 13.1 (excluding Sections 13.1(g) and (h)) shall only apply with respect to the Territory, and Servier's obligations to inform and cooperate with XOMA under this Section 13.1 (excluding Sections 13.1(g) and (h)) shall only apply with respect to Canada, the member states of the European Union, Japan and Mexico and such other countries as may reasonably be specified by XOMA to Servier from time to time in writing. Notwithstanding the foregoing, the Parties shall comply with the provisions of Section 13.1 in its entirety in relation to publication submissions in international medical journals.

13.2 Confidential Information; Exceptions. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing, the Parties agree that the receiving Party shall keep confidential and shall not publish or otherwise disclose or use for any purpose other than as provided for in this Agreement any Confidential Information during the term of this Agreement hereof and for a period of [*] years following the termination of this Agreement; *provided*, *however*, that the obligation to keep a Party's trade secrets confidential shall survive for such time as such information remains a protected trade secret. For the avoidance of doubt, Agreement Improvements shall be deemed to be the Confidential Information of both parties. Notwithstanding the foregoing, Confidential Information shall not include any information to the extent that it can be established by written documentation of the receiving Party that such information:

(a) was already known to the receiving Party, other than under an obligation of confidentiality, except to the extent such obligation has expired or an exception is applicable under the relevant agreement pursuant to which such obligation established, at the time of disclosure;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of this Agreement; or

(d) was disclosed to the receiving Party, other than under an obligation of confidentiality except to the extent such obligation has expired or an exception is applicable under the relevant agreement pursuant to which such obligation established, by a Third Party who had no obligation to the disclosing Party not to disclose such information to others.

13.3 Authorized Disclosure. Except as expressly provided otherwise in this Agreement, each Party may use and disclose Confidential Information of the other Party as follows: (a) under appropriate confidentiality provisions substantially equivalent to those in this Agreement, in connection with the performance of its obligations or as reasonably necessary or useful in the exercise of its rights under this Agreement in complying with the terms of agreements with Third Parties existing as of the Original Agreement Effective Date; (b) to the extent such disclosure is reasonably necessary in filing or prosecuting patent, copyright and trademark applications in accordance with this Agreement, prosecuting or defending litigation, complying with applicable governmental regulations or the rules of any national securities exchange, obtaining regulatory approval or fulfilling post-approval regulatory obligations, or otherwise required by Law; *provided*, *however*, that if a Party intends to rely on this clause (b) to make any such disclosure of the other Party's Confidential Information it will, except where impracticable for necessary disclosures, for example, in the event of medical emergency, give reasonable advance notice to the other Party of such disclosure requirement and, except to the extent inappropriate in the case of patent applications, will use commercially reasonable efforts to secure confidential treatment of such Confidential Information required to be disclosed; (c) in communication with advisors, including lawyers and accountants, on a need to know basis, in each case under appropriate confidentiality provisions substantially equivalent to those of this Agreement; or (d) to the extent mutually agreed to by the Parties. Notwithstanding any provision of this Agreement to the contrary, nothing herein shall prevent either Party from making any disclosure required by Law in a timely manner.

ARTICLE 14
REPRESENTATIONS, WARRANTIES AND COVENANTS

14.1 By Servier as of the Original Agreement Effective Date. Servier hereby represents and warrants as of the Original Agreement Effective Date to, and covenants with, XOMA (in the case of subsections (e) through (j), (m) and (n), with respect to the Licensed Products other than ACEON and/or the API other than the ACEON API, as applicable, only) as follows:

(a) Servier is duly organized and validly existing under the Laws of its jurisdiction of incorporation and has full corporate power and authority, and has taken all corporate action necessary, to enter into and perform its obligations under this Agreement.

(b) This Agreement is a legal, valid and binding obligation of Servier, enforceable against Servier in accordance with its terms. Neither the execution and delivery of this Agreement by Servier, nor the performance by Servier of its obligations hereunder, conflicts with any agreement, instrument or understanding, oral or written, by which Servier is bound.

(c) No authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, under any applicable Law currently in effect, is required in connection with the execution and delivery of this Agreement by Servier, or the performance by Servier of its obligations hereunder.

(d) To Servier's knowledge, after due inquiry, the Servier Intellectual Property is valid and enforceable. To Servier's knowledge, there are no claims written or otherwise, asserting the invalidity, misuse, unenforceability, unregisterability, non-infringement or misappropriation of the Servier Intellectual Property, and Servier knows, after due inquiry, of no facts or circumstances that could reasonably be likely to give rise to such a claim.

(e) To Servier's knowledge, after due inquiry, there are no adverse claims regarding ownership of the Servier Intellectual Property, and none of the Servier Intellectual Property is subject to any liens, charges or encumbrances (except for the licenses granted to XOMA hereunder and under the Trademark Agreement and to Abbott and its sublicensees in respect of perindopril erbumine as in effect on the Original Agreement Effective Date).

(f) Except for the licenses granted to XOMA hereunder and under the Trademark Agreement and to Abbott and its sublicensees in respect of perindopril erbumine as in effect on the Original Agreement Effective Date, Servier has not granted any rights or licenses to any Third Party under any of the Servier Intellectual Property in the Territory.

(g) To Servier's knowledge, after due inquiry, none of the Development, manufacture or Commercialization of Perindopril API as contemplated by this Agreement in the Territory interferes with, infringes, misappropriates or otherwise violates any intellectual property rights of any Third Party. To Servier's knowledge, none of the Development, manufacture or Commercialization of Amlodipine API or Indapamide API as contemplated by this Agreement in the Territory interferes with, infringes, misappropriates or otherwise violates any intellectual property rights of any Third Party.

(h) Servier has made available to XOMA all information in its possession or control relating to the API or any Licensed Products and the Development, manufacture, and Commercialization of the API and Licensed Products, that is material to the marketability of the Licensed Products in the Territory. Without limiting the foregoing, Servier has disclosed to XOMA the existence of any patent searches or opinions that it has received or of which it is aware relating to the API or any Licensed Products, or the Development, manufacture or Commercialization of the API and/or the Licensed Products, whether within or outside the Territory, and Servier has made available to XOMA all material information from such patent searches and all material information that forms the basis for such patent opinions.

(i) To Servier's knowledge, after due inquiry, all of the studies, tests and preclinical and clinical trials of any of the Licensed Products have been and as of the Original Agreement Effective Date are being undertaken in compliance with all applicable Laws and guidelines.

(j) None of Servier, any of its Affiliates or any Third Party acting by or on behalf of Servier or any of its Affiliates in any capacity concerning or in connection with the Development, manufacture or Commercialization of API or any Licensed Products has been debarred or is subject to debarment, and none of Servier and any of its Affiliates shall engage or use any Third Party in any capacity concerning or in connection with the Development, manufacture or Commercialization of API or any Licensed Products that has been debarred or is otherwise subject to an adverse regulatory decision. Servier agrees to notify XOMA in writing immediately if it or any entity acting on its behalf in any capacity concerning or in connection with the Development, manufacture or Commercialization of API or any Licensed Products is debarred or becomes the subject of any threatened or pending action, suit, claim, investigation, legal or administrative proceeding relating thereto.

(k) None of Servier or its Affiliates, as applicable, and to Servier's knowledge, the other party or any person or entity acting by or on behalf of such other party, is in breach or default under any commitment to which it is a party with respect to Servier's obligations and/or XOMA's rights under their Agreement.

(l) Servier shall, and shall ensure that its Affiliates and any entity acting on its or their behalf shall, carry out their obligations pursuant to this Agreement, consistent with all applicable Laws and industry standards.

(m) To Servier's knowledge, there has occurred no decision, action, proceeding or inaction by any Regulatory Authority that has resulted in or could reasonably be expected to result in, individually or in the aggregate, the material delay of or a material adverse effect on, the Marketing Approval of any API or Licensed Product within the past five (5) years.

(n) To Servier's knowledge, no event, development or change in circumstance is in existence or has occurred and is continuing that would reasonably be expected to materially adversely affect the scope of the Marketing Approval; *provided* that no representation or warranty is made with respect to the possible effects of the U.S. Patient Protection and Affordable Care Act of 2010, known as the Healthcare Reform Act.

(o) No rights granted to XOMA pursuant to this Agreement and no actions authorized hereby to be undertaken by XOMA, its Sublicensees or designees would be in conflict or breach with or would otherwise violate or cause a default under any agreement between Servier or any of its Affiliates and any Third Party.

14.2 By Servier as of the Effective Date. Servier hereby represents and warrants as of the Effective Date to, and covenants with, XOMA as follows:

(a) The representations, warranties and covenants made by Servier in Section 14.1 (other than in subsection (g) thereof) are true and correct as of the Effective Date (in the case of Sections 14(e), (f), (h) through (j), (m) and (n), with respect to ACEON and/or the ACEON API, as applicable, only).

(b) To Servier's knowledge, after due inquiry, none of the Development, manufacture or Commercialization of ACEON or ACEON API as contemplated by this Agreement in the Territory interferes with, infringes, misappropriates or otherwise violates any intellectual property rights of any Third Party.

14.3 Limitation on Liability. XOMA agrees that Servier shall have no liability to XOMA for breach or violation of any representation, warranty or covenant made in Section 14.2 to the extent such breach or violation was caused by a breach or violation of any representation, warranty or covenant made by Abbott pursuant to the Abbott Termination Agreement.

14.4 By XOMA as of the Original Agreement Effective Date. XOMA hereby represents and warrants as of the Original Agreement Effective Date to, and covenants with, Servier as follows:

(a) XOMA is duly organized and validly existing under the Laws of its jurisdiction of incorporation and has full corporate power and authority, and has taken all corporate action necessary, to enter into and perform its obligations under this Agreement.

(b) This Agreement is a legal, valid and binding obligation of XOMA, enforceable against XOMA in accordance with its terms. Neither the execution and delivery of this Agreement by XOMA, nor the performance by XOMA of its obligations hereunder, conflicts with any agreement, instrument or understanding, oral or written, by which XOMA is bound.

(c) No authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, under any applicable Law currently in effect, is required in connection with the execution and delivery of this Agreement by XOMA, or the performance by XOMA of its obligations hereunder.

(d) XOMA shall, and shall ensure that all of its authorized Sublicensees carry out their obligations pursuant to this Agreement, consistent with all applicable Laws and industry standards.

(e) None of XOMA, any of its Affiliates or any Third Party acting by or on behalf of XOMA or any of its Affiliates in any capacity concerning or in connection with the manufacture, Development or Commercialization of API or any Licensed Products has been debarred or is subject to debarment, and none of XOMA and any of its Affiliates shall engage or use any Third Party in any capacity concerning or in connection with the Development, manufacture or Commercialization of API or any Licensed Products that has been debarred or is otherwise subject to an adverse regulatory decision. XOMA agrees to notify Servier in writing promptly if it or any entity acting on its behalf in any capacity concerning or in connection with the Development, manufacture or Commercialization of API or any Licensed Products is debarred or becomes the subject of any threatened or pending action, suit, claim, investigation, legal or administrative proceeding relating thereto.

(f) To XOMA's knowledge, no event, development or change in circumstance is in existence or has occurred and is continuing that would reasonably be expected to materially adversely affect the scope of the Marketing Approval; *provided* that no representation or warranty is made with respect to the possible effects of the U.S. Patient Protection and Affordable Care Act of 2010, known as the Healthcare Reform Act.

(g) XOMA acknowledges that (i) it has reviewed all documents that Servier has provided to XOMA in connection with this Agreement and the transactions contemplated hereby and (ii) Servier has responded to all of XOMA's requests and questions with respect thereto.

14.5 By XOMA as of the Effective Date. XOMA hereby represents and warrants as of the Effective Date to, and covenants with, Servier that the representations, warranties and covenants made by XOMA in Section 14.4 are true and correct as of the Effective Date (in the case of Sections 14(e) through (g), with respect to ACEON and/or the ACEON API, as applicable, only).

14.6 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL PATENT RIGHTS AND KNOW-HOW PROVIDED HEREUNDER ARE PROVIDED AS-IS. SERVIER MAKES NO REPRESENTATION OR WARRANTY WITH REGARD TO ANY PATENTS, KNOW-HOW, DATA, LICENSED PRODUCT OR API OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO ABBOTT'S DEVELOPMENT AND COMMERCIALIZATION OF ACEON. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SERVIER DISCLAIMS, AND WAIVES ALL WARRANTIES OF AND TO, XOMA, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY LICENSED PRODUCT OR API OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, AND ANY IMPLIED WARRANTY OF NONINFRINGEMENT.

ARTICLE 15
TERM AND TERMINATION

15.1 Term. The term of this Agreement commenced on the Original Agreement Effective Date and shall continue in effect (a) for a period of eight (8) years thereafter or (b) until the expiration of the last-to-expire patent included in the Servier Intellectual Property, whichever is later, in either case unless terminated pursuant to this Article 15 (the "***Initial Period***"). After the Initial Period, the duration of this Agreement will be automatically extended for successive one-year periods unless one of the Parties notifies the other Party of its decision not to extend the duration of this Agreement beyond the Initial Period or any subsequent extension. Such notice shall be delivered in writing at least [*] months before any anniversary date of this Agreement. Notwithstanding the foregoing, this Agreement shall automatically terminate upon termination of the Trademark Agreement.

15.2 Termination By Servier. Notwithstanding the above and without limiting any other rights or remedies either Party may have under this Agreement or otherwise, Servier shall have the right to terminate this Agreement upon written notice to XOMA within [*] months after the occurrence of any of the following:

(a) if XOMA breaches, in any material respect, any of its representations, warranties, covenants or obligations under this Agreement, and such breach is not cured within [*] days after XOMA's receipt of written notice of such breach; or

(b) if XOMA suffers an Insolvency Event; or

(c) if the Marketing Approval of the Initial Licensed Product is not obtained for the Territory by the Approval Deadline or a "complete response" letter is received from the FDA relating to the Initial Licensed Product; or

(d) if Servier unilaterally decides to withdraw one or more of the Licensed Products in the European Union for Safety and Public Health Reasons; *provided*, that if such withdrawal relates to less than all the Licensed Products, then Servier's right to terminate shall apply only to such withdrawn Licensed Product(s); or

(e) if the applicable Minimum Net Sales Amount has not been achieved with respect to a period of [*] consecutive fiscal quarters and XOMA has failed to pay the additional amount indicated in Section 9.5 with respect to such period in accordance with the provisions thereof within [*] days after XOMA's receipt of written notice of such failure; or

(f) if, following notice from XOMA of its intention to either Transfer or sublicense its rights and obligations under this Agreement following a Specified Change of Control as provided in Section 18.10, such Transfer or sublicense is not completed within [*] months after Servier's receipt of such notice; *provided*, that Servier shall have no right to terminate this Agreement pursuant to this clause (f) if XOMA notifies Servier prior to the expiration of such [*] month period that it has ceased its efforts to so Transfer or sublicense and in lieu thereof intends for clause (c) of Section 18.10 to apply; or

(g) if XOMA [*] but has not [*], provided the Parties have executed the amendment mentioned in Section 3.1 (a) above; or

(h) if XOMA [*] because [*], and XOMA [*]; or

15.3 Termination By XOMA. Notwithstanding the above and without limiting any other rights or remedies either Party may have under this Agreement or otherwise, XOMA shall have the right to terminate this Agreement upon notice to Servier within [*] months after the occurrence of any of the following:

(a) if Servier breaches, in any material respect, any of its representations, warranties, covenants or obligations under this Agreement, and such breach is not cured within [*] days after Servier's receipt of written notice of such breach; or

(b) if Servier suffers an Insolvency Event; or

(c) if (i) at any meeting between representatives of XOMA and representatives of the FDA regarding the Initial Licensed Product prior to the filing of an NDA for the Initial Licensed Product, XOMA is informed by the FDA that one or more additional clinical trials will be required before such an NDA will be accepted by the FDA, or (ii) additional pre-clinical or other Data or Development is required for Marketing Approval of the Initial Licensed Product amounting to not less than [*] U.S. Dollars (US$[*]) or delaying the NDA submission for the Initial Licensed Product by more than [*] months, *provided* that XOMA expressly waives the foregoing termination right solely in relation to the Study; or

(d) if a "complete response" letter is received from the FDA relating to the Initial Licensed Product; or

(e) if the Marketing Approval of the Initial Licensed Product is not obtained for the Territory by the Approval Deadline; *provided*, that, in the event the NDA for the Initial Licensed Product has been submitted prior to the Approval Deadline, any such termination by XOMA will not become effective until either a "complete response" letter or a Marketing Approval is received from the FDA relating to the Initial Licensed Product. It is understood and agreed that, notwithstanding the foregoing proviso, XOMA shall have no financial obligations under this Agreement once it has duly exercised its right of termination under this clause (e), regardless of whether such termination is yet effective; or

(f) if the Marketing Approval for the Initial Licensed Product does not include three (3) years of exclusivity for the Initial Licensed Product pursuant to Section 505(c)(3)(E) or (j)(5)(F) of the U.S. Food, Drug and Cosmetic Act and the rules and regulations thereunder, including 21 C.F.R. § 314.108, unless the failure of such Marketing Approval to include such a period of exclusivity results from XOMA's failure to request same; or

(g) if XOMA unilaterally decides to withdraw the Licensed Product in the Territory for Safety and Public Health Issues; *provided*, that if such withdrawal relates to less than all the Licensed Products, then XOMA's right to terminate shall apply only to such withdrawn Licensed Product(s); and *provided*, *further*, that if any such withdrawal is not in response to a request by or at the suggestion of the FDA, then XOMA shall not have the right to terminate this Agreement as provided in this clause (g) but instead the one-year extension periods referred to in Section 15.1, including the then-current extension period, shall be reduced to periods of [*] months, and XOMA shall have the right to give notice of its decision not to extend the duration of this Agreement as provided in Section 15.1 at least [*] months prior to the expiration of any extension period.

15.4 Partial Termination in Certain Circumstances. If XOMA breaches, in any material respect, its financial commitments to Medpace, Inc. pursuant to Section 4A.5 of that certain Amendment No.1 to the Master Services Agreement dated as of October 4th, 2011 between Medpace, Inc. and XOMA (US) LLC (the "Medpace Agreement"), then Servier may, at its option, satisfy XOMA's financial commitments to Medpace, Inc. thereunder. If Servier so elects, the licenses and other rights and obligations of the Parties hereunder shall continue in full force and effect, and XOMA shall have an additional financial obligation to Servier (the "Reimbursement Obligation") in an amount equal to the payment(s) made by Servier to Medpace, Inc. in satisfaction of XOMA's aforementioned commitments to Medpace, Inc. Within [*] days following receipt by XOMA of an invoice from Servier for such amount, together with confirmation of Servier's payment(s) to Medpace, Inc., either (a) XOMA shall pay such amount to Servier in full or (b) (i) the licenses and other rights and obligations of both Parties hereunder with respect to the Initial Licensed Product and the Additional Combination Products (but not with respect to ACEON) shall terminate as of such [*] day and (ii) XOMA will pay to Servier, within [*] days following the end of each [*] beginning with the first full calendar [*] after this Section 15.4(b) takes effect, an amount equal to [*]% of ACEON Gross Sales (as defined below) for such [*], which amounts shall be applied to the Reimbursement Obligation and which payments shall continue until the Reimbursement Obligation is paid in full, not to exceed, however, [*] months from the date of receipt by XOMA of the invoice from Servier. "ACEON Gross Sales" means, for a particular period, the Gross Sales of ACEON by XOMA or through or by its Sublicensees in the Territory through customary channels of distribution to independent Third Parties in bona fide arms length sales for such period.

15.5 Effects of Termination.

(a) The termination or expiration of this Agreement shall not affect any payment of any debts or obligations accruing prior to such date of termination or expiration. Articles 1, 10, 13, 14, 16, 17 and 18 and Sections 12.3 and 15.5 shall survive the termination or expiration of this Agreement.

(b) Upon termination or expiration of this Agreement in its entirety, (i) XOMA shall terminate all activities related to the Commercialization of Licensed Products, and shall use commercially reasonable efforts to return to Servier or destroy, at Servier's option, all documents (including copies) of any kind concerning the API, Servier Know-How or the Licensed Products received from Servier or otherwise created in the course of performing this Agreement; (ii) XOMA and its Sublicensees shall promptly, diligently and continuously provide to Servier or its designee(s) all assistance reasonably necessary in order to assist Servier or its designee(s) in transitioning all aspects of the Parties' relationship hereunder, including but not limited to all work in progress, regulatory submissions, Agreement Improvements and XOMA Know-How, to Servier or its designee; and (iii) XOMA shall transfer and assign to Servier or its designee(s) all previously undisclosed Data and any Regulatory Filings relating to the Licensed Products that are in XOMA's possession (including and but not limited to any IND, NDA, Marketing Approval or any approval for any Licensed Product labeling or Promotional Materials owned by or held in the name of XOMA or its Affiliates), including the ownership thereof.

ARTICLE 16
DISPUTE RESOLUTION

16.1 Arbitration. All disputes and claims arising out of or in connection with this Agreement other than those arising out of or relating to the infringement, validity and/or enforceability of any Patent (each, a "***Dispute***") shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules (each such arbitration, an "***Arbitration***"). Each Arbitration will be conducted in English and all foreign language documents shall be submitted in the original language and, if so requested by any arbitrator or Party, shall also be accompanied by a translation into English. The Arbitration proceedings shall take place in Zurich, Switzerland. The arbitrator(s) in any Arbitration shall be bound by and shall strictly enforce the terms of this Agreement. The decision of the arbitrator(s) shall be final and binding on each Party and its respective successors and assigns, and judgment may be entered thereupon in any court of competent jurisdiction, consent to which is hereby given irrevocably. All expenses of any arbitration pursuant to this Section 16.1, including fees and expenses of the Parties' attorneys, the arbitrators and any witness produced at the request of the arbitrators, shall be paid by the non-prevailing Party.

16.2 Request for Arbitration. In the event of any Dispute, either Party shall be entitled to deliver written notice to the other Party specifying, in reasonable detail, the cause of action (the "***Request for Arbitration***"). Following delivery of a Request for Arbitration by either Party, Arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce in effect at the time of such Arbitration, save as varied by this Agreement or in writing signed by the Parties hereto. The decision of the arbitrators shall be by majority vote and shall be delivered in writing to the Parties.

16.3 Confidential Results. Except to the limited extent necessary to comply with applicable Law, legal process, with a court order, to enforce a final settlement agreement or to secure enforcement of, or a judgment on, the arbitrators' award, the Parties agree that the existence, terms and content of any arbitration proceeding entered into pursuant to this Agreement, all information and documents disclosed in arbitration by either Party or evidencing any arbitration results, award, judgment or settlement, or the performance thereof, and any allegations, statements and admissions made or positions taken by either Party in an arbitration proceeding shall be treated and maintained in confidence and are not intended to be used or disclosed for any other purpose or in any other forum.

ARTICLE 17
INDEMNIFICATION

17.1 By XOMA. XOMA shall indemnify, defend, and hold harmless Servier, the Affiliates of Servier, and their respective direct and indirect, past, present and future officers, directors, managers, members, partners, owners, employees, licensees, successors, and assigns (each a "***Servier Indemnitee***") from and against all Losses arising out of a claim involving a Third Party imposed upon, asserted against, or incurred by any Servier Indemnitees in connection with, arising out of or relating to the Commercialization of Licensed Products in the Territory under this Agreement (including products liability claims and all claims arising out of or relating to the supply chain); *provided*, *however*, that the foregoing indemnity shall not apply to Losses incurred as a result of Servier's or any of its Affiliates' or Sublicensees' gross negligence, willful misconduct or violation of Law (it being understood that XOMA's defense obligations shall remain in effect).

17.2 Indemnification Procedures. If any claim, demand, action or proceeding is made or commenced by any Third Party (a "***Third-Party Claim***") against any Servier Indemnitee, the Servier Indemnitee shall provide XOMA prompt written notice thereof; *provided*, *however*, that failure to issue such notice shall not affect XOMA's indemnification obligation under this Agreement except to the extent such failure materially and adversely affects the ability of XOMA to defend the Third-Party Claim. XOMA shall assume the defense and resolution of the Third-Party Claim, *provided* that the Servier Indemnitee shall have the right to participate in the defense of the Third-Party Claim at its own expense through counsel of its choice (control of the defense will remain with XOMA). XOMA shall not consent to the entry of any judgment or enter into any settlement that would require any act (including reimbursement, as described below) or forbearance on the part of the Servier Indemnitees or which does not unconditionally release the Servier Indemnitees from all liability in respect of the Third-Party Claim without the prior written consent of the Servier Indemnitee. The Servier Indemnitee may undertake the defense of the Third-Party Claim, at XOMA's expense, if (a) XOMA fails promptly to assume and diligently to prosecute the defense or (b) such Servier Indemnitee is advised by its counsel that there may be one or more legal defenses available to it which are different from or additional to those available to XOMA. XOMA shall not be obligated to pay the fees and expenses of more than one team of counsel in the event of multiple Servier Indemnitees who engage multiple counsel pursuant to the provisions of clause (b) of the preceding sentence. It is understood and agreed that should one or more Servier Indemnitees choose to engage its own counsel, counsel for XOMA shall reasonably cooperate with such counsel in all matters relating to the Third Party Claim. Furthermore, as to any monetary damage award or cash settlement in respect of a Third-Party Claim where (x) Servier's or any of its Affiliates' or Sublicensees' negligence in connection with, arising out of or relating to the manufacture of API is at least a partial cause of the actual or, with respect to a settlement, alleged damages and (y) XOMA's losses, liabilities, costs and expenses resulting from such Third-Party Claim have had or are reasonably expected to have a material adverse effect on XOMA's business or financial condition or the Development and Commercialization of the Licensed Products in the Territory pursuant to the Agreement, then, upon payment by XOMA in respect of such monetary damage award or cash settlement, Servier shall reimburse XOMA for [*] of the amount thereof, if any, that exceeds [*] U.S. Dollars (US$[*]) and is less than or equal to [*] U.S. Dollars (US$[*]).

17.3 Disclaimer of Liability for Consequential Damages. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS AND EMPLOYEES BE LIABLE UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE SUFFERED BY THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 18
MISCELLANEOUS

18.1 Assignment. This Agreement and any rights granted or obligations imposed hereunder are personal to each Party and shall not be sold, assigned, delegated or otherwise transferred (each a "***Transfer***"), directly or indirectly, by operation of law or otherwise, by either Party without the prior written consent of the other Party, which consent may be granted or withheld in such other Party's sole discretion; *provided*, *however*, that (a) either Party, at any time for any reason, may Transfer (i) this Agreement or any right or obligation hereunder, in whole or in part, to any of its Affiliates who agree to be bound by the applicable terms and conditions of this Agreement, or (ii) this Agreement in whole to any successor of such Party by merger or sale of all or substantially all of its business assets to which this Agreement relates who agrees to be bound by the applicable terms and conditions of this Agreement, and (b) XOMA, at any time, may Transfer or sublicense this Agreement to (i) a special purpose vehicle formed for the purposes of (x) obtaining XOMA's rights and obligations under this Agreement, (y) developing, making and selling Licensed Products and/or (z) raising funds to be used for the foregoing, that agrees to be bound by the applicable terms and conditions of this Agreement, or (ii) if XOMA [*] and Servier [*]. Any attempted Transfer of this Agreement or any of the rights granted hereunder in violation of this Section 18.1 shall be void *ab initio.* Any transaction that results in an entity to which this Agreement, or any rights or obligations hereunder, were Transferred in reliance on clause (a) (i) above ceasing to be an Affiliate shall be deemed a Transfer subject to this Section 18.1. The consent by any Party to any Transfer shall not constitute a waiver of the necessity for such consent in any subsequent Transfer. XOMA shall remain jointly and severally liable to Servier with respect to any obligations under this Agreement Transferred by XOMA to (i) any of its Affiliates, or (ii) any Third Party that does not have comprehensive general liability insurance at the level indicated in Article 10 above, in each case unless Servier consents to such Transfer, such consent not to be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

18.2 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of Germany to the exclusion of its conflict of law provisions.

18.3 Severability. If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. In the event any provisions shall be held invalid, illegal or unenforceable, the Parties shall use commercially reasonable efforts to substitute a valid, legal and enforceable provision, which, insofar as practical, implements the purposes hereof.

18.4 Notices. Any notices, requests, reports, approvals, designations, responses, or other communications provided for in this Agreement to be made by either of the Parties to the others shall be in writing to the other at its/their address set forth below. Any such notice or communication may also be given by hand, mail, e-mail (if sent to an e-mail address specified by the receiving Party) or facsimile. Either Party may by like notice specify an address to which notices and communications shall thereafter be sent. Any such notice, instruction or communication shall be deemed to have been delivered (a) upon receipt, if delivered by hand, (b) three (3) Business Days after it is sent by mail, (c) upon receipt by the sending Party of confirmation of receipt by the receiving Party, if sent by e-mail, and (d) one (1) Business Day or when transmitted with electronic confirmation of receipt, if transmitted by facsimile (if such transmission is on a Business Day; otherwise, on the next Business Day following such transmission).

In the case of Servier:

LES LABORATOIRES SERVIER
22 Rue Garnier
92200 Neuilly sur Seine
France
Attention: USA Zone Manager
Facsimile: +33 1 55 72 52 05

With required copies to:

LES LABORATOIRES SERVIER
22 Rue Garnier
92200 Neuilly sur Seine
France
Attention: Director of Legal Affairs
Facsimile: +33 1 57 72 39 00

In the case of XOMA:

XOMA

26 Upper Pembroke Street
Dublin 2
Ireland
Attention: Alan Kane
Facsimile: +353 1 637 3989

With required copies (which shall not constitute notice) to:

Cahill Gordon & Reindel llp
80 Pine Street
New York, NY 10005
United States of America
Attention: Geoffrey E. Liebmann
Facsimile: +1 212 269 5420
And to:

XOMA Ltd.
2910 Seventh Street
Berkeley, California 94710
United States of America
Attention: General Counsel
Facsimile: +1 510 649 7571

18.5 No Waiver. None of the provisions of this Agreement can be waived except in a writing signed by the Party granting the waiver. No failure by a Party to exercise any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any right preclude any other or further exercise of that right or the exercise of any other rights. The waiver by any Party of any breach of this Agreement shall not be deemed a waiver of any prior or subsequent breach. All remedies of either Party shall be cumulative and the pursuit of one remedy shall not be deemed a waiver of any other remedy.

18.6 Further Assurances. Each Party shall execute, acknowledge and deliver, without additional consideration, such further assurances, instruments and documents, and shall take such further actions, as the other Party shall reasonably request in order to fulfill the intent of this Agreement and the transactions contemplated hereby.

18.7 No Third-Party Beneficiaries. Nothing in this Agreement is intended or shall be construed to give any other person or entity any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein, other than Servier Indemnitees, XOMA Indemnitees and any assignee permitted under Section 18.1 above.

18.8 Relationship of the Parties. The relationship of the Parties under this Agreement shall be solely that of independent contractors and nothing herein shall be construed to create or imply any relationship of employment, agency, joint venture, partnership or any relationship other than that of independent contractors. Servier and XOMA acknowledge and agree that each of them is engaged in a separate and independent business and neither shall state, represent or imply any interest in or control over the business of the other.

18.9 Force Majeure. Neither Party hereto shall be liable for any failure to perform an obligation under this Agreement, other than a payment obligation, by reason of force majeure. For the purposes of this Agreement, the term "force majeure" shall mean circumstances that are not within the reasonable control of such Party, such as requisition or interference by any government, state or local authorities, war, strikes, lockout or other labor disputes, civil disorders or commotions, act of aggression, acts of God, energy or other conservation shortages, disease, or occurrences of a similar nature.

18.10 Specified Change of Control. Within [*] days following a Specified Change of Control, XOMA shall notify Servier of its intention to:

(a) Transfer (as defined in Article 18.1 above) its rights and obligations under the Agreement to a Third Party that does not, immediately prior to such Transfer, actively compete with Servier in the hypertension field alone or in [*] of the following therapeutic fields: stroke, acute coronary syndrome, chronic stable angina, heart failure, myocardial infarction, atherothrombosis and coronary artery diseases; or

(b) sublicense its rights and obligations under the Agreement to a Third Party that does not, immediately prior to such sublicensing, actively compete with Servier in the hypertension field alone or in [*] of the following therapeutic fields: stroke, acute coronary syndrome, chronic stable angina, heart failure, myocardial infarction, atherothrombosis and coronary artery diseases; or

(c) increase the Minimum Net Sales Amounts by [*] per cent ([*]%). Such increase shall start to apply with the next period of four (4) consecutive calendar quarters following such Specified Change of Control.

18.11 Privileges. If a Party is entitled to attorney-client or attorney work product privileges from disclosure established under public policy provisions, such privileges shall apply and may be invoked by the other Party.

18.12 Entire Agreement. This Agreement and the Exhibits and Schedules attached hereto, as well as the Trademark Agreement signed on the same date, constitute the entire understanding between the Parties relating to the subject matter hereof and thereof, and no amendment or modification to this Agreement shall be valid or binding upon the Parties unless designated as such, made in writing and signed by the representatives of such Parties. This Agreement shall supersede the Mutual Confidentiality Agreement effective as of July 6, 2009 between Servier and XOMA (US) LLC, and all Confidential Information disclosed thereunder shall be governed by the terms and conditions of this Agreement.

18.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals by their duly authorized representatives as of the date and year first above written.

LES LABORATOIRES SERVIER

By: _____
Name: Christian Bazantay
Title: Proxy

By: _____
Name: Yves Langourieux
Title: Proxy

By: _____
Name: Jean-Phillippe Seta
Title: Proxy

XOMA IRELAND LIMITED

By: _____
Name: Christopher J. Margolin
Title: Director

Duly authorized for and on behalf of XOMA Ireland Limited in the presence of:

_____

SCHEDULE 1.1(ddd)

SERVIER PATENTS

Patent No./Dates	**Title**	**Owner/Investor(s)**
US 6653336 Filing Date: March 3, 1998 Earliest Priority Date: November 19, 1997 [FR]	Combination of hypertension converting enzyme inhibitor with a diuretic for treating microcirculation disorders	Les Laboratoires Servier, France Guez, David; Schiavi, Pierre; Levy, Bernard
US 7060842 Filing Date: July 23, 2002 Earliest Priority Date: July 24, 2001 [FR]	Method for synthesis of (2S,3aS,7aS)-1(S)-alanyloctahydro-1H-indole-2- carboxylic acid derivatives as intermediates for synthesis of perindopril	Les Laboratoires Servier, France Mezel, Tibor; Porcs-Makkay, Marta; Simig, Gyula
US 6835843 Filing Date: April 5, 2001 Earliest Priority Date: April 6, 2000 [FR]	Method for synthesis of perindopril and its pharmaceutically acceptable salts	Les Laboratoires Servier, France Langlois, Pascal; Turbe, Hugues
US 6818788 Filing Date: March 30, 2001 Earliest Priority Date: March 31, 2000 [FR]	Synthesis of N-[(S)-1-carboxybutyll}- (s)-alanine esters for synthesis of perindopril	Les Laboratoires Servier, France Souvie, Jean-Claude
US 6774259 Filing Date: April 10, 2001 Earliest Priority Date: April 11, 2000 [FR]	Synthesis of N-[(S)-1-carboxybutyl]- (S)-alanine esters for synthesis of perindopril	Les Laboratoires Servier, France Souvie, Jean-Claude; Renaud, Alain
US 6696481 Filing Date: February 21, 2003 Earliest Priority Date: April 18, 2002 [FR]	L-arginine salt of perindopril and its use as an ACE inhibitor	Les Laboratoires Servier, France Damien, Gerard; Lefoulon, Francois; Marchand, Bernard

Patent No./Dates	Title	Owner/Investor(s)
US 7368580 Filing Date: July 29, 2004 Earliest Priority Date: July 31, 2003 [EP]	Method for synthesis of perindopril and its pharmaceutically acceptable salts	Les Laboratoires Servier, France Fugier, Claude; Dubuffet, Thierry; Langlois, Pascal
US 7361757 Filing Date: August 31, 2004 Earliest Priority Date: September 1, 2003 [EP]	New process for the synthesis of N-[(S)-1-carboxybutyl]-(S)-alanine esters and their use in the synthesis of perindopril	Les Laboratoires Servier, France Breard, Fabienne; Fugier, Claude
US 7358372 Filing Date: July 29, 2004 Earliest Priority Date: July 31, 2003 [EP]	Method for synthesis of perindopril and its pharmaceutically acceptable salts	Les Laboratoires Servier, France Fugier, Claude; Dubuffet, Thierry; Langlois, Pascal
US 7323575 Filing Date: January 5, 2007 Earliest Priority Date: April 9, 2003 [EP]	Method for the synthesis of (2S)- indoline-2-carboxylic acid for use in the synthesis of perindopril	Les Laboratoires Servier, France Souvie, Jean-Claude; Lecouve, Jean-Pierre
US 7534896 Filing Date: August 27, 2004 Earliest Priority Date: August 29, 2003 [EP]	Method for synthesis of perindopril and its pharmaceutically acceptable salts	Les Laboratoires Servier, France Dubuffet, Thierry; Langlois, Pascal
US 7288661 Filing Date: December 9, 2004 Earliest Priority Date: December 10, 2003 [EP]	Method for synthesis of (2S,3aS,7aS)-1-[(S)-alanyl]octahydro-1H-indole-2- carboxylic acid derivatives and use in the synthesis of perindopril	Les Laboratoires Servier, France Dubuffet, Thierry; Lecouve, Jean-Pierre

Patent No./Dates	Title	Owner/Investor(s)
US 7326794 Filing Date : January 29, 2003 US 7279595 (DIV) Filing Date: April 20, 2007 Earliest Priority Date: January 30, 2002 [EP]	Process for the preparation of high purity perindopril	Les Laboratoires Servier, France Simig, Byula; Mezei, Tibor; Porcs-Makkay, Marta; Mandi, Attila
US 7279583 Filing Date: December 9, 2004 Earliest Priority Date: December 10, 2003 [EP]	Method for synthesis of perindopril and its pharmaceutically-acceptable salts	Les Laboratoires Servier, France Dubuffet, Thierry; Lecouve, Jean-Pierre
US 7223872 Filing Date: August 27, 2004 Earliest Priority Date: August 29, 2003 [EP]	Method for synthesis of perindopril and its pharmaceutically-acceptable salts [2003/26]	Les Laboratoires Servier, France Dubuffet, Thierry; Lecouve, Jean-Pierre
US 7220776 Filing Date: June 28,2004 Earliest Priority Date: June 30, 2003	Method for synthesis of perindopril and its pharmaceutically acceptable salts	Les Laboratoires Servier, France Dubuffet, Thierry; Langlois, Jean-Pierre
US 7208607 Filing Date: November 18, 2004 Earliest Priority Date: November 19, 2003 [EP]	Method for synthesis of perindopril and its pharmaceutically acceptable salts	Les Laboratoires Servier, France Dubuffet, Thierry; Lecouve, Pascal
US 7196204 Filing Date: April 7, 2004 Earliest Priority Date: April 9, 2003 [EP]	Method for the synthesis of s-indoline-2-carboxylic acid and application thereof in the synthesis of perindopril	Les Laboratoires Servier, France Souvie, Jean-Claude; Lecouve, Jean-Pierre

Patent No./Dates	Title	Owner/Investor(s)
US 7183308 Filing Date: August 27, 2004 Earliest Priority Date: August 29, 2003 [EP]	Method for synthesis of perindopril and its pharmaceutically acceptable salts	Les Laboratoires Servier, France Dubuffet, Thierry; Langlois, Pascal
US 7179833 Filing Date: June 28, 2004 Earliest Priority Date: June 30, 2003 [EP]	Method for synthesis of perindopril and its pharmaceutically acceptable salts	Les Laboratoires Servier, France Dubuffet, Thierry; Lecouve, Jean-Pierre
US 7166633 Filing Date: February 27, 2004 Earliest Priority Date: February 28, 2003 [EP]	Process for the synthesis of perindopril and its pharmaceutically-acceptable salts	Les Laboratoires Servier, France Dubuffet, Thierry; Langlois, Pascal
US 7157485 Filing Date: February 27, 2004 Earliest Priority Date: February 28, 2003 [EP]	Method for synthesis of (2S,3aS,7aS)-1-[(S)-alanyl)octahydro–1H-indole-2- carboxylic acid derivatives for use in the synthesis of perindopril	Les Laboratoires Servier, France Dubuffet, Thierry; Langlois, Pascal
US 7157484 Filing Date: February 27, 2004 Earliest Priority Date: February 28, 2003 [EP]	Method for synthesis of (2S,3aS,7aS)-perhydroindole-2-carboxylic acid and esters as intermediaries in the synthesis of perindopril	Les Laboratoires Servier, France Dubuffet, Thierry; Langlois, Pascal
US 5334392 Filing Date: June 9, 1992 Earliest Priority Date June 18, 1991 [FR]	Matrix for the sustained release of indapamide after oral administration	Les Laboratoires Servier, France Cuiné, Alain; Huet de Barochez, Bruno; Guez; David
US 7846961 Filing Date: February 26, 2007 Earliest Priority Date: February 28, 2006 [FR]	Alpha Crystalline form of the Arginine salt of Perindopril, a Process for its Preparation and Pharmaceutical Compositions Containing it	Les Laboratoires Servier, France Coquerel, Gérard; Lefebvre, Loic; Souvie, Jeal-Claude; Authouart, Pascale

Patent No./Dates	Title	Owner/Investor(s)
US 7923569 Filing Date: February 26, 2007 Earliest Priority Date: February 28, 2006 [FR]	Beta Crystalline form of the Arginine Salt of Perindopril, a Process for its Preparation and Pharmaceutical Compositions Containing it	Les Laboratoires Servier, France Coquerel, Gérard; Lefebvre, Loïc; Souvie, Jean-Claude; Authouart, Pascale
US 20070172524 Filing Date: January 11, 2007 Earliest Priority Date: March 29, 2004 [DE]	Process for preparing a solid pharmaceutical composition	Les Laboratoires Servier, France Klobcar, Iztok; Puncuh-Kolar, Alesa; Grandovec, Anica; Turk, Urska; Soimajer-Lampic, Polona
US 7674814 Filing Date: May 10, 2005 Earliest Priority Date: May 14, 2004 [SI]	Process for the preparation of perindopril and its salts	Les Laboratoires Servier, France Merslavic, Marjo; Smid, Janja; Tomsic, Zdenka
US 7521566 Filing Date: February 28, 2003 Earliest Priority Date: February 28, 2003	Process for preparation of perindopril and its salts	Les Laboratoires Servier, France Datta, Debashish; Singh, Girlj Pal; Godbole, Himanshu Madhav; Siyan, Rajinder Singh
US 7705046 Filing Date: June 18, 2004 US 7981921 (DIV) Filing Date: March 9, 2010 Earliest Priority Date: June 24, 2003	Novel cristalline forms of perindopril erbumine	Les Laboratoires Servier, France Strässler Christoph; Lellek Vit; Fässler, Roger
US 2010-0172995 (DIV) Filing Date: June 3, 2009 Earliest Priority Date: March 29, 2004 [DE]	Process for preparing a solid pharmaceutical composition	Les Laboratoires Servier, France Klobcar Iztok ; Puncuh-Kolar Alesa ; Grandovec Anica ; Turk Urska ; Solmajer-Lampic Polona

Patent No./Dates	**Title**	**Owner/Investor(s)**
US 2010-0267799 (CONT) Filing Date: June 22, 2010 Earliest Priority Date: January 23, 2002	Orodispersible pharmaceutical composition of perindopril	Les Laboratoires Servier, France Wüthrich Patrick ; Rolland Hervé ; Julien Marc

SCHEDULE 3.1(a)

Study: Perindopril Amlodipine for Treatment of Hypertension

SCHEDULE 6

SUPPLY TERMS

ARTICLE 1 DEFINITIONS

Capitalized terms that are not defined in this Schedule 6 shall have the meaning assigned to such terms in the License and Commercialization Agreement entered into as of July 7, 2010 between Les Laboratoires Servier and XOMA LS LIMITED to which this Schedule 6 is attached (the "***Agreement***") and, as used in this Schedule 6, the following terms shall have the following meanings:

1.1 "***Actual Shortage***" shall have the meaning set forth in Section 9.2 of this Schedule 6.

1.2 "***Batch***" means a defined quantity of API processed in one process or series of processes, so that it could be expected to be homogeneous.

1.3 "***Clinical Supplies***" shall have the meaning set forth in Section 3.2 of this Schedule 6.

1.4 "***Components***" means, collectively, all raw materials, excipients and materials required to manufacture the API or Clinical Supplies, as the case may be, in accordance with the Specifications and the Quality Agreement.

1.5 "***Deviation***" means any failure of API or Clinical Supplies to conform to the Specifications, US cGMPs (in the case of API), EU cGMPs (in the case of Clinical Supplies) or the Quality Agreement or otherwise fully comply with the representations and warranties contained herein that relate to API or Clinical Supplies. "***Deviating***" shall have its correlative meaning.

1.6 "***EU cGMPs***" means current Good Manufacturing Practices as defined from time to time under the Directive 2003/94/EC, as amended, and the regulations promulgated thereunder, *provided* that in the event the FDA determines that EU cGMPs are not applicable to Clinical Supplies, then EU cGMPs shall mean US cGMPs.

1.7 "***Forecasted Requirements***" shall have the meaning set forth in Section 3.1 of this Schedule 6.

1.8 "***Inventory Shortfall***" means, on an API-by-API basis, either

1.8.1 that the amount of inventory constituting the Safety Stock of any API is less than [*]%of the amount of such API contained in the next succeeding [*] months for the Amlodipine API, [*] months for the Perindopril API, [*] months for the ACEON API and a number of months to be agreed by the Parties in good faith for the Indapamide API, in each case of XOMA's then current Forecasted Requirements for such API; or

1.8.2 the occurrence of any event or events or the existence of circumstances (including decisions by Servier) that make the circumstance described in the foregoing clause unavoidable.

1.9 "***Joint Testing***" shall have the meaning set forth in Section 6.10 of this Schedule 6.

1.10 "***Purchase Order***" shall mean a written purchase order submitted by XOMA to Servier detailing XOMA's purchase of API or Clinical Supplies, as the case may be.

1.11 "***Quality Agreement***" means one or more agreements negotiated in good faith and entered into by the Parties and Egis relating to the respective obligations of the Parties and Egis that are intended to ensure that the APIs and Clinical Supplies are of the quality required for their intended respective uses. The Parties acknowledge that (i) the Quality Agreement relating to the APIs other than the ACEON API and the Amlodipine API has been entered into by them effective as of July 7, 2010, and (ii) the Quality Agreement relating to the Amlodipine API has been entered into by XOMA and Egis, effective as of August 8, 2011. Simultaneously with the execution of this Agreement, the Parties are entering into an amendment to the Quality Agreement between them relating to the ACEON API. All references to the "Quality Agreement" herein shall be deemed to be references to the Quality Agreement as so amended.

1.12 "***Safety Stock***" shall have the meaning set forth in Section 9.1 of this Schedule 6.

1.13 "***Specifications***" means the respective API or Clinical Supplies specifications and the related methods that are agreed upon by the Parties from time to time in accordance with Article 2 of this Schedule 6.

1.14 "***Supply Failure***" shall have the meaning set forth in Section 9.2 of this Schedule 6.

1.15 "***US cGMPs***" means current Good Manufacturing Practices as defined from time to time under the U.S. Food, Drug and Cosmetic Act, as amended, and the regulations promulgated thereunder.

ARTICLE 2 SPECIFICATIONS; CHANGES IN SPECIFICATIONS

2.1 Prior to execution of the Agreement, Servier provided XOMA with proposed Specifications for (a) Amlodipine API for the Initial Licensed Product, (b) Perindopril API for the Initial Licensed Product, and (c) the Initial Licensed Product itself. The Parties acknowledge that, promptly following the Original Agreement Effective Date, they agreed on such Specifications, and parts (a), (b) and (c), respectively, of Appendix 2.1 attached to this Schedule 6 set forth such agreed specifications. The Parties agree on the Specifications for ACEON API and ACEON itself set forth in Appendix 2.1A hereto. On request, Servier shall provide XOMA with proposed Specifications in connection with XOMA's determination to exercise the Option for any Additional Combination Product(s). The Parties shall endeavor in good faith to agree on Specifications for the APIs and Clinical Supplies, if any, for each Additional Combination Product as to which XOMA intends to exercise the Option and shall supplement Appendix 2.1 hereto to include such additional Specifications.

2.2 If (a) at any time a Regulatory Authority requests or a change to applicable Law or guidelines requires that Servier change the Specifications, configuration, packaging and/or manufacturing processes for APIs or Clinical Supplies, as the case may be, to be supplied to XOMA hereunder, or (b) following an inspection pursuant to Section 5.5 hereof Servier must change the Specifications, configuration, packaging and/or manufacturing processes for APIs or Clinical Supplies, as the case may be, to be supplied to XOMA hereunder in order to maintain or regain compliance with Specifications, US cGMPs (in the case of API), EU cGMPs (in the case of Clinical Supplies) and/or applicable Laws or guidelines and so notifies Servier in writing, then (i) Servier will provide XOMA with as much notice as possible of such change(s) and the Parties will consult about such change(s) and Servier will consider XOMA's comments in good faith in connection with such change(s), and (ii) Servier shall bear all costs and expenses associated with such change(s), unless otherwise agreed by the Parties, and will be responsible for applying for and obtaining any approvals from Regulatory Authorities necessary as a result of the proposed change(s) to continue to manufacture APIs and, as applicable, Clinical Supplies. Servier will promptly reimburse XOMA for the costs of any filings or other actions XOMA must take with any Regulatory Authority as a result of any and all such changes that relate to Licensed Products upon receipt of an invoice therefor. If such change(s) would cause a conflict between the requirements of two or more Regulatory Authorities with jurisdiction over the Licensed Products, the Parties will confer in a good-faith attempt to resolve the conflict. If despite good-faith efforts by the Parties, such conflict cannot be resolved, Servier will continue to produce APIs and/or Clinical Supplies, as the case may be, in accordance with the original unchanged Specifications, configuration, packaging and/or manufacturing process for XOMA's use and sale in the Territory, until such time as the conflict can be resolved; *so long as* Servier or Servier's contract or toll manufacturers are not prevented by applicable Law from producing APIs and/or Clinical Supplies, as the case may be, in accordance with the original Specifications, configuration, packaging and/or manufacturing processes. XOMA shall cooperate with Servier in any reasonable manner to effect any such change. Servier will disclose all information to XOMA and provide assistance to XOMA, at XOMA's costs, as may be reasonably necessary or desirable for XOMA to complete its quality assurance testing and qualification of such changes (*i.e.*, for manufacturing and stability) of any APIs and/or Clinical Supplies, as the case may be, supplied to XOMA.

2.3 If at any time Servier or a Servier contract or toll manufacturer wishes to change the Specifications, configuration, packaging and/or manufacturing process for APIs and/or Clinical Supplies, as the case may be, to be supplied to XOMA hereunder and such change is not requested by a Regulatory Authority or required by a change in applicable Law or guidelines, Servier will provide XOMA with at least [*] days' prior written notice of such change(s). XOMA will consider in good faith any such request during such [*] day period. If after such analysis XOMA approves the change(s), such approval not to be unreasonably withheld or delayed, then Servier shall bear all costs and expenses associated with such change(s), unless otherwise agreed by the Parties, and will be responsible for applying for and obtaining any approvals from Regulatory Authorities necessary as a result of the proposed change(s) to continue to manufacture APIs and/or Clinical Supplies, as the case may be. Servier will promptly reimburse XOMA for the costs of any filings or other actions XOMA must take with any Regulatory Authority as a result of any and all such changes that relate to Licensed Products upon receipt of an invoice therefor. If, on the other hand, XOMA determines, that the proposed change(s) would materially hamper (a) the Development or Commercialization of a Licensed Product or (b) the effectiveness or safety of any Licensed Product for use in the Field, then Servier will continue to produce APIs and/or Clinical Supplies, as the case may be, in accordance with the original unchanged Specifications, configuration, packaging and/or manufacturing processes for XOMA's use and sale.

2.4 Except as requested by a Regulatory Authority or required by applicable Law or guidelines, Servier shall not affect any change under Section 2.3 which (a) would require XOMA to seek approval for such change from any Regulatory Authority in order to continue the Development or Commercialization of a Licensed Product, unless Servier bears all costs and expenses associated with such approval, or (b) would materially hamper the effectiveness or safety of any Licensed Product for use in the Field.

2.5 If at any time XOMA requests a change in the Specifications, configuration, packaging and/or manufacturing processes for APIs and/or Clinical Supplies, as the case may be, to be supplied to XOMA hereunder that is not requested by a Regulatory Authority or required by a change in applicable Law or guidelines, including a change in formulation or dosage, Servier shall consider in good faith, and shall use Diligent Efforts to cause its Third Party subcontractors to consider in good faith, any such requests received from XOMA. If Servier approves any such change(s), such approval to be given at Servier's sole discretion. XOMA will bear all reasonable costs incurred by Servier in effecting such change(s), unless otherwise agreed by the Parties, and all reasonable costs incurred by Servier in seeking regulatory approval necessary as a result of such change(s) to continue to manufacture APIs and/or Clinical Supplies in any and all countries where Servier supplies the APIs and/or Clinical Supplies, as the case may be. XOMA will be responsible for, and will bear the costs of, any filings or other actions it must take with any Regulatory Authority as a result of such change(s) that relate to the applicable Licensed Product.

2.6 Except as indicated in Section 2.5 above, Servier shall be responsible for applying for and obtaining any approvals from Regulatory Authorities that may be necessary as a result of the proposed change(s) described in this Article 2 for its manufacture and supply of the APIs and/or Clinical Supplies, as the case may be, to XOMA. XOMA shall be responsible for applying for and obtaining any Regulatory Approval in the Territory of any Licensed Product that may be necessary as a result of the proposed change(s) in the manufacture of any API and/or Clinical Supplies, as the case may be, to be supplied by Servier hereunder. Each Party shall use its commercially reasonable efforts to obtain such approvals as promptly as is practicable.

ARTICLE 3 SUPPLY OF API AND LICENSED PRODUCTS FOR CLINICAL TRIALS

3.1 Within [*] days after all Data of Abbott has been transferred or made available, as applicable, to XOMA as required by Section 4.1(a)(ii), XOMA shall provide Servier with a good-faith non-binding forecast of its requirements for the applicable API(s) (and the requirements of its Affiliates) for the sale and use of the Licensed Products in the Territory during the first [*] month period following the Effective Date on an API-by-API basis ("***Forecasted Requirements***"). The Forecast Requirements covering [*] month periods shall thereafter be updated on a quarterly basis. The first [*] months of the initial forecast shall be considered the first Purchase Order for API that Servier shall supply to XOMA. Servier shall supply the API to XOMA in accordance with such Purchase Order. The remaining [*] months of each such rolling forecast shall be forecasts only and XOMA shall be free to vary the forecasted amounts; *provided*, that the variance, whether positive or negative, in the forecasted amount of an API for any quarter within the first [*] months of a forecast shall not exceed [*] percent ([*]%) of the amount most recently forecasted for such API in such quarter. The Forecasted Requirements shall be in an amount comprising one or more whole Batches. No Purchase Orders for API shall be delivered with less than [*] days' lead time prior to the delivery date(s) requested by XOMA in such Purchase Orders unless Servier agrees to and accepts a delivery date of less than [*] days. In the event that XOMA desires to alter its forecast by more than [*] percent ([*]%) for any particular quarter, Servier will consider such request in good faith, but under no circumstances is Servier obligated to accept forecast changes of greater than [*] percent ([*]%).

3.2 In the event XOMA desires to have Servier supply Clinical Supplies, XOMA shall provide Servier a good-faith non-binding estimate of its requirements of the Licensed Products (other than ACEON) (in bulk tablet form) and placebo for clinical trials in the Territory to be conducted by or on behalf of XOMA ("***Clinical Supplies***") during the first [*] month period following delivery of such forecast on a Licensed Product (other than ACEON)-by-Licensed Product (other than ACEON) basis, which forecast shall thereafter be updated on a quarterly basis so long as XOMA desires to have Servier supply Clinical Supplies. The first [*] months of the initial forecast shall be considered the first Purchase Order for Clinical Supplies that Servier shall supply to XOMA. Servier shall supply Clinical Supplies to XOMA in accordance with such Purchase Order. The remaining [*] months of each such rolling forecast shall be forecasts only and XOMA shall be free to vary the forecasted amounts; *provided*, that the variance, whether positive or negative, in the forecasted amount of Clinical Supplies for any quarter within the first [*] months of a forecast shall not exceed [*] percent ([*]%) of the amount most recently forecasted for such Clinical Supplies in such quarter. No Purchase Orders for Clinical Supplies shall be delivered with less than [*] days' lead time prior to the delivery date(s) requested by XOMA in such Purchase Orders unless Servier agrees to and accepts a delivery date of less than [*] days. In the event that XOMA desires to alter its forecast by more than [*] percent ([*]%) for any particular quarter, Servier will consider such request in good faith, but under no circumstances is Servier obligated to accept forecast changes of greater than [*] percent ([*]%).

3.3 Purchase Orders shall include: (a) the requested delivery date(s); (b) shipping instructions as hereinafter set forth; and (c) any other information dictated by the circumstances of the order.

3.4 Servier shall manufacture, test, release, deliver and sell API and Clinical Supplies to XOMA and its Affiliates at the applicable prices indicated in Section 4.2 of this Schedule 6, and Servier shall be responsible for purchasing, at its expense, all Components used by Servier. Servier shall only purchase Components for Clinical Supplies that XOMA considers, in its sole discretion, to be acceptable for use in clinical trials in the Territory. Servier shall only purchase Components for API from entities with all relevant drug master files in effect and on file with the FDA.

3.5 Servier shall have the right to perform any or all of its duties and/or obligations under this Schedule 6 through one or more of its Affiliates and/or through one or more Third Party contract and/or toll manufacturers of API and/or Clinical Supplies, as the case may be; *provided*, *however*, that Servier shall remain responsible for the performance of such duties and/or obligations.

ARTICLE 4 PURCHASE TERMS FOR API AND CLINICAL SUPPLIES

4.1 Subject to the terms of Section 6.2 of the Agreement, Servier shall be obligated to accept each Purchase Order,*provided* the terms of the Purchase Order are consistent with the terms of this Schedule 6. If Servier does not reject a Purchase Order within [*] Business Days after receipt thereof, such Purchaser Order shall be deemed to be accepted by Servier. In the event of an accepted Purchase Order with terms that conflict with the terms hereof, the terms of this Schedule 6 shall supersede the terms of such Purchase Order unless acknowledged and agreed to by Servier in writing.

4.2 The purchase price to be paid by XOMA for Amlodipine API shall be [*] U.S. Dollars (US$[*]) per kilogram.

The purchase price to be paid by XOMA for Perindopril API shall be [*] U.S. Dollars (US$[*]) per kilogram.

The purchase price to be paid by XOMA for ACEON API shall be [*] U.S. Dollars (US$[*]) per kilogram.

The purchase price to be paid by XOMA for Indapamide API shall be determined by mutual agreement of the Parties prior to XOMA's exercise of the Option with respect to an Additional Combination Product containing the Indapamide API; *provided*, that such price shall not exceed [*] U.S. Dollars (US$1[*]) per kilogram.

The purchase price to be paid by XOMA for Clinical Supplies shall be as set forth on Appendix 4.2.

4.3 Invoices for API and Clinical Supplies will be denominated in Euros (converted from the U.S. Dollar amount at the exchange rate in effect on the date of invoice) and issued by Servier upon CIP any US airport designated by XOMA (according to the 2000 ICC Incoterms) delivery date and shall be payable in Euros within [*] days after the receipt by XOMA of Servier's invoice.

ARTICLE 5 MANUFACTURING AND QUALITY CONTROL

5.1 API and Clinical Supplies delivered by Servier to XOMA shall be released by Servier's quality control unit and shall be accompanied by a certificate of analysis and compliance signed by an authorized representative of Servier certifying that each lot of API and Clinical Supplies has been manufactured in accordance with Servier's batch record documentation and in compliance with US cGMPs (in the case of API), EU cGMPs (in the case of Clinical Supplies), the Specifications, the Quality Agreement and the representations and warranties contained herein that relate to API or Clinical Supplies, as the case may be.

5.2 Clinical Supplies shall be delivered by Servier in bulk tablet form. The Clinical Supplies shall be packaged and released by XOMA's quality control unit or XOMA's designee before any consumption by humans in clinical trials.

5.3 Servier shall maintain a completed manufacturing record, packaging record and analytical record, and shall retain samples, for each lot of API or Clinical Supplies manufactured for XOMA and such other records as specified in the Quality Agreement for a period of time specified in the Quality Agreement. Such records and retained samples shall be made available to XOMA upon appropriate advance written request and to the FDA immediately upon request.

5.4 Servier and its Affiliates shall carry out, and shall cause each permitted Third Party toll or contract manufacturer acting on Servier's behalf to carry out, all of their responsibilities hereunder in conformity with US cGMPs (in the case of API), EU cGMPs (in the case of Clinical Supplies) and all other applicable Laws and guidelines. Servier and its Affiliates shall maintain, and shall use Diligent Efforts to cause each permitted toll or contract manufacturer acting on Servier's behalf to maintain, all licenses, permits and registrations required under applicable Laws to perform their obligations under the Agreement.

5.5 XOMA shall have the right, alone or with consultants or designees reasonably acceptable to Servier and subject to obligations of confidentiality no less stringent than those set forth in the Agreement, and Servier shall permit or cause to be permitted, on reasonable prior written notice from XOMA to Servier, XOMA and such consultants or designees, to inspect the Servier or Third Party contractor facility and the equipment used or to be used in the manufacturing, filling, packaging, storage, testing, shipping or receiving of API or Clinical Supplies once within the first [*] days following the Original Agreement Effective Date and thereafter on no more than one occasion in each [*]-month period during the term of the Agreement except for cause as set forth herein or in the Quality Agreement. The foregoing restriction on the number of occasions XOMA and its consultants or designees may inspect the applicable facility and equipment shall not apply so long as there exists, or XOMA has good reason to believe there exists, any material deficiency in or material failure by the applicable facility or equipment to be in compliance with US cGMPs (in the case of API), EU cGMPs (in the case of Clinical Supplies), applicable Laws or guidelines or the representations and warranties contained herein or in the Agreement.

5.6 Servier shall permit, or cause any Third Party contract or toll manufacturer acting on Servier's behalf to permit, authorized officials of the FDA to inspect the Servier or Third Party contractor facility, including the equipment used in the manufacturing, filling, packaging, storage, testing, shipping or receiving of API or Clinical Supplies, as applicable, as required for the granting or maintaining of any Marketing Approval. Each Party shall notify the other Party promptly after such Party becomes aware that any such inspection is planned or imminent. To the extent permitted by applicable Law, Servier shall permit, and cause any Third Party contract or toll manufacturer acting on Servier's behalf to permit, XOMA to accompany the authorized officials of the FDA in its inspection, *provided,* that prior to any such inspection of a Third Party contractor facility, XOMA shall, if requested by such Third Party, enter into a confidentiality agreement reasonably acceptable to such Third Party. XOMA shall be provided copies of all reports and written communications submitted by the FDA (or with respect to any Regulatory Authority other than the FDA, only final reports) concerning such inspection and copies of any other written communication received by any Regulatory Authority relating to API or Clinical Supplies or the facility (if it relates to the manufacture or supply of API or Clinical Supplies) within the earlier of [*] Business Days of receipt thereof by Servier or [*] Business Days of receipt thereof by any Third Party contract or toll manufacturer acting on Servier's behalf, as applicable. Servier will consult with XOMA and consider XOMA's comments in good faith before responding to each such communication. Servier shall provide XOMA with its final responses within [*] days of submission thereof. Servier shall promptly remedy any deficiencies noted by the applicable Regulatory Authority and implement, at Servier's expense, any changes or improvements required.

ARTICLE 6 SHIPMENT AND ACCEPTANCE

6.1 API and Clinical Supplies shall be delivered in Servier's appropriate shipping packaging to the designated carrier, CIP (according to the 2000 edition ICC Incoterms) an airport in the United States to be designated by XOMA in the applicable Purchase Order. Title to API and Clinical Supplies shall pass to XOMA upon loading on the designated aircraft. The terms of the sale shall be CIP (according to the 2000 edition ICC Incoterms). Servier shall provide XOMA such documents and assistance as XOMA reasonably requests to facilitate XOMA's importation of the API and Clinical Supplies. XOMA will arrange for pick-up at the designated U.S. airport.

6.2 The Parties agree on the analytical methods for the Amlodipine API and the Perindopril API for the Initial Licensed Product listed in Appendix 6.2 attached to this Schedule 6. Not later than [*] days following the later of (i) the Effective Date or (ii) receipt by XOMA of all information from Abbott reasonably necessary to agree on such analytical methods, the Parties shall agree on the analytical methods for the ACEON API and supplement Appendix 6.2 attached to this Schedule 6 to set forth such agreed analytical methods. XOMA and Servier shall endeavor in good faith to agree upon the appropriate analytical methods for additional API on an API-by-API basis as soon as practicable, and in any event no later than [*] days, after exercise by XOMA of the Option with respect to an Additional Combination Product containing such API and shall supplement Appendix 6.2 hereto to list such additional analytical methods.

6.3 The Parties agree on the analytical methods for the Clinical Supplies for the Initial Licensed Product listed in Appendix 6.2 attached to this Schedule 6. XOMA and Servier shall endeavor in good faith to agree upon the appropriate analytical methods for additional Clinical Supplies on an Additional Combination Product-by-Additional Combination Product basis as soon as practicable, and in any event no later than [*] days, after exercise by XOMA of the Option with respect to such Additional Combination Product and shall supplement Appendix 6.2 hereto to list such additional analytical methods.

6.4 XOMA or its designee shall validate all analytical methods promptly after such agreement and in no event later than [*] days after the transfer of the analytical methods to XOMA by Servier; *provided*, *however*, that such [*]-day period shall be extended by such reasonable period of time necessary for XOMA or its designee, as the case may be, to acquire any testing equipment that is required for such validation. Notwithstanding anything to the contrary in this Schedule 6, Servier shall have no obligations to ship API or Clinical Supplies, as the case may be, prior to XOMA's or its designee's written notification to Servier that the analytical methods that apply to such API or Clinical Supplies, as the case may be, have been validated.

6.5 Upon delivery of the API to XOMA or its designee in accordance herewith, XOMA or its designee shall inspect such API and shall:

- verify the compliance of the API delivered (identity of the API, batch number, volume) against the packing list of API delivered and the invoice;
- verify that the whole delivery is present, or there is any shortage;
- verify the absence of visible damage; and
- sign the Airway bill.

Before accepting delivery of the API and in the event of visible damage or shortage, XOMA or its designee shall set forth on the delivery note or on the Airway bill the external appearance, the identification numbers, and the number and weight of the disputed packages (damaged or missing). If XOMA or its designee fails to do so, any such API with visible damage shall be deemed to be accepted and XOMA shall be deemed to have waived its right with respect to any such shortage. In addition, XOMA or its designee shall promptly send to Servier a copy of the Airway bill mentioning all such information on the disputed packages so that Servier will be able to summon the loss adjuster.

6.6 In the event that hidden damage due to transportation is discovered, XOMA or its designee shall inform Servier by fax or email promptly upon such discovery, and at the latest within [*] days after delivery. The fax or email shall set forth the external appearance, the identification numbers, and the number and weight of the disputed packages. The damaged API shall be recorded in the inventory and physically set aside in a separate area pending a decision from Servier.

6.7 In any case, within [*] days after delivery, XOMA or its designee shall send a written notice to the shipper, with a copy to Servier, describing the damage that occurred, whether such damage is a shortage, hidden or visible, in each case due to transportation. If XOMA or its designee fails to notify the shipper of such claim within the above period, as between the Parties, such damaged API shall be deemed accepted.

6.8 In the event that a consignment of API is entirely lost, XOMA or its designee shall provide Servier with the original of a non-delivery certificate (or loss certificate), if any, that shall be issued by the shipper within [*] from the expected delivery date.

6.9 Furthermore, XOMA or its designee shall provide Servier, within [*] days following the delivery of the damaged API, with the following documents:

- the original insurance certificate (if this document has been issued and handed over to XOMA or its designee);
- a copy of the consignment invoice and of the packing list;
- copies of the Airway bill and all shipping documents from the dispatch site to the final destination (delivery note, consigners' receipts and the like) on which the shipper and/or XOMA or its designee has made remarks concerning such damage;
- a copy of the written notice indicating the damages to the API (and confirmation of receipt) sent by XOMA or its designee to the shipper; and
- the original of the shipper's reply to the written notice sent by XOMA or its designee.

In addition, in the event that Servier orders the destruction of any damaged API, XOMA or its designee shall provide Servier promptly after such destruction the following documents:

- if applicable, a certificate relating to the destruction of damaged goods (with details of the API); and
- if applicable, an invoice for the costs of such destruction.

If XOMA or its designee fails to follow the above described procedure in all material respects and to provide Servier with the documents listed above, as between the Parties, the damaged API shall be deemed accepted.

6.10 Notwithstanding the provisions in Sections 6.5 through 6.9, in the event that a Deviation is discovered, XOMA or its designee shall inform Servier by fax or email promptly upon such discovery, and at the latest within [*] days after delivery. The fax or email shall set forth the identification numbers, and the number and weight of the disputed packages. The Deviating API or Clinical Supplies shall be recorded in the inventory and physically set aside in a separate area pending the procedures set forth in the immediately following paragraph. In any case, within [*] days after delivery, XOMA or its designee shall send a written notice to Servier, describing the Deviation. If XOMA or its designee fails to notify Servier of such claim within the above period, such Deviating API or Clinical Supplies, as the case may be, shall be deemed accepted.

Upon receiving notification of a Deviation, Servier shall promptly inspect a sample of such API or Clinical Supplies, as the case may be. Servier shall have no more than [*] Business Days from XOMA's notification of rejection to disagree with XOMA regarding whether there is a Deviation. If the Parties disagree whether there is a Deviation, such disagreement regarding the proper rejection of a shipment shall be submitted for resolution to the Vice President of Quality (or equivalent-level officer) of each of XOMA and Servier. Any such disagreement that is not resolved by such officers of the Parties within [*] days of Servier's inspection shall be resolved by joint testing conducted by the Parties (and at the cost of the Party determined to be in error) at a mutually agreeable laboratory (the "***Joint Testing***"). The Parties shall fully cooperate in the Joint Testing, and the results of such Joint Testing will be final and binding. In the event Servier agrees, or the Joint Testing finds, that there is a Deviation, Servier shall, at XOMA's sole option: (i) replace the Deviating API or Clinical Supplies, as the case may be, and ship such replacement API or Clinical Supplies, as the case may be, to XOMA at Servier's expense, using Diligent Efforts to complete such replacement within [*] days after the Joint Testing finds that there is a Deviation; or (ii) credit any such payments to future shipments. XOMA may, at its option, dispose of such Deviating API or Clinical Supplies, as the case may be, or return the Deviating API or Clinical Supplies, as the case may be, to Servier. Servier shall reimburse XOMA for all related freight, handling and/or disposal costs and other reasonable expenses incurred in relation to such Joint Testing. Any substitute API or Clinical Supplies, as the case may be, supplied pursuant to this Section 6.10 shall be subject to inspection and testing as provided in Sections 6.5 though 6.9. Upon XOMA's acceptance thereof, Servier's supply pursuant to this Article 6 of substitute API or Clinical Supplies, as the case may be, shall satisfy and discharge any claims or potential claims of XOMA against Servier with respect to quantities of Deviating API or Clinical Supplies, as the case may be, that have been replaced. In the event XOMA agrees, or the Joint Testing finds, as the case may be, that there is no Deviation, XOMA shall reimburse Servier for all related freight, handling and/or disposal costs and reasonable expenses incurred in relation to such Joint Testing.

ARTICLE 7 REGULATORY RESPONSIBILITIES

7.1 Servier shall be responsible for obtaining and maintaining at all times during which it is obligated to supply the API or Clinical Supplies to XOMA, such approvals of facility and processes as may be required under applicable Laws to manufacture the API for commercialization in the Territory and Clinical Supplies for use in the Territory, and Servier shall manufacture such API and Clinical Supplies in conformity with US cGMPs (in the case of API), EU cGMPs (in the case of Clinical Supplies) and all requirements under applicable Laws and guidelines so as to obtain and maintain Marketing Approval of the Licensed Products in the Territory.

7.2 Servier shall be solely responsible for all costs and expenses associated with its compliance with US cGMPs (in the case of API), EU cGMPs (in the case of Clinical Supplies), applicable Laws and guidelines as provided in Section 7.1.

ARTICLE 8 REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 Servier represents, warrants and covenants to XOMA that all API and Clinical Supplies to be manufactured and supplied pursuant to this Schedule 6 shall: (i) be manufactured in full compliance with US cGMPs (in the case of API) and EU cGMPs (in the case of Clinical Supplies), (ii) meet the applicable Specifications at the time of shipment, and Servier shall use Diligent Efforts to ensure that the API and Clinical Supplies meet Specifications at the time of delivery to XOMA, (iii) have a shelf life of no less than [*] months for the Amlodipine API, [*] months for the Perindopril API, [*] months for the ACEON API and a period to be agreed by the Parties in good faith for the Indapamide API, or such shorter period(s) as the parties may from time to time agree, and (iv) comply with (and be manufactured in accordance with) all applicable Laws and guidelines and the Quality Agreement.

8.2 XOMA represents, warrants and covenants to Servier that it shall comply with all applicable Law relating to the handling, storage, and disposal of each API, any Clinical Supplies and the manufacture of Licensed Product.

8.3 XOMA understands that it is anticipated the facilities to be used by Servier and/or its Affiliates for the manufacture of API will be inspected by the FDA and that such inspection may result in recommended changes to be implemented at the facilities or to the processes used therein. Neither Party shall be deemed to be in breach of any of its representations, warranties, covenants or other obligations while such recommended changes are being addressed in a commercially diligent manner.

8.4 ASIDE FROM THE WARRANTIES OF THE PARTIES CONTAINED IN THE AGREEMENT (INCLUDING THIS SCHEDULE 6), ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ARE HEREBY EXCLUDED.

8.5 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER RESULTING FROM ANY CAUSE OR CLAIM WHATSOEVER, WHETHER BY TORT OR CONTRACT OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT AND LOSS OF SAVINGS, BUSINESS DATA, OR GOODWILL.

8.6 XOMA is not authorized to, and shall not, make any representations or warranties on behalf of Servier with respect to the API or any Clinical Supplies, without the prior written consent of Servier, which consent may be withheld in Servier's sole discretion.

ARTICLE 9 SAFETY STOCK; INVENTORY SHORTFALL; SUPPLY FAILURE

9.1 Servier shall use commercially reasonable efforts to maintain on hand an inventory of each API in conformity with US cGMPs, the applicable Specifications, the Quality Agreement and the representations and warranties contained herein that relate thereto (the "***Safety Stock***") equal to or greater than [*]% of the amount of such API contained in the next succeeding (a) [*] months of XOMA's then current Forecasted Requirements for the Perindopril API, (b) [*] months of XOMA's then current Forecasted Requirements for the ACEON API, (c) [*] months of XOMA's then current Forecasted Requirements for the Amlodipine API and (d) a number of months to be agreed by the Parties in good faith for the Indapamide API. The Safety Stock shall be replenished in a manner sufficient to ensure that, upon any delivery to XOMA, each API included therein shall have an effective shelf life of no less than [*] months for the Amlodipine API, [*] months for the Perindopril API, [*] months for the ACEON API and a period to be agreed by the Parties in good faith for the Indapamide API or such shorter period(s) as the parties may from time to time agree.

9.2 Servier shall use Diligent Efforts to prevent any Inventory Shortfall, including through the maintenance and allocation of inventories of API. Servier shall notify XOMA promptly if any Inventory Shortfall of the type described in clause (a) of the definition thereof occurs or Servier becomes aware of the occurrence of an event or events or the existence of circumstances described in clause (b) of such definition, including whether or not such Inventory Shortfall will impact any planned deliveries of one or more APIs. If such notice indicates an impact on any such planned deliveries, then as soon as reasonably practicable thereafter, Servier shall provide XOMA a forecast setting forth in reasonable detail Servier's plan to remedy such Inventory Shortfall including an updated schedule of what such planned deliveries will be. Such forecast shall thereafter be updated to reflect any significant developments and on no less than a monthly basis. If XOMA determines in its reasonable judgment based on any such forecast that XOMA will not be able to fulfill orders for the applicable Licensed Product as a result of the Inventory Shortfall (an "***Actual Shortage***"), the Parties will meet to evaluate the magnitude of the Actual Shortage and the appropriate means to address such Actual Shortage. In the case of an Actual Shortage of Perindopril API or ACEON API, if the Parties agree that the Actual Shortage will exceed [*] consecutive months or if such Actual Shortage does exceed four (4) consecutive months (an Actual Shortage of any API in excess of [*] consecutive months being referred to herein as a "***Supply Failure***"), then XOMA may at its sole option cause Servier, at Servier's cost and expense, to initiate and complete technology licensing and transfer to, and qualification of, an additional source of manufacturing of Perindopril API or ACEON API, as the case may be, at a site selected by Servier, which may include, for the avoidance of doubt, a Third Party site. In the case of an Actual Shortage of any API other than Perindopril API or ACEON API, XOMA's obligation to purchase such API exclusively from Servier, if any, shall immediately cease.

9.3 In the event of any dispute as to the magnitude, existence or plans to remedy an Actual Shortage, the dispute may be submitted by either Party to the Coordinating Committee for resolution. In the event the Coordinating Committee cannot resolve such dispute within [*] Business Days of such submission, the dispute shall be promptly submitted to a senior executive with decision making authority of each Party for resolution. In the event such senior executives cannot resolve such dispute within [*] Business Days of such submission, the dispute shall be resolved pursuant to Article 16 of the Agreement.

9.4 Without limiting XOMA's remedies available pursuant to other provisions of the Agreement, in the event of a Supply Failure during the term of the Agreement, XOMA's obligations under the Agreement with respect to such API (including, if applicable, the obligation to purchase such API exclusively from Servier) and any Licensed Product containing such API (including, if applicable, with respect to the Minimum Net Sales Amounts set forth in Section 9.5) shall be suspended until such time as the delivery of such API is restored by Servier or by a Third Party as provided in Section 9.2 (whereupon any such obligation of exclusivity will only apply in the event such API continues to be supplied by Servier); and the Minimum Net Sales Amounts set forth in Section 9.5 of the Agreement shall not apply until the end of the first period of [*] consecutive calendar quarters beginning and ending after the Actual Sales shortage has ceased and (y) whichever of clause (i) or (ii) of such Section 9.5 as applied at the time such Actual Shortage began shall apply beginning at the end of such 4 quarter period for the remainder of the applicable period referred to in such clause.

ARTICLE 10 PRECEDENCE

In the event of a contradiction between the terms of this Schedule 6 and the other terms of the Agreement, and in particular the terms of Section 6.2 of the Agreement, the other terms of the Agreement shall control. Once a Designed Third Party has started to supply Perindopril API, Amlodipine API and Indapamide API to XOMA as indicated in Section 6.2 of the Agreement, Servier shall be relieved from its delivery obligations hereunder as of the date of the first delivery by such Designated Third Party, on an API-by-API basis. In respect of such delivery activities, the Designated Third Party shall not be considered an agent of Servier or as acting on behalf of Servier in any way whatsoever.

Appendix 2.1
(to Schedule 6)

Specifications

(a) Amlodipine API for Initial Licensed Product

[*]

(b) Perindopril API for Initial Licensed Product

[*]

(c) Initial Licensed Product

[*]

Appendix 2.1A
(to Schedule 6)

Specifications - ACEON API and ACEON

(a) ACEON API

[*]

(b) ACEON

[*]

Appendix 4.2
(to Schedule 6)

Prices - Clinical Supplies*

Perindopril (milligrams(mg))	Amlodipine(milligrams(mg))	Price (U.S. Dollars)
[*] mg.	[*] mg.	$[*]
[*] mg.	[*] mg.	$[*]
[*] mg.	[*] mg.	$[*]
[*] mg.	[*] mg.	$[*]

*** Prices set forth above are for 1,000 tablets in bulk form, CIP.**

Prices for Clinical Supplies not listed in the table above shall be as agreed by the Parties in good faith based on the prices set forth above.

Appendix 6.2
(to Schedule 6)

Analytical Methods - Perindopril API, Amlodipine API and Initial Licensed Product

[*]

SCHEDULE 7.2

COORDINATING COMMITTEE MEMBERSHIP

The following functions shall be represented:

- **Medical information**
- **Regulatory affairs**
- **Development**
- **Alliance Management/Operations**
- **Legal**

SCHEDULE 8.1(b)(i)

E-ROOM CONTENTS

[*]

SCHEDULE 8.1(b)(ii)

E-ROOM CONTENTS RELATED TO ACEON

[*]

SCHEDULE 8.1(b)(iii)

EXAMPLE OF ELECTRONIC REPORT

[*]

SCHEDULE 11.3(c)

SAMPLE INVOICE

[*]

SCHEDULE 11.5

FORM OF ROYALTY REPORT

[*]

EXHIBIT 10.44A

[*] indicates that a confidential portion of the text of this agreement has been omitted.

AMENDED AND RESTATED TRADEMARK LICENSE AGREEMENT

Entered into between the undersigned as of January 11, 2012 (the "Effective Date"):

BIOFARMA,
A company duly organized and existing under the laws of France
and having its office at:
22 rue Garnier,
92200 NEUILLY-SUR-SEINE
FRANCE
(hereinafter referred to as "**BIOFARMA**")

AND

XOMA IRELAND LIMITED,
A company duly organized and existing under the laws of the Republic of Ireland
and having its office at:

26 Upper Pembroke Street

DUBLIN 2
IRELAND

(hereinafter referred to as "**XOMA**")

BIOFARMA and XOMA are hereinafter individually referred to as the "Party" or collectively referred to as the "Parties".

SUMMARY

PREAMBLE

WHEREAS, BIOFARMA is the owner of certain Trademarks (as hereinafter defined) in the Territory (as hereinafter defined);

WHEREAS, XOMA LS LIMITED ("**XOMA LS**") approached BIOFARMA, an Affiliate of LES LABORATOIRES SERVIER ("**SERVIER**"), in order to acquire an exclusive license to use the Trademarks in the Territory in connection with the commercialization of the Licensed Products (as hereinafter defined) in the Territory, and BIOFARMA agreed to grant such license;

WHEREAS, BIOFARMA and XOMA LS entered into a Trademark License Agreement (the "**Original Agreement**"), dated July 7, 2010 (the "**Original Agreement Effective Date**");

WHEREAS, XOMA LS assigned the Original Agreement to XOMA on March 14, 2011;

WHEREAS, XOMA and SERVIER are parties to that certain License and Commercialization Agreement, dated July 7, 2010 (the "**License and Commercialization Agreement**"), as amended, pursuant to which SERVIER is exclusively licensing to XOMA certain intellectual property rights so as to enable XOMA to commercialize the Licensed Products in the Territory;

WHEREAS, XOMA and SERVIER are entering into an Amended and Restated License and Commercialization Agreement, dated of even date herewith, pursuant to which, among other things, SERVIER is expanding the license grant to XOMA to include an additional Licensed Product, currently commercialized in the Territory under the trade name ACEON® (the "**Amended and Restated Agreement**"); and

WHEREAS, in connection with the execution of the Amended and Restated Agreement, XOMA desires to receive a license grant to the ACEON trademark used for such additional Licensed Product, and the Parties desire to amend and restate the Original Agreement as set forth herein

(hereinafter this "**Agreement**").**NOW, THEREFORE**, IN CONSIDERATION OF THE FOREGOING AND OF THE UNDERTAKINGS CONTAINED HEREIN, THE PARTIES, INTENDING TO BE LEGALLY BOUND HEREBY, AGREE AS FOLLOWS:

ARTICLE I
DEFINITIONS

As used in this Agreement, the following terms have the following meanings, capitalized terms used but not defined herein shall have the meaning set forth in the Amended and Restated Agreement:

1.1 "**ACEON**" means all pharmaceutical preparations, in all dosage strengths, formulations and methods of administration, that contain ACEON API as the sole active ingredient for use in the treatment of humans for hypertension or other cardiovascular diseases, including without limitation those being marketed in the Territory as of the Effective Date under the trade name ACEON®.

1.2 "**ACEON API**" means the active pharmaceutical ingredient known under the INN perindopril associated with the erbumine salt.

1.3 **"Additional Combination Product(s)**" means all pharmaceutical preparations, in all dosage strengths, formulations and methods of administration, that combine (i) the Perindopril API and (ii) one or more other active pharmaceutical ingredients, including the Indapamide API alone and the Indapamide API together with the Amlodipine API, in each case as active pharmaceutical ingredients for use in the Field. Notwithstanding the foregoing, "Additional Combination Product(s)" shall not include the Initial Licensed Product or any pharmaceutical preparation that combines the Perindopril API and any active pharmaceutical ingredient other than Amlodipine API or Indapamide API that becomes the subject of one or more SERVIER research programs after the Original Agreement Effective Date.

1.4 **"Affiliate"** of a Party means:

(i) any company or other entity in which more than (50%) of the voting rights, shares or other equity interests are owned or controlled, directly or indirectly (including pursuant to any option, warrant or similar arrangement), by said Party, and/or

(ii) any company or other entity which owns or controls, directly or indirectly (including pursuant to any option, warrant or similar arrangement), at least fifty percent (50%) of the voting rights, shares or other equity interests of said Party, and/or

(iii) any company or other entity in which at least fifty percent (50%) of the voting rights, shares or other equity interests are owned or controlled, directly or indirectly (including pursuant to any option, warrant or similar arrangement), by a company or other entity referred to in clause (ii) hereinabove.

1.5 "**Amlodipine API**" means the active pharmaceutical ingredient known under the INN amlodipine and any salt, derivative, chelate, clathrate, polymorph, isomer (either structural or optical), acid, base, pro-drug or metabolite thereof.

1.6 "**API**" means, collectively or singularly as the context dictates, the Perindopril API, the Amlodipine API, the ACEON API and, upon exercise by XOMA of the Option with respect to any Additional Combination Product containing the Indapamide API, the Indapamide API.

1.7 **"Business Day"** means a day that is not a Saturday, Sunday or a day on which banking institutions in San Francisco, California U.S.A. and/or Paris, France, are authorized by Law to remain closed.

1.8 **"Commercialization"** means, with respect to the Licensed Products, any and all processes and activities conducted to establish and maintain sales for such Licensed Products, including maintaining Marketing Approval, manufacturing or having manufactured Licensed Products from API, selling, offering for sale, detailing, marketing, promoting, storing, transporting, supporting, distributing, and importing the API. "**Commercialize**" and "**Commercializing**" shall have their correlative meanings.

1.9 **"FDA"** means the United States Food and Drug Administration or any successor entity thereto.

1.10 "**Indapamide API**" means the active pharmaceutical ingredient known under the INN indapamide and any salt, derivative, chelate, clathrate, polymorph, isomer (either structural or optical), acid, base, pro-drug or metabolite thereof.

1.11 **"Indemnitees"** means BIOFARMA, its Affiliates, their respective directors, representatives, agents, officers, employees, direct and indirect beneficial owners, successors and assigns.

1.12 "**Initial Licensed Product**" means all pharmaceutical preparations, in all dosage strengths, formulations and methods of administration, that combine the Amlodipine API and the Perindopril API as active ingredients for use in the Field.

1.13 **"Law"** means, individually and collectively, any and all laws, ordinances, rules, directives and regulations of any kind whatsoever of any governmental or regulatory authority within the applicable jurisdiction.

1.14 **"Licensed Product(s)"** means (i) the Initial Licensed Product, (ii) ACEON and (iii) upon exercise by XOMA of the Option with respect to any Additional Combination Product, such Additional Combination Product.

1.15 **"Marketing Approval"** means all approvals, licenses, registrations or authorizations necessary for the Commercialization by XOMA, its Sublicensees or designees of a Licensed Product in the Territory, including, if applicable, the pricing thereof. Marketing Approval shall be deemed to have been received upon first receipt by XOMA, its Sublicensees or designees of notice from the FDA that Commercialization of a Licensed Product has been approved in the Territory.

1.16 **"NDA"** means a New Drug Application (or any foreign equivalent), including all supplements and amendments thereto, for the approval of the Licensed Product as a new drug by the FDA.

1.17 **"Net Sales"** are recorded according to GAAP (including invoices and accruals). Net Sales means adjusted gross amount invoiced on all sales (***Gross Sales***") of the Licensed Products (including, but not limited to, hospital sales, mail orders and retail sales) by XOMA or through or by its Sublicensees in the Territory, through customary commercial channels of distribution to an independent Third Party in bona fide arms length sales, less the following deductions:

(i) customs tariffs and duties, insurance charges (in each case, when invoiced as additional charges) , allowances for bad debts; and

(ii) Returns (including additional returns accrual) and rebates excluding cash discounts, which Returns shall not exceed [*] percent ([*]%) of Gross Sales on a quarterly basis; and

(iii) discounts actually given for managed care rebates, Medicaid rebates, Medicare rebates, chargebacks, TRICARE rebates and patient assistance program rebates; and

(iv) Recalls;

provided, that deductions pursuant to clauses (i), (ii) and (iii) shall not exceed in the aggregate [*] percent ([*]%) of Gross Sales on a quarterly basis.

For purposes of clarification, if a particular deduction falls under more than one category set forth above, such deduction shall only be taken once.

Any recalls falling out of the definition of Recalls shall be excluded from the determination of Net Sales.

Sales taxes, value added taxes and any other taxes when invoiced as additional charges are excluded from Net Sales.

1.18 **"Perindopril API**" means the active pharmaceutical ingredient known under the INN perindopril associated with the arginine salt.

1.19 **"Promotional Materials"** means all Licensed Product packaging and labeling, and all written, printed, graphic, electronic, audio or video matter, including journal advertisements, sales visual aids, leave behind items, formulary binders, reprints, direct mail, direct-to consumer advertising, broadcast advertisements and sales reminder aids, for example, scratch pads, pens and other like items, in each case created by XOMA or directly on its behalf and used or intended for use in connection with any promotion of a Licensed Product.

1.20 **"Recalls"** means Licensed Products recalled by XOMA (i) for quality, safety or other issues pertaining to the manufacture of API, if supplied by SERVIER, or (ii) following SERVIER's request.

1.21 **"Returns"** means all Licensed Products returned to XOMA by any independent Third Party.

1.22 **"Territory"** means the United States of America and its territories and possessions.

1.23 "**Third Party**" means any entity other than BIOFARMA or XOMA, or their respective Affiliates.

1.24 "**Trademarks**" means (a) with respect to the Initial Licensed Product, the trademark selected by XOMA for the Initial Licensed Product, which as of the Effective Date is [*], *provided* that such trademark is approved by the applicable regulatory authorities and successfully registered with the U.S. Patent and Trademark Office, and if such trademark is not so approved and so registered, the trademark selected by XOMA from those other trademarks listed on Schedule 1.24 hereto or otherwise proposed by XOMA and agreed to by BIOFARMA, (b) with respect to ACEON, the trademark ACEON® No. 3351617 of March 27, 2007 and all the common law rights in the ACEON mark in the Territory and (c) with respect to the Additional Combination Products and/or any Replacement Trademarks, such other trademarks as may be agreed upon in accordance with the terms of this Agreement from time to time. Once a trademark has been selected by the Parties as provided herein, approved by the regulatory authorities and successfully registered with the U.S. Patent and Trademark Office for the Initial Licensed Product, the other trademarks listed in Schedule 1.24 may be used by BIOFARMA for other products after having notified XOMA.

1.25 Interpretation. References to Articles and Sections contained herein shall refer to Articles and Sections of this Agreement as applicable unless otherwise specifically set forth herein. The words "including", "includes" and words of similar import shall be deemed to be followed by "without limitation."

1.26 Additional Definitions. Each defined term used in this Agreement but not set forth in the preceding Sections of this Article I is defined in the body or recitals of this Agreement as indicated below.

Term	Section
"**Additional Trademark**"	2.3
"**Agreement**"	Recitals
"**Amended and Restated Agreement**"	Recitals
"**Defaulting Party**"	8.2
"**knowledge**"	3.2
"**License and Commercialization Agreement**"	Recitals
"**Original Agreement**"	Recitals
"**Original Agreement Effective Date**"	Recitals
"**Replacement Trademarks**"	5.1
"**Royalties"**	6.1
"**SERVIER**"	Recitals
"**Transfer**"	9.2
"**XOMA LS**"	Recitals

ARTICLE II
GRANT

2.1 BIOFARMA hereby grants to XOMA, and XOMA hereby accepts, during the term of this Agreement and subject to its terms and conditions, an exclusive (even as to BIOFARMA), royalty-bearing, sublicensable (with the consent of BIOFARMA, such consent not to be unreasonably withheld or delayed) license to use the Trademarks in the Territory solely in connection with the Commercialization of the Licensed Products in the Territory. All goodwill resulting from XOMA's, its Sublicensees' and their subcontractors' use of the Trademarks shall inure solely to the benefit of BIOFARMA. BIOFARMA retains all rights not specifically granted to XOMA in this Section 2.1. No implied licenses are set forth herein. XOMA acknowledges that no other trademarks other than the Trademarks are being licensed to XOMA pursuant to this Agreement. In furtherance of the foregoing, the Parties acknowledge that XOMA shall have no right or license to use or otherwise refer to "**SERVIER**" or "**BIOFARMA**," other than as required by any applicable law or regulation.

2.2 To the extent not previously provided, BIOFARMA shall immediately provide to XOMA all current trademark search reports for pharmaceutical products which BIOFARMA shall have ordered with respect to the trademarks for the Initial Licensed Product listed on Schedule 1.24 or as otherwise proposed by XOMA and agreed to by BIOFARMA.

2.3 Upon request by XOMA and reasonably in advance of any exercise by XOMA of the Option, pursuant to Section 2.2 of the Amended and Restated Agreement, to include in the licenses thereunder one or more Additional Combination Products, BIOFARMA shall submit to XOMA a reasonable number of candidates for trademark(s) to be used in the Commercialization of such Additional Combination Product(s) in the Territory and shall provide to XOMA all current trademark search reports for pharmaceutical products which BIOFARMA shall have ordered with respect to those of the trademark(s) selected by XOMA from such list or as otherwise proposed by XOMA and agreed to by BIOFARMA (each such additional trademark, hereinafter an "**Additional Trademark**"). Once an Additional Trademark has been so agreed upon, the Parties shall promptly supplement Schedule 1.24 hereto to include such Additional Trademarks and BIOFARMA shall (a) promptly file in its name, and diligently pursue, the registration of (and thereafter maintain) each such Additional Trademark in accordance with its obligations hereunder at BIOFARMA's cost, and (b) provide XOMA with copies of any filings and responses. XOMA shall provide reasonable assistance, at BIOFARMA's request and cost, in connection with such registration and maintenance. For the purposes of this Agreement, all references to Trademarks shall be deemed to include Additional Trademarks**.**

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF BIOFARMA

3.1 BIOFARMA hereby represents and warrants, as of the date hereof, to XOMA as follows:

3.1.1 No Third Party has any rights in the Trademarks in the Territory except for Abbott (as defined in the Amended and Restated Agreement) solely with respect to ACEON as provided in the Abbott Termination Agreement (as defined in the Amended and Restated Agreement). BIOFARMA has terminated all prior agreements relating to use of the Trademarks in the Territory except solely with respect to ACEON as provided in the Abbott Termination Agreement. There is no pending or, to the knowledge of BIOFARMA after due inquiry, threatened challenge, action, claim, demand, suit, proceeding, arbitration, grievance, citation, summons, inquiry or investigation of any nature, civil, criminal, regulatory or otherwise, in law or in equity that would prevent BIOFARMA from hereby performing under this Agreement, or that relates to the ownership or usage or other rights of BIOFARMA to the Trademarks in the Territory. BIOFARMA has not entered into any current or subsisting agreement granting any right or interest in the Trademarks with respect to the Territory. None of the rights of BIOFARMA under the Trademarks have been licensed to BIOFARMA from a Third Party.

3.1.2 BIOFARMA has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Agreement by BIOFARMA have been duly and validly authorized and approved by proper corporate action on the part of BIOFARMA, and BIOFARMA has taken all other actions required by Law, its certificate of incorporation or by-laws or any agreement to which it is a party or to which it may be subject, required to authorize such execution, delivery and performance. Assuming due authorization, execution and delivery on the part of XOMA, this Agreement constitutes a legal, valid and binding obligation of BIOFARMA, enforceable against BIOFARMA in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership, moratorium and similar Laws.

3.2 For purposes of this Article III and Article IV, "**knowledge**" shall mean a Party's or its Affiliates' actual knowledge as of the date hereof.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF XOMA

4.1 XOMA hereby represents and warrants, as of the date hereof, to BIOFARMA as follows:

4.1.1 XOMA has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Agreement by XOMA have been duly and validly authorized and approved by proper action on the part of XOMA, and XOMA has taken all other actions required by Law, its constitutional documents or any agreement to which it is a party or to which it may be subject required to authorize such execution, delivery and performance. Assuming due authorization, execution and delivery on the part of BIOFARMA, this Agreement constitutes a legal, valid and binding obligation of XOMA, enforceable against XOMA in accordance with its respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium and similar Laws.

4.1.2 It is financially capable of undertaking the business operations that it conducts and of performing its obligations hereunder.

4.1.3 There is no action, claim, demand, suit, proceeding, arbitration, grievance, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, regulatory or otherwise, pending in law or in equity that would prohibit XOMA from fully performing under this Agreement.

4.1.4 Any Licensed Product marketed by XOMA will comply with all applicable Law, as well as any regulatory and governmental agency that has jurisdiction and industry codes and standards including current Good Manufacturing Practices related to manufacturing, labeling and advertising, records and reports, and drug listing, assuming, with respect to any Licensed Product containing API supplied by SERVIER, that the representations and warranties of SERVIER with respect to such API set forth in Section 8.1 of Schedule 6 of the Amended and Restated Agreement are true and correct.

4.1.5 XOMA will have conducted a basic search of the U.S. Patent and Trademark Office database of registered and pending trademark applications for any trademarks that are confusingly similar to each Trademark prior to XOMA's use of such Trademark in the Territory.

4.1.6 XOMA will indemnify, defend and hold harmless Indemnitees against all damages, claims, liabilities, losses and other expenses, including reasonable attorneys' fees and costs, whether or not a lawsuit or other proceeding is filed, that arise out of or relate to a breach by XOMA of any representation, warranty, covenant, or term of this Agreement; *provided,* that the foregoing indemnity shall not apply to damages, claims, liabilities, losses or other expenses incurred as a result of BIOFARMA's or any of its Affiliates' gross negligence, willful misconduct or violation of Law (it being understood that XOMA's defense obligations shall remain in effect).

4.1.7 The foregoing indemnity shall be subject to the terms of Sections 17.2 and 17.3 of the Amended and Restated Agreement which shall be incorporated into this Agreement by such reference.

ARTICLE V
TRADEMARK AND QUALITY CONTROL

5.1 Selection of Trademark. In the event that (a) any Trademark(s) to be used to Commercialize any Licensed Products hereunder is/are finally rejected by the FDA or any other governmental or regulatory authority, or (b) the said Trademark(s) is/are successfully challenged by a Third Party, then, in any case the trademark(s) ("**Replacement Trademarks**") to be used by XOMA on the applicable Licensed Product in the Territory shall be mutually agreed upon by the Parties and shall be filed in the name of and owned by BIOFARMA. Prior to agreeing upon any such Replacement Trademark(s), BIOFARMA shall submit to XOMA a reasonable number of candidates for such trademark(s) and shall provide to XOMA all current trademark search reports for pharmaceutical products which BIOFARMA shall have ordered with respect to the Replacement Trademark(s) selected by XOMA or as otherwise proposed by XOMA and agreed to by BIOFARMA. BIOFARMA shall pursue the registration (and thereafter maintain) the Replacement Trademarks chosen by the Parties in accordance with its obligations hereunder at BIOFARMA's cost and will provide XOMA with copies of any filings and responses. XOMA shall provide reasonable assistance at BIOFARMA's request in connection with such registration and maintenance. For the purposes of this Agreement, all references to Trademarks shall be deemed to include Replacement Trademarks.

5.2 Registration and Maintenance Costs. BIOFARMA, at its own expense, will execute, file and record all documents to maintain, preserve and renew applications for registration of the Trademarks (including any Replacement Trademarks and Additional Trademarks) in the Territory, and will take commercially reasonable efforts to obtain registration of any trademark applications for the Trademarks as of the Original Agreement Effective Date. At BIOFARMA's request, XOMA will reasonably cooperate with BIOFARMA's requests in connection with the filing, maintenance, preservation and renewal of all applications and registrations of the Trademarks, including executing all documents as reasonably requested by BIOFARMA in the Territory. BIOFARMA shall reimburse XOMA's out of pocket costs incurred in exercising its obligations pursuant to this Section 5.2.

5.3 Ownership. XOMA acknowledges that the Trademarks are the sole and exclusive property of BIOFARMA, and XOMA agrees that nothing in this Agreement shall give XOMA any right, title or interest express or implied in the Trademarks anywhere in the world other than the right to use the Trademarks in accordance with the terms of this Agreement. XOMA agrees that it shall not, at any time during the term of this Agreement or thereafter, do or suffer to be done any act that would in any way impair the rights of BIOFARMA in and/or to the Trademarks, in the Territory. In particular, XOMA agrees that it will not at any time, in the Territory, (a) do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of BIOFARMA's claimed ownership in the Trademarks; (b) take any action that would interfere with BIOFARMA's registration and/or use of the Trademarks outside the Territory; (c) take any action that would diminish or dilute the distinctiveness or validity of the Trademarks; or (d) challenge BIOFARMA's ownership of the Trademarks and/or registration thereof. In connection with such limited use of the Trademarks as permitted by this Agreement, XOMA acknowledges that use thereof shall inure to the benefit of BIOFARMA and shall not create in XOMA's favor any right, title or interest in or to the Trademarks. XOMA further agrees that its own acts or omissions made in connection with or related to the Trademarks shall not form any basis for a challenge of the validity of any BIOFARMA interest in the Trademarks. XOMA shall not grant any other party the right to use the Trademarks, other than in connection with its fulfillment of its obligations under this Agreement and pursuant to the Amended and Restated Agreement.

5.3.1 XOMA further agrees that its use of the Trademarks shall conform to the standards set by BIOFARMA and be under the quality control of BIOFARMA, including reasonable inspection by BIOFARMA, and shall be in compliance with all applicable requirements of Law.

5.3.2 To the extent that any rights in and to the Trademarks are deemed to accrue to XOMA, XOMA hereby assigns any and all such rights, at such time as they may be deemed to accrue, including the resulting goodwill, to BIOFARMA.

5.4 Promotional Materials. XOMA will provide BIOFARMA with at least one sample of each example of Promotional Materials, packaging (including labeling, boxes, etc.) bearing the Trademarks (prior to implementing on the market of the same and any changes thereto prior to such changes). Upon the request of BIOFARMA, XOMA shall deliver to BIOFARMA, from time to time, at its request without charge, a reasonable additional number of packaged finished goods and partially finished goods or other materials adequate for BIOFARMA to determine that XOMA is in compliance with the terms of this Agreement and the terms of the Amended and Restated Agreement.

5.4.1 XOMA agrees that the use of the Trademarks on Promotional Materials shall conform to the typical quality standards and trademark use standards used by XOMA with respect to other marketing materials distributed by XOMA from time to time.

5.4.2 XOMA will use proprietary notices (™, ® or ©) on each example of Promotional Materials, packaging (including labeling, boxes, etc.) in the form that BIOFARMA provides.

5.5 Domain Names. BIOFARMA agrees that XOMA, as part of fulfillment of its obligations under this Agreement and the Amended and Restated Agreement, may have the need to operate websites using domain names which include the Trademarks as part thereof. BIOFARMA agrees that it shall retain and maintain ownership of such domain names, and that XOMA may operate such websites, subject to the approval by BIOFARMA of the content of the websites, such approval not to be unreasonably withheld or delayed.

5.5.1 To the extent, with respect to ACEON, that one or more domain names are registered in the name of Abbott, XOMA shall cooperate with Abbott to have such domain names, and all rights therein, directly transferred to XOMA. To the extent, with respect to ACEON, that one or more domain names are registered in the name of BIOFARMA, the Parties shall cooperate with each other to have such domain names, and all rights therein, transferred to XOMA. At termination of the Amended and Restated Agreement, XOMA shall transfer at no cost to BIOFARMA all ACEON domain names and all domain names containing the name ACEON.

5.6 Injunctive Relief. In the event of any unauthorized use of the Trademarks, BIOFARMA may, in addition to all other remedies that may be available to it, seek relief in equity (including a temporary restraining order, temporary or prohibitory injunction, and permanent mandatory or prohibitory injunction) to restrain and prohibit the continuation of any such unauthorized use and may seek to compel compliance with the provisions of this Agreement and to restrain and prohibit the unauthorized use.

ARTICLE VI
ROYALTIES

6.1 Royalty Payments. As consideration for the Trademarks license granted to XOMA hereunder, and subject to Sections 6.4 and 7.2, XOMA shall pay to BIOFARMA, after the end of each calendar quarter, royalties equal to [*] percent ([*]%) of Net Sales of the Licensed Products ("**Royalties**") on a Licensed Product by Licensed Product basis.

6.2 Royalty Payment and Reports.

6.2.1 Each Royalty shall be payable quarterly only once with respect to the Licensed Products. XOMA shall provide a report to BIOFARMA of the sales estimates within [*] Business Days after the end of each calendar [*] in substantially the form attached as Schedule 11.5 to the Amended and Restated Agreement setting forth (i) the amount of Gross Sales in U.S. Dollars of the Licensed Products in such [*], (ii) any deductions and/or withholding from such amount of Gross Sales as permitted pursuant to the definition of Net Sales, (iii) a calculation of Net Sales in U.S. Dollars of the Licensed Products for such [*], (iv) the amount of aggregate Net Sales in U.S. Dollars of the Licensed Products on a cumulative per year basis for the current year, and (v) the amount of Royalty due in U.S. Dollars on Net Sales with respect to such [*].

6.2.2 XOMA shall also provide a report to BIOFARMA of:

(i) the sales estimates within [*] Business Days after the end of each calendar [*] with the same information as above, and

(ii) the actual sales within [*] days after the end of each calendar [*] with the same information as above. Upon receipt of each such report that relates to a calendar [*], BIOFARMA will issue an invoice for the amount reflected on such report as being payable with respect to such calendar [*]. Within [*] days after receipt of such invoice but not later than [*] days after the end of each calendar [*], XOMA shall make the royalty payment reflected in such report and invoice with respect to such calendar [*].

(iii) XOMA shall provide a report to BIOFARMA of the annual sales no later than [*] of each calendar year. Such report shall be certified by an executive officer of XOMA as accurate and in accordance with generally accepted accounting principles (to the extent applicable).

For the avoidance of doubt, any report required by Section 6.1 or this Section 6.2 may be included in the corresponding report required by Section 11.5 of the Amended and Restated Agreement for the same period so long as such report is provided to both Servier and BIOFARMA.

6.3 Payments Generally. All payments under this Agreement shall be made by wire transfer to a bank account designated by BIOFARMA, in Euros in an amount converted from the U.S. Dollar amount of such payment set forth in or determined in accordance with this Agreement at the exchange rate in effect on the date of payment. Any payments or portions thereof due hereunder which are not paid when due shall bear interest equal to the lesser of (i) one-month LIBOR plus [*] basis points per annum or (ii) the maximum rate permitted by Law, calculated on the number of days such payment is delinquent. This Section 6.3 shall in no way limit any other remedies available to either Party.

6.4 Taxes. In the event that any Royalties or other payments due from XOMA to BIOFARMA under this Article VI are subject to withholding tax required by Law to be paid to the taxing authority of any country, the amount of such tax may be withheld from the applicable Royalties or other payment due BIOFARMA. XOMA shall pay such tax on behalf of BIOFARMA and shall furnish BIOFARMA with evidence of withholding tax paid. Any such payments made by XOMA to an applicable taxing authority shall constitute payments made to BIOFARMA under this Article VI and in no event shall XOMA be liable for any payments in excess of amounts due to BIOFARMA under this Article VI, whether or not in the form of any taxes, duties, levies or other similar charges, including related interest, additions to tax and penalties, in respect of any payments pursuant to this Article VI.

6.5 Audit Rights. BIOFARMA shall have the right, at its own expense, no more than once per calendar year, to inspect XOMA's relevant financial books and records through an independent internationally recognized auditor designated by BIOFARMA and approved by XOMA, such approval not to be unreasonably withheld or delayed, and subject to reasonable obligations of confidentiality, upon at least [*] days advance written notice for the purpose of confirming XOMA's compliance with the terms hereof. In the event that the foregoing audit reveals an underpayment by XOMA, within [*] days of the receipt of the auditor's report, XOMA shall remit payment to BIOFARMA of the amount of the underpayment plus interest as set forth in Section 6.3 above. BIOFARMA shall bear the costs incurred in connection with such inspection and audit, all in accordance with the terms and conditions of this Agreement. Any overpayments shall promptly be refunded to XOMA.

ARTICLE VII
INFRINGEMENT/ENFORCEMENT

7.1 Each Party will promptly notify the other, in writing, if it becomes aware of any infringement or suspected or threatened infringement of the Trademarks. Subject to Section 7.4, XOMA agrees to take no further steps with respect to such infringement pending instructions from BIOFARMA.

Nothing in this Section shall prevent the Parties from compliance with any and all laws or regulations requiring notification of infringements or counterfeiting activities involving the Trademark to the proper authorities.

7.2 BIOFARMA may in its sole discretion, but shall not be required to, bring legal action against any infringement or threatened infringement of the Trademarks or defend against any claim that the Trademarks infringe any rights of a Third Party of which it is aware or which is brought to its attention; in the event BIOFARMA brings such action, which shall be at its own cost, XOMA shall cooperate fully with BIOFARMA, at BIOFARMA's cost including if required to bring such action, furnishing a power of attorney and furnishing documents and information and executing all necessary documents as BIOFARMA may request. Any recovery in action or defense described in this Section 7.2 obtained shall belong to BIOFARMA. BIOFARMA shall not settle any such action or defense that imposes any obligation on XOMA without XOMA's prior written consent. If BIOFARMA declines to bring or defend a legal action under this Section 7.2 and XOMA exercises its option under Section 7.4 to bring or defend such action, then no Royalties shall be due under this Agreement for the Trademark that is the subject of such action while such action is pending or thereafter unless and until XOMA prevails in such action.

7.3 Should BIOFARMA decide to bring legal action to prosecute such infringement, XOMA shall be entitled to join the action so long as BIOFARMA retains at all times the right to direct the action (including the choice of its counsel and litigation and settlement strategy) subject to the limitation set forth in Section 7.2.

In case XOMA and BIOFARMA mutually agree to prosecute such infringement jointly, or defend jointly against any such claim all costs and expenses of, as well as any recovery obtained from such action or defense shall be divided equally between BIOFARMA and XOMA.

7.4 If BIOFARMA has failed to bring or defend an action relating to any infringement in the Territory under Sections 7.2 or 7.3 above,

(i) [*] weeks after it has been notified in writing by XOMA of such alleged infringement, or

(ii) [*] weeks before the time limit, if any, set forth in the appropriate laws and regulations for the filing of such action, whichever comes first,

XOMA may at its option, bring legal action against any infringement or threatened infringement to the Trademarks or defend against any claim that the Trademarks infringe the right of a Third Party. XOMA shall act in its own name and at its own cost. In such event, BIOFARMA shall cooperate fully with XOMA, at XOMA's cost, including, if required in order to bring such an action, joining such an action, the furnishing to XOMA of a power of attorney and furnishing documents and information and executing all necessary documents as XOMA may request. Any recovery obtained in any action or defense described in this Section 7.4 shall belong to XOMA.

7.5 Should the Trademarks not be registered or be invalidated for any reasons whatsoever, or if BIOFARMA fails to bring any action and XOMA opts not to bring any action against any infringement, the Parties shall agree to the selection at XOMA's discretion, registration at BIOFARMA's expense and use by XOMA of a Replacement Trademark(s) in accordance with the procedures of Section 5.1 and which shall belong to BIOFARMA and which shall be governed by the terms of this Agreement.

ARTICLE VIII
TERM AND TERMINATION

8.1 **Term.** This Agreement commenced on and as of the Original Agreement Effective Date and shall continue until the expiration or termination of the Amended and Restated Agreement, at which time this Agreement shall automatically terminate.

8.2 **Termination.** Either Party shall have the right to terminate this Agreement upon notice to the other Party (the "**Defaulting Party**") at any time if the Defaulting Party breaches, in any material respect, any of its representations, warranties or obligations under this Agreement, and such breach is not cured within [*] days after the Defaulting Party's receipt of written notice of such breach.

8.3 **Rights and Obligations of Parties upon Termination**

8.3.1 Any termination (i) shall be on a trademark-by-trademark basis without prejudice to any other damage or legal redress that a Party hereto may be entitled to, and (ii) shall not release a Party hereto from any indebtedness, liability or other obligation incurred hereunder by such Party prior to the date of termination or expiration.

8.3.2 Upon termination, XOMA shall discontinue the use of and refrain thereafter from using or registering the Trademarks and any trademark(s) confusingly similar thereto, and further agrees to refrain from using trade names, slogans, package designs, labels, advertising copy or other indicia of origin associated with the Trademark or with BIOFARMA.

8.3.3 Upon termination, XOMA shall use commercially reasonable efforts to return to BIOFARMA (or certify to BIOFARMA that it has destroyed) all documents and Promotional Materials (including copies) of any kind concerning the Trademark communicated to it by BIOFARMA.

8.3.4 The following provisions of this Agreement will survive expiration or termination of this Agreement: Articles I, III, IV and IX and this Section 8.3.

ARTICLE IX
MISCELLANEOUS

9.1 EXCEPT AS SPECIFICALLY PROVIDED HEREIN, NEITHER BIOFARMA NOR XOMA MAKES ANY OTHER WARRANTIES OR REPRESENTATIONS UNDER THIS AGREEMENT. EACH PARTY HEREBY DISCLAIMS ALL IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY, EXCEPT AS SPECIFICALLY SET FORTH IN THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLES 3 AND 4 OF THIS AGREEMENT, SHALL HAVE NO LIABILITY FOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

9.2 Assignment. This Agreement and any rights granted or obligations imposed hereunder are personal to each Party and shall not be sold, assigned, delegated or otherwise transferred (each a "**Transfer**"), directly or indirectly, by operation of law or otherwise, by either Party without the prior written consent of the other Party, which consent may be granted or withheld in such other Party's sole discretion; *provided, however,* that either Party, at any time for any reason, may Transfer (a) this Agreement or any right or obligation hereunder, in whole or in part, to any of its Affiliates who agree to be bound by the applicable terms and conditions of this Agreement, or (b) this Agreement in whole to any successor of such Party by merger or sale of all or substantially all of its business assets to which this Agreement relates who agrees to be bound by the applicable terms and conditions of this Agreement. Any attempted Transfer of this Agreement or any of the rights granted hereunder in violation of this Section 9.2 shall be void *ab initio*. Any transaction that results in an entity to which this Agreement, or any rights or obligations hereunder, were Transferred in reliance on clause (a) above ceasing to be an Affiliate shall be deemed a Transfer subject to this Section 9.2. The consent by any Party to any Transfer shall not constitute a waiver of the necessity for such consent in any subsequent Transfer. XOMA shall remain jointly and severally liable to BIOFARMA with respect to any obligations under this Agreement Transferred by XOMA to (i) any of its Affiliates, or (ii) any Third Party that does not have comprehensive general liability insurance at the level indicated in Article 10 of the Amended and Restated Agreement, in each case unless BIOFARMA consents to such Transfer, such consent not to be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

9.3 Notices. Any notices, requests, reports, approvals, designations, responses, or other communications provided for in this Agreement to be made by either of the Parties to the others shall be in writing to the other at its/their address set forth below. Any such notice or communication may also be given by hand or by e-mail or facsimile. Either Party may by like notice specify an address to which notices and communications shall thereafter be sent. Any such notice, instruction or communication shall be deemed to have been delivered upon receipt if delivered by hand, three (3) Business Days after it is sent by mail, one (1) Business Day or when transmitted with electronic confirmation of receipt, if transmitted by facsimile (if such transmission is on a Business Day; otherwise, on the next Business Day following such transmission).

In the case of BIOFARMA:

BIOFARMA
22 Rue Garnier
92200 Neuilly sur Seine
France

Attention: Head of Trademark Department

Facsimile: + 33 1 55 72 32 69

With a required copy to:

LES LABORATOIRES SERVIER
22 Rue Garnier
92200 Neuilly Sur Seine
France

Attention: USA Zone Manager

Facsimile: + 33 1 55 72 52 05.

In the case of XOMA:

XOMA IRELAND LIMITED

26 Upper Pembroke Street
Dublin 2
Ireland
Attention: Alan Kane
Facsimile: +353 1 637 3989

With required copies (which shall not constitute notice) to:

Cahill Gordon & Reindel llp
80 Pine Street
New York, NY 10005
United States of America
Attention: Geoffrey E. Liebmann
Facsimile: +1 212 269 5420

and to:

XOMA Ltd.
2910 Seventh Street
Berkeley, California 94710
United States of America
Attention: General Counsel
Facsimile: +1 510 649 7571

9.4 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of Germany to the exclusion of its conflict of law provisions.

9.5 Dispute Resolution. The Provisions of Article 16 "Dispute Resolution" of the Amended and Restated Agreement shall be incorporated herein by reference and shall apply mutatis mutandis to this Agreement.

9.6 No Waiver. None of the provisions of this Agreement can be waived except in a writing signed by the Party granting the waiver. No failure by a Party to exercise any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any right preclude any other or further exercise of that right or the exercise of any other rights. The waiver by any Party of any breach of this Agreement shall not be deemed a waiver of any prior or subsequent breach. All remedies of either Party shall be cumulative and the pursuit of one remedy shall not be deemed a waiver of any other remedy.

9.7 Severability. If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. In the event any provisions shall be held invalid, illegal or unenforceable, the parties shall use best efforts to substitute a valid, legal and enforceable provision, which, insofar as practical, implements the purposes hereof.

9.8 Entire Agreement. This Agreement, as well as the Amended and Restated Agreement signed on the same date, constitute the entire understanding between the Parties relating to the subject matter hereof and thereof, and no amendment or modification to this Agreement shall be valid or binding upon the Parties unless designated as such, made in writing and signed by the representatives of such Parties.

9.9 No Third-Party Beneficiaries. Nothing in this Agreement is intended or shall be construed to give any other person or entity any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein, other than Indemnitee and any assignee permitted under Section 9.2 above.

9.10 Relationship of the Parties. The relationship of the Parties under this Agreement shall be solely that of independent contractors and nothing herein shall be construed to create or imply any relationship of employment, agency, joint venture, partnership or any relationship other than that of independent contractors. BIOFARMA and XOMA acknowledge and agree that each of them is engaged in a separate and independent business and neither shall state, represent or imply any interest in or control over the business of the other.

9.11 Further Assurances. Each Party shall execute, acknowledge and deliver, without additional consideration, such further assurances, instruments and documents, and shall take such further actions, as the other Party shall reasonably request in order to fulfill the intent of this Agreement and the transactions contemplated hereby.

9.12 Force Majeure. Neither Party hereto shall be liable for any failure to perform an obligation under this Agreement, other than a payment obligation, by reason of force majeure. For the purposes of this Agreement, the term "force majeure" shall mean circumstances that are not within the reasonable control of such Party, such as requisition or interference by any government, state or local authorities, war, strikes, lockout or other labor disputes, civil disorders or commotions, act of aggression, acts of God, energy or other conservation shortages, disease, or occurrences of a similar nature.

9.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together, shall constitute one and the same instrument.

9.14 Privileges. If a Party is entitled to attorney-client or attorney work product privileges from disclosure established under public policy provisions, such privileges shall apply and may be invoked by the other Party

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals by their duly authorized representatives as of the Effective Date.

BIOFARMA

By: _____
Name: Christian Bazantay
Title: Proxy

By: _____
Name: Yves Langourieux
Title: Proxy

By: _____
Name: Jean-Philippe Seta
Title: Proxy

XOMA IRELAND LIMITED

By: _____
Name: Christopher J. Margolin
Title: Director

SCHEDULE 1.24
Trademarks

[*]

[*] indicates that a confidential portion of the text of this agreement has been omitted.

MASTER SERVICES AGREEMENT

Between

Medpace Inc.
an Ohio Corporation
4620 Wesley Avenue
Cincinnati, Ohio 45212

("MEDPACE")

and

XOMA (US) LLC
a Delaware company with limited liability
2910 Seventh Street
Berkeley, California 94710

("SPONSOR")

This MASTER SERVICES AGREEMENT (the "Agreement"), dated as of November 9, 2009 (the "Effective Date"), is between MEDPACE and SPONSOR. MEDPACE and SPONSOR are sometimes referred to herein individually as a "Party" and together as the "Parties".

RECITALS:

WHEREAS, SPONSOR is in the business of developing and obtaining regulatory approvalof the marketing and sale of pharmaceutical products and or biological products, and or medical devices; and

WHEREAS, MEDPACE is engaged in the business of providing services related to the design and execution of clinical development programs involving drugs, biologics, and medical devices through engagement by its clients, the sponsors of clinical development programs, to perform such services; and

WHEREAS, SPONSOR desires to engage MEDPACE to perform certain services ("Services") as set forth hereinafter in connection with certain clinical trials, all in accordance with and subject to the terms of this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions hereinafter set forth, the Parties agree as follows:

1. PROJECT SPECIFICATIONS

1.1. MEDPACE hereby agrees to perform Services for SPONSOR from time to time. The precise Services to be performed by MEDPACE shall be mutually agreed upon by the Parties and set forth in one or more task orders (each a "Task Order"), a form of which is attached hereto as Exhibit A. Each Task Order shall be signed by an authorized representative of each Party and shall include detailed information concerning a given project, including a description of the specific services to be provided ("Scope of Work"), project milestones and target completion dates ("Project Schedule"), a detailed budget ("Project Budget'), and a schedule of payments related to the Project Schedule and the Project Budget ("Payment Schedule"). Each Task Order shall contain a Transfer of Obligations list ("Transfer of Obligations") in conjunction with the relevant Task Order and consistent with the regulations set forth in 21 C.F.R. Section 312, Subpart D (Responsibilities of Sponsors and Investigators).

1.2. To the extent the Services include a clinical investigation (to be performed in accordance with the details provided in the applicable Task Order), MEDPACE shall require each Study Site to execute SPONSOR's Clinical Site Agreement, attached hereto as Exhibit B. Any changes to the Clinical Site Agreement requested by the Study Site shall be submitted to SPONSOR for review. SPONSOR shall have sole and final approval of each Clinical Site Agreement.

2. PROJECT SCHEDULE

2.1. Each Task Order shall contain project timelines, milestones or target dates for completion of a project or a portion thereof, and all such schedules shall be reasonable for the Services to be provided. In all events, the Parties shall use their reasonable best efforts to comply with each Task Order.

2.2. If at any time either Party anticipates a delay in meeting the timelines for a given Task Order as set forth in its Project Schedule, either due to changes to the Services requested by SPONSOR, or other causes (including, but not limited to, FDA approval of a competitor's NDA for the same drug, which may adversely affect patient enrollment), then the anticipating Party shall promptly notify the other Party in writing, specifying the reason for the delay and the anticipated effect upon the timelines, milestones or other deliverables.

3. CHANGE ORDERS

3.1. Any change in the details of a Task Order or the assumptions upon which the Task Order is based may require changes in the Project Budget, Payment Schedule or Project Schedule. Every such change shall require a written amendment to the Task Order (a "Change Order"). Each Change Order shall detail the requested changes to the applicable task, responsibility, duty, budget, timeline or other matter. The Change Order will become effective upon the execution of the Change Order by both Parties, and the Change Order will specify the period of time within which MEDPACE must implement the changes. Both Parties agree to act in good faith and promptly when considering a Change Order requested by the other party but neither party is obligated to execute a Change Order. No Change Order shall become effective unless and until it is signed by both Parties. Any such changes that result in additional charges shall be reflected in the Change Order to the affected Task Order, Project Budget or Payment Schedule.

4. PROJECT BUDGET, PAYMENT SCHEDULE, AND TERMS

4.1. The SPONSOR agrees to pay MEDPACE for Services rendered pursuant to the Project Budget and Payment Schedules included in each Task Order.

4.2. The SPONSOR agrees to reimburse MEDPACE for reasonable pass-through expenses identified in the Task Order and incurred by MEDPACE in providing the Services in accordance with the relevant Task Order. All expenses billed to SPONSOR by MEDPACE must be accompanied by appropriate documentary evidence, such as receipts or other documentation reasonably acceptable to SPONSOR.

The Parties hereby acknowledge and agree that escrow costs ("Escrow Costs") may include but are not limited to third party advance payments for investigator meetings, vendors, Study Site payments ("Study Site" shall mean the physical location at which a particular investigator conducts a study), and any payments to investigators, institutions, and site maintenance organizations for services performed that relate to a Study. If SPONSOR and MEDPACE agree that as part of the Services to be provided under this Agreement or any Task Order(s), that MEDPACE is to enter into agreements with third parties and obligate itself to making payments to such third parties for services rendered in conducting a Study, then SPONSOR shall escrow in advance all funds necessary for MEDPACE to meet its current payment obligations and those obligations for the upcoming fiscal quarter (including non-cancelable expenses).

The Parties acknowledge and agree that any third parties (including but not limited to investigators, institutions or site management organizations) paid with escrow funds in connection with the performance of Services under this Agreement or any Task Order shall not be considered the agent, employee or subcontractor of MEDPACE.

4.3. SPONSOR shall mail payments to MEDPACE within [*] days after receipt of a written invoice and required supporting documentation as applicable. An annual interest rate of [*]% will be applied to outstanding invoices greater than [*] days.

5. WARRANTIES AND REPRESENTATIONS:

5.1. Acknowledgements:

MEDPACE acknowledges that the Services to be provided hereunder are for the benefit of, and are subject to the direction of SPONSOR. MEDPACE acknowledges that SPONSOR is the beneficiary under the terms of this Agreement and each Task Order, and that SPONSOR is entitled to enforce the provisions thereof.

5.2. Representations and Warranties of MEDPACE

5.2.1. MEDPACE represents and warrants that it is a corporation with its principal office and place of business at 4620 Wesley Avenue, Cincinnati, Ohio 45212, duly organized, validly existing and in good standing in its place of organization, and is in good standing in and duly qualified to do business.

5.2.2. MEDPACE warrants that the execution, delivery and performance of this Agreement and each task order has been validly authorized by all corporate action and this Agreement and each Task Order represents the valid binding agreement of MEDPACE enforceable in accordance with its terms. The execution, delivery and performance of this Agreement and each Task Order will not violate any organizational document governing MEDPACE, any agreement to which MEDPACE is a party, or any law or court or governmental order, holding or writ by which MEDPACE is bound. MEDPACE further warrants that it shall render the Services requested by SPONSOR in accordance with high professional standards, consistent with Good Clinical Practices and with the standard of care customary in the contract research organization industry.

5.2.3. MEDPACE warrants that the personnel assigned to perform services rendered under this Agreement shall be qualified and professionally capable of performing the Services, shall be adequate to effectively perform the Services on the agreed upon schedule and shall devote such time as is necessary to perform the Services on such agreed upon schedule.

5.2.4. MEDPACE further warrants that it shall perform the Services in compliance with all applicable laws and regulations including, without limitation, the Federal Food, Drug and Cosmetic Act and the regulations promulgated pursuant thereto, and all future amendments during the term. MEDPACE further warrants that it shall make available to SPONSOR, or to the responsible regulatory authority, relevant records, programs and data as may reasonably be requested by SPONSOR or which is the subject of a Task Order. SPONSOR shall have the right to monitor the operations of MEDPACE hereunder, and SPONSOR representatives shall have the right to visit any of the facilities where MEDPACE is performing any of the Services and during such visits to inspect the work being done and materials used, to observe the procedures being followed, to examine the books, records and other data relevant to the Services. If any regulatory agency requests to inspect any books, records, data of MEDPACE relating to the Services, MEDPACE shall immediately notify SPONSOR.

5.2.5. MEDPACE represents and warrants that there is no litigation, regulatory investigation or proceeding, administrative hearing or any other similar proceeding pending or to the best of its knowledge threatened against MEDPACE which could adversely affect MEDPACE's ability to perform the Services.

5.2.6. Upon request, MEDPACE shall provide a copy of a certificate evidencing its insurance coverage to SPONSOR.

5.3. Representations and Warranties of SPONSOR

5.3.1. SPONSOR represents and warrants that it is a Delaware company with limited liability with its principal office and place of business at 2910 Seventh Street, Berkeley, California 94710, duly organized, validly existing and in good standing in its place of organization, and is in good standing in and duly qualified to do business.

5.3.2. SPONSOR warrants that the execution, delivery and performance of this Agreement and each task order has been validly authorized by all corporate action and this Agreement and each Task Order represents the valid binding agreement of SPONSOR enforceable in accordance with its terms. The execution, delivery and performance of this Agreement and each Task Order will not violate any organizational document governing SPONSOR, any agreement to which SPONSOR is a party, or any law or court or governmental order, holding or writ by which SPONSOR is bound.

5.3.3. SPONSOR represents and warrants that there is no litigation, regulatory investigation or proceeding, administrative hearing or any other similar proceeding pending or to the best of its knowledge threatened against SPONSOR which could adversely affect SPONSOR's ability to perform under this Agreement or any Task Order.

5.3.4. Upon request, SPONSOR shall provide a copy of a certificate evidencing its insurance coverage to MEDPACE.

6. TERMINATION

6.1 Either Party may terminate this Agreement without cause immediately upon giving the other Party notice of such termination, provided such termination shall not in and of itself affect any then uncompleted Task Order.

6.2 SPONSOR may terminate any Task Order without cause immediately upon giving MEDPACE notice of such termination. As soon as practicable, after receipt of such notice, the Parties shall cooperate in good faith to agree on a plan to expeditiously conclude activities with respect to such matter. MEDPACE shall transfer to SPONSOR all case report forms, study files, and other data and information in any and all formats available, including electronic format and computer files and programs, in MEDPACE's possession.

6.3 MEDPACE may terminate a Task Order only if SPONSOR has defaulted on its obligations thereunder and has not cured such default (a) within [*] days after receipt of written notice if the default is the failure to pay MEDPACE any amount due thereunder or (b) within [*] days after receipt of written notice in the event of any other default. As soon as practicable, after receipt of such notice, the Parties shall cooperate in good faith to agree on a plan to expeditiously conclude activities with respect to such matter. MEDPACE shall transfer to SPONSOR all case report forms, study files, and other data and information in any and all formats available, including electronic format and computer files and programs, in MEDPACE's possession.

6.4 In the event of any-termination of a Task Order before completion, SPONSOR agrees to pay MEDPACE for all Services rendered pursuant to the unfinished Task Order prior to such termination and any non-cancelable expenses incurred in connection with MEDPACE's performance of Services thereunder. As soon as reasonably practicable following receipt of a termination notice, MEDPACE shall submit an itemized accounting of Services performed, expenses incurred pursuant to performance of the Services, non-cancelable expenses incurred by MEDPACE relating to any unfinished Task Order, and payments received in order to determine a balance to be paid by either Party to the other. Such balance shall be paid within [*] days of receipt of such an itemized accounting by SPONSOR.

7. COMMUNICATIONS

7.1. Any notice required or permitted under this Agreement shall be in writing and shall be deemed given if delivered personally, mailed by prepaid, first class, certified mail, return receipt requested, or sent by express courier service, to the Party to be notified at the addresses set forth below (or such other address as shall be designated by written notice); provided that all notices shall be effective upon receipt thereof:

If to MEDPACE:

Medpace, Inc.
4620 Wesley Avenue
Cincinnati, Ohio 45212
Attn: August J. Troendle
Telephone: (513) 579-9911 x2278

If to SPONSOR:
XOMA (US) LLC
2910 Seventh Street
Berkeley, California 94710
Attn: Legal Department
Telephone: (510) 204-7200

8. CONFIDENTIALITY

8.1. SPONSOR, may provide confidential information to MEDPACE during the course of this Agreement. All information disclosed by SPONSOR to, or otherwise acquired or received by, MEDPACE or any of its employees, including, but not limited to, all information developed during the Services, including, but not limited to, the case reports and safety information, and all of SPONSOR's business information, all sales and operating information, statistical plans, existing and potential business and marketing plans and strategies, financial information, cost and pricing information, media, know-how, designs, source codes, technical information, data, concepts, reports, methods, processes, techniques, operations, devices, and the like, whether or not the foregoing information is patented, tested, reduced to practice, or subject to copyright and whether prepared by SPONSOR, its representatives or others, that contain or otherwise reflect or are based upon, in whole or in part, any of the foregoing information or that reflect MEDPACE's review of, interest in, or evaluation of all or any portion of the foregoing information and including any information concerning or constituting application, reverse engineering, copying, reverse compiling, duplication, installation, processes, procedures, formulae, trade secret, know-how, technology, and other intellectual property, whether communicated in writing, orally, electronically, photographically, visually or in recorded or any other form, is deemed to be the confidential information of SPONSOR ("SPONSOR Confidential Information"). MEDPACE shall not disclose SPONSOR Confidential Information to any third party, or use SPONSOR Confidential Information for any purpose other than for the benefit of SPONSOR, without the prior written consent of SPONSOR.

8.1.1. MEDPACE shall ensure by binding written agreement that its employees, agents, and approved independent contractors involved in the Services shall comply with the provisions of Article 8 of this Agreement. MEDPACE shall disclose SPONSOR Confidential Information only to those of its employees, agents, and independent contractors who reasonably need to know SPONSOR Confidential Information.

8.1.2. MEDPACE shall exercise due care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure and use of SPONSOR Confidential Information associated with the Services.

8.2. MEDPACE Confidential Information.

MEDPACE may provide confidential information to SPONSOR during the course of this Agreement ("MEDPACE Confidential Information"). MEDPACE Confidential Information shall include but is not limited to standard operating procedures, pricing, and financial information provided by MEDPACE or its Affiliates to SPONSOR during the course of performance of the Services, and any non public information pertaining to MEDPACE's business practices or other proprietary information. SPONSOR shall not disclose MEDPACE Confidential Information to any third party, or use MEDPACE Confidential Information for any purpose other than for those set forth under this Agreement or a Task Order, without the prior written consent of MEDPACE.

8.2.1. SPONSOR shall ensure by binding written agreement that its employees, agents, and approved independent contractors involved in the Services shall comply with the provisions of Article 8 of this Agreement. SPONSOR shall disclose MEDPACE Confidential Information only to those of its employees, agents, and independent contractors who reasonably need to know MEDPACE Confidential Information.

8.2.2. SPONSOR shall exercise due care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure and use of Confidential Information associated with the Services.

8.2.3. MEDPACE Confidential Information and SPONSOR Confidential Information are referred to herein collectively or individually, with respect to either party, as "Confidential Information."

8.3. This confidentiality and nondisclosure provision shall not apply to:

Information which was known by the Party before the date hereof or which is independently discovered, after the date hereof, without the aid, application or use of the Confidential Information, as evidenced by written records;

Information which is in the public domain on the date hereof or subsequently becomes publicly available through no fault or action of the other Party; or

Information, which is lawfully obtained by the receiving Party from sources independent of the disclosing Party who, to the receiving Party's knowledge, have a lawful right to disclose such Confidential Information.

8.3.1. If the receiving Party is requested to disclose the Confidential Information of the other Party or the substance of this Agreement in connection with a legal or administrative proceeding or otherwise to comply with a requirement under the law, the receiving Party will give the disclosing Party prompt notice of such request so that the disclosing Party may seek an appropriate protective order or other remedy, or waive compliance with the relevant provisions of this Agreement. The disclosing Party must notify the receiving Party within [*] days that it intends to take action in response to the request for disclosure. If the disclosing Party seeks a protective order or other remedy, the receiving Party, at the disclosing Party's expense, will cooperate with and assist the disclosing Party in such efforts. Failure of the disclosing Party to intervene shall not relieve the obligations to maintain confidentiality except in so far as the receiving Party must comply with the terms of such process compelling disclosure.

8.4 The receiving Party will use any Confidential Information received in connection with this Agreement only in the conduct of the Services and will return to the disclosing Party, at the disclosing Party's expense, all Confidential Information at the request of the disclosing Party.

8.5 The Parties agree that any breach of this Section would cause irreparable harm - and that in addition to any and all other available remedies, injunctive relief, without the necessity of a bond or other security, shall be appropriate and available.

9. RIGHTS IN PROPERTY

9.1. All materials, documents, data, software and information of every kind and description supplied to MEDPACE by SPONSOR or any of SPONSOR's clients, or prepared, developed, or generated by MEDPACE pursuant to this Agreement, (except for the pre-existing MEDPACE procedural manuals, personal data, methods, procedures, and policies) are and shall be the sole and exclusive property of SPONSOR. Further, all data and information generated or derived by MEDPACE as the result of services performed by it under this Agreement shall be and remain the exclusive property of SPONSOR. SPONSOR shall have the right to make whatever use they deem desirable of any such materials, documents, data or software. MEDPACE shall not, without the prior written consent of SPONSOR, publish, disseminate, or otherwise disclose to any third party any such property (except such disclosure as may be required by law), or use any such property for any purpose other than the performance of this Agreement. Any inventions or other intellectual property, including without limitation protectable copyrights and trademarks, that may evolve from the data and information described above or as the result of Services performed by MEDPACE under this Agreement shall belong to SPONSOR and MEDPACE agrees to assign its rights in all such inventions and/or other intellectual property to SPONSOR consistent with the obligations set forth in Article 10 below.

9.2. SPONSOR acknowledges that all computer programs, software, applications, databases, proposals and other documentation generally used by MEDPACE and not directly related to, derived from or developed solely for SPONSOR are the exclusive and confidential property of MEDPACE or the third parties from whom MEDPACE has secured the right of use. SPONSOR agrees that any improvement, alteration or enhancement to MEDPACE systems, software, applications or processes which are developed or implemented during the course of any Services performed hereunder, without the use of any SPONSOR data, information, materials or Confidential Information (or derivatives thereof), shall be the property of MEDPACE.

10. PATENT RIGHTS

10.1. MEDPACE shall disclose promptly to SPONSOR any and all inventions, discoveries and improvements conceived or made by MEDPACE while providing such services to SPONSOR pursuant to the Agreement and constituting a modification or extension of use relating to SPONSOR's proprietary rights, and agrees to assign all its interest therein to SPONSOR or its nominee; whenever requested to do so by SPONSOR, MEDPACE shall execute any and all applications, assignments, or other instruments and give testimony which SPONSOR shall deem necessary to apply for and obtain a patent in the United States of America and/or other applicable jurisdiction or of any foreign country or to protect otherwise SPONSOR's interests and shall compensate MEDPACE for the time devoted to said activities and reimburse it for expenses incurred.

11. PUBLICITY

11.1. MEDPACE shall not make any public announcements, publications papers, abstracts or oral presentations concerning this Agreement, the subject matter hereof or any Task Order or the subject matter thereof, without the prior written consent of SPONSOR.

11.2. Neither Party may use the other Party's name, logo or trademark in any communication, release, notice or other publication without the express prior written consent of the other Party.

11.3. The Parties agree that any breach of this Section would cause irreparable harm and that in addition to any and all other available remedies, injunctive relief, without the necessity of a bond or other security, shall be appropriate and available.

12. SECURITY AND DISPOSITION OF STUDY FILES

12.1. Except as otherwise provided for in this Agreement, MEDPACE shall use commercially reasonable efforts, including, but not limited to, periodic backup of computer files, to prevent the loss or alteration of SPONSOR's study data, Confidential Information, documentation, and correspondence. MEDPACE shall in all respects comply with any Food and Drug Administration regulations concerning the maintenance, creation and storage of records, including electronic records.

12.2. At appropriate time points or at completion of Services under a Task Order, MEDPACE shall transfer study materials, documents and correspondence to SPONSOR. MEDPACE shall have the right to retain one copy of any study materials, documentation, and correspondence necessary solely to meet regulatory or MEDPACE's own internal audit requirements, so long as it continues to maintain the confidentiality requirements of Article 8.

13. SPONSOR OBLIGATIONS

13.1. SPONSOR acknowledges that performance of the Services by MEDPACE will require the co-operative involvement of both Parties, and SPONSOR hereby agrees to provide such assistance as may be reasonably necessary to enable MEDPACE to perform the Services.

14. INDEMNIFICATION

14.1. Indemnification by SPONSOR

SPONSOR shall indemnify, defend and hold harmless MEDPACE from and against any and all damages, losses, liabilities, costs or expenses (collectively "Damages"), resulting or arising from any third-party claims, demands, assessments, actions, suits, investigations or proceedings (collectively "Claims"), relating to or arising from or in connection with this Agreement or the Services under any Task Order (including but not limited to any Damages arising from or in connection with any study, test, device, product or potential product to which this Agreement relates), to the extent such Claims or Damages have not resulted from (a) the negligence or willful misconduct of MEDPACE, (b) a breach of any applicable FDA, federal, state or local law by MEDPACE, or (c) a material breach of this Agreement or any Task Order by MEDPACE.

14.2. Indemnification by MEDPACE

MEDPACE agrees to indemnify, defend and hold harmless SPONSOR from and against any and all Damages resulting or arising from third-party Claims relating to or arising from or in connection with the Services under any Task Order to the extent that such Claims or Damages are determined to have resulted from (a) the negligence or willful misconduct of MEDPACE, (b) a breach of any applicable FDA, federal, state or local law, or (c) a material breach of this Agreement or any Task Order by MEDPACE.

14.3. Any party providing indemnification under this Agreement shall have the right to control the defense and settlement of any Claims or Damages. The indemnified party shall have the right to obtain separate legal counsel at its own expense if it so chooses. The indemnifying party shall not unreasonably withhold consent for settlement and the indemnified party shall reasonably cooperate in the defense of any Claims or Damages, at the indemnifying party's reasonable expense, and provide prompt notice to the indemnifying party of any Claims or Damages for which indemnification is sought.

15. LIMITATION OF LIABILITY

15.1. Notwithstanding the terms of Article 14 above, in no event shall SPONSOR or MEDPACE be liable for any indirect, incidental, special, or consequential damages or lost profits arising out of the provision of services hereunder, even if the breaching party has been advised of the possibility of such damages.

16. INSPECTIONS AND AUDITS

16.1. Except as otherwise provided for in this Agreement, SPONSOR shall have the right, upon at least [*] business days' prior written notice to MEDPACE, to examine the standard operating procedures, facilities, books, records, papers, files and documentation, including computer files, data bases and records, at MEDPACE's facilities and the facilities of clinical investigators contracted by MEDPACE to determine the adequacy of such records, to ensure the Services are being performed in accordance with the approved Task Orders and applicable regulations and/or to examine the financial records of MEDPACE as may be reasonably necessary to verify out-of-pocket expenses incurred during the performance of the Services. Such inspections and audits shall be conducted during normal business hours.

16.2. MEDPACE shall provide reasonable assistance, including making available members of its staff and providing access to all requested records, to facilitate such inspections and audits.

16.3. MEDPACE shall take all reasonable steps required by SPONSOR to cure any deficiencies found in any audit, inspection or investigation.

17. DEBARMENT

17.1. MEDPACE hereby represents, warrants, and certifies that neither it nor any of its officers, directors, owners, principals or employees has been or will be at any relevant time hereunder debarred under Section 306 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §335a(a) or (b), or similar local law. In the event that any such party becomes debarred, MEDPACE shall notify SPONSOR in writing immediately.

17.2. MEDPACE hereby represents, warrants, and certifies that it has not and shall not use in any capacity the services of any individual, corporation, partnership, or association which has been debarred under Section 306 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §335a(a) or (b), or similar local law. In the event MEDPACE becomes aware of or receives notice of the debarment of any individual, corporation, partnership, or association providing services to MEDPACE, which relate to the Services being provided under this Agreement, MEDPACE shall notify SPONSOR in writing immediately.

18. NON SOLICITATION

Neither Party and its affiliates shall during the term of this Agreement and for a period of [*] months following its termination, either directly or indirectly, hire any employee of the other Party with whom its comes into contact as a result of providing the Services, or recruit, solicit, or entice any such person to become employed by it or any affiliate and shall not approach any such employee for such purpose or encourage, authorize or approve the taking of such action by any other person; provided, however, that the foregoing shall not prevent either Party from hiring any employee of the other Party who:
(a) responds to a general advertisement or bona fide recruitment campaign or (b) has ceased to be employed by such Party otherwise than pursuant to a solicitation by the other Party. The Parties agree that any breach of this provision would cause irreparable harm and that in addition to any and all other available remedies injunctive relief, without the necessity of a bond or other security, shall be appropriate and available.

19. ENTIRE AGREEMENT

This Agreement contains the full understanding of the Parties with respect to the subject matter hereof and supersedes all existing agreements and all other oral, written or other communications between the Parties concerning the subject matter hereof. This Agreement shall not be amended, modified or supplemented in any way except in writing and signed by a duly authorized representative of SPONSOR and MEDPACE.

20. GOVERNING LAW

This Agreement and the performance hereof shall be governed, interpreted and construed in all respects by the internal laws of the State of New York.

21. NO WAIVER

No waiver of any term, provision, or condition of this Agreement whether by conduct or otherwise in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such term, provisions, or conditions, or of any other term, provision, or condition of this Agreement.

22. INDEPENDENT CONTRACTOR

In fulfilling its obligations pursuant to this Agreement, each Party shall be acting as an independent contractor. Neither Party is granted any right or authority to assume or to create any obligation or responsibility, expressed or implied, on behalf of or in the name of the other Party.

23. FORCE MAJEURE

Neither Party shall be liable or deemed to be in default for any delay due to causes beyond the reasonable control of the Party, such as: war, acts or threats of terrorism, civil disorders, acts of God, or government action; provided, that the affected Party (a) promptly notifies the other of the cause and its effects on the Services to be performed hereunder, (b) immediately resume performance after the cause of delay is removed, and (c) use all commercially reasonable efforts to minimize the duration of such delay. Financial difficulty shall never be deemed a force majeure event.

24. SEVERABILITY

In the event any provision of this Agreement shall be determined to be void or unenforceable, the remaining provisions shall remain in full force and effect.

25. ASSIGNMENT

25.1. Except as set forth herein, neither Party shall assign this Agreement or any Task Order except with the express prior written consent of the other Party.

25.2. Notwithstanding anything contained herein: (i) a Party may assign this Agreement and/or any Task Order to any Affiliate, provided that the assigning Party remains fully liable for all liabilities and obligations under this Agreement and any such Task Order; and, (ii) a Party may assign this Agreement and/or any Task Order to a Successor.

25.3. As used herein, "Affiliate" means in relation to a Party, any entity controlling such Party, controlled by such Party, or under common control with such Party; and "Successor" means any entity which acquires all or substantially all assets of a Party or any entity into which a Party is merged.

26. SUBCONTRACTING

MEDPACE may subcontract any portion of the Services hereunder with the prior written consent of SPONSOR, and such consent will not be unreasonable withheld. MEDPACE shall remain liable for the performance of any such Subcontractor.

27. NO OWNERSHIP OF SPONSOR SHARES

In order to avoid potential for conflicts of interest, MEDPACE hereby agrees that during the term of this Agreement it will not hold any shares of SPONSOR or SPONSOR's parent company or options to purchase shares of SPONSOR or SPONSOR's parent company without the written consent of I SPONSOR and that it will not purchase or sell, whether for its own account or the account of any other person or entity, shares of SPONSOR or SPONSOR's parent company.

28. CONFLICTS BETWEEN AGREEMENTS

In the event that there is any conflict between the provisions of this Agreement and any duly executed Task Order, this Agreement shall control, unless the Task Order clearly states that in the event of such conflict, it shall control.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

MEDPACE, INC.

Signature: _____

Title: _____

Date: _____

XOMA (US) LLC

Signature: _____

By: Daniel P. Cafaro
Title: Vice President of Regulatory Affairs and Compliance

Date: _____

EXHIBIT A

FORM OF TASK ORDER

MEDPACE Task Order Number: _____

MEDPACE Project Number: _____

This Task Order, dated _____, is between Medpace Inc. ("**MEDPACE**"), and ("**SPONSOR**").

RECITAL:

WHEREAS, MEDPACE and SPONSOR have entered into that certain Master Services Agreement dated _____"Master Services Agreement"); and

WHEREAS, pursuant to the Master Service Agreement, MEDPACE has agreed to perform certain Services in accordance with Task Orders from time to time entered into by the Parties and SPONSOR and MEDPACE now desire to enter into such a Task Order; and

WHEREAS, MEDPACE and SPONSOR desire that MEDPACE provide certain services with respect to _____ (the "Study") for the study of the product _____("Study Product") as set out in the Protoco Number _____, which is attached hereto as Appendix 1;

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

1. Scope of Work: MEDPACE shall perform the services described in the Scope of Work, attached hereto as Appendix 2, in accordance with the Project Schedule, attached hereto as Appendix 3 and any other documents attached to and specifically referenced in this Task Order ("Services").

2. Compensation: For performance of these Services, SPONSOR shall pay to MEDPACE amount equal to the Project Budget set forth in Appendix 4, which amount shall be payable pursuant to the Payment Schedule set forth in Appendix 5. The Project Budget is provided for cost analysis purposes. It is agreed that all fees are fixed prices unless the underlying assumptions (including trial duration, number of sites/patients, services provided) change and all such changes shall be documented in a Change Order. After staff are assigned, costs are incurred based upon allocation of staff capacity.

3. Transfer of Obligations: Sponsor Obligations transferred to MEDPACE by SPONSOR (consistent with the regulations set forth in 21 C.F.R. Section 312, Subpart D) are identified in Appendix 6.

4. MSA. The provisions of the Master Services Agreement are hereby expressly incorporated by reference into and made a part of this Task Order.

IN WITNESS WHEREOF, the Parties have hereunto signed this Task Order effective as of the day and year first written above.

MEDPACE, INC.

Signature: _____

By: _____

Title: _____
(Print Name)

Date: _____

XOMA (US) LLC

Signature: _____

By: _____
(Print Name)

Title: _____

Date: _____

List of Appendices:

Appendix 1: Protocol
Appendix 2: Scope of Work
Appendix 3: Project Schedule
Appendix 4: Project Budget
Appendix 5: Payment Schedule
Appendix 6: Transfer of Obligations

EXHIBIT 10.45A

[*] indicates that a confidential portion of the text of this agreement has been omitted.

AMENDMENT NO. 1 TO
MASTER SERVICES AGREEMENT

This Amendment No. 1 to Master Services Agreement (this "**Amendment**"), dated as of October 4, 2011 (the "**Amendment Effective Date**"), is between Medpace, Inc., an Ohio corporation with offices at 4620 Wesley Avenue, Cincinnati, Ohio 45212 (" **MEDPACE**"), and XOMA (US) LLC, a Delaware limited liability company with offices at 2910 Seventh Street, Berkeley, California 94710 ("**SPONSOR**"). MEDPACE and SPONSOR are sometimes referred to herein individually as a "**Party**" and together as the "**Parties**." Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Master Services Agreement (as defined below).

RECITALS:

WHEREAS, MEDPACE and SPONSOR have entered into that certain Master Services Agreement, dated as of November 9, 2009 (the '**Master Services Agreement**"); and

WHEREAS, the Parties now wish to amend the Master Services Agreement on the terms set forth below;

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. **Amendment.** The Master Services Agreement is hereby amended by adding thereto a new Article 4A to read in its entirety as follows:

4A. SPECIAL PAYMENT AND OTHER PROVISIONS RELATING TO PERINDOPRIL PRODUCTS

4A.1. Certain Definitions

4A.1.1. "**ACEON**" means the product ACEON®, which is one of the subjects of the Amended and Restated License Agreement.

4A.1.2. "**Amended and Restated License Agreement**" means that certain Amended and Restated License and Commercialization Agreement to be entered into by and between Les Laboratoires Servier ("**Servier**") and XOMA Ireland Limited relating to ACEON and the Perindopril/Amlodipine Product.

4A.1.3. "**Gross Sales**" means, with respect to a particular product and for a particular period, the adjusted gross amount invoiced on all sales of such product by SPONSOR or through or by its affiliates or sublicensees in the U.S. through customary commercial channels of distribution to independent third parties in bona fide arms length sales for such period.

4A.1.4. "**Perindopril/Amlodipine Product**" means the product Perindopril/Amlodipine, which is one of the subjects of the Amended and Restated License Agreement.

4A.1.5. "**Perindopril/Amlodipine Services**" means the Services to be performed by MEDPACE pursuant to the Perindopril/Amlodipine Task Orders.

4A.1.6. "**Perindopril/Amlodipine Studies**" means the studies of the Perindopril/Amlodipine Product that are the subjects of the Perindopril/Amlodipine Task Orders.

4A.1.7. "**Perindopril/Amlodipine Task Orders**" means (a) MEDPACE Task Order Number 5 (MEDPACE Project Number [*]), dated July 6, 2011, between MEDPACE and SPONSOR under the Master Services Agreement ("**Task Order No. 5**"), and (b) that certain Task Order to be entered into between the Parties under the Master Services Agreement relating to the planned small meal interaction study for the Perindopril/Amlodipine Product. .

4A.2. Payments from Servier. Within [*] days of the first dosing of the first patient in the first of the Perindopril/Amlodipine Studies, SPONSOR will pay to MEDPACE [*] Euro, whether received from Servier in whole or in part, which will be credited against any payments then owed to MEDPACE for Perindopril/Amlodipine Services pursuant to the Perindopril/Amlodipine Task Orders or Section 4A.4 below, if applicable, and any additional funds shall be provided as an advance against future Perindopril/Amlodipine Services to be performed by MEDPACE under the Perindopril/Amlodipine Task Orders and applied as payment for such Perindopril/Amlodipine Services when due.

4A.3. Payments from Products Sales

4A.3.1. ACEON. Within [*] days following the end of each month beginning with January of 2012, SPONSOR will pay to MEDPACE an amount equal to [*]% of Gross Sales for ACEON for such month which will be credited against any payments then owed to MEDPACE for Perindopril/Amlodipine Services pursuant to the Perindopril/Amlodipine Task Orders or Section 4A.4 below, if applicable, and any additional funds remainder shall be provided as an advance against future Perindopril/Amlodipine Services to be performed by MEDPACE and applied as payment for such Services when due. Payments pursuant to this Section 4A.3.1 shall continue until all amounts due to MEDPACE for Perindopril/Amlodipine Services (including pursuant to Section 4A.4 below) have been paid in full.

4A.3.2. Perindopril/Amlodipine Product. In the event the Perindopril/Amlodipine Services are completed, and MEDPACE is still owed payments from SPONSOR for Perindopril/Amlodipine Services, SPONSOR will not start new development programs with the Perindopril/Amlodipine Product without either making payment in full of all amounts due to MEDPACE for Perindopril/Amlodipine Services or receiving MEDPACE's prior written consent. As is the case with payments pursuant to Section 4A.3.1, payments pursuant to this Section 4A.3.2 shall continue until all amounts due to MEDPACE for Perindopril/Amlodipine Services (including pursuant to Section 4A.4 below) have been paid in full. Should SPONSOR elect to sell the Perindopril/Amlodipine Product in its entirety, MEDPACE must be paid in full prior to completion of such sale.

4A.3.3. Payment Report. Each payment to MEDPACE required by Section 4A.3.1 or 4A.3.2 shall be accompanied by a reasonably detailed report in a form reasonably satisfactory to MEDPACE setting forth SPONSOR's calculation of Gross Sales for the relevant product and month.

4A.4. Premium to MEDPACE in Certain Circumstances.

4A.4.1. If, upon completion of Task Order No. 5, the aggregate amount earned (paid and unpaid) by MEDPACE for services pursuant to Task Order No. 5 exceeds the aggregate of all payments actually made to MEDPACE for the services under Task Order No. 5 through completion of Task Order No. 5 (such excess, the "**Excess Amount**"), then, subject to the provisions of Section 4A.4.2 below, MEDPACE shall be entitled to an additional payment amount, as a premium, equal to [*]% of the Excess Amount ("**Premium**"), which payment shall be made from the amounts required to be paid to MEDPACE for Task Order No. 5 services pursuant to Sections 4A.3.1 and 4A.3.2, or, at SPONSOR's option, other SPONSOR operating cash flows, as applicable.

4A.4.2. As soon as reasonably practicable following completion of Task Order No. 5, MEDPACE shall submit an itemized accounting of all payments for services under Task Order No. 5 earned and received in order to determine the Excess Amount, and in the event SPONSOR pays the Excess Amount in full to MEDPACE within [*] days following receipt of such itemized accounting, no Premium shall be payable.

4A.5. If any Excess Amount and its corresponding Premium have not been paid to MEDPACE within [*] months of completion of Task Order No. 5:

4A.5.1. SPONSOR shall remain liable for these payments as well as all other payments pursuant to all other Perindopril/Amlodipine Task Orders, which will be made from Section 4A.3.1. funds, and

4A.5.2. SPONSOR and MEDPACE will negotiate in good faith to establish an alternative payment strategy which will attempt to resolve any remaining balance; [*].

4A.6 Amounts Held as Advances at Time of Termination In the event the Perindopril/Amlodipine Task Orders are terminated before completion and the amounts paid pursuant to Section 4A.2 or 4A.3.1 then being held as advances exceed the remaining amount due to MEDPACE for Perindopril/Amlodipine Services, such excess amount shall be returned to SPONSOR as soon as reasonably practicable following receipt of a termination notice.

4A.7. Additional Covenants. Each of the Parties shall use commercially reasonable efforts to initiate the Perindopril/Amlodipine Study that is the subject of Task Order No. 5 on or before December 31, 2011 and to complete such study in accordance with the Project Schedule and the Project Budget provided in Task Order No. 5 (as the same may be modified from time to time by Change Order or other mutual agreement of the Parties). The Parties agree that the payment provisions of this Article 4A supersede the Payment Schedule set forth in Task Order No. 5.

4A.8. Negotiation Rights. As a condition of this payment arrangement, SPONSOR agrees that for [*] years after the Amendment Effective Date, MEDPACE, including its parent(s), subsidiaries, affiliates, and successors, shall have the exclusive right to negotiate for the conduct of all clinical trials for one or more fixed-dose combination products containing both perindopril and either indapamide, amlodipine and indapamide and/or any other active pharmaceutical ingredient (such products, the "**Additional Combination Products**") pursuant to a financing arrangement substantially similar to that reflected in this Amendment. SPONSOR shall not conduct any negotiations or enter into any agreement with any third party regarding the provision of services related to the design and execution of clinical development programs for Additional Combination Products without first either conducting negotiations with MEDPACE in accordance with this Section 4A.7 ("**Negotiations**") or receiving a written waiver from MEDPACE of its rights under this Section 4A.7, provided that MEDPACE is then in compliance with its obligations under the Master Services Agreement and any Task Orders thereunder.

The Parties agree to conduct all Negotiations in good faith, with reasonable diligence and for a period of not more than [*] days after the date of such notice or such other period as the Parties shall then agree in writing (the "**Exclusivity Period**"). In the event Negotiations are conducted in accordance with this Section 4A.7 but the Parties have not reached written agreement at the end of the Exclusivity Period, SPONSOR shall be free to negotiate with third parties regarding the provision of services related to the design and execution of clinical development programs for Additional Combination Products. In the event the Parties reach such an agreement, the terms agreed to by the Parties with respect thereto shall be set forth in an amendment to this Agreement or a separate agreement, as the Parties shall determine. All MEDPACE work will be charged at the rates offered to MEDPACE preferred customers. MEDPACE and SPONSOR will negotiate in good faith the scope of each project.

4A.9. Effectiveness. This Article 4A shall become effective immediately, and without further action by either Party, upon execution and delivery of the Amended and Restated License Agreement by the parties thereto.

Section 2. Effect of Amendment. Except as expressly stated herein, the Master Services Agreement shall remain in full force and effect.

Section 3. Counterparts. This Amendment 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.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first set forth above.

MEDPACE, INC.

By: _____
Name:
Title:

XOMA (US) LLC

By: _____
Name: James R. Neal
Title: Vice President, Business Development

Exhibit 21.1

Subsidiaries of the Company	Jurisdiction of Organization
XOMA Ireland Limited	Ireland
XOMA Technology Ltd.	Bermuda
XOMA (US) LLC	Delaware
XOMA LS Limited	Ireland
XOMA CDRA LLC	Delaware

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 of XOMA Corporation (Nos. 333-108306, 333-151416, 333-171429 and 333-174730) pertaining to the 1981 Share Option Plan, the Restricted Share Plan, the 1992 Directors Share Option Plan, the Amended and Restated 1998 Employee Stock Purchase Plan, the 2007 CEO Share Option Plan and the Amended and Restated 2010 Long Term Incentive and Stock Award Plan and in the Registration Statement on Form S-3 of XOMA Corporation (No. 333-172197) and the related Prospectuses of XOMA Corporation, of our reports dated March 14, 2012, with respect to the consolidated financial statements of XOMA Corporation, and the effectiveness of internal control over financial reporting of XOMA Corporation included in this Annual Report (Form 10-K) for the year ended December 31, 2011.

/s/ ERNST & YOUNG LLP
San Francisco, California
March 14, 2012

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, John Varian, certify that:

1. I have reviewed this annual report on Form 10-K of XOMA Corporation;

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 14, 2012

/s/ JOHN VARIAN

John Varian
Chief Executive Officer

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 Corporation;

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 14, 2012

/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 Corporation (the "Company") that the Annual Report of the Company on Form 10-K for the year ended December 31, 2011, 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 14, 2012

/s/ JOHN VARIAN

John Varian
Chief Executive 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.

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 Corporation (the "Company") that the Annual Report of the Company on Form 10-K for the year ended December 31, 2011, 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 14, 2012

/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.

Exhibit 99.1

XOMA Reports 2011 and Fourth Quarter Financial Results

BERKELEY, Calif., March 14, 2012 (GLOBE NEWSWIRE) -- XOMA Corporation (Nasdaq: XOMA), a leader in the discovery and development of therapeutic antibodies, today announced its financial results and operational highlights for the fourth quarter and year ended December 31, 2011.

“While the first half of 2011 included some disappointments, we had a crucial success in attracting a world-class pharmaceutical company, Les Laboratoires Servier, to become our partner for our lead asset gevokizumab. In mid 2011, we were able to recruit Paul Rubin, MD, as our Chief Medical Officer,” stated John Varian, XOMA's Chief Executive Officer. Mr. Varian added, “After joining XOMA as Interim CEO in September 2011, I worked with Paul and the rest of the management team to take significant actions to make XOMA a stronger company. These actions were two-fold. First, we significantly expanded the gevokizumab development program. Second, to fund this investment, we streamlined XOMA and moved the Company away from non-differentiating activities. The expanded clinical approach for gevokizumab was announced in November 2011, and the streamlining, which resulted in a $14 million reduction in recurring costs, was announced on January 5, 2012.

"As you have seen from us in the early months of 2012, we remain focused on investing in value-creating activities. We believe XOMA will conclude 2012 with the gevokizumab global Phase 3 program ongoing, results in hand from our Phase 2 proof-of-concept study in moderate to severe inflammatory acne, and our second and third proof-of-concept Phase 2 studies underway,” Mr. Varian continued. “I have confidence we have the ability to achieve these milestones and the depth of knowledge and creativity of our team will lead to additional avenues upon which we can build value for XOMA and its shareholders.”

XOMA had total revenues of $58.2 million in 2011, compared with $33.6 million in 2010. The increase in revenues in 2011 compared with 2010 was due primarily to payments made by Les Laboratoires Servier (Servier) throughout 2011 for gevokizumab development.

XOMA had a net loss of $32.7 million, or $1.04 per share, for the year ended December 31, 2011, compared with net loss of $68.8 million, or $3.69 per share, for the year ended December 31, 2010. Research and development expenses in 2011 decreased to $68.1 million compared with $77.4 million in 2010, primarily reflecting decreased spending on gevokizumab-related clinical trials during the third and fourth quarters of 2011. General and administrative expenses were $24.0 million in 2011 and $23.3 million in 2010.

For the fourth quarter ended December 31, 2011, XOMA had total revenues of $9.8 million and a net loss of $11.7 million, or $0.34 per share, compared with total revenues of $9.6 million and net loss of $17.8 million, or $0.84 per share, for the quarter ended December 31, 2010.

At December 31, 2011, XOMA had cash and cash equivalents of $48.3 million, compared with $37.3 million at December 31, 2010. XOMA received from Servier approximately $35 million in cash related to the companies' Collaboration and License Agreement for gevokizumab, including an upfront payment of $15 million and a EUR15 million loan, in January 2011. In December 2011, XOMA secured a $10 million loan from GE Capital.

2012 Organizational Changes to Focus on Value-Creating Activities and Fourth Quarter 2011 Operational Highlights

- On January 5, 2012, XOMA announced the appointment of John Varian as Chief Executive Officer, in addition to his continued position as a member of the Board of Directors. Concurrently, Mr. Varian announced the streamlining of XOMA's operations to focus on value-creating activities, primarily the expansion of gevokizumab's clinical development program. The streamlining resulted in
  - a personnel reduction of 84 positions
  - the decision to outsource Phase 3 and commercial-scale manufacturing
  - the elimination of internal research functions that were non-differentiated or obtainable cost-effectively through contract service providers
  - a reduction in G&A spending of 20% to support the leaner organization
  - the decision to complete the biodefense contracts XOMA has in place but not actively pursue future contracts.
- In November 2011, the Company announced the expansion of XOMA's Phase 3 program for gevokizumab to the broader indication of non-infectious uveitis (NIU). NIU is a broad-spectrum ocular disorder, which includes Behçet's uveitis, affecting an estimated 150,000 people in the United States. The Company expects to begin its global Phase 3 program in the second quarter of 2012.
- In December 2011, XOMA launched a Phase 2 proof-of-concept trial to determine gevokizumab's efficacy in treating moderate to severe inflammatory acne. This study is the first in a series of three proof-of-concept Phase 2 studies that XOMA is conducting to expand the value of gevokizumab.
- In December 2011, the Company secured a $10 million term loan from GE Capital.
- In October 2011, the Company was awarded a new U.S. government contract for up to $28 million over five years to develop broad-spectrum antitoxins for the treatment of human botulism poisoning.
- In December 2011, XOMA changed its jurisdiction of incorporation from Bermuda to Delaware.

Guidance

The Company reaffirmed the anticipated cash used in ongoing operating activities during 2012 to be approximately $35 million, as announced on January 5, 2012.

Investor Conference Call and Webcast

XOMA will host a conference call and webcast today, March 14, 2012, at 4:30 p.m. ET. The webcast can be accessed via the Investors section of XOMA's website at http://investors.xoma.com/events.cfm and will be available for replay until close of business on June 10, 2012. Telephone numbers for the live audiocast are 877-369-6589 (U.S./Canada) and 408-337-0122 (international). A telephonic replay will be available beginning approximately two hours after the conclusion of the call until close of business on March 21, 2012. Telephone numbers for the replay are 855-859-2056 (U.S./Canada) and 404-537-3406 (international), passcode 58076235.

About Gevokizumab
Gevokizumab (XOMA 052) is a potent monoclonal antibody with the potential to treat patients with a wide variety of inflammatory diseases and other diseases. Gevokizumab binds strongly to interleukin-1 beta (IL-1 beta), a pro-inflammatory cytokine that has been shown to be involved in Behçet's and other forms of non-infectious uveitis, cardiovascular disease, and other auto-inflammatory diseases. By binding to IL-1 beta, gevokizumab inhibits the activation of the IL-1 receptor, thereby modulating the cellular signaling events that produce inflammation.

Les Laboratoires Servier is XOMA's development and commercialization partner for gevokizumab. XOMA holds rights to gevokizumab in the U.S. and Japan for non-cardiovascular indications, including non-infectious uveitis and acne for which clinical studies are ongoing.

About Non-infectious Uveitis
The term uveitis broadly refers to the inflammatory diseases that affect the portion of the eye known as the uvea, which is the middle of three layers that surround the eye. People with uveitis may experience decreased vision, pain, light sensitivity, and floaters. Uveitis may be caused by an infection that is commonly treated with an antimicrobial agent, or by an unknown pathogen triggering inflammation, called non-infectious uveitis.

The most common form of uveitis affects the front of the eye and is known as anterior uveitis. Other forms include intermediate uveitis, posterior uveitis, and pan uveitis. These types differ in that they all include involvement of the back portions of the eye. Posterior uveitis refers to inflammation in the retina and the choroid, and it may result from a different immune response trigger. Pan-uveitis refers to inflammation of all three major parts of the eye. Behçet's uveitis is a well-known form of pan-uveitis. Due to the swelling of tissues critical to vision, intermediate, posterior, and pan-uveitis (which collectively make up NIU) can lead to blindness if not treated.

The only FDA-approved treatment regimen for intermediate, posterior, and pan-uveitis is corticosteroid therapy. These may be given orally or systemically, injected directly into the eye or surrounding areas, or delivered via slow-release polymers that are inserted into the eye. The fact that physicians use other non-FDA approved drugs in addition to corticosteroids to treat non-infectious uveitis underscores the need for new treatment options.

About XOMA
XOMA discovers and develops innovative antibody therapeutics. XOMA’s lead antibody drug candidate is gevokizumab (XOMA 052), a humanized antibody that modulates the inflammatory cytokine interleukin-1 beta, or IL-1 beta. In collaboration with the Company’s partner, Les Laboratoires Servier (Servier), XOMA expects to initiate global Phase 3 clinical development of gevokizumab to treat non-infectious uveitis, including the subset of patients with Behçet’s uveitis, in 2012. Separately, XOMA has launched a Phase 2 proof-of-concept program for gevokizumab to evaluate additional indications for further development, including moderate-to-severe inflammatory acne.

In order to retain the value of XOMA’s discoveries and its future revenue potential, XOMA made a strategic decision to establish a commercial capability. To implement this strategy, the Company established its U.S. commercial operations through the acquisition of U.S. rights to Servier’s ACEON® (perindopril erbumine), a marketed angiotensin converting enzyme (ACE) inhibitor. The agreement with Servier includes a portfolio of fixed-dose combination product candidates where perindopril is combined with other active ingredients to treat hypertension. XOMA has the right to develop and commercialize one of these product candidates for the U.S. market and options to develop and commercialize two more.

Through its unique discovery platform, the Company is focused on discovering and developing allosteric modulating antibodies that combine the beneficial pharmacology of small molecule drugs with the target specificity of antibodies. Among these novel discoveries are two new classes of fully human antibodies: XMetA partially activates the insulin receptor, and XMetS sensitizes the insulin receptor. These two programs represent distinct and potentially breakthrough therapeutic approaches to the treatment of patients with diabetes. XOMA is headquartered in Berkeley, California. For more information, please visit www.xoma.com.

The XOMA Corporation logo is available at http://www.globenewswire.com/newsroom/prs/?pkgid=5960

Forward-Looking Statements
Certain statements contained herein concerning timing of initiation of clinical trials, availability of clinical trial results, continued sales of approved products, regulatory approval of unapproved product candidates and anticipated levels of cash utilization, 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 timing of initiation of and availability of results of clinical trials may be delayed or may never occur as a result of actions or inaction by regulators or present or future collaboration partners, complications in the design, implementation or third-party approval of clinical trials, complications in the collection or interpretation of statistical data or unanticipated safety issues; continued sales of approved products may be impacted by XOMA's ability to implement its marketing efforts, competition or unanticipated safety issues; regulatory approval of unapproved product candidates may be affected by the results of future clinical trials, actions or inaction by the FDA or unanticipated safety issues; and anticipated levels of cash utilization may be other than as expected due to unavailability of additional licensing or collaboration opportunities, inability to obtain the services of contract manufacturing or service providers on anticipated terms, higher than expected costs for clinical trials, outsourced manufacturing or other services, the effects of the pace of development spending in light of the terms of XOMA's existing collaboration arrangements, or unanticipated changes in XOMA's research and development programs or other businesses.

These and other risks, including those related to current economic and financial market 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 or licensing relationships; the ability of collaborators, licensees and other third parties to meet their obligations and their discretion in decision-making; XOMA's ability to meet the demands of the United States government agency with which it has entered into its government contracts; competition; market demand for products; scale-up, manufacturing 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; and uncertainties as to the costs of protecting intellectual property, 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 **

XOMA Ltd.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)
(in thousands, except per share amounts)

	Three months ended December 31,		Year ended December 31,	
	2011	2010	2011	2010
Revenues:				
License and collaborative fees	$ 1,266	$ 433	$ 17,991	$ 2,182
Contract and other revenue	8,560	9,150	40,037	27,174
Royalties	21	18	168	4,285
Total revenues	9,847	9,601	58,196	33,641
Operating expenses:				
Research and development	16,659	19,134	68,137	77,413
Selling, general and administrative	5,235	6,557	24,014	23,332
Total operating expenses	21,894	25,691	92,151	100,745
Loss from operations	(12,047)	(16,090)	(33,955)	(67,104)
Other income (expense):				
Interest (expense)	(644)	(104)	(2,462)	(385)
Other income (expense):	956	(1,554)	3,689	(1,240)
Net loss before taxes	(11,735)	(17,748)	(32,728)	(68,729)
Provision for income tax expense	-	(10)	(15)	(27)
Net loss	$ (11,735)	$ (17,758)	$ (32,743)	$ (68,756)
Basic and diluted net loss per share of common stock	$ (0.34)	$ (0.84)	$ (1.04)	$ (3.69)
Shares used in computing basic and diluted net loss per share of common stock	34,420	21,195	31,590	18,613

XOMA Ltd.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands)

	December 31,	
	2011	**2010**
ASSETS		
Current assets:		
Cash and cash equivalents	$ 48,344	$ 37,304
Trade and other receivables, net	12,332	20,864
Prepaid expenses and other current assets	2,019	712
Total current assets	62,695	58,880
Property and equipment, net	12,709	14,869
Other assets	2,632	503
Total assets	$ 78,036	$ 74,252
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 2,128	$ 3,581
Accrued and other liabilities	10,012	10,658
Deferred revenue	5,695	17,044
Interest bearing obligations - current	2,796	-
Warrant liabilities	379	4,245
Total current liabilities	21,010	35,528
Deferred revenue – long-term	7,539	1,086
Interest bearing obligations – long-term	33,524	13,694
Other liabilities - long term	952	353
Total liabilities	63,025	50,661
Stockholders' equity	15,011	23,591
Total liabilities and stockholders' equity	$ 78,036	$ 74,252

CONTACT: XOMA Ltd.

Company and Investor Contact:
Carol DeGuzman
510-204-7270
deguzman@xoma.com

Juliane Snowden
The Oratorium Group, LLC
jsnowden@oratoriumgroup.com

Media Contact:
Canale Communications
Pam Lord
619-849-6003
pam@canalecomm.com